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Test Report Federal Register

Tuesday
June 26, 1979

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- 37191 Relations With the People on Taiwan** Executive order.
- 37195 Captive Nations Week** Presidential proclamation
- 37193 Equal Employment Opportunity Commission** Executive order transferring functions to
- 37207 Social Security** HEW/SSA revises rules on application filing for old-age, survivors', dependents', or disability benefits; effective 6-26-79
- 37336 Mid-Career Training in Health Administration/Planning** HEW/HRA and PHS announces that grants will be awarded in fiscal year 1979; applications by 8-7-79
- 37434 Prescription Drugs for Human Use** HEW/FDA establishes required format for physician labeling; effective 12-26-79 (Part II of this issue)
- 37212 Color Additives in Food and Drugs for Human Use** HEW/FDA establishes requirements for label declaration of FD&C Yellow No. 5; effective 7-1-81 and 7-26-80; objections by 7-26-79
- 37364 Treasury Securities** Treasury/Sec'y announces auction of Bonds of 1994

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- 37470 Business Development Companies** SEC proposes rule regarding performance-based compensation of registered investment advisers; comments by 8-31-79 (Part III of this issue)
- 37478 Community Development Block Grants** HUD/CPD issues interim rules governing operation of Small Cities Program; effective 7-26-79; comments by 8-27-79 (Part IV of this issue)
- 37201 Commodity Exchange** CFTC amends rules to make registration fees non-refundable under certain conditions; effective 7-26-79
- 37332 Federal Inspection or Grading and Acceptance of Food** USDA/FSQS sets forth policy regarding withdrawal or denial of service based upon convictions for bribery and related offenses; effective 6-26-79
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- 37225 Affirmative Action** PADC issues regulations to assure participation of minorities, women, handicapped persons, and Vietnam era veterans in benefits from development and rejuvenation of Washington, D.C. area; effective 6-26-79; comments by 7-30-79
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Executive Order 12143 of June 22, 1979

The President

Maintaining Unofficial Relations With the People on Taiwan

In light of the recognition of the People's Republic of China by the United States of America as the sole legal government of China, and by the authority vested in me as President of the United States of America, by the Taiwan Relations Act (Public Law 96-8, 93 Stat. 14, 22 U.S.C. 3301 *et seq.*, hereinafter referred to as "the Act"), and Section 301 of Title 3 of the United States Code, in order to facilitate the maintenance of commercial, cultural and other relations between the people of the United States and the people on Taiwan without official representation or diplomatic relations, it is hereby ordered as follows:

1-1. *Delegation and Reservation of Functions.*

1-101. Exclusive of the functions otherwise delegated, or reserved to the President, by this Order, there are delegated to the Secretary of State all functions conferred upon the President by the Act. In carrying out these functions, the Secretary of State shall consult with other departments and agencies as appropriate.

1-102. There are delegated to the Director of the Office of Personnel Management the functions conferred upon the President by paragraphs (1) and (2) of Section 11(a) of the Act. These functions shall be exercised in consultation with the Secretary of State.

1-103. There are reserved to the President the functions conferred upon the President by Section 3, Section 7(a)(3), and the second sentence of Section 9(b), and the determination specified in Section 10(a) of the Act.

1-2. *Specification of Laws and Determinations.*

1-201. Pursuant to Section 7(a) of the Act, I specify the following provisions of law:

- (a) Section 4082 of the Revised Statutes (22 U.S.C. 1172);
- (b) Section 1707 of the Revised Statutes (22 U.S.C. 1173);
- (c) Section 1708 of the Revised Statutes (22 U.S.C. 1174);
- (d) Section 1709 of the Revised Statutes, as amended (22 U.S.C. 1175);
- (e) Section 1710 of the Revised Statutes, as amended (22 U.S.C. 1176);
- (f) Section 1711 of the Revised Statutes, as amended (22 U.S.C. 1177);
- (g) Section 1718 of the Revised Statutes (22 U.S.C. 1185); and
- (h) Section 7 of the Act of April 5, 1906 (22 U.S.C. 1195).

1-202. Pursuant to Section 9(b) of the Act, and in furtherance of the purposes of the Act, the procurement of services may be effected without regard to the following provisions of law and limitations of authority:

- (a) Section 3648 of the Revised Statutes, as amended (31 U.S.C. 529);
- (b) Section 9 of the Act of June 30, 1906 (31 U.S.C. 627), and Section 3679 and 3732 of the Revised Statutes (31 U.S.C. 665; 41 U.S.C. 11), to the extent necessary to permit the indemnification of contractors against unusually hazardous risks, as defined in Institute contracts, consistent, to the extent practicable, with regulations prescribed by the Department of Defense pursu-

ant to the provisions of the Act of August 28, 1958 (50 U.S.C. 1431 *et seq.*), and Executive Order No. 10789 of November 14, 1958, as amended;

(c) Section 3709 of the Revised Statutes and Section 302 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 5, 252);

(d) Section 3710 of the Revised Statutes (41 U.S.C. 8);

(e) Section 2 of Title III of the Act of March 3, 1933 (41 U.S.C. 10a);

(f) Section 3735 of the Revised Statutes (41 U.S.C. 13);

(g) Section 304(b) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254(b)), so as to permit the payment of fees in excess of the prescribed fee limitations, but nothing herein shall be construed as authorizing the use of the cost-plus-a-percentage-of-cost system of contracting;

(h) Section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255);

(i) Sections 2 through 16 of the Contract Disputes Act of 1978 (41 U.S.C. 601-613);

(j) Sections 2304, 2305 and 2306(a) through (f) of Title 10 of the United States Code, but nothing herein shall be construed as authorizing the use of the cost-plus-a-percentage-of-cost system of contracting; and

(k) Section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168).

1-203. (a) With respect to cost-type contracts with the American Institute in Taiwan under which no fee is charged or paid, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

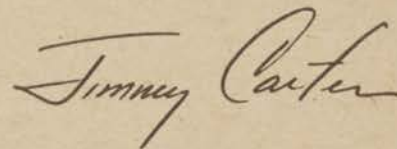
(b) With respect to contracts heretofore or hereafter made under the Act, other than those described in subsection (a) of this Section, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof, if the Secretary of State determines in each case that such action is necessary to protect the foreign policy interests of the United States.

1-204. Pursuant to Section 10(a) of the Act, the Coordination Council for North American Affairs is determined to be the unofficial instrumentality established by the people on Taiwan having the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with the Act.

1-3. *President's Memorandum of December 30, 1978.*

1-301. This Order supersedes my memorandum of December 30, 1978 for all departments and agencies entitled "Relations With the People on Taiwan" (44 FR 1075). Agreements and arrangements referred to in paragraph (B) of that memorandum shall continue in force and shall be performed in accordance with the Act and this Order.

THE WHITE HOUSE,
June 22, 1979.



Presidential Documents

Executive Order 12144 of June 22, 1979

Transfer of Certain Equal Pay and Age Discrimination in Employment Enforcement Functions

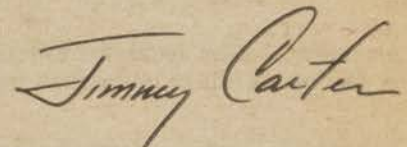
By the authority vested in me as President of the United States of America by the Constitution and laws of the United States, including Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807), in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1-101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106).

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds, available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this Order, including the transfer of funds, records, property, and personnel.

1-104. This Order shall be effective July 1, 1979.



THE WHITE HOUSE,
June 22, 1979.

THE UNIVERSITY OF CHICAGO

DEPARTMENT OF CHEMISTRY

RESEARCH REPORT

1950-1951

REPORT OF THE RESEARCH GROUP ON THE CHEMISTRY OF THE CARBON-14 ISOTOPE

The following report was prepared by the members of the research group on the chemistry of the carbon-14 isotope during the year 1950-1951. The work was carried out under the direction of the senior member of the group, and the results are presented in the following pages.

The work was carried out in the Department of Chemistry, University of Chicago, during the year 1950-1951. The results are presented in the following pages.

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Presidential Documents

Proclamation 4666 of June 22, 1979

Captive Nations Week, 1979

By the President of the United States of America

A Proclamation

Twenty years ago, by a joint resolution approved July 17, 1959 (73 Stat. 212), the Eighty-Sixth Congress authorized and requested the President to proclaim the third week in July of each year as Captive Nations Week.

However greatly the world has changed in the past generation, our country's fundamental faith in human freedom remains constant. Americans now, as at all times in our history, remain steadfast in our belief that liberty and national independence are among the universal birthrights of mankind.

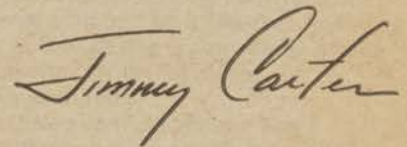
Remembering our democratic heritage and our commitment to human rights, let us take this occasion to reaffirm our admiration for all the men and women around the world who are committed to the cause of freedom.

And mindful of our own rich and diverse heritage, let us express our compassion and respect for persons around the world still seeking the realization of these ideals in their own lands.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week beginning July 15, 1979, as Captive Nations Week.

I invite the people of the United States to observe this week with appropriate ceremonies and activities and to reaffirm their dedication to the ideals which unite us and serve as inspiration to others.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of June, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and third.



Rules and Regulations

Federal Register

Vol. 44, No. 124

Tuesday, June 26, 1979

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.

GENERAL ACCOUNTING OFFICE

4 CFR Parts 51, 52, 53, 56

Transportation

CFR Correction

The text of Subchapter D—Transportation, appearing on pages 48–52 of title 4, revised as of January 1, 1978, was inadvertently omitted from the 1979 edition of the CFR. Subchapter D, consisting of Parts 51 through 56, should read as set forth below:

SUBCHAPTER D—TRANSPORTATION

PART 51—DETERMINATIONS

Sec.

51.1 Scope of part.

51.2 Standard forms and procedures.

§ 51.1 Scope of part.

This part contains basic determinations by the Comptroller General as to the extent he deems it necessary to continue or discontinue to exercise the authority to prescribe forms and uniform procedures provided in section 309, 42 Stat. 25, 31 U.S.C. 49.

(42 Stat. 25, as amended; 31 U.S.C. 52. Interpret or apply sec. 112, 64 Stat. 835; 31 U.S.C. 66)

[40 FR 47511, Oct. 9, 1975]

§ 51.2 Standard forms and procedures.

It is determined that the prescribing of standard forms and procedures pertaining to payments for transportation services furnished for the account of the United States is so closely related to the audit of such payments and adjustment of claims pertaining thereto that it will generally be unnecessary for this function to be performed in the General Accounting Office upon transfer of the transportation audit to the General Services Administration. Standard

forms and procedures may therefore be prescribed by the Administrator, General Services Administration, subject to consultation with the internal organization of the General Accounting Office assigned overview responsibility, except for the uniform standards and procedures necessary to permit performance of the discretionary functions vested by statute in the Comptroller General and other uniform fiscal requirements deemed necessary, as prescribed in part 52.

(42 Stat. 25, as amended; 31 U.S.C. 52. Interpret or apply sec. 112, 64 Stat. 835; 31 U.S.C. 66)

[40 FR 47511, Oct. 9, 1975]

PART 52—UNIFORM STANDARDS AND PROCEDURES FOR TRANSPORTATION TRANSACTIONS

Sec.

52.1 Scope of part.

52.2 Use of American flag vessels and certificated air carriers.

52.3 Use of travel agencies.

Authority: Sec. 311, 42 Stat. 25; 31 U.S.C. 52. Interpret or apply sec. 309, 42 Stat. 25; 31 U.S.C. 49 and sec. 112, 64 Stat. 835; 31 U.S.C. 66, unless otherwise noted.

Source: 40 FR 47512, Oct. 9, 1975, unless otherwise noted.

§ 52.1 Scope of part.

This part contains uniform standards and procedures relating to discretionary functions vested by statute in the Comptroller General and to matters requiring uniformity of fiscal practices relating to transportation transactions entered into for the account of the United States Government.

§ 52.2 Use of American flag vessels and certificated air carriers.

(a) *Transportation of passengers.* Section 901 of the Merchant Marine Act of 1936, 46 U.S.C. 1241, requires the use of American flag vessels for travel on official business; and section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517, requires the use of air carriers certificated under section 401 of the Federal Aviation Act of 1958 (American flag) for Government-financed passenger transportation (including but not limited to Government dependents, consultants, grantees, contractors and subcontractors), when such carriers are available. Compliance with section 901 and section 5 is

required whether the transportation expenses are paid by the United States or reimbursed to the traveler.

(b) *Transportation of personal effects and freight.* Section 901 of the Merchant Marine Act of 1936, 46 U.S.C. 1241, requires the use of American flag vessels by officers and employees of the United States for the transportation of their personal effects, when such vessels are available, and section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U.S.C. 1517, requires the use of air carriers certificated under section 401 of the Federal Aviation Act of 1958 (American flag) for any Government-financed movement of freight by air when such air carriers are available.

(c) *Disallowance of expenditures.* The Comptroller General will disallow any expenditures for commercial non-American-flag air or foreign-flag ocean passenger transportation, or for foreign-flag ocean transportation of personal effects or non-American-flag air transportation of freight, unless there is attached to the payment voucher a certificate or memorandum adequately explaining why American-flag service was unavailable signed by the traveler or other responsible official of the agency authorizing the travel or transportation who has knowledge of the facts concerning such usage.

(d) *Required documentation.* Each voucher for reimbursement of expenses for travel in whole or in part via a non-American-flag air or foreign flag ocean carrier, and each bill for payment of transportation services furnished in whole or in part by a non-American-flag air or foreign flag ocean carrier will be supported by the following documentation:

(1) *Required certificate.* The certificate or memorandum required under this part should be substantially as follows:

I certify that it (is) (was) necessary for _____ (name of traveler or agency) to use _____ (foreign-flag vessel(s)) _____ or noncertificated* air carrier(s) _____ flight identification No(s), or to transport (personal effects) (freight) between _____ and _____ en route from _____ to _____ on _____

*Section 401 of Federal Aviation Act of 1958 (49 U.S.C. 1501).

____ (date) for the following reasons:

Date

Signature of traveler or authorizing officer

Title or position

Organization

(2) *Documentation for passenger and freight transportation by American-flag direct air carriers.* All bills submitted by American-flag direct air carriers for payment for commercial foreign air passenger or freight transportation must contain either: (i) a certification by the carrier that no non-American-flag air carriers were used in the carriage of the passenger or freight or (ii) copies of documents required to be retained by the carrier under 14 CFR Part 249 that would indicate which portion of the through movement was performed by American-flag and non-American-flag air carriers, together with the certificate required in paragraph (d)(1) of this section covering such usage.

(3) *Documentation by indirect air carriers.* All bills submitted by indirect air carriers as defined in 14 CFR 296.1 and 297.1 for the payment of transportation charges for the movement of freight by air must be supported by a copy of the air waybill and manifest required to be executed by 14 CFR 296.70 and 297.51.

(e) *Responsibility of carrier to secure certificate.* The certificate or memorandum required under paragraph (d)(1) of this section must be obtained by the ocean or air carrier or freight forwarder and submitted as support in billing charges for transportation services.

(f) *Responsibility of accountable officers.* Certifying officers and military disbursing officers have the responsibility in the first instance of determining the accuracy and acceptability of the certification or memorandum and other documentation required in paragraph (d) of this section which must be attached to bills involving transportation by non-American-flag air carriers and foreign-flag vessels prior to the certification of such bills. When there is doubt as to the acceptability of the certification, accountable officers or the head of the agency involved may request an advance decision by addressing a submission to the Comptroller General of the United States, U.S. General

Accounting Office, Washington, D.C. 20548.

(g) *Responsibility of General Services Administration.* In auditing vouchers for payment of transportation charges to carriers and forwarders, the General Services Administration will ascertain that payments involving the use of a non-American-flag vessel or air carrier are supported by the required certificate or memorandum and documentation required in paragraph (d) of this section justifying such use. When there is doubt as to the accuracy or acceptability of any justification, the matter will be referred to the Comptroller General for decision.

(42 Stat. 25; 31 U.S.C. 52. Interpret or apply sec. 112, 64 Stat. 835; 31 U.S.C. 66; sec. 901(a), 49 Stat. 2015, 46 U.S.C. 1241(a); sec. 5, 88 Stat. 2104, 49 U.S.C. 1517; sec. 8, 28 Stat. 207, as amended, 31 U.S.C. 74)

§ 52.3 Use of travel agencies.

(a) Travel agencies may not be utilized to secure any passenger transportation service (1) within the United States, Canada, or Mexico, (2) between the United States, Canada, or Mexico, (3) from the United States or its possessions to foreign countries, and (4) between the United States and its possessions, and between and within its possessions.

(b) Travel agencies may be used only when authorized under administrative regulations, to secure air, bus, rail, water, or any combined passenger transportation service within foreign countries (except Canada or Mexico); between foreign countries; or from foreign countries to the United States and its possessions; provided:

(1) The request for transportation is made first to a company branch office or a general agent of an American-flag air or ocean carrier if the travel originates in a city or its contiguous carrier-servicing area in which such branch office or general agent is located and through ticketing arrangements for the transportation authorized cannot be secured, or

(2) No company branch office or general agent of an American-flag air or ocean carrier is located in the city or its contiguous carrier-servicing area in which the official travel originated. (Information as to branch offices and general agents of American-flag air and ocean carriers is available at overseas offices of the Department of State.)

(c) No payment is to be made to a travel agency for charges in excess of those which would have been properly chargeable had the requested service been obtained by the traveler direct from the carrier or carriers involved.

PART 53—REVIEW OF GENERAL SERVICES ADMINISTRATION TRANSPORTATION SETTLEMENT ACTIONS

Sec.

53.1 Definitions.

53.2 Actions reviewable by Comptroller General.

53.3 Requests for review.

53.4 Copies to General Services Administration.

Authority: Secs. 53.1 through 53.4 issued under sec. 311, 42 Stat. 25; 31 U.S.C. 52. Interpret or apply Sec. 322, 54 Stat. 955, as amended, 49 U.S.C. 66(b).

Source: 40 FR 47513, Oct. 9, 1975, unless otherwise noted.

§ 53.1 Definitions.

(a) "Claim" means any bill or demand, including submission of voucher or supplemental bill, for payment of charges for transportation and related services by a carrier or forwarder entitled under 49 U.S.C. 66 to payment for such services prior to audit by the General Services Administration.

(b) "Settlement" means any action taken by the General Services Administration in connection with the audit of payments for transportation and related services furnished for the account of the United States that has a dispositive effect, including:

(1) Deduction action (or refund by carrier) in adjustment of asserted transportation overcharges;

(2) Disallowance of a claim, or supplemental bill, for charges for transportation and related services, either in whole or in part;

(3) Any other action that entails finality of administrative consideration.

§ 53.2 Actions reviewable by Comptroller General.

Actions taken by the General Services Administration on a claim by a carrier or freight forwarder entitled under 49 U.S.C. 66 to be paid for transportation services prior to audit that have dispositive effect and constitute a settlement action as defined in § 53.1 will be reviewed by the Comptroller General, provided request for review of such action is made within six months (not including time of war) from the date such action is taken or within the periods of limitation specified in 49 U.S.C. 66(a), whichever is later.

§ 53.3 Requests for review.

Requests for review of settlement actions by the General Services Administration should be addressed to the Comptroller General of the United States, U.S. General Accounting Office, Washington, D.C. 20548. Each request

for review must identify the transaction as to which review is requested by the date the action was taken, the Government bill of lading or Government transportation request number, the carrier's bill number, Government voucher number and date of payment, General Services Administration claim number, or other identifying information, to enable speedy location of the pertinent records. Each request for review should state why the action taken is believed erroneous and specify any factual, technical, or legal basis relied on.

§ 53.4 Copies to General Services Administration.

Review of settlement actions will be expedited if a copy of the document requesting review by the Comptroller General is sent to the General Services Administration to facilitate assembly of the pertinent records.

PART 56—JOINT REGULATIONS FOR ADVANCE PAYMENT OF CHARGES FOR TRANSPORTATION SERVICES FURNISHED THE UNITED STATES

Sec.

56.1 Prescription of standards.

56.2 Payment prior to Government confirmation of satisfactory performance.

56.3 Bonding requirements.

Authority: Sec. 1(b), 86 Stat. 1163, 1164, as amended by sec. 201, 88 Stat. 1959; (49 U.S.C. 66(c)).

Source: 41 FR 53769, Dec. 9, 1976, unless otherwise noted.

§ 56.1 Prescription of standards.

The regulations in this part are issued jointly by the Comptroller General of the United States and the Secretary of the Treasury under the provisions of 49 U.S.C. 66(c) which authorizes payment of charges for transportation services to carriers or forwarders in advance of the completion of services without regard to section 3848 of the Revised Statutes, 31 U.S.C. 529: *Provided*, The carrier or forwarder has issued the usual ticket, receipt, bill of lading or equivalent document covering the service involved. Regulations, prescribed by the head of an agency in implementation of this part will be reviewed by the General Accounting Office as a part of its audit of the agency's activities.

§ 56.2 Payment prior to Government confirmation of satisfactory performance.

Where a carrier or forwarder has issued the usual ticket, receipt, bill of lading or equivalent document, and subject to limitations prescribed by the Administrator, General Services Administration, or his designee, administrative procedures may provide

for payment of bills for charges for transportation services furnished for the account of the United States prior to Government confirmation of the satisfactory completion of such services except those bills presented by:

(a) An assignee bank or financial institution under the authority of 31 U.S.C. 203 and 41 U.S.C. 15;

(b) Payees who are in bankruptcy proceedings or are subject to the control of a receiver, trustee, or other similar representative;

(c) Payees who consistently fail to refund overcharges without assertion of substantial defenses or other valid reasons when notified by the General Services Administration or any other interested Government agency;

(d) Payees who without good cause fail to make timely disposition or settlement of loss or damage or other claims asserted by agencies of the United States;

(e) Payees owing substantial sums of money to the United States concerning which no adequate arrangements for settlement have been made;

(f) Payees in such bad financial condition as to justify a determination that the Government's best interests require consideration of special payment rules for their account;

(g) Payees who do business with the United States infrequently and who previously have not been administratively approved for payment upon presentation of bills;

(h) Any other person or business organization determined administratively for valid reasons to be ineligible for payment unless after review of the facts and in the absence of objection by the United States General Accounting Office it is determined administratively that the best interests of the United States will not be jeopardized by such payment.

§ 56.3 Bonding requirements.

Whenever the head of an agency of the United States or his designee determines in any particular case that a bond (or other form of guarantee or assurance) of an acceptable surety is essential for the account of any particular carrier or forwarder in order to protect the interests of the United States where payments are to be made prior to Government confirmation of the satisfactory completion of transportation services a bond may be required and held by the agency making such requirement. The bond shall be for such amount as in the discretion of the responsible Government officers is necessary for the protection of the Government's best interests but shall

not exceed \$10,000 unless the head of the agency or his designee certifies that a bond for a higher amount is justified in the circumstances.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 213

Excepted Service; Department of Commerce

AGENCY: Office of Personnel Management.

ACTION: Correction to final rule.

SUMMARY: This amendment corrects the documents published on March 23, 1979 and April 10, 1979, which erroneously listed three Schedule C positions under 213.3314 (w)(2), (w)(3) and (w)(7). These positions should be correctly listed under 213.3314(m), Office of the Assistant Secretary for Industry and Trade.

EFFECTIVE DATE: June 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Donna Ashurst, 202-632-3782. Accordingly, 5 CFR 213.3314 (w)(2), (w)(3), and (w)(7) are revoked; (m)(27) and (m)(28) are added and (m)(1) is amended as set out below:

§ 213.3314 Department of Commerce.

(m) *Office of the Assistant Secretary for Industry and Trade.* (1) One Private Secretary and three Confidential Assistants to the Assistant Secretary.

(27) Director, Office of Industrial Mobilization.

(28) Deputy Director, Bureau of Trade Regulation.

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-19628 Filed 6-25-79; 8:45 am]

BILLING CODE 6325-01-M

5 CFR Part 213

Excepted Service; Department of the Navy, Department of Energy, Department of Transportation

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of the Navy, Department of Energy, and Department of

Transportation because they are confidential in nature. Appointments may be made to these positions without examination by the Office of Personnel Management.

EFFECTIVE DATE: April 6, 1979.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3308(a)(15), 213.3331(c)(9), and 213.3394(a)(52) are added as set out below:

§ 213.3308 Department of the Navy.

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

(15) One Special Assistant for Environment to the Deputy Under Secretary.

§ 213.3331 Department of Energy.

(c) *Federal Energy Regulatory Commission.* * * *

(9) One Confidential Assistant (Secretary) to the Director, Office of Congressional and Public Affairs.

§ 213.3394 Department of Transportation.

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

(52) One Secretary (Steno) to the Deputy Administrator, Research and Special Programs Administration.

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

Office of Personnel Management.

Beverly M. Jones,

Issuance System Manager.

[FR Doc. 79-19629 Filed 6-25-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR 794

[Amendment 2]

Division of Payments

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment changes certain terms and references and deletes an obsolete provision. These changes are needed to make this part conform with the provisions of the individual program regulations.

EFFECTIVE DATE: June 26, 1979.

FOR FURTHER INFORMATION CONTACT: Charles J. Riley, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, (202) 447-7633.

SUPPLEMENTARY INFORMATION: The following provisions and changes are reflected in this amendment.

1. The regulations at 7 CFR Part 794 (Division of Payments) are applicable to the Feed Grain, Upland Cotton, and Wheat Programs for 1978-81 Crop Years, 7 CFR Part 713. The regulations at 7 CFR Part 794 (Division of Payments) are also applicable to the Rice Program for 1978-81 Crop Years, 7 CFR Part 730.

2. Allotments are established for rice but not for feed grains, upland cotton, and wheat. Program payments are based for rice on the rice acreage within the allotment and for feed grains, upland cotton, and wheat on the total acreage for the respective crop. Accordingly, the regulations at 7 CFR Part 794 are revised to reflect these provisions.

3. The statutory authority for upland cotton found at section 103(f) of the Agricultural Act of 1949, as amended, no longer provides for small farm upland cotton payments with respect to the 1978-81 crops. Accordingly, this provision is deleted from 7 CFR Part 794. Since these changes are necessary to conform with current program provisions, it is hereby found and determined that compliance with notice and public procedure requirements of Executive Order 12044 and 5 U.S.C. 553 are impracticable and contrary to the public interest. Accordingly, the regulations at 7 CFR Part 794 are revised to read as follows:

Final Rule

1. Section 794.1 is revised as follows:

§ 794.1 Applicability.

This part is applicable to the Feed Grain, Upland Cotton, and Wheat Programs for Crop Years 1978-81, Part 713 of this chapter, as amended; the Rice Program for Crop Years 1978-81, Part 730 of this chapter, as amended; and all other programs to which this part is made applicable by individual program regulations.

2. Section 794.2 is amended by revising paragraphs (a) and (b) to read as follows:

§ 794.2 Division of program payments.

(a) *General.* Each person on a participating farm, or other participating unit as approved by the Deputy Administrator, shall be given the opportunity to participate in the program in proportion to such person's interest in the program crops (on allotment acreage for rice) or the interest such person would have had if the crops had been produced. The name of such person shall be listed on a form which is approved by the Deputy Administrator

for recording payment shares, herein called "payment form." If such person refuses or fails to sign the payment form, the share of the payment to which such person would otherwise be entitled shall nevertheless be shown on the form. Federal agencies can earn no program payments but any shares to which such agencies would otherwise be entitled shall also be shown on the form as though the agencies were earning them. The sum of the percentage shares of the program payment shall equal 100 percent.

(b) *Division of program payment.*

Each producer's share of the farm program payment for a crop shall be based on the following:

(1) The producer's share of the crop (from allotment acreage for rice), or the proceeds thereof, or

(2) If no crop is produced, the share which the producer would have otherwise received had the crop been produced.

Notwithstanding the foregoing sentence, a different division of payments which is fair and equitable may be approved by the county committee if all of the producers who would otherwise share in the payment agree to the different division in writing. Such different division of payments may also be approved by the county committee, with the concurrence of a representative of the State committee, even though all of the producers cannot agree on the division. In addition, a different division of payments may be approved by the county committee when required by the applicable program regulations which relate to successors-in-interest.

(Secs. 101(h), 103(f), 105A, and 107A of the Agricultural Act of 1949, as added by Pub. L. 95-113 (91 Stat. 913 et seq.))

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

Signed at Washington, D.C., June 18, 1979.

John W. Goodwin,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-19704 Filed 6-25-79; 8:45 am]

BILLING CODE 3410-05-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket C-2965]

Prohibited Trade Practices and Affirmative Corrective Actions; General Mills Fun Group, Inc.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Minneapolis, Minn. subsidiary of General Mills, Inc. in the advertising and sale of its toy products, to cease misrepresenting or failing to make relevant disclosures regarding the performance, operation, use, size or appearance of such products through visual portrayals, descriptions, or commercial production techniques. General Mills, Inc. is also bound by the terms of the order.

DATES: Complaint and order issued May 15, 1979.¹

FOR FURTHER INFORMATION CONTACT: FTC/PC, William S. Sanger, Jr., Washington, D.C. 20580. (202) 254-6128.

SUPPLEMENTARY INFORMATION: On Thursday, Dec. 7, 1978, there was published in the *Federal Register*, 43 FR 57267, a proposed consent agreement with analysis in the Matter of General Mills Fun Group, Inc., a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart-Advertising Falsely or Misleadingly: § 13.142 Operation; § 13.160 Promotional sales plan; § 13.170 Qualities or properties of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-20 Disclosures. Subpart-Misrepresenting Oneself and Goods—Goods: § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use, or standing.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart-Neglecting, Unfairly or Deceptively, To Make Material Disclosure: § 13.1863 Limitations of product; § 13.1885 Qualities or

properties; § 13.1895 Scientific or other relevant facts. Subpart-Offering Unfair, Improper and Deceptive Inducements To Purchase or Deal: § 13.2063 Scientific or other relevant facts; § 13.2075 Television "mock ups", etc. Subpart-Using Deceptive Techniques In Advertising: § 13.2275 Using deceptive techniques in advertising; 13.2275-70 Television depictions.

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

Carol M. Thomas,
Secretary.

[FR Doc. 79-19772 Filed 6-25-79; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Docket 9001]

Prohibited Trade Practices and Affirmative Corrective Actions; Ford Motor Co.

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, among other things, requires a Dearborn, Mich. automobile manufacturer to cease, in connection with automobiles marketed by its Lincoln-Mercury Division, misrepresenting the fuel economy of any automobile or its superiority over competitive products; and the purpose, contents and results of automotive tests. Additionally, the firm is required to substantiate all claims regarding the structural strength, quietness, fuel economy and performance of its products, and maintain such substantiation for a three-year period.

DATES: Complaint issued Dec. 10, 1974. Order issued May 24, 1979.¹

FOR FURTHER INFORMATION CONTACT: FTC/PA, Wallace S. Snyder, Washington, D.C. 20580; (202) 724-1499.

SUPPLEMENTARY INFORMATION: On Monday, March 12, 1979, there was published in the *Federal Register*, 44 FR 13493, a proposed consent agreement with analysis in the Matter of Ford Motor Company, a corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions, or objections regarding the proposed form of order.

No comments having been received, the Commission has ordered the

issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows: Subpart-Advertising Falsely or Misleadingly: § 13.20 Comparative data or merits; 13.20-20 Competitors' products; § 13.160 Promotional sales plans; § 13.170 Qualities or properties of product or service; 13.170-34 Economizing or saving; § 13.205 Scientific or other relevant facts; § 13.210 Scientific tests; § 13.255 Surveys. Subpart-Corrective Actions and/or Requirements: § 13.533 Corrective actions and/or requirements; 13.533-45 Maintain records; 13.533-45(a) Advertising substantiation. Subpart-Failing To Maintain Records: § 13.1051 Failing to maintain records; 13.1051-10 Accurate. Subpart-Misrepresenting Oneself and Goods—Goods: § 13.1575 Comparative data or merits; § 13.1585 Competitive inferiority; § 13.1710 Qualities or properties; § 13.1740 Scientific or other relevant facts; § 13.1757 Surveys; § 13.1762 Tests, purported.—Promotional Sales Plans: § 13.1830 Promotional sales plans. Subpart-Neglecting, Unfairly or Deceptively, to Make Material Disclosure: § 13.1885 Qualities or properties; § 13.1895 Scientific or other relevant facts.

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

Carol M. Thomas,
Secretary.

[FR Doc. 79-19771 Filed 6-25-79; 8:45 am]

BILLING CODE 6750-01-M

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 1****General Regulations Under the Commodity Exchange Act; Registration Fees to be Non-Refundable**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission is amending §§ 1.11 and 1.13 of Part 1 of its General Regulations under the Commodity Exchange Act. The amendments provide that the application fees for registration

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

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

with the Commission shall not be refundable if registration is denied or if the application is withdrawn after processing of such application has begun.

EFFECTIVE DATE: July 26, 1979.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Attorney, Office of the Chief Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, (202) 254-8955.

SUPPLEMENTARY INFORMATION: On March 19, 1979, the Commodity Futures Trading Commission ("Commission") published proposed amendments to §§ 1.11 and 1.13 of its regulations (44 FR 16443) to make application fees for registration with the Commission non-refundable. The Commission received no response to its request for comment on the proposed amendments. Accordingly, the Commission has determined to adopt the amendments in the same form in which they were proposed.

Section 1.11 of the Commission's regulations sets forth the fee schedule for the various categories of applicants for registration, or renewal thereof, under the Commodity Exchange Act, as amended ("Act") (7 U.S.C. section 1 *et seq.*).¹

Section 1.13 of the Commission's regulations provides for notification of registration, or renewal thereof. It also currently provides for a refund of the application fee if registration is refused.

The authority for the assessment of registration fees is Section 8a(4) of the Act (7 U.S.C. section 12a(4)): "The Commission is authorized—to fix and establish from time to time reasonable fees and charges for registrations and renewals thereof."²

¹ The present schedule is as follows: futures commission merchant, \$200 (plus a fee of \$6 for each domestic branch office, correspondent or agent); floor broker and associated person, \$20; and commodity trading advisor or commodity pool operator, \$50. An associated person filing on Form 4-Ra pays no fee.

² Section 8a(4) was first enacted in 1936 (Pub. L. No. 74-675, § 10, 49 Stat. 1500). It authorized the Secretary of Agriculture "to fix and establish from time to time fees and charges for registrations and renewals thereof . . . not to exceed \$10 for each . . ." Section 8a(4) was amended in 1955 to remove the \$10 maximum and the authority to set "reasonable" fees was granted to the Secretary. Congress recognized that the \$10 limitation established in 1936 was no longer adequate to recover costs, and that the amendment would give the Secretary the flexibility to adjust fees to meet rising costs. The amendment to Section 8a(4) was recommended by the Department of Agriculture, which stated in its transmittal letter to the Senate that: "The proposed amendment would enable the Department of Agriculture to establish a schedule of fees and charges which, taking into account the value to the registrant and with due regard to the public interest, would recover to the fullest extent

The costs incurred in processing and investigating an applicant whose registration is not approved or who withdraws once processing of such application has begun are at least equal to and often exceed the costs incurred by the Commission for a successful applicant.³ The Commission is therefore making non-refundable the registration fees it collects from persons denied registration or who withdraw their application once processing has begun.

Some associated persons apply for renewal of their registration when they become associated with a different futures commission merchant, even though their registration has not expired and they are not required to refile under the Act or the rules promulgated thereunder. Associated persons who thus file renewal applications in error will continue to receive a refund of their application fee.

The Commission will make these amendments applicable to all applications which are filed after the effective date of the rules.

The Commodity Futures Trading Commission hereby amends Title 17, Chapter I, Part 1 of the Code of Federal Regulations by revising §§ 1.11 and 1.13 as set forth below:

§ 1.11 [Amended]

1. Section 1.11 is amended by adding the following concluding sentence:

* * * The fees shall be non-refundable, unless the applicant withdraws his application before any processing of that application has occurred.

* * * * *

2. Section 1.13 is amended as follows:

(a) By changing the section heading;

(b) By deleting the concluding sentence; and

(c) By revising the text to read as follows:

§ 1.13 Notification of registration.

Upon receipt of an application for registration (or renewal thereof) the Commission will, if registration is granted, notify the registrant that he has been registered under the Act.

possible the aggregate cost of registration activities." H.R. REP. No. 1425, 84th Cong., 1st Sess., reprinted in [1955] U.S. CODE CONG. & AD. NEWS 2683-4. The Commission assumed the Secretary of Agriculture's registration function under the Commodity Futures Trading Commission Act of 1974, Pub. L. No. 93-463, Sec. 103, 88 Stat. 1392.

³ An applicant who is not currently registered under the Act is subject to a fitness evaluation. The Commission conducts a background examination of applicants (and key employees of applicant firms, where applicable) with the assistance of the Federal Bureau of Investigation and other federal agencies to determine fitness for registration. If warranted, a further investigation is made to determine if the applicant should be registered.

(Sec. 2a(11), Pub. L. 93-463, 88 Stat. 1391 (7 U.S.C. § 4a(j)); Sec. 8a(4), Pub. L. 74-675, 49 Stat. 1500 (7 U.S.C. § 12a(4)), as amended, Pub. L. 84-248, 69 Stat. 535, Pub. L. 90-258, 82 Stat. 33, Pub. L. 93-463, 88 Stat. 1392; Section 8a(5), Pub. L. 74-675, 49 Stat. 1501 (7 U.S.C. § 12a(5)), as amended, Pub. L. 90-258, 82 Stat. 33, Pub. L. 93-463, 88 Stat. 1392.)

Issued in Washington, D.C. on June 21, 1979, by the Commission.

Jane K. Stuckey,

Secretary of the Commission.

[FR Doc. 79-19819 Filed 6-25-79; 8:45 am]

BILLING CODE 6351-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC-10741]

Rules and Regulations, Investment Company Act of 1940; Agency Transactions by Affiliated Persons on a Securities Exchange

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a rule under the Investment Company Act of 1940 regarding the remuneration which may be received by an affiliated person of an investment company acting as a broker in a securities transaction for that company on a securities exchange. Any transaction executed pursuant to the rule would satisfy that act's standard that an affiliated broker may receive a payment which does not exceed the usual and customary broker's commission. Provided that certain conditions are met, the rule permits a commission to be received which is fair and reasonable (compared to that received by other brokers in comparable transactions for similar securities on a securities exchange). Among the conditions is a requirement that the transaction be effected pursuant to procedures, established by the investment company's directors, which are reasonably designed to provide remuneration that is reasonable and fair compared to the remuneration received by other persons in connection with similar transactions on a securities exchange during a comparable time period.

EFFECTIVE DATE: June 20, 1979.

FOR FURTHER INFORMATION CONTACT: Mark B. Goldfus, Special Counsel, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission,

500 North Capitol Street, Washington, D.C. 20549, (202) 755-0230.

SUPPLEMENTARY INFORMATION: The Commission today adopted a rule under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"), to define the conditions under which, if satisfied, an affiliated person¹ of an investment company could receive a commission, fee or other remuneration as broker in a securities transaction for that company which would be deemed not to exceed the "usual and customary broker's commission" for purposes of section 17(e)(2)(A) of the Act [15 U.S.C. 17(e)(2)(A)]. This rule was proposed by the Commission as proposed rule 17e-2 under the Act [17 CFR 270.17e-2], but because of the Commission's rescission today of then existing rule 17e-1 under the Act [17 CFR 270.17e-1]² the Commission has redesignated and adopted this rule as new rule 17e-1 under the Act [17 CFR 270.17e-1].

In response to its request for comments regarding the proposed rule, as announced in Investment Company Act Release No. 10605 (Feb. 27, 1979), 44 FR 12202 (Mar. 6, 1979), the Commission received and considered seven letters. Except for a technical change in the findings regarding such transactions which are required to be made by an investment company's directors, the Commission has determined to adopt the rule as proposed.

Final Rulemaking

The rule provides that, for purposes of section 17(e)(2)(A) of the Act, a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if certain conditions are satisfied. The reasons for the Commission's proposing to adopt rule 17e-1 were discussed thoroughly in Investment Company Act Release No. 10605. Persons interested in more detailed discussions of the various conditions of the rule, which are summarized below, should refer to that release.

First, such commission, fee or other remuneration is reasonable and fair compared to the commission, fee or other remuneration received by other brokers in connection with comparable securities being traded on a securities exchange during a comparable period of time.

Second, the investment company's directors, including a majority of the directors who are not interested persons

of the investment company,³ (a) adopt procedures reasonably designed to provide that such commission, fee, or other remuneration is consistent with the standard described above,⁴ (b) review these procedures at least annually to determine that they continue to be appropriate, and (c) determine at least quarterly that such transactions have complied with these procedures. The Commission has deleted from the rule as adopted a requirement in the proposed rule that would have required the directors to determine specifically that such transactions were consistent with the purposes of the rule. The Commission believes that transactions which comply with procedures appropriately established by investment company directors pursuant to this rule inherently would be consistent with the purposes of this rule. Nonetheless, the Commission expects that investment company directors, in establishing procedures under the rule and determining compliance with such procedures, will address the concerns embodied in section 17(e) of the Act against overreaching.

Finally, the rule provides certain recordkeeping requirements.

Authority, Effective Date

The Commission adopts new rule 17e-1 pursuant to the provisions of section 6(c) [15 U.S.C. 80a-6(c)], section 31(a) [15 U.S.C. 80a-30(a)], and section 38(a) [15 U.S.C. 80a-37(a)] of the Act.

Because the rulemaking is exemptive in nature and not the exclusive method for complying with the provisions of section 17(e)(2) of the Act,⁵ it is effective immediately.

Text of Adopted Rule

Part 270 of Chapter II of Title 17 of the Code of Federal Regulations is amended by adding new § 270.17e-1 as follows:

¹ The term "interested person" is defined in section 2(a)(19) of the Act [15 U.S.C. 80a-2(a)(19)].

⁴ The board of directors may delegate to a directorial committee or other persons associated with the investment company the drafting task of preparing recommended procedures to be considered by the board as a whole. Of course, the board is responsible for any procedures that it ultimately chooses. See *Lasker v. Burks*, 47 U.S.L.W. 4494, 4496 n. 10 (May 15, 1979) [minimum standards applying to decisions which investment company directors may be called upon to make]. Moreover, in considering any recommendations in the course of making such a determination, the board should request from the initial draftsmen and evaluate such information as may reasonably be necessary to determine if the procedures would comply with the requirements of paragraph (b)(1) of the rule. Compare section 15(c) of the Act [15 U.S.C. 80a-15(c)] [procedures for directors' approving an investment advisory contract].

⁵ See Investment Company Act Release No. 10605, proposing this rule, at n.5.

§ 270.17e-1 Brokerage transactions on a securities exchange.

For purposes of section 17(e)(2)(A) of the Act [15 U.S.C. 80a-17(e)(2)(A)], a commission, fee or other remuneration shall be deemed as not exceeding the usual and customary broker's commission, if:

(a) The commission, fee, or other remuneration received or to be received is reasonable and fair compared to the commission, fee or other remuneration received by other brokers in connection with comparable transactions involving similar securities being purchased or sold on a securities exchange during a comparable period of time;

(b) The board of directors, including a majority of the directors of the investment company who are not interested persons thereof, (1) have adopted procedures which are reasonably designed to provide that such commission, fee or other remuneration is consistent with the standard described in paragraph (a) of this section, (2) review no less frequently than annually such procedures for their continuing appropriateness, and (3) determine no less frequently than quarterly that all transactions effected pursuant to this rule during the preceding quarter were effected in compliance with such procedures; and

(c) The investment company (1) shall maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section, and (2) shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each such transaction setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

By the Commission.

George A. Fitzsimmons,
Secretary.

June 20, 1979.

[FR Doc. 79-19731 Filed 6-25-79; 8:45 am]

BILLING CODE 8010-01-M

¹ The term "affiliated person" is defined in section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)].

² Investment Company Act Release No. 10740 (June 20, 1979).

17 CFR Part 270

[Release No. IC-10740]

Investment Company Act of 1940; Remuneration Permitted Affiliated Persons of Registered Investment Companies Acting as Brokers in Over-the-Counter Transactions**AGENCY:** Securities and Exchange Commission.**ACTION:** Rule rescission.

SUMMARY: The Commission today is rescinding, as obsolete, a rule which, notwithstanding the statutory maximum remuneration prescribed by the Investment Company Act of 1940, authorized an affiliated person of a registered investment company who is acting as broker in an over-the-counter securities transaction involving that company to receive remuneration exceeding 1 percent of the sale price, if such remuneration generally equals the fixed minimum brokerage commissions prescribed by specified securities exchanges.

EFFECTIVE DATE: June 20, 1979.

FOR FURTHER INFORMATION CONTACT: Mark B. Goldfus, Special Counsel, Investment Company Act Study Group, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. (202) 755-0230.

SUPPLEMENTARY INFORMATION: The Commission today rescinded, as obsolete, rule 17e-1 [17 CFR 270.17e-1] under the Investment Company Act of 1940 [15 U.S.C. 80a-1 et seq.] ("Act"). Rescinded rule 17e-1 had provided that, notwithstanding the statutory maximum remuneration prescribed by section 17(e)(2)(C) of the Act [15 U.S.C. 80a-17(e)(2)(C)], an affiliated person¹ of an investment company or any affiliated person of such person acting as broker in an over-the-counter transaction may receive remuneration exceeding the statutory maximum of 1 percent of the sale price of the securities sold, if such remuneration generally equals the fixed minimum brokerage commissions prescribed by specified securities exchanges.

The reasons for the Commission's proposing to rescind rule 17e-1 were discussed thoroughly in Investment Company Act Release No. 10606 (Feb. 27, 1979), 44 FR 12204 (Mar. 6, 1979). Persons interested in the matter should refer to that release. In response to its request for comments regarding the proposed rescission of rule 17e-1, the

Commission received and considered two letters. Both commentators believed that the standards in the rule are obsolete, although one commentator suggested that it be amended to incorporate a new exemptive standard. The Commission believes that any proposed payment of such remuneration in excess of the statutory maximum prescribed in section 17(e)(2)(C) of the Act should be considered hereinafter in the context of an application for an order exempting a particular transaction (or series of related transactions) from the prohibitions and limitations of the Act.²

Accordingly, the Commission, having found that the rule is obsolete, has rescinded rule 17e-1 [17 CFR § 270.17e-1] under the Act.

By the Commission.
George A. Fitzsimmons,
Secretary.

June 20, 1979.

[FR Doc. 79-19732 Filed 6-25-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 281

[Docket No. RM79-13]

Natural Gas Curtailment Interim Regulation for Implementation of Section 401 of the Natural Gas Policy Act of 1978**AGENCY:** Federal Energy Regulatory Commission, DOE.**ACTION:** Order Denying Rehearing.

SUMMARY: The Federal Energy Regulatory Commission received petitions requesting rehearing of the Interim Curtailment Rule 44 FR 13464 (March 12, 1979). It has considered the arguments raised in the petitions and has denied them. No changes have been made in the rule.

EFFECTIVE DATE: June 20, 1979.

FOR FURTHER INFORMATION CONTACT: MaryJane Reynolds, Federal Energy

¹ "Persons engaged in the securities business cannot be unaware of their obligation to serve the best interest of customers and that interpositioning is bound to result in increased prices or costs." *Delaware Management Company, Inc.*, 43 SEC 392, 400 (1967) (footnote omitted). *Accord Financial Programs, Inc.*, Securities Exchange Act Release No. 11312 (Mar. 24, 1975), 6 SEC Docket 503. In this regard, section 17(e)(2)(C) also does not allow an affiliated broker to retain remuneration for an unneeded service. *Steadman Security Corporation*, Securities Exchange Act Release No. 13665 (June 29, 1977), 12 SEC Docket 1041, 1056, *appeal pending*, No. 77-2415 (5th Cir.).

Regulatory Commission, Office of the General Counsel, 825 North Capitol Street NE., Room 8000, Washington, D.C. 20426, (202) 275-4283.

I. Introduction

On March 6, 1979, the Federal Energy Regulatory Commission (Commission) issued, in Docket No. RM79-13, its "Interim Curtailment Rule" for the period April 1, 1979 through October 31, 1979. The rule implements, for that period, Section 401 of the Natural Gas Policy Act of 1978. On November 1, 1979, the "Interim Curtailment Rule" will be superseded by the Commission's "Final Rule", Order No. 29, issued on May 2, 1979 in Docket No. RM79-15, 44 FR 26855 (May 8, 1979).

Petitions for rehearing of the "Interim Curtailment Rule" were filed by Transcontinental Gas Pipe Line Corporation (Transco), The United States Brewers Association, Inc. (Brewers), Consolidated Edison Company of New York, Inc. (Con Ed), United Gas Pipe Line Company (United), The Great Western Sugar Company (Great Western), Texas Gas Transmission Corporation (Texas Gas), The American Bakers Association (ABA), The General Service Customer Group (GSC), Columbia Nitrogen Corporation and Nipio, Inc. (CNC), The Process Gas Consumers Group, *et al* (PGC), The Fertilizer Institute (Fertilizer) and Air Products and Chemicals, Inc. and The National Food Processors Association, Stouffer Chemical Company and Willamette Industries, Inc. (Agricultural Industries). On May 4, 1979, the Commission issued an order granting rehearing solely for the purpose of reconsideration.

II. Issues Raised on Rehearing

A. Non-Pipeline Supplies.—Brewers, ABA, CNC, Fertilizer and Agricultural Industries seek rehearing on the issue of the treatment of non-pipeline supplies in the computation of the deficiency of the essential agricultural user. In § 281.106(b)(1), the calculation of total supply deficiency is defined as the estimated volume of gas required by the eligible end-user minus the estimated volume of natural gas available to the eligible end-user from all sources to meet high-priority uses and essential agricultural uses.

ABA argues that "the statute provides no basis, whatsoever, for the Commission's apparent intent to diminish agricultural priority volumes by the amount of non-pipeline sources of gas that may be available to a user." (Petition at 4). CNC argues that "the Commission may not deny agricultural

¹ The term "affiliated person" is defined in section 2(a)(3) of the Act [15 U.S.C. 80a-2(a)(3)].

users protection under Section 401 of the NGPA and interstate pipeline curtailment plans because of the potential availability of non-pipeline sources, such as emergency gas, self-help gas provided under Order Nos. 533/2 type programs, or peak-shaving facilities of local distribution companies" (Petition at 8). CNC argues that such supplies are not pipeline supplies subject to curtailment.¹

During the interim period, the Commission simply seeks to provide relief based upon the difference between supply requirements and supply availability. The estimated volume of natural gas available to the eligible end-user includes natural gas from all sources to the extent that such natural gas is actually used by the eligible end-user. This would include emergency gas and Order Nos. 533/2 gas. However, an eligible end-user who does not use such gas for a particular curtailment period need not include such gas within its estimated volume available under § 281.106(b)(1)(ii). The Commission neither authorizes any eligible end-user to refuse available gas from non-pipeline sources nor insulates an eligible end-user from contractual liability for the refusal to take such supplies.

Sebring, cited by certain petitioners, is inapposite. In *Sebring*, certain intervenors sought the inclusion in the curtailment plan of Florida Gas Transmission (FGT) of certain gas owned by Florida Power Corporation and Florida Power and Light which was transported by FGT. Herein, the Commission is not attempting to allocate non-pipeline natural gas.

B. Volumes for which adjustments may be received.—In the "Interim Curtailment Rule" the Commission adopted the certification of requirements established by the Secretary of Agriculture. The Commission stated, however, that "the interstate pipeline's supply obligation to direct essential agricultural users is limited to the requirements certified by the Secretary of Agriculture as long as those requirements do not cause a direct end-user to exceed its contractual entitlement with the interstate pipeline or a local distribution company to exceed its contractual entitlement with the interstate pipeline" (Interim Rule at 10).

Brewers, Great Western, ABA, Fertilizer, CNC, and Agricultural Industries (which are essential agricultural users) argue that the

Secretary of Agriculture's certification must be adopted without a contractual limitation. On the other hand, GSC, PGC and United argue that essential agricultural use requirements should be measured by the base period utilized in each interstate pipeline's presently effective curtailment plan. Con Ed argues that it is unduly discriminatory to utilize current requirements for essential agricultural uses and base period requirements for high-priority uses.

1. Contract Limitations. Brewers argues that the Secretary of Agriculture has sole authority to determine requirements for essential agricultural use. Brewers state that "in certifying the volumetric requirements for an essential agricultural use establishment, the Secretary of Agriculture indicated that the requirements so certified 'shall not necessarily be limited to the maximum contractual volume of such Essential Agricultural Use Establishment.'" (Petition at 2-3).

It is correct that the Secretary of Agriculture has not limited certified volumes to existing control volumes. The Commission has not changed the volumes certified by the Secretary of Agriculture. However, the issue is whether pipelines have responsibilities to meet those requirements, regardless of contract or certificate obligations. In the Commission's view, Section 401 requires pipelines to serve the volumes certified by the Secretary of Agriculture provided that the volumes do not exceed contract or certificate volumes. However, Section 401 does not create new contract or certificate obligations for interstate pipelines.

Section 401 of the Natural Gas Policy Act (NGPA) states, in part, that "no curtailment plan of an interstate pipeline may provide for curtailment of deliveries of natural gas for any essential agricultural use * * * unless the curtailment is to protect high-priority users. The key phrase is the "curtailment plan of an interstate pipeline". In *American Public Gas Association v FERC*, 587 F. 2d 1089, 1098 (D.C. Cir 1978), the Court stated that:

"Nevertheless, the purpose of a curtailment plan is to prescribe the manner in which a pipeline that cannot meet its contractual [emphasis added] commitments will curtail deliveries of its own gas."

Similarly, the Supreme Court in *FERC v Transcontinental Gas Pipeline Corp.*, 423 U.S. 326, 327-28, (1975) stated that "the [natural gas] shortage is said to require curtailment of contracted natural gas deliveries by Transco to its customers during periods of high demand." Finally, in *State of North*

Carolina v FERC 584 F.2d 1003, 1007 (D.C. Cir. 1978), the Court stated that:

"When a pipeline company's natural gas supplies become inadequate to meet contractual commitments to customers, there must be a provision—through a curtailment plan—for apportioning the diminishing gas supply among the customers." (emphasis added)

Thus, a curtailment plan is a method of allocation of contracted demand for natural gas. Therefore, the protection afforded agricultural use of natural gas by Section 401 of the NGPA does not create new contract obligations between interstate pipelines and their customers.

Increased service by interstate pipelines is governed by Section 7 of the Natural Gas Act (NGA) dealing with certificates of public convenience and necessity while curtailment plans in contrast deal with reductions in existing service. Section 401 of the NGPA does not compel an interstate pipeline to serve an essential agricultural user who is not now served by that pipeline. Absent the issuance of a certificate of public convenience and necessity under Section 7 of the NGA interstate pipelines cannot be required to increase service to existing customers or attach new customers. There was no indication that Congress, in enacting the NGPA, intended to override the certificate requirements of Section 7 of the NGA.

The policies of local distribution companies regarding the addition of new customers is generally subject to state regulation. The Commission does not believe that Section 401 binds state regulators to order local distribution companies to add new customers, increase deliveries or execute new or modified contracts or service agreements. Parties, however, are free to amend their contracts and pipelines are free to file applications for new or amended certificates under Section 7.²

2. Base Period Concept. In the Interim Rule the Commission adopted the Secretary of Agriculture's certification of requirements for essential agricultural uses, subject to the aforementioned contract limitation. The Secretary of Agriculture certified certain volumes which may be in excess of base period volumes for any specific pipeline.

GSC argues that "not only does the Commission rule violate the base period concept but it elevates essential

¹ CNC cites *Sebring Utilities Commission v FERC* Case No. 77-2911, (5th Cir. March 20, 1979) in support of its argument.

² Great Western also argues in its Petition for Rehearing that its pipeline supplier Montana-Dakota Utilities Company (MDU) is misinterpreting the contract limitation. However, Great Western has filed a petition for a Declaratory Order on the question of construction of its contract. Docket No. TC79-38. Accordingly, the contract construction question between Great Western and MDU is not addressed in this Petition for Rehearing.

agricultural uses of natural gas to a preferred status—a result inconsistent with the provisions of the Natural Gas Act requiring that curtailment plans be just and reasonable and not unduly discriminatory and preferential.” (Petition at 1) Con Ed raises essentially the same argument.³ PGC argues that:

“It is fundamentally inappropriate for the FERC to defer to the USDA on the growth issue because both the recent energy legislation and the Natural Gas Act clearly indicate that decisions on base periods can only be made by the FERC. Further, the decision must be based on consideration of factors such as gas supply, continuity of service and discrimination. These are factors about which the USDA has no expertise, and which the Commission did not consider in adopting the interim rule” (Petition at 7).

It is the position of the Commission that the measurement of requirements for essential agricultural uses pursuant to one standard and the measurement of requirements for all other end uses pursuant to another standard is a preference mandated by Section 401(c), which gives the Secretary of Agriculture authority to certify the natural gas requirements of essential agricultural uses. The Commission believes it is required by law to accept that certification to the extent that it is applicable to the curtailment plan of an interstate pipeline.⁴ No such provision exists with regard to high-priority users.

As the Commission stated in Order No. 29, “Final Rule” Docket No. RM79-15, issued May 2, 1979, 44 FR 26855, 26857 (May 8, 1979):

“The Commission’s reading of Section 401, amply supported by the rulemaking record indicates that Congress intended to up-grade the priority classification of essential agricultural users while specifically protecting high priority users. However, Congress did not mandate * * * high-priority load growth.”

PGC argues that to allow increases above base period volumes violates *Granite City Steel Company v. FPC*, 320 F. 2d 711 (D.C. Cir. 1963) even if the Commission retains the contract limitation. The argument fails. First, *Granite City* involved solely matters arising under the Natural Gas Act, and preceded both curtailment and the NGPA. Second, *Granite City* and Section 7(a) do not apply to growth within contract demand. In *American Smelting and Refining Company v. FPC*, 494 F.2d 925, 936 (D.C. Cir. 1974) (ASARCO) the Court stated that:

“Quite clearly, this statutory restriction (§ 7(a) and *Granite City*) is not infringed by a curtailment plan based on end use. The curtailment plan does not order the sale of additional gas to one customer to the detriment of another.” * * * we do not think this statutory restriction applies to curtailment plans. Section 7(a) is plainly intended to regulate expansions of service.” Since the growth in essential agricultural requirements will be within the contract demand of the direct user or the local distribution company, Section 7(a) and *Granite City* are inapplicable.⁵

United argues that the NGPA intended that essential agricultural requirements be limited to base period volumes. In support of its position United relies upon the statement of the Congress that Congress did not intend section 401 to result in adoption of a new base year for curtailment purposes. To buttress its position, United states that the Senate bill specifically allowed an agricultural preference for “present and expanded capacity” for certain uses, and that the Senate’s language was deleted from the bill. As a result, United argues that growth was inferentially rejected.

The Commission has complied with the Congressional intent: The interim rule does not create a new base year for curtailment plans. Moreover, United has misread the legislative history. The Senate bill’s “expanded use and capacity” language was limited to feedstock or process fuel use for fertilizer and essential agricultural chemical production. All other essential agricultural uses specified in the Senate bill did not contain similar language. In other words, “expanded use and capacity” in the Senate bill, are words of limitation and their deletion thereby expands the scope of Section 401. Thus, unlike the provisions of the Senate bill, Section 401 provides that the Secretary may determine both what uses qualify as essential agricultural uses and the volumes necessary for such uses. The plain language of Section 401(b) does not limit the Secretary’s determination to base period volumes.

C. *Alternate Fuel*.—Section 401(b) of NGPA provides that the protection for essential agricultural uses provided in Section 401(a) need not be afforded if the Commission, in consultation with the Secretary of Agriculture, determines that use of a fuel is reasonably available as an alternative for any agricultural use of natural gas. The Conference Manager’s Report states that “the

Commission, in consultation with the Secretary of Agriculture, will determine if alternative fuels are economically practicable and reasonably available to meet the needs of agricultural uses * * *

PGC argues that “the Commission’s inclusion in the essential agricultural and high-priority use priorities, of substantial requirements for uses with installed alternate fuel capability renders the Commission’s Interim Curtailment Rule arbitrary, capricious, unsupported by the evidence, and contrary to the applicable statutes.” PGC further states that “the Commission’s duties under the NGPA and the Natural Gas Act preclude it, even in an Interim Rule, from unnecessarily exposing industrial process and feedstock users to natural gas curtailments.” (Petition at 2-3). United argues that a strict alternate fuel capabilities test should be applied to all large volume agricultural uses recognized under the terms of Section 401 since “the goal of any sound curtailment policy must be to protect ‘to the maximum extent practicable’ those end users in most critical need of gas.” (Petition at 6). Both PGC and United discuss a 300 Mcf on a peak day cutoff.

The Commission recognizes the necessity of utilizing a meaningful procedure for the determination of alternate fuel practicability and availability.⁶ However, it is infeasible for the Commission to create and operate a procedure to analyze the practicability and availability of alternate fuels for essential agricultural uses within the time provided for promulgation of the interim rule. The argument by PGC that alternate fuel determinations should also be applicable to high-priority users is without merit. Section 401, in creating an order of preference for high-priority uses and essential agricultural uses, only creates an alternate fuel determination test for essential agricultural uses. The end uses which qualify for the high-priority classification are entitled to that classification, by law, regardless of the practicability and availability of alternate fuels.

D. *Miscellaneous Issues*.—1. *The Need for Flexibility*. Transco states that the Commission should amplify its order to recognize that “flexibility is required to properly take into account the unique circumstances on individual pipeline systems.” (Petition at 4). Transco states

³For a contrasting interpretation of *Granite City* see initial Decision in *Southern Natural Gas Company et al.*, Docket Nos. RP76-67-2 et al. However, in its order affirming this decision, the Commission declined to rule on the Presiding Administrative Law Judge’s finding with regard to *Granite City*.

⁴Con Ed, however, would apparently not object to a rolling base period for essential agricultural users if high-priority users were accorded similar treatment.

⁵See discussion pp. 5-7 *Supra*.

⁶See, “Notice of Proposed Rulemaking,” Procedures for Evaluating the Economic Practicability and Reasonable Availability of Alternate Boiler Fuel for Large Boiler Facilities, Docket No. RM79-40, issued May 2, 1979, 44 FR 26855 (May 8, 1979).

that it is concerned that rigid rules might become a benchmark to formulation of the permanent rules.

There is no need to modify the Interim Rule to recognize flexibility. As Transco concedes, the Commission's order issued March 30, 1979 in *Florida Gas Transmission Company et al*, Docket No. TC79-5 *et al* (including Transco's Docket No. TC79-33) accepted Transco's tariff provision for the Interim Rule without suspension. Furthermore, in Order No. 29, the Commission stated that "nothing in the rule precludes any interstate pipeline and its customers from proposing, as a settlement, a curtailment plan that differs from that set out in our rule."⁷

2. Curtailment of Low Priority Uses. GSC states that it is unclear from the Interim Rule whether a distributor must curtail its lower priority loads before seeking an adjustment from its pipeline. GSC notes in its filing (Petition at 5) that the Commission appeared to conclude in *Natural Gas Pipeline Company of America*, Docket No. TC79-15, order issued March 30, 1979, that lower priority loads need not be curtailed prior to seeking an adjustment. GSC's interpretation of the *Natural* decision is correct.

3. Pipeline-to-Pipeline Adjustments. Texas Gas argues that the Interim Curtailment Rule is discriminatory in that interstate pipelines who purchase gas from other interstate pipelines are not permitted to request adjustments from these pipeline suppliers under § 281.105. It was the Commission's belief that due to general gas supply projections and the fact that the Interim Rule would only operate during the non-heating season that adjustments could be kept within one interstate pipeline for purposes of administrative feasibility. While rehearing is not being granted on this issue, the Commission will expeditiously entertain any requests for relief from interstate pipeline purchasers who cannot effect adjustments within their own systems.

4. Interpretation of the Agriculture Rule. In its joint protest to all of the tariff filings implementing the Interim Rule, PGC sought to have the Commission interpret the Department of Agriculture Rule as to whether the "level of service" which would be received under the presently effective curtailment plan refers to base period service in 1979 for a given period during operation of the Interim Rule. The Commission declined to rule on PGC's request, stating the PGC was seeking clarification of the Agriculture Rule

rather than the Commission's Interim Rule.⁸

PGC again seeks such clarification. The Commission denies that request for the same reasons stated in the various March 30, 1979 orders. Moreover, the issue is moot because the Secretary of Agriculture has amended its rule to allow all essential agricultural users current requirements.

The Commission orders: The Petitions for Rehearing of the Interim Curtailment Rule in Docket No. RM79-13 are herein denied.

By the Commission.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-19746 Filed 6-25-79; 8:45 am]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

[Regulation No. 4]

Federal Old-Age, Survivors, and Disability Insurance; Filing of Applications and Other Forms

AGENCY: Social Security Administration,
HEW.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate in simpler language the rules for filing an application for old-age, survivors', dependents', or disability benefits under the Social Security Act. We made one major change in the existing rules. The change carries out section 332 of the Social Security Amendments of 1977 (Pub. L. 95-216) which limits, with certain exceptions, the retroactivity of applications for benefits reduced because of age. The amendment to the Social Security Act applies to applications for reduced benefits filed on or after January 1, 1978.

EFFECTIVE DATE: These amendments are effective June 26, 1979.

FOR FURTHER INFORMATION CONTACT: James MacDonald, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 301-594-7341.

SUPPLEMENTARY INFORMATION:

Background

HEW is revising its regulations to make them clearer and easier for the public to use. As part of this effort, we

proposed a complete rewrite of Subpart G, Filing of Applications and Other Forms. We published our proposed revision of Subpart G in the *Federal Register* with a Notice of Proposed Rulemaking on September 1, 1978 (43 FR 39268).

In the proposed revision, we used simpler, clearer language to restate the application rules and we reorganized them in a more logical and orderly sequence. Also, we deleted provisions in this subpart that are outdated or little used or that are contained or belong in other subparts of the regulations.

In addition to these changes, we clarified an existing rule dealing with a "written statement". The rule provides, under certain circumstances, for using the filing date of a written statement, such as a letter, indicating an intent to claim benefits as the filing date of a claim for benefits. We restated the rule to make clear that the filing date of a claim may be based on a written statement if the applicant files a prescribed application form within a specified time period.

We made one major change in the rules. The change reflects a revision in the law made by section 332 of the Social Security Amendments of 1977 (Pub. L. 95-216). This amendment to the Social Security Act limits, with certain exceptions, the retroactivity of applications for benefits reduced for age filed on or after January 1, 1978. The new rule is contained in § 404.621(a).

Introduction

This subpart is important because a person must file an application to make a claim for social security benefits. When a person files an application, it permits us to decide formally whether he or she (or the person for whom the application is filed) is entitled to benefits. Also, filing an application protects the right to appeal if the person is not satisfied with the decision.

This subpart does not include requirements concerning applications for black lung benefits, supplemental security income benefits or for a social security number. These rules are in Part 410, Part 416, and Part 422 of Title 20 of the Code of Federal Regulations. When we are further along with rewriting our regulations, we will consider whether combining all the application rules would be more helpful to the public.

In addition to the revisions discussed below that we made as a result of the public comments, the following changes have been made in the final regulation. First, we removed from the final regulation the provisions of Subpart G that refer to hospital insurance benefits.

⁷ Order No. 29, *Supra* note at slip pages 10-11.

⁸ See *EG, Florida Gas Transmission Company, et al*, Docket No. TC79-5 *et al*, issued March 30, 1979.

Although the provisions are removed, they are not terminated and will continue to apply until new regulations are published by the Health Care Financing Administration, HEW. Additionally, we have indicated in § 404.601 that the application form and the procedures for filing a claim under Subpart G are the same as those used to establish entitlement to Medicare benefits. Second, we added to § 404.614 the provisions of Subpart G that explain the time and place for filing a written statement, request or notice, and we revised § 404.601 to reflect this change. Third, we made several editorial changes to further clarify the final regulations.

Response to Public Comments

In response to the Notice of Proposed Rulemaking, we received 44 comments: 25 from State government agencies, 13 from public and private organizations, 3 from Federal government agencies, and 3 from members of the general public. Virtually all of the comments were favorable. Several commenters, while commending the recodification effort, raised questions or made suggestions that resulted in our making a number of nonsubstantive changes in the final rules.

Discussion of Comments

1. *Further clarify retroactivity rules.* Some commenters suggested that we further clarify the rules contained in § 404.621(a) on the retroactive effect of an application filed after the first month the claimant could have been entitled to disability or old-age, survivors', or dependents' benefits. We rewrote the section to state more clearly the rule on the 12-month retroactivity of these applications and the rule limiting the retroactivity of certain applications for old-age, wife's, husband's, widow's or widower's benefits. Also, in response to these comments, we included an example to show how the rule limiting retroactivity is applied.

2. *Include rule on application by 16 to 18 year-old claimant.* A commenter noted our omission of the rule on applications by claimants between 16 and 18 years old from the proposed revision of § 404.612. The rule permits a claimant who is between 16 and 18 years old to sign an application under certain circumstances. It was not our intent to revise our policy on who may sign an application, and in response to the comment we added the rule that now appears in § 404.612(b) of the final regulation.

3. *Clarify who may sign an application.* Several commenters

indicated that paragraph (f) of proposed § 404.612 was unclear. This paragraph stated that if it is necessary to protect a claimant from losing benefits and there is a valid reason for the claimant not signing an application, someone other than the persons specifically designated in the regulation could sign. In response to these comments, we revised the paragraph (now paragraph (g)) and added an example to show when the rule is used.

4. *Clarify written statement rule.* Some commenters suggested that we further explain the rule in § 404.630 about using a written statement to establish the filing date of a claim. We revised this section to explain in more detail when the filing date of a written statement indicating an intent to claim benefits will be used as the filing date of an application.

5. *Permit oral applications.* Several commenters recommended that the date of any oral inquiry be used to establish the filing date of an application. Present procedures permit us to prepare a written statement based on a telephone call and, under certain circumstances, to use this writing to establish a filing date. It was suggested that this procedure be expanded to include not only telephone calls in which the caller expresses an intent to claim benefits, but also any oral inquiry we receive at one of our offices. We have not included a provision such as this in the final regulation.

When a person visits one of our offices and wishes to claim benefits, our present policy is to encourage the filing of an application. For this reason we have not felt it necessary, as it is in the case of a telephone call, to have one of our employees prepare a written statement indicating that the person wishes to file an application. We are looking into whether this policy fully protects the rights of individuals who visit our offices and express an interest in filing for benefits. If we find that it does not, or that claimants are losing benefits because the present policy is not being followed, we will further consider implementing a procedure such as the one proposed by the commenters.

6. *Include instructional material in the regulation.* Several commenters recommended that more of the instructional material on applications now found in our Claims Manual be included in the regulation. Our objectives in recodifying Subpart G were to include in the regulations our substantive policies of general applicability and the rules we are required to publish. Additionally, we sought to avoid unnecessary regulation

and excessive detail. It is our view that the Claims Manual instructions recommended for inclusion in the final regulation supplement the rules we are publishing in the *Federal Register* and that the instructions appropriately belong in our Claims Manual. For these reasons, we did not expand the final regulation as suggested by the commenters.

7. *Editorial comments.* In response to comments recommending that we use simpler language, shorter sentences, and fewer cross-references, we made a number of editorial changes in the final regulations. For example, we eliminated the terms underpayment of benefits, equitably entitled, and under a disability, in favor of simpler descriptions of what these terms mean. We also simplified the language in several sections and reviewed the use of and need for cross-references.

8. *Comments beyond the scope of the Notice.* Some comments were received that went beyond the scope of the Notice of Proposed Rulemaking or the scope of our authority. They included:

(a) Explain a period of disability for a deceased person. A period of disability is explained in our regulations on benefits in Subpart D.

(b) Revise § 404.621(c) to provide special age 72 payments for months before the month an application is filed. This is not possible under existing law.

(c) Retain the larger print used in publishing the proposed regulations in the *Federal Register* and use different colored print for headings and subheadings in the regulations. These comments and other comments that concerned changes in the format of the regulations were referred to the Office of the Federal Register (OFR) for consideration. OFR is currently exploring new formats for publishing the *Federal Register*.

The proposed regulations with these changes are adopted as shown below.

(Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368; 49 Stat. 647; 42 U.S.C. 405 and 1302.)

(Catalog of Federal Domestic Assistance Program Nos. 13.803 Social Security-Retirement Insurance; 13804 Social Security-Special Benefits for Persons Aged 72 and Over; 13805 Social Security-Survivors' Insurance.)

Dated: May 17, 1979.

Stanford G. Ross,
Commissioner of Social Security.

Approved: June 15, 1979.

Hale Champion,
Acting Secretary of Health, Education, and
Welfare.

Subpart G of Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

Subpart G—Filing of Applications and Other Forms

General Provisions

Sec.

404.601 Introduction.

404.602 Definitions.

404.603 You must file an application to receive benefits.

Applications

404.610 What makes an application a claim for benefits.

404.611 Filing of application with Social Security Administration.

404.612 Who may sign an application.

404.613 Evidence of authority to sign an application for another.

404.614 When an application or other form is considered filed.

404.615 Claimant must be alive when an application is filed.

Effective Filing Period of Application

404.620 Filing before the first month you meet the requirements for benefits.

404.621 Filing after the first month you meet the requirements for benefits.

404.622 Limiting an application.

404.623 Filing by persons eligible for old-age and husband's or wife's benefits.

Filing Date Based on Written Statement

404.630 Use of date of written statement as filing date.

404.631 Statements filed with the Railroad Retirement Board.

404.632 Statements filed with a hospital.

Withdrawal of Application

404.640 Withdrawal of an application.

404.641 Cancellation of a request to withdraw.

Authority: Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368, and 49 Stat. 647; sec. 5, Reorganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 405 and 1302 and 5 U.S.C. Appendix.

Subpart G—Filing of Applications and Other Forms

General Provisions

§ 404.601 Introduction.

This subpart contains the Social Security Administration's rules for filing a claim for old-age, disability, dependents', and survivors' insurance benefits as described in Subpart D of

Part 404. It tells what an application is, who may sign it, where and when it must be signed and filed, the period of time it is in effect and how it may be withdrawn. This subpart also explains when a written statement, request, or notice will be considered filed. Since the application form and procedures for filing a claim under this subpart are the same as those used to establish entitlement to Medicare benefits under 42 CFR Part 405, persons who wish to become entitled to Medicare benefits should refer to the provisions of this subpart. Requirements concerning applications for the black lung benefits program are contained in Part 410. Requirements concerning applications for the supplemental security income program are contained in Part 416. Part 422 contains the requirements for applying for a social security number.

§ 404.602 Definitions.

For the purpose of this subpart—

"Applicant" means the person who files an application for benefits for himself or herself or for someone else. A person who files for himself or herself is both the "applicant" and the "claimant."

"Application" refers only to an application on a form described in § 404.611.

"Benefits" means any old-age, disability, dependents', and survivors' insurance benefits described in Subpart D, including a period of disability.

"Claimant" means the person who files an application for benefits for himself or herself or the person for whom an application is filed.

"We", "us", or "our" means the Social Security Administration (SSA).

"You" or "your" means, as appropriate, the person who applies for benefits, the person for whom an application is filed, or the person who may consider applying for benefits.

§ 404.603 You must file an application to receive benefits.

In addition to meeting other requirements, you must file an application to become entitled to benefits. If you believe you may be entitled to benefits, you should file an application. Filing an application will—

(a) Permit a formal decision to be made on your entitlement to benefits;

(b) Protect your entitlement to any benefits that may be payable for as many as 12 months before the application was filed; and

(c) Give you the right to appeal if you are dissatisfied with the decision.

Applications

§ 404.610 What makes an application a claim for benefits.

To be considered a claim for benefits, an application must generally meet all of the following conditions:

(a) It must be on an application form as described in § 404.611.

(b) It must be completed and filed with SSA as described in § 404.611.

(c) It must be signed by the claimant or someone described in § 404.612, who may sign an application for the claimant.

(d) The claimant, with the limited exceptions in § 404.615, must be alive at the time it is filed.

§ 404.611 Filing of application with Social Security Administration.

(a) *General rule.* You must apply for benefits on one of our application forms. See Part 422, Subpart F, for a list of appropriate application forms. See also § 404.614 for places where an application for benefits may be filed.

(b) *Effect of claims filed with the Railroad Retirement Board.* An application filed with the Railroad Retirement Board on one of its forms is also considered an application for social security benefits if the application is filed—

(1) By or for a claimant who has less than 10 years of service in the railroad industry;

(2) By or for a claimant who has 10 or more years of service in the railroad industry and the applicant does not limit the application to benefits payable only under the Railroad Retirement Act; or

(3) By the spouse or by or for the child of a claimant who has worked any length of time in the railroad industry and the applicant does not limit the application to benefits payable only under the Railroad Retirement Act.

(c) *Effect of claims filed with the Veterans Administration.* An application filed with the Veterans Administration on one of its forms for survivors' dependency and indemnity compensation (see section 3005 of title 38, United States Code) is also considered an application for social security dependents' and survivors' benefits except the lump-sum death payment.

§ 404.612 Who may sign an application.

We will determine who may sign an application according to the following rules:

(a) A claimant who is 18 years old or over, mentally competent, and physically able to do so, must sign his or her own application. If the claim is for

child's benefits for a person who is not yet 22 years old, the application may be signed by a parent or a person standing in place of the parent.

(b) A claimant who is between 18 and 18 years old may sign his or her own application if he or she is mentally competent, has no court appointed representative, and is not in the care of any person.

(c) If the claimant is under age 18, or mentally incompetent, or physically unable to sign, the application may be signed by a court appointed representative or a person who is responsible for the care of the claimant, including a relative. If the claimant is in the care of an institution, the manager or principal officer of the institution may sign the application.

(d) If a person who could receive disability benefits or who could have a period of disability established dies before filing, an application for disability benefits or for a period of disability may be signed by a person who would be qualified to receive any benefits due the deceased.

(e) If a person who paid burial expenses for which a lump-sum death payment may be made dies before filing an application for the payment, the application may be signed by a person who could receive the payment for the deceased's estate.

(f) If a written statement showing an intent to claim benefits is filed with us, but the person for whom the benefits are claimed dies before an application is filed, an application may be filed as explained in § 404.630(d).

(g) If it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not signing the application, we may accept an application signed by some one other than a person described in this section.

Example: Mr. Smith comes to a social security office a few days before the end of a month to file an application for old-age benefits for his neighbor, Mr. Jones. Mr. Jones, a 63 year old widower, just suffered a heart attack and is in the hospital. He asked Mr. Smith to file the application for him. We will accept an application signed by Mr. Smith since it would not be possible to have Mr. Jones sign and file the application until the next calendar month and a loss of one month's benefits would result.

§ 404.613 Evidence of authority to sign an application for another.

(a) A person who signs an application for someone else will be required to provide evidence of his or her authority to sign the application for the person claiming benefits under the following rules:

(1) If the person who signs is a court appointed representative, he or she must submit a certificate issued by the court showing authority to act for the claimant.

(2) If the person who signs is not a court appointed representative, he or she must submit a statement describing his or her relationship to the claimant. The statement must also describe the extent to which the person is responsible for the care of the claimant. This latter information will not be requested if the application is signed by a parent for a child with whom he or she is living.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for the care of the claimant, he or she must submit a statement indicating the person's position of responsibility at the institution.

(b) We may, at any time, require additional evidence to establish the authority of a person to sign an application for someone else.

§ 404.614 When an application or other form is considered filed.

(a) *General rule.* An application for benefits, or a written statement, request, or notice is filed on the day it is received by an SSA employee at one of our offices or by an SSA employee who is authorized to receive it at a place other than one of our offices.

(b) *Other places and dates of filing.* We will also accept as the date of filing—

(1) The date an application for benefits, or a written statement, request or notice is received by any office of the U.S. Foreign Service or by the Veterans Administration Regional Office in the Philippines;

(2) The date an application for benefits or a written statement, request or notice is mailed to us by the U.S. mail, if using the date we receive it would result in the loss or lessening of rights. The date shown by a U.S. postmark will be used as the date of mailing. If the postmark is unreadable, or there is no postmark, we will consider other evidence of when you mailed it to us; or

(3) The date an application for benefits is filed with the Railroad Retirement Board or the Veterans Administration. See § 404.611 (b) and (c) for an explanation of when an application for benefits filed with the Railroad Retirement Board or the Veterans Administration is considered an application for social security benefits.

§ 404.615 Claimant must be alive when an application is filed.

A claimant must be alive at the time an application is filed. There are the following exceptions to this general rule:

(a) If a disabled person dies before filing an application for disability benefits or a period of disability, a person who would be qualified to receive any benefits due the deceased may file an application. The application must be filed within 3 months after the month in which the disabled person died.

(b) If a person who paid burial expenses for which a lump-sum death payment may be made dies before filing an application for the payment, the application may be signed by a person who could receive the payment for the deceased's estate.

(c) If a written statement showing an intent to claim benefits is filed with us, but the person for whom the benefits are claimed dies before an application is filed, an application may be filed as explained in § 404.630(d).

Effective Filing Period of Application

§ 404.620 Filing before the first month you meet the requirements for benefits.

(a) *General rule.* If you file an application for benefits (except special age 72 payments) before meeting all the requirements for entitlement, the claim will be denied unless all the requirements are met before a final decision is made on the application. If the requirements are met before that decision, we will treat your application as though it was filed in the month you first met all the requirements of entitlement.

(b) *Filing for special age 72 payments.* The requirements for entitlement to special age 72 payments must be met no later than 3 months after the month an application is filed.

§ 404.621 Filing after the first month you meet the requirements for benefits.

(a) *Filing for disability benefits and for old-age, survivors' or dependents' benefits.* (1) If you file an application for disability benefits, or for old-age, survivors' or dependents' benefits, after the first month you could have been entitled to them, you may receive benefits for up to 12 months immediately before the month in which you application is filed. Your benefits may begin with the first month in this 12-month period in which you meet all the requirements for entitlement. This rule has the following limitation. It is not followed if you apply for old-age, wife's, husband's, widow's or widower's benefits and the effect of the payment of

benefits for a month before the month you file would be to reduce your benefits because of your age. An explanation of the reduction that occurs because of age if you are entitled to these benefits for a month before you reach the retirement age of 65, is in § 404.410. An example of the limitation, that assumes paragraph (a)(2) of this section does not apply, follows.

Example: You become 65 years old in April 1979. If you apply for old-age benefits in April, you cannot be entitled to months in the 12-month period before April because the payment of benefits for any of these months would result in your benefits being reduced for age. If you do not file your application until July 1979, you may be entitled to benefits for the months of April, May and June 1979 because the payment of benefits for these months would not result in your benefits being reduced for age. You will not, however, receive benefits for the 9 months before April.

(2) The limitation on your entitlement to old-age, wife's, husband's, widow's or widower's benefits for months before you file an application does not apply if—

(i) You apply for old-age benefits and there are one or more persons who would be entitled to benefits as a dependent on your earnings record for past months and these benefits are not subject to reduction;

(ii) You have excess earnings in the year the application is filed and the excess earnings could be charged to months prior to the month of application. In that event, the limitation will not apply to the number of months prior to filing the application which are required to charge the excess earnings. See § 404.430 for the definition of "excess earnings" and § 404.434 for an explanation of the months to which excess earnings are charged; or

(iii) You are a widow, widower, or surviving divorced wife who is disabled and could be entitled to retroactive benefits for any month before age 60. If you could not be entitled before age 60, the limitation will prevent payment of benefits to you for past months, but it will not affect the month you become entitled to hospital insurance benefits.

(b) *Filing for lump-sum death payment.* An application for a lump-sum death payment must be filed within 2 years after the death of the person on whose earnings record the claim is filed. There are two exceptions to the 2-year filing requirement:

(1) If there is a good cause for failure to file within the 2-year period, we will consider your application as though it were filed within the 2-year period. Good cause does not exist if you were

informed of the need to file an application within the 2-year period and you neglected to do so or did not desire to make a claim. Good cause will be found to exist if you did not file within the time limit due to—

(i) Circumstances beyond your control, such as extended illness, mental or physical incapacity, or a language barrier;

(ii) Incorrect or incomplete information we furnished you;

(iii) Your efforts to get evidence to support your claim without realizing that you could submit the evidence after filing an application; or

(iv) Unusual or unavoidable circumstances which show that you could not reasonably be expected to know of the time limit.

(2) The Soldiers' and Sailors' Civil Relief Act of 1940 provides for extending the filing time.

(c) *Filing for special age 72 payments.* An application for special age 72 payments is not effective as a claim for benefits for any month before you actually file.

(d) *Filing for a period of disability.* You must file an application for a period of disability while you are disabled or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month time period because of a physical or mental condition, you may apply not more than 36 months after your disability ended. The general rule we use to decide whether your failure to file was due to a physical or mental condition is stated in Subpart D.

(e) *Filing after death of person eligible for disability benefits or period of disability.* If you file for disability benefits or a period of disability for another person who died before filing an application and you would qualify under § 404.503(b) to receive any benefits due the deceased, you must file an application no later than the end of the third month following the month in which the disabled person died.

§ 404.622 Limiting an application.

Your application may entitle you to benefits for up to 12 months before the month in which it is filed. See § 404.621(a). You may limit the number of months of your entitlement in the 12-month period. You may state this choice any time before a decision is made on your claim by indicating, in writing, the month you want your benefits to begin. You may change the first month of entitlement in the 12-month period after a decision has been made on your claim under the following conditions:

(a) You file the request in writing.

(b) If you are filing for the claimant, he or she is alive when the request is filed.

(c) If any other person who is entitled to benefits would lose some or all of those benefits because of the change, that person, or the person who filed for him or her, consents in writing.

(d) Any benefit payments that would become improper as a result of the change in entitlement month are repaid, or we are satisfied that they will be repaid.

§ 404.623 Filing by person eligible for old-age and husband's or wife's benefits.

(a) *Presumed filing for husband's or wife's benefits.* If you file an application for old-age benefits, you are presumed to have filed an application for husband's or wife's benefits in the first month of your entitlement to old-age benefits, if—

(1) Your old-age benefits are reduced for age because you choose to receive them before you become 65 years old; and

(2) You are eligible for either a husband's or a wife's benefit for the first month of your entitlement to old-age benefits.

(b) *Presumed filing for old-age benefits.* (1) If you file an application for husband's or a wife's benefits, you are presumed to have filed an application for old-age benefits in the first month of your entitlement to husband's or wife's benefits if—

(i) Your husband's or wife's benefits are reduced for age because you choose to receive them before you become 65 years old; and

(ii) You are eligible for old-age benefits for the first month of your entitlement to husband's or wife's benefits.

(2) The rule in paragraph (b)(1) of this section is not used if you are also entitled to disability benefits in the first month of your entitlement to husband's or wife's benefits. In this event, you are presumed to have filed for old-age benefits only if your disability benefits end before you become 65 years old.

Filing Date Based on Written Statement

§ 404.630 Use of date of written statement as filing date.

If a written statement, such as a letter, indicating your intent to claim benefits either for yourself or for another person is filed with us under the rules stated in § 404.614, we will use the filing date of the written statement as the filing date of the application, if all of the following requirements are met:

(a) The statement indicates an intent to claim benefits.

(b) The statement is signed by the claimant, the claimant's spouse, or a person described in § 404.612. If you telephone us and advise us that you intend to file a claim but cannot file an application before the end of the month, we will prepare and sign a written statement if it is necessary to prevent the loss of benefits.

(c) The claimant files an application with us on an application form as described in § 404.611, or one is filed for the claimant by a person described in § 404.612, within 6 months after the date of a notice we will send advising of the need to file an application. We will send the notice to the claimant. However, if it is clear from the information we receive that the claimant is a minor or is mentally incompetent, we will send the notice to the person who submitted the written statement.

(d) The claimant is alive when the application is filed; or if the claimant has died after the written statement was filed, an application is filed—

(1) By or for a person who would be eligible to receive benefits on the deceased's earnings record;

(2) By a person acting for the deceased's estate; or

(3) If the statement was filed with a hospital under § 404.632, by the hospital if—

(i) No person described in paragraphs (d) (1) or (2) of this section can be located; or

(ii) A person described in paragraphs (d) (1) or (2) of this section is located but refuses or fails to file the application unless the refusal or failure to file is because it would be harmful to the deceased person or the deceased's estate.

§ 404.631 Statements filed with the Railroad Retirement Board.

A written statement filed with the Railroad Retirement Board will be considered a written statement filed with us under the rules in § 404.630 if—

(a) The statement indicates an intent to claim any payments under the Railroad Retirement Act;

(b) It bears the signature of the person filing the statement;

(c) No application is filed with the Railroad Retirement Board on one of its forms. If an application has been filed, we will use the date of filing of that application as determined by the Railroad Retirement Board (see § 404.614(b)(3)); and

(d) The statement is sent to us by the Railroad Retirement Board.

§ 404.632 Statements filed with a hospital.

A statement (generally a hospital admission form) filed with a hospital may serve as a written statement under § 404.630 if the requirements of this section are met. The statement will be considered filed with us as of the date it was filed with the hospital and will serve to protect entitlement to benefits. A statement filed with a hospital by you or some other person for you requesting or indicating an intent to claim benefits will be considered a written statement filed with us and § 404.630 will apply to it if—

- (a) You are a patient in the hospital;
- (b) The hospital provides services covered by hospital insurance under the Medicare program;
- (c) An application has not already been filed; and
- (d) The statement is sent to us.

Withdrawal of Application

§ 404.640 Withdrawal of an application.

(a) *Request for withdrawal filed before a determination is made.* An application may be withdrawn before we make a determination on it if—

(1) A written request for withdrawal is filed at a place described in § 404.614 by the claimant or a person who may sign an application for the claimant under § 404.612; and

(2) The claimant is alive at the time the request is filed.

(b) *Request for withdrawal filed after a determination is made.* An application may be withdrawn after we make a determination on it if—

(1) The conditions in paragraph (a) of this section are met;

(2) Any other person who would lose benefits because of the withdrawal consents in writing to it. Written consent for the person may be given by someone who could sign an application for him or her under § 404.612; and

(3) All benefits already paid based on the application being withdrawn are repaid or we are satisfied that they will be repaid.

(c) *Effect of withdrawal.* If we approve a request to withdraw an application, the application will be considered as though it was never filed. If we disapprove a request for withdrawal, the application is treated as though the request was never filed.

§ 404.641 Cancellation of a request to withdraw.

A request to withdraw an application may be cancelled and the application reinstated if—

(a) A written request for cancellation is filed at a place described in § 404.614 by the claimant or someone who may

sign an application for the claimant under § 404.612;

(b) The claimant is alive at the time the request for cancellation is filed; and

(c) For a cancellation request received after we have approved the withdrawal, the request is filed no later than 60 days after the date of the notice of approval.

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Food and Drug Administration

21 CFR Parts 74, 101, and 201

[Docket No. 77N-0009]

FD&C Yellow No. 5; Labeling in Food and Drugs for Human Use

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: This document establishes requirements for the label declaration of FD&C Yellow No. 5 when used to color foods for human use and drugs for human use that are administered orally, nasally, vaginally, or rectally. This action is considered necessary because of mounting evidence of allergic-type reactions to FD&C Yellow No. 5. With this action, persons sensitive to FD&C Yellow No. 5 will be able to avoid those products that contain this color additive. The effective dates for this regulation will provide time for the correction of existing labels and conform with the uniform effective date for other regulations concerning the labeling of foods.

EFFECTIVE DATES: For foods: July 1, 1981; for drugs: June 26, 1980 or at the next printing of the labeling, whichever occurs first; objections by July 26, 1979.

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

FOR FURTHER INFORMATION CONTACT:
Foods—Gerard L. McCowin, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-5740.
Drugs—Paul O. Fehnel, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 8, 1969 (34 FR 7447), the Food and Drug Administration (FDA) issued an order listing FD&C

Yellow No. 5 (also commonly known as tartrazine) for use in foods under § 74.705 (21 CFR 74.705) and for use in ingested drugs under § 74.1705 (21 CFR 74.1705) (formerly §§ 8.275 and 8.4175 prior to recodification in the Federal Register of March 22, 1977 (42 FR 15553)). This action was supported by safety data in a color additive petition (CAP 23) and other relevant data. The petition was submitted by the Certified Color Industry Committee, c/o Hazelton Laboratories, Falls Church, VA (now the Certified Color Manufacturers Association, 900 17th St. NW., Washington, DC 20006); notice of filing was published in the Federal Register of March 27, 1965 (30 FR 4083). At the time of listing for food and ingested drug use, no specific restrictions were placed on the use of FD&C Yellow No. 5 other than that it be subject to batch certification by FDA. FD&C Yellow No. 5 is also provisionally listed for use in externally applied drugs and in cosmetics under § 81.1(a) (21 CFR 81.1(a)). The closing date for this provisional listing is January 31, 1981. Because of mounting evidence of allergic-type reactions to FD&C Yellow No. 5, the agency believes it is now appropriate to require that the presence of the color be specifically identified on the label of products in which it is used.

The evidence concerning the relationship between ingestion of FD&C Yellow No. 5 and allergic-type reactions was discussed in the Federal Register of February 4, 1977 (42 FR 6835), when FDA proposed regulations concerning the use of FD&C Yellow No. 5 in foods and ingested drugs. For food, the proposal would require a label declaration for all foods containing FD&C Yellow No. 5. For ingested drugs, however, FDA set forth two alternative proposals. Drug Proposal I was to require a warning statement on the labels of both over the counter (OTC) and prescription drugs. Drug Proposal II was to ban the use of FD&C Yellow No. 5 in certain categories of OTC and prescription drug products frequently used by persons with allergic disorders and to require a warning statement on the labels of all other OTC and prescription drugs containing FD&C Yellow No. 5. In addition to requesting comments on the two drug proposals, the agency requested information on the availability of drug products that are free of FD&C Yellow No. 5.

This final rule requires the label of all foods containing FD&C Yellow No. 5 to declare the presence of the color additive as FD&C Yellow No. 5. In the case of drugs, a slightly different label declaration is required. The presence of FD&C Yellow No. 5 must be declared by

both names by which it is known (FD&C Yellow No. 5 and tartrazine) for OTC and prescription drug products which are administered orally, nasally, rectally, or vaginally, but not for topical or other externally applied drug products. In addition, labeling for the prescription drug products subject to the rule will be required to contain a precautionary statement on possible allergic reactions to the use of FD&C Yellow No. 5.

Interested persons were invited to submit comments on the proposal by April 5, 1977. In response to the proposal, the agency received 428 comments from manufacturers, trade associations, professional societies, consumer groups, and individual citizens. A summary of the comments and FDA's responses follow:

General Comments

1. Several comments from consumers objected to the proposal on the grounds that FD&C Yellow No. 5 presented no danger to humans in the amounts commonly found in foods and drugs. Many of these comments urged FDA to consider the rights of the general public as well as the rights of persons sensitive to FD&C Yellow No. 5. These comments emphasized that before taking a regulatory action that will impact on the general public, but is for the benefit of only a few, FDA should establish certain public health priorities. One comment questioned whether FDA should ban any substance solely on the basis of a few rat studies, without real evidence of harm to humans, and asserted that FDA condones cigarette smoking, a known detriment to health.

Since FD&C Yellow No. 5 was listed for use in food and ingested drugs, evidence has accumulated of allergic-type responses in humans, not rats, caused by ingestion of foods or drugs containing the color.

There have been increasing numbers of reports that these responses to FD&C Yellow No. 5 occur primarily in patients who also have aspirin intolerance. The phenomenon of aspirin intolerance in certain persons with underlying allergic disorders, including bronchial asthma, nasal polyposis, vasomotor rhinitis, and skin allergies to various substances, has been known for over 50 years. Both the aspirin and the FD&C Yellow No. 5 reactions are manifested by asthmatic symptoms, urticaria, angioedema, or nasal symptoms.

FDA agrees that before taking a regulatory action concerning FD&C Yellow No. 5, many different factors have to be considered. That any action involving FD&C Yellow No. 5 will

impact on the general public, although it is for the benefit of only a few, is just one of many factors to be considered. Other factors include the severity of reactions experienced by persons sensitive to FD&C Yellow No. 5, the protection afforded to sensitive persons by a label declaration or a warning statement, the number of sensitive persons, the availability of products that do not contain FD&C Yellow No. 5, and the importance of colors for distinguishing between drugs. Two different drug proposals were published to solicit as many varied comments as possible and to help FDA weigh the various factors.

Although there is no evidence in the available information on FD&C Yellow No. 5 that demonstrates a significant hazard to the general population at current usage levels, the agency concludes that the evidence of a causal relationship between FD&C Yellow No. 5 and serious allergic-type responses in certain susceptible individuals is sufficient to warrant label declaration. Under the requirements imposed by this regulation, the only broad impact on the general public will be the identification of the color on the label of all foods and most drugs. While some persons may not feel a need for this information, the availability of the information will not interfere with any persons' rights. With respect to cigarette smoking, FDA's authority is limited. Nonetheless, FDA has not condoned cigarette smoking, and has, for example, taken action to warn consumers of the hazards of smoking when combined with the use of specific drug products.

2. Several comments from consumers generally opposed the proposed label declaration of FD&C Yellow No. 5. Three comments objected to the increasing amount of government interference in the lives of the American people. One comment from a physician contended that the vast majority should not be penalized to protect the infinitesimal few. Three comments contended that there was insufficient justification to warrant the increased cost to the large majority of people since consumers would inevitably bear the brunt of the expense involved with label changes.

Although not primarily addressing the proposed label declaration of FD&C Yellow No. 5, a comment from a manufacturer of Easter egg colors objected to the increasing interference of FDA in the lives of the American people and American small businesses, such as the Easter egg dye industry. This manufacturer also objected to the proposed label declaration if the scientific evidence was not conclusive

that FD&C Yellow No. 5 was harmful and if the effective date did not allow time for current supplies of labels to be used.

FDA advises that FD&C Yellow No. 5 has clearly been shown to produce allergic-type responses in humans, although there is no evidence of a significant hazard to the general population when the color is used at current levels and in the manner now practiced. In those persons that are affected by the color, however, the presence of the color may have serious health implications. The agency concludes that action is justified to limit the potential for exposure of the estimated 47,000 to 94,000 FD&C Yellow No. 5 intolerant persons to the color through ingestion of food and/or drugs.

The effective dates of this final regulation will minimize any increased costs to the consumer because of label changes. These effective dates will provide sufficient time to permit use of current stocks of labeling and revision of labeling in the normal course of business to include a declaration of the presence of FD&C Yellow No. 5. For the benefit of the Easter egg dye manufacturer and other color additive manufacturers, FDA emphasizes that all color additives and color additive mixtures, including Easter egg dyes and food dyes sold for use in the home, should already declare the presence of all color additives by name on their labels to be in accordance with § 70.25. This action in no way penalizes the majority of the population. Rather, the requirement for a label declaration as opposed to a possible prohibition against the use of the color has been selected because it minimizes the societal impact while providing an adequate measure of protection for those sensitive to the color.

3. One comment suggested that the final regulation allow an alternative labeling statement that uses the name "tartrazine" in conjunction with the name "FD&C Yellow No. 5," i.e., FD&C Yellow No. 5 (tartrazine). This alternative labeling, the comment said, would allow sensitive persons who may not know that FD&C Yellow No. 5 is synonymous with tartrazine to determine if the food they are eating or drugs they are taking contain the color. The comment claimed that because many clinicians use the term "tartrazine" the legal distinction made in the preamble between FD&C Yellow No. 5 and tartrazine should not control the labeling directed to the layman.

Since 1939, FD&C Yellow No. 5 has been the name FDA has designated in regulations for this color additive.

However, the medical literature, including the references cited in the proposal and placed on file with the Hearing Clerk, frequently refers to the compound as tartrazine in discussions about sensitivity to the color. Therefore, because some people recognize this color additive as FD&C Yellow No. 5, and others as tartrazine, the agency concludes that the public would be afforded additional protection if both names appear on the label. Because of the serious nature of the reaction in a small proportion of those who are allergic to the dye, it is important that labeling information enable both the physician responsible for the diagnosis and management, and the consumer so diagnosed, to be able to immediately recognize products containing the dye and thereby avoid their use.

Both names for the color additive shall be required on the labeling for drug products. Irrespective of which name a physician is familiar with, he or she will be able to prescribe a drug for patients who are sensitive to FD&C Yellow No. 5, or advise them to take an OTC drug with confidence that the drug does not contain the color additive. Because drugs used to treat allergy problems may be used widely by persons intolerant of the FD&C Yellow No. 5, it is especially important that both the physician and the consumer be able to immediately recognize those drug products containing the dye and avoid their use.

This requirement is not being extended to labels for food products. A basic requirement of the act, and regulations that pertain to food labeling, is that ingredients should be declared by their common names. Because the majority of laymen responding to the proposal, including those sensitive to FD&C Yellow No. 5, referred to the color additive as FD&C Yellow No. 5 or Yellow No. 5, FDA can find no reason to depart from this food labeling requirement by requiring a dual declaration of the color. The regulations set forth below, therefore, require label declaration of the presence of the color in foods by its common name only, that is, FD&C Yellow No. 5, the name by which it has been regulated since 1939. However, the agency does encourage food manufacturers to parenthetically declare tartrazine after the official common name to provide additional information to consumers who are sensitive to FD&C Yellow No. 5.

With respect to cosmetics, effective May 31, 1976, all newly ordered labels for cosmetics have been required to declare all specific colors present by their common names. Because this

labeling change has already taken effect and cosmetic labels currently declare "FD&C Yellow No. 5," there is also no reason to include the dual declaration of the color on the label of cosmetics.

4. Many comments favored a complete and absolute ban on the use of FD&C Yellow No. 5 in all foods, drugs, and cosmetics. Some comments suggested a ban of FD&C Yellow No. 5 to the greatest extent possible and appropriate labeling of uses not banned.

This approach was carefully considered by the agency before publication of the proposal but was rejected because there was an insufficient basis for that action. The comments received on the proposal did not provide any additional data indicating that a total or partial ban on the use of FD&C Yellow No. 5 was needed to protect sensitive persons. To the contrary, many comments, including several comments from persons sensitive to FD&C Yellow No. 5, suggested that label declaration would be adequate. FDA concludes, therefore, on the basis of the available data, that a ban on the use of FD&C Yellow No. 5 is not needed at this time to protect sensitive persons. If the labeling requirements prove to be inadequate for informing persons of the presence of FD&C Yellow No. 5 in foods and drugs, the possibility of a ban will be reconsidered.

5. Several comments suggested that FDA require the labeling of all ingredients (especially specific dyes, flavorings, and preservatives) on packages of foods, drugs, and cosmetics.

Although these comments go beyond the scope of the proposal, the agency advises that virtually without exception FDA currently requires labeling of food, drug, and cosmetic ingredients to the extent permitted by the act. In general, FDA requires that:

(1) Ingredients of food products must be declared on the label in decreasing order of predominance. Spices, flavorings, and colorings may be declared collectively on the label because the act explicitly so permits. The act also exempts the mandatory ingredients in standardized foods from label declaration. The law does, however, provide for label declaration of optional ingredients and many standards have been amended to require the declaration of those ingredients.

(2) All active ingredients and certain specified ingredients, whether active or not, in drugs must be declared;

(3) All inactive ingredients (except flavorings and colors) in prescription

drugs for other than oral use must be declared;

(4) All ingredients (except fragrances and flavors which may be declared collectively as such) in cosmetics must be declared in decreasing order of predominance.

Food Comments

6. The majority of comments were from consumers who supported the proposed label declaration but suggested that FDA should take an even stronger stand and ban FD&C Yellow No. 5. Several comments contended that color additives provide no "benefit" to the public and that their use is purely cosmetic and concluded, therefore, that their use should not be sanctioned by FDA. Other comments opposed the use of any artificial color additive and stated their preference for "natural" foods and food ingredients.

Congress has made the judgment that color additives that have been shown to be safe should be permitted in food. The role of FDA under the act is not to make the value judgment about whether color additives are "beneficial," but rather to evaluate the data submitted in support of color additive petitions and to approve for use in foods, drugs, cosmetics, and devices those colors that the agency is reasonably certain are safe. Congress has made the collective judgment that color additives are "beneficial" and should be permitted to be used if shown to be safe.

FDA also advises that "natural" foods and food ingredients are not necessarily safer than artificial ones. Many substances are harmful if ingested in sufficiently large quantities. Additionally, many synthesized ingredients are chemically identical to substances that occur naturally. The notion that natural food ingredients are safer than artificial food ingredients is not supported by scientific data.

7. Several comments suggested that food products, as well as drugs, should display a precautionary statement, e.g., "This product contains FD&C Yellow No. 5 which may cause allergic-type reactions in certain susceptible individuals." However, many other comments, acknowledging that the scientific evidence supported some regulatory action, stated that label declaration of FD&C Yellow No. 5 was sufficient to alleviate the problem. Two organizations of allergists submitted separate resolutions to the effect that the interests of the patients and the physicians would be entirely served by simply requiring that FD&C Yellow No. 5 be declared on the label of foods.

FDA concludes that for foods a simple listing of the color as FD&C Yellow No. 5 among the list of ingredients is sufficient to alert susceptible persons to the presence of FD&C Yellow No. 5. Persons who know they are intolerant of FD&C Yellow No. 5 are likely to be selective in the types of foods that they use and, with appropriated label declaration, would be able to avoid the potential hazard from allergic-type reactions to the color in foods by reading the label. Accordingly, a label declaration of FD&C Yellow No. 5 in food for humans, whether added as the straight color, a mixture, or a lake, would enable persons intolerant to FD&C Yellow No. 5 to minimize exposure to the color.

8. One comment from a cheese manufacturer asked that the wrappers, including wax wrappers, surrounding cheese be exempted from this regulation. The manufacturer contended that the labeling declaration should only apply to the use of FD&C Yellow No. 5 in foods.

The agency agrees that if FD&C Yellow No. 5 is present only in the packaging material the product need not be labeled as required by the regulation. Evidence suggesting that FD&C Yellow No. 5 migrates into foods from packaging material has not been submitted. It is unlikely that FD&C Yellow No. 5 will migrate to the foods from most packaging materials, e.g., plastic wraps and foils, and the agency is not expanding this regulation to include those uses of FD&C Yellow No. 5 at this time.

9. Two comments, one from a food manufacturer and the other from a national trade association of food manufacturers, contended that the effective date for final implementation of the label declaration of FD&C Yellow No. 5 should be at least 2 years instead of the proposed 1 year. They contended that 2 years will be necessary to deplete existing stocks of products and label inventory, especially for seasonal products. Neither comment, however, supplied any supporting data to substantiate their claims.

The effective date of July 1, 1981 for food labeling should provide sufficient time to permit use of current stocks of labeling and revision of labeling to include a declaration of the presence of FD&C Yellow No. 5. Because several other labeling changes concerning food products become effective on July 1, 1981, the agency has chosen this date as the effective date for the required label declaration of FD&C Yellow No. 5 for foods. Manufacturers have been aware of the proposed labeling changes since February 4, 1977 when the proposal

published in the Federal Register allowing them more time to decrease their current stocks of labeling. Manufacturers may, of course, revise their labeling before the effective date of this regulation, as FDA encouraged them to do in the February 4, 1977 proposal.

10. One comment suggested that the proposed wording of the last sentence of § 101.22(c) could be misinterpreted to mean that any color listed in Part 74 must be declared on the food label. To remedy such a possible misinterpretation this comment suggested the words "its listing in" be replaced by "required by."

FDA agrees that the phrase "its listing in Part 74" could be misleading. Therefore, the final regulation is changed accordingly.

Drug Comments

11. One drug manufacturer, requesting that FD&C Yellow No. 5 not be banned from the proposed seven categories of prescription drug products, supplied a list of drug products that it manufactures in these seven categories and which do not contain FD&C Yellow No. 5. Thus, it was argued, a physician prescribing a drug has numerous alternative drug products within a particular therapeutic class from which to select ones adequate to serve the needs of the small class of persons who may be allergic to FD&C Yellow No. 5. Another comment stated that numerous alternative drugs not containing FD&C Yellow No. 5 exist in the therapeutic categories identified by FDA and that a statement of the presence of FD&C Yellow No. 5 on the label would be sufficient to alleviate any problem. A survey conducted by one trade association, although not exhaustive because all member firms did not respond, revealed that of the seven prescription classifications, at least the following number of products are available without FD&C Yellow No. 5: analgesic, 24; antihistamine, 14; cough-cold, 28; oral-nasal decongestant, 14; anti-asthmatic, 23; nonsteroidal, anti-inflammatory, 3; and glucocorticoid, 32. A later survey was conducted by a leading color manufacturer. This survey, representing replies from 54 companies and covering 794 nationally marketed drug products, indicated the following drug products with and without FD&C Yellow No. 5: analgesic, 45 with and 172 without; antihistamine, 27 with and 58 without; cough-cold, 64 with and 95 without; oral-nasal decongestant, 19 with and 45 without; anti-asthmatic, 16 with and 52 without; nonsteroidal, anti-inflammatory, 21 with and 21 without; and glucocorticoid, 14 with and 140 without.

At the time of the proposal, FDA had minimal information about the availability of drug products that were in the particular therapeutic categories identified in the proposal and that did not contain FD&C Yellow No. 5. The categories of drugs identified in the proposal for prohibition of the use of the color are those classes of drugs that are most likely to be taken by persons intolerant of FD&C Yellow No. 5 to treat an allergic problem, including those allergic-type conditions that may arise as a result of ingestion of FD&C Yellow No. 5. In view of the information presented, however, it appears that a wide selection of drugs is available in each category that is free of FD&C Yellow No. 5. Therefore, if each drug is appropriately labeled, a physician could prescribe, or a patient could select, if OTC, a drug product free of FD&C Yellow No. 5 from any of these therapeutic categories of drugs. For this reason, as well as for the reasons mentioned in comment 13, FDA concludes that the proposal to ban FD&C Yellow No. 5 from these categories of drug products is not necessary and is therefore not being adopted at this time.

12. Many comments objected to the proposed ban on FD&C Yellow No. 5 in the specified categories of drug products because of the lack of available alternative colors. Several of these comments strongly endorsed the statements contained in the preamble to the proposal about the advantages of color coding, especially that color coding aids in avoiding patient confusion, fosters quality control, and engenders patient compliance. Several comments pointed out that the list of certified colors is small, and that other colors, such as D&C Yellow No. 10, with limited use to date, may have unsuspected disadvantages, such as an allergic potential. Two comments said that D&C Yellow No. 10 is not a reliable substitute for FD&C Yellow No. 5 because toxicological data are not extensive, and work on D&C Yellow No. 10 is still in progress and is not required to be submitted until January 31, 1981. The currently limited usage of D&C Yellow No. 10 was considered important because its tinctorial strength as a pigment color for coating pharmaceutical tablets is several orders of magnitude below that of FD&C Yellow No. 5. Thus, considerably more D&C Yellow No. 10 would be required to achieve a specific color standard. Several other comments emphasized that FD&C Yellow No. 6, though named yellow, is truly orange and, therefore, is

not a suitable replacement for FD&C Yellow No. 5.

The agency finds these comments concerning the lack of availability of alternative colors for replacing FD&C Yellow No. 5, along with those concerning the availability of drugs free of FD&C Yellow No. 5, quite persuasive and concludes that FD&C Yellow No. 5 should not be banned from drug products at this time. The agency recognizes the important place that drug color coding plays in avoiding patient confusion and the large number of drug products that would have to be reformulated. There is, therefore, a definite advantage to continuing the use of FD&C Yellow No. 5 with the assurance that there are sufficient alternative drug products that do not contain the color and that the label declaration will provide adequate notice. Although a new chronic feeding study has been recently initiated with D&C Yellow No. 10, previous studies have shown no adverse effects. The requirement for a new chronic feeding study was part of the regulation of February 4, 1977 (42 FR 6992) stating the intention to end the provisional listing of color additives. Besides D&C Yellow No. 10, 25 other color additives, including FD&C Yellow No. 5, required new chronic feeding studies because the original studies conducted during the 1950's and 1960's no longer meet toxicological standards for establishing safety. These studies are required only to reconfirm by contemporary toxicological standards the results of previous tests that support the usage of these 26 color additives before they are permanently listed; there is currently no concern that use of these colors presents a hazard to the public health.

13. Many comments supported Drug Proposal II for both prescription and OTC drug products. One drug firm said that, in view of the scientific literature on FD&C Yellow No. 5, it started to phase out FD&C Yellow No. 5 from its bronchodilator and similar products several years ago. Several comments pointed out that the ban from certain drug products was more feasible for drugs than for foods because certain other colors remain available for use in drugs, whereas FD&C Yellow No. 5 is the only true yellow available for use in food.

In view of the availability of drugs without FD&C Yellow No. 5 in the specified therapeutic categories as discussed in comment 11, the extensive history of use with FD&C Yellow No. 5 mentioned in comment 12, and the acknowledged benefit of color coding drug products (comment 12), FDA

concludes that Drug Proposal II for both prescription and OTC drugs is not warranted at this time. In addition to the required label declaration on OTC and prescription drugs, however, the agency will require that prescription drugs requiring package inserts include a warning statement in the "Precautions" section as discussed in comment 22. If data become available showing that the label declaration is not adequate to notify sensitive persons, FDA will repropose a ban on the use of FD&C Yellow No. 5 for certain categories of drug products.

14. One comment suggested that proposed § 8.4175(b), as worded, could be misinterpreted to mean that FD&C Yellow No. 5 was banned from all rectally or vaginally administered drug products. To remedy such a possible misinterpretation, the comment suggested that the phrase "whether ingested or administered rectally or vaginally" be used.

Because the proposed ban is not being adopted, proposed § 8.4175(b) will not appear in the final regulations and this suggestion does not require any action.

15. One comment requested that, if the ban on the use of FD&C Yellow No. 5 is finalized, it not be applied to investigational new drugs. It was contended that in some situations, the use of FD&C Yellow No. 5 in clinical trials of drugs which are included in the proposed ban is necessary to "blind" the new drug, placebo, or active control drug adequately. Further, it was contended that because the patients in an IND study are closely monitored, the risk would be quite small.

Because FD&C Yellow No. 5 is not being banned from any drug products at this time, it may continue to be used in investigational new drugs. As with other drugs, the presence of FD&C Yellow No. 5 must be declared on the label of an investigational new drug, and the warning statement must be included in the information about the drug that is made available to the investigator.

16. One comment objected to the use of the word "ingested" in proposed § 8.4175(b) because it is subject to multiple interpretation. It was suggested that if the specific intent of the term "ingested" was to convey "oral" administration, then this clearer term should be used.

Although proposed § 8.4175(b), which would have prohibited the use of FD&C Yellow No. 5 in certain categories of drugs, is not being finalized, the label of drug products containing FD&C Yellow No. 5 administered orally, nasally, vaginally, or rectally will be required to bear a statement declaring the presence

of the color additive. The use of the word "ingested" in the proposal was intended to convey the commonly used distinction between drugs taken internally and those administered externally or topically. External, in turn, refers to application to external parts of the body excluding mucous membranes. Because the term "ingested" is insufficiently precise, the terms "orally" and "nasally" will be substituted in the final regulation.

17. One comment requested that, if Drug Proposal II is adopted, the regulation specifically exempt prescription drugs intended for oral inhalation. The specific product referred to in the comment is packaged in a No. 2 capsule containing the active ingredient and lactose as a filler. FD&C Yellow No. 5 is used to color one-half of the capsule. This capsule is placed into a device, punctured, the contents of the capsule inhaled, and then the empty capsule is discarded. The comment also included data demonstrating that the FD&C Yellow No. 5 in the capsule did not migrate to the contents of the capsule.

Because Drug Proposal II is not being adopted, there is no need to exempt drugs for inhalation as requested in the comment. Further, the final rule applies to drug products containing FD&C Yellow No. 5, and the use of the color only in a product's container (where no migration of the color occurs) would not subject the product to the requirements of the rule.

18. One comment suggested that the regulation banning the use of FD&C Yellow No. 5 in certain categories of drug products exempt any product in which the color is trapped in a matrix, such as in a plastic string on an IUD marketed under an NDA, or limit the ban to vaginally administered drugs that have a systemic effect.

Because the final regulation does not include a ban on the use of FD&C Yellow No. 5, this comment, as worded, has no immediate relevance. FDA did consider, however, whether the label declaration should be required for a product in which the color is trapped in a matrix. FDA concludes that, in the absence of data showing that FD&C Yellow No. 5 is not absorbed, such a product should bear the label declaration.

19. Many comments, acknowledging that the scientific evidence supported some regulatory action, suggested that drug products be treated in a manner identical to foods, i.e., merely declare the presence of FD&C Yellow No. 5 as an ingredient on the labels. It was argued that if declaring FD&C Yellow No. 5 as an ingredient in food, where it

is estimated 95 to 97 percent of the dye is used, is sufficient to protect sensitive persons, then it should be equally acceptable for drugs. It was further contended that a label declaration, whether in food or drug products, would achieve the desired notice to sensitive persons. Two organizations of allergists submitted separate resolutions to the effect that the interest of the patients and the physicians would be entirely served by requiring FD&C Yellow No. 5 to be declared on the label of drug products. Several comments took issue with the three reasons set forth in the preamble as the basis for requiring a warning statement on drug labels rather than merely indicating the presence of FD&C Yellow No. 5 as on food labels. The comments contended that (1) ingredient labeling on foods is not any more uniform than that for drugs, (2) the dye could be expressly declared as an inactive ingredient so it would not be confused as an active ingredient, and (3) there are many other ways to advise physicians of the allergic-type responses to FD&C Yellow No. 5 than to require a warning statement on the label of drug products. One comment stated that the stricter regulatory treatment for drug products is not justified when food products, which generally contain more FD&C Yellow No. 5 than drug products, are required only to declare the presence of FD&C Yellow No. 5 on the label. The comment was further supported by information from the Certified Color Manufacturers Association that only 5 percent of FD&C Yellow No. 5 is used in drugs, while 95 percent is used in foods. Several comments urged that FDA consider (1) the important function and properties of FD&C Yellow No. 5 used in drug products, (2) the small amount of FD&C Yellow No. 5 used in drug products, (3) the absence of precise data defining either the small number of persons intolerant of FD&C Yellow No. 5 or the degree of that intolerance, and (4) the existence of an adequate number of alternative drug products, and accord drug products the same regulatory treatment as food products.

FDA agrees generally with these comments and concludes that there is no necessity, at this time, for requiring a warning statement on the label of OTC and prescription drugs while requiring only a label declaration on the label of food. FDA also agrees that a label declaration, whether on a food label or a drug label, will achieve the desired notice to sensitive persons. Although several individual comments from some physicians were in favor of the warning statement and/or the ban on FD&C

Yellow No. 5, two professional societies of allergists passed resolutions in favor of only the label declaration. To avoid possible confusion concerning the purpose of FD&C Yellow No. 5, however, its presence in drugs, as suggested by one comment, shall be identified on the label as a color additive in a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive" or "Contains color additives including FD&C Yellow No. 5 (tartrazine)."

20. Several comments, while in favor of a label declaration for drug products, reviewed the studies cited in the preamble and the assumptions made by FDA in arriving at the figures quoted in the preamble concerning the number of FD&C Yellow No. 5 sensitive persons in the United States and argued that the studies were vague and covered only a limited number of patients. These comments said that, although this data base may indicate that some action is necessary, neither the warning statement nor the proposed ban from certain drug products could be justified in view of the significant part FD&C Yellow No. 5 plays in the color coding of drugs. Another comment, recommending a label declaration only, pointed out that the studies referenced in the preamble demonstrated that FD&C Yellow No. 5 sensitive persons are hypersensitive persons having multiple allergies. These persons, it was contended, are in the habit of checking labels. One comment from a manufacturer supplied data to show that although several billion doses of their OTC drug products containing FD&C Yellow No. 5 have been sold since 1970 the firm had received only 37 reports from consumers that may possibly involve allergic reactions.

FDA agrees with the comments that the data available on FD&C Yellow No. 5 sensitivities clearly indicate that some action is necessary. As evident from the dual proposal for drugs, the exact action to be taken had not been determined. Notwithstanding broad estimates, the actual number of persons sensitive to FD&C Yellow No. 5 is unknown. Although many individuals sensitive to FD&C Yellow No. 5, or suffering from other allergies, submitted comments in support of banning FD&C Yellow No. 5, no comments were submitted that helped to define the total number of sensitive persons. Therefore, in the absence of more precise numbers of sensitive persons and for the reasons set forth in reply to comments 11, 12, and 19, FDA concludes that neither the warning statement for all drugs nor the ban should be adopted at this time. If data become available indicating that the label declaration is not sufficient to

adequately protect sensitive persons, irrespective of the number of individuals involved, more restrictive requirements will be considered.

21. Two comments suggested that the label declaration be required for drug products but recommended that the proposed warning statement be required for those categories of drugs that under Drug Proposal II would not have been allowed to contain FD&C Yellow No. 5. Several comments, in favor of the warning statement on the label of all drugs, stated that if the statement proves to be inadequate, FDA could then institute a ban on FD&C Yellow No. 5.

If a label declaration is sufficient to advise sensitive persons of the presence of FD&C Yellow No. 5 in most drugs, there is no reason to conclude that it would not also provide sufficient notice when on the labels of products from those specific drug categories for which a ban was proposed. As stated previously, if the label declaration proves to be inadequate, FDA could then institute more restrictive regulatory action.

22. One comment argued that the inclusion of the warning statement overemphasizes the significance of the allergy problem. In addition, it alleged that if the statement is required, it would be equivalent to a ban, because manufacturers may be forced to reformulate their drug products to avoid adverse marketing impact of such a warning statement. Because of possible problems encountered when reformulating, the limited knowledge concerning other colors, the limited number of persons at whom the warning statement is aimed, and the large number of people affected by a reformulation, it was stated that the proposed warning statement would be counterproductive. It was also argued that the use of warning statements that are applicable at most to only a small number of individuals dilute the impact of warnings, generally, and may cause inattention to warnings of a more serious nature aimed at the general public.

The agency agrees that a warning statement need not appear on the labels of drugs, but will require a declaration of the presence of FD&C Yellow No. 5 on the labels of drugs. FDA disagrees that the proposed warning statement on the labels of drugs would have been equivalent to a ban. However, if notification of the presence of FD&C Yellow No. 5 can be satisfactorily achieved by means other than a warning statement on the labels of drug products, such other means should be used

because of space limitations and the importance of reserving the use of warning statements to situations involving a greater potential for adverse reaction or potential safety hazard.

Although this regulation does not require that the proposed warning statement appear on the label of drugs, a statement will be required to appear in the "Precautions" section of the package insert for prescription drugs administered orally, nasally, vaginally or rectally to comply with § 201.100(d) (21 CFR 201.100(d)). This section requires that any labeling for a prescription drug, whether or not it is on or within the package from which the drug is to be dispensed, bear adequate information for its use, including indications, effects, dosages, routes, methods, and frequency and duration of administration, and any relevant warnings, hazards, contraindications, side effects, and precautions under which practitioners licensed by law to administer the drug can use the drug safely and for the purpose for which it is intended. The "Precautions" section, generally, includes any special care to be exercised by the practitioner for safe and effective use of the drug.

23. One comment stated that the proposed warning statement for drugs was too broad and should be revised to read: "This product contains FD&C Yellow No. 5, which may cause allergic-type reactions in persons who are allergic to aspirin and certain other similar drugs."

FDA disagrees with the comment. Although there is a strong association between aspirin intolerance and FD&C Yellow No. 5 intolerance, there may be persons who are intolerant to FD&C Yellow No. 5 but not intolerant to aspirin. Therefore, a physician could be misled if the suggested statement was adopted.

24. Several comments suggested that the warning statement appear in the "Precautions" section of the package insert, rather than in the "How supplied" section, because statements of this nature usually appear in the "Precautions" section. Another comment suggested that, because § 201.100(d) does not require the use of a "How supplied" section, proposed § 8.4175(c)(2) be modified by inserting the phrase "if present" at the end of this paragraph.

FDA agrees that the statement required in the package insert for prescription drugs should appear in the "Precautions" section of the package insert, rather than in the "How supplied" section, and has revised the regulation accordingly.

25. Several comments objected to proposed § 201.64 which would require the warning statement be on the principal display panel of OTC drugs. It was argued that it is inconsistent and discriminatory to require a prominence on OTC drugs greater than that required on foods, which, it was alleged, represent a far greater potential for FD&C Yellow No. 5 ingestion. In addition, it was argued that the placement of this warning statement would, by implication, elevate the true significance of FD&C Yellow No. 5 reactions far beyond that warranted from the existing data concerning the color. In addition, the statements on FD&C Yellow No. 5 would be more prominent than that of other public health information in OTC labeling of greater significance.

The agency agrees with these comments and, as stated previously, is not requiring a warning statement on the labels of drugs.

26. One comment suggested a ban on the use of FD&C Yellow No. 5 in all externally applied drug products, as well as internally administered drug products, because of the chance of introducing the dye through a break in the skin. Another comment stated FD&C Yellow No. 5 should be banned from externally applied drug products and cosmetics because it is a strong contact sensitizer.

FDA had considered whether to require a label declaration for externally applied drug products before issuing the proposal and concluded that there was not sufficient data to support such a labeling requirement at that time. As stated in the preamble of the proposal, FDA is not aware of any published report concerning externally applied drugs containing FD&C Yellow No. 5 causing allergic-type responses in persons sensitive to the color additive. Because a ban on the use of FD&C Yellow No. 5 in internally administered drug products is not being required at this time, the agency disagrees with these comments pertaining to externally applied drug products in the absence of data to establish the need for such a ban. If evidence is available showing that externally applied drug products or cosmetics containing FD&C Yellow No. 5 produce allergic-type reactions, it should be submitted to the FDA Hearing Clerk. Although not requiring that the label of externally applied drug products declare the presence of FD&C Yellow No. 5, FDA encourages firms to declare voluntarily the presence of all inactive ingredients, including FD&C Yellow No. 5, on all drug products. With respect to cosmetics, effective May 31, 1976, all

newly ordered labels for cosmetics, including those applied externally, have been required to declare the specific color present. Thus, by reading the product labels, a person could determine if a particular cosmetic contains FD&C Yellow No. 5.

27. One comment recommended that the wording of proposed § 8.4175(c) be changed so that conventional intrauterine devices (IUD's), which are regulated as devices, would also be covered by the regulation. As proposed, it was argued that the labeling requirement would only apply to drug-bearing IUD's which are regulated as new drugs.

As proposed, the regulation did not cover devices. At the present time, the color additive regulations do not explicitly apply to devices; they apply only to foods, drugs, and cosmetics. Regulations concerning the use of color additives in devices are being prepared and are expected to be published some time in 1979. Until their publication, devices containing FD&C Yellow No. 5 are not required to bear a label declaring the presence of FD&C Yellow No. 5. However, for the protection of sensitive persons, the agency encourages all firms manufacturing devices, including intrauterine devices, containing FD&C Yellow No. 5 to so label their products unless they have data to establish that the color would not reasonably be expected to be absorbed from the device.

28. Many comments requested that a provision be added to the final regulation to allow a manufacturer of a drug product marketed under an approved new drug application to delete voluntarily FD&C Yellow No. 5 from drugs before receiving approval from FDA. It was pointed out that if, in the interest of the public, a manufacturer voluntarily deletes FD&C Yellow No. 5 from a new drug, even though not required to do so by the final regulations, such action should be permitted as promptly as possible. One comment suggested that FDA immediately clarify, in a notice in the *Federal Register* even before publishing the final regulation, that companies desiring to remove voluntarily FD&C Yellow No. 5 from their product be allowed to do so as soon as possible and not be required to wait until their supplemental new drug application is approved.

A manufacturer of a drug product marketed under an approved new drug application may remove FD&C Yellow No. 5 from the drug product before receiving FDA approval for such a change under existing regulations. The

supplemental application notifying the agency of the removal of FD&C Yellow No. 5 should be submitted in accordance with § 314.8 (d)(3) and (e) pertaining to supplemental new drug applications. A notice was not published as requested because it was premature until all the comments were reviewed and a decision reached concerning the contents of the regulation pertaining to drugs. To obviate any possible confusion, FDA also advises that the removal of FD&C Yellow No. 5 from a drug product is not considered a material change and, thus, in accord with § 207.35(b)(4), does not require the assignment of a new NDC number.

29. Two comments requested that, if Drug Proposal II for both OTC and prescription drugs is adopted, 1 year be permitted for both the labeling changes and the reformulation. It was pointed out that 6 months is too short a time period in which to reformulate all the classes of drugs, especially for those firms manufacturing quite a few drugs in the classes. It was argued that the proposed 6-month time for reformulation does not take into consideration the industrial interdependencies and the necessary steps involved in reformulating a product. One comment requested that the time for distribution of drugs requiring reformulation be extended from 18 months to 24 months if the 12-month reformulation period is adopted.

Because the proposed ban on the use of FD&C Yellow No. 5 in certain categories of drugs is not being finalized, drug products will not have to be reformulated and, thus, these comments do not require any action.

30. One comment requested clarification of the statement in the "Effective Date" section of the preamble, dealing with the requirement that holders of a new drug application who reformulate must show that the change in composition does not materially affect the drug, that stated: "If the data are too limited to support a conclusion that the drug will retain its declared potency for a reasonable marketing period, a commitment to test the stability of marketed batches at reasonable intervals and to submit the data as they become available is required." The comment assumed that this required stability testing of representative batches, rather than testing of every batch, but requested that this be clarified.

This statement was intended to require that at least the three initial production batches be tested for stability. If a manufacturer wishes to remove voluntarily FD&C Yellow No. 5

from a new drug, the supplemental application discussed in the reply to comment 28 should include, among other things, data available to establish the stability of the revised formulation or a commitment to test the stability of at least the three initial production batches at reasonable intervals and to submit the data to FDA as they become available.

31. One comment requested that an inflation impact statement be prepared to support any reformulation requirement. This comment estimated the cost of reformulation of any single drug product to be \$25,000.

An inflation impact assessment was prepared for the proposed regulations and placed on file with the Hearing Clerk. It was obviously not possible to set a specific figure because the agency had no way of knowing how many products were affected or how many products would be reformulated with another color. It was estimated, however, that the threshold of \$100,000,000 in any given year would not be approached. Again, because the proposed ban is not being finalized, there is no need to prepare a revised economic impact assessment.

Having evaluated the comments and the data submitted with them, FDA concludes that FD&C Yellow No. 5 has clearly been shown to produce allergic-type responses in humans, and thus, a requirement for label declaration of the color is justified and in the public interest. Labeling for food and drug products should be revised as soon as possible to include the declaration of FD&C Yellow No. 5 in the list of ingredients, and FDA encourages manufacturers to comply voluntarily in advance of the effective dates established by this rule. The mandatory effective date of this regulation for foods is July 1, 1981 because the agency has established this date as its uniform effective date for compliance with all final food labeling regulations published in the *Federal Register* after September 29, 1978 (43 FR 44830).

With respect to drug labeling, the effective date of this regulation is June 26, 1980, or at the next printing of the labeling, whichever occurs first. FDA believes the requirements for drug products should become effective earlier than those for foods. Persons intolerant of FD&C Yellow No. 5, in the absence of a labeling requirement, will continue to take a variety of drugs which contain FD&C Yellow No. 5 to treat conditions or symptoms of disease, conditions which may have arisen because of prior ingestion of drugs containing FD&C Yellow No. 5. More importantly, FDA's

mandatory uniform effective date of July 1, 1981, which is the principal reason for that effective date for the food labeling requirements of this rule, does not apply to drug products.

The primary basis for this action is section 706(b)(3) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376(b)(3)), which provides that regulations for the listing of a color additive shall "prescribe the conditions under which such additive may be safely employed for such use or uses (including, but not limited to * * * and directions or other labeling or packaging requirements for such additive)."

There is no evidence that any color, including FD&C Yellow No. 5, elicits allergic-type reactions in animals, other than humans. Accordingly, label declaration of FD&C Yellow No. 5 in animal feeds and pet food is not being required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 501, 502, 701, 706(b), (c), and (d), 52 Stat. 1049-1051 as amended, 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 351, 352, 371, 376 (b), (c), and (d))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

SUBCHAPTER A—GENERAL

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. In § 74.705 by revising paragraph (d) to read as follows:

§ 74.705 FD&C Yellow No. 5.

(d) *Labeling requirements.* (1) The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom shall conform to the requirements of § 70.25 of this chapter.

(2) Foods for human use that contain FD&C Yellow No. 5, including butter, cheese, and ice cream, shall specifically declare the presence of FD&C Yellow No. 5 by listing the color additive as FD&C Yellow No. 5 among the list of ingredients.

2. In § 74.1705 by revising paragraph (c) to read as follows:

§ 74.1705 FD&C Yellow No. 5.

(c) *Labeling requirements.* (1) The label of the color additive and any mixtures intended solely or in part for coloring purposes prepared therefrom

shall conform to the requirements of § 70.25 of this chapter.

(2) The label of OTC and prescription drug products administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 5 shall specifically declare the presence of FD&C Yellow No. 5 by listing the color additive using the names FD&C Yellow No. 5 and tartrazine. The listing shall be done by a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive" or "Contains color additives including FD&C Yellow No. 5 (tartrazine)."

(3) The labeling required by § 201.100(d) of this chapter for prescription drugs containing FD&C Yellow No. 5 that are administered orally, nasally, vaginally, or rectally shall, in addition to the label statement required under paragraph (b)(2) of this section, bear the statement "This product contains FD&C Yellow No. 5 (tartrazine) which may cause allergic-type reactions (including bronchial asthma) in certain susceptible individuals. Although the overall incidence of FD&C Yellow No. 5 (tartrazine) sensitivity in the general population is low, it is frequently seen in patients who also have aspirin hypersensitivity." This statement shall appear in the "Precautions" section of the labeling.

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

PART 101—FOOD LABELING

3. In § 101.22 by revising paragraph (c) to read as follows:

§ 101.22 Foods; labeling of spices, flavorings, colorings, and chemical preservatives.

(c) A statement of artificial flavoring, artificial coloring, or chemical preservative shall be placed on the food or on its container or wrapper, or on any two or all three of these, as may be necessary to render such statement likely to be read by the ordinary person under customary conditions of purchase and use of such food. The specific artificial color used in a food shall be identified on the labeling when so required by regulation in Part 74 of this chapter to assure safe conditions of use for the color additive.

SUBCHAPTER C—DRUGS: GENERAL

PART 201—LABELING

4. In Subpart A by adding new § 201.20 to read as follows:

§ 201.20 Declaration of presence of FD&C Yellow No. 5 in certain drugs.

(a) The label of OTC and prescription drug products administered orally, nasally, rectally, or vaginally containing FD&C Yellow No. 5 shall specifically declare the presence of FD&C Yellow No. 5 as a color additive using the names FD&C Yellow No. 5 and tartrazine. The listing shall be by a statement such as "Contains FD&C Yellow No. 5 (tartrazine) as a color additive" or "Contains color additives including FD&C Yellow No. 5 (tartrazine)."

(b) The labeling required by § 201.100(d) of this part for prescription drugs containing FD&C Yellow No. 5 that are administered orally, nasally, vaginally, or rectally shall bear the statement "This product contains FD&C Yellow No. 5 (tartrazine) which may cause allergic-type reactions (including bronchial asthma) in certain susceptible individuals. Although the overall incidence of FD&C Yellow No. 5 (tartrazine) sensitivity in the general population is low, it is frequently seen in patients who also have aspirin hypersensitivity." This statement shall appear in the "Precautions" section of the labeling.

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 26, 1979 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of

all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective dates. This regulation shall be effective as to foods and drugs initially introduced or initially delivered for introduction into interstate commerce on or after the following dates: For foods, July 1, 1981; for drugs, June 26, 1980 or at the next printing of the labeling, whichever occurs first, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing or objections or lack thereof will be given by publication in the Federal Register.

(Secs. 501, 502, 701, 706 (b), (c), and (d), 52 Stat. 1049-1051 as amended, 1055-1056 as amended, 74 Stat. 399-403 (21 U.S.C. 351, 352, 371, 376 (b), (c), and (d)).)

Dated: June 20, 1979.

Sherwin Gardner,

Acting Commissioner of Food and Drugs.

[FR Doc. 79-19857 Filed 6-25-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

Application of the Fair Labor Standards Act to Domestic Service

AGENCY: Wage and Hour Division, Labor.

ACTION: Final rule.

SUMMARY: An amendment to section 552.2(b) dated February 2, 1979 extended minimum wage coverage to domestic service employees earning \$100 or more in cash during a calendar year. Previously, the test was earnings of \$50 or more in cash during a calendar quarter. Upon reconsideration, it has been determined that Congressional intent was to use the same standard for coverage of domestic service employees under the Fair Labor Standards Act as is provided under the Social Security Act. Because the eligibility requirement for domestic service employees under the Social Security Act remains \$50 per quarter, the amendment to section 552.2(b) is revoked, and the original standard is reinstituted.

EFFECTIVE DATE: June 26, 1979.

FOR FURTHER INFORMATION CONTACT: Brooks N. Sipes, Acting Director, Division of Minimum Wage and Hour Standards, Wage and Hour Division,

U.S. Department of Labor, S-3508, Washington, D.C. 20210; (202) 523-7043.

SUPPLEMENTARY INFORMATION: Domestic Service employees covered by the Fair Labor Standards Act include employees whose compensation constitutes wages under section 209(g) of Title II of the Social Security Act. The definition of wages under section 209(g)(3) of that Act was changed by the Social Security Amendments of 1977 from "compensation paid in cash during a calendar quarter totaling \$50 or more" to "compensation paid in cash during a calendar year totaling \$100 or more" (emphasis added). On February 2, 1979, section 552.2(b) of the regulations was amended to conform to this change in the definition of wages, thereby expanding the coverage provided by the Fair Labor Standards Act for domestic service employees.

Upon reconsideration, it has been noted that the definition of wages under section 209(g)(2) of Title II of the Social Security Act was unchanged by the Social Security Amendments of 1977 and remains "compensation paid in cash during a calendar quarter totaling \$50 or more." That section specifically applies to domestic service employees. Review of the legislative history reveals that it was the clear intent of Congress to use the same standard to determine coverage of domestic service employees under the Fair Labor Standards Act as is used under the Social Security Act. Therefore, the February 2, 1979 amendment to section 552.2(b) is revoked, and the original language of the section is reinstituted.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Wage and Hour Division. Because this change is not substantive, but is more in the nature of a correction, returning to the original interpretation as to the scope of minimum wage coverage for domestic service employees, there is no requirement to publish for comment or delay the effective date.

Section 552.2(b) of Part 552, Title 29, Code of Federal Regulations is amended to read as follows:

§ 552.2 Purpose and scope.

(b) Section 2(a) of the Act finds that the "employment of persons in domestic service in households affects commerce." Section 6(f) extends minimum wage protection under section 6(b) to employees employed as domestic service employees under either of the following circumstances: (1) If the employee's compensation for such services from his employer would

constitute wages under section 209(g) of Title II of the Social Security Act, that is, if the compensation paid in cash during a calendar quarter totaled \$50 or more, or (2) if the employee was employed in such domestic service work by one or more employers for more than 8 hours in the aggregate in any workweek.

Section 7(1) extends generally the protection of the overtime provisions of section 7(a) to such domestic service employees. Section 13(a)(15) provides both a minimum wage and overtime exemption for "employees employed on a casual basis in domestic service employment to provide babysitting services" and for domestic service employees employed "to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves." Section 13(b)(21) provides and overtime exemption for domestic service employees who reside in the household in which they are employed.

(Sec. 29(b), 88 Stat. 76; 29 U.S.C. 206(f); Secretary's Order No. 16-75, dated November 25, 1975 (40 FR 55913); and Employment Standards Order No. 76-2, dated February 23, 1976 (41 FR 9016))

Signed at Washington, D.C., this 19th day of June 1979.

C. Lamar Johnson,

Deputy Administrator, Wage and Hour Division, Department of Labor.

[FR Doc. 79-19790 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-27-M

Pension and Welfare Benefit Programs

29 CFR Part 2550

Rules and Regulations for Fiduciary Responsibility; Investment of Plan Assets Under the "Prudence" Rule

AGENCY: Department of Labor.

ACTION: Final regulation.

SUMMARY: This document contains a final regulation relating to the investment duties of a fiduciary of an employee benefit plan under the Employee Retirement Income Security Act of 1974 (the Act). The regulation is relevant to the investment of assets of employee benefit plans for which fiduciaries have investment duties, and, therefore, it affects participants, beneficiaries and fiduciaries of all such plans.

EFFECTIVE DATE: July 23, 1979.

FOR FURTHER INFORMATION CONTACT:

Paul R. Antsen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, U.S. Department of Labor, Washington, D.C. 20216, (202) 523-8971, or Gregor B. McCurdy, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20216, (202) 523-9141.

SUPPLEMENTARY INFORMATION: On April 25, 1978, notice was published in the *Federal Register* (43 FR 17480) ¹ that the Department had under consideration a proposal to adopt a regulation, 29 CFR § 2550.404a-1, under section 404(a)(1)(B) of the Act, relating to the investment duties of a fiduciary of an employee benefit plan. Section 404(a)(1)(B) of the Act provides, in part, that a fiduciary shall discharge his duties with respect to an employee benefit plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims (the "Prudence" rule).²

Public comments were received, in response to the proposal, that generally supported the tentative views of the Department reflected therein, although many suggestions for specific revisions were offered. A few comments opposed the adoption of the proposed, or of any, regulation concerning these matters. Among the reasons given in opposition to the adoption of the proposed regulation were: (1) that the courts, rather than the Department, should determine how the "prudence" rule is to be interpreted; (2) that the Department's views regarding the requirements of the "prudence" rule, as reflected in the proposed regulation, are incorrect; (3) that it is impractical to attempt to define "prudence" by regulation; and (4) that the proposal did not accomplish its stated objectives. The Department has considered the comments opposing adoption of the regulation, but has not been persuaded that its interpretation of the requirements of the "prudence" rule

set forth below is incorrect. It believes, moreover, that adoption of a regulation concerning the investment duties of fiduciaries under the "prudence" rule is appropriate because such a regulation would provide guidance for many plan fiduciaries in an important area of their responsibilities under the Act.

Counsel for one group of interested persons, while supporting the proposed regulation in principle, asked that they be given an opportunity to express their views at a public hearing on the proposed regulation. They also suggested that the regulation should, in any event, be republished to give interested persons additional opportunity for comment. The Department has considered these requests, but has determined that neither a public hearing nor republication of a proposed regulation is necessary or appropriate.

Accordingly, after consideration of all the written comments received, the Department has determined to adopt the proposed regulation as modified and set forth below.

Discussion of the Regulation

The legislative history of the Act indicates that the common law of trusts, which forms the basis for and is federalized and codified in part 4 of Title I of the Act, should, nevertheless, not be mechanically applied to employee benefit plans.³ The "prudence" rule in the Act sets forth a standard built upon, but that should and does depart from, traditional trust law in certain respects.

The Department is of the opinion that (1) generally, the relative riskiness of a specific investment or investment course of action does not render such investment or investment course of action either *per se* prudent or *per se* imprudent, and (2) the prudence of an investment decision should not be judged without regard to the role that the proposed investment or investment course of action plays within the overall plan portfolio. Thus, although securities issued by a small or new company may be a riskier investment than securities issued by a "blue chip" company, the investment in the former company may be entirely proper under the Act's "prudence" rule.

Accordingly, paragraph (b)(1) of the regulation, as adopted, provides generally that, with respect to an investment or investment course of action taken pursuant to a fiduciary's investment duties, the requirements of the "prudence" rule have been satisfied

if the fiduciary has acted in a manner consistent with appropriate consideration of the facts and circumstances that the fiduciary knows or should know are relevant, including the role that the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties. Paragraph (b), as adopted, has been modified in response to certain comments received on the regulation as originally proposed.

As a general observation, the comments received by the Department indicated that many commentators were uncertain of the scope of the proposed regulation. In particular, some commentators appear to have viewed the various factors and conditions set forth in the proposal as a statement of requirements that must necessarily be met in order to satisfy the requirements of the "prudence" rule. In this regard, it should be noted that the regulation reflects the views of the Department as to a manner of satisfying the requirements of the "prudence" rule, and does not purport to impose any additional requirements or constraints upon plan fiduciaries. It should also be noted that the Department does not view compliance with the provisions of the regulation as necessarily constituting the exclusive method for satisfying the requirements of the "prudence" rule. Rather, the regulation is in the nature of a "safe harbor" provision; it is the opinion of the Department that fiduciaries who comply with the provisions of the regulation will have satisfied the requirements of the "prudence" rule, but no opinion is expressed in the regulation as to the status of activities undertaken or performed that do not so comply.

With regard to more particular matters, a number of comments suggested that one condition of the proposal—that a fiduciary give appropriate consideration to "all" relevant facts and circumstances—could be read as establishing an impossible standard, especially for fiduciaries of small plans, because (1) no fiduciary has unlimited resources to develop all the information that one might deem to be relevant to a particular investment decision, and (2) no fiduciary can be expected to consider all the relevant facts and circumstances, whether or not of material significance.

Because section 404(a)(1)(B) of the Act provides that it is the fiduciary's duties with respect to the plan which must be discharged in accordance with the "prudence" rule, it appears to the

¹ See also 43 FR 27208 (June 23, 1978), in which notice was given of an extension of the original comment period.

² The regulation pertains only to the investment duties of a fiduciary of an employee benefit plan. Section 404(a)(1)(B) of the Act, however, requires that a fiduciary discharge *all* his duties in accordance with the "prudence" rule.

It should also be noted that, although the proposed regulation made reference to an additional requirement of section 404(a)(1)—that the fiduciary discharge his duties solely in the interest of plan participants and beneficiaries—that reference has been deleted from the regulation as adopted. This was done to avoid suggesting that satisfaction of the "prudence" rule with respect to an investment or investment course of action necessarily implies satisfaction of that additional requirement.

³ See, e.g., H.R. Rep. No. 1280, 93d Cong., 2d Sess. 302 (1974).

Department that the scope of those duties will determine, in part, the factors which should be considered by a plan fiduciary in a given case. The nature of those duties will, of course, depend on the facts and circumstances of the case, including the nature of the arrangement between the fiduciary and the plan. For that reason, the regulation, as adopted, does not distinguish among classes of fiduciaries with respect to what particular duties may be involved. The Department recognizes, however, that a fiduciary should be required neither to expend unreasonable efforts in discharging his duties, nor to consider matters outside the scope of those duties. Accordingly, the regulation has been modified to provide that consideration be given to those facts and circumstances which, taking into account the scope of his investment duties, the fiduciary knows or should know are relevant to the particular investment decision involved. The scope of the fiduciary's inquiry in this respect, therefore, is limited to those facts and circumstances that a prudent person having similar duties and familiar with such matters would consider relevant.

Several commentators asserted that the regulation, in recognition of the Act's provisions permitting delegation of investment duties to, and their allocation among, several fiduciaries, should permit a fiduciary who is responsible for the management of plan assets to rely on information supplied by appropriate other plan fiduciaries, and to act in accordance with policies and instructions supplied by those persons in making decisions on the investment of plan assets. Those comments, generally, addressed the situation where several investment managers are involved in managing the assets of a plan, each being responsible for a portion of the plan's investment portfolio.⁴ Under those circumstances, it would not, in the view of the commentators, be appropriate to require a fiduciary who is responsible for only a portion of the plan's portfolio to take into consideration facts and circumstances relating to the balance of the portfolio in making an investment decision. The Department agrees, in part, with those comments. Accordingly, paragraph (b)(1) of the regulation as adopted also provides that such a fiduciary need give appropriate consideration to the role the proposed investment or investment course of action plays in that portion only, of the plan's investment portfolio, with respect to which the fiduciary has investment duties.

However, the Department cannot state that, under the foregoing circumstances, a fiduciary is entitled blindly to rely upon instructions or policies established by other plan fiduciaries. Similarly, the regulation does not provide, as requested by one commentator, that the assets of a pooled investment fund may be invested in accordance with its published investment objectives and policies without requiring that consideration be given to the particular needs of any individual plan that has an interest in the fund. It would appear that, where authority to manage part (or all) of the assets of a plan has been delegated to one or more investment managers pursuant to section 402(c)(3) of the Act, the primary responsibility for determining that the delegation is appropriate rests with the named fiduciary or fiduciaries effecting the delegation. Nevertheless, the Department considers that each such manager's investment duties, under section 404(a)(1)(B) of the Act, includes (among other things) a duty not to act in accordance with a delegation of plan investment duties to the extent that the manager either knows or should know that the delegation involves a breach of fiduciary responsibility.⁵ Once the manager has considered factors otherwise necessary to assure himself that the delegation of investment authority and related specific instructions are appropriate, he may, in exercising such authority and carrying out such instructions, rely upon information provided to him in accordance with the provisions of new paragraph (b)(3) of the regulation. That paragraph provides that an investment manager responsible for the management of all or part of a plan's assets pursuant to an appointment described in section 402(c)(3) of the Act may, for purposes of complying with the provisions of the regulation, rely upon certain information supplied to him by or at the direction of the appointing fiduciary, provided that the manager neither knows nor should know that the information is incorrect.

Paragraph (b)(1) of the proposed regulation has also been revised in order to make clear that the fiduciary's acts do not satisfy the "prudence" rule solely

because the fiduciary had previously given consideration to relevant facts and circumstances. Some comments questioned whether, under the regulation as originally proposed, a fiduciary might be deemed to be "immunized" once he had given such consideration, notwithstanding the nature of his subsequent acts. The regulation, as adopted, provides that it is the "investment" or "investment course of action" in question that will satisfy the requirements of the "prudence" rule if the criteria set forth in the regulation are met.

Paragraph (b)(2) of the regulation sets forth factors that are to be included, to the extent applicable, in an evaluation of an investment or investment course of action if a fiduciary wishes to rely on the provisions of the regulation. They are: (1) the composition of the portfolio with regard to diversification; (2) the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and (3) the projected return of the portfolio relative to the funding objectives of the plan. These factors are adopted substantially as proposed, except that the first factor has been revised, in response to questions raised by some of the comments, to make clear that the word "diversification" is to be given its customary meaning as a mechanism for reducing the risk of large losses; that factor, as originally proposed, referred to "diversification of risk." The second factor has also been modified in order to make clear that its principal subject matter is all anticipated cash requirements of the plan, and not solely those arising by reason of payment of benefits. A fourth factor set forth in the proposal, which related to the "volatility" of the portfolio, has been eliminated as a factor specifically to be considered because, although paragraph (b)(2) as adopted sets forth factors which must be considered in all cases in order to comply with the provisions of the regulation,⁶ the reference to "volatility" may be read, according to some comments, as suggesting that only certain portfolio management techniques are appropriate. Moreover, as discussed more fully below, the subject of risk and opportunity for gain—which subsumes consideration of

⁴Further, section 405(a) of the Act provides, in part, that a plan fiduciary shall be liable for a breach of fiduciary liability of another fiduciary with respect to the same plan if, among other things, he has knowledge of such a breach and does not make reasonable efforts to remedy it, or he has enabled such other fiduciary to commit a breach by his failure to comply with the requirements of section 404(a)(1) of the Act in the administration of his specific responsibilities which give rise to his status as a fiduciary.

⁶Paragraph (b)(2) of the regulation, as proposed, stated that the factors which should be considered "may" include those listed. In order to reduce uncertainty, reflected in the comments, regarding the application of the regulation, and in view of the fact that the regulation is in the nature of a "safe harbor" provision, paragraph (b)(2) has been restructured so as to indicate the factors which should under all circumstances be considered by any fiduciary who wishes to rely on the provisions of the rule.

⁵See sections 403(a)(2) and 402(c)(3) of the Act.

"volatility" in some respects—is now addressed in subparagraph (A) of paragraph (b)(2). A former fifth factor, which read "the prevailing and projected economic conditions of the entities in which the plan has invested and proposes to invest," is also dealt with in that subparagraph.

Several commentators suggested that inclusion of that fifth factor in the regulation would be contrary to the intent of the proposal because it focuses attention on the individual investment, rather than on the aggregate plan portfolio. Others objected to its inclusion on the ground that it is antithetical to the theory of operation of certain "passive" investment media (such as "index" funds) that acquire portfolios designed to match the performance of various investment indices and that, accordingly, have little or no discretion in altering the composition of their portfolios.⁷

The regulation, however, is not intended to suggest either that any relevant or material attributes of a contemplated investment may properly be ignored or disregarded, or that a particular plan investment should be deemed to be prudent solely by reason of the propriety of the aggregate risk/return characteristics of the plan's portfolio. Rather, it is the Department's view that an investment reasonably designed—as a part of the portfolio—to further the purposes of the plan, and that is made upon appropriate consideration of the surrounding facts and circumstances, should not be deemed to be imprudent merely because the investment, standing alone, would have, for example, a relatively high degree of risk. The Department also believes that appropriate consideration of an investment to further the purposes of the plan must include consideration of the characteristics of the investment itself. Accordingly, paragraph (b)(2) of the regulation provides that, for purposes of paragraph (b)(1), "appropriate consideration" shall include a determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio for which the fiduciary is responsible, to further the purposes of the plan, taking into account the risk of loss and the opportunity for gain (or other return) associated with the

investment or investment course of action.⁸

In the case of "passive" investment funds, referred to above, it would seem that, to the extent the fund manager is managing plan assets,⁹ the investments made by the fund, as well as the plan's investment in the fund, must meet the requirements of the "prudence" rule. However, to the extent that an index fund, including the screen or filter process described above at note 7, is reasonably designed to fulfill the fund manager's fiduciary obligations with respect to a plan whose assets are managed therein, such manager, acting in accordance with the fund's objective and its filter or screen process, generally would be in compliance with the provisions of the "prudence" rule, as described in the regulation, with respect to that plan.

The terms "investment duties" and "investment course of action" are defined in paragraphs (c)(1) and (2) of the regulation. No comments were received regarding these definitions, and they have been adopted substantially in the form proposed. New paragraph (c)(3) has been added, defining the term "plan" to mean an employee benefit plan to which Title I of the Act applies.

Discussion of Certain Other Comments

Counsel for one group of commentators characterized the factors set forth in paragraph (b)(2) as relating solely to the "investment merit" of a particular investment or investment course of action. Because, in the view of those commentators, the prudence of the acquisition or retention of a contract issued by an insurance company may involve factors besides "investment merit", they suggested that the regulation should contain a separate provision that would set forth two factors to be considered by a fiduciary in evaluating the prudence of the acquisition or retention of such a contract: the risks assumed, and the services provided, by the insurance company. The Department is unable to concur with the commentators' view that the regulation as proposed dealt only with matters of "investment merit" as narrowly perceived in the comment. The Department agrees that such factors as the risk to be assumed and the services to be provided under a contract are pertinent to any investment decision involving such contract. The regulation as adopted specifically provides that, in order to come within the scope of the

regulation, a fiduciary shall consider the facts and circumstances the fiduciary knows or should know are relevant to the investment decision, and that the factors set forth in paragraph (b)(2) are not intended to be exclusive. Accordingly, the Department believes that it is unnecessary to set forth additional factors with respect to insurance contracts or other specific types of investment.

Two commentators suggested that the Department clarify that the adoption of the regulation would not result in fiduciaries being required to invest in expensive systems or analyses to make investment decisions. Under the "prudence" rule, the standard to which a fiduciary is held in the proper discharge of his investment duties is defined, in part, by what a prudent person acting in a like capacity and familiar with such matters would do. Thus, for example, it would not seem necessary for a fiduciary of a plan with assets of \$50,000 to employ, in all respects, the same investment management techniques as would a fiduciary of a plan with assets of \$50,000,000.

Numerous comments were received with respect to the factors set forth in paragraph (b)(2). Several persons requested that the Department clarify or define terms such as "diversification of risk", "risk", "volatility" and "liquidity." For example, some persons asked what specific measurements of volatility, risk and liquidity should be utilized by fiduciaries in making investment decisions for a plan. The Department believes that, in view of the modifications (discussed above) made in the regulation as adopted, it is neither necessary nor appropriate for the regulation to contain such definitions.

Several commentators asserted that certain specified types of investments, such as, for example, investments in small or recently formed companies, or non-income producing investments that are not securities (such as, for example, certain precious metals and objects of art) have not been viewed with favor, traditionally, as trust investments. Those comments urged that the regulation specify the extent to which such investments are permissible under the "prudence" rule. Other commentators made reference to the traditional principle that trust investments should be income-producing, and suggested that the appropriate measure of investment "return" should be defined to mean "total return"—that is, an aggregate return computed without regard to whether a contributing factor thereto consists of income or capital items.

⁷It should be noted that index funds typically include a "screen" or "filter" process by which portfolio investments for any such fund may be changed to reflect significant, adverse financial developments affecting any potential or existing portfolio company, notwithstanding the continued inclusion of the company in the index against which the fund is measured.

⁸The term "risk" is used here in its ordinary sense, and refers to any and all types of risk applicable to a particular investment or investment course of action.

⁹See, e.g., section 401(b) of the Act.

Although the Department considers that defining "return" would be beyond the appropriate scope of this regulation, it believes that the "prudence" rule does not require that every plan investment produce current income under all circumstances. As indicated above and in the preamble to the proposed regulation, the Department believes that the universe of investments permissible under the "prudence" rule is not necessarily limited to those permitted at common law.

However, the Department does not consider it appropriate to include in the regulation any list of investments, classes of investment, or investment techniques that might be permissible under the "prudence" rule. No such list could be complete; moreover, the Department does not intend to create or suggest a "legal list" of investments for plan fiduciaries.

The preamble to the proposed regulation stated (as does this preamble) that the risk level of an investment does not alone make the investment *per se* prudent or *per se* imprudent. Comments were received which asserted that such proposition is inappropriate and would promote irresponsibility on the part of plan fiduciaries. Other commentators not only agreed with the proposition, but also suggested that it should be incorporated in the regulation. The Department believes that both of these concerns are addressed by the modifications, discussed above, made to paragraph (b)(2) of the regulation as adopted.

The Department has determined that this regulation is not a "significant regulation" as defined in the Department's guidelines (44 FR 5570, January 26, 1979) implementing Executive Order 12044.

Statutory Authority

The regulation set forth below is adopted pursuant to the authority contained in section 505 of the Act (Pub. L. 93-406, 88 Stat. 894 (29 U.S.C. § 1135)). Although the regulation is an "interpretative rule" within the meaning of 5 U.S.C. § 553(d), the effective date of the regulation is July 23, 1979, consistent with the statement of the Department, in connection with the regulation as proposed, that such regulation would be effective 30 days after its adoption.

Final Regulation

Accordingly, Part 2550 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended by inserting in the appropriate place to read § 2550.404a-1 as set forth below:

§ 2550.404a-1 Investment Duties.

(a) *In general.* Section 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974 (the Act) provides, in part, that a fiduciary shall discharge his duties with respect to a plan with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

(b) *Investment Duties.* (1) With regard to an investment or investment course of action taken by a fiduciary of an employee benefit plan pursuant to his investment duties, the requirements of section 404(a)(1)(B) of the Act set forth in subsection (a) of this section are satisfied if the fiduciary (A) has given appropriate consideration to those facts and circumstances that, given the scope of such fiduciary's investment duties, the fiduciary knows or should know are relevant to the particular investment or investment course of action involved, including the role the investment or investment course of action plays in that portion of the plan's investment portfolio with respect to which the fiduciary has investment duties; and (B) has acted accordingly.

(2) For purposes of paragraph (1) of this subsection, "appropriate consideration" shall include, but is not necessarily limited to, (A) a determination by the fiduciary that the particular investment or investment course of action is reasonably designed, as part of the portfolio (or, where applicable, that portion of the plan portfolio with respect to which the fiduciary has investment duties), to further the purposes of the plan, taking into consideration the risk of loss and the opportunity for gain (or other return) associated with the investment or investment course of action, and (B) consideration of the following factors as they relate to such portion of the portfolio:

- (i) The composition of the portfolio with regard to diversification;
- (ii) The liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the plan; and
- (iii) The projected return of the portfolio relative to the funding objectives of the plan.

(3) An investment manager appointed, pursuant to the provisions of section 402(c)(3) of the Act, to manage all or part of the assets of a plan, may, for purposes of compliance with the provisions of paragraphs (1) and (2) of this subsection, rely on, and act upon the basis of, information pertaining to

the plan provided by or at the direction of the appointing fiduciary, if—

(A) such information is provided for the stated purpose of assisting the manager in the performance of his investment duties, and

(B) the manager does not know and has no reason to know that the information is incorrect.

(c) *Definitions.* For purposes of this section:

(1) The term "investment duties" means any duties imposed upon, or assumed or undertaken by, a person in connection with the investment of plan assets which make or will make such person a fiduciary of an employee benefit plan or which are performed by such person as a fiduciary of an employee benefit plan as defined in section 3(21)(A) (i) or (ii) of the Act.

(2) The term "investment course of action" means any series or program of investments or actions related to a fiduciary's performance of his investment duties.

(3) The term "plan" means an employee benefit plan to which Title I of the Act applies.

Signed at Washington, D.C., this 20th day of June 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, United States Department of Labor.

[FR Doc. 79-19634 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-29-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Yellowstone National Park, Wyoming, Montana, Idaho; Fishing Regulations

Correction

In FR Doc. 79-19020, appearing at page 35222 in the issue of Tuesday, June 19, 1979, the two introductory words in paragraph § 7.13(e)(3) on page 35223 should read "Closed Waters".

BILLING CODE 1505-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

36 CFR Part 906

Affirmative Action Policy and Procedure

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: Interim Rule; request for comment.

SUMMARY: The Pennsylvania Avenue Development Corporation issues interim regulations that will assure the participation of minorities, women, handicapped persons, and Vietnam era veterans in the benefits that derive from development and rejuvenation of the Corporation's area. The regulations provide that all developers who respond to an offering by the Corporation, or who receive property interests of ten percent or more of the area of their development site must submit an Affirmative Action Plan to the Corporation. The Affirmative Action Plan must address each stage in the development, i.e., planning, construction, and operation. Developers who do not, in any appreciable amount, require the intervention of the Corporation in assembling a development parcel will be encouraged by the Corporation to comply with the requirements in these regulations. These regulations provide financial incentives to developers who meet or exceed the requirements of the regulations.

DATES: Effective Date: June 26, 1979. Comments must be received on or before July 30, 1979.

ADDRESS: Send comments to Mr. Jerry Smedley, Chief of Real Estate Operations, Pennsylvania Avenue Development Corporation, 425 13th Street, N.W., Suite 1148, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Ms. Mary M. Schneider, Attorney, (202) 566-1078, or Mr. Jerry Smedley, Chief of Real Estate Operations, (202) 566-0602, Pennsylvania Avenue Development Corporation.

SUPPLEMENTARY INFORMATION. The Pennsylvania Avenue Development Corporation is a wholly owned government corporation of the United States created by Congress to develop and rejuvenate 21 blocks along the north side of Pennsylvania Avenue, N.W., Washington, D.C. The Corporation has prepared a development plan, The Pennsylvania Avenue Plan—1974, which has been adopted by Congress. Development in accordance with the Plan will produce many opportunities and benefits for all who are actively involved. As a federal agency, the Corporation must do all that is possible to assure that these opportunities and benefits are available to everyone regardless of race, creed, national origin, sex, handicap, or service experience.

To that end, the Corporation is requiring aggressive affirmative action

on the part of developers to involve traditionally disadvantaged groups in the development of the Corporation's area. Developers who meet or exceed the requirements set forth in these regulations can receive financial benefits for meaningful affirmative action programs.

STATEMENT OF SIGNIFICANCE: The Pennsylvania Avenue Development Corporation has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044.

36 CFR Chapter IX is amended by adding a new Part 906 to read as follows:

PART 906—AFFIRMATIVE ACTION POLICY AND PROCEDURE

Subpart A—Development Program

Sec.

- 906.1 Purpose and policy.
- 906.2 Definitions.
- 906.3 Procedures.
- 906.4 Formulation of affirmative action plan.
- 906.5 Administration of affirmative action plan.
- 906.6 Implementation.
- 906.7 Incentives.
- 906.8 Review and monitoring.
- 906.9 Voluntary compliance.
- 906.10 Confidentiality.

Exhibit A—Suggested minimum guidelines and goals.

Exhibit B—Guidelines for establishing strategy to implement affirmative action personnel plan.

Authority: Pennsylvania Avenue Development Corporation Act of 1972, as amended, sec. 6(b), Pub. L. 92-578, 86 Stat. 1270 (40 U.S.C. 875(6)); Executive Order 11625 (36 FR 19967) October 14, 1971; Title VII Civil Rights Act of 1964 (40 U.S.C. 2000e-2); Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1973, secs. 119, 122(d)(2), Pub. L. 93-602, 92 Stat. 2982, 2987 (29 U.S.C. 794); Executive Order 12138 (44 FR 29637) May 22, 1979.

Subpart A—Development Program

§ 906.1 Purpose and policy.

(a) One of the objectives stated in the Congressionally approved Pennsylvania Avenue Plan—1974 is insuring that minority businesses, investors, and workers have an opportunity to share in the benefits that will occur as a result of redevelopment. Accordingly, the Corporation will take affirmative action to assure full minority participation in activities and benefits that result from implementation of The Pennsylvania Avenue Plan—1974.

(b) It is the policy of the Pennsylvania Avenue Development Corporation to foster a progressive Affirmative Action Program that affords minorities, women,

handicapped persons, and Vietnam era veterans a fair and meaningful share in the opportunities generated by the development activities of the Corporation.

(c) It is mandatory for developers who respond to a solicitation for proposals made by the Corporation to comply with the rules stated in Subpart A of Part 906.

(d) It is mandatory for developers who receive property interests of ten percent (10%) or more of the area of a development parcel from the Corporation to comply with the rules stated in Subpart A of Part 906.

(e) The Corporation will encourage any entity not described in paragraphs (c) and (d) of this section to comply with the requirements set forth in this Subpart A of Part 906.

§ 906.2 Definitions.

As used in this part:

(a) "Affirmative Action Plan" means a plan which at a minimum includes:

(1) A statement of the affirmative action policy of the development team and a list of the names of the members of the development team including equity investors, and identification of minority owned businesses and investors;

(2) A contracting and purchasing plan;

(3) A leasing plan;

(4) A personnel plan;

(5) An equity investment plan;

(6) The goals, timetables and strategy for achieving the goals of the developer;

(7) A list of specific, quantifiable committed opportunities; and

(8) Designation of an Affirmative Action Officer.

(b) "Committed Opportunity" means an opportunity set aside and committed for the sole involvement of a woman, minority group member, Vietnam era veteran, handicapped person, or minority owned business, including opportunities for training and equity investment.

(c) "Contracting and purchasing plan" means a plan for the subject project which at a minimum includes the following:

(1) A list of all minority enterprises and minority owned businesses that are involved in the development proposal or its implementation;

(2) An analysis of the types of contracts and purchases that will be required by the development team in order to implement the development through and including operation of the completed development;

(3) A list of goals and timetables by category of purchase or contract for involvement of minority owned businesses in the development process;

(4) Strategy for achieving the goals established; and

(5) A list of committed opportunities for the involvement of minority owned businesses in the development process.

(d) "Developer" means a person partnership, company, corporation, association, or other entity that develops a new structure on a site or substantially renovates a structure on a site within the Corporation's development area where the site either (1) has been offered to the public by the Corporation for development, or (2) the Corporation has transferred real property rights that equal or exceed ten percent (10%) of the area of the development parcel.

(e) "Development parcel" is an area of land established by the Corporation to be a minimum developable site under The Pennsylvania Avenue Plan—1974, as amended, and The Planning and Design Objectives, Controls, and Standards of the Corporation (36 CFR Part 920 *et seq.*).

(f) "Development team" means the group that submits a proposal to develop a parcel including developers, architects, engineers, lawyers, financial institutions, insurance companies, and others who help formulate, develop, and otherwise make a proposal to the Corporation.

(g) "Equity Investment Plan" means a plan for the subject project which at a minimum includes the following:

(1) A statement as to whether or not equity investment has been or will be solicited to implement the subject project;

(2) A statement as to whether or not a joint venture has been or will be formed to implement the subject project;

(3) If equity investment has been solicited or if a joint venture has been formed, a statement of the efforts made to involve members of minority groups and women when these opportunities were offered;

(4) If equity investment will be solicited, or a joint venture will be formed, a plan to involve members of minority groups and women when these opportunities are offered, including a list of committed opportunities;

(5) A list of goals and a timetable for securing participation of members of minority groups and women in equity investment and joint venture.

(h) "Handicapped person" means any person who (1) has a physical or mental impairment that substantially limits one or more of the person's major life activities, (2) has a record of such impairment.

(i) "Leasing plan" means a plan for the subject project which at a minimum includes the following:

(1) A retail plan showing the types of retail businesses to be included in the project and a plan for the types of uses for the balance of the development;

(2) Goals and methods for inclusion of minority enterprises as tenants in the project;

(3) Committed opportunities for leasing to minority enterprises.

(j) "Minority Enterprise" means any enterprise that is either a minority owned business or a not for profit or non-profit organization (as defined in 26 U.S.C. 501(c)(3) or (c)(6)) and also fulfills one or more of the following criteria:

(1) The Board of Directors or equivalent policy making body is comprised of members, a majority of whom are minorities or women and the chief executive officer of the organization is a minority group member or a woman; or

(2) The objectives of the organization as described in its charter are substantially directed toward the betterment of minorities or women.

(k) "Minority group member" means any "person" residing in the United States who is Negro, Hispanic, Oriental, Native American, Eskimo, or Aleut, as defined below:

(1) Negro—is an individual of the Negro race of African origin;

(2) Hispanic—is an individual who is descended from and was raised in or participates in the culture of Spain, Portugal, or Latin America, or who has at least one parent who speaks Spanish or Portuguese as part of their native culture;

(3) Oriental—is an individual of a culture, origin, or parentage traceable to the areas south of the Soviet Union, East of Iran, inclusive of the islands adjacent thereto, located in the Pacific including, but limited to, Taiwan, Indonesia, Japan, Hawaii, and the Philippines, together with the islands of Polynesia;

(4) Native American—is an individual having origins in any of the original people of North America, who is recognized as an Indian by either a tribe, tribal organization, or suitable authority in the community. For purposes of this section a suitable authority in the community may be an educational institution, a religious organization, or a state or federal agency.

(5) Eskimo—is an individual having origins in any of the original peoples of Alaska;

(6) Aleut—is an individual having origins in any of the original peoples of the Aleutian Islands.

(l) "Minority owned business" means a business that is:

(1) A sole proprietorship owned by a minority group member or a woman;

(2) A business entity at least 50 percent of which is owned by minority group members or women;

(3) A publicly owned business at least 51 percent of the stock of which is owned by minority group members or women;

(4) A certified minority owned business as evidenced by a certificate satisfactory to the Corporation's Affirmative Action Officer, and signed by the owner or the executive officer of the minority owned business.

For purposes of this definition, ownership means that the risk of gain or loss and the amount of control exercised must be equivalent to the ownership percentage.

(m) "Personnel plan" means a plan for the subject project which at a minimum includes the following:

(1) An analysis of participation of minority group members, women, Vietnam era veterans, and handicapped persons in the development project including an evaluation by category of employment, i.e., professional and managerial, skilled, semi-skilled, trainee, and other, and the number of employees in each category;

(2) An analysis of the salaries of minority group members, women, handicapped persons, and Vietnam era veterans showing the relative position of these employees with those not covered by the Affirmative Action Plan;

(3) Goals and timetables for employment by category and salary level of minorities, women, Vietnam era veterans, and handicapped persons employed for the development parcel;

(4) Strategy for achieving the goals established (see Exhibit B);

(5) A list of committed opportunities for the employment of minority group members, women, Vietnam era veterans, and handicapped persons.

(n) "Vietnam era veteran" means a person who:

(1) Served on active duty for a period of more than 180 days, any part of which occurred during the Vietnam era, and was discharged or released therefrom with other than a dishonorable discharge; or

(2) Was discharged or released from active duty for a service-connected disability if any part of such active duty was performed during the Vietnam era.

§ 906.3 Procedures.

(a) Affirmative Action Plans must be submitted to the Corporation at the following times:

(1) At the time a response is submitted to the Corporation's solicitation for proposals, the response must include an Affirmative Action Plan;

(2) If a property right exceeding 10 percent of the area of the development parcel is made available by the Corporation, but without the Corporation having made a solicitation for proposals, the developer must submit an Affirmative Action Plan within 30 days after the start of negotiations with the Corporation.

(b) Affirmative Action Plans will be reviewed as follows:

(1) Each Affirmative Action Plan submitted to the Corporation will be reviewed by the Corporation's Affirmative Action Officer, or his designee.

(2) In the case of a developer who responds to a solicitation for proposals, the Affirmative Action Plan will be reviewed by the Affirmative Action Officer, and if the Plan is in substantial compliance with the goals set forth in Exhibit A, the Plan and the recommendation of the Affirmative Action Officer will be submitted to the Chairman of the Board for approval prior to the Board's final selection.

(3) In the case of a developer who receives 10 percent or more of the area of a development parcel from the Corporation, the Affirmative Action Plan will be reviewed by the Corporation's Affirmative Action Officer, and if the Plan is in substantial compliance with the goals set forth in Exhibit A, the Plan and the recommendation of the Affirmative Action Officer will be submitted to the Chairman of the Board for approval within 15 days of submission.

(4) The Chairman may approve any Affirmative Action Plan that is not in substantial compliance with the goals set forth in Exhibit A, but for which the developer has documented a genuine effort to meet the goals of the regulations and complied with the spirit of the Corporation's policy.

(5) The Chairman may, in his discretion, submit any Affirmative Action Plan to the Board of Directors for approval, if there is not substantial compliance with the goals set forth in Exhibit A.

(6) The review of the Affirmative Action Plan will determine conformity with The Pennsylvania Avenue Plan—1974, the policy of the Corporation's Board of Directors, and the regulations and guidelines set forth in this Subpart A, Part 906.

(c) Revisions:

(1) The Corporation may require a developer at any time prior to approval

of the Affirmative Action Plan to revise the Plan for compliance with the requirements of this Subpart.

(2) Each developer required to comply with this Subpart must submit for approval an up-dated Affirmative Action Plan at the commencement of construction, at the commencement of occupancy, and at the commencement of operation or management of any portion of the facility by the developer or a related entity. Each revision of the Affirmative Action Plan must address all the requirements set forth in Section 906.4.

(3) The Corporation's Affirmative Action Officer will review all revisions submitted to the Corporation. If the revision is a substantial change from the originally approved Plan, the review procedures set forth in paragraph (b) of this section will be applicable. If the revision submitted is not a substantial change from the originally approved Plan, the Corporation's Affirmative Action Officer may approve the revision.

§ 906.4 Formulation of affirmative action plan.

(a) The developer, in formulating the Affirmative Action Plan, should consider all phases of development from establishment of the development team to operation and management of the development project including each component of the project (e.g., hotel, retail, office, residential). The developer should also consider the personnel profile of project contractors, subcontractors.

(b) For each phase and each component, the developer should give consideration to creating business and employment opportunities and committed opportunities in the following:

- (1) Equity participation;
- (2) Professional and technical services such as legal, architectural, engineering, and financial;
- (3) Purchasing materials and supplies in connection with construction and operation;
- (4) Contracting for construction, operation, and maintenance; and,
- (5) Financing, including construction and permanent financing, and other financial and banking services.

§ 906.5 Administration of affirmative action plan.

(a) The developer shall appoint an Affirmative Action Officer, and for projects exceeding \$10 million in cost, the person appointed must have affirmative action as a primary responsibility.

(b) The developer shall report to the Corporation periodically its progress in meeting the goals and timetables in its Affirmative Action Plan with respect to its contracting and purchasing plan, leasing plan, and committed opportunities. In meeting the reporting requirements the developer shall:

(1) Count an individual only once for reporting purposes;

(2) Count an individual in the first appropriate category as follows:

- (i) Minority Group Member;
- (ii) Handicapped Person;
- (iii) Woman;
- (iv) Vietnam Era Veteran;

(3) Report the dollar amount of contracts and purchases from minority owned businesses including subcontracts;

(4) In the event 10 percent or more of the dollar amount of a contract, subcontract, or purchase from a minority owned business is performed by other than a minority owned business, the developer shall report only the dollar amount performed by the minority owned business.

§ 906.6 Implementation.

(a) Each developer's Affirmative Action Plan will be incorporated into the real estate agreement between the developer and the Corporation.

(b) Each developer shall include a clause requiring a contracting and purchasing plan and a personnel plan in any contract exceeding \$500,000.

(c) Each developer should consider including a clause requiring a contracting and purchasing plan and a personnel plan in any contract less than \$500,000.

(d) In order that the Corporation may be of assistance, and to the extent practical, the developer shall notify the Corporation's Affirmative Action Officer of any failure to meet the approved Affirmative Action Plan.

(e) The Corporation, at the request of the developer, shall provide the developer with assistance for meeting the goals set forth in the Affirmative Action Plan. Such assistance may be provided in the form of lists of minority enterprises, sources for recruiting and advertising, as well as other available information.

§ 906.7 Incentives.

(a) At the request of the developer, the Corporation may agree to deferral of a portion of rental, not to exceed 50 percent, during construction and during the first year of operation following construction of any phase of the development project. Allowable rent deferral during the construction phase

will be two percent of the total base rent for each one percent of the value of all construction contracts which have been awarded to Minority Owned Businesses, not to exceed 50 percent. Rent deferral during the first year of operation following construction of any phase of the development project will be four percent for each one percent of total equity owned by minority group members, minority owned businesses, and women.

(b) Following review of Affirmative Action reports submitted to the Corporation pursuant to Section 906.5(b), the Corporation will determine the developer's compliance with the goals set forth in the approved Affirmative Action Plan. Compliance with the goals established in the Plan will be measured by adding the percentages reported including overages in each category and dividing that by the number of categories covered in the Plan.

(c) If 75 percent compliance is not achieved during any rent deferral period, the Corporation will afford the developer 120 days to achieve at least that level of compliance. If, at the end of that 120 day period, 75 percent compliance is not achieved, all rental deferral, together the interest, will be due and payable to the Corporation on the 10th day following receipt of written notice that payment of the deferred rent has been accelerated.

§ 906.8 Review and monitoring.

The Corporation, either by its employees, consultants, or other government agency, shall analyze and monitor compliance with the developer's approved Affirmative Action Plan. The Corporation shall rely on the reports submitted by the developer. However:

(a) Further investigation by the Corporation may be undertaken if problems are brought to the attention of the Corporation through any reliable source, or if any formal complaints are filed against the developer that relate to performance of the Affirmative Action Plan; and

(b) The Corporation reserves the right to audit the records of the developer that pertain to any report submitted to the Corporation.

§ 906.9 Voluntary compliance.

The Corporation will encourage any individual or entity not described in § 906.1(c) or (d) to submit and adopt an Affirmative Action Plan on any development project for which the Corporation's review and approval is required to determine conformity of the development project with the The

Pennsylvania Avenue Plan—1974. Any such Affirmative Action Plan should accompany the development plans.

§ 906.10 Confidentiality.

All information submitted to the Corporation pursuant to this Subpart A will be kept confidential, except as availability to the public may be required by the Freedom of Information Act.

Exhibit A—Suggested Minimum Guidelines and Goals

The following are suggested for consideration by developers in formulation of minimum affirmative action goals for the development parcel:

(a) Equity participation—10 percent participation by minority group members, women, and minority owned businesses as investors in ownership of the development parcel.

(b) Contracts for professional and technical services—20 percent of the dollar value of the contracts to minority owned businesses.

(c) Persons providing professional or technical services—20 percent should be minority group members, women, handicapped persons, or Vietnam era veterans.

(d) Construction contracting—15 percent of the total dollar value to minority owned businesses. (In order to accomplish this goal, the developer must require that any prime contractor show at least 15 percent minority subcontractors unless the prime contractor is a minority contractor.)

(e) Construction employment should comply with the Washington Plan as a minimum.

(f) Purchasing—20 percent of the dollar value of all purchases of materials and supplies to minority owned businesses.

(g) Hotel employment—20 percent of all hotel employees, 15 percent of all personnel earning an excess of \$2,000 a month (in 1978 dollars), and 60 percent of trainees for hotel positions should be minority group members, women, handicapped persons, or Vietnam era veterans.

(h) Leasing of space—15 percent of the retail space should be targeted for minority enterprises.

(i) Committed opportunities—should be created for professional, technical, construction, hotel, or other type operations where the representation of minority group members, women, or handicapped persons in a field is inconsistent with the demographic profile for the Washington metropolitan area.

Exhibit B—Guidelines for Establishing Strategy To Implement Affirmative Action Personnel Plan

The following are suggested as the types of activities to be considered in the development of strategies for the affirmative action personnel plan:

(1) "Vigorous" searching for qualified minority and women applicants for job openings in professional and managerial positions, often including recruitment visits to

educational institutions with large minority or female enrollments.

(2) Wide dissemination of affirmative action policy in advertisements and employment literature.

(3) Utilization of minority media in recruitment advertisements.

(4) Notification of job openings to minority community organizations and associations.

(5) Listing of all employment openings with compensation of under \$20,000 per year at a local office of the State Employment Service (or union hiring hall when union labor is required).

(6) Periodic review of minority, female, Vietnam era veteran, and handicapped employees to identify underutilized and unutilized skills and knowledge as well as opportunities for reassignment.

(7) Utilization of merit promotion and on-the-job training programs to create career ladders or otherwise qualify minority, female, Vietnam era veteran, and handicapped employees for advancement.

Dated: June 19, 1979

Joseph B. Danzansky,
Chairman.

[FR Doc. 79-19840 Filed 6-25-79; 8:45 am]
BILLING CODE 7630-01-M

POSTAL SERVICE

39 CFR Part 111

American Samoa; Mail Security Regulations

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule authorizes postal officials in American Samoa to cooperate with territorial customs officials of the Government of American Samoa by permitting them to examine the exterior of mail entering American Samoa which may contain dutiable or prohibited articles and to open, without a search warrant or the consent of the sender or addressee, such incoming suspected mail as the Postal Service has authority to open without a search warrant or consent. This extends to territorial customs officials of American Samoa the same cooperation which is authorized to be given by postal employees in Guam to territorial customs officials of the Government of Guam, and by postal employees in the U.S. Virgin Islands to officials of the U.S. Customs Service in the Virgin Islands, under existing postal regulations.

EFFECTIVE DATE: July 26, 1979.

ADDRESS: Questions about the rule should be directed to the Assistant General Counsel, Special Projects, U.S. Postal Service, 475 L'Enfant Plaza West, S.W., Washington, D.C. 20260.

FOR FURTHER INFORMATION CONTACT:

Charles R. Braun (202) 245-4620.

SUPPLEMENTARY INFORMATION:

The Postal Service proposed this rule in the Federal Register on January 15, 1979, 43 FR 3056. An explanation of the purposes of the proposal accompanied it when it was published for comment. The Government of American Samoa, which is the entity most affected by the proposal, unreservedly supported the proposal in its written comments, and pledged to cooperate with the implementation of the regulations if they are adopted. No other person or entity commented for or against the proposal. Accordingly, the Postal Service adopts the proposed amendment without change.

Part 115 of the Postal Service Manual is amended by adding a new section 115.98 as follows:

98 *Customs Inspection in American Samoa.* Pago Pago postal employees may permit designated American Samoa customs officials, without a search warrant, to open, inspect, and read the contents of unsealed mail, and to examine the exterior (but not open or read the contents) of sealed mail which originates outside the Territory of American Samoa and is addressed for delivery within the Territory of American Samoa. Upon the request of American Samoa customs officials, postal employees in the Pago Pago post office may ask the addressee of sealed mail which American Samoa customs reasonably suspects of containing dutiable or prohibited matter to authorize American Samoa customs officials to open and inspect the contents of the sealed mail, or to appear at the post office to accept delivery of the sealed mail in the presence of an American Samoa customs official.

(39 U.S.C. 401, 403, 404, 411, 3623(d)).

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-10830 Filed 6-25-79; 8:45 am]

BILLING CODE 7710-12-M

is no substantive change in the certification process.

EFFECTIVE DATE: The correction is effective June 26, 1979. The procedure goes into effect July 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter Metrinko (202) 275-7885.

SUPPLEMENTARY INFORMATION: The simplified certification process adopted at 44 FR 7965 contained a sample caption summary to be filed with the application. This served and published caption summary did not completely reflect the Commission's findings on page 21 of the decision. The correct version appears below.

Accordingly, Section 1062.3(e) of Title 49 of the Code of Federal Regulations will read as follows:

§ 1062.3 Special procedures governing applications to transport property in which applicants seek motor common carrier operating authority to perform service within the commercial zone of a port city, where a shipment has a prior or subsequent movement by maritime carrier.

(e) Caption summary and notice.

Applicant shall submit a caption summary of the authority sought with each application and shall use the following format for each caption summary.

No. MC- (Sub-)
Applicant: (Name, address) Applicant's representative: (Name, address) To operate as a *common carrier*, by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *general commodities* (except classes A and B explosives) between points in the commercial zone of (name of city and state), restricted to traffic having a prior or subsequent movement by water.

Every caption summary will be published in the Federal Register to give notice of the application filed under these special rules.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-19741 Filed 6-25-79; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION**49 CFR Part 1062**

[Ex Parte No. MC-105]

Ex-Water Traffic; Certification Rules; Correction

AGENCY: Interstate Commerce Commission.

ACTION: Correction of final rules.

SUMMARY: The Commission adopted simplified certification rules for ex-water traffic motor common carriage at 44 FR 7965 (February 8, 1979). This notice is to correct an inadvertent error in the served and published rules. There

Proposed Rules

Federal Register

Vol. 44, No. 124

Tuesday, June 26, 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.

NATIONAL COMMISSION ON SOCIAL SECURITY

[1 CFR Part 485]

Privacy Act of 1974; Proposed Procedures

Proposed regulations for implementation

AGENCY: National Commission on Social Security.

ACTION: Proposed Rule.

SUMMARY: The following proposed regulations drafted in accordance with section (f) of 5 U.S.C. 552a, the Privacy Act of 1974, are hereby offered for public comment. The purposes of these regulations are to establish procedures by which an individual can determine if the Commission maintained a system of records which include a record pertaining to that individual and also to establish procedures for individual access to the records for purposes of review, amendment and/or correction.

DATE: Comments are due on or before July 27, 1979.

ADDRESS: Send comments to the Executive Director, National Commission on Social Security, 440 G Street, N.W., Washington, D.C. 20218.

FOR FURTHER INFORMATION CONTACT: Laura Kreuzer, Administrative Officer, (202) 376-2622.

Dated at Washington, D.C. on June 20, 1979.

Francis J. Crowley,
Executive Director.

It is proposed to add the following part 485 to Title 1 of the CFR.

PART 485—PRIVACY ACT IMPLEMENTATION

Sec.

485.1 Purpose and Scope.

485.2 Definitions.

485.3 Procedures for requests pertaining to individuals records in a records system.

485.4 Times, places, and requirements for the identification of the individual making a request.

Sec.

485.5 Access of requested information to the individual.

485.6 Request for correction or amendment to the record.

485.7 Agency review of request for correction or amendment to the record.

485.8 Appeal of an initial adverse agency determination on correction or amendment of the record.

485.9 Disclosure of record to a person other than the individual to whom the record pertains.

485.10 Fees.

Authority: 5 U.S.C. 552a; Pub. L. 93-579.

§ 485.1 Purpose and scope.

The purposes of these regulations are to:

(a) Establish a procedure by which an individual can determine if the National Commission on Social Security, hereafter known as the Commission, maintains a system of records which includes a record pertaining to the individual; and

(b) Establish a procedure by which an individual can gain access to a record pertaining to him or her for the purpose of review, amendment and/or correction.

§ 485.2 Definitions.

For the purpose of these regulations—

(a) The term "individual" means a citizen of the United States or an alien lawfully admitted for permanent residence;

(b) The term "maintain" includes maintain, collect, use or disseminate;

(c) The term "record" means any item, collection or grouping of information about an individual that is maintained by the Commission, including, but not limited to, his or her employment history, payroll information, and financial transactions and that contains his or her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as social security number.

(d) The term "system of records" means a group of any records under the control of the Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual; and

(e) The term "routine use" means, with respect to the disclosure of a record, the use of such record for a purpose which is compatible with the purpose for which it was collected.

§ 485.3 Procedures for requests pertaining to individual records in a records system.

An individual shall submit a request to the Administrative Officer to determine if a system of records named by the individual contains a record pertaining to the individual. The individual shall submit a request to the Executive Director of the Commission which states the individual's desire to review his or her record.

§ 485.4 Times, places, and requirements for the identification of the individual making a request.

An individual making a request to the Administrative Officer of the Commission pursuant to Section 485.3 shall present the request at the Commission offices, 440 G Street, N.W., Washington, D.C., 20218, on any business day between the hours of 9 a.m. and 5 p.m. The individual submitting the request should present himself or herself at the Commission's offices with a form of identification which will permit the Commission to verify that the individual is the same individual as contained in the record requested.

§ 485.5 Access to requested information to the individual.

Upon verification of identity the Commission shall disclose to the individual the information contained in the record which pertains to that individual.

§ 485.6 Request for correction or amendment to the record.

The individual should submit a request to the Administrative Officer which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with provisions of § 485.4 of this Part.

§ 485.7 Agency review of request for correction or amendment of the record.

Within ten working days of the receipt of the request to correct or to amend the record, the Administrative Officer will acknowledge in writing such receipt and promptly either—

(a) Make any correction or amendment of any portion thereof which the individual believes is not accurate, relevant, timely, or complete; or

(b) Inform the individual of his or her refusal to correct or to amend the record in accordance with the request, and the

procedures established by the Commission for the individual to request a review of that refusal.

§ 485.8 Appeal of an initial adverse agency determination on correction of amendment of the record.

An individual who disagrees with the refusal of the Administrative Officer to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Director, National Commission on Social Security, 440 G Street, N.W., Washington, D.C. 20218. The Executive Director will not later than thirty working days from the date on which the individual request such review, complete such review and make a final determination unless, for good cause shown, the Executive Director extends such thirty day period. If, after his or her review, the Executive Director also refuses to correct or to amend the record in accordance with the request, the individual may file with the Commission a concise statement setting forth the reasons for his or her disagreement with the refusal of the Commission and may seek judicial review of the Executive Director's determination under 5 U.S.C. 552a(g)(1)(A).

§ 485.9 Disclosure of record to a person other than the individual to whom the record pertains.

The Commission will not disclose a record to any individual other than to the individual to whom the record pertains without receiving the prior written consent of the individual to whom the record pertains, unless the disclosure has been listed as a "routine use" in the Commission's notices of its system of records, or falls within one of the special disclosure situations listed in the Privacy Act of 1974 (5 U.S.C. 552a(b)).

§ 485.10 Fees.

If an individual requests copies of his or her record, he or she shall be charged ten cents per page, excluding the cost of any search for review of the record, in advance of receipt of the pages.

[FR Doc. 79-19864 Filed 6-25-79; 8:45 am]

BILLING CODE 6820-AC-M

OFFICE OF PERSONNEL MANAGEMENT

[5 CFR Part 315]

Career and Career-Conditional Employment

AGENCY: Office of Personnel Management.

ACTION: Proposed regulations with comments invited for consideration in final rulemaking.

SUMMARY: In accordance with Executive Order 12125 of March 15, 1979, which permits conversion of mentally retarded and severely physically handicapped from Schedule A to competitive appointments, these regulations provide for such conversions after 2 years of satisfactory nontemporary service and for crediting nontemporary service under Schedule A §§ 213.3102(t) and 213.3102(u) toward the requirement for competitive career tenure. (Amendments to the Schedule A authorities were published April 6, 1979, when agencies were delegated authority to appoint severely physically handicapped persons under § 213.3102(u) without prior Office approval.) To provide for persons who were given temporary appointments under the Schedule A authorities before issuance of these proposed regulations, a variation has been approved allowing credit for up to 2 years of service under such temporary appointments to meet the requirements for conversion and be counted toward career tenure.

DATE: Written comments will be considered if received on or before August 27, 1979.

ADDRESS: Send written comments to Office of the Deputy Associate Director for Staffing, Recruitment/Agency Services Branch, Room 6H28, Office of Personnel Management, Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: William Bohling, 202-632-4533.

Accordingly, 5 CFR Part 315 is amended by adding a new § 315.703e, as follows:

§ 315.703e Mentally retarded and severely physically handicapped employees serving under schedule A appointment.

(a) *Coverage.* This section applies to employees appointed under § 213.3102(t) and 213.3102(u) of this chapter who:

(1) Complete 2 or more years of satisfactory service under nontemporary Schedule A appointments; and

(2) Meet all requirements and conditions governing career and career-conditional appointment except those requirements concerning competitive selection from a register and medical qualifications.

(b) *Tenure on conversion.* An employee converted under paragraph (a) of this section becomes:

(1) A career-conditional employee, except as provided in paragraph (b)(2) of this section;

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under § 213.3102(t) or 213.3102(u) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

(c) *Acquisition of competitive status.* A person whose employment is converted to career or career-conditional employment under this section acquires a competitive status automatically on conversion.

(5 U.S.C. 3301, 3302; EO 12125)
Office of Personnel Management
Beverly M. Jones,

Issuance Systems Manager.

[FR Doc. 79-19827 Filed 6-25-79; 8:45 am]

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1011]

[Docket No. AO-251-A21]

Milk in the Tennessee Valley Marketing Area; Proposed Termination of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice proposing termination of the order.

SUMMARY: This document gives notice that termination of the Tennessee Valley Federal milk marketing order at midnight, July 31, 1979, is being considered. More than one-third of the market's dairy farmers voting in a referendum opposed the issuance of an amended order for the market that was proposed in the Department's final decision issued April 23, 1979. Approval by two-thirds of the dairy farmers is required before an amended order can become effective. Since The Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the applicable statutory authority, it is necessary to consider terminating the present order. This notice gives interested persons an opportunity to submit written comments on the proposed termination.

DATE: Comments are due on or before July 11, 1979.

ADDRESS: Comments (four copies) should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Richard A. Glandt, Marketing Specialist, Dairy Division, Agriculture Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-4829.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice Of Hearing—Issued August 23, 1978; published August 28, 1978 (43 FR 38412).

Recommended Decision—Issued January 18, 1979; published January 23, 1979 (44 FR 4696).

Extension of Time for Filing Exceptions—Issued February 9, 1979; published February 15, 1979 (44 FR 9761).

Final Decision—Issued April 23, 1979; published April 26, 1979 (44 FR 24563).

Referendum Order—Issued May 21, 1979; published May 25, 1979 (44 FR 30353).

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), the termination of the order regulating the handling of milk in the Tennessee Valley marketing area is being considered, with such termination to be at midnight, July 31, 1979.

A public hearing on proposed amendments to the Tennessee Valley milk order was held at Knoxville, Tennessee, on September 13, 1978, pursuant to notice thereof issued August 23, 1978 (43 FR 38412). On April 23, 1979 (44 FR 24563), the Deputy Assistant Secretary for Marketing and Transportation Services issued a final decision on the issues considered at the hearing. The Department concluded that the order should be amended and that the provisions of the proposed amended order would tend to effectuate the declared policy of the Act.

A referendum was conducted to determine whether producers favored the issuance of the proposed amended order. More than one-third of the producers voting in the referendum opposed the issuance of the proposed amended order. Approval by two-thirds of such producers is required before the proposed amended order can become effective. Since the Department has determined that the provisions of the proposed amended order are necessary to effectuate the declared policy of the Act, it is necessary to consider terminating the present order.

All persons who desire to submit written data, views or arguments in connection with the proposed termination should file the same with the Hearing Clerk, Room 1077, South Building, U.S. Department of

Agriculture, Washington, D.C. 20250, not later than July 11, 1979. Four copies of all documents should be filed.

All written submissions made pursuant to this notice will be made available for public inspection at the office of the Hearing Clerk during regular business hours (7 CFR 1.27(b)).

Signed at Washington, D.C., on June 20, 1979.

William T. Manley,
Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-19813 Filed 6-25-79; 8:45 am]

BILLING CODE 3410-02-M

Rural Electrification Administration

[7 CFR Part 1701]

Telephone Carrier System Specifications; Revision of Existing Specification

AGENCY: Rural Electrification Administration.

ACTION: Proposed Rule.

SUMMARY: REA proposes to revise REA Bulletin 345-50 to announce a general revision of REA Specification PE-60 for Trunk Carrier Systems. The last revision of this specification was in April 1975. Since that date, significant changes have been made in the telephone industry in the design and application of trunk carrier systems. The proposed revision of REA Specification PE-60 contains changes to identify certain industry criteria and to quantify performance characteristics of trunk carrier systems. This action will make it possible for REA telephone borrowers to continue to provide their subscribers with the most modern and efficient telephone service.

DATE: Public comments must be received by REA on or before August 27, 1979.

ADDRESS: Submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355-S, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Claude F. Buster, Jr., Chief, Transmission Branch, Telephone Operations and Standards Division, telephone number 202-447-3917.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 USC 901 *et seq.*), REA proposes to issue a revision of REA Bulletin 345-50. Copies of the proposed revisions of REA Bulletin 345-50 and REA Specification PE-60 may be secured in person or by written request from the Director, Telephone Operations

and Standards Division, at the address above.

All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division, during regular business hours, at the address above.

The proposed effective date of the proposed revision in February 1, 1980.

An impact analysis for this proposed action has been prepared and is available upon request.

On issuance of revised REA Bulletin 345-50, Appendix A to Part 1701 will be modified accordingly.

Dated: June 20, 1979.

John H. Arnesen,
Acting Assistant Administrator.

[FR Doc. 79-19752 Filed 6-25-79; 8:45 am]

BILLING CODE 3410-15-M

[7 CFR Part 1701]

Wood Telephone Pedestal Stub; Proposed REA Specification PE82

AGENCY: Rural Electrification Administration.

ACTION: Proposed specification.

SUMMARY: The Rural Electrification Administration (REA) proposes to issue REA Specification PE82, Wood Telephone Pedestal Stubs. This proposed specification will cover items currently incorporated in REA Specification DT5C:PE9. In addition The Technical Standards Committee "A" (Telephone) has approved modifications and changes in addition to those currently covered in the specification.

The present inclusion of telephone pedestal stubs requirements in the joint electric/telephone specification for poles has resulted in misinterpretation of specification requirements. It was therefore decided to separate these stubs from the Specification DT5C:PE9 for wood poles, define the requirements and include drawings to illustrate various features. REA has worked with principal suppliers in developing this specification.

On issuance of this specification a memorandum will be circulated announcing that items carried in Specification PE82 have been extracted from Specification DT:PE9.

DATE: Public comments must be received by REA on or before July 26, 1979.

ADDRESS: Interested persons may submit written data, views or comments to the Director, Power Supply and Engineering Standards Division, Rural Electrification Administration, Room

3304, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-4413. All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Director, Power Supply and Engineering Standards Division during regular business hours.

FOR FURTHER INFORMATION CONTACT: Archie W. Cain (202) 447-3621.

SUPPLEMENTARY INFORMATION: Pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue REA Specification PE82. A copy of the proposed specification may be secured in person or in writing from the Director, Power Supply and Engineering Standards Division. On issuance of revised REA Bulletin 345-1, Appendix A to Part 1701 will be modified accordingly.

Dated: June 20, 1979.

Joe S. Zoller,
Assistant Administrator—Electric.

[FR Doc. 79-19703 Filed 6-25-79; 8:45 am]

BILLING CODE 3510-15-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 791 0001]

Schering-Plough Corp.; Correction

AGENCY: Federal Trade Commission.

ACTION: Correction.

SUMMARY: In Federal Register issue for Thursday, May 31, 1979, 44 FR 31205, a Consent Agreement with Analysis to Aid Public Comment was published in the Matter of Schering-Plough Corp. The Summary incorrectly set forth one of the provisions of the proposed order.

DATE: June 26, 1979.

FOR FURTHER INFORMATION CONTACT: Gregory E. Hales, SSR-I-512, Federal Trade Commission, 6th and Pennsylvania Avenue NW., Washington, D.C. 20580. (202) 724-1185.

SUPPLEMENTARY INFORMATION: FR Doc. 79-16931, appearing in the Federal Register issue for Thursday, May 31, 1979, 44 FR 31205, contained a summary which incorrectly stated that Schering-Plough Corporation would be required to divest completely, within one year, Scholl, Inc. The terms of the proposed order would require Schering-Plough Corp. to divest the assets utilized by Scholl primarily for the manufacture, distribution and sale in the United States of Solvex athlete's foot products. The text of the proposed order

appearing at 44 FR 31206 correctly sets forth the appropriate provision

Carol M. Thomas,
Secretary.

[FR Doc. 79-19721 Filed 6-25-79; 8:45 am]

BILLING CODE 6570-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 201, 207, and 314]

[Docket No. 78N-0320]

Requirements for Designating the Manufacturer's Name on a Drug or Drug Product Label; Reopening of Comment Period and Availability of Department of Justice Analysis of Economic Effects of Proposal

AGENCY: Food and Drug Administration.

ACTION: Proposed Rule; Reopening of
Comment Period and Notice of
Availability.

SUMMARY: The Food and Drug Administration (FDA) reopens the comment period on its proposal to specify the conditions under which a person may be identified on the label of a drug product as its manufacturer. This action is taken to solicit the submission of data and analyses on the claim that the proposal would have an anticompetitive effect on the drug industry. This document also announces the availability of a related Department of Justice analysis requested by FDA.

DATE: Comments by August 27, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Steven Unger, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: In the Federal Register of October 3, 1978 (43 FR 45614) FDA published a proposal defining the conditions under which a person may be identified on the label of a drug product as its manufacturer. The proposal invited interested persons to submit comments by December 4, 1978.

The proposal responds in large part to the problem of identifying the manufacturer of a drug product when not all manufacturing operations are performed by the firm identified on the drug label as manufacturer. As stated in the preamble to the proposal, problems

"occur primarily when several persons perform different manufacturing operations to produce a drug or drug product, or when a person performs the manufacturing operations under a contractor leasing agreement with another person who markets the drug or drug product and who wants to be identified on the drug or drug product's label as its manufacturer" (43 FR 45615). The problems associated with contractor leasing agreements were examined in hearings before the Subcommittee on Monopoly and Anticompetitive Activities of the Senate Select Committee on Small Business and before the House Subcommittee on Oversight and Investigations of the Committee on Interstate and Foreign Commerce.

The proposal listed 10 manufacturing operations important to drug manufacture. Under the proposal, to claim to be the manufacturer of a drug, a firm must perform all the listed operations applicable to production of the drug. If a firm performs none of the applicable operations, it could not claim to be manufacturer of the drug or drug product under any circumstances. If a firm, however, performs some but not all of the applicable operations, and if it still chooses to identify itself as manufacturer, it must identify itself as a joint manufacturer along with each other firm that performs one or more of the remaining applicable operations. The proposed regulation also specifies the conditions under which a person may claim to have performed the listed manufacturing operations.

In response to the proposal, FDA received 52 written comments. Several of them claimed that the proposal, if finalized, would have significant adverse effects on drug manufacturing costs and an anticompetitive effect on the drug industry. The comments suggested that, to the extent that the proposal would prevent a drug company from claiming to be the manufacturer of a drug or compel it to acknowledge the participation of other firms in the manufacturing process, marketing considerations would induce the company to reduce its use of contract manufacturing. The comments argue that this would result in (a) loss of whatever efficiencies inherent in the use of contract manufacturing; and (b) damage to or elimination of some of the contract manufacturing firms, thereby possibly reducing competition in the manufacture or sale of drugs.

To assist FDA in its consideration of the economic issues raised by these comments, the agency sought the views of the Antitrust Division of the U.S.

Department of Justice. In a letter dated January 23, 1979, FDA asked the Antitrust Division to review and comment on the argument that the proposal would have an anticompetitive effect. The letter committed this agency to making public the Department of Justice's response and to reopening the comment period for the benefit of interested persons. On April 26, 1979, the Department of Justice responded. The response suggested that before attempting an analysis of the effects the proposal might have on drug industry competition, "additional development of the record is needed to assess the probable competitive effects, both beneficial and adverse." The response recommended that on reopening the comment period for the proposal, FDA should invite the submission of additional facts about the claimed anticompetitive effects of the proposal. FDA's letter and the Department of Justice's response have been placed on file in the office of the Hearing Clerk, FDA (address above).

FDA does not have available to it the kinds of data and information required to make a meaningful assessment of the economic arguments made in the comments. The agency is reopening the comment period to enable interested persons to submit the data and information needed for an evaluation of the economic impact the proposed regulation might have. Although any relevant comments are welcome, the following issues appear fundamental, and evidence on them is particularly solicited:

(1) What are the incentives for, and what is the extent of, the use of contract manufacturing currently?

Firms who use contract manufacturing presumably find an economic advantage in doing so. Various kinds of economic efficiencies might lead a company to contract out some or all manufacturing operations. These considerations might include economies of scale when the same product is made in one large plant instead of several smaller ones; overcoming in-house capacity or scheduling limitations, or reducing exposure to economic risk, by using available out-of-house capacity; seeking to maintain a high rate of return on capital invested in firm plant and equipment by reserving in-house capabilities for patented, specialized or otherwise higher-profit, less competitive lines while utilizing contract facilities for more competitive, lower-margined lines offering lower rates of return on capital. The nature and size of any such efficiencies need to be clarified by data or analyses that demonstrate the short-

and long-run cost incentives for using contract manufacture. It would also be helpful if the comments indicated whether the incentives associated with contract manufacture are uniform for all drug products and, is not, the characteristics of the product for which the incentives are significant. For example, are the incentives greater for prescription drugs, for particular therapeutic classes of drugs, or for particular dosage forms?

Also needed is evidence concerning the extent of contract manufacturing by drug firms. The agency specifically requests that comments address both (a) the percentage of products marketed by a drug company for which contract manufacturing is used in some degree, and (b) the extent of contract manufacturing in the total manufacturing process for various products and product categories, i.e., what fraction of manufacturing operations involved in the production of a product are contracted out?

(2) How and to what extent would the proposed changes reduce incentives for the use of contract manufacturing?

If the proposal were finalized, a drug company's decision to reduce its use of contract manufacturing would seem to rest solely on perceptions of marketing disadvantages for products with respect to which the company could no longer claim or imply that it is the sole manufacturer, even though it continued to take responsibility for the quality of the product. To cause reduced use of contract manufacturing, such disadvantages would have to be sufficiently substantial to outweigh advantages motivated the use of contract manufacturing in the first place. There is a need, therefore, for data or analyses to show how and to what extent the sales and prices of drugs whose manufacture is partly or entirely contracted out might be affected by a regulation prohibiting the responsible firm from representing itself as the drug's manufacturer. Of interest would be the identification of the particular consumer groups (physicians, commercial or institutional pharmacists, lay public) expected to react unfavorably in the sense that demand for the affected drug products is reduced. Are particular categories or classes of drug products likely to be affected more than others? Comments should also explain how any such adverse marketing reactions would manifest themselves. For example, would sales shift from a firm currently contracting out drug manufacture to another firm that manufactures the same or a similar product in-house? Would the

drug continue to be sold by the nonmanufacturer or would it be marketed by the actual manufacturer? Would those marketing reactions be expressed in sales shifts without price effects or would there be some effect on the price of the product whose manufacture had previously been contracted out in whole or part?

It would be particularly useful for FDA to receive estimates of the possible extent and magnitude of adverse effects on product sales or prices in terms of products potentially affected, proportion of sales likely to be affected, price effects, identity of beneficiaries of sales losses, and the like.

In addition, it would be useful to receive comments from persons knowledgeable in the drug purchasing area concerning the extent to which the proposed regulation is likely to impact drug purchasing decisions.

(3) Considering both the incentives for use of contract manufacturing and possible reductions of these incentives associated with adverse marketing reactions, to what extent is it likely that drug companies would withdraw from contract manufacturing?

A firm that substitutes in-house for contract manufacture will presumably incur expenditures for plant, equipment, and start-up costs. It would be helpful to have some examples of trade-off or make-vs.-buy analyses comparing costs or other incentives for contract manufacture with in-house manufacturing costs, and demonstrating how alternative patterns of adverse sales or price effects from the proposed changes could translate into situations justifying or not justifying a business decision to switch to in-house manufacture. In this regard, FDA is interested in learning whether the adoption of State requirements compelling the disclosure on drug labels of the name of the manufacturer ("manufacturer" being defined somewhat differently from State to State) has resulted in any shift away from the use of contract manufacturing.

(4) How and to what extent would manufacturing costs, competition, and prices of drug products be affected by withdrawals from contract manufacture in varying degree?

If there currently are economic incentives for the use of contract manufacture, presumably there is no significant cost advantage to a firm in replacing it with in-house production, and there may be cost disadvantages. In this case, depending on competitive conditions, consumers would gain no benefit from the change or might suffer price increases. The comments asserted

that decreased contract manufacture would reduce competition by damaging or eliminating some competitors. The accuracy of such assertions, however, depends on how and to what degree reduction in contract manufacture might come about. It is possible to conceive of circumstances in which reduced use of contract manufacture might not damage competition. For example, if a firm contracting out drug manufacture is the sole customer of a contract manufacturer, the two enterprises are hardly in competition to begin with. If the contracting-out firm simply absorbs the contractor as a corporate acquisition, there is no change in the competitive structure. If, instead, the firm builds its own plant, there is a doubling of capacity and the potential, in some cases at least, for increased competition if the contractor finds another firm either as customer or merger partner. Alternatively, if a contract manufacturer serves a number of firms, the withdrawal of one firm in favor or in-house manufacture could conceivably increase competition as the contract manufacturer tries to keep its remaining customers and perhaps helps them to maintain or expand their sales through price competition with the withdrawing firm. This assumes that the firms are not acting in concert and that each one is making its own trade-off decision about giving up contract manufacture in the short of long run to avoid the shift from "made by" to "distributed by" or the like on its product label. It is not at all clear that all firms would choose the same strategy in such circumstances.

It seems necessary, therefore, to explore the conditions under which reduced use of contract manufacture by some firms would have anticompetitive or procompetitive outcomes. Comments are invited on this point, focusing, if possible, on the differing competitive effects of the range of possible responses by drug companies to the implementation of the proposed rule. Especially useful would be analyses of the likelihood of changes in industrial structure and the extent to which each such alternative structural outcome might affect competitive conditions, costs, and prices.

FDA would prefer that comments discuss only the economic issues raised in this notice. Comments previously submitted on the proposed regulation need not be resubmitted. In preparing a final order, FDA will, of course, consider all comments.

FDA has determined that this document does not contain an agency action covered by § 25.1(b) (21 CFR

25.1(b)), and consideration by the agency of the need to prepare an environmental impact statement is not required.

This document is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 701(a), 52 Stat. 1050-1051 as amended, 1055 (21 U.S.C. 352, 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Interested persons may, on or before August 27, 1979 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 19, 1979.

William F. Randolph,
*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 79-19722 Filed 6-25-79; 8:45 am]
BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Parole Commission

[28 CFR Part 2]

Paroling, Recommitting and Supervising Federal Prisoners

Correction

In FR Doc. 79-19109 appearing on page 36077 in the issue for June 20, 1979, make the following correction: In the middle column, in § 2.61, in subparagraph (a), in the 11th line, insert the year, "1979" after the date, "June 4".

BILLING CODE 1505-01-M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1256-6]

Revision of the District of Columbia Implementation Plan

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On December 26, 1978, the District of Columbia submitted a revised

State Implementation Plan (SIP) to EPA. This revised SIP was for those areas designated as not attaining the National Ambient Air Quality Standards. The plan addresses attainment of the Total Suspended Particulate, Ozone, and Carbon Monoxide standards. The revisions were made to meet the requirements of Part D, of Title I of the Clean Air Act as amended.

Additionally, on December 27, 1978 the District of Columbia submitted Act 2-280, revising Section 2, Regulation 72-12, the Visible Emissions Regulation. This change was made by the District in its effort to provide a more realistic and enforceable visible emission standard, as well as a greater specificity of the testing procedures used to determine compliance.

The requirements for an approvable nonattainment SIP are described in a Federal Register notice published on April 4, 1979 (44 FR 20372 [1979]), and are not repeated in this notice. This notice describes the nature of the District of Columbia nonattainment SIP submittal and discussed any deficiencies with respect to the requirements of Section 110 and Part D of the Clean Air Act found by EPA's review to date. Additionally, this notice addresses the submittal of the change to the visible emissions standard.

DATE: Comments must be submitted on or before July 26, 1979. On April 19, 1979 the Regional Administrator, EPA Region III, published a Notice of Availability (44 FR 23263 [1979]) of the revised District of Columbia Implementation Plan (SIP) for public inspection. The Regional Administrator believes that the additional 30-days now being afforded the public to comment will be sufficient. However, in the event the Regional Administrator receives a request for additional time to submit comments, he will consider granting an extension of the present comment period for up to an additional 30 days.

ADDRESSES: Copies of the proposed SIP revision and the accompanying support documents are available for inspection during normal business hours at the following offices:

U.S. Environmental Protection Agency,
Region III, Air Programs Branch, Curtis
Building, Tenth Floor, Sixth & Walnut Sts.,
Philadelphia, Pennsylvania 19106, ATTN:
Edward A. Vollberg.

District of Columbia Department of
Environmental Service, Bureau of Air &
Water Quality, 5010 Overlook Avenue,
S.W., Washington, D.C. 20032, ATTN: John
V. Brink.

Public Information Reference Unit, Room
2922, EPA Library, U.S. Environmental

Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

For the Transportation Control portions of the plan: Public Information Center, Suite 201, Metropolitan Washington Council of Governments, 1225 Connecticut Avenue, N.W., Washington, D.C. 20036.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to: Mr. Howard Heim, Chief, Air Programs Branch (3AH10), Air & Hazardous Materials Division, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, ATTN: AH300DC.

FOR FURTHER INFORMATION CONTACT: Mr. Edward A. Vollberg (3AH11), U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106, telephone: 215-597-8309.

SUPPLEMENTARY INFORMATION:

Introduction

On March 3, 1978 (43 FR 8962 [1978]), and on September 12, 1978 (43 FR 40502 [1978]), the Administrator of the Environmental Protection Agency (EPA), in accordance with requirements of Section 107 of the Clean Air Act, as amended, designated the District of Columbia portion of the National Capital Interstate Air Quality Control Region (AQCR) as a nonattainment area for ozone and designated certain selected areas within the District of Columbia as nonattainment areas for particulate matter and carbon monoxide.

As a result, the District of Columbia was obliged to revise its SIP by January 1, 1979 to meet the requirements of Part D of Title I of the Clean Air Act, as amended. In fulfillment of these requirements, the Mayor of the District of Columbia submitted a revised SIP on December 26, 1978.

On April 19, 1979 (44 FR 23263 [1979]), EPA published a Notice of Availability of the District of Columbia SIP revision and invited the public to inspect the plan. As of yet, no public comments have been received. EPA has reviewed the SIP revision with respect to the requirements and criteria described or referenced in the Federal Register notice published on April 4, 1979 (44 FR 20372 [1979]). This notice to which interested persons may refer is entitled "State Implementation Plan; General Preamble for Proposed Rulemaking on Approval of Plan Revisions for Nonattainment Areas", and is incorporated herein by reference.

Background

The District of Columbia originally submitted its Implementation Plan on January 31, 1972. The controls in this original SIP have achieved considerable progress in reducing air pollution in the District of Columbia. Nonetheless, a SIP revision is required for those areas designated as nonattainment. The revision submitted in response to that requirement describes a planning process and includes specific programs for reducing air pollution. Due to the pervasive and widespread violations of the Federal primary standards for ozone and carbon monoxide, the plan does not anticipate achieving the standards for these pollutants by the end of 1982 as required by the Clean Air Act, as amended. Therefore, the District of Columbia has requested an extension of the deadline for achieving these standards up until the end of 1987 in accordance with Section 172 of the Act. In order to achieve this goal, controls in addition to those contained in the plans will be necessary. These additional controls are to be defined in the SIP revisions due on July 1, 1982. The development of strategies to improve ambient air quality levels for ozone and carbon monoxide was achieved through a cooperative effort of the Government of the District of Columbia and the Metropolitan Washington Council of Governments.

The District of Columbia Department of Environmental Services is primarily responsible for the development of the particulate control strategies and measures contained in the plan. The District's plan has historically contained regulations controlling the traditional sources of particulate matter. The present submittal has identified fugitive dust as being a significant contributor to the nonattainment situation. Therefore, the District's proposed plan adds control measures aimed at reducing vehicle and roadway emissions. Also, further study of fugitive particulate emissions will be performed. On December 27, 1978, the District also requested that EPA consider Act 2-280, revising the Visible Emissions Regulation, No. 72-12. This revised regulation would allow visible emissions on a continuous basis versus the present regulation which allows no visible emissions except for short periods of time.

Notwithstanding the regional cooperation in the Metropolitan Washington area in the development of the nonattainment plan, its final adoption and submittal rests exclusively with the Government of the District of Columbia. The following narrative,

categorized by pollutant, will discuss the extent of EPA's review of the District of Columbia's plan submittals and subsequent correspondence (dated May 3, 1979) as of May 24, 1979. On the basis of EPA's review to date, this notice will indicate those items needing corrections or clarification; thus, unless otherwise stated, the remainder of the proposed plan is considered acceptable.

Total Suspended Particulates (TSP)

Description of Submittals

In response to the nonattainment area designations and the requirements stated in Section 110 and Part D of the Act, the District of Columbia submitted on December 26, 1978, a plan to attain standards for total suspended particulates. The plan includes an emissions inventory, a diffusion modeling demonstration, a set of proposed regulations, a commitment to an annual incremental reduction as well as commitments and a proposal for further study to result in the adoption of fugitive particulate regulations. This work would be concluded in time for the attainment of the total suspended particulate standard by December 31, 1982.

On December 27, 1978, the District of Columbia requested an additional revision be made to its air quality control regulations relating to visible emissions. The submittal stated that this revision, known as Act 2-280 which changes Regulation 72-12, would: (1) provide more realistic and enforceable visible emissions standards for large boilers; (2) provide greater specificity as to the procedures and conditions to be followed in testing the emission of air pollution from stationary sources; (3) provide more appropriate criminal penalties; and (4) not change the mass emissions standards for particulate matter or any other criteria pollutant.

Adoption After Reasonable Notice and Hearing

The District of Columbia held public hearings on Regulation 72-12 and on the overall SIP revision on May 23, 1978 and on October 27, 1978 respectively. Both of these revisions contain sufficient documentation that the appropriate procedures were followed in providing notice and that public hearings were held in accordance with the requirements of 40 CFR Part 51.4. The regulations in the nonattainment SIP submittal have not yet been formally adopted by the District of Columbia. The procedural steps in the District's regulatory process are continuing

toward their formal adoption to remedy this deficiency.

Control Strategy and Demonstration of Attainment

EPA in its review raised questions concerning the attainment demonstration for the TSP regulations. These questions related to the projected air quality concentrations in 1980 and 1985. Also, EPA requested justification for the assumed background concentration that was used in the modeling. In subsequent discussions and in a letter dated May 3, 1979, the District provided a response to EPA's concerns. The District stated that the basis for the air quality demonstration was the work previously performed by the Metropolitan Washington Council of Governments. The values projected by this previous modeling work were adjusted for some assumptions that no longer were valid. The explanation, and materials from the referenced report supporting the corrected assumptions provided by the District satisfies EPA's earlier concerns regarding the use of the concentrations that were presented in the strategy development and attainment demonstration.

Margin for Growth

An additional area of concern which required clarification was an apparent discrepancy in the manner in which growth would be accommodated by the nonattainment plan proposed by the District of Columbia. The District, in the letter of May 3, 1979, clarified its intention to accommodate major point source growth on a case-by-case basis. Furthermore, the District stated that the modeling efforts used in the attainment demonstrations included factors for growth of area sources.

Pre-Construction Review

Case-by-case growth is to be accounted for by the proposed preconstruction review regulations in the District plan. These regulations are required to meet the provisions of Section 173, a new section of the Act. EPA has commented to the District that the proposed regulations are deficient as follows:

(a) They do not encompass Section 173(4) of the Act which provides for new source permit issuance contingent upon the determination that the applicable implementation plan is being carried out for the nonattainment area;

(b) They do not contain the provision that any emission reductions required as a precondition of permit issuance be legally binding;

(c) There is not equivalence with Section 173(1)(A) and (B) of the Act which require a determination prior to new source permit issuance that either (1) specific levels of reduction in allowable emissions will be achieved by the time of source start-up or (2) the emissions from the new source will not contribute to levels exceeding permitted limits. The District of Columbia is considering changing its proposed regulations to add these needed requirements. The new source review process must meet the provisions of Section 173 to be approvable.

Reasonably Available Control Technology (RACT) as Expeditiously as Practicable

EPA's review raised a question whether the District had adopted RACT for all stationary sources of particulates. In the case of rotary cup burners, the District has proposed a regulation to ban all such burners. EPA believes this regulation to be a RACT measure for particulate matter control. The District has not committed to the adoption of these regulations by July 1, 1979. While the regulation was included in the entire regulation package presently before the District Council for action, adoption of all RACT measures is necessary for an adequate nonattainment plan.

Emission Inventory

EPA's review of the particulate emission inventory identified two problems: (1) a lack of specific source information and, (2) the omission of two stationary sources. In its letter of May 3, 1979, the District of Columbia referenced the documents containing the specific source information and revised its emission inventory to include the two stationary sources that were noted as being missing. Therefore, the emission inventory is now considered adequate as a basis for the control strategy demonstration.

Enforceability

The regulations in the SIP are only proposed rules. They have not been formally adopted by the District of Columbia and therefore are not enforceable at this time. EPA, by letter of April 27, 1979, has notified the Mayor of the District of Columbia of the need for City Council to adopt these regulations expeditiously in order to ensure final EPA approval at the earliest possible date.

Concerning other aspects of the submittal, EPA made several recommendations to the District of Columbia. These recommendations deal with regulations in Section 8-2:712

"Control of Fugitive Dust." EPA believes that before it can approve these regulations, they must incorporate language changes to enhance their enforceability. Also, the proposed regulations did not designate the lead enforcement agency, nor were resources committed for the control of fugitive dust emissions from public roads and public lands.

Representatives from the Department of Environmental Services, the Bureau of Air and Water Quality of the District of Columbia, in meetings on March 16 and 30, 1979, addressed these issues. It was agreed that the EPA-recommended changes to Section 8-2:712 will be considered before these proposed regulations are transmitted to the City Council. Furthermore, the Departments of Environmental Services and Transportation will be jointly responsible in implementing the control of fugitive dust from public roads and public lands. These agreements were confirmed in the letter of May 3, 1979. Therefore, only the need for adopting the proposed particulate matter regulations is an outstanding issue on their enforceability.

With regard to the proposed revision of the visible emissions regulation (Regulation 72-12), EPA advised the District of Columbia that it had not quantified the impact of the proposed regulation on air quality. The District formally responded to EPA on this matter in its letter of May 3, 1979. The response contends that the attainment demonstration for the nonattainment SIP is adequate for the visible emissions revision. Therefore, EPA has reviewed the demonstration in this light. Additionally, a screening analysis performed by EPA indicates that the particulate emissions presented in the demonstration are not significantly changed by the visible emissions revision. Therefore, the attainment demonstration in the proposed nonattainment SIP for particulate matter is not jeopardized by the amendment of the visible emissions regulation; consequently there is no need for a separate attainment demonstration to be performed for the latter. EPA, therefore, finds the visible emissions regulation revision to be acceptable and hereby proposes that it be approved.

Ozone

Description of Submittal

EPA designated the entire District of Columbia as a nonattainment area for ozone. In response to the requirements of Section 110 and Part D of the Act, the District of Columbia officially submitted

a revised SIP on December 26, 1978 for the attainment of the ozone standard.

This SIP contains a set of proposed regulations providing for control of volatile organic compounds (VOC) emissions from stationary and mobile sources. For oxidant nonattainment areas, EPA requires the adoption of Reasonably Available Control Technology (RACT) for eleven (11) VOC source categories. The District regulates six (6) of these categories in its SIP: solvent metal cleaning, tank truck gasoline loading terminals, cutback asphalt, bulk gasoline plants, gasoline service stations (Stage I vapor controls), and storage of petroleum liquids in fixed roof tanks. The District has no sources within the remaining five (5) categories and therefore is not required at this time to have regulations for such categories. The five excluded categories are: surface coating of large appliances; surface coating for insulation of magnet wire; surface coating of cans, coils, paper, fabrics, automobiles, and light duty trucks; petroleum refineries; and surface coating of metal furniture. The District, however, has committed itself to develop required regulations for those VOC categories which would apply to sources in the District of Columbia and for which EPA may issue Control Techniques Guideline (CTG) documents in the future. These may include techniques for control of vapors when refueling motor vehicles (Stage II Vapor Recovery) which the District of Columbia presently regulates.

The portion of the District SIP covering emissions from mobile sources will be discussed separately under the section TRANSPORTATION CONTROL MEASURES that follows later in this notice.

Adoption After Reasonable Notice and Hearing

The District of Columbia held public hearings concerning the provisions of the SIP on October 27, 1978. The revision contains sufficient documentation that the appropriate procedures were followed in providing notice and that public hearings were held in accordance with the requirements of 40 CFR Part 51.4. The regulations in the SIP submittal have not yet been formally adopted by the District of Columbia. The procedural steps in the District's regulatory process are continuing toward their formal adoption to remedy this deficiency. EPA, by letter of April 27, 1979, has notified the Mayor of the District of Columbia of the need for City Council to adopt these regulations expeditiously in order to ensure final EPA approval at the earliest possible date.

Attainment Date

The District of Columbia does not anticipate attaining the ozone standard by the end of 1982. An extension of the deadline for attaining this standard until the end of 1987 has been requested. EPA may approve such a request provided the District demonstrates that attainment by 1982 is impossible, despite the implementation of RACT for the applicable VOC stationary source categories and the implementation of transportation control measures, including a motor vehicle inspection and maintenance program (I/M) as discussed below.

Control Strategy and Demonstration of Attainment

The District submittal was based upon the 0.08 ppm oxidant standard. A new 0.12 ppm ozone standard was promulgated by EPA on February 8, 1979. EPA noted in its review of the submittal, that there was neither a clear commitment to attain the 0.08 ppm oxidant standard, nor was there a commitment to attain the new ozone standard of 0.12 ppm. The plan must contain a commitment to achieve the needed emission reductions necessary for attainment of either of these standards in order to be acceptable.

Emission Inventory

The District of Columbia submitted a 1978 emission inventory for VOC emissions. EPA has requested the District to expand this inventory to include source-specific information for the major point sources. Also, the District must submit the calculations and methods of estimation used in developing the inventory before EPA can evaluate the inventory for accuracy. This is necessary to determine the adequacy of the nonattainment plan.

Reasonable Further Progress (RFP)

The RFP presentation in the District of Columbia submittal used the 6 a.m. to 9 a.m. VOC emissions instead of daily (24-hour) values in determining the required emission reduction to attain the ozone standard. To remedy this deficiency, the District has agreed to adjust the RFP presentation to reflect total daily emissions. Background data including all calculations performed in developing the RFP diagram were not submitted with the plan. However, on May 3, 1979, a new RFP diagram based upon a 24-hour format was submitted and is under review.

Margin for Growth

The District of Columbia incorporated growth factors and projections in its SIP.

However, these growth estimates were not adequately referenced for EPA to evaluate their use. Also, a tracking system for these emission growth rates was omitted from the submittal. The District has submitted references to the sources of the growth estimates in its letter of May 3, 1979. However, the question of a tracking system is still unaddressed. Growth of major point sources will be accounted for by the pre-construction review requirements of the plan. This is discussed above for total suspended particulates.

Reasonably Available Control Technology as Expeditiously as Practicable

The District submitted proposed regulations for its VOC sources. Generally, the RACT regulations are adequate; however, the definition of "emulsified asphalt" needs some clarification. The regulation must state the amount of solvent, if any, that is allowed in these asphalt materials. Generally emulsified asphalt should contain little or no solvent. The District of Columbia has allowed the use of cutback asphalt during the season from October to March. This is acceptable provided the District documents to EPA that no violations of the ozone standard have been recorded during these months.

Inspection and Maintenance (I/M)

An I/M program is required in the District of Columbia. However, as discussed below, the commitment to the program proposed by the District is qualified. The District of Columbia has been notified that for its motor vehicle inspection and maintenance program, the present legislation, Law 1-132, "District of Columbia Exhaust Emission Standards Act," contains language which does not provide for a full legal authority for the implementation of I/M as required under the Clean Air Act. The present provisions contain a determination of equivalency which limits the implementation of I/M based upon actions of the adjoining jurisdictions of the Commonwealth of Virginia and the State of Maryland to implement equivalent I/M programs for their portions of the National Capital Interstate Air Quality Control Region. This language in the regulation limits the District's ability to implement an I/M program and limits EPA in its ability to grant an extension for the attainment of standards. The District has been notified of this in a letter to Mayor Barry on May 2, 1979. This letter requests that the Mayor submit to the City Council legislation which would amend Law 1-

132 to provide for full legal authority to implement I/M. EPA has been advised that the District of Columbia is in the process of removing this qualification. Submittals to EPA of a schedule committing the District to amend its legislation accordingly, along with an acceptable schedule to implement the I/M program, are required to make this portion of the plan adequate; however, submittal of the formal amendment to Law 1-132 is needed for final approval.

The District of Columbia has conditioned its commitment to I/M based on additional contingencies, including "final cost estimates", "District Council budget approval", and "changes in automobile technology that would make I/M obsolete". EPA has notified D.C. that these contingencies should be removed to allow for full implementation of I/M. Also, the SIP should contain a statement that the District has authority to prohibit registration of non-complying vehicles or provide some equally effective mechanism to prevent operation of such vehicles. Finally, the SIP should also include a commitment to the development of I/M emission standards designed to result in a 25% reduction in hydrocarbon and carbon monoxide emissions by 1987.

Enforceability

The general enforceability of the proposed VOC regulations has some noted deficiencies. If a regulations or regulations are not enforceable, credit for the reduction in emissions achieved through the implementation of the regulations cannot be taken. Five points are listed which need to be clarified or revised to ensure the enforceability of the proposed regulation:

(1) There are no compliance schedules contained in any of the VOC regulations;

(2) A test method is needed in Section 8-2:707(j)(1)(F)(ii);

(3) A performance level should be stated for required air pollution control devices under Section 8-2:707(j)(1)(E)(iii);

(4) A definition of "emulsion cleaner" is needed in Section 8-2:707(j)(3)(A); and

(5) The regulations do not specify who is to perform the leak test and issue the certificate under Section 8-2:707(c)(1)(C).

These deficiencies must be addressed, in order to achieve an adequate plan.

Transportation Control Measures (for Ozone and Carbon Monoxide)

Background

The Mayor of the District of Columbia designated the Metropolitan Washington Council of Governments (COG) as the organization of locally elected officials authorized under Section 174 of the Clean Air Act amendments to prepare the transportation control measure portion of the ozone and carbon monoxide implementation plans for the District of Columbia. In fulfillment of its responsibilities, COG, with extensive public and elected official involvement, produced a document dated November 29, 1978, entitled "Washington Metropolitan Air Quality Plan for Control of Photochemical Oxidants and Carbon Monoxide." Chapters One and Two of this COG plan and its Appendices A through G have been incorporated by the District of Columbia into its State Implementation Plan. Chapters Three and Four were not included in the plan. (The District substituted for Chapter Three its own more specific work developing the REP diagrams. Chapter Four which contained the proposed COG work program was omitted due to its preliminary nature.) A work program must be made a part of the SIP.

The District believes the success of the District Implementation Plan is contingent on the implementation of five basic strategies:

(1) The continued construction of the Metrorail transportation system in the Metropolitan Washington region.

(2) A continued reduction in emissions as a result of the Federal Motor Vehicle Control Program.

(3) A program for inspection and maintenance of motor vehicles in the District of Columbia.

(4) Enforcement of existing and new regulations for the control of volatile organic substances from stationary sources.

(5) The expansion of transportation control measures to reduce pollution from the overall regional transportation system.

The District of Columbia Implementation Plan describes the planning process and the specific programs for achieving the needed emission reductions. As previously stated, the District does not anticipate attaining the ozone or the carbon monoxide standard by December 31, 1982, and therefore, has requested an extension of the attainment date for the ozone and the carbon monoxide standards to the end of 1987. Also as

noted, this requires a commitment and schedule to implement an I/M program, as well as further analysis and subsequent adoption of necessary transportation control measures.

In reviewing the transportation control plan measure portion of the District of Columbia's SIP, EPA solicited comments from the U.S. Department of Housing and Urban Development and U.S. Department of Transportation.

The Department of Housing and Urban Development's comments to EPA supported the proposed transportation control measures since they foster improved air quality in the District and complement the National Urban Policy.

The Department of Transportation submitted comments concerned mainly with the compatibility of scheduling, funding, and implementation of the proposed transportation control measures with other ongoing programs. EPA will evaluate these comments along with others before taking final action on the SIP.

Evaluation of Plan

EPA, in its letter of March 12, 1979, transmitted comments on the transportation control measure portion of the District of Columbia SIP. Meetings were subsequently held between EPA and the District agencies concerned to review the comments in detail and to resolve the issues raised by those comments. As a result, supplemental information was submitted to EPA on April 20, 1979 from the District of Columbia. This information addressed EPA's questions concerning the transportation planning and programming process used by the District of Columbia. The District of Columbia Department of Environmental Services submitted further information on May 3, 1979 concerning the remaining transportation issues. EPA is still reviewing this information to determine its adequacy. A major issue needing further resolution is the inspection and maintenance program which requires action on the part of the District of Columbia City Council.

Presented in the following paragraphs are summaries of comments on the District of Columbia submittal, and subsequent actions as related to EPA's checklist for review of transportation portions of 1979 submittals that are not addressed in other portions of this notice.

The Emission Inventory for carbon monoxide used by the District of Columbia was found to be adequate. However, the inventory for hydrocarbons was not adequate, since the rationale for using the 6:00 a.m. to

9:00 a.m. emissions of hydrocarbons instead of the preferable total 24-hour daily emissions had not been presented. In its May 3, 1979 letter, the District submitted a new RFP diagram based on the format. This diagram is presently under review. The District is required to submit annual reports to assess the progress of the necessary emissions reductions. Furthermore, COG, as the Section 174 agency, must file progress reports in accordance with the Section 175 grant requirements.

A schedule for comprehensive alternative analysis was endorsed by the COG Transportation Planning Board on December 20, 1978 and submitted to EPA and the Urban Mass Transportation Administration for initial funding under Section 175 of the Clean Air Act. After supplementary information was submitted by COG, the initial amount of Section 175 money was granted on March 30, 1979 for the development of a detailed work program for alternatives analysis as well as the commencement of initial tasks for alternatives analysis. Thus, the outline for comprehensive analysis of alternatives has been submitted and a more detailed analysis is currently underway. Through its membership in COG, the District has endorsed this submittal. This schedule should be adopted to meet the requirements of Section 110(a)(3)(D), 172(b)(2) and 172(11)(c) of the Clean Air Act.

The process for consultation involving the public, interest groups, and elected officials during the preparation of this plan as documented in the COG Air Quality Plan is adequate. That plan defines transportation/air quality issues, establishes the planning process, and outlines the development of an alternatives analysis.

Contingent upon continuation of Federal funding support, the District intends to commit resources necessary to carry out the elements of the revised implementation plan. The Departments of Environmental Services and Transportation will be the primary District participants in the implementation and enforcement of the plan. In addition, the Unified Planning Work Program has been modified by the COG Transportation Planning Board to include integrated transportation and air quality activities and submitted to the Urban Mass Transit Administration and EPA, committing to the first year of this process. The commitment to resources described in this submittal is adequate.

The District of Columbia has noted that it has made past commitments to establish, expand and improve public transportation to meet basic

transportation needs and will continue to do so in the future. The District specified that this commitment is contingent on the continued operation and expansion of the Metrorail system. This commitment appears to be adequate.

In preparing its plan, the Metropolitan Washington Council of Governments recommended 28 transportation measures as appropriate for consideration in the 1979 SIP submittal. These measures were selected from an initial list of 70 measures identified as having potential for reducing transportation-related emissions. The Metropolitan Washington Council of Governments has proposed an analysis of alternatives which will review all 70 of the measures to be considered for possible inclusion into the State Implementation Plan.

The District of Columbia Department of Transportation has proposed commitments to study and/or implement 14 of the 28 COG measures. They are:

1. Continued Construction of Metrorail—To implement the District of Columbia portion of the Interim Contribution Agreement for financing the construction of a 60-mile Metro rail system.

2. Institute Fair Market Commercial Parking Rates for Government Employees—To prepare and submit to D.C. Council draft legislation to require the charging of commercial parking rates for government employee parking spaces.

3. Eliminate All Day On-Street Non-Resident Parking Where Appropriate—To continue to implement the District Residential Parking Program.

4. Build/Designate Exclusive Lanes or Areas for High Occupancy Vehicles—To identify and implement bus lanes and bus priority street improvements within available resources.

5. Build Additional Bikeways and Bicycle Paths—To seek funding and to construct as funding becomes available a system of arterial bikeways and bikelanes in the District of Columbia.

6. Implement Fixed Route Minibus or Semi-demand Responsive Transit System—To study the possibility of instituting neighborhood small bus services within the District of Columbia to provide feeder systems to Metro rail.

7. Install Additional Bicycle Storage Facilities—To work with the Washington Metropolitan Transportation Authority to provide additional bicycle storage facilities at Metro stations within the District of Columbia. To designate secure weather-protected bicycle spaces and encourage

their installation in the District of Columbia.

8. Develop a Program for Instituting a Regional Tax to Support Transit Operations—To prepare and request D.C. Council to approve legislation as the District's part of a regional taxing program to support transit.

9. Develop a Coordinated Private and Public Sector Parking Management Policy—To prepare and request D.C. Zoning Commission approval of zoning regulation amendments to ensure that parking standards and policies complement transit use. To implement the Improved Parking and Traffic Enforcement Plan in the District of Columbia.

10. Provide for Additional Pedestrian Facilities and Eliminate Barriers to Pedestrian Flow—To strengthen the policy emphasis throughout existing D.C. Department of Transportation programs to include pedestrian facilities wherever possible and to continue the present sidewalk replacement and curb ramp improvement programs through FY 1980 as resources permit.

11. Add Signal Preemption Devices for Transit Vehicles Where Appropriate—To assist the Northern Virginia Transportation Commission in studying the use of bus signal preemption devices.

12. Improve (Traffic) Signalization in the Region—To study the District's present radio controlled signal system for cost effectiveness compared to a computer signal system as project funds are made available from the U.S. Department of Transportation.

13. Develop a Regional Program for the Withdrawal of Interstate Highway Funds With Funds to be Used For Transit Construction—To continue to transfer Interstate Highway funds to be used for transit construction as the District of Columbia deems possible.

14. Encourage Additional Corridor Studies for Implementation of Transportation System Management Incentives—To identify and study selected areas and corridors in the District of Columbia for maximizing efficiency of traffic arterials and protecting the function of local streets as federal funding and District resources permit.

In addition, the district unilaterally proposed a Public Education Program, a Ride-sharing Strategy, and a Clean Vehicle Program. Details of these transportation measures appear in Appendix A of the District of Columbia plan. The transportation measures have been recommended for adoption by the District City Council.

EPA requested more clarification and justification for the process of selecting or rejecting transportation control measures. EPA will concur in the rejection of any measure only after sufficient evidence is provided justifying such action.

The District of Columbia has requested the revocation or revision of various provisions of the existing SIP which were promulgated by EPA. This involves measures contained in Title 40 of the Code of Federal Regulations as listed below. In addition, the District, in its December 26, 1978 submittal, requested EPA to withdraw the Bus Priority Plan previously submitted on September 30, 1977. This was done on March 2, 1979 (44 FR 11798 [1979]). As a result of legislative, administrative, and judicial actions, the original SIP containing these various measures has been significantly altered. Furthermore, the December 26, 1978 submittal contains proposed measures which, when adopted, will replace many of these measures and establish new dates for implementation. EPA is requesting public comment upon the anticipated action of revoking or revising the below-listed sections, making them meaningful and consistent with the proposed plan.

PART 52 [Amended]

Approval Status (Heavy Duty Vehicles), Section 52.472(c), (revoke).
 Legal Authority, Section 52.474, (revoke).
 Control Strategy, Section 52.483, (revise).
 Compliance Schedules, Section 52.476(c), (revoke).
 Identification of Plan, Section 52.470, (revise).
 Parking Surcharge Measures, Section 52.476(d), (revoke).
 Elimination of Free On-Street Commuter Parking, Section 52.476(e), (revoke).
 Exclusive Bus Lanes, Section 52.476(h), (revise).
 Review of New Sources and Modifications, Section 52.478 (revoke).
 Management of Parking Supply, Section 52.493, (revoke).
 Source Surveillance, Section 52.479, (revise).
 Attainment Dates for National Standards, Section 52.481, (revise).
 Control Strategy: Carbon Monoxide and Photochemical Oxidants (Hydrocarbons), Section 52.483, (revoke).
 Inspection and Maintenance Program, Section 52.490, (revoke).
 Bicycle Lanes and Storage Facilities, Section 52.491, (revoke).
 Medium Duty Air/Fuel Control Retrofit, Section 52.492, (revoke).
 Heavy Duty Air/Fuel Control Retrofit, Section 52.494 (revoke).
 Oxidizing Catalyst Retrofit, Section 52.495, (revoke).
 Vacuum Spark Advance Disconnect Retrofit, Section 52.496, (revoke).

Summary of Critical Issues

Three elements of the District of Columbia SIP represent major deficiencies which may affect its eventual approvability without appropriate action and/or commitments by the District. These are:

(1) The regulations and transportation measures are only proposed. They have not been formally adopted by the District of Columbia City Council and therefore are not enforceable.

(2) The commitment to the I/M program presently is qualified in that it is contingent on the State of Maryland and the Commonwealth of Virginia adopting equivalent programs in their portions of the National Capital Interstate AQCR.

(3) The language of the proposed VOC regulations is such that their enforceability is uncertain.

General Comments

Section 172 (b)(9) of the Act requires an identification and analysis of air quality, health, welfare, economic, energy and social effects of the plan provisions required by Section 172 and a summary of the public comment on such analysis. EPA has noted that this analysis is adequate at this time for the ozone plan, because a more thorough analysis is to be done in preparing the plan to be submitted by July 1, 1982. For the total suspended particulate plan, EPA has notified the District of Columbia that the required analysis was not included in the submitted plan. The District has verbally informed EPA that the documents which contain the analysis would be incorporated into the plan by reference. EPA is still awaiting receipt of the written confirmation referencing the required documents.

Requirements Other Than Part D

On November 14, 1978, the District of Columbia submitted information required by Section 124 of the Clean Air Act. This information concluded that an adequate supply of complying fuel exists to meet the current emission limitations in the District's Implementation Plan. EPA reviewed the information and agrees with the report findings and proposes to approve them.

Conclusion

The measures proposed today when formally adopted, by the District of Columbia City Council will be in addition to, and not in lieu of, existing SIP regulations. The present emission control regulations of any source will remain applicable and enforceable to prevent a source from operating without controls or under less stringent controls,

while it is moving toward compliance with the new regulations (or, if it chooses, challenging the new regulations). Failure of a source to meet applicable pre-existing regulations will result in appropriate enforcement action, including assessment of non-compliance penalties. Furthermore, if there is any instance of delay or lapse in the applicability or enforceability of the new regulations, because of a court order or for any other reason, the pre-existing regulations will be applicable and enforceable.

The only exceptions to this rule are cases where there are conflicts between the requirements of the new regulations and the requirements of the existing regulations such that it would be impossible for sources to comply with the new regulations. In these situations, the State may exempt sources from compliance with the pre-existing regulations. Any exemption granted would be reviewed and acted on by EPA either as part of these proposed regulations or as future SIP revisions.

The District of Columbia Department of Environmental Services has requested that EPA propose this plan revision containing the proposed amended regulations and solicit public comments at this time. Therefore, the public is invited to submit to the address stated above comments on whether the proposed amendments to the District of Columbia air pollution regulations should be approved if and when formally adopted by the District of Columbia City Council, as a revision of the District of Columbia SIP. If the regulations which are subsequently adopted by the District City Council do not significantly differ from those submitted with the proposed SIP revision, then EPA may take final action without opportunity for further comment.

Finally, it is the intention of the Regional Administrator, EPA Region III to propose as a future SIP revision only those regulations which may subsequently be adopted by the District of Columbia, and which significantly differ from the proposed rules which were included in the submittal of December 26, 1978.

The Administrator's decision to approve or disapprove the proposed revisions will be based on the comments received and on a determination of whether the amendments meet the requirements of Part D and Section 110(a)(2) of the Clean Air Act and 40 C.F.R. Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. §§ 7401-7642)

Dated: June 1, 1979.

George D. Pence,
Acting Regional Administrator.

[FR Doc. 79-19837 Filed 6-25-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Part 116d]

Grants to State Educational Agencies to Meet the Special Educational Needs of Migratory Children

AGENCY: Office of Education, HEW.

ACTION: Correction, proposed rules.

SUMMARY: In the notice of proposed rulemaking published in the *Federal Register* on May 14, 1979, Page 28187, a technical correction needs to be made. The document is corrected as follows: On Page 28187, first column, in § 116d.2, paragraph (a)(1), which reads "The Education Division General Administrative Regulations (EDGAR) in part 100a (Direct Grant Programs) and Part 100c (Definitions)" change "part 100a (Direct Grant Programs)" to read "part 100b (State-Administered Programs)."

FOR FURTHER INFORMATION CONTACT: Mr. John Ridgway, telephone (202) 245-2222.

Dated: June 19, 1979.

(Catalog of Federal Domestic Assistance No. 13.429, Educationally Deprived Children-Migrants)

L. David Taylor,
Deputy Assistant Secretary for Management
Analysis and Systems.

[FR Doc. 79-19773 Filed 6-25-79; 8:45 am]

BILLING CODE 4110-02-M

[45 CFR Parts 119 and 120]

State Leadership Programs

AGENCY: Office of Education, HEW.

ACTION: Correction of Proposed Rules.

SUMMARY: This document corrects the date by which comments must be received concerning a proposed rule on State leadership programs that appears on page 28258 of the *Federal Register* of May 14, 1979 (44 FR 28258).

DATES: Comments must be received on or before July 13, 1979.

ADDRESSES: Comments should be sent to: David G. Phillips, Division of State Educational Assistance Programs, U.S. Office of Education, 400 Maryland Avenue, S.W. (ROB-3 room 3010), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Mr. David Phillips, telephone (202) 245-2495.

SUPPLEMENTARY INFORMATION: In Volume 44, No. 94 in 44 FR 28258 in the first column under the heading DATES, change "All written comments must be received (on or before the 45th day after publication of this notice in the *Federal Register*)" to read: " * * * on or before (the 60th day after publication of this notice in the *Federal Register*)" The end of the comment period is July 13, 1979.

Dated: June 19, 1979.

L. David Taylor,
Deputy Assistant Secretary for Management,
Analysis and Systems.

[FR Doc. 79-19820 Filed 6-25-79; 8:45 am]

BILLING CODE 4110-02-M

[45 CFR Part 161d]

Preschool Partnership Program

AGENCY: Office of Education, HEW.

ACTION: Correction Notice.

SUMMARY: The Notice of Proposed Rulemaking for the Preschool Partnership Program was published in the *Federal Register*, Volume 44, No. 111, on June 7, 1979. This notice changes the location of the public meeting to be held in Kansas City, Missouri. The change is being made to provide access to the meeting by the handicapped.

ADDRESSES: The location of the public meeting in Kansas City, Missouri is changed—

From: Board of Education Building,
Auditorium, 1211 McGee Street,
Kansas City, Missouri.

To: New Federal Office Building, Room
140, 601 East 12th Street, Kansas City,
Missouri.

FOR FURTHER INFORMATION CONTACT: Dr. Harold Blackburn, Region VII,
Kansas City, Missouri, (816) 374-2276.

Dated: June 19, 1979.

Ernest L. Boyer,
U.S. Commissioner of Education.

[FR Doc. 79-19763 Filed 6-25-79; 8:45 am]

BILLING CODE 4110-02-M

INTERSTATE COMMERCE COMMISSION

[49 CFR Part 1121]

[Ex Parte No. 274 (Sub-No. 2)]

Abandonment of Railroad Lines and Discontinuance of Service

AGENCY: Interstate Commerce
Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: On May 30, 1978, the United States Court of Appeals for the Seventh Circuit rendered a decision in *Chicago & North Western Transportation Company et al v. United States, et al.*, 582 F.2d 1043, as modified July 31, 1978, cert. denied (Dec. 4, 1978), which invalidated in part the Commission's regulations governing the Abandonment of Railroad Lines and Discontinuance of Service, 41 FR 48520 as amended 42 FR 25327. The Court's decision invalidated that portion of the regulations which authorizes the Commission to postpone certificates of abandonment beyond the statutory six-month negotiation period in the event parties fail to execute a financial assistance agreement. The Court's decision also affects four areas of the national subsidy standards, which are presently set forth in Subpart D of the Regulations. These areas are 1) current cost of equipment, 2) cost of equity capital in determining return on equipment, 3) cost of capital for railroads in reorganization, and 4) effect of income taxes.

The Court's findings in these four areas affect the determination of costs and return on value for subsidy purposes only, and not for abandonment purposes. To reflect the difference in the abandonment and subsidy calculations, the Commission proposes to amend the regulations to include a new Subpart E—Standards for Determining Rail Continuation Subsidy Payments. The new Subpart E will incorporate the standards set forth in Subpart D, with the exception of certain elements changed to conform with the Court's decision. Subpart D will enumerate the standards for determining costs and revenues for deciding the merits of abandonment applications.

The Commission seeks comments from all interested persons on the proposed amendments, which are

intended to bring the Regulations into compliance with the Court's decision.

In drafting the proposed amendments, the Commission has considered the comments received in response to its notice published September 15, 1978, at 43 FR 41245. That notice sought comments on the best means to bring the Regulations into compliance with the Court's decision.

DATES: Comments should be filed on or before July 25, 1979.

ADDRESSES: An original and 15 copies of the comments should be sent to: Office of Proceedings, Room 5414, Interstate Commerce Commission, Washington, D.C. 20423. Attention: Ex. Parte No. 274 (Sub-No. 2).

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202-275-7564, or James Wells 202-275-0833.

SUPPLEMENTARY INFORMATION: The decision of the Court of Appeals for the Seventh Circuit has two major consequences. It affects the ability of the ICC to postpone certificates of abandonment and changes the present method for determining the costs of subsidizing rail service.

First, the Court found that the Commission lacked jurisdiction to postpone abandonment certificates beyond the six-month negotiation period prescribed in section 1a(6)(a) of the Interstate Commerce Act (recodified at 49 USC 10905). This section authorizes the ICC to postpone certificates for a period of up to six months to enable parties to execute a subsidy or purchase agreement for a line for which the ICC has made a finding permitting abandonment.

To address the situation in which a railroad refuses to enter a financial assistance agreement, the Commission promulgated § 1121.38(i)(2) of the Regulations. This section authorized the Commission in such a situation to:

- (i) Issue a final certificate at the end of the 6-month period * * *;
- (ii) Reopen the underlying abandonment or discontinuance proceeding to reevaluate the application on its merits in light of the financial assistance offer;
- (iii) Direct the carrier to continue to provide rail freight service for an additional year in return for compensation to be computed by the Commission [in accordance with certain standards] * * * or
- (iv) Take whatever action is appropriate in the particular situation and in conformity with section 1a of the Act. Such action may include but not be limited to setting the matter for

arbitration subject to the final review of the Commission.

The Court found subsections (ii), (iii), and (iv) invalid since those provisions would permit the Commission to postpone certificates beyond the six month negotiation period.

The Commission sought review of the Court's decision by the Supreme Court. The Commission maintained that it had authority to reopen an abandonment proceeding on the basis of substantially changed circumstances, if it found at the end of the six-month negotiation period that a railroad refused to accept an offer of financial assistance that complied with the statutory standards. On December 4, 1978, the Supreme Court denied the Commission's petition. As a result, the finding of the Seventh Circuit stands and the Regulations must be amended to delete paragraphs (i)(2) (ii), (iii) and (iv) of § 1121.38.

Second, the Seventh Circuit held that for subsidy purposes: (1) the "current cost" of cars, locomotives, and equipment means replacement value for purposes of depreciation; (2) the regulations must reflect the cost of equity capital in determining return on equipment; (3) the regulations must reflect the cost of equity capital for railroads in reorganization; and (4) the Commission must consider the effects of Federal and State income taxes on the equity capital invested in equipment and the equity capital for railroads in reorganization. Since the Court's decision affects only the treatment of costs for subsidy purposes, the Commission will segregate its regulations governing the calculation of avoidable costs. Subpart D will set forth the Standards for deciding the merits of abandonment, while new Subpart E will set forth Standards for determining rail continuation subsidy payments.

The following discussion will discuss separately each of the four subsidy areas affected by the Court's decision.

I. Current Cost of Equipment

Section 1a(11)(a) of the Interstate Commerce Act (recodified at 49 U.S.C. 10905) provides that the avoidable cost of subsidizing a line means all expenses a carrier incurs by virtue of not being able to discontinue service or abandon a line. It further provides that these expenses include the current cost of freight cars, locomotives and other equipment used in providing the subsidized service. The Commission's standards presently define current costs for depreciation purposes as the average book cost of the equipment currently in use throughout the railroad's system, assigned on a unit basis to the

equipment used on the branch line. The court, however, interpreted current cost to mean replacement cost, i.e. the cost of purchasing new equipment. Proposed §§ 1121.52 (a) and (n) and 1121.53 (a)-(e) of Subpart E reflect the Court's definition in calculating the depreciation cost of equipment.

The Court declined to rule on whether replacement cost, rather than book value, is the proper basis on which to calculate return on investment in equipment. The Court directed the Commission to review this issue. The Commission proposes to adopt replacement value in determining the return on investment in equipment used to provide subsidized service.

The premise of the Court in adopting replacement value for depreciation purposes is that the railroads will have to buy new equipment. Because depreciation must be based on this premise, the Commission believes that the return on value should also reflect the replacement value of equipment. Depreciation is a recoupment of expended capital which represents an investment in the equipment. Return on value is the amount which must be earned on the investment in the equipment. Therefore, the same investment base should be used for calculating both depreciation and return.

Freight Cars

With respect to freight cars, the present procedure will be retained, but with the elements of depreciation and return on value calculated on a replacement basis for both on- and off-branch costs. The on-branch costs will now reflect the average cost per day and per mile of each individual car type that actually serves the branch. This differs from the current procedure, which uses a single average cost per day and per mile for all cars regardless of type. The off-branch costs will still be calculated by applying Rail Form A, but the depreciation expense will be calculated on the replacement value of the average size of the car fleet owned during the year.

On-branch depreciation

The proposed § 1121.52(a) of Subpart E will remove reference to Account 62-22-00. The term "Depreciation-freight cars" will be amended to reflect the amount calculated using replacement value.

Under the new procedure for subsidy determinations, the replacement cost for each car type will be determined by using a recent purchase price or the manufacturer's quoted price of that particular type of car. The railroad will

be required to substantiate the amount under either method. The value per car will be applied to the average number of cars of that particular type owned by the railroad during the year. The replacement cost will then be multiplied by the carrier's depreciation rate for that type of car as reported in the latest annual report to the Commission or from company records. The annual depreciation developed using the replacement value will be inserted into the cost per day and cost per mile calculations used to determine on-branch car costs for that type of car. The procedure for developing the depreciation cost must be used for each type of car on the branch.

On-branch return on value

Section 1121.52(a)(2) will reflect the replacement value of freight cars used to serve the branch. The rate of return that is applied to the replacement value of these cars will include the elements of debt capital, equity capital, and the effects of income taxes on these elements.

In computing the return on value for each type of car serving the branch line, the replacement value will be determined by using the same procedure described for calculating the depreciation cost. The rate of return that will be applied to the replacement value of a carrier's current inventory for a particular car type is described in Part II of this notice.

To calculate the return on value for each car type, the replacement value will be multiplied by the rate of return determined under the new procedure in Part II of this notice. This amount will be included in the cost per car day calculation, and then assigned to the branch line based on the number of car days that type of car spends on the branch during the subsidy period.

Off-branch depreciation

The off-branch costs for freight cars, which will be calculated under § 1121.52(f), uses replacement value in determining depreciation costs.

The off-branch cost for Class I railroads currently is calculated using the Rail Form A cost formula. The depreciation costs included in this formula normally are those costs recorded in the annual report Form R-1. These costs will no longer be used. In their place, depreciation costs based on the replacement value of the carrier's freight car fleet will be used. The replacement value of the carrier's car fleet will be calculated by using the same procedure that was used to determine the on-branch replacement

value. This procedure will be repeated for each type of freight car in the carrier's car fleet, whether or not that car-type will be used to serve the branch. The replacement value for all types of cars will be necessary for the application of Rail Form A.

The new depreciation costs to be included in the Rail Form A will be calculated by applying the depreciation rate for each car type in the Annual Report Form R-1 or company records to the replacement value for each car-type.

In calculating the off-branch costs for Class II railroads, the amount of freight car depreciation recorded in the Annual Report Form R-2 will be replaced by the amount calculated using the procedure set forth above for Class I railroads. The revised amount will be included in the calculation of the system variable expense under proposed § 1121.52(f)(4)(i).

Off-branch return on value

The subsidy regulations governing off-branch costs for Class I railroads will be amended to use replacement value to determine the return on value for freight cars. The replacement value to be used in determining this return will be the same as that used to determine the replacement value of freight cars for depreciation purposes.

To calculate the return on value for each car type, the replacement value will be multiplied by the rate of return determined under the new procedure in Part II of this notice. This revised return on value will replace the amount currently included in Rail Form A.

Locomotives

In amending the present subsidy regulations to reflect the new definition of current cost of equipment, locomotives must be treated differently from freight cars. The current cost of locomotives affects only the on-branch costs. The cost of providing service to a line operated under subsidy extends only to equipment that is used either to haul the branch line traffic or provide motive power to handle the traffic while it is on the subsidized line. The freight car costs of the branch must reflect the replacement costs of freight cars moving beyond the branch because that equipment remains dedicated to the movement of a branch line shipment. However, new locomotives are not necessary to move freight trains over the balance of the carrier's system simply because those trains may contain one or more cars from a subsidized branch line. Furthermore, a railroad's entire locomotive fleet need not be replaced simply to haul the subsidized branch

line traffic on other parts of the carrier's system.

On-branch depreciation

In calculating the depreciation expense for locomotives used to provide service on the branch, the cost base will be the current purchase price for that particular type and size locomotive. If more than one type or size locomotive will be used on the branch, the hours incurred in serving the branch line must be maintained separately for each class or type of locomotive which will serve the line during the subsidy period.

Currently the regulations use the amounts recorded in the annual report, separated between yard and road, with a further separation between diesel and other. This amount is assigned to the branch on the ratio of hours on the branch to the total hours on the entire system for that particular type of locomotive.

Section 1121.53(a)-(e) will adopt the following procedure. The current substantiated purchase price for the particular size and type of locomotives to be used on the branch will be multiplied by the depreciation rate for locomotives contained in the carrier's latest annual report or in company records. This will develop the annual depreciation expense for each type of locomotive serving the branch. This expense will be assigned to the branch line based on the ratio of the locomotive unit hours on the branch to the system average locomotive unit hours per unit for the applicable category of locomotive. The railroad will determine the average locomotive unit hour per unit for each of the four categories designated in Section 1121.53(d) of the regulations. The ratio developed from this step will then be applied against the annual depreciation expense calculated on replacement cost.

On-branch return on value

The return on investment for locomotives, § 1121.52(b), will recognize (1) the replacement cost of the locomotives used to provide service on the branch line and (2) the inclusion of both debt and equity capital and the effect of income taxes. The return on investment will be calculated separately for each classification or type of locomotive used on the branch line. The replacement cost used in determining the return on investment will be the current purchase price for that particular type and size locomotive.

The rate of return, determined in accordance with the procedure outlined under Part II of this notice, will be applied to the replacement cost of each

type or class of locomotive which will serve the branch line during the subsidy period. This will develop the annual rate of return for each class or type of locomotive.

Currently, § 1121.42(h) assigns the return on value to the branch line on a ratio of locomotive unit hours on the branch to the system locomotive unit hours for each of the four categories of locomotives. Locomotives are separated between yard and road, and between diesel and other.

The amended procedure for subsidy determinations will continue to use locomotive unit hours as the basis of assignment and will recognize the four major locomotive categories. The railroad will determine the average locomotive unit hours per unit for each of the four major categories. The return on value will be assigned to the branch on the ratio of hours on the branch to the average system locomotive unit hours per unit for the applicable locomotive category. This ratio will then be applied to the annual return on value for each type or classification of locomotive that serves the branch.

II Cost of Equity Capital in Determining Return on Equipment

The term "avoidable cost" encompasses capital costs as well as operating expenses. To reflect this, the new subsidy standards will provide for a return on investment in locomotives, § 1121.52(b), and freight cars, § 1121.52(a)(2) and (f). In computing this figure, the present standards use the rate of interest that applied to the latest equipment trust certificates, conditional sales agreements, or equipment lease agreements entered into by the railroad to purchase or lease new locomotives and freight cars. This formula provides a single rate of return based on the cost of debt capital. The Commission believed that this approach would furnish an effective return on equity capital, and the carriers had suggested no specific methods of measuring equity capital costs. The Court ruled this present approach invalid because it does not provide for equity capital which, like debt capital, is invested in locomotives and freight cars.

We now propose a more specific breakdown of capital costs which will account for equity as well as debt capital. This breakdown will conform to generally accepted financial and economic theory consistent with the opportunity cost concept of cost of capital. The concept of opportunity cost recognizes that subsidizers should compensate railroads for denying them the opportunity to invest their funds in

the financial market place. The Commission believes that this is the best approach given the complexity of calculating the cost of equity capital.

The calculation of the cost of capital will be made by taking the current after-tax cost of capital, weighted to the actual railroad capital structure, and adjusted for the effects of the combined effective Federal and State income tax

rate. The effects of income taxes will be discussed in depth in Part IV of this notice. The application of taxes to the cost of capital shall be universally applied whenever the cost of capital is used in this report. This application uses the effective tax rate to adjust the cost of debt to an after-tax number. The model below shows how the current cost of capital will be determined:

Current Cost of Capital Model Based on Opportunity Cost Concepts

	Actual capital structure	Before-tax capital cost	After-tax capital cost	Weighted after-tax capital cost
Debt	XX%	XX%	XX%	XX%
Equity	XX%	Not applicable	XX%	XX%
Total	100%			XX%

The first step for the railroad will be to determine its permanent capital structure ratio of debt and equity such that the two numbers total 100 percent. This will be the actual capital structure of the railroad receiving the subsidy payment and shall be adjusted to include preferred stock in the equity portion, if appropriate.

Next, the costs of both debt and equity will be determined. This step will require an additional adjustment, since the cost of debt is pre-tax and the cost of equity is after-tax. This adjustment will be made by multiplying the current cost of debt by the quantity "one minus the Federal and State income tax rate actually paid by the railroad". This will yield an after-tax current cost of debt consistent with the approach used to determine the cost of equity. The amount will approximate that which a carrier would earn in the financial market place if it did not have to commit funds to the purchase of additional equipment.

The current cost of equity shall be developed from market data or comparable earnings of railroads or other industries with similar operating risk characteristics. This cost of equity is not a simple "cost" in the traditional accounting sense, but includes an element of subjectivity in its calculation. Two things, about the cost are certain, however. First, it is more expensive than the cost of debt because of the added variability of return (i.e., risk). Second, it is defined on an after-tax basis since it is based on and derived from net earnings. The important point here is that no adjustment for taxes is needed for the cost of equity since it is already an after-tax number.

The final step involves weighting the respective after-tax costs by the actual debt and equity capital structure ratios. The after-tax cost of debt is multiplied by the capital structure ratio for debt, and the after-tax cost of equity is multiplied by the capital structure ratio for equity. The resulting debt and equity amounts are combined to determine the current cost of capital used in the calculation of return on investment for equipment.

III. Cost of Capital for Railroads in Reorganization

Under present § 1121.45(b) of the Regulations, the reasonable return of a railroad in reorganization is the average yield on all railroad bonds for the week immediately preceding the execution of the subsidy agreement, as quoted by any standard investors' service. The Court held this approach invalid for subsidy determinations because it does not reflect the cost of equity capital.

The Association of American Railroads suggests that the proper determination of the cost of capital for railroads in reorganization is the mean cost of capital of railroads not in reorganization, as provided by Section 1a(11) of the Interstate Commerce Act (recodified at 49 U.S.C. 10905). Because railroads in reorganization may have difficulty in obtaining the data necessary to substantiate their calculations, the Commission is providing an optional method for determining this mean cost of capital. The optional procedure will provide a low cost alternative to railroads in reorganization which do not wish to

incur the expense of preparing a justification statement.

Under the optional procedure, the mean cost of capital would be determined by extracting from a representative sample of railroads not in reorganization all of the following data:

(1) An average capital structure ratio of debt and equity capital, adjusted to include preferred stock, if appropriate;

(2) An average current cost of debt derived from investor's services reports such as Moody's, Standard and Poor's, etc.;

(3) An average cost of equity obtained from either a market-data based method or a comparable earnings method; and

(4) An average effective Federal and State tax rate.

Once this data is gathered, a railroad can adjust the current cost of debt (a before-tax number) to an after-tax cost of debt by multiplying the debt cost by the quantity "one minus the effective tax rate". When the after-tax cost of debt and equity are obtained, these numbers can be multiplied by the appropriate capital structure ratio to obtain the average weighted after-tax cost of capital. These two numbers are then combined to arrive at the mean cost of capital for railroads not in reorganization.

IV. Effect of Income Taxes

The railroads asserted to the Court that the existing regulations fail to consider the effects of Federal and State income taxes in two respects: 1) the return on investment in locomotives and freight cars, and 2) the return on value for railroads in reorganization. The Court directed the Commission to reconsider its treatment of the effects of income taxes and to explain its reasons if it adheres to its present position.

The Court also directed the Commission to address the criticism that using the effective tax rate for a railroad's overall operation does not adequately measure the effect of taxes upon the equity portion of return on investment in a subsidized line. The railroads assert that the use of effective tax rate is improper because it reflects tax effects attributable to non-branch line operations, causing the railroad to partially subsidize branch line service through its other operations.

Effect of Income Taxes on Equity Capital

The regulations as presently drafted do not specifically allow for consideration of the cost of equity capital in determining return on equipment and return to carriers in reorganization. In addressing the effects

of income taxes, the Commission acknowledges the use of both debt and equity capital in determining the current cost of capital. This is necessary to reflect all the sources of capital available for financing new investments.

To account for the effects of income taxes, the Commission will amend the method for calculating the current cost of capital by applying a weighted average to the effective after-tax costs of debt and equity.

In the case of debt capital, the cost of debt should be adjusted to an after-tax basis to account for the fact that interest payments are a deductible expense (tax benefit). The cost of equity requires no adjustment for taxes, however, since it is based on net after-tax earnings.

The procedure for weighing debt and equity capital is explained in Part II of this notice. The percentage number obtained from weighing the debt and equity capital will be multiplied against the valuation of properties as reflected under §1121.54, *Valuation of Rail Properties*. This calculation will account for the effect of income taxes on both the return on the value of the properties of railroads in reorganization and the return on value of the equipment used to provide service to the branch line.

Another question raised by the Court is whether the regulations take into account the effect of foregone tax benefits. The standards have always included foregone tax benefits in determining the rail continuation subsidy payments. Foregone tax benefits are included as an element of value under the new §1121.54(b) (formerly §1121.44(b)) upon which a return is calculated. The return allowed on the foregone tax benefits is calculated at the same rate as that applied to the working capital and the net liquidation value of the rail properties. This compensates the railroad for not being able to realize the deduction in income taxes that would result if the properties were abandoned.

Use of Effective Tax Rate

To apply the statutory tax rate to the branch line as suggested by the railroads, would assume isolation of the branch from the balance of the system and from the benefit of any tax credits. This would be the only instance in which the branch line would be treated in isolation. For instance, a portion of the costs assigned to branch line traffic is associated with the movement of that traffic over other lines of the carrier. Those costs are system averages reflecting the costs associated with operation of the entire system. The railroads do not question this

assignment and in essence agree that all the shipments should be expensed on the same system-wide basis.

The Commission cannot accept the railroad's position that the branch line is not a part of the carrier's system where tax benefits are concerned. For cost purposes the branch is considered an integral part, reflecting the operational cost characteristics of the entire railroad, and we see no sound reason for using a different approach regarding taxes. We shall continue to employ the effective tax rate, reflecting the actual taxes paid by the railroad as a result of overall operations.

This is not a major Federal action significantly affecting the human environment, energy efficiency and energy consumption.

Decided: March, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,
Secretary.

Proposed amendments to Part 1121, Subchapter B or Chapter X of Title 49 of the Code of Federal Regulations.

PART 1121—ABANDONMENT OF RAILROAD LINES AND DISCONTINUANCE OF SERVICE

1. The Authority paragraph is amended to read as follows:

Authority: Sec. 205(e)(1)(B), Regional Rail Reorganization Act of 1973, Pub. L. 93-236, 87 Stat. 985, 994, as amended by section 309, Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. 94-210, 90 Stat. 31, 57; and chapters 101, 103, 105, and 109 of title 49, United States Code.

Subpart A—General

§ 1121.10 [Amended]

2. Section 1121.10 is amended to read as follows:

§ 1121.10 Purpose and scope.

(a) 49 U.S.C. 10901 governs the extension, construction, and acquisition of lines by rail carriers. Regulations under that section are set forth in Part 1120. 49 U.S.C. §§ 10903-10906 govern abandonments of rail lines and discontinuance of rail service by common carriers. 49 U.S.C. 10903 provides that a rail carrier may abandon a railroad line or discontinue a rail service only if the Commission finds that the present and future public convenience and necessity require or permit the abandonment or discontinuance.

(b) This Part 1121 contains regulations governing abandonment of and discontinuance of service over rail lines.

This Part 1121 also sets forth procedures for providing financial assistance to assure continued rail freight service and for acquisition of rail lines for alternative public use. Subpart A of this part contains definitions and a statement of purpose and scope of the regulations. Subpart B of this part requires each rail carrier to file a full and complete diagram of the transportation system operated, directly or indirectly, by the carrier. The diagram shall be accompanied by a detailed description of certain of the carrier's lines of railroads. Subpart C of this part specifies the notice, filing, and processing requirements for abandonment or discontinuance applications offers of financial assistance, and offers of acquisition for public use. Subpart D of this part establishes standards for use in evaluation of abandonment and discontinuance applications. Subpart E of this part establishes standards for determining rail freight service continuation assistance.

§ 1121.11 [Amended]

3. Section 1121.11 is amended by deleting § 1121.11(b).

4. In § 1121.11(d), the reference is changed from "section 1a of the Act" to "49 U.S.C. 10903".

5. In § 1121.11(e), the reference is changed from "Part I of the Act" to "subtitle IV of title 49, United States Code".

6. In § 1121.11(i), the reference is changed from "section 1a(6)(a) of the Act" to "49 U.S.C. 10905(b)".

Subpart B—System Diagram

§ 1121.20 [Amended]

7. In § 1121.20(a)(4), the reference is changed from "section 1a(6)(a) of the Act" to "49 U.S.C. 10905(b)".

§ 1121.23 [Amended]

8. In § 1121.23(d), the references are changed from "section 1a(5)(b) of the Act" to "49 U.S.C. 10904(d)(3)".

§ 1121.25 [Amended]

9. In § 1121.25, the reference is changed from "section 1a(5)(a) of the Act" to "49 U.S.C. 10904(d)(1)".

Subpart C—Procedures Governing Notice, Applications, Financial Assistance, and Acquisition for Public Use

10. The table of contents for Subpart C is amended by changing the title of § 1121.37 to read as follows:

1121.37 Commission determination and certification under 49 U.S.C. 10904.

§ 1121.32 [Amended]

11. In § 1121.32(a)(2), the reference is changed from "the Interstate Commerce Act" to "subtitle IV of title 49, United States Code".

12. In § 1121.32(d)(3), the reference is changed from "Exhibit I" to "Exhibit II".

§ 1121.34 [Amended]

13. In § 1121.34(e)(4), the reference is changed from "section 1a of the Act" to "49 U.S.C. 10904".

§ 1121.36 [Amended]

14. In § 1121.36(b)(1), the reference is changed from "section 5(2)(f) of the Act" to "49 U.S.C. 11347".

15. In § 1121.36(b)(2), the reference is changed from "section 1a(4)" to "49 U.S.C. 10903(b)(2)".

§ 1121.37 [Amended]

16. The title for § 1121.37 is amended to read as follows:

§ 1121.37 Commission determination and certification under 49 U.S.C. 10904.

17. In § 1121.37(b)(2), the reference is changed from "section 1a of the Act" to "subchapter I of chapter 109 of title 49, United States Code".

18. In § 1121.37(b)(2)(i), the reference is changed from "section 1a(4) of the Act" to "49 U.S.C. 10903(b)(2)".

19. In § 1121.37(b)(2)(ii), the reference is changed from "section 1a(4) of the Act" to "49 U.S.C. 10903(c)".

20. In § 1121.37(b)(2)(iii), the reference is changed from "section 1a(6) of the Act" to "49 U.S.C. 10905".

21. In § 1121.37(b)(2)(iv), the reference is changed from "section 1a(10) of the Act" to "49 U.S.C. 10906".

22. In § 1121.37(b)(3)(ii), the reference is changed from "section 1a(6) of the Act" to "49 U.S.C. 10905".

23. In § 1121.37(b)(3)(iii), the reference is changed from "section 1a of the Act" to "subchapter I of chapter 109 of title 49, United States Code".

§ 1121.38 [Amended]

24. In § 1121.38(a), the reference is changed from "section 1a(6) of the Act" to "49 U.S.C. 10905".

25. In § 1121.38(b)(2)(i), the reference is changed from "§ 1121.46" to "§ 1121.56".

26. In § 1121.38(c)(2), the reference is changed from "Subpart D" to "Subpart E".

27. In § 1121.38(e), the reference is changed from "Exhibit I (§ 1121.46)" to "Exhibit II (§ 1121.56)".

28. In § 1121.38(f), the reference in the title is changed from "section 1a(6) of the Act" to "49 U.S.C. 10905".

29. In § 1121.38(f)(1), the reference is changed from "section 1a(7) of the Act" to "49 U.S.C. 10905".

30. In § 1121.38(f)(2)(ii), the first reference is changed from "section 1a(6) of the act" to "49 U.S.C. 10905", and the second reference is changed from "section 1a of the Act" to "subchapter I of chapter 109 title 49, United States Code".

31. In § 1121.38(h)(1), the reference appearing in the last sentence is changed from "Subpart D" to "Subpart E".

32. § 1121.38(i)(2) is amended to read as follows:

At the end of the 6-month period, the Commission shall issue a certificate, which shall become effective and may be conditioned in accordance with the provisions of subchapter I of chapter 109 of title 49, United States Code.

33. In § 1121.38(j)(1) the reference is changed from "section 1(18) or section 5(2) of the Act" to "49 U.S.C. § 10901, 49 U.S.C. §§ 11344-11345, or 49 U.S.C. § 1136".

§ 1121.39 [Amended]

34. In § 1121.39(d), the reference is changed from "section 1a(4) of the Act" to "49 U.S.C. 10903(c)".

35. In § 1121.39(d), the reference is changed from "section 1a(6) of the Act" to "49 U.S.C. 10905".

Subpart D—Standards for Determining Costs, Revenues, and Return on Value

36. The title of Subpart D is amended to read as follows:

Subpart D—Standards for Determining Costs and Revenues

37. The table of contents for Subpart D is amended by deleting reference to §§ 1121.44, .45, and .47, to read as follows:

1121.40 General.
1121.41 Revenue and Income Attributable to Branch Lines.
1121.42 Calculation of Avoidable Costs.
1121.43 Apportionment Rules for the Assignment of Expenses to On-Branch Costs.
1121.46 Submission of Revenue and Cost Data.

38. Section 1121.40 is amended to read as follows:

§ 1121.40 General.

(a) *Contents of subpart.* This subpart contains the methodology for determining the extent to which the avoidable costs of providing rail service exceed the revenues attributable to the line. The Commission will use this avoidable loss information in reaching

findings on the merits of a proposed abandonment or discontinuance.

(b) *Data Collection.* The owning or operating carrier shall establish a system to collect, at the branch level, the information required for the base year, and to determine the final subsidy payment (§ 1121.50(b) of Subpart E of this part). The collection and compilation of such data shall accord with the Branch Line Accounting System (49 CFR part 1201) established by the Office pursuant to section 205(e)(1)(a) of the Regional Rail Reorganization Act of 1973, as amended.

39. In § 1121.41, the first sentence of the introductory paragraph and the last sentence of paragraph (a) are amended to read as follows:

§ 1121.41 Revenue and income attributable to branch lines.

The revenue attributable to the rail properties is the total of the revenues assigned to the branch in accordance with this section, plus any subsidy payments that would cease upon discontinuance of service on the branch. * * *

(a) * * * The revenues of all other bridge or overhead traffic shall be attributed to the branch on the ratio of miles moved on the branch to miles moved on the system.

§ 1121.42 [Amended]

40. Section 1121.42 is amended by deleting §§ 1121.42 (k), (l), and (m).

§ 1121.44 [Deleted]

41. Subpart D is amended by deleting § 1121.44.

§ 1121.45 [Deleted]

42. Subpart D is amended by deleting § 1121.45.

43. Section 1121.46 is amended to read as follows:

§ 1121.46 Submission of revenue and cost data.

The applicant shall submit the following information, developed in accordance with the methodology set forth in §§ 1121.41-43, as Exhibit I to its abandonment or discontinuance application.

	Base year operations
Revenues attributable:	
1. Freight originated and/or terminated on branch.....	
2. Bridge traffic.....	
3. All other revenue and income.....	
4. Total revenues attributable (lines 1 through 3).....	
Avoidable costs:	
5. On-branch costs (lines 5a through 5j).....	
a. Maintenance of way and structures.....	
b. Maintenance of equipment.....	
c. Transportation.....	
d. General administrative.....	

	Base year operations
e. Deadheading, taxi, and hotel.....	
f. Overhead movement.....	
g. Freight cars costs.....	
h. Return on investment—locomotives.....	
i. Revenue taxes.....	
j. Property taxes.....	
6. Off-branch costs (lines 6a and 6b).....	
a. Freight originated and/or terminated on branch.....	
b. Bridge traffic.....	
7. Total avoidable costs (line 5 plus line 6).....	
Avoidable loss:	
8. Avoidable loss from operations (line 4 minus line 7).....	

§ 1121.47 [Deleted]

44. Subpart D is amended by deleting § 1121.47.

45. Part 1121 is amended by adding a new Subpart E, as follows:

Subpart E—Standards for Determining Rail Continuation Subsidy Payments

§ 1121.50 General.

(a) *Contents of subpart.* (1) When the Commission finds that the present or future public convenience and necessity require or permit abandonment or discontinuance, and that a financially responsible person has made an offer of financial assistance, 49 U.S.C. 10905(b) directs the Commission to determine the extent to which the avoidable costs of providing rail transportation plus a reasonable return on the involved rail properties exceed the revenues attributable to the line. Section 205(e)(1)(b) of the Regional Rail Reorganization Act of 1973, as amended, directs the Office to publish standards for determining the "avoidable costs of providing rail freight service," as that phrase is used in 49 U.S.C. 10905(b). This subpart contains the methodology for such determinations and the standards for application to a particular proceeding. The Commission will use these data in making financial assistance determinations.

(2) This subpart also sets forth a method by which the carrier may establish its Estimated Subsidy Payment to be included in its application (§§ 1121.32(d) of Subpart C of this part) and by which an offeror of financial assistance may formulate a subsidy offer or Proposed Subsidy Payment under 49 U.S.C. 10905 and § 1121.38 of Subpart C of this part.

(b) *Final payment of financial assistance.* (1) When rail service is continued under a financial assistance agreement, the final payment for the subsidy year will be adjusted to reflect the actual revenues derived, avoidable costs incurred and value of properties used in the subsidy year.

(2) If, in a Financial Status Report (§ 1121.57 of this subpart) issued during the first 10 months of the subsidy year,

the railroad notifies the subsidizer that the Estimated Subsidy Payment will be exceeded by more than 15 percent, or if the excess results from an expense preapproved by the subsidizer, the entire adjustment shall be included in the final payment. Otherwise, when an adjustment causes the actual subsidy to exceed the Estimated Subsidy Payment, the amount by which the adjustment exceeds 15 percent of the Estimated Subsidy Payment shall be treated as a carryover avoidable cost in the subsequent subsidy year.

§ 1121.51 Revenue and income attributable to branch lines.

The revenues attributable to the rail properties are the total of the revenues assigned to the branch in accordance with § 1121.41 of Subpart D of this part, plus any subsidy payments that would cease upon discontinuance of service on the branch for the subsidy year. The parties may agree on a mutually acceptable usage charge for bridge traffic in lieu of the mileage apportionment set forth in § 1121.41 of Subpart D of this part.

§ 1121.52 Calculation of avoidable costs.

The avoidable costs of providing freight service on a branch shall be determined in accordance with § 1121.42 of Subpart D of this part, with the following exceptions and additions:

(a) *Freight car costs.* (1) Freight car costs (§ 1121.42(g) of Subpart D of this part) shall not include depreciation as determined in Account 62-22-00.

(2) The cost per car-day shall be calculated for each type of time-mileage car by adding 50 percent of the total freight car repair costs for each type (R-1, schedule 415, column (b)), and 60 percent of the depreciation costs for each car type. Depreciation shall be developed as follows:

The return on value for each type of car shall be calculated by first arriving at the current cost per car by using the most recent purchase of this type by the railroad indexed to the midpoint of the subsidy year or a price quote from the manufacturer. This unit price shall be applied to the average number of this type of car owned by the carrier during the subsidy year. The current value developed for each car type is then multiplied by the composite depreciation rate for that type of car as shown in the latest annual report filed with the Commission or company records.

To these amounts add 100 percent of the return on investment, which shall be calculated by multiplying the total current value of each type car developed for depreciation purposes in this section by the rate of return calculated for locomotives in § 1121.52(b) of this subpart; add the time portion of the

railroad's payments for hire of time-mileage freight cars (R-1, schedule 366, columns (h) and (i)); and subtract the time portion of the railroad's receipts for hire of time mileage freight cars (R-1, schedule 366, columns (d) and (e)). The total of these costs is divided by the total car-days for each type developed in § 1121.42(g)(1) of Subpart D of this part.

(3) The cost per mile shall be calculated for each type of time-mileage car by adding 50 percent of the total freight train car repair cost for each car type (R-1, schedule 415, column (b)); 40 percent of the total depreciation costs for each car type developed in § 1121.42(g)(2) of Subpart D of this part; the mileage portion of the railroad's payments for the hire of time-mileage freight cars (R-1, schedule 366, column (g)); subtracting the mileage portion of the railroad's receipts of hire of time-mileage of freight cars (R-1 schedule 366, column (c)); and dividing the result by the total car miles for each car type developed in § 1121.42(g)(2) of Subpart D of this part.

(b) *Return on investment-locomotives.* The return on investment shall be calculated for each type or classification of locomotive that is actually used to provide service to the branch line. The return for the locomotive(s) used shall be calculated in accordance with the following procedure:

(1) The current replacement cost for each type of locomotive used to serve the branch line shall be based on the most recent purchase of that particular type and size locomotive by the carrier or an amount quoted by the manufacturer. The amount must be substantiated.

(2) The current cost of capital used in the calculation of return on investment for locomotives shall be the current after-tax cost of capital, weighted to the actual capital structure, and adjusted for the effects of the combined effective Federal and State income tax rate. This rate of return, expressed as a percent, will be calculated as follows:

(i) The railroad shall determine its permanent capital structure ratio of debt and equity capital such that the two numbers total 100 percent. This capital structure will be the actual capital structure of the railroad filing for the continuation payment.

(ii) The current cost of debt shall be determined by taking the average of all debt instruments, including bonds, equipment trust certificates, financial lease arrangements, etc., and multiplying this current cost by one minus the effective combined Federal and State income tax rate actually

incurred by the railroad in question. The result is an after-tax current cost of debt.

(iii) The current cost of equity shall be determined from market data or comparable earnings of railroads or other organizations with similar operating risk characteristics, to find the return that shareholders expect to earn on their investment. Both of these approaches result in an after-tax figure which reflects the Federal and State income taxes actually paid.

(iv) The current after-tax cost of debt is multiplied by the capital structure ratio number for debt to obtain a weighted after-tax cost of current debt.

(v) The current after-tax cost of equity is multiplied by the capital structure ratio number for equity to obtain a weighted after-tax cost of current equity.

(vi) The results of paragraphs (b)(2)(iv) and (v) are added together to determine the current cost of total capital used in the calculation of return on investment for equipment.

(3) The annual return on investment for each category or type of locomotive shall be calculated by multiplying the replacement cost developed in paragraph(b)(1) above by the current cost of capital determined in paragraph(b)(2).

(4) The return on investment for each type of locomotive shall be assigned to the branch on a ratio of the locomotive unit hours on the branch to average locomotive unit hours per unit for each type of locomotive in the system. This ratio will be developed as follows:

(i) The carrier shall keep and maintain records of the number of hours that each type of locomotive incurred in serving the branch during the subsidy period.

(ii) The railroad shall develop the system average locomotive unit hours per unit for each of the following types of locomotives: yard-diesel; yard-other; road-diesel; and road-other.

(iii) The ratio applied to the return on investment is calculated by dividing the hours that each type or class of locomotive is used to serve the branch, as developed in paragraph (b)(4)(i), by the system average locomotive unit hours per unit for the applicable type developed in paragraph (b)(4)(ii).

(5) The cost assigned to the branch for each type of locomotive shall be calculated by multiplying the annual return on investment developed in paragraph (b)(3) by the ratio(s) developed in paragraph (b)(4).

(c) *Administrative costs.* The cost assigned under this account shall be the actual costs directly attributable to the administration of the subsidy or, at the option of the carrier, 1 percent of the

total annual revenues attributed to the branch.

(d) *Casualty reserve account.* The costs assigned under this account shall be any payments mutually agreed to by the person offering the subsidy and the railroad for the purpose of holding the subsidizer harmless from any liability under those accounts that are used to record costs incurred by the railroad as a result of an accident.

(e) *Rehabilitation.* Rehabilitation costs shall not be included unless:

(1) The track involved does not meet minimum Federal Railroad Administration Class I Safety Standards (49 CFR 213), in which case the railroad will furnish, with the abandonment application, a detailed estimate of the costs to rehabilitate the track to the minimum level and the subsidy agreement will include a provision to cover such costs; or

(2) The potential subsidizer requests a level of service which requires expenditures for rehabilitation.

(f) *Off-branch costs.* The procedure for determining the off-branch costs will use the existing Rail Form A cost formula. This formula will be applied to the latest Annual Report Form R-1 filed by the railroad, with two exceptions. The amount used in the formula for freight car depreciation will be calculated using the procedure discussed in § 1121.52(a)(2) of this subpart, applied to the average total car fleet of the railroad. The return on investment in freight cars shall be computed by developing the replacement cost of the carrier's average car fleet owned during the year for which the latest Annual Report Form R-1 is filed. The replacement cost of the average car fleet multiplied by the current cost of capital developed in § 1121.52(b) of this subpart shall be used in the determination of off-branch costs.

(1) Terminal costs, line-haul car costs, and interchange costs shall be treated and computed using the procedure in § 1121.42(n)(1) of Subpart D of this part.

(2) Class I railroads shall develop the through-train, single-line, variable unit costs set forth in § 1121.42(n)(2) of Subpart D of this part by applying Rail Form A to data contained in its latest Form R-1 filed with the Commission, but modified to reflect freight car depreciation and return on value as determined in § 1121.52(a)(2) of this subpart.

(3) Calculations by car type shall be made in accordance with § 1121.42(n)(3) of Subpart D of this part.

(4) Class II and Class III line-haul railroads shall calculate off-branch costs as follows:

(i) The estimated system variable expenses shall be calculated using the following procedure. The total expenses used in the calculation shall be the total operating expenses, less the freight car depreciation included in Account 222, (schedule 410, columns (b), (c) and (d)), rents, taxes excluding Federal income taxes, and the depreciation of freight cars calculated using the procedure set forth in § 1121.52(a)(2) of this subpart. The system variable expenses are developed by multiplying the total expenses calculated above by 0.78, the 3-year composite variability ratio for all Class I railroads.

(ii) The cost per ton-mile of revenue freight is calculated by dividing the amount developed in subparagraph (i) by the system total ton-miles of revenue freight (schedule 2601, L. 25, col. (d)) in the carrier's latest Annual Report (Form R-2).

(iii) The cost developed in paragraph (f)(4)(ii) shall be applied to the total revenue ton-miles of traffic which are attributable to the branch and which move other portions of the railroad's system.

§ 1121.53 Apportionment rules for the assignment of expenses to on-branch costs.

The apportionment rules contained in § 1121.43 of Subpart D of this part shall apply to this subpart E, except that locomotive depreciation shall be calculated using the following procedure:

(a) The current replacement cost for each type of locomotive used to serve the branch line will be based on the most recent purchase of that particular type and size locomotive by the carrier or an amount quoted by the manufacturer.

(b) The depreciation rate that will be applied to the replacement cost shall be the carrier's composite rate for locomotives as reported in the latest Annual Report Form R-1 submitted to the Commission or company records.

(c) The annual depreciation cost for each type of locomotive shall be calculated by multiplying the replacement cost(s) developed in paragraph (a) by the rate from paragraph (b).

(d) The depreciation expense for each type of locomotive shall be assigned to the branch on the ratio of the hours incurred serving the branch to the average system locomotive unit hours in service by each of the following categories of locomotives: yard-diesel; yard-other; road-diesel; and road-other. The ratio for each type of locomotive used to serve the branch line shall be the same as that developed in § 1121.52(b)(4)(iii) of this subpart.

(e) The depreciation shall be calculated by multiplying the annual depreciation expense for each type of locomotive developed in paragraph (c) by the ratio(s) developed in paragraph (d).

§ 1121.54 Valuation of rail properties.

The investment base to which the return element shall apply shall be the sum of:

(a) The allowable working capital computed at 15 days on-branch cash avoidable costs (on-branch avoidable costs less depreciation);

(b) The amount of current income tax benefits resulting from abandonment of the line which would have been applicable to the period of the subsidy agreement (this information to be furnished by the railroad and subject to audit by the person offering the subsidy); and

(c) The net liquidation value, for their highest and best use for nonrail purposes, of the rail properties on the line to be subsidized which are used and required for performance of the service requested by the person offering the subsidy. This value shall be determined by computing the current appraised market value of such properties for other than rail transportation purposes, less all costs (dismantling and disposition of improvements) necessary to make the remaining properties available for their highest and best use and complying with applicable zoning, land use, and environmental regulations.

§ 1121.55 Reasonable return.

(a) A carrier not in reorganization shall furnish to the Commission and to any financially responsible person considering the offer of a rail service continuation payment a substantiated statement showing its current cost of capital in accordance with the methodology established in § 1121.52(b)(2) of this subpart.

(b) For a carrier in reorganization, a statement shall be furnished to the Commission and to any financially responsible person considering the offer of a rail service continuation payment, showing the mean cost of capital for railroads not in reorganization. This standard may be determined, at the option of the railroad, using the following general guidelines. Extract from a representative sample of railroads not in reorganization the following:

(1) An average capital structure ratio of debt and equity capital totalling 100 percent (adjusted to include preferred stock if appropriate).

(2) An average current cost of debt capital derived from investor's services

reports such as Moody's, Standard and Poor's, etc.

(3) An average cost of equity capital obtained through either market data or comparable earnings methods.

(4) An average effective Federal and State tax-rate.

The current cost of debt is multiplied by one minus the effective tax rate to obtain an after-tax cost of debt. To obtain the average weighted after-tax cost of capital, the after-tax equity is multiplied by the ratio of each element to the total capital structure. These two numbers are then added together to arrive at the mean current cost of capital for railroads not in reorganization.

(c) The rate of return element of the subsidy payment shall be computed by applying the current cost of capital as determined above to the investment base determined pursuant to § 1121.54 of this subpart. The cost of debt capital shall be adjusted annually to reflect the carrier's actual current effective Federal and State income tax rate. In the event the carrier and the subsidizers cannot agree on the amount of the return element, this amount will be determined by the Commission, and the Commission's determination shall be final.

§ 1121.56 Submission of revenue and cost data.

The applicant shall submit the following information, developed in accordance with the methodology set forth in §§ 1121.51-55, as Exhibit II to its abandonment or discontinuance application. An offeror of financial assistance shall use such information to formulate a proposed Subsidy Payment (§ 1121.38 of Subpart C of this part).

	Base year operations	Projected subsidy year operations
Revenues attributable:		
1. Freight originated and/or terminated on branch.....		
2. Bridge traffic.....		
3. All other revenue and income.....		
4. Total revenues attributable (lines 1 through 3).....		
Avoidable costs:		
5. On-branch costs (lines 5a through 5j):		
a. Maintenance of way and structures.....		
b. Maintenance of equipment.....		
c. Transportation.....		
d. General Administrative.....		
e. Deadheading, taxi, and hotel.....		
f. Overhead movement.....		
g. Freight car costs.....		
h. Return on investment—locomotives.....		
i. Revenue taxes.....		
j. Property taxes.....		
6. Off-branch costs (lines 6a and 6b):		
a. Freight originated and/or terminated on branch.....		
b. Bridge traffic.....		

	Base year operations	Projected subsidy year operations
7. Total avoidable costs (line 5 plus line 6)		
Available loss:		
8. Avoidable loss from operations (line 4 minus line 7)		
Subsidization costs:		
9. Rehabilitation		
10. Administration costs (subsidy year only)		
11. Casualty reserve account		
12. Total subsidization costs (lines 9 through 11)		
Return on Value:		
13. Valuation of property (lines 13a through 13c):		
a. Working capital		
b. Income tax benefits		
c. Net liquidation value		
14. Rate of return		
15. Total return on value (line 13 times line 14)		
Estimated subsidy:		
16. Estimated subsidy (line 4 minus lines 7, 12, and 15)		

¹Projection shall include amounts necessary to attain FRA Class I safety standard.

§ 1121.57 Financial status reports.

Within 30 days after the end of each quarter, of the subsidy year, each carrier which is a party to a financial assistance agreement shall submit to the subsidizer a Financial Status Report for each line operated under subsidy. Such Financial Status Report shall be in the form prescribed below. Significant deviations from the negotiated estimates must be explained. Unless the parties agree otherwise, the last Financial Status Report issued within the first 10 months of the subsidy period will be the basis for negotiating the financial assistance agreement for the subsequent subsidy year. The year-end report will be the basis of the subsidy payment adjustment. All data shall be developed in accordance with the methodology set forth in §§ 1121.51-55. In the quarterly reports, the actual data for the year to date and a projection to the end of the subsidy year shall be shown for each item.

	Actual	Projected
Revenues:		
1. Freight originated and/or terminated on branch		
2. Bridge traffic		
3. All other revenue and income		
4. Total revenue (lines 1 through 3)		
Available costs:		
5. On-branch costs (lines 5a through 5j):		
a. Maintenance of way and structures		
b. Maintenance of equipment		

	Actual	Projected
c. Transportation		
d. General administrative		
e. Deadheading, taxi, and hotel		
f. Overhead movement		
g. Freight car costs		
h. Return on investment—locomotives		
i. Revenue taxes		
j. Property taxes		
6. Off-branch costs		
7. Total avoidable costs (line 5 plus line 6)		
Available loss:		
8. Avoidable loss from operations (line 4 minus line 7)		
Subsidization costs:		
9. Rehabilitation		
10. Administration costs		
11. Casualty		
12. Total subsidization costs (lines 9 through 11)		
Return on value:		
13. Valuation of property (lines 13a through 13c):		
a. Working capital		
b. Income benefits		
c. Net liquidation value		
14. Rate of return		
15. Total return on value (line 13 times line 14)		
Subsidy payment:		
16. Subsidy payment (line 4 minus lines 7, 12, and 15)		

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 655]

Atlantic Squid Fishery

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Approval and partial disapproval of fishery management plan for the Atlantic squid fishery, proposed regulations, and request for comments.

SUMMARY: The Assistant Administrator for Fisheries has approved, with the exception of one provision, the Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean (FMP) prepared by the Mid-Atlantic Fishery Management Council (Council). The regulations to implement the management measures contained in the FMP would establish: (1) annual quotas for United States and foreign fishing vessels harvesting squid; (2) mandatory reporting by both vessel operators and dealers/processors; and (3) criteria for reallocating to foreign nations portions of domestic quotas for squid which would not be harvested by U.S. vessels. All regulations governing the foreign fishery for squid contained in 50 CFR Part 611 are adopted by reference in the FMP; those regulations will be re promulgated to implement the FMP.

Therefore, the proposed regulations below pertain only to the domestic fishery for squid within the United States fishery conservation zone.

DATE: Comments on the FMP, these proposed regulations, and the draft regulatory analysis (RA) relating to this proposed action are invited for a 60-day period. All comments must be submitted in writing on or before August 27, 1979.

ADDRESS: All comments on the FMP and these proposed regulations should be sent to: Regional Director, National Marine Fisheries Service, 14 Elm Street, Gloucester, MA 01930. Mark "Comments on proposed squid regulations" on outside of envelope.

Copies of the draft RA required under provisions of Executive Order 12044 may be obtained by writing to: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, Washington, D.C. 20235. All comments on this draft RA should be sent to the Assistant Administrator for Fisheries at the above address. Mark "Comments on draft RA for Squid Fishery" on outside of envelope.

FOR FURTHER INFORMATION CONTACT: Dr. Robert W. Hanks, Acting Regional Director, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, MA 01930; Telephone (617) 281-3600.

SUPPLEMENTARY INFORMATION: The Assistant Administrator approved, with one exception, the FMP for the Atlantic Squid Fishery (*Illex illecebrosus* and *Loligo pealei*) on June 6, 1979. This FMP covers both the domestic and foreign squid fisheries in the U.S. fishery conservation zone (FCZ) and supersedes the Preliminary Fishery Management Plan for Squid Fisheries of the Northwest Atlantic (PMP), as amended, which has been regulating the Atlantic squid fishery conducted by foreign fishing vessels since March 1, 1977.

One provision of the FMP was not approved and will not be implemented. The disapproved portion of the FMP would have prevented fishing for squid in two areas of the Mid-Atlantic Bight totaling approximately 750 square miles. These areas are located approximately 50 miles off Ocean City, Maryland, and 106 miles off Delaware Bay, and are dump sites for municipal sewage and industrial wastes, respectively. The FMP contains no information concerning the accumulation of potentially toxic compounds in migratory fish stocks; therefore, the recommended measure has not been shown to be a necessary and appropriate conservation and management measure, as required by section 303 of the Fishery Conservation and Management Act of 1976.

The Council included recommended management measures in the FMP and these were considered and used as a basis for these proposed regulations.

A. The Fishery Management Unit.

Management of two species of commercially important squid found in the Northwest Atlantic Ocean is addressed in this FMP. *Loligo pealei*, the long-finned squid, occurs on the Continental Shelf from Nova Scotia to the Gulf of Mexico. The principal commercial concentrations are found from Georges Bank to Cape Hatteras. *Illex illecebrosus*, the short-finned squid, ranges from Greenland to Florida. It is found in greatest abundance between Newfoundland and Virginia. The FMP has as its management unit all squid under United States jurisdiction in the Atlantic Ocean. This management unit includes both FCZ and State territorial waters. These regulations do not restrict the catch of squid from any State waters. However, all squid landings, regardless of whether caught in State or Federal waters, will be counted against the annual domestic quotas.

B. *Optimum yield.* Biological data indicate that each species of squid constitutes a single stock in the Northwest Atlantic. Neither stock appears at this time to need rebuilding. Further, because squid is short-lived (lifespan of approximately 1½ to 3 years), the Council has determined that maximum utilization of this resource consistent with its management objectives should be realized.

For *Loligo*, the optimum yield (OY) is equal to the maximum sustainable yield (MSY) of 44,000 metric tons (mt). Two factors were taken into consideration in making this determination. First, resource assessments used in development of the FMP indicate that the stock is relatively stable. Second, the species' short life cycle suggests that the portion of MSY not harvested will be lost from the spawning population through natural mortality.

Biological data on *Illex* are much less complete than those for *Loligo*. Because of this, the calculation of an appropriate MSY from the stock is more tenuous. Information available to the Council suggests that a reasonable MSY for *Illex* is 40,000 mt, given certain assumptions about stock-recruitment relationships. To ensure that over-exploitation does not take place, the Council has set the OY for *Illex* at 30,000 mt. Justification for this margin between MSY and OY is based on the following factors:

(1) Biological uncertainties as to *Illex* population structure and stock-recruitment relationships;

(2) Ecological considerations of the important role of *Illex* as prey for fish and marine mammals;

(3) The nature of the autumn and spring bottom trawl resource assessment surveys as conducted by the National Marine Fisheries Service, which are designed to assess numerous marine species rather than squid specifically; and

(4) The developing nature of the domestic fishery, including new vessels, potential joint ventures, and transfers from other fisheries.

The Council intends to proceed cautiously with development of this fishery until such time as more precise data become available about the life history and ecological relationships of *Illex* in the Northwest Atlantic.

C. *Annual Domestic Harvest.* The level of domestic harvest specified in the FMP is 24,000 mt for both species combined. In setting the domestic quotas at this level, the Council has attempted to reflect not only the past performance of U.S. fishermen in this fishery, but the anticipated change in traditional fishing patterns and practices which the Council anticipates will soon take place. The primary objective of the Council in setting such a high level relative to past domestic catch is to ensure that any expansion of effort in the domestic fishery will be accommodated.

Traditionally, squid has been harvested principally as an incidental catch to more commercially valuable species. Consequently, domestic catch has been small in comparison with the total catch of squid by vessels of foreign nations. Recently, however, squid has become a more sought-after commercial species, partly as the result of an increase in ex-vessel price. Within the past few years the availability of foreign markets to U.S.-caught squid has caused a dramatic increase in price.

Aside from the economic incentive represented by current squid ex-vessel prices, the Council expects that current restrictive quotas for regulated species, such as Atlantic groundfish and surf clams, and a decline in abundance of unregulated species, such as scallops, will provide inducement for fishermen and investors to transfer effort and capital into the squid fishery. Therefore, both the incidental nature and the duration of the domestic fishery are expected to change. These changes will have an effect on the level of catch by domestic fishermen.

Also, the Council noted that significant amounts of squid may have been taken in the past by the recreational party boat industry and by

individual fishermen for food or bait. These catches are not included in the statistical data on domestic squid landings.

D. *Conservation and Management Measures.* The regulations will require the owner or operator of any fishing vessel, including commercial fishing vessels and party boats or charter boats, but excluding private recreational boats, to obtain permits and to submit a complete logbook report to the Regional Director within 48 hours after the end of any fishing trip during which squid are caught. These logbooks will contain information on a daily basis for the entire trip during which the squid were caught, and for all fish caught during the trip. Information on squid catches must be broken down by genera (*Illex* and *Loligo*).

The FMP establishes a fishing year from April 1 to the following March 31. This fishing year will allow domestic fishermen first opportunity to harvest squid as *Loligo* migrate inshore and northward along the coast to spawn, and as *Illex* begin to move off of the Continental Shelf and disperse over the Continental Shelf. Also, by shifting the time-period for management from calendar year to fishing year, there can be more timely application of new resource assessment data for fishery management decision-making.

Annual quotas are established by the FMP for both the domestic and foreign components of the Atlantic squid fishery as follows:

Illex—

United States, 10,000 mt.
Foreign Nations, 20,000 mt.

Loligo—

United States, 14,000 mt.
Foreign Nations, 30,000 mt.

The FMP provides for the Assistant Administrator for Fisheries to make timely in-session reallocations of both species of squid from U.S. harvesting capacity to the total allowable level of foreign fishing (TALFF). The reallocation procedure provides specific criteria to be followed in evaluating domestic harvest and increasing TALFF. The reallocation in the FMP is not begun until catch reports for the first five months of the season for *Illex* and six months for *Loligo* are completed. Under any circumstances, for either species, the Assistant Administrator may not reallocate more than one-half the difference between reported domestic harvest and the annual domestic quota.

A notice of availability of the final Environmental Impact Statement was published on June 9, 1978 (43 FR 25183).

A notice of availability of a supplement to the final Environmental Impact Statement was published on January 22, 1979 (44 FR 4545).

Signed at Washington, D.C., this the 19th day of June, 1979.

Winfred H. Meibolm,

Executive Director, National Marine Fisheries Service.

Authority: 16 U.S.C. 1801 *et seq.*

Accordingly, it is proposed to add a new Part 655 to 50 CFR to read as follows:

PART 655—ATLANTIC SQUID FISHERY

Subpart A—General Provisions

Sec.

- 655.1 Purpose and Scope.
- 655.2 Definitions.
- 655.3 Relation to Other Laws.
- 655.4 Vessel Permits and Fees.
- 655.5 Recordkeeping and Reporting Requirements.
- 655.6 Vessel Identification.
- 655.7 Prohibitions.
- 655.8 Enforcement.
- 655.9 Penalties.

Subpart B—Management Measures

- 655.20 Fishing Year.
- 655.21 Allowable Levels of Harvest.
- 655.22 Reallocation Provisions.
- 655.23 Closure of Fishery.
- 655.24 Size Restrictions. [Reserved]
- 655.25 Gear Restrictions. [Reserved]

Authority: 16 U.S.C. 1801 *et seq.*

Subpart A—General Provisions

§ 655.1 Purpose and scope.

(a) The regulations in this Part govern fishing for Atlantic squid by fishing vessels of the United States within that portion of the Atlantic Ocean over which the United States exercises exclusive fishery management authority.

(b) The regulations governing fishing for Atlantic squid by foreign vessels in the fishery conservation zone are contained in 50 CFR Part 611.

(c) These regulations implement the Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean, which was prepared and adopted by the Mid-Atlantic Fishery Management Council and approved by the Assistant Administrator.

§ 655.2 Definitions.

In addition to the definitions in the Act, the terms used in this Part shall have the following meanings:

Act means the Fishery Conservation and Management Act of 1976, as amended, 16 U.S.C. 1801 *et seq.*

Assistant Administrator means the Assistant Administrator for Fisheries of

the National Oceanic and Atmospheric Administration, Department of Commerce, or an individual to whom appropriate authority has been delegated.

Atlantic squid or squid means the species *Illex illecebrosus* (short-finned squid) and *Loligo pealei* (long-finned squid).

Authorized Officer means:

- (1) Any commissioned, warrant, or petty officer of the U.S. Coast Guard;
- (2) Any certified enforcement officer or special agent of the National Marine Fisheries Service;
- (3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce and the Commandant of the Coast Guard to enforce the provisions of the Act; or
- (4) Any Coast Guard personnel accompanying and acting under the direction of any person described in paragraph (1) of this definition.

Catch, take, or harvest includes, but is not limited to, any activity which results in mortality to any squid or bringing any squid on board a vessel.

Fishery Conservation Zone (FCZ) means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

Fishing includes any activity, other than scientific research conducted by a scientific research vessel, which involves:

- (1) The catching, taking, or harvesting of squid;
- (2) The attempted catching, taking, or harvesting of squid;
- (3) Any other activity which can reasonably be expected to result in the catching, taking, or harvesting of squid; or
- (4) Any operations at sea in support of, or in preparation for, any activity described in paragraphs (1), (2), or (3) of this definition.

Fishing trip means a period of time during which fishing is conducted, beginning when the vessel leaves port and ending when the vessel returns to port.

Fishing vessel means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for: (1) Fishing; (2) aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including, but not limited to, preparation, supply,

storage, refrigeration, transportation, or processing.

Metric Ton (mt) means 1,000 kilograms, which is equal to 2,204.6 pounds.

Operator, with respect to any fishing vessel, means the master or other individual on board and in charge of that vessel.

Owner, with respect to any fishing vessel, means:

- (1) Any person who owns that vessel in whole or in part;
- (2) Any charterer of the vessel, whether bareboat, time, or voyage;
- (3) Any person who acts in the capacity of a charterer, including but not limited to parties to a management agreement, operating agreement, or any similar agreement that bestows control over the destination, function, or operation of the vessel; or
- (4) Any agent designated as such by a person described in paragraphs (1), (2), or (3) of this definition.

Person means any individual (whether or not a citizen or national of the United States), corporation, partnership, association, or other entity (whether or not organized or existing under the laws of any State), and any Federal, State, local, or foreign government or any entity of any such government.

Personal use (of squid) means use as bait, for human consumption, or for other purposes not including sale or barter, in amounts not to exceed 100 pounds (45.4 kilograms) per trip.

Regional Director means the Regional Director, Northeast Region, National Marine Fisheries Service, Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930, Telephone (617) 281-3600; or a designee.

Regulated species means any species for which fishing by a vessel of the United States is regulated pursuant to the Act.

United States harvested squid means squid caught, taken, or harvested by vessels of the United States under this Part, whether or not such squid is landed in the United States.

Vessel of the United States means:

- (a) Any vessel documented or numbered by the United States Coast Guard under United States law; or
- (b) Any vessel under five net tons which is registered under the laws of any State.

§ 655.3 Relation to other laws.

(a) Nothing in this Part 655 shall be construed as relieving any person from compliance with other requirements imposed by any regulation or statute of the United States or of any State.

(b) For Federal regulations governing the harvest of Atlantic squid by foreign fishing vessels, see 50 CFR Part 611.

(c) All fishing activity, regardless of species sought, is prohibited pursuant to 15 CFR Part 924, on the U.S.S. *Monitor* Marine Sanctuary, which is located off the coast of North Carolina (35°00'23" N., 75°24'32" W.).

§ 655.4 Vessel permits and fees.

(a) *General.* Every fishing vessel, including party and charter boats, fishing for Atlantic squid under this Part must have a permit issued under this section. Vessels taking squid for personal use are exempt from this section.

(b) *Eligibility.* [Reserved]

(c) *Application.* (1) An application for a permit under this Part must be submitted and signed by the owner or operator of the vessel on an appropriate form obtained from the Regional Director. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) Applicants shall provide all the following information:

- (i) The name, mailing address including ZIP code, and telephone number of the applicant;
- (ii) The name of the vessel;
- (iii) The vessel's United States Coast Guard documentation number or, if the vessel is under five net tons, the vessel's State registration number;
- (iv) The home port, gross tonnage, radio call sign, and length of the vessel;
- (v) The engine horsepower of the vessel;
- (vi) The approximate fish hold capacity of the vessel;
- (vii) The type and quantity of fishing gear used by the vessel;
- (viii) The average size of the crew, which may be stated in terms of a normal range; and
- (ix) Any other information concerning vessel characteristics requested by the Regional Director.

(3) Any change in the information specified in paragraph (c)(2) of this section shall be submitted by the applicant in writing to the Regional Director within 15 days of the change.

(d) *Fees.* No fee is required for any permit issued under this Part.

(e) *Issuance.* The Regional Director shall issue a permit to the applicant no later than 30 days from the receipt of a completed application.

(f) *Expiration.* A permit shall expire when ownership or name of the vessel changes.

(g) *Duration.* A permit shall continue in full force and effect until it expires or is revoked, suspended, or modified pursuant to 50 CFR Part 621.

(h) *Alteration.* No person shall alter, erase, or mutilate any permit. Any permit which has been intentionally altered, erased, or mutilated is invalid.

(i) *Replacement.* Replacement permits may be issued by the Regional Director. An application for a replacement permit shall not be considered a new application.

(j) *Transfer.* Permits issued under this Part are not transferable or assignable. A permit shall be valid only for the fishing vessel for which it is issued.

(k) *Display.* Any permit issued under this Part must be carried on board the fishing vessel at all times. The permit shall be presented for inspection upon the request of any Authorized Officer.

(l) *Revocation.* Subpart D of Part 621 of this chapter (Civil Procedures) governs the imposition of sanctions against a permit issued under this part. As specified in that Subpart D, a permit may be revoked, modified, or suspended if the permitted fishing vessel is used in the commission of an offense prohibited by the Act or these regulations, or if a civil penalty or criminal fine imposed under the Act is not paid.

§ 655.5 Recordkeeping and reporting.

(a) *Fishing vessel records.* (1) The operator of any fishing vessel issued a permit to fish for squid under this Part shall:

(i) Maintain on board the vessel an accurate and complete fishing logbook on forms supplied by the Regional Director, according to the requirements of § 655.5(a)(2);

(ii) Make the fishing logbook available for inspection by any Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, at any time during or after a fishing trip;

(iii) Keep each fishing logbook for one year after the date of the last entry in the logbook; and

(iv) Submit fishing logbook reports, as specified in § 655.5(a)(2).

(2) The owner or operator of any fishing vessel conducting any fishing operation subject to this Part shall submit a complete fishing logbook report to the Regional Director within 48 hours after the end of any fishing trip. Fishing logbooks shall contain information on a daily basis for the entirety of any trip during which squid or any other regulated species are caught, and shall contain information for all fish which are caught. Information on squid catches

must be provided separately for each genus of squid (*Illex* and *Loligo*).

(3) The Assistant Administrator may revoke, modify, or suspend the permit of a fishing vessel whose owner or operator falsifies or fails to submit the records and reports prescribed by this section, in accordance with the provisions of 50 CFR Part 621.

(b) *Fish dealer or processor reports.* Any person who receives Atlantic squid for a commercial purpose from a fishing vessel subject to this Part shall:

(1) File a weekly report (Sunday through Saturday) with the Regional Director on forms supplied by him within 48 hours of the end of any week in which squid is received. This report shall include information on all transfers, purchases, or receipts of all squid (listing *Illex* and *Loligo* separately) and other fish made during that week; and

(2) Permit an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make inspections, to inspect at the principal place of business any records or books relating to any transfers, purchases, or receipts of squid.

§ 655.6 Vessel identification.

(a) *Official Number.* Each fishing vessel subject to this Part and over 25 feet in length shall display its Official Number on the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from enforcement vessels and aircraft. The Official Number is the documentation number issued by the Coast Guard for documented vessels or the registration number issued by a State or the Coast Guard for undocumented vessels.

(b) *Numerals.* (1) The Official Number shall be at least 18 inches in height for fishing vessels over 65 feet in length and at least 10 inches in height for all other vessels over 25 feet in length.

(2) The Official Number must be in block Arabic numerals in contrasting color.

(3) The Official Number shall be permanently affixed to or painted on the vessel. However, vessels carrying fishing parties on a per capita basis or by charter may use non-permanent markings to display the Official Number whenever the vessel is fishing for squid.

(c) *Vessel length.* The length of a vessel, for purposes of this section, is that length set forth in Coast Guard or State records.

(d) *Duties of operator.* The operator of each fishing vessel shall:

(1) Keep the Official Number clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging or its fishing gear obstructs the view of the Official Number from any enforcement vessel or aircraft.

§ 655.7 Prohibitions.

It is unlawful for any person to:

(a) Use any vessel for the taking, catching, harvesting, or landing of any Atlantic squid (except for personal use), unless the vessel has a valid permit issued pursuant to this Part on board the vessel;

(b) Fail to report to the Regional Director within 15 days any change in the information contained in the permit application for a vessel;

(c) Falsify or fail to make, keep, maintain, or submit any logbook, or other record or report required by this Part;

(d) Make any false statement, oral or written, to an Authorized Officer, concerning the taking, catching, landing, purchase, sale, or transfer of any Atlantic squid;

(e) Fail to affix and maintain markings as required by § 655.6;

(f) Possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land any Atlantic squid taken in violation of the Act, this Part, or any other regulation promulgated under the Act;

(g) Fish for, take, catch, or harvest any Atlantic squid from the FCZ after the fishery has been closed pursuant to § 655.23;

(h) Transfer directly or indirectly, or attempt to so transfer, any United States harvested squid to any foreign fishing vessel, while such vessel is within the FCZ, unless the foreign fishing vessel has been issued a permit, under section 204 of the Act, which authorizes the receipt by such vessel of United States harvested squid;

(i) Refuse to permit an Authorized Officer, or any employee of the National Marine Fisheries Service designated by the Regional Director to make such inspections, to inspect any logbooks or records relating to the taking, catching, harvesting, landing, purchase, or sale of Atlantic squid;

(j) Refuse to permit an Authorized Officer to board a fishing vessel subject to such person's control for purposes of conducting any search or inspection in connection with the enforcement of this Act, this part, or any other regulation promulgated under the Act;

(k) Fail to comply immediately with enforcement and boarding procedures specified in § 655.8;

(1) Forcibly assault, resist, oppose, impede, intimidate, threaten, or interfere with any Authorized Officer in the conduct of any search or inspection under the Act;

(m) Resist a lawful arrest for any act prohibited by this Part;

(n) Interfere with, delay, or prevent by any means the apprehension or arrest of another person knowing that such other person has committed any act prohibited by this Part;

(o) Interfere with, obstruct, delay, or prevent by any means the lawful investigation or search in the process of enforcing this Part;

(p) Violate any other provision of this Part, the Act, or any regulation promulgated pursuant thereto.

§ 655.8 Enforcement.

(a) *General.* The operator of any fishing vessel subject to this Part shall immediately comply with instructions issued by an Authorized Officer to facilitate safe boarding and inspection of the vessel, its gear, equipment, logbook, and catch for purposes of enforcing the Act and this Part.

(b) *Signals.* Upon being approached by a Coast Guard vessel or aircraft, or other vessel or aircraft authorized to enforce provisions of the Act, the operator of the fishing vessel shall be alert for communications conveying enforcement instructions. VHF-FM radiotelephone is the normal method of communicating between vessels. Should radiotelephone communication fail, however, other methods of communication including signals may be employed. The following signals extracted from the International Code of Signals are among those which may be used and are included here for the safety and information of fishing vessel operators:

(1) "L" meaning "You should stop your vessel instantly,"

(2) "SQ3" meaning "You should stop or heave to; I am going to board you," and

(3) "AA AA AA etc.," which is the call to an unknown station, to which the signaled vessel must respond by illuminating the vessel's Official Numbers required by § 655.6.

(c) *Boarding.* A vessel signaled to stop or heave to for boarding shall:

(1) Stop immediately and lay to or maneuver in such a way as to permit the Authorized Officer and his/her party to come aboard;

(2) Provide a ladder for the Authorized Officer and his/her party;

(3) When necessary to facilitate the boarding, provide a man rope, safety line and illumination for the ladder; and

(4) Take such other actions as are necessary to ensure the safety of the Authorized Officer and his/her party to facilitate the boarding.

§ 655.9 Penalties.

Any person or fishing vessel found to be in violation of this Part will be subject to the civil criminal penalty provisions and forfeiture provisions prescribed in the Act, and to Parts 620 (Citations) and 621 (Civil Procedures) of this chapter.

Subpart B—Management Measures

§ 655.20 Fishing year.

The fishing year for Atlantic squid is the 12-month period beginning on April 1 and ending on March 31 of the following year.

§ 655.21 Allowable levels of harvest.

(a) *Catch Quotas.* The allowed levels of harvest on fishing year basis for Atlantic squid are 30,000 mt of *Illex illecebrosus* and 44,000 mt of *Loligo pealei*. These levels of harvest are divided into annual catch quotas for vessels of the United States and vessels of foreign nations as follows:

(1) The annual catch quotas for vessels of the United States are 10,000 mt of *Illex illecebrosus* and 14,000 mt of *Loligo pealei*.

(2) The annual catch quotas for vessels of foreign nations are 20,000 mt of *Illex illecebrosus* and 30,000 mt. of *Loligo pealei*.

(b) *Territorial waters.* These regulations do not limit harvests of Atlantic squid in the territorial waters of any State. Harvests from State waters, however, shall be subtracted from the annual domestic quotas set forth in paragraph (a)(1).

§ 655.22 Reallocation.

(a) *General.* This section establishes a procedure which will be followed to make timely reallocations to foreign fishing vessels of part of the domestic quota which will not be harvested by domestic fishermen during the fishing year. Any reallocation shall be consistent with the objectives of the Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean and in accordance with the criteria and procedures set forth in paragraphs (b) and (c) of this section.

(b) *Criteria.* (1) *Loligo.* The Assistant Administrator shall determine the domestic harvest of *Loligo* by reviewing vessel and dealer/processor logbook data and any other relevant landings statistics for the first six months of the fishing year (April 1–September 30). If reporting domestic harvest (including

off-loadings at sea) is equal to or greater than 50 percent of the annual domestic quota of 14,000 mt, no reallocations shall be made. If the reported domestic harvest for the first six months of the fishing year is less than 50 percent of the annual domestic quota, the Assistant Administrator may reallocate up to one-half the difference between reported domestic harvest and the annual domestic quota.

(2) *Illex*. The Assistant Administrator shall determine the domestic harvest of *Illex* by reviewing vessel and dealer/processor logbook data and any other relevant landing statistics for the first five months of the fishing year (April 1–August 31). If reported domestic harvest (including off-loadings at sea) is equal to or greater than 40 percent of the annual domestic quota of 10,000 mt, no reallocation shall be made. If reported domestic harvest for the first five months of the fishing year is less than 40 percent of the annual domestic quota, the Assistant Administrator may reallocate up to one-half the difference between the reported domestic harvest and the annual domestic quota.

(c) *Procedure*. (1) *Initial Determination*. If the Assistant Administrator determines that a reallocation may be made for either species of Atlantic squid, he shall publish in the Federal Register a notice of intent to reallocate a specified amount of the unharvested portion of domestic annual quota to the annual quotas established for foreign nations specified in § 655.21. Notice of an intent to reallocate shall also be sent to holders of permits issued under this Part, and to agents of foreign fishing vessels permitted to fish for squid under 50 CFR Part 611, on or before the date of publication of the notice in the Federal Register.

(2) *Public comment*. The public shall be given no less than 15 days from the date of publication of the notice of intent to reallocate to submit written comments concerning the amount of Atlantic squid to be reallocated. Comments shall be sent to the Regional Director.

(3) *Consultation*. During the 15-day public comment period, the Assistant Administrator or a designee shall consult with the appropriate committee of the Mid-Atlantic Fishery Management Council to determine whether the proposed reallocation of Atlantic squid is consistent with the objectives contained in the Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean.

(4) *Final determination*. The Assistant Administrator shall make a final

determination of the amount of the species of Atlantic squid to be reallocated after taking into account:

(i) The intent and capability of U.S. fishing vessels to harvest the species of Atlantic squid during the remainder of the fishing year;

(ii) The consistency of any reallocation with the objectives contained in the Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean;

(iii) The current harvest of the species of Atlantic squid by foreign nations as allowed pursuant to 50 CFR Part 611;

(iv) The most current information available concerning the biological status of the species of Atlantic squid; and

(v) Any other information determined by the Assistant Administrator to be relevant.

(5) *Publication of reallocations*. The Assistant Administrator shall publish regulations in the Federal Register to accomplish any reallocation of any species of Atlantic squid pursuant to paragraph (c)(4) of this section approximately 15 days prior to the effective date of the reallocation. Comments received during the comment period, all relevant information used by the Assistant Administrator in making a final determination on reallocation, and the most recent catch statistics for domestic and foreign harvest of the species of Atlantic squid to be reallocated shall be summarized in the Federal Register.

(6) *Effective Dates*. (i) *Illex*. Any reallocation of *Illex* shall be effective on December 1 and remain in effect to the end of the fishing year on March 31.

(ii) *Loligo*. Any reallocation of *Loligo* shall be effective on January 1 and remain in effect to the end of the fishing year on March 31.

§ 655.23 Closure of fishery.

(a) *General*. The Regional Director shall periodically monitor catches and landings of *Illex* and *Loligo* and shall project at least once every quarter the date when the annual quotas will be harvested. The fishery for either species of squid shall be closed when the annual quota, less the anticipated incidental catch during a closure under paragraph (d) of this section, for that species is reached.

(b) *Recommendation of closure*. When 90 percent of either of the annual domestic quotas specified in § 655.21 has been harvested, the Regional Director may make a recommendation to the Assistant Administrator that the fishery for that species be closed, if projections based on vessel and dealer/

processor logbook data indicate that the annual quota for that species will be reached or exceeded before March 31.

(c) *Notice of closure*. If the Assistant Administrator determines that a closure of the squid fishery for the relevant species is necessary to prevent the annual species quota from being exceeded the Assistant Administrator shall:

(1) Notify in advance the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils of the closure;

(2) Mail notifications to all persons holding permits issued under § 655.5 of the closure at least 72 hours prior to the effective date of the closure; and

(3) Publish a notice of closure in the Federal Register.

(d) *Incidental catch*. During a period of closure, fishing vessels may catch, take, or harvest the relevant species of squid incidental to fishing for other species of fish, provided that such species of squid constitutes no more than 10 percent by weight of the total catch of all other fish on board the vessel at the end of any fishing trip.

§ 655.24 Size restrictions [Reserved]

§ 655.25 Gear restrictions [Reserved]

Fishery Management Plan for the Squid Fishery of the Northwest Atlantic Ocean

June 1979

Prepared by the Mid-Atlantic Fishery Management Council in cooperation with New England Fishery Management Council, South Atlantic Fishery Management Council, and National Marine Fisheries Service.

Abbreviations Used in this Document

CFR—Code of Federal Regulations
cm—centimeter
EIS—Environmental Impact Statement
fathom—6 feet
FCMA—Fishery Conservation and Management Act
FCZ—Fishery Conservation Zone
fishing year—the 12 month period beginning April 1
FMP—Fishery Management Plan
FRG—Federal Republic of Germany
GDR—German Democratic Republic
GIFA—Governing International Fishery Agreement
ICNAF—International Commission for the Northwest Atlantic Fisheries
km—kilometer
knot—a unit of speed equal to one nautical mile (1.15 miles) per hour
mt—metric ton = 2204.5 pounds
MSY—maximum sustainable yield
NMFS—National Marine Fisheries Service
NOAA—National Oceanic and Atmospheric Administration
OY—optimum yield
PMP—Preliminary Fishery Management Plan
SA—Subarea or Statistical Area

Secretary—Secretary of Commerce
TAC—Total Allowable Catch
TALFF—total allowable level of foreign fishing

II. Summary

II-1. Responsible Federal Agency

US Department of Commerce.
National Oceanic and Atmospheric Administration.
National Marine Fisheries Service.

II-2. Name of Action

(X) Administrative ()
Legislative.

II-3. Description of the Action

The Fishery Conservation and Management Act of 1976 (16 USC 1801 et seq.), enacted and signed into law on April 13, 1976, established a fishery conservation zone and provided for exclusive US regulation over all fishery resources except highly migratory species (i.e., tuna) within the zone. This management plan for the squid fishery of the northwestern Atlantic Ocean was prepared by the Mid-Atlantic Fishery Management Council in consultation with the New England and South Atlantic Fishery Management Councils in accordance with the FCMA. It replaces the PMP currently in effect for Northwest Atlantic Squid. The objectives of the plan are to:

1. Achieve and maintain optimal stocks for future recruitment.
2. Prevent destructive exploitation of squid species.
3. Minimize capture of nontarget species.
4. Achieve efficiency in harvesting and use.
5. Maintain adequate food supplies for predator species, recognizing that squid are also predators.
6. Minimize user conflicts.
7. Improve understanding of the condition of the stocks.
8. Encourage increased American participation in the squid fishery.

It is recommended that the following measures be adopted to achieve these objectives:

1. Define the management unit for this FMP as all *Loligo pealei* and *Illex illecebrosus* under US jurisdiction in the Atlantic.
2. The 1979-1980 fishing year Optimum Yield for *Illex* be set at 30,000 metric tons and the 1979-1980 fishing year Optimum Yield of *Loligo* be set at 44,000 metric tons. The US capacity is 10,000 mt of *Illex* and 14,000 mt of *Loligo*. The foreign surplus (TALFF) is 20,000 mt of *Illex* and 30,000 mt of *Loligo*.

3. Any vessel owner or operator (foreign or domestic) desiring to catch squid or transport or deliver for sale, any squid must possess the appropriate valid registration or permit from the NMFS. This does not apply to individual US fishermen catching squid for their personal use.

4. Foreign fishing for squid be restricted to five designated areas.

5. Appropriate gear restrictions be imposed on foreign vessels fishing for squid.

6. Periodic reports on squid catches must be filed by foreign and domestic fishermen. Domestic dealers and processors must submit weekly reports on any transactions involving squid.

7. Incentives be provided, as discussed in Section XIII-8, to encourage development of the domestic squid industry.

8. A reassessment of the estimated US harvesting capacity for squid will be conducted annually. Based on this analysis allocation of additional amounts of squid available for foreign harvest will be considered as discussed in Section XIII-3.

Implementation of FMPs by the Secretary of Commerce has been defined as a major Federal action significantly affecting the environment.

II-4. Summary of Impact

The measures recommended in the plan will provide for the long term viability of the squid stocks while permitting and encouraging the domestic squid industry to develop fully. This plan allows for the continuation of the foreign squid fishery.

II-5. Alternatives

Alternative conservation and management measures for which comments are desired are:

1. Increased Optimum Yield (OY) for *Loligo* and *Illex*—This may result in a reduction in future productivity of the stocks for a moderate stock-recruitment relationship. If recruitment were independent of spawning stock, some increase in OYs could occur without reducing future productivity. Sufficient information is not available with which to estimate the impact of increased OYs for *Loligo* or *Illex* until responses of the squid populations to present OY levels are observed.

2. Reduced OY for *Loligo* and *Illex*—This would decrease the chances of a reduction in long-term future productivity of these stocks, but unless there is a strong stock recruitment relationship the most likely result is that a resource available for harvest would be underutilized. The Council has

rejected this alternative and has adopted instead biologically conservative estimates of MSY. This is in part predicated on the fact that the OYs selected for both *Loligo* and *Illex* take into consideration the short life spans of the species. Based on past catch estimates and trends in abundance, there is little justification for reducing the OYs for *Loligo* or *Illex* below these levels. However, the Squid/Butterfish Advisory Subpanel has recommended reducing the OY for *Loligo* to 10% less than the MSY Level in order to enhance predator-prey relationships.

3. Changes in fishing seasons and areas—These seasonal and area limitations on fishing were established to reduce gear conflicts between the offshore lobster pot fishery and the squid fishery. Based on available data, less severe restrictions are likely to result in increased gear conflicts. Alternatively, more severe restrictions are not likely to reduce gear conflicts substantially, and may make it impossible for foreign nationals to catch their proposed allocations.

4. Take no action at this time—This alternative would mean that the PMP, prepared by the NMFS, would continue in force. The PMP regulates foreign, but not domestic, fishermen. The effect of this alternative would be that the data that would be collected on domestic fishing and processing efforts as a result of this plan could not be collected as effectively, and assessments of the scope and development of the domestic fishery would not be as accurate as they would be with the plan.

5. Changes in gear—Various alternative methods of catching squid to reduce or eliminate bycatch have been considered. These include jigging and use of lights as well as mid-water trawling. The Council believes that the continuation of the gear regulations set forth in 50 CFR 611.13(c) for foreign fishermen should reduce bycatch. Consideration may be given in future amendments to the plan for imposing gear restrictions on domestic fishermen to improve selectivity.

6. Changes in the Management Unit—Alternative management units include (a) only the FCZ and (b) US territory, that is, the FCZ and the territorial sea combined. Using the squid in the FCZ only would, if nothing else, limit the collection of data on all US fishing for squid. This would be a significant problem in a developing fishery. Limiting the management unit to squid in US territory would be adequate if the question of a bilateral arrangement with

Canada were resolved or if *Illex* were not a transboundary stock.

II-6. List of Agencies From Which Comments Have Been Requested

Agency	Comment received	
	Original	Supplemental
Senate Commerce Committee.....		
House Merchant Marine & Fisheries Committee.....		
Department of State.....	X	
Department of Commerce:		
National Marine Fisheries Service—NOAA.....	X	
Office of Coastal Zone Management—NOAA.....		
Department of the Interior:		
U.S. Fish and Wildlife Service.....		
Bureau of Land Management.....		
U.S. Dept. of Transportation, U.S. Coast Guard.....	X	X
Environmental Protection Agency.....	X	
The States of Maine through North Carolina.....		
New England Fishery Management Council.....		
South Atlantic Fishery Management Council.....	X	

II-7. Dates

Hearings:

Pt. Judith, RI—December 1, 1977, October 3, 1978.
 Portland, ME—December 2, 1977, October 5, 1978.
 Hyannis, MA—December 5, 1977.
 Gloucester, MA—December 6, 1977, October 4, 1978.
 Manteo, NC—December 6, 1977.
 Norfolk, VA—December 7, 1977, September 20, 1978.
 Ocean City, MD—December 8, 1977, September 21, 1978.
 Cape May, NJ—December 9, 1977, September 26, 1978.
 Riverhead, NY—December 12, 1977.
 Red Bank, NJ—December 14, 1977.
 Asbury Park, NJ—September 27, 1978.
 Centerreach, NY—September 28, 1978.
 Draft statement to Environmental Protection Agency: November 7, 1977.
 Final supplemental statement to Environmental Protection Agency: August 28, 1978.

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XV. Relationship of the recommended measures to existing applicable laws and policies.

XVI. Council review and monitoring of the plan.

XVII. References.

IV. Introduction

IV-1. Development of the Plan

This management plan for squid was prepared by the Mid-Atlantic Fishery Management Council in cooperation with the New England and South Atlantic Fishery Management Councils. It contains management measures to regulate fishing for two species of squid (*Loligo pealei* and *Illex illecebrosus*).

This fishery management plan, once approved and implemented by the Secretary of Commerce, will establish regulations for both foreign and domestic fleets harvesting squid within the FCZ and will supersede the PMP currently in effect.

IV-2. Overall Management Objectives

The Mid-Atlantic Council has adopted eight objectives to guide management and development of the squid fishery in the northwestern Atlantic. They are:

1. Achieve and maintain optimum stocks for future recruitment.
2. Prevent destructive exploitation of squid species.
3. Minimize capture of nontarget species.
4. Achieve efficiency in harvesting and use.
5. Maintain adequate food supply for predator species, recognizing that squid are also predators.
6. Minimize user conflicts.
7. Improve understanding of the condition of the stocks.
8. Encourage increased American participation in the squid fishery.

V. Description of the Stocks

V-1. Species and Their Distribution

Loligo pealei. Known by the common names of long-finned squid, winter squid, common squid, and bone squid, *Loligo pealei* (Lesueur) is one of five Atlantic species of the genus *Loligo* of the squid family Loliinidae. *L. pealei* ranges over the continental shelf from Nova Scotia to the Gulf of Mexico. However, primary commercial

concentrations occur from Corsair Canyon on Georges Bank to Cape Hatteras (Serchuck and Rathjen, 1974; Tibbets, 1975; Hotta, 1976).

Seasonal differences in geographic and bathymetric distribution of long-finned squid are evident and appear to be related to bottom water temperatures. Concentrations are usually found in areas where these temperatures are above 8° C (46° F). For example, the greatest squid catches made by the NMFS 1967-1971 spring and autumn bottom trawl surveys were in 10-12° C and 10-14° C waters respectively. During winter, when water temperature is coldest inshore, long-finned squid concentrate along the outer edge of the Continental Shelf in 8-12° C waters (Summers, 1967; Vovk, 1969). From late spring to early autumn the species disperses from the shelf edge into shallow coastal waters with heaviest concentrations usually occurring in the Cape Hatteras, New York Bight, and Nantucket Shoals areas. During summer, however, concentrations of *Loligo* may possibly occur anywhere on the Continental Shelf. This dispersion is part of a spring inshore spawning migration which begins in the southern areas and as water temperatures rise, proceeds northward along the coast. By April or May, mature squid arrive in Massachusetts waters with smaller immature individuals arriving in May and June. During late spring and summer, long-finned squid may be found in harbors and estuaries, particularly in southern New England. In the fall, concentrations appear in the southern New England and Hudson Canyon area (ICNAF 5Zw and 6A) in water less than 110m (361 ft.) deep (Rathjen, 1973; Serchuck and Rathjen, 1974; Tibbets, 1975). Vovk (1969) also found large fall concentrations of long-finned squid in the area between Block Island and southern Georges Bank.

NMFS spring bottom trawl surveys show primary concentrations of *Loligo* in depths of 111-183m (364-600 ft.) and lesser concentrations in other depths surveyed (27-110m and 184-366m). Size distribution correlates with depth in both spring and fall survey data, with the largest individuals usually taken at the greatest depths (Serchuck and Rathjen, 1974). Other investigators (Summers, 1967; Mercer, 1969) have found similar correlations.

Loligo pealei usually spawn in shallow waters between Delaware and eastern Cape Cod. A six-month spawning season which extends through the warmer half of the year is indicated by the annual cycle of sexual maturation

of *Loligo*. Recently, however, Mesnil (1976) proposed to ICNAF the concept of two crossed life cycles for *Loligo pealei* based on various size groups found during research surveys and inferences to similar life cycles for *Loligo vulgaris* and the cuttlefish *Sepia officinalis* in the northeast Atlantic. Briefly, this theory is as follows: squid hatching in early summer spawn approximately 14 months later the following fall. These eggs hatch in late fall and mature about 20 months later in late spring-early summer. This cycle would then be repeated. However, much more study is necessary before this theory can be firmly established.

During spawning, male squid deposit sperm cells in the mantle cavity of the female with a modified arm. The female then extrudes eggs into its mantle cavity which upon contact with sperm cells become fertilized. Between 150 and 200 fertilized eggs are contained in each gelatinous capsule and these are passed through the siphon into the water (McMahon and Summers, 1971). The demersal capsules are attached to bottom debris or often to clusters of previously spawned egg capsules. Sexually mature females, depending on their size, produce between 3,500 and 6,000 eggs. It is believed that there is heavy mortality of both sexes after spawning; however, this has not been conclusively established. Eggs hatch in 11-27 days, releasing larvae about 3mm ($\frac{1}{8}$ inch) in length. Little is known of these larval stages, as they are not often found in spawning areas and are assumed to be carried away by currents. Larvae are essentially similar to adults; development is gradual with the juveniles remaining in coastal waters until fall (Summers, 1971; Rathjen, 1973; Barnes, 1974).

Squid age determination through analysis of growth rings in beaks, statoliths and pens is not yet conclusive. Therefore, age and growth data is inferred from sequential length frequency distribution analyses. Present data indicate that *Loligo* live for 14-24 months although some males may reach 36 months of age. Individuals grow an average of 1.0-1.5 cm per month, reaching a dorsal mantle length of 16 and 18 cm ($6\frac{1}{4}$ and 7 inches) at one year, and 27 and 32 cm ($10\frac{1}{2}$ and $12\frac{1}{2}$ inches) at two years for females and males, respectively. The observed sex ratio is approximately 1:1 (Summers, 1971; Mesnil, 1976).

Illex illecebrosus. The summer or short-finned squid (*Illex illecebrosus*) (Lesueur) belongs to the ocean squid family Ommastrephidae, and is one of three species of *Illex* found in the

northwest Atlantic. Its range extends from Greenland to Florida and it is relatively abundant between Nova Scotia and New Jersey. However, it is most abundant in summer in the Gulf of Maine and in the Newfoundland region (Mercer, 1965).

Details of the life history and biology of *Illex* are not well known. During the spring and summer, they migrate into coastal waters about 10-15 m (33-50 ft.) deep off Newfoundland and Nova Scotia and somewhat deeper in the New England area and may form large surface schools. This inshore movement may be in response to temperature and salinity preferences, and off Canada may be due to their pursuit of capelin (*Mallotus villosus*) which also move inshore at this time. In late fall (October-December) short-finned squid move offshore in ICNAF Subarea 5 and Statistical Area 6 and to the southeast and open ocean from Subareas 3 and 4 (see Figure 1).

Unlike *Loligo*, *Illex* is not restricted to water above 8° C (Mercer, 1973). The optimum temperature range of *Illex* is about 7-15° C (45-59° F), although they were taken by Canadian research surveys on the Grand Banks at depths of 55-365 m (180-1200 ft.) with bottom water temperatures of 0.5-8.0° C (Squires, 1957). However, large concentrations of short-finned squid are usually found along the edge of the Continental Shelf where temperatures are greater than 5° C (41° F) (Tibbetts, 1975).

Spawning is usually assumed to take place in the deep waters of the continental slope from December through June with most individuals dying after spawning. Actual spawning grounds have not been documented, however. In fact, some short-finned squid have been taken on Georges Bank during the assumed winter spawning season. Wigley (personal communication) encountered sexually mature *Illex* on Georges Bank during summer as did a joint US-Japanese survey in July 1979, and recently USSR scientists confirmed this observation. Presence of larvae is of little help, since all members of the family Ommastrephidae have virtually identical planktonic stages. Eggs are believed to be spawned one by one in batches and fertilized in the water column. Yet no eggs identified as those of *Illex* have been reported to date (Nesls, 1968; Mesnil, 1976).

Short-finned squid are usually shorter-lived than long-finned squid, reaching ages of 12-16 months. Maximum mantle length is approximately 25-35 cm ($9\frac{1}{2}$ -13 $\frac{1}{4}$ inches). Females grow larger than

males, although males are heavier than females for any given length. Growth is rapid with an approximate doubling in mantle length between May and October and a resultant six- to eight-fold weight increase (Squires, 1967; Rathjen, 1973; Tibbetts, 1975).

V-2. Abundance and Present Condition

Squid are short-lived animals that fluctuate widely in abundance, and it is impossible to predict long-term relative abundance of these species. Assessment of relative abundance of *Loligo* can only reliably be made in the autumn immediately preceding the fall-winter fishery (i.e., using data from the annual NMFS autumn bottom trawl surveys). The same predictive limitations also apply to *Illex*, but for this species neither the annual spring nor the autumn NMFS trawl surveys has in the past been particularly useful for management purposes. The autumn survey indicates abundance of *Illex* at the end of the summer fishing season, presumably just before *Illex* migrate offshore to spawn and die. The spring survey appears to be too early in the year (the water temperatures are still low) to give an accurate indication of the abundance of *Illex* during the following summer and autumn (NMFS, 1977).

Stock size estimates of *Loligo* and *Illex* populations in ICNAF SA 5 and 6 were reviewed by Sissenwine (1976). All of the estimates exhibit considerable variance. The most useful of these for *Loligo* are minimum biomass estimates based on NMFS autumn bottom trawl surveys. These biomass estimates are for the autumn when mean weight of individual *Loligo* is about 20 grams (0.7 ounces). The mean weight of these same *Loligo* taken by the foreign fisheries during winter is about 60 grams (2 ounces) and when taken by U.S. fishermen in late spring about 80-100 grams (2.8-3.5 ounces). Thus, the number of individuals rather than the weight in metric tons is the more important figure for estimating stock size.

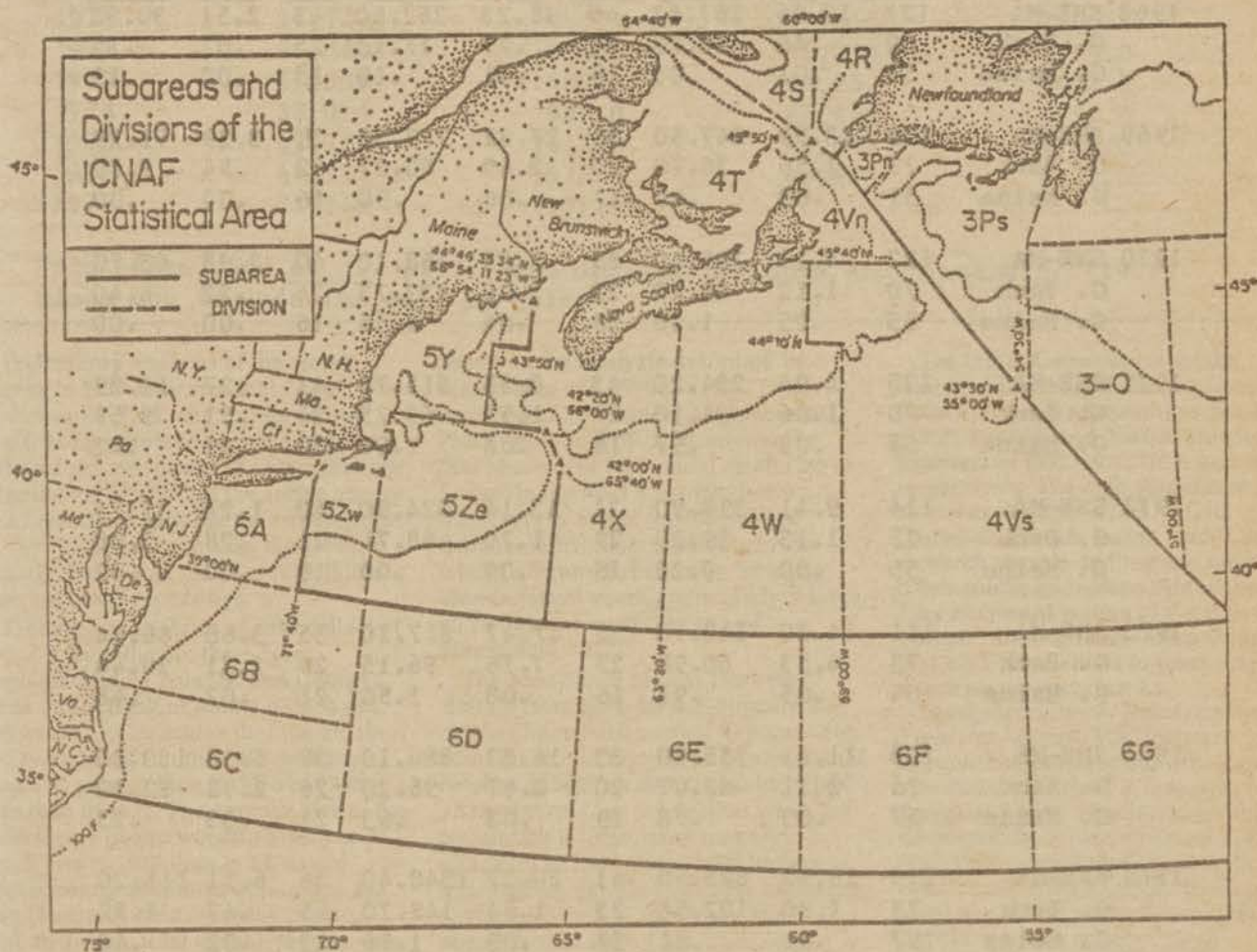
Table 1 gives the results of NMFS autumn bottom trawl survey data for long-finned squid for 1968-1976. Data from 1976 indicate that *Loligo* remained at about the same relatively high level that occurred in the previous two years. The abundance of pre-recruit *Loligo* was observed in earlier years. Table 2 gives *Loligo* biomass estimates based on the

above results. B_1 values (in metric tons and in millions of individuals) were derived by areal expansion of the survey data (i.e., area of tows vs. area of fishing grounds), and thus are probably

conservative estimates. *Loligo* are more vulnerable to trawl capture during the day (Table 1). B_2 estimates in Table 2 were obtained by adjusting nighttime trawl catches of *Loligo* upward to

account for this difference in efficiency. Thus, B_2 estimates of biomass are probably more realistic (yet still conservative) than those derived from the simpler areal expansion.

Figure 1



Northwest Atlantic From Cape Hatteras To Newfoundland,

Showing ICNAF Areas Referred To In The Management Plan

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Table 1. Catches of Loligo pealei in NMFS Autumn Bottom Trawl Surveys for Southern New England-Middle Atlantic (SNE-MA), Georges Bank and the Gulf of Maine.
(mean weights in kg and numbers per tow by strata set)

	TOTAL			DAY			NIGHT		
	# tows	wt /tow	#/tow	# tows	wt /tow	#/tow	# tows	wt /tow	#/tow
1968 SNE-MA	124	10.86	267.57	40	16.23	362.60	43	2.51	30.58
G. Bank	69	.40	10.73	22	.77	17.13	25	.02	.12
G. Maine	50	.01	.09	18	.01	.10	15	.00	.11
1969 SNE-MA	119	13.99	347.50	38	27.32	777.30	39	3.29	51.29
G. Bank	73	1.56	36.70	25	2.49	60.37	32	.54	9.70
G. Maine	51	.03	.40	17	.06	.90	16	.00	.00
1970 SNE-MA	122	4.13	105.40	38	5.55	168.10	40	2.98	63.70
G. Bank	70	1.12	49.40	23	2.99	133.73	24	.22	6.40
G. Maine	53	.05	1.46	18	.06	1.55	16	.00	.00
1971 SNE-MA	125	4.04	234.20	43	8.55	515.70	41	.27	11.29
G. Bank	73	1.06	34.10	27	1.51	63.75	24	.51	9.69
G. Maine	55	.03	.57	16	.08	1.08	20	.01	.42
1972 SNE-MA	114	9.41	398.90	31	13.14	524.90	40	1.24	31.25
G. Bank	73	1.13	39.30	29	1.70	68.71	21	.28	5.08
G. Maine	55	.00	0.20	18	.00	.00	18	.00	.02
1973 SNE-MA	111	14.20	542.90	38	17.47	817.10	35	3.68	66.94
G. Bank	73	4.53	60.90	27	7.16	96.15	28	2.31	30.44
G. Maine	54	.05	.91	16	.08	1.56	21	.02	.48
1974 SNE-MA	108	11.41	355.90	33	16.33	886.10	38	5.38	130.00
G. Bank	74	2.21	62.07	20	2.67	96.20	26	2.93	22.10
G. Maine	57	.03	.78	19	.03	.63	21	.03	.23
1975 SNE-MA	115	15.55	895.50	41	20.27	1548.40	36	6.11	115.20
G. Bank	73	1.80	102.56	23	1.64	142.70	25	.47	1.82
G. Maine	57	.81	.81	19	.03	1.56	23	.02	.40
1976 SNE-MA	123	15.79	579.79	37	22.05	979.90	40	3.65	90.74
G. Bank	67	3.14	103.52	27	5.82	207.53	19	2.18	54.94
G. Maine	55	.36	12.67	14	.51	16.00	21	1.37	8.58
*1977 SNE-MA	131	11.89	685.77						
G. Bank	92	0.87	39.38						

From Sissenwine *et al.* (1977) and updated by Lange and Sissenwine (1977)
* estimates do not include the Gulf of Maine

Table 2. *Loligo pealei* Biomass Estimates (B_1 and B_2) Based On Data From NMFS Autumn Bottom Trawl Surveys, For Southern New England - Middle Atlantic, Georges Bank, And The Gulf of Maine

B_1 values were derived by areal expansion of the survey data (see p. 10).
 B_2 values are adjusted to account for sampling at night rather than day.

	B_1 wt. (tons)	B_1 (no. $\times 10^6$)	B_2 wt. (tons)	B_2 (no. $\times 10^6$)
1968	28,073	692.6	29,114	1211.9
1969	37,643	931.6	48,053	2393.1
1970	12,095	337.9	19,640	1946.2
1971	11,752	641.4	14,050	1106.1
1972	25,400	1065.1	21,039	1533.3
1973	42,338	1460.9	44,252	3092.0
1974	32,014	989.0	46,442	4757.0
1975	41,912	2412.0	48,636	4789.0
1976	44,935	1632.0	48,930	4372.0
*1977	31,318	1791.3		

From Sissenwine et al. (1977) and updated by Lange and Sissenwine (1977)
 *does not include the Gulf of Maine

Preliminary analysis of the spring survey in 1977 indicates that *Loligo* was quite scarce. This may reflect cooler water temperatures which might have delayed the movement of *Loligo* inshore. Abundance of squid in the spring survey has been more variable than abundance in the autumn survey, thus the latter is usually used as an index of population size, especially for *Loligo*.

Preliminary analysis of data collected thus far from the Southern New England-Middle Atlantic and Georges Bank strata (Gulf of Maine data is not yet available) indicates that the number of *Loligo* in 1977 in the SNE-MA area was 18% greater than in 1976 but 23% less than in 1975. The average size of the individuals (mean weight), however, is much less in 1977 than in 1976, and consequently estimates of biomass are less (Table 2). This decrease in size, and, therefore, total weight, may be due to later spawning. Even the conservative estimate of stock size for 1977 indicated in Table 2 is adequate to support the *Loligo* optimum yield of 44,000 tons

based on the analysis described by Sissenwine and Tibbetts (1977) and repeated in Preliminary Management Plans and this FMP. It is noteworthy that because of the annual small size of *Loligo* in the NMFS autumn bottom trawl survey catch, the biomass of fishable individuals available to the winter offshore fishery may be lower than in recent years, particularly if large mesh nets are used (Lange and Sissenwine, 1977).

The abundance of *Illex* increased sharply from 1974-1976. It appears that catches have been related to population abundance and there is no evidence that catches as high as 20,000 tons have had an impact on *Illex* production when the population is large. *Illex* was very abundant in the autumn 1976 bottom trawl survey (Table 3) but this indicated past abundance in 1976 more than abundance in 1977. *Illex*, like *Loligo*, was also scarce in spring survey catches; however, this may have been a result of unusually cold water temperatures delaying migration.

The U.S.S.R. has estimated the minimum biomass of *Illex* on Georges Bank (by areal expansion) as 100,000, 58,000, 197,000, and 258,000 tons for the summers of 1971, 1972, 1975, and 1976, respectively. The high abundance in 1976 was confirmed by U.S.S.R., Canadian, French, Polish, and U.S. research vessels. In the past, separate catch quotas have been established for *Illex* in coastal waters of the U.S. and Canada, although there is no evidence that *Illex* populations in these areas comprise separate stocks.

Stock-Recruitment Relationships And Yield Per Recruit. The degree of dependence between spawning stock size and recruitment is unknown for *Loligo* and *Illex*. Simulation models developed by Sissenwine and Tibbetts (1977) considered three hypothetical relations in order to estimate maximum yield per recruit to the unexploited population for a range of stock-recruitment circumstances. The three relationships considered are shown in Figure 3.

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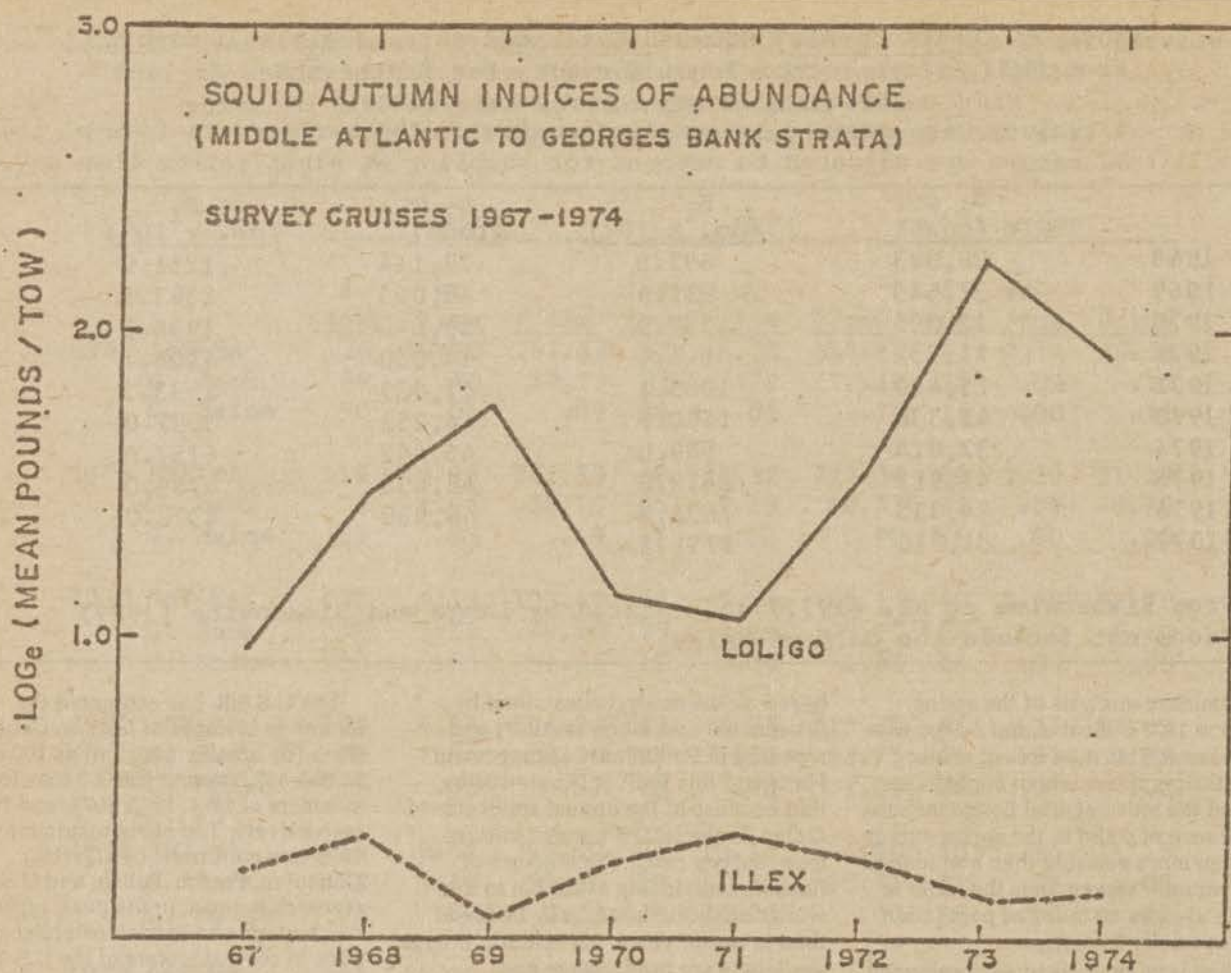


Figure 2

Autumn Survey Abundances (Log_e Mean Pounds Per Tow) For Squid,
Loligo pealei And Illex illecebrosus, 1967 - 1974,
From The Middle Atlantic To Georges Bank (From Tibbetts, 1977)

Sissenwine and Tibbetts' (1977) models were designed to simulate the effect of fishing on squid (Loligo and Illex). Instantaneous growth, fishing, and natural mortality rates varied monthly in a realistic manner, with more fishing mortality occurring during the winter for Loligo and during the summer for Illex. A two-year life-span was assumed for Loligo with spawning spread uniformly through May-September. For Illex, a one-year life-span was assumed with spawning spread uniformly through January-March. Recruitment was described by a single-parameter, stock-recruitment function:

$$R = \frac{P}{1 + A(p' - 1)}$$

where R = weight of new squid (recruits) entering the fishery as a proportion of the weight of new squid that would enter an unexploited stock, p = the weight of spawners in an unexploited (virgin) stock, p' = the weight of spawners in the exploited stock as a proportion of the virgin spawning stock, and A = a coefficient (ranging from 0 to 1.0) which has a specific value depending upon density-dependence assumptions.

Table 3. Stratified Mean Catch per Tow in Pounds for Loligo and Illex, from US Survey Vessel Spring and Autumn 1967 - 1977.
(Data for 1977 are preliminary and incomplete.)

Area	Year	Spring		Autumn	
		<u>Loligo</u> wt/tow	<u>Illex</u> wt/tow	<u>Loligo</u> wt/tow	<u>Illex</u> wt/tow
Mid-Atlantic	1967			4.23	1.14
	1968	5.49	.09	26.85	1.62
	1969	3.82	.02	39.76	.28
	1970	2.75	.02	7.97	.55
	1971	6.22	.57	11.76	.72
	1972	6.69	.00	14.79	1.27
	1973	6.23	.02	36.88	.20
	1974	6.09	.26	25.25	.47
	1975	10.71	.03	28.59	3.53
	1976	15.89	.07	18.74	21.96
Southern New England	1967	2.15	.04		
	1968			23.28	.61
	1969	2.74	.00	20.47	.36
	1970	0.62	.30	20.17	.16
	1971	2.35	.24	10.48	.76
	1972	2.98	.06	5.48	.51
	1973	13.08	.00	27.84	.68
	1974	10.76	.01	24.64	.11
	1975	21.44	.17	25.02	.32
	1976	16.73	.06	41.09	.58
Southern Georges Bank	1976	16.81	.14	54.02	3.92
	1977	2.56	.04		
	1967			2.13	.43
	1968	2.45	.00	1.54	.96
	1969	11.60	.00	6.72	.18
	1970	1.61	.00	1.97	.90
	1971	3.94	.02	4.15	2.61
	1972	6.11	.02	2.50	.62
	1973	7.42	.17	11.42	2.21
	1974	0.29	.13	5.06	.59
	1975	4.49	.12	.64	2.77
	1976	1.90	.05	11.38	20.90
	1977	1.36	.11		

Table 3. (continued)

East	1967			1.02	.07
Georges	1968	.00	.02	1.51	1.03
Bank	1969	1.15	.00	6.29	.14
	1970	1.29	.03	5.62	.33
	1971	.13	.00	.69	.33
	1972	.21	.00	.49	.22
	1973	.00	.00	12.19	.50
	1974	.00	.00	.92	.48
	1975	.61	.00	.00	.53
	1976	.03	.00	9.03	48.07
	1977	.04	.09		
North	1967			.03	.08
Georges	1968	.00	.00	.38	.54
Bank	1969	.00	.00	1.01	.02
	1970	.00	.00	1.36	.48
	1971	.00	.00	2.32	.67
	1972	.00	.00	3.33	.45
	1973	.00	.00	8.59	.94
	1974	.00	.00	6.41	.19
	1975	.00	.00	6.89	3.13
	1976	.03	.02	4.36	30.66
	1977	.03	.00		

From Sissenwine *et al.* (1977).

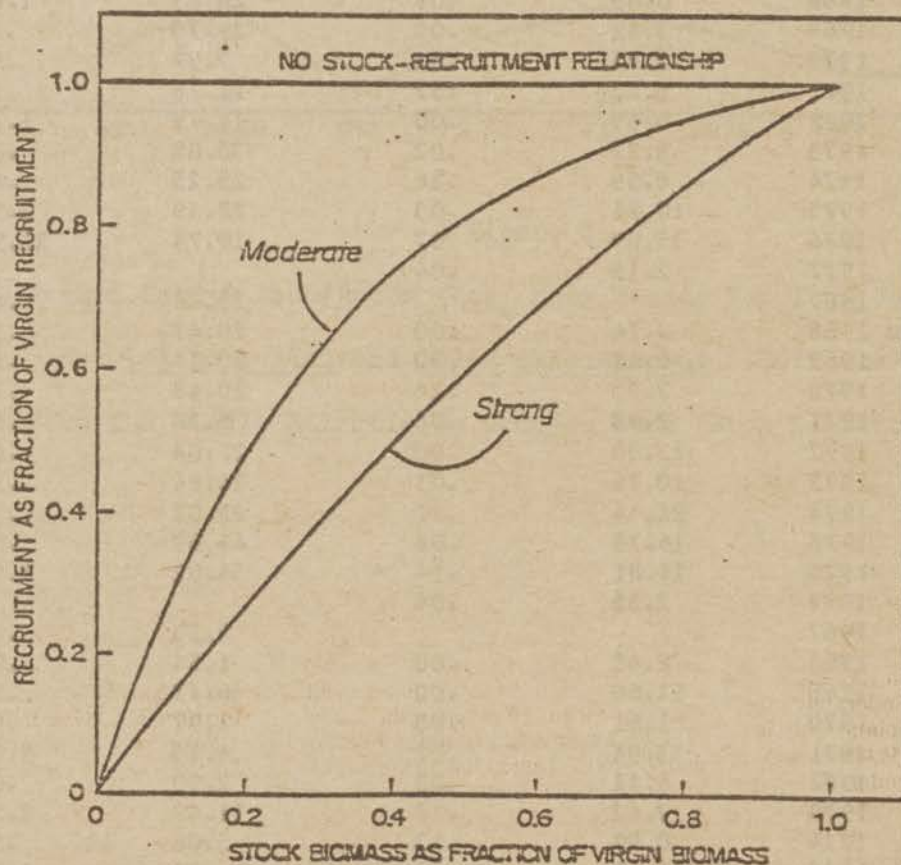


Figure 3. Squid Stock-Recruitment Relationships

Table 4. Squid Stock-Recruitment Characteristics

Species	Stock-Recruitment	Y_{max} (grams)	E_{msy} (%)	W_{msy} (grams)
<i>Loligo</i>	None	38	75	52
<i>Loligo</i>	Moderate	21	40	72
<i>Loligo</i>	Strong	8	15	85
<i>Illex</i>	None	45	63	72
<i>Illex</i>	Moderate	25	37	90
<i>Illex</i>	Strong	9	15	100

Y_{max} = Expected maximum weight per individual recruited to the virgin stock.

E_{msy} = Exploitation rate over lifespan of organism that will produce MSY. Percent of recruits that should be caught in order to produce MSY.

W_{msy} = Average weight of individual in catch if fishery exploited at MSY level.

Based on these models, maximum yield per recruit (Y_{max}) of *Loigo* and *Illex* is about 38 grams at an exploitation rate (over the lifespan of the species) (E_{msy}) of 75% and 63%, respectively. If recruitment is moderately dependent upon spawning stock size then the maximum yield per recruit to the recruit to the unexploited fishery is 21 grams for *Loligo* and 25 grams for *Illex*, with E_{msy} equal to 40% and 37% respectively. For a strong relationship between stock and recruitment, the corresponding values are 8 grams and 15% for *Loigo* and 9 grams and 15% for *Illex*. These results along with the average weight of individuals of the catch according to the simulations are summarized in Table 4. Both species of squid are cannibalistic and cannibalism is a mechanism that could potentially result in a density dependent relationship between spawning stock size and recruitment.

Population size estimates for *Loligo* range from about 1.0 to 4.8 billion individuals between 1968-1976. These are probably underestimates since they are based on areal expansion of bottom trawl survey data (see Sissenwine, 1976). Most of the squid taken in autumn bottom trawl surveys were small, recruiting squid. Therefore, an annual recruitment of greater than 1.5 billion *Loligo* seems likely. If a moderately strong stock recruitment relationship is assumed, then a catch of 44,000 metric tons is indicated by the model (based on a maximum long-term average yield). This was the basis for optimum yield in 1977 for *Loligo*. The model was not used

to determine optimum yield for *Illex* in 1977 because of uncertainty in model parameters and inadequate estimates of annual recruitment.

Using the U.S.S.R. estimates of standing stock size of *Illex* on Georges Bank (100,000, 58,000, 197,000, and 257,000 metric tons in summers of 1971, 1972, 1975, and 1976, respectively), and assuming a moderate stock-recruitment relationship and most exploitation during the summer, these estimates indicate that a catch of at least 37,000, 21,000, 73,000, and 95,000 tons could have been supported by the population, according to the model (applying a 37% exploitation rate).

It should be noted that the models described above are based on the life cycles for *Loligo* and *Illex* of 24 and 12 months as described by Summers (1971) and Squires (1967). Recently, Mesnil (1976) suggested more complicated cross-over life cycles for both species of squid. If further investigation supports these proposed life cycles, it will be necessary to modify the models. In addition, the models are based on seasonal patterns of fishing that occurred prior to establishment of foreign fishing "windows" (primarily winter fishing for *Loligo* and summer fishing for *Illex*) and a sharp departure from this seasonal fishing pattern will also require modification of the model.

Cohort Analysis. Without a reliable method to determine the age of squid landed and age composition of the catch, only a crude approach to cohort analysis is possible. Ikeda and Sato (1976) approximated age composition of

the Japanese *Loligo* catch for the 1972-1973 and the 1973-1974 fishing seasons based on length composition and the hypothetical growth function:

$$L_t = 38.3(1 - e^{-0.58t})$$

Where:

L_t = mantle length in cm at age t
 t = age in years
 e = a constant (2.71828 . . .)

Cohorts were defined as monthly brood groups, and the estimated brood composition of the catch was used to calculate the number and exploitation rate of *Loligo* in the April, May, and June broods at the beginning of the fishing season. Sissenwine (1976) noted problems with the results because of possible errors in assignment of individuals to broods, inadequate data on natural mortality, and the small portion of the total catch resulting from the broods that was considered in the analysis.

***Loligo pealei* Stock Status:** November 1977.¹ The pre-circuit index (the stratified mean number per tow of individuals ≤ 8 cm mantle length; Table 5) from the autumn 1976 U.S. bottom trawl survey was higher than the previous 9 year (1967-1975) average, although it was 49% lower than that in 1975. The catch/tow of *Loligo* of all sizes was also above the 9 year average for 1976, but lower than 1975.

Early 1977 commercial catches of *Loligo* were, however, less than in previous recent years. Preliminary

¹ This section was taken from Lange and Sissenwine (1977).

reports of foreign catches in the first three months were 25% less than in 1976, even though total allowable catches had not been reached. Inshore catches by U.S. fishermen during the first six months of 1977 dropped 71% from 1976 catches, and 16% from the previous seven year (1970-1976) average. Even though the U.S. directed fishery in May and June realized approximately the same landings as in May and June of 1976, the amount of effort applied to obtain this catch may have been greater (personal communication, Pat Gerrier, NMFS). Incidental catches in earlier months and since June have been substantially lower than previously.

NMFS spring bottom trawl survey results in 1977 indicate a decrease in *Loligo* abundance in the Southern New England, Middle Atlantic, and Southern Georges Bank areas from 1976 to 1977 of 85%, 86%, and 28% respectively. The decreases from the 1968 to 1976 mean catch were 70%, 74%, and 69% respectively (Table 3). In August 1977, the NMFS research vessels *Albatross IV* and *Delaware II* participated in an inshore (≤ 60 fathoms) summer bottom trawl survey from Cape Hatteras to Nova Scotia. *Loligo* is usually abundant in these shallow waters during the summer. Stratified mean numbers per tow for this survey, in the standard survey strata, (15-60 fathoms) were calculated and compared with a similar survey conducted in 1969. It should be noted that the 1969 autumn bottom trawl survey indicated that the abundance of *Loligo* in that year was typical of other years during which surveys were conducted.

In 1977, the stratified mean number of *Loligo* per tow was 54.087 [with $P(29.81 \leq y_{st} \leq 78.36) = .95$] in the Southern New England-Mid-Atlantic area; 2.194 [$P(0.0 \leq y_{st} \leq 4.903) = .95$] on Georges Bank, with none in the Gulf of Maine area. These values were about half those of 1969 (104.86, 4.36, and 0.0, respectively). Strata by strata comparison of *Loligo* catches in these two years shows a significant (at the 0.05 level) decrease in mean catches per tow for those strata sampled during both cruises (Table 6). There was also a substantial change in the percent composition of squid (*Loligo* vs. *Illex*) in the catches. In 1969 *Illex* made up 49% and 53% of the total squid catch (in numbers) in the Southern New England and Mid-Atlantic, respectively, while the corresponding percentages were 76% and 95.5%, indicating an increase in importance of *Illex* in the squid biomass of these areas. In both years, *Illex* made up 100% of the squid caught in the Gulf of Maine.

Information from vessels which collect *Loligo* for biological samples for the Marine Biological Laboratory in Woods Hole indicate the possibility of late arrivals to the inshore area. Few large individuals were taken in the late spring-early summer when they are usually quite abundant, but as the summer progressed these large *Loligo* began to appear in great quantities, possibly indicating a delay in the peak spawning period from May to late July.

The NMFS autumn bottom trawl survey provides the most reliable indices of abundance for *Loligo*, and preliminary analysis of data collected thus far, from Southern New England-Middle Atlantic and Georges Bank strata (the Gulf of Maine has not been sampled yet), indicate that the number of *Loligo* in 1977 in the Southern New England-Middle Atlantic area is 18% greater than in 1976, but 23% less than in 1975. However, the average size of the individuals (mean weight) was much less in 1977 than in 1976, and, consequently, estimates of biomass are less (Table 1). This decrease in size and, therefore, total weight, may be due to later spawning. Estimates of stock size in numbers and weight were calculated by areal expansion of catch/tow data (Tibbetts, 1977). These estimates are very conservative since they assume that the gear efficiency is 100%. Since *Loligo* migrate vertically at night and thus are less vulnerable to bottom trawl gear, a more realistic estimate of stock size can be obtained by adjusting all night tows by a factor corresponding to the fishing power of the bottom trawl gear during day relative to night.

Even the conservative estimate of stock size for 1977 indicated in Table 1 is adequate to support a total catch of 44,000 tons, based on the analysis described in Sissenwine and Tibbetts (1977) and repeated in PMPs. Because of the annual small size of *Loligo* in the NMFS autumn bottom trawl survey catch, the biomass of fishable individuals available to the winter offshore fishery may be lower than in recent years, particularly if large mesh nets are used.

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Table 5. Pre-Recruit Indices of *Loligo* - Stratified Mean Number Per Tow of *Loligo* of All Sizes and of These ≤ 8 cm in Mantle Length in Autumn Bottom Trawl Surveys - Middle Atlantic to Georges Bank

Year	Mean number per tow of <i>Loligo</i>	
	All sizes	≤ 8 cm
1967	134.5	126.9
1968	176.5	159.9
1969	237.3	217.4
1970	85.6	79.3
1971	163.3	161.5
1972	271.4	258.5
1973	372.0	353.9
1974	251.7	233.3
1975	614.4	593.3
1976	410.9	302.5

Table 6. Strata Mean Number Per Tow *Loligo* from NMFS Summer Bottom Trawl Surveys, 1969 and 1977, Including Number of Tows Per Strata

Strata	Number of Tows	Mean Number per Tow, 1969	Number of Tows	Mean Number per Tow, 1977
1	7	134.3	7	0.6
2	7	7.6	0	-
3	3	0	0	-
4	3	0	0	-
5	5	47.2	5	0
6	8	0	0	-
7	3	0	0	-
8	3	0	0	-
9	5	1.2	5	0
10	8	0	6	0
11	3	0	0	-
12	3	0	0	-
61	4	88.8	5	173.6
62	2	120.0	2	34.5
63	2	34.0		3308.0
64	2	2.0	0	-
65	7	417.7	10	121.3
66	4	112.5	2	144.5
67	1	12.0	0	-
68	2	2.5	0	-
69	6	255.3	4	30.5
70	4	502.3	1	46.0
71	2	616.5	0	-
72	2	80.5	0	-
73	5	172.6	3	108.3
74	4	16.2	0	-
75	2	17.0	0	-
76	2	1.0	0	-
13	9	0	10	0
14	4	0	0	-
15	3	0	0	-
16	10	0	11	0
17	4	0	0	-
18	3	0	0	-
19	9	14.2	9	11.7
20	6	20.7	6	1.5
21	4	0	4	0
22	0	-	4	0
23	5	0.4	5	0
24	6	0	7	0
25	0	-	4	0

V-3. Ecological Relationships

Squid play key roles as predators and prey in the flow of energy in the coastal northwest Atlantic ecosystem. They are rapid growing (high production to biomass ratio), abundant and widely distributed during the warm months when the ecosystem is most productive. Overexploitation of squid might result in the decrease of other marine species which compete with fisheries for squid, and substantial increases in squid abundance might threaten fish species that are preyed upon, during the early life stages, by squid (Sissenwine *et al.*, 1977).

Both *Loligo* and *Illex* are active, voracious predators. Young of both species feed heavily on euphausiid shrimp and other small crustaceans. As the individuals grow, the diet gradually changes to young fish. For example, Squires (1957) reported that as the mantle length of *Illex* increased from 10 to 30 cm (4 to 11¾ inches), the percentage of individuals with fish in their stomachs increased from 11.8% to 62.5%, respectively. Major prey species for short-finned squid include cod (*Gadus morhua*), haddock (*Melanogrammus aeglefinus*), redfish (*Sebastes marinus*), capelin (*Mallotus villosus*), and mailed sculpin (*Triglops nybelini*) (Squires, 1957). Atlantic mackerel (*Scomber scombrus*), Atlantic herring (*Clupea harengus*), sand lance (*Ammodytes americanus*), and flounders are also eaten by *Illex* (Bigelow and Schroeder, 1953; Rathjen, 1973; Lux, Uzmann, and Lind, 1977).

Loligo actively feed on pelagic shrimp, schools of young Atlantic mackerel, silver hake (*Merluccius bilinearis*), and butterfish (*Peprilus triacanthus*) (Barnes, 1974). In addition, squid are cannibalistic as adults and often prey on the young. Vovk (1969) reported squid, euphausiids, fish, shrimp, copepods, crabs, and polychaetes in more than 2% of the stomachs of *Loligo* examined. The first four items were found in greater than 25% of the stomachs. Vovk found a higher occurrence of fish in the stomachs of *Loligo* as the squid increased in size. Various fish groups were found, such as *Diaphus* (Myctophidae), *Anchoa* (Engraulidae), *Stenotomus* (Sparidae), *Clupea* (herring), and *Alosa* (Clupeidae), with most individual fish between 5 and 19 cm in length (Sissenwine *et al.*, 1977).

Fifty-four fish species have been identified as predators of adult squid (*Illex* and *Loligo*) in the Fishery Conservation Zones of the United States and Canada (see Table 7). The largest

predator reported specifically from the northwest Atlantic is the northern pilot whale (*Globicephala melaena*) (Squires, 1967; Mercer, 1974). Squires (1967) reported that pilot whales feed almost exclusively on squid and mainly on *Illex*, since the abundance of Arctic squid (*Gonatus fabricii*) is not sufficient to provide a long-term food source for large herds of pilot whales. For approximately six months out of every year, these whales off Newfoundland subsist on *Illex*. Years of scarcity of *Illex*, therefore, could significantly impact on pilot whale populations of the Newfoundland area.

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Table 7. Squid Predators and References

Alewife*	Arvidson, manuscript report
American john dory	Bigelow and Schroeder, 1953
Atlantic angel shark	Maurer and Bowman, 1975
Atlantic bonito*	Bigelow and Schroeder, 1953
Atlantic croaker*	Maurer and Bowman, 1975
Atlantic silverside	Bigelow and Schroeder, 1953; Mulkana, 1966
Atlantic tomcod	Bigelow and Schroeder, 1953
Barndoor skate	Bigelow and Schroeder, 1953; Arvidson, manuscript report
Barrelfish	Bigelow and Schroeder, 1953
Bigeye thresher shark	Stillwell and Casey, 1976
Black sea bass*	Bigelow and Schroeder, 1953
Bluefin tuna*	Crane, 1936; Bigelow and Schroeder, 1953; Dragovich, 1969; 1970
Bluefish*	Bigelow and Schroeder, 1953; Grant, 1962; Lux and Mahoney, 1972; Maurer and Bowman, 1975
Butterfish*	Bigelow and Schroeder, 1953
Fourspot flounder	Bigelow and Schroeder, 1953; Maurer and Bowman, 1975; Arvidson, manuscript report
Goosefish*	Schroeder, 1895; Field, 1907; Bigelow and Schroeder, 1953; Maurer and Bowman, 1975; Arvidson, manuscript report
Haddock*	Homans and Needler, 1944; Wigley, 1956; Wigley and Theroux, 1965; Bowman, 1975; Arvidson, manuscript report
Hickory shad*	Bigelow and Schroeder, 1953; Arvidson manuscript report
Lancetfish	Mathews <i>et al.</i> , 1977
Little skate	Field, 1907; Bigelow and Schroeder, 1953; Richards <i>et al.</i> , 1963
Mackerel*	Maurer, 1975
Night shark	Maurer and Bowman, 1975
Northern pilot whale	Squires, 1967; Mercer, 1974
Northern searobin	Bigelow and Schroeder, 1953
Offshore hake	Maurer and Bowman, 1975
Opah	Bigelow and Schroeder, 1953
Oyster toadfish	Field, 1907; Gudger, 1910; Bigelow and Schroeder, 1953; Schwartz and Duercher, 1963
Rainbow smelt*	Kendall, 1927; Bigelow and Schroeder, 1953
Redfish*	Bigelow and Schroeder, 1953; Kelly and Barker, 1961; Dexter, 1969; Konchina, 1970
Red hake*	Bigelow and Schroeder, 1953; Vinogradov, 1972; Arvidson, manuscript report
Roughtail stingray	Maurer and Bowman, 1975
Roundnosed grenadier	Podrazhanskaya, 1971
Sand tiger	Bigelow and Schroeder, 1953
Scup*	Bigelow and Schroeder, 1953; Arvidson, manuscript report
Sea raven	Maurer and Bowman, 1975
Silver hake*	Dexter, 1969; Vinogradov, 1972; Bowman, 1975
Skipjack tuna*	Bigelow and Schroeder, 1953; Dragovich, 1969
Smooth dogfish	Breder, 1921; Bigelow and Schroeder, 1953; Maurer and Bowman, 1975; Arvidson, manuscript report
Spiny dogfish*	Bowers, 1906; Field, 1907; Bigelow and Schroeder, 1953; Jensen, 1966; Maurer and Bowman, 1975; Arvidson, manuscript report
Striped bass*	Bigelow and Schroeder, 1953; Merriman, 1941; Nicholson and Lewis, 1973
Swordfish*	Bigelow and Schroeder, 1953; McKenzie, 1959; Tibbo <i>et al.</i> , 1961; Scott and Tibbo, 1968; Salla and Pratt, 1973
Thorny skate	Maurer and Bowman, 1975
Threespine stickleback	Bigelow and Schroeder, 1953
Thresher shark	Bigelow and Schroeder, 1953
Tilefish*	Bigelow and Schroeder, 1953; Arvidson, manuscript report
Weakfish*	Bigelow and Schroeder, 1953; Maurer and Bowman, 1975
White hake*	Maurer and Bowman, 1975
White marlin*	Ovchinnikov, 1970
White perch*	Bigelow and Schroeder, 1953
White shark	Bigelow and Schroeder, 1953
Winter skate	Bigelow and Schroeder, 1953; Arvidson, manuscript report
Witch flounder*	Summer <i>et al.</i> , 1913; Linton, 1921; Smith, 1950; Nichols and Breder, 1927; Maurer and Bowman, 1975
Yellowfin tuna*	Dragovich, 1969

* = species have commercial or recreational importance
Modified from Maurer, 1975.

BILLING CODE 3510-22-C

In the eastern Pacific Ocean, the squid family Ommastrephidae is an important food source for several species of porpoise (Perrin *et al.*, 1973). While no actual data are available from the northwest Atlantic, it can probably be inferred from the Pacific data that squid are a significant part of the diet for porpoise species of the northwest Atlantic.

The billfishes, an important and valuable group of recreational and commercial species, utilize squid heavily for food. Salla and Pratt (1973) reported that squid comprise approximately 20% by volume of food items in stomachs of swordfish (*Xiphias gladius*) from the western north Atlantic. The white marlin (*Tetrapturus albidus*) is reported to consume *Loligo pealei* more than any other fish or invertebrate as a food item (Ovchinnikov, 1970).

Maurer (1975) looked at food habits of eleven fish species classified as squid predators. Of these eleven species, nine are demersal and two are pelagic. Specimens were selected at random from catches made during nine standard NMFS bottom trawl surveys (1969-1972) from Cape Hatteras to the Nova Scotian shelf. Relative importance of squid (*Loligo* and *Illex*) in their diets is shown in Table 8. Squid constituted 30.5% of the diet weight of bluefish, thus making squid probable the most important prey for this species. Bluefish are known for voracious feeding habits and have been observed "tearing" through large schools of squid (Bigelow and Schroeder, 1953). Although Atlantic mackerel seem to possess the speed and size necessary to be a successful squid predator, squid represented only 0.1% of the diet by weight. Squid represented a significant percentage of the diet of four demersal species: sea raven (19.9%), fourspot flounder (17.7%), spiny dogfish (12.6%), and goosefish (12.2%), but was less important in the diets of other demersal fish such as silver hake (2.1%) and white hake (1.8%).

Table 8.—The Relative Quantitative Importance of Squid in the Generalized Diets of Some North Atlantic Fish

Predators	Percent diet weight
Bluefish.....	30.5
Sea raven.....	19.9
Fourspot flounder.....	17.7
Spiny dogfish.....	12.6
Goosefish.....	12.2
Witch flounder.....	2.8
Silver hake.....	2.1
White hake.....	1.8
Red hake.....	1.2
Offshore hake.....	0.9
Atlantic mackerel.....	0.1

NOTE.—From Maurer, 1975.

Interaction with the demersal community may be associated with observed squid behavior. Observers aboard research submersibles have reported that squid frequently lie in a "resting position" on the bottom. During this period individuals appear to be quite lethargic and therefore subject to substantial predation by demersal species (Maurer, 1975).

Streaker (greater) shearwaters (*Puffinus gravis*) off Newfoundland utilize *Illex* as an important food item in their diets (Zuev and Nesis, 1971). While there is no other known documentation of seabirds feeding on squid of the northwestern Atlantic, Zuev and Nesis (1971) reported that *Loligo reynaudi* is a prey species for cape jackass penguins off of South Africa, and therefore it is probable that many north Atlantic seabirds utilize squid as a food. However, the relative importance of squid in avian diets is not known.

The role of squid (*Loligo* and *Illex*) in the continental shelf ecosystem of the northwest Atlantic has not been quantified. However, the large number of species involved in a predator-prey relationship with *Loligo* and *Illex* suggests great importance of squid in the food web of the area (Tibbetts, 1975). Recent data (Clark and Brown, 1977) show pronounced increases in relative abundance of mackerel, squid, and white hake in recent years coincident with declines of other species "occupying similar ecological niches". They postulate that the "apparent increase in squid abundance may have occurred in response to declining abundance of finfish species". Actual relationships, however, remain unclear.

V-4. Estimates of MSY

Recent minimum stock size estimate indicate from about 1.0 billion to 4.6 billion *Loligo* in Subarea 5 and Statistical Area 6 during the fall of each year, most of which are new recruits. Therefore, recruitment of at least 1.5 billion individuals seems likely for 1979 based on past observations. The results of the autumn 1977 NMFS survey support this conclusion (Lange and Sissenwine, 1977). One very preliminary estimate of MSY for *Loligo* is 50,000 metric tons (Anderson 1976). MSY estimates based on the model discussed above (Sissenwine and Tibbetts, 1977; Sissenwine, 1976), a moderate stock recruitment relationship, and recruitment of 1.5 billion individuals to the virgin fishery, is about 31,000 metric tons. If recruitment is 1.5 billion individuals to the fishery at equilibrium under exploitation at MSY level, then MSY would be about 44,000 tons. Both

these estimates tend to overestimate MSY because they are based on a deterministic model while recruitment is in fact variable, but on the other hand recruitment estimates may in fact be too low. Therefore, these errors may cancel.

There are no reliable estimates of stock size nor certainty as to catches of *Illex* in recent years. There is no basis at present for predicting the abundance of *Illex* for 1979. The high abundance of *Illex* in 1976 was confirmed by USSR, Canadian, French, Polish, and US research vessels. Maximum sustainable yield of *Illex* has been estimated by Anderson (1976) as 40,000 tons, but this is a very preliminary estimate. The Council, after considering this analysis, has chosen this most conservative value for MSY.

V-5. Probable Future Condition

As noted in Section V-2, it is impossible to predict long-term relative abundances of either squid species. However, the MSYs and OYs proposed in this plan are conservative biologically and are based on minimum estimates of biomass sizes. The OY for *Illex*, in particular, is designed to prevent overfishing of the stock in the absence of more reliable scientific information. In addition, depending on the results of data analyses of summer and autumn NMFS survey data, the OY for each species may be adjusted by the Council prior to the fishing season to prevent over-reduction of spawning stock sizes.

VI. Description of Habitat

VI-1. Condition of the Habitat

Climatic, physiographic, and hydrographic differences separate the ocean region from Cape Hatteras to the Gulf of Maine into two distinct areas: the Middle Atlantic-Southern New England Region and the New England Region, with the natural division occurring at Nantucket Shoals.

The Middle Atlantic-Southern New England region is relatively uniform physically and is influenced by many large coastal rivers and the Chesapeake Bay, the largest estuary in the United States. Additional significant estuarine influences are Narragansett Bay, Long Island Sound, the Hudson River estuary, Delaware Bay, and the nearly continuous band of estuaries behind the barrier beaches along southern Long Island, New Jersey, Delaware, Maryland, and Virginia. The southern edge of the region includes the significant estuarine complex of Currituck, Albermarle, and Pamlico Sounds behind the outer banks of Cape Hatteras.

At Cape Hatteras, the continental shelf (characterized by waters less than 200 meters [656 feet] deep) extends seaward approximately 32 km (20 miles), widens gradually to 113 km (70 miles) off New Jersey and Rhode Island and then broadens to 193 km (120 miles) off Cape Cod forming Georges Bank. The substrate of the shelf in this region is predominantly sand interspersed with large pockets of sand-gravel and sand-shell. Beyond 200 m, the substrate becomes a mixture of silt, silt-sand, and clay. As the continental slope turns into the Abyssal Plain (at depths greater than 2,000 m [6,560 feet]), clay predominates over silt and becomes the major substrate.

Mineral resources of the area include large sand and gravel deposits, now being mined in some localities near shore. There are potentially recoverable offshore deposits of phosphate rock, placer deposits of titanium, monazite and zircon, and oil. Locally important concentrations of sulfur, salt, anhydrite, potash, and magnesium are known. It is also probable that manganese oxide nodules occur offshore. However, current technology is inadequate for economic recovery of most placer and hard rock deposits.

Water temperatures range from less than 3°C in the New York right in February to approximately 27°C off Cape Hatteras in August. The annual range of surface temperature at any location may be 15°C in slope waters to greater than 20°C near shore. During the coldest season the vertical thermal gradient is minimized. In late April-early May, a thermocline develops although storm surges over Nantucket Shoals retard thermocline development there. The thermocline persists through the summer. Surface waters begin to cool in early autumn, weakening the thermocline so that by mid-November surface to bottom water temperature is nearly homogeneous. Overturns occur in the spring and fall, resulting in recycling of nutrients.

The salinity cycle results from stream flow and intrusion of slope water from offshore. The winter salinity maximum is reduced to a minimum in early summer by large volumes of spring river runoff. Inward drifts of offshore saline water in autumn eventually counterbalance fresh water outflow and return the region's salinity distribution to the winter maximum. Water salinities near shore average 32‰, increase to 34-35‰ along the shelf edge, and exceed 36.5‰ along the main lines of the Gulf Stream.

On the continental shelf, surface circulation is generally southwesterly

during all seasons, although this may be interrupted by coastal indrafting and some reversal of flow at the northern and southern extremities of the area. Speeds of the drift are on the order of five nautical miles per day. There may be a shoreward component to this drift during the warm half of the year and an offshore component during the cold half. This drift, fundamentally the result of temperature-salinity distribution, may be made final by the wind. A persistent bottom drift at speeds of tenths of nautical miles per day extends from beyond mid-shelf toward the coast and eventually into the estuaries. Offshore, the Gulf Stream flows northeasterly.

The New England region from Nantucket Shoals to the Gulf of Maine includes two of the world's most productive fishing grounds: Georges Bank and Browns Bank. The Gulf of Maine, which is a deep cold water basin, is nearly sealed off from the open Atlantic by these two Banks. The outer edges of Georges and Browns Banks fall off sharply into the continental shelf. Other major features include Vineyard and Nantucket Sounds, Cape Cod Bay, and Cashes Ledge and Stellwagen Basin within the Gulf of Maine.

Water temperatures range from 2°C to 17°C at the surface and over the banks, and 4°C to 9°C at 200 meters in the inner Gulf of Maine. Mean salinity values range from about 32 to 34‰ depending on depth and location. However, lower salinity values generally occur close to shore. In addition, both water temperatures and salinities within the Region, but especially along the southern boundary of George Bank and the deep basins of the inner Gulf of Maine, are influenced by intrusion of slope water.

Surface circulation within the Gulf of Maine is generally counterclockwise. Cold Nova Scotian waters enter through the Eastern Channel and move across Browns Bank while slope waters enter through the Northeast (Fundian) channel. Gulf of Maine waters spill out over Georges Bank and through the Great South Channel onto Nantucket Shoals. The anticyclonic eddy over Georges Bank that develops in the spring breaks down into a westerly and southerly drift by autumn.

Gulf Stream meanders and warm core eddies, two oceanographic phenomena which normally remain in deep offshore water, can profoundly effect environmental conditions on the fishing grounds off the northeast United States when either one moves close along the continental slope. The warm core eddies seen off the New England coast mostly form in the slope water region southeast

of Georges Bank by detaching from meanders of the Gulf Stream. Rotation is in a clockwise direction at speeds varying from 0.6 to 1.8 knots.

Environmental effects and their possible influence on fishery resources resulting from meanders and eddies have been identified by Chamberlin (1977) and are as follows:

1. Warming of the upper continental slope and outer shelf by direct contact of a meander or eddy. This may influence the timing of seasonal migrations of fish as well as the timing and location of spawning.

2. Injection of warm saline water into the colder less saline waters of the shelf by turbulent mixing at the inshore boundary of a meander or eddy. This may have influences on the fishery resources similar to that of direct warming, and also cause mortality of fish eggs and larvae on the shelf when the colder water in which they live is warmed beyond their tolerance by the mixing-in of warm slope water.

3. Entrainment of shelf water off the shelf, an effect frequently seen in satellite imagery. Mortality of Georges Bank fish larvae is known to occur, presumably because of temperature elevation when shelf water in which they occur is carried into the slope water. (Colton, 1959). The most profound effects of the entrainment on the fishing grounds may be changes in circulation and in water mass properties resulting from the replacement of the waters lost from the shelf.

4. Upwelling along the continental slope, which may result in nutrient enrichment near the surface and increased primary biological productivity.

The ecosystem can be divided into the following fundamental groups which are necessary for the system to continue indefinitely: abiotic (nonliving) substances; autotrophic organisms (primary producers) which are able to use abiotic material to store solar energy to create organic matter; and decomposers which break down organic matter, using its stored energy to create inorganic constituents. Most ecosystems also have consumers which convert organic material to another form, using some of the stored energy of the organic material for maintenance. The rate of transfer of material and energy between parts of the ecosystem is affected by the amount, type, or condition of abiotic and biotic material (factors) in the system.

The annual cycle of the plankton community (drifting organisms) of the region is typical of the temperate zone. During the winter, phytoplankton (plant plankton) and zooplankton (animal

plankton) populations are low. Nutrients are available, but production is suppressed by low levels of solar radiation and low temperature. As spring approaches and the level of solar radiation increases, an enormous diatom bloom occurs. As the bloom progresses, concentrations of inorganic nutrients decrease.

As water temperatures increase during late spring and summer, phytoplankton and zooplankton become increasingly abundant because of the more rapid development of early life stages, the spawning of fish and benthos, and the abundant food supply.

During autumn, as water temperatures decrease, the water column becomes unstable due to mixing and nutrients are recycled to the euphotic zone. This stimulates another phytoplankton bloom which is limited by decreasing levels of solar radiation. Phytoplankton and zooplankton levels then decline to their winter minimum while nutrient levels increase to their winter maximum.

Anomalous conditions within the generalized annual cycles are probably common. The stability of the water column which affects nutrient availability may be disrupted by severe storms. Anomalies in temperature may disturb the timing between the annual cycles of interacting species.

Zooplankton feed predominantly but not exclusively on phytoplankton and thus form an intermediate link between phytoplankton, the primary producers of the sea, and the larger animals of the nekton and benthos. The exact relationships within the food webs are poorly understood, but it is certain that the zooplankton play an important role in the conversion of plant to animal tissue (Saila, 1973).

VI-2. Habitat Areas of Particular Concern

During the summer and early autumn of 1976, oxygen concentrations at bottom were severely depleted and widespread mortalities of benthic organisms occurred in the section of the New York Bight shown in Figure 5. This near-anoxic (and in places anoxic) region of O_2 levels less than 2 parts per million (ppm) was located approximately 4 miles (6.5 km) off New Jersey and covered an area about 100 miles (160 km) long and 40 miles (64 km) wide during the most critical phases of the depletion (Sharp, 1976). Normal O_2 levels in this region are greater than 4 ppm.

Investigations to date indicate that this state was probably induced by a combination of meteorological and circulatory conditions in conjunction

with a large-scale algal bloom (predominantly of *Ceratium tripos*). Lack of normal seasonal turbulence occasioned by relatively few storms (Hurricane Belle notwithstanding), unusual wind patterns, and above-average surface water temperatures probably all contributed to depletion of the oxygen content of waters beneath the permanent thermocline in this region (Sharp, 1976). It is not known to what degree the routine dumping of wastes (sewage sludge and dredge spoils) contributed to the depletion. However, it is reasonable to assume that any effect would have been detrimental (Atkinson, 1976).

The species affected by the anoxia of most commercial importance were surf clam, red hake, lobster, and crabs. Finfish were observed to be driven to inshore areas to escape the anoxia, or were trapped in water with concomitant high levels of hydrogen sulfide (Steimle, 1976).

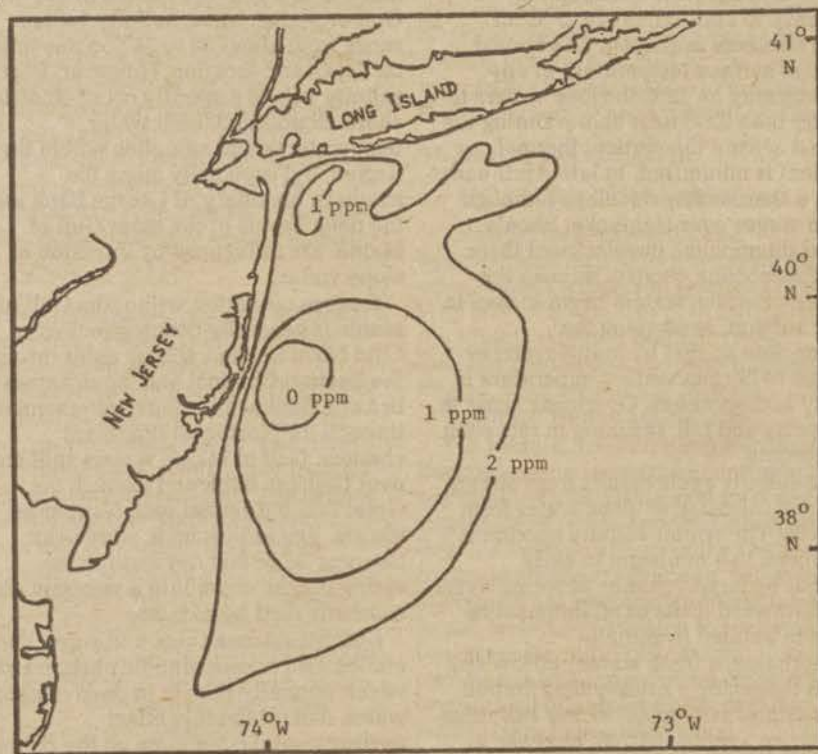
Reduction in oxygen levels in New York Bight below normal levels has been observed several times in recent history (Atkinson, 1976) although not to levels as low as those observed in summer, 1976. The relative contribution of any of the above mentioned factors to the anoxia cannot yet and may never fully be assessed. However, it is

important to note that each of these conditions, by itself, was not a unique, previously unobserved phenomenon. It is as yet too early to predict the long-term effects of the anoxic condition on any of the affected resources or their habitats.

The Environmental Protection Agency has requested that no fishing be permitted between 38°20'00"N to 38°25'00"N and 74°10'00"W to 74°20'00"W because the area is a sewage disposal area and between 38°40'00"N to 39°00'00"N and 72°00'00"W to 72°30'00"W because it is a toxic industrial waste site (W. E. Stickney, Personal Communication).

VI-3. Habitat Protection Programs

No special habitat protection programs exist in the habitat of the squid species that are the subjects of this plan. Sampling for pollution is carried out by both the NMFS and the Environmental Protection Agency. Habitat protection programs are administered by a variety of Federal agencies including the Bureau of Land Management of the Interior Department, the Coast Guard, and the Environmental Protection Agency. The only States in the region with approved Coastal Zone Management Programs are Massachusetts and Rhode Island.



Oxygen Concentrations (Parts Per Million) In "Fish Kill" Area Of The Middle Atlantic Bight, Summer, 1976 (From Sharp, 1976)

Figure 4

VII. Fishery Management Jurisdiction, Laws, and Policies

VII-1. Management Institutions

The US Department of Commerce, acting through the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils, pursuant to the FCMA, has authority to manage the stocks.

VII-2. Treaties and International Agreements

Foreign fishing for squid is regulated by the FCMA pursuant to which Governing International Fishery Agreements are negotiated with foreign nations for fishing within the FCZ.

VII-3. Federal Laws, Regulations, and Policies

The only known Federal law that directly regulates the management of the squid fishery is the FCMA. Currently the fishery is managed pursuant to a Preliminary Management Plan prepared by the Department of Commerce. That PMP will be replaced by this FMP following its approval by the Secretary of Commerce. No Indian treaty rights are known to exist relative to the species that are the subjects of this FMP.

VII-4. State Laws, Regulations, and Policies

No State laws, regulations, or policies are known to exist relative to this fishery.

VII-5. Local and Other Applicable Laws, Regulations and Policies

No local or other laws, regulations, or policies are known to exist relative to this fishery.

VIII. Description of Fishing Activities

VIII-1. History of Exploitation

The squid fishery of the northwest Atlantic off the United States was, until the mid-1960s, a small, relatively insignificant fishery pursued only by domestic fishermen, and landings never totaled more than several thousand metric tons. In contrast, the California squid fishery for *Loligo opalescens* since its inception during World War I has been significantly larger, dominating the total amount of squid harvested by the United States. While a market for US caught squid has traditionally existed, it has been supplied principally by west coast operations. California landings have been greater than 10,000 metric tons only once (1946).

Exploitation of the squid resource in ICNAF SA 5 and SA 6 increased when foreign fishing began in 1964 when USSR trawlers reported small incidental

catches (Table 9). When Japan and Spain entered the fishery in 1967 and 1970, respectively, catches increased more rapidly with a reported 1971 total catch of 22,210 tons, ten times that caught by the US alone in 1963 (the last year of sole domestic harvest). During 1972, trawlers from eleven countries operating in the fishery harvested 48,707 tons, a 119% increase over 1971. The US was ranked sixth that year among the eleven nations harvesting squid.

Total catch for both *Loligo* and *Illex* combined peaked in 1973 at 56,768 tons and then gradually declined during the next three years to 47,024 tons harvested in 1976.

In 1974 ICNAF began to set Total Allowable Catch (TAC) quotas for squid. Table 10 lists the quotas, each country's allocation for 1974-1976, and their reported squid catches for the same period. The 1974, 1975, and 1976 catches were only 78%, 73%, and 64% of the TACs, with the US and Japan never harvesting their entire assigned allocations. Overall, the amounts of squid harvested from SA 5 have been greater than those from SA 6 with the most significant difference occurring in 1973 (SA 5=36,161 tons, SA 6=20,492 tons). Japanese and Italian catches have been greater in SA 6 while Bulgarian, East German, Polish, USSR, and US catches have been greater in SA 5. Spanish catches have been relatively evenly divided between the two areas. In 1972-1976, a reported annual average catch of 52,000 tons of squid from Cape Hatteras to the Gulf of Maine (ICNAF SA 5 and SA 6) was recorded for all countries combined. This represented only 7% of the mean world squid catch (1970-1974) of 747,080 tons as compiled by the Food and Agricultural Organization of the United Nations (FAO) (Hotta, 1976). Most of the world catch is taken in the eastern Pacific Ocean and consists of genera other than *Loligo* or *Illex*. Thus, while the squid fishery of the northwestern Atlantic is very significant for certain foreign markets, its overall importance in providing the world population with much needed protein is quite small.

VIII-2. Domestic Commercial and Recreational Fishing Activities

United States fishermen have landed squid at least since the late 1800s. Accounts by Lyles (1968) of this early fishing indicate that most squid were taken by otter trawls incidental to fishing for other species. Traps were employed to take squid also. Through the years this situation appears to have remained unchanged, since NMFS statistical data and Fishery Reporting

Specialists' port surveys indicate that on the Atlantic coast otter trawls and traps are still the major harvesting gear for squid, the former being the most productive while taking squid incidentally. The fishery is seasonal, with domestic catches of *Loligo* and *Illex* taking place predominantly in summer (May-August) and fall (July-November), respectively. Accurate relative proportions of each species in the total landings, however, are unknown since until recently no distinction was made between the two. However, recent data (Table 10) and species distributions indicate that *Loligo* has traditionally accounted for the major portions of east coast US landings, especially from fishing grounds south of Cape Cod. US counties where squid are landed are shown in Table 31.

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Squid Catches By Foreign
And US Vessels In ICNAF
Subdivisions 5Ze & 5Zw
And Subarea 6, By Month,
January 1974-December 1976

(Note scale changes for
US catches)

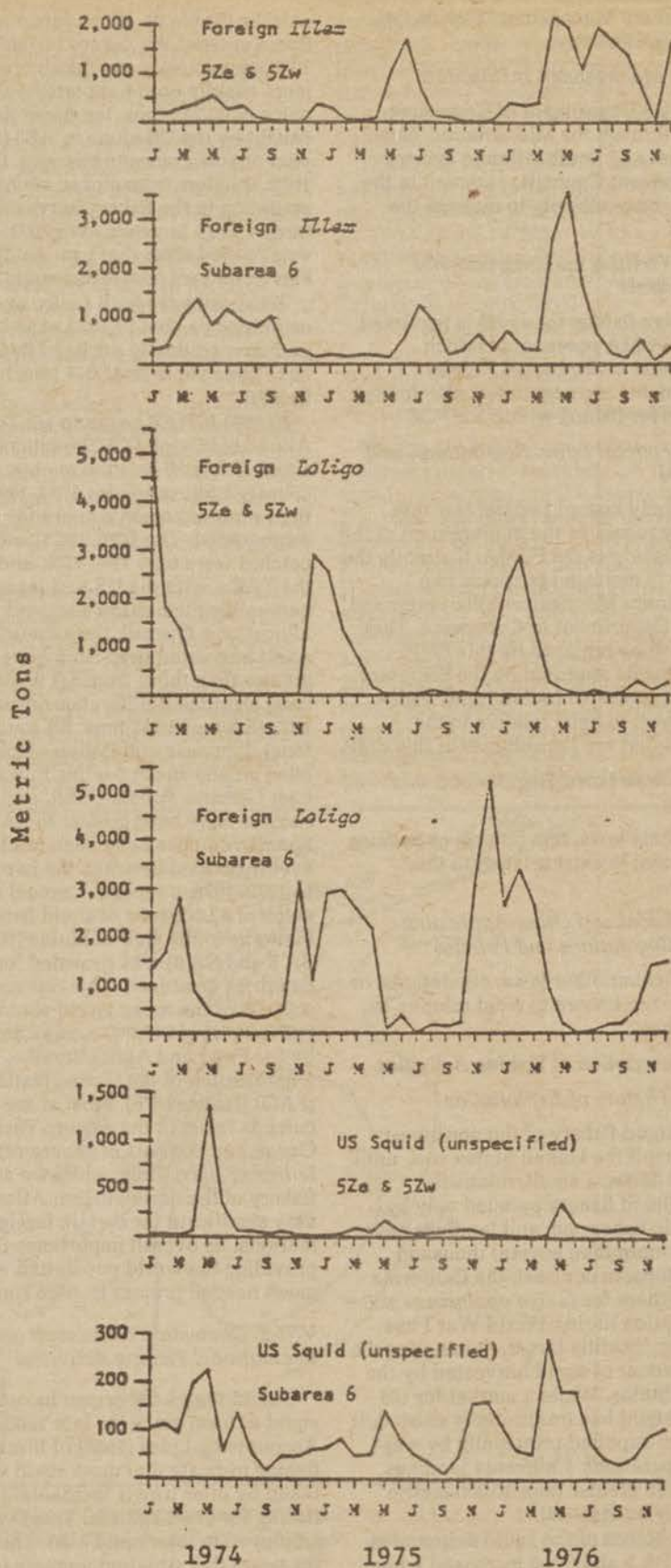


Figure 5.

Table 9. Annual squid landings (Loligo and Illex combined) in metric tons, by country for SA 5 & 6, for the years 1963 to 1974. Data from ICNAF publications.

COUNTRY	YEAR											
	1963	1964	1965	1966	1967	1968	1969	1970	1971	1972	1973	1974
Bulgaria									90	499	410	592
Canada									1			27
Cuba						10	1			14		
France										296	820	
FRG ^{a/}										463	1,641	
GDR ^{b/}								20		313		
Italy										3,200	3,165	4,260
Japan					7	1,734	7,711	13,639	10,602	18,691	15,526	16,820
Poland										5,428	9,199	6,709
Romania										66	150	9
Spain							566	4,426	6,770	10,545	14,932	16,144
USSR		4	176	389	833	3,176	1,340	1,065	6,138	6,976	8,977	8,495
USA	2,105	929	1,154	1,173	1,829	1,762	1,461	1,061	1,182	1,197	1,635	2,422
Total	2,105	933	1,330	1,562	2,669	6,682	11,079	20,211	24,783	47,375	56,768	55,478

^{a/} FRG = Federal Republic of Germany ^{b/} GDR = German Democratic Republic

Table 10

Squid Quotas and Catch Under ICNAP 1974-1976 for SA 5 and 6

Year	Rec Tac	Agreed Tac	Bul	Can	Cuba	Den	Fra	Frq	Ice	Ita	Jap	Nor	Pol	Por	Rom	Spa	USSR	Uk	USA	Gdr	Others	Total	% Harvested
1974	50000- 80000	71000	0	0	0	0	0	1000	0	4700	24380	0	6800	0	0	13000	8500	0	5600	0	7100	71000	78%
			5922/	27	0	0	0	0	0	4260	16820	0	6709	0	9	16144	8495	0	2422	0	50	55478	
1975	71000 ^{3/}	71000	0	0	0	0	0	1000	0	4700	24300	0	6800	0	0	13000	8500	0	5600	0	7100	71000	73%
			205	0	151	0	0	27	0	4234	13985	0	6836	0	48	9902	8928	0	1728	898	4745	51687	
1976																							
<u>Illex</u>	30000	30000	0	0	0	0	0	0	0	1000	0	0	5000	0	0	5000	7500	0	7500	0	4000	30000	
			0	54	8	0	0	1101	0	1117	3256	0	5050	0	9	4063	6812	0	229	996	2241	24936	83%
<u>Loligo</u>	44000	44000	0	0	1000	0	0	1000	0	3300	15700	0	1700	0	0	8800	2000	0	8500	0	2000	44000	
			23	0	257	0	0	22	0	3304	5029	0	1706	0	13	9137	832	0	3602	317	1042	25264	57%
TOTAL	74000	74000	0	0	1000	0	0	1000	0	4300	15700	0	6700	0	0	13800	9500	0	16000	0	6000	74000	
			23	54	265	0	0	1123	0	4421	8285	0	6756	0	22	13200	7644	0	3831	1313	3283	50220	68%

Key: Number in block print are TAC allocations. Numbers in script are actual reported squid catches.

1/ The total amount harvested as a percentage of the TAC

2/ Catches of squid as reported to ICNAP

3/ Was intended by STACRES to pertain only to Loligo

Data from ICNAP. 1976 information is preliminary and subject to final revision.

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Gloucester and Point Judith have been the most productive ports making Massachusetts and Rhode Island the first and second ranking States, respectively, for squid landings on the Atlantic Coast. New York ranks a significant third. Historical landing data for the domestic fishery appear in Tables 11 and 12. Documented landings for the early fishery through 1927 are scarce. However, landings as high as 2,500 and 2,900 metric tons in 1902 and 1919, respectively, were reported for New England. Prices for squid during this period ranged from one-half to two cents per pound. In the decade that followed (1928-1938), reporting of annual landings on a regular basis for the New England, Mid-Atlantic, and Chesapeake areas was begun (Table 11). Total annual landings during 1928-1938 averaged greater than 2,100 metric tons (4.62 million pounds) with an average ex-vessel price of 2.2 cents per pound. Landings in the New England area were relatively high in 1928 at 3,317 metric tons but then tapered off to approximately 1,200 metric tons per year. Mid-Atlantic landings in contrast, were 410 metric tons in 1928, increased to 1,000 metric tons by 1931, and then more or less stabilized at that level through 1938. Throughout this decade Chesapeake landings averaged 100 metric tons annually. Ex-vessel squid prices in the 1930's averaged 2.5 cents per pound in the Mid-Atlantic-Chesapeake area and 1.7 cents per pound in New England. These prices are on par with the 1939 Massachusetts ex-vessel prices for haddock, cod and flounder. However, it must be realized that squid landings were insignificant compared to groundfish landings, and had squid landings increased to any extent, the ex-vessel price per pound would have been much lower.

In the 1940s there was an evident drop in landings in all three areas (Table 12). Tables 13 and 14 show that this drop is also evident within individual states, especially New York, New Jersey, and Maryland and to a lesser extent in Massachusetts and Rhode Island. With the drop in landings, average price of squid in New England increased from 1.3 to 5.5 cents per pound, and in the combined Mid-Atlantic Chesapeake area from 2.4 to 10 cents per pound. The reason for this occurrence is not documented, but may have resulted from homelife and economic conditions indicative of World War II.

During the post-war years, New England landings increased to annual levels as high as 4.6 million pounds (2,087 metric tons) in 1949. Overall

however, landings from the late 1940s through the mid-1970s fluctuated around a mean of 1,000 metric tons annually indicating stable yet limited market conditions. The Mid-Atlantic and Chesapeake area (Table 14) shows a similar trend with 1,040 metric tons of squid landed in 1949, but from the late 1940s to the mid-1970s fluctuated around a mean of 1,000 metric tons annually indicating stable yet limited market conditions.

Again, as in the 1940s, there occurred a general decrease in landings during 1964 through 1972 in the New England area (Tables 12 and 13) which was paralleled by up to a 2.6 fold increase in price per pound. During this period, as in the 1940s, the elevations in price per pound that occurred lasted even after landings again increased.

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Table 11. US Historical Landings for the New England, Mid-Atlantic, and Chesapeake Areas, 1928-1938
(in metric tons and thousands of dollars)

Year	New England		Mid-Atlantic		Chesapeake		Total	
	MT	\$	MT	\$	MT	\$	MT	\$
1928	3317	157	b	b	b	b	3317	157*
1929	2566	128	410	36	83	6	3059	170
1930	2503	112	806	55	102	8	3411	175
1931	1278	55	998	49	187	12	2463	116
1932	1414	42	1000	35	147	6	2561	83
1933	489	19	390	16	66	3	945	38
1934	b	b	b	b	52	4	52	4*
1935	1611	57	1101	67	132	5	2844	129
1936	b	b	b	b	55	4	55	4*
1937	1498	42	1070	66	84	3	2652	111
1938	979	29	930	33	165	4	2074	66

b = data not available.

* = partial totals

Modified from Lyles (1968)

Table 12. Contribution Of Squid Landings To Selected New England Port Landings (By Weight)
(thousands of pounds)

Port And State	Squid	Total Finfish And Squid	Squid % Of Total Finfish Squid	Total All Species	Squid % Of All Species
Portland, ME	13.7	31,950.0	<0.1	32,124.0	<0.1
Gloucester, MA	1,917.7	148,722.2	1.3	149,710.5	1.3
Chatham, MA	9.0	3,292.0	0.3	8,299.7	0.1
New Bedford, MA	169.5	62,746.0	0.3	167,030.6	0.1
Plymouth, MA	87.3	2,516.9	3.5	3,246.1	2.7
Provincetown, MA	332.4	18,107.8	1.8	28,493.6	1.2
Sandwich, MA	77.2	15,228.5	0.5	20,983.3	0.4
Newport, RI	181.7	16,358.5	1.1	19,146.1	0.9
Pt. Judith, RI	569.2	42,476.5	1.3	43,467.4	1.3

< = less than

Table 13. US Squid Fishery: Catch and Value by Sections
(in metric tons and thousands of dollars)

	New England		Mid-Atlantic		Chesapeake		Total	
	MT	\$	MT	\$	MT	\$	MT	\$
1939	1091	33	1500	86	201	5	2792	124
1940	796	22	1191	51	137	3	2124	75
1941					129	4	129	4*
1942	495	35	329	63	87	4	911	102
1943	474	58	495	110			969	168*
1944	435	52	408	94	76	13	919	159
1945	751	91	564	105	68	12	1383	208
1946	477	49	204	47*	62	18	743	144*
1947	750	90	334	64	44	9	1128	163
1948	1171	167	834	172	65	10	2070	349
1949	2107	125	952	92	88	10	3147	227
1950	638	57	422	57	47	8	1107	122
1951	1827	147	678	123	38	7	2543	277
1952	370	73	528	94	41	6	939	172
1953	2045	211	439	62	70	8	2554	281
1954	1197	82	405	65	43	5	1645	152
1955	1184	101	630	69	65	8	1879	178
1956	867	81	465	81	54	7	1386	169
1957	2021	138	642	93	70	9	2733	240
1958	1168	108	737	91	65	5	1970	204
1959	1152	137	496	80	89	9	1737	226
1960	950	160	550	80	137	23	1637	263
1961	555	105	803	127	159	18	1517	250
1962	1127	160	909	116	116	19	2152	295
1963	1219	154	758	110	133	16	2110	280
1964	253	58	629	96	107	13	989	167
1965	382	81	649	99	116	13	1147	193
1966	238	54	753	141	194	22	1185	217
1967	827	101	633	91	265	24	1725	216
1968	837	120	627	96	202	20	1666	236
1969	877	202	412	91	177	20	1466	313
1970	498	159	344	94	196	27	1038	280
1971	804	220	234	94	191	40	1229	354
1972	657	220	534	177	121	30	1312	427
1973	1167	508	510	232	79	24	1756	764
1974	1291	532	1023	415	106	40	2420	987
1975	1199	461	687	308	64	24	1950	793
1976	2738	1116*	901	422	69	24	3708	1562*

* partial totals

Sources: NOAA-NMFS Fishery Statistics of the United States 1939-1973.
NMFS Current Fishery Statistics 1974-1976.

Table 14. Squid Landings by State - New England Region
(in thousands of pounds and thousands of dollars)

	ME		NH		MA		RI		CT		TOTAL		AVERAGE PRICE/LB. FOR REGION
	lbs	\$	lbs	\$	lbs	\$	lbs	\$	lbs	\$	lbs	\$	\$
1939	1	a*	-	-	1724	24	663	7	12	1	2400	33	.013
1940	-	-	-	-	1367	15	381	6	4	a	1752	22	.012
1941	b*	b	b	b	b	b	b	b	b	b	b	b	b
1942	-	-	-	-	990	26	96	9	2	a	1088	35	.032
1943	-	-	-	-	802	38	193	15	47	5	1042	58	.056
1944	-	-	-	-	586	35	309	10	62	7	957	52	.054
1945	-	-	-	-	1217	60	273	14	162	17	1652	91	.055
1946	1	a	-	-	319	11	509	18	220	20	1049	49	.047
1947	1	a	-	-	666	32	774	46	208	13	1649	90	.054
1948	-	-	-	-	1396	83	558	36	622	48	2576	167	.065
1949	20	a	-	-	2438	53	1870	47	307	24	4635	125	.027
1950	21	a	-	-	835	34	483	18	64	5	1403	57	.041
1951	5	a	-	-	2196	76	1735	64	84	7	4121	147	.036
1952	1	a	-	-	383	35	416	37	14	1	814	73	.090
1953	3	a	-	-	3243	134	1208	74	45	3	4499	211	.047
1954	2	a	-	-	1989	55	626	26	16	1	2633	82	.031
1955	6	a	-	-	1939	60	605	37	55	4	2605	101	.039
1956	1	a	-	-	1085	20	722	52	99	9	1907	81	.042
1957	3	a	-	-	2826	55	1467	72	150	11	4446	138	.031
1958	6	a	-	-	1228	28	1289	76	46	4	2569	108	.042
1959	-	-	-	-	1686	71	728	59	122	7	2536	137	.054
1960	-	-	-	-	1248	73	803	84	38	3	2089	160	.076
1961	-	-	-	-	868	65	301	35	52	5	1221	105	.086
1962	1	a	-	-	1387	75	943	75	148	10	2479	160	.064
1963	7	a	-	-	1971	107	666	44	38	3	2682	154	.057
1964	-	-	-	-	238	12	287	43	31	3	556	58	.104
1965	-	-	-	-	436	31	357	45	47	5	840	81	.096
1966	-	-	-	-	35	2	386	44	102	8	523	54	.103
1967	-	-	-	-	885	46	910	53	24	2	1819	101	.055
1968	4	a	-	-	710	45	996	67	132	8	1842	120	.065
1969	-	-	-	-	537	59	1123	116	269	27	1929	202	.105
1970	a	a	-	-	505	49	559	104	31	6	1095	159	.145
1971	a	a	-	-	979	76	703	128	86	16	1768	220	.124
1972	2	a	-	-	688	85	750	134	6	1	1446	220	.152
1973	3	a	-	-	924	143	1621	361	19	4	2567	508	.198
1974	21	3	-	-	1431	241	1376	286	13	2	2841	532	.187
1975	12	2	-	-	832	122	1776	334	17	3	2637	461	.175
1976	36	2	-	-	3597	502	2571	612	b	b	6204	1116*	.180

a = amounts less than 500 lbs or 500 dollars

b = data not available

* = partial totals

Sources: NOAA-NMFS Fishery Statistics of the United States 1939-1973.
NMFS Current Fishery Statistics 1974-1976.

Since the 1960s, North Carolina has landed small quantities of squid. During 1969-1976, approximately 15 metric tons were landed annually, with the fishery peaking in 1974 at 34 metric tons and then declining to only 16 metric tons in 1976 (Table 17). Landings in southern states (South Carolina, Georgia and Florida) are even less. Fishermen interviews indicate that these figures may be low by as much as 50% due to unreported charter boat squid catches that are immediately employed as bait. However, doubling these landing figures still results in a relatively insignificant fishery in terms of the total squid fishery of the northwest Atlantic.

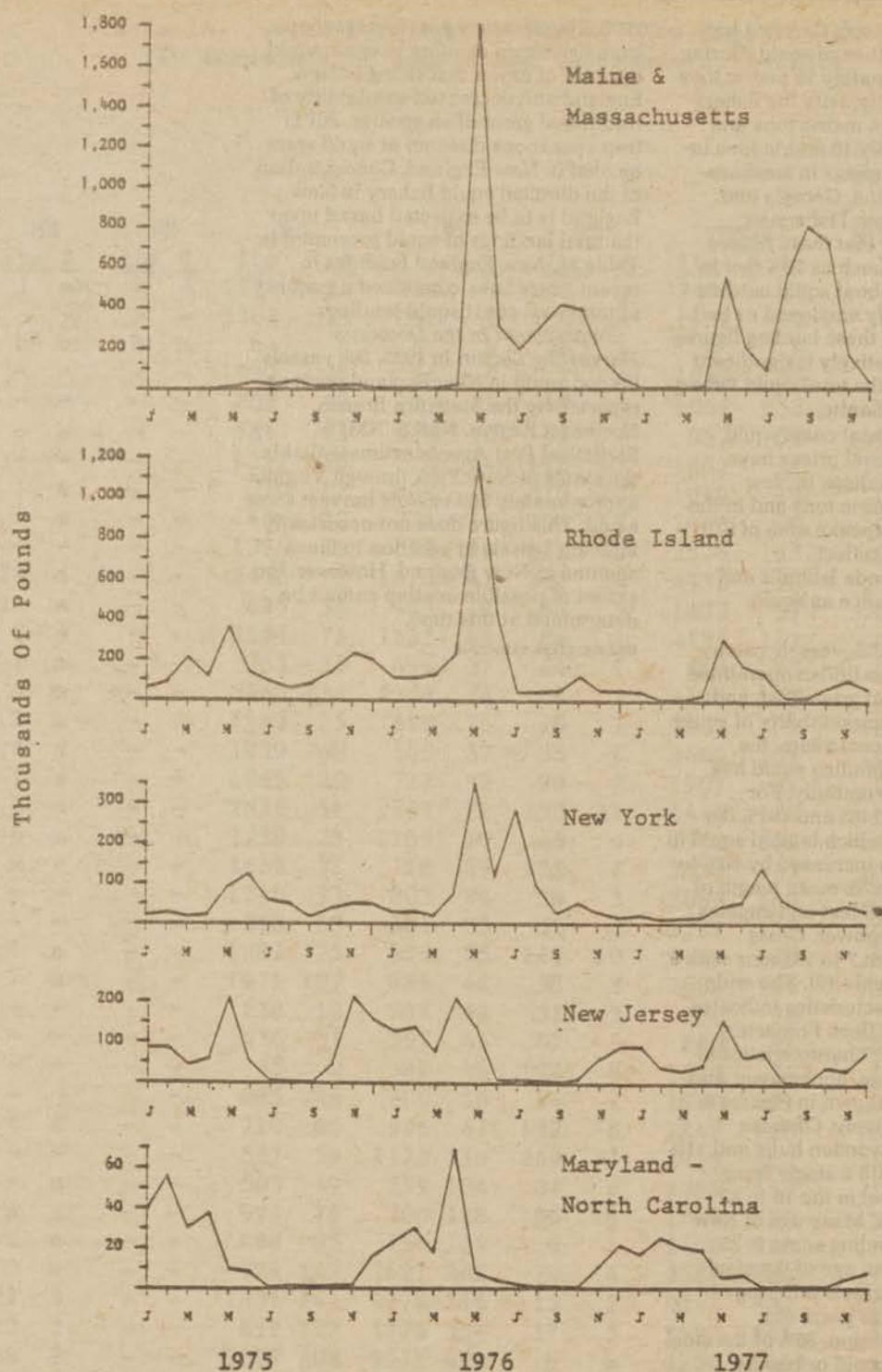
Since 1970, total east coast squid landings and ex-vessel prices have increased. Total landings in New England of 2,738 metric tons and in the Mid-Atlantic-Chesapeake area of 970 metric tons in 1976 reflect Massachusetts', Rhode Island's and New York's dominance as squid producing states.

The majority of U.S. vessels catch squid incidentally to finfish operations directed primarily at groundfish and butterfish. As the marketability of squid has increased in recent years, the number of vessels landing squid has also increased substantially. For example, between 1965 and 1975, the number of vessels which landed squid in New England ports increased by 60% to 205 (Table 18). In 1975, mean length of these vessels was 58 feet and engines averaged 242 horsepower. Gross tonnage ranged from 7 to 191 tons with a mean of 54 tons (Table 19). The wide range of such characteristics indicates the diversity of the fleet. Frequency distributions for the characteristics of length, gross tonnage, horsepower and age of vessels are shown in Figures 8 through 11, respectively. Of these vessels, 89% have wooden hulls and 11% have steel hulls, with a single ferro-cement hulled vessel in the 16 to 22 gross tonnage class. Mean age of New England vessels landing squid is 25 years, with the mean age of the steel and wood hulled vessels differing significantly—8 to 28 years old, respectively. In addition, 86% of the steel vessels are 10 years old or less as opposed to only 5% of the wooden vessels being in that age category. The number of operating units (vessels or traps) conducting a directed fishery for squid in 1974-1976 as compiled by the Statistics Branch, Northeast Region, NMFS, is shown in Table 20. All of the vessels pursuing a directed squid fishery were otter trawlers, and the percentage of such vessels from New England increased from 73% in 1974 to 93% in

1976. This increase possibly resulted from fishermen desiring to catch squid because of easier marketing in New England and decreased availability of traditional groundfish species. All 11 trap operations directed at squid were located in New England. Concentration of the directed squid fishery in New England is to be expected based upon the total landings of squid presented in Table 12. New England landings in recent years have comprised a majority of total east coast squid landings.

Employment In the Domestic Harvesting Sector. In 1975, 205 vessels landed squid in New England ports as reported by the Statistics Branch, Northeast Region, NMFS. NMFS Statistical Port Agents estimate that in the states of New York through Virginia approximately 300 vessels harvest some squid. This figure does not necessarily indicate vessels in addition to those counted in New England. However, the extent of possible overlap cannot be determined at this time.

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Reported Commercial Landings Of Squid By State

January, 1975 - December, 1977

(Note changes of scale. Almost all of the "Maine & Massachusetts" landings are landed in Massachusetts.)

Figure 6

Table 15

1976 US Commercial Landings* Of Selected Species In The New England And Middle Atlantic States (Maine - Virginia)

Species	Thousands Of Pounds	% Of Total	Species	(Ex-Vessel)		Species	Average Ex-Vessel Price/lb.
				Thousands Of Dollars	% Of Total		
Atlantic menhaden	656,380	46.7	American lobster	54,678	17.0	Bloodworms	\$2.36
Atlantic herring	110,517	7.9	Sea scallop	33,135	10.3	Bay scallop	2.10
Atlantic cod	56,019	4.0	American oyster	28,490	8.9	Sea scallop	1.79
Blue crab	53,861	3.8	Hard clam	24,660	7.7	Hard clam	1.76
Surf clam	49,138	3.5	Surf clam	23,357	7.3	American lobster	1.65
Silver hake	47,660	3.4	Atlantic menhaden	18,487	5.8	Swordfish	1.36
Yellowtail flounder	37,940	2.7	Yellowtail flounder	15,553	4.8	Soft clam	1.18
American lobster	33,113	2.4	Atlantic cod	14,626	4.6	American oyster	1.16
Redfish	32,133	2.3	Blue crab	13,335	4.2	Northern puffer	0.68
American oyster	24,666	1.8	Soft clam	12,317	3.8	Striped bass	0.58
Summer flounder	23,635	1.7	Summer flounder	10,650	3.3	Witch	0.49
Unclassified, industrial	22,472	1.6	Haddock	5,563	1.7	Surf clam	0.48
Pollock	22,117	1.6	Winter flounder	5,444	1.7	Summer flounder	0.45
Sea scallop	18,479	1.3	Swordfish	4,905	1.5	Haddock	0.44
Scup	15,959	1.1	Redfish	4,394	1.4	Yellowtail flounder	0.41
Winter flounder	15,651	1.1	Atlantic herring	4,360	1.4	Bluefin tuna	0.41
Hard clam	14,009	1.0	Silver hake	3,979	1.2	Tilefish	0.40
Haddock	12,789	0.9	Scup	3,301	1.0	American eel	0.38
Weakfish	12,059	0.9	Pollock	2,934	0.9	Winter flounder	0.35
Soft clam	10,449	0.7	Bay scallop	2,790	0.9	American shad	0.34
White hake	9,046	0.6	American plaice	2,365	0.7	Shrimps	0.34
Squid	8,379	0.6	Striped bass	2,298	0.7	Black sea bass	0.33
Alewives	7,838	0.6	Witch	2,057	0.6	Mussels	0.31
American plaice	7,822	0.6	Weakfish	1,670	0.5	American plaice	0.30
Atlantic croaker	7,673	0.5	Bluefin tuna	1,650	0.5	Ocean quahog	0.29
Bluefish	6,905	0.5	Ocean quahog	1,617	0.5	Butterfish	0.29
Ocean quahog	5,600	0.4	Squid	1,577	0.5	Jonah crab	0.28
Atlantic mackerel	4,975	0.4	Bloodworms	1,256	0.4	Red crab	0.28
Red hake	4,975	0.4	White hake	1,185	0.4	Unclassified, food	0.28
Witch	4,157	0.3	Black sea bass	1,143	0.4	White perch	0.27
Bluefin tuna	4,021	0.3	Atlantic croaker	967	0.3	Atlantic cod	0.26
Striped bass	3,987	0.3	Tilefish	887	0.3	Blue crab	0.25
Swordfish	3,595	0.3	Butterfish	865	0.3	Yellow perch	0.22
Black sea bass	3,451	0.2	Shrimps	764	0.2	Scup	0.21
Butterfish	3,033	0.2	Unclassified, food	761	0.2	Catfish/Bullheads	0.19
Unclassified, food	2,734	0.2	Bluefish	625	0.2	Squid	0.19
Shrimps	2,254	0.2	Atlantic mackerel	614	0.2	Spot	0.19
Tilefish	2,225	0.2	American shad	526	0.2	Weakfish	0.14
Mussels	1,695	0.1	American eel	518	0.2	Redfish	0.14
American shad	1,557	0.1	Mussels	517	0.2	White hake	0.13
Catfish/Bullheads	1,462	0.1	Unclassified, industrial	431	0.1	Pollock	0.13
Red crab	1,428	0.1	Red hake	416	0.1	Atlantic croaker	0.13
Rock crab	1,413	0.1	Red crab	404	0.1	Atlantic mackerel	0.12
American eel	1,373	0.1	Catfish/Bullheads	285	<0.1	Sharks	0.10
Bay scallop	1,328	0.1	Alewives	279	<0.1	Tautog	0.09
Spot	1,221	0.1	Spot	229	<0.1	Red crab	0.09
Dogfish	1,212	0.1	White perch	223	<0.1	Bluefish	0.09
White perch	837	0.1	Rock crab	129	<0.1	Red hake	0.08
Bloodworms	532	<0.1	Jonah crab	81	<0.1	Silver hake	0.08
Jonah crab	284	<0.1	Dogfish	65	<0.1	Dogfish	0.05
Tautog	254	<0.1	Tautog	23	<0.1	Alewives	0.04
Sharks	121	<0.1	Sharks	12	<0.1	Atlantic herring	0.04
Yellow perch	24	<0.1	Northern puffer	6	<0.1	Atlantic menhaden	0.03
Northern puffer	9	<0.1	Yellow perch	5	<0.1	Unclassified, indus.	0.02
Total	1,376,428	98	Total	312,408	97		
Grand total, all species	1,405,792		Grand total, all species	320,732			

* Landings are shown in round (live) weight except for shell mollusks. Clams, mussels and oyster are reported in weight of total meats; scallops are reported in weight of edible meats.

< = less than

Table 16. Squid Landings by State
Mid-Atlantic and Chesapeake Regions
(in thousands of pounds and thousands of dollars)

YR	NY		NJ		DE		MD		VA		TOTAL		AVERAGE PRICE/LB. FOR REGION
	lbs	\$	lbs	\$	lbs	\$	lbs	\$	lbs	\$	lbs	\$	\$
1939	1643	67	1657	19	-	-	105	1	337	4	3742	91	.024
1940	1471	31	1149	20	-	-	86	1	215	2	2921	54	.018
1941	b	b	b	b	b	b	71	1	212	3	283*	4*	.014
1942	355	35	368	28	-	-	31	2	161	2	915	67	.073
1943	510	52	580	58	-	-	b	b	b	b	1090*	110*	.101
1944	455	51	442	43	-	-	28	3	139	10	1064	107	.100
1945	640	63	600	42	1	a	47	6	102	5	1390	117	.084
1946	449	47	b	b	b	b	73	11	64	7	586*	65*	.111
1947	339	38	391	25	6	1	41	4	56	5	833	73	.088
1948	1055	106	766	65	14	1	76	6	68	4	1979	182	.092
1949	1144	64	940	28	11	a	48	3	146	6	2289	102	.044
1950	636	44	278	12	14	1	40	4	64	4	1032	65	.063
1951	1053	100	428	22	10	1	24	2	60	5	1575	130	.082
1952	816	63	325	29	21	2	6	1	83	5	1251	100	.080
1953	362	27	589	33	15	2	5	a	149	8	1120	70	.062
1954	554	39	335	26	2	a	6	a	90	5	987	70	.071
1955	682	38	695	30	10	1	16	1	127	7	1530	77	.050
1956	704	56	299	23	19	2	13	1	105	6	1140	88	.077
1957	996	73	413	20	4	a	25	1	128	8	1566	102	.065
1958	1232	69	374	21	15	1	16	1	127	4	1764	96	.054
1959	740	56	352	24	-	-	14	1	182	8	1288	89	.069
1960	1035	68	176	12	-	-	18	1	284	22	1513	103	.068
1961	1186	89	580	38	-	-	35	2	314	16	2115	145	.068
1962	1456	84	544	32	-	-	31	2	224	17	2255	135	.060
1963	872	68	796	42	-	-	39	3	253	13	1960	126	.064
1964	1007	74	377	22	-	-	29	2	206	11	1619	109	.067
1965	974	66	453	33	-	-	32	3	223	10	1682	112	.066
1966	1238	110	419	31	-	-	62	6	364	16	2083	163	.078
1967	772	58	621	33	-	-	42	4	542	20	1977	115	.058
1968	973	69	406	27	-	-	15	1	430	19	1399	116	.083
1969	532	55	374	36	-	-	14	1	375	19	1295	111	.086
1970	404	51	352	43	-	-	10	2	422	25	1188	121	.102
1971	311	56	205	38	-	-	11	2	410	38	937	134	.143
1972	764	100	412	77	-	-	4	1	262	29	1442	207	.144
1973	537	97	585	135	-	-	13	4	160	20	1295	256	.198
1974	964	178	1287	237	-	-	64	15	169	25	2484	455	.183
1975	569	134	942	174	-	-	41	13	101	11	1653	332	.200
1976	1108	225	875	197	-	-	39	11	113	13	2135	446	.209

a = amounts less than 500 pounds or 500 dollars

b = data not available

* = partial totals

Source: NOAA-NMFS Fishery Statistics of the United States 1939-1973.
Current Fishery Statistics 1974-1976.

Table 17. North Carolina Squid Fishery - Catch and Value

	<u>lbs.</u>	<u>MT</u>	<u>\$</u>	<u>Average Price/lb.</u>
1969	24491	(11)	1244	.051
1970	21252	(10)	1197	.056
1971	10437	(5)	877	.084
1972	14995	(7)	1085	.072
1973	28161	(13)	3184	.113
1974	75087	(34)	11935	.159
1975	59903	(27)	6753	.113
1976*	35664	(16)	4822	.135

* 1976 data is preliminary

Source: NMFS Current Fishery Statistics, 1969-1976

Table 18. Number of Vessels Landing Squid in New England

<u>Year</u>	<u>Number of Vessels</u>
1965	122
1970	152
1975	205

Table 19. Characteristics of Domestic Vessels That Landed Squid in New England during 1975

	<u>Range</u>	<u>Mean</u>	<u>Standard Deviation</u>
Length (feet)	32-104	58	+13
Length (meters)	10-32	18	+4
Gross tonnage	7-191	54	+33.5
Horsepower	24-765	242	+128
Crew size	2-8	3.4	+1.8
Age of vessel (years)	2-74	25	+13

Data from Statistics Branch, Northeast Region - NMFS

Vessels landing squid in New England employed 695 fishermen. By assuming the same mean crew size of 3.4 from the New England data (Table 19) for vessels fishing from New York through Virginia, an additional 972 fishermen were employed. Also, two independent approaches based on 1973 data for otter trawlers and otter trawl fishermen were used. Application of these data to reported numbers of vessels landing squid in 1975 in New York through Virginia yielded estimates of 805 and 958 fishermen employed on these vessels. Thus, from Maine to Virginia approximately 1,650 persons are employed on fishing vessels landing some squid.

However, since squid landings are incidental to catches of other species by the otter trawl fleet, probably none of the individuals is employed solely due to the squid fishery. Even for the slightly less than 100 fishermen employed by the approximately 30 boats conducting a directed squid fishery, squid most likely accounts for only a relatively small percentage of the crew's total earnings. This is due to the fact that their directed fishing effort for squid may last for only short periods of time. In the Mid-Atlantic, when squid is not the directed fishery, many boats "shack" the squid. Due to this different settlement system the squid accounts for a more significant percentage of earnings than would seem

the case. For example, on a recent "poor" trip squid accounted for less than half the total gross but accounted for about 83% of the crew's paycheck. This system is not used when squid is the directed fishery. The major significance of squid to the harvesting sector at the present time is that it offers a supplemental income to fishermen. During part of May and June squid landings may be the deciding factor as to whether fluke fishing is profitable. In certain localities, such as North Carolina, squid may also provide fishing opportunities and income between seasons for other more profitable species.

Table 20.—Number of Domestic Operating Units Engaged in a Directed Fishery for Squid

Year	Otter trawlers	Traps
1974.....	41	10
1975.....	30	9
1976.....	41	8

NOTE.—Data from Statistics Branch, Northeast Regions, NMFS.

Gear Employed in the Fishery

The early domestic fishery for squid was essentially for *Loligo*, which during the summer can often be found close to shore near docks in southern New England during the evening. Rathjen (1973) stated that during the late 19th and early 20th centuries pound nets all along the coast, but especially in New England, yielded catches of squid.

In the 1930s and 1940s pound nets, otter trawls, and floating traps were the principal types of gear used by east coast domestic fishermen to catch squid. Insignificant amounts of squid were also taken by purse and haul seines, anchor gill nets, and hand lines. By 1973 otter

trawls were the major gear employed, with over 85% of the total amount of squid landed by this method, mainly as an incidental catch to groomfish operations. Rhode Island, Massachusetts, and New Jersey were the three principal states using this gear. Pound nets and floating traps were also significant in the New England area. Mineral quantities of squid were taken by several additional methods (Table 21).

A comparison of gear used in 1939 and 1973 (Table 21) shows the use of pound nets has decreased significantly in every state during this 44 year period. Conversely, otter trawl squid catches have increased dramatically in every state except New York where reported otter trawl squid catches decreased by almost 50%. However, otter trawls accounted for 83% of the State's squid landings in 1973 as opposed to only 58% in 1939. Squid taken by haul seines have been reported only from New York where they comprise less than 1% of the total squid landing.

Table 21.—Comparison of Squid Catch by Gear for 1939 and 1973 by State

[In thousands of pounds]

	Pound nets		Otter trawls		Floating traps		Haul seines		Other*	
	1939	1973	1939	1973	1939	1973	1939	1973	1939	1973
ME.....				2.6	1.3					
MA.....	1,448.4	143.6	248.2	771.5	27.7	1.1				7.6
RI.....	50.6		10.8	1,294.0	601.2	326.6				.1
CT.....	7.7		3.9	18.5						
NY.....	697.5	44.4	945.5	447.2			.2	45.8		
NJ.....	1,583.0		73.1	584.1					.1	.4
MD.....	105.0	13.4	.3							
VA.....	275.2		62.0	187.1						.9

*Includes: purse seines, drift gill nets, hand lines, offshore lobster pots and scallop dredges.

Source: NOAA-NMFS Fishery Statistics of the United States 1939 & 1973.

VIII-3 Foreign Fishing Activities

Regulation of foreign fisheries along the United States coast of the northwest Atlantic Ocean began in 1949 when the U.S. convened a conference of 11 countries in Washington, D.C. This conference resulted in the formation of the International Commission for the Northwest Atlantic Fisheries (ICNAF). The Northwest Atlantic Fisheries Act of 1950 authorized US participation in the activities of the convention. The designated areas were the waters north of 39°00' north latitude and east of 71°40' west longitude. ICNAF regulations in the early 1950s resulted in the establishment of mesh size regulations for certain directed groundfish fisheries and groundfish bycatch provisions for other small mesh directed fisheries.

Management of squid in ICNAF SA 5 and SA 6 began in 1974 when the ICNAF Standing Committee on Research and Statistics (STACRES) recommended a preemptive Total Allowable Catch (TAC) of between 50,000 and 80,000 metric tons based primarily on a 1973 assessment of the *Loligo* stock by Japanese scientists. The TAC set for both species (*Loligo* and *Illex*) was 71,000 tons annually for 1974 and 1975 (Table 10). Based on updated assessments for *Loligo* by the United States and estimates of stock biomass by Japanese scientists, separate TACs were set for each genus (30,000 tons for *Illex* and 44,000 tons for *Loligo*) for 1976.

Foreign fishing for squid began in 1964 when the U.S.S.R. reported taking 4 tons incidentally in ICNAF SA 5 (Tables 9 and 10). Through 1966, the Soviets were

the only foreign nationals off our coast pursuing any type of squid fishery and their catches totaled 389 tons. Japan, fishing in ICNAF SA 6, entered the fishery in 1967 and by 1969 had become the dominant squid harvester with 7,122 tons landed. Japan retained this dominance through 1975. In 1976 Spain became the leading harvester with a catch of 13,193 tons, a 33% increase over 1976 while Japanese catches decreased 40% to 8,353 tons (Table 22).

The mean squid catch for 1972-1976 for all countries except the U.S. was just under 50,000 tons, the fishery peaking in 1973 at 56,768 metric tons.

"Days fished" data reported to ICNAF for 1974 and 1975 (Tables 23 and 24) indicate the relative amount of fishing pressure exerted by foreign nationals of particular fisheries. Overall, total fishing days for squid, as reported to ICNAF, decreased 25% from 1974 to 1975 but total squid catch in 1975 was down only 7% from the 1974 level.

The characteristics of Italian, Japanese, and Spanish vessels that fished in ICNAF SA 5 and SA 6 during 1974 are given in Table 25. These nations were chosen since their effort was directed primarily at squid. Of these, Japan had the largest vessels in terms of mean gross tonnage, length, and horsepower. Compared to the United States fleet harvesting squid, the vessels of these three countries are much larger, more powerful, and newer.

Foreign nations have traditionally pursued their directed *Loligo* fishery with bottom trawling gear. The Japanese have experimented using jigs to harvest *Illex* but this technique is mainly employed in the Pacific squid fishery. However, jigging is the basic approach to harvesting *Illex* by Canadians off Newfoundland. The predominant bycatch of the *Loligo* fishery off the Mid-Atlantic states is butterfish, and this bycatch may possibly be increased by use of pelagic gear.

In 1977 the Canadian allocation in US waters of *Loligo* was 2,000 mt of which 15 mt were caught and 1,000 mt of *Illex* of which none were caught. The Canadian caught no *Loligo* in Canadian waters and caught 29,759 mt of *Illex* in Subarea 3 and 9,280 mt in Subarea 4. The total catch in Canadian waters (by Canadians and foreigners) in 1977 was 32,692 mt of *Illex* in Subarea 3 and 55,218 mt in Subarea 4. No *Loligo* were caught.

VIII-4. Interaction Between Domestic and Foreign Participants in the Fishery

US and foreign landings data for squid in SA 5 and SA 6 are given in Tables 26 and 27, respectively. Total US landings

have remained relatively constant and show no trends. However, in terms of percentage of the total catch, US landings have declined from 100% of both species in 1963 to 5% for *Loligo* and 1% for *Illex* in 1975. Bycatch of other species of interest to US fishermen (e.g., butterfish) in the foreign directed fishery for squid presents another level of competition for limited available resources.

Fisheries (main species sought category) in which squid were caught in the northwest Atlantic are presented in Table 28 by country. A total squid catch of 55,528 metric tons was taken in 1974, of which 12,853 tons was bycatch. The squid fishery was difficult to identify as directed or incidental under the ICNAF catch reporting scheme since it occurred in a mixed fishery situation. A procedure was adopted of assigning a catch record to the squid fishery if the largest catch was of squid.

It is not known to what extent foreign fishing activities have affected the domestic squid fishery. Since the US squid market is quite small and the development of export markets for squid represents a distinct opportunity for expanding the US squid industry, large foreign squid catches may have hindered development of this export trade and the domestic squid industry. Fishermen have indicated that activity of large foreign trawlers in areas of squid concentration may adversely influence the development of a directed squid fishery by smaller US vessels because of perceived foreign dominance of the limited space because of size and number of vessels. However, the area concept governing foreign fishing within the FCZ should minimize this potential obstacle.

Table 22. Estimated^a species breakdown of squid landings in ICNAF SA 5 and 6, 1963-1975.

Year	Canada	Bulgaria	France	FRG	Japan	Italy	Spain	Poland	Romania	USSR	USA	GDR	Cuba	Total
<u>Loligo</u>														
1963											1,294			1,294
1964											572			572
1965										99	709			808
1966										226	722			948
1967					5 ^b					548	1,125			1,678
1968					177 ^b					2,184	1,083	5		3,449
1969					7,125 ^b					1,080	898			9,103
1970					13,557		4,483			482	652	10		36,184
1971		50			10,528		1,881			3,561	727			16,747
1972		254 ^b	296		17,102	2,928	8,165	2,754	33 ^b	4,045	742		7	36,789
1973		410 ^b	820	463	14,396 ^b	2,994	11,145 ^b	5,134	139 ^b	5,000	1,100	163		42,940
1974		300	27	1,639	13,493 ^b	3,280 ^b	9,375 ^b	1,653 ^b	-	4,485	2,141	-		34,754
1975	-	74			10,746	3,390	8,090	3,785 ^b	-	4,295	1,593 ^b	620 ^b		32,593
<u>Illex</u>														
1963											810			810
1964											358			358
1965										78	444			522
1966										119	452			570
1967										286	704			992
1968										1,052	678	5		3,390
1969					2 ^b					260	562	1		1,409
1970					586 ^b					174	408	10		701
1971	1	40			82		27			2,578	455			5,439
1972		245			48	272	2,317	2,674	33	2,927	472		7	11,913
1973		-			1,589	171	3,694 ^b	4,070	-	3,976	530	156		13,696
1974		293			1,009 ^b	980 ^b	3,784 ^b	5,052	9	3,945	148			20,523
1975		120	66		3,327 ^b	844 ^b	6,769 ^b	3,051 ^b	48	3,706	107 ^b	278 ^b		13,255

Source:

a - Tibbetts 1976. If not reported by species; the estimate is 60% of the April through September catches of Illex in the offshore fishery of Japan, Spain, Italy, and 50% of the April through September catches of Illex in the shelf fishery of the remaining countries.

b - As reported to ICNAF

Table 23.1974 days fished as reported to ICNAF

Country	Cod	Haddock	Redfish	Silver hake	Red hake	Pollock	Flounder	Ground-fish	Herring	Mackerel	Pelagic	Other fish	Squid	Total
Bulgaria				55						712				767
Canada	310	91	13			553		148	0				9	1,124
Denmark														
France	3								65					68
FRG									616					616
Iceland														
Italy ^a													0	
Japan								3	147		162		1,092	2,649
Norway														
Poland	6								1,241	3,500		5	423	5,175
Portugal														
Romania									170	345				523
Spain	419												2,378	2,797
USSR				6,004	2,412		18	304	3,012	4,045		1,317	435	18,347
UK														11
USA	5,890	77	770	924	106	1,145	13,365	7,051	222	541	574	1,276	1,805	33,754
GOR	2								936	1,392	8	458		2,797
Other														

^aNo reporting of effort units.

Table 24.1975 days fished as reported to ICNAF

Country	Cod	Haddock	Redfish	Silver hake	Red hake	Pollock	Flounder	Ground- fish	Herring	Mackerel	Pelagic	Other fish	Squid	Total
Bulgaria				63						715				778
Canada	386	153	1		450		141							1,131
Cuba				135					67	15				217
France									64					64
FRG						5			598	4				607
Italy ^a														
Japan							65		188	26	259		1,663	2,201
Norway		1												1
Poland				9					1,589	3,539	9		252	5,398
Romania									109					109
Spain	1,510												2,634	4,144
USSR				7,615	775				3,106	3,598		384	572	16,050
UK														
USA	6,695	297	875	1,932	24	1,678	15,174	6,347	241	141	693	695	69	34,861
GDR						1			1,039	1,302		51	23	2,416
IRE ^a													0	
Total	8,592	450	876	9,754	799	2,134	15,174	6,553	7,001	9,340	961	1,130	5,213	67,977

^a No reporting of effort units

Table 25. Characteristics of Foreign Vessels Fishing in SA 5 & 6 During 1974 for Those Countries Fishing Primarily for Squid

	Italy		Japan		Spain ¹	
	Mean	Range	Mean	Range	Mean	Range
Gross Tonnage	1220	632-1584	2202	999-2880	667	284-1646
Length (meters)	70	59-75	76	62-79	50	36-74
(feet)	230	194-246	250	203-259	165	118-243
Horsepower	2374	1285-2900	2818	2200-3500	1418	800-2670
Crew Size	28	16-32	53	43-60	28	19-46
Age at 1974	4 yrs.	1-7	9 yrs.	7-14	5 yrs.	0-12 ²

¹ - Characteristics are for Spanish vessels which fished exclusively in SA6, primarily for squid.

² - Age 0 means the vessel was built in 1974.

Number of vessels: Italy - 10; Japan - 16; Spain - 35.

Data compiled from "ICNAF. (1976). List of Fishing Vessels for 1974."

Table 26. USA and Foreign Landings of Loligo for SA 5 and 6, Expressed as Relative Percentages of the Total Quantity Landed, 1963-1975.

Year	USA landings (MT)	Percent of total USA landings	Foreign landings (MT)	Percent of total foreign landings	Total landings (MT)
1963	1,249	100	0	0	1,249
1964	572	100	4	0	576
1965	709	88	99	12	808
1966	722	76	226	24	948
1967	1,125	67	553	33	1,678
1968	1,083	31	2,366	69	3,449
1969	898	10	8,205	90	9,103
1970	652	2	35,532	98	36,184
1971	727	4	16,020	96	16,747
1972	742	2	36,047	98	36,789
1973	1,100	3	41,840	97	42,940
1974	2,141	6	32,613	94	34,754
1975*	1,593	5	31,001	95	32,594
1976*	1,230	5	21,478	95	22,708

* - Preliminary data.

Table 27. USA and Foreign Landings of Illex Squid for SA 5 and 6
Expressed as Relative Percentages of the Total Quantity Landed,
1963-1975

Year	USA landings (MT)	Percent of total USA landings	Foreign landings (MT)	Percent of total foreign landings	Total landings (MT)
1963	810	100	0	0	810
1964	358	100	0	0	358
1965	444	85	78	15	522
1966	452	79	118	21	570
1967	704	71	288	29	992
1968	678	20	2,712	80	3,390
1969	562	40	847	60	1,409
1970	408	58	293	42	701
1971	455	8	4,984	92	5,439
1972	472	4	11,441	96	11,913
1973	530	4	13,166	96	13,696
1974	148	1	20,375	99	20,523
1975*	107	1	13,148	99	13,255
1976*	229	1	21,637	99	21,866

* = Preliminary data.

Table 28. By-catches (metric tons) and By-catch Ratios of Squid
Taken in 1974 in SA 5 and 6 in Designated Fisheries (Main Species Sought
Category) by Country*

Country	Main Species Sought					
	Silver Hake	Red Hake	Other ground- fish	Herring	Mackerel	Other pelagic fish
Bulgaria	56 (.034)				536 (.026)	
Canada			0 (.00)	0 (.00)		
France				0 (.00)		
FRG				0 (.00)		
GDR				0 (.00)	0 (.00)	0 (.00)
Japan			1 (.091)	11 (.005)		623 (.188)
Poland				664 (.020)	3,904 (.004)	0 (.00)
Romania				2 (.002)	7 (.001)	
USSR	3,162 (.032)	1,349 (.090)	22 (.040)	896 (.025)	824 (.010)	0 (.00)
Total	3,218	1,349	23	1,573	5,271	623

* = USA figures are not available as squid catches are combined with other invertebrates in distribution of catch by gear tables.

Table 29. By-catch ratios and catches (metric tons) in squid fishery for 1974 by countries.

Country	Species Caught														Other fish	Total
	Cod	Haddock	Red-fish	Silver hake	Red hake	Pollock	Am. plaice	Witch flounder	Y.T. flounder	Other flounder	Herring	Mackerel	Squid			
Total	0 Ratio Catch 15	0 5	0 0	0.011 436	0.007 296	0 0	0 0	0 0	0 4	0.004 151	0.009 351	0.057 2,345	1.000 40,842	0.084 3,421	1.172 47,861	
Canada	0 Ratio Catch 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	1.000 27	0 0	1.000 27	
Italy	0 Ratio Catch 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0.099 420	1.000 4,260	0 0	4.680 1,099	
Japan	0 Ratio Catch 0	0 0	0 0	0.006 104	0 0	0 0	0 0	0 0	0 0	0.004 72	0 0	0.004 62	1.000 16,185	0.179 2,836	1.193 19,309	
Spain	0 Ratio Catch 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0.002 37	0 0	0 0	1.000 16,144	0.008 127	1.010 16,308	
USA	0.003 Ratio Catch 2	0 0	0.009 6	0 0	0 0	0 0	0 0	0 0	0.002 1	0.063 40	0 0	0.160 102	1.000 639	0.269 172	1.505 952	
USSR	0.009 Ratio Catch 13	0.003 5	0.225 326	0.205 296	0 0	0 0	0 0	0 0	0.002 3	0.001 2	0.066 95	0.010 15	1.000 1,446	0.161 233	1.632 2,434	
Poland	0 Ratio Catch 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0 0	0.120 256	0.816 1,746	1.000 2,141	0.001 3	1.937 4,146	

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IX. Description of Economic Characteristics of the Fishery

IX-1. Domestic Harvesting Sector

The U.S. squid fishery has traditionally been incidental in nature, although a directed fishery with floating traps has been conducted for some time in Maine and southern New England. However, with the significant declines in abundance of traditional finfish species in recent years, more interest in a directed squid fishery has developed. In 1974 and 1975, approximately 35-40 small and medium otter trawlers from Massachusetts ports conducted a short-term directed fishery for *Loligo* on spring spawning concentrations near Nantucket with catches processed for export. Most recently, there has been some interest in pair trawling for squid.

The main reason for little domestic interest in squid harvesting has been lack of a substantial domestic market; thus, prices remained low until recent years. The average ex-vessel price remained below ten cents per pound until 1964 and 1970 for the New England and Mid-Atlantic-Chesapeake areas, respectively. For the ten-year period 1967-1976, average ex-vessel price for squid increased 360% in the Mid-Atlantic-Chesapeake area (from 5.8 to 20.9 cents per pound) and slightly greater than 325% in New England (from 5.5 to 18.0 cents per pound). This price increase was coupled with a 300% increase in squid landings in New England, yet in other areas landings remained relatively constant. This large increase in New England landings may have been because squid prices compared somewhat favorably with groundfish prices during certain seasons of 1971-1974. However, because of market conditions, historic prices for squid have been substantially less than for finfish. The price of squid is extremely inelastic and thus high squid prices are maintained only during periods of low landings. Once landings increase to high levels, the market becomes saturated and the price decreases dramatically.

Massachusetts and Rhode Island landings comprise about 95% of the total squid landed in New England. Table 30 presents recent data on the value of this catch in these two States as a percentage of the value of the total States' fish and shellfish catches. The data show that the squid catch in Massachusetts constitutes less than 1% of the total value of the State catch, while in Rhode Island it has constituted from 1 to 2% of the total.

The squid fishery of the Mid-Atlantic and Chesapeake areas has been much smaller than that of New England since 1969 except for 1974 (Table 13). For this area, squid landings have represented less than 1% of the total finfish and shellfish landings except for the years 1967-1970 when they averaged between 1 and 2%.

Landings by gear by county for Mid-Atlantic States with squid landings are shown in Table 32. Squid accounted for less than 10% of finfish and squid landings in all counties except Atlantic, New Jersey and for fish pound nets in Suffolk, New York.

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Table 30. Values of Squid Catches in Comparison to Total Landed Values in Massachusetts and Rhode Island, 1971-1975.

Year	Massachusetts			Rhode Island		
	Total fish and shellfish (\$1000)	Squid	%	Total fish and shellfish (\$1000)	Squid	%
1971	48,348	76	(1)	12,552	128	1
1972	56,757	85	(1)	12,592	134	1
1973	56,226	143	(1)	14,953	361	2
1974	50,712	241	(1)	15,866	285	2
1975	65,738	19	(1)	18,796	333	2

(1) = less than one percent

Table 31. Species Rank by Volume of the Catch - 1964-1968
Rhode Island, Conn., New York, New Jersey, Delaware, Maryland, Virginia
Ranking of Top 15 Species is for 1964-8,
with Complete Ranking Figures for 1968.

RANK					SPECIES	1968 QUANTITY (Thousands of Pounds)
1968	'67	'66	'65	'64		
1	1	1	1	1	Menhaden	360,354
2	2	2	2	2	Crabs, Blue	56,353
3	3	3	3	3	Clams, Surf	40,534
4	4	4	4	5	Alewives	36,533
5	5	6	6	6	Oysters	24,340
6	6	5	5	4	Scup or Porgy	13,931
7	7	7	7	8	Clams, Hard	13,702
8	8	9	10	9	Flounder, Yellowtail	12,226
9	9	10	8	7	Whiting	9,722
10	12	13	14	12	Striped Bass	8,303
11	10	11	13	13	Flounder, Blackback	7,552
12	14	15	15	14	Lobsters, Northern	6,454
13	11	8	9	11	Flounder, Fluke	6,288
14	13	12	11	10	Clams, Soft	5,906
15	15	14	12	15	Scallops, Sea	4,103
16					Shad	4,101
17					Swellfish	3,996
18					Butterfish	3,449
19					Squid	2,952
20					Cod	2,914

From: Saila and Pratt (1973) page 6-7

Table 32. Contribution Of 1976 Squid Landings To New York, New Jersey, Maryland, and Virginia Counties And Fishing Gears

	Thousands of Pounds <u>Quantity</u>	Thousands of Dollars <u>Value</u>	Average \$/Pound	Squid Contribution %	
				<u>Pounds</u>	<u>\$</u>
<u>New York</u>					
<u>Kings County</u>					
Squid Landings					
Fish Otter Trawls	99.3	19.6	0.20		
County Landings					
All Species	2,449.1	532.1		4.1	3.7
Finfish & Squid	2,293.4	464.6		4.3	4.2
Fish Otter Trawls	2,027.1	332.3		4.9	5.9
<u>Nassau County</u>					
Squid Landings					
Fish Otter Trawls	35.9	7.7	0.21		
County Landings					
All Species	4,871.1	2,539.9		0.7	0.3
Finfish & Squid	1,029.7	265.7		3.5	2.9
Fish Otter Trawls	947.3	238.4		3.8	3.2
<u>New York County</u>					
Squid Landings					
Sea Scallop Dredges	0.5	0.1	0.23		
County Landings					
All Species	534.1	828.6		<0.1	<0.1
Finfish & Squid	24.8	8.8		2.0	1.3
Sea Scallop Dredges	534.1	828.6		<0.1	<0.1
<u>Suffolk County</u>					
Squid Landings					
Haul Seines	0.7	0.1	0.21		
Fish Otter Trawls	688.5	139.8	0.20		
Fish Pound Nets	282.7	57.4	0.20		
Total		197.4	0.20		
County Landings					
All Species	26,310.1	28,239.3		3.7	0.7
Finfish & Squid	14,311.2	3,875.5		6.8	5.1
Haul Seines	760.6	208.4		0.1	<0.1
Fish Otter Trawls	9,176.4	2,776.0		7.5	5.0
Fish Pound Nets	2,418.7	469.0		11.7	12.2

Table 32. (Continued)

	Thousands of Pounds <u>Quantity</u>	Thousands of Dollars <u>Value</u>	Average <u>\$/Pound</u>	Squid Contribution %	
				<u>Pounds</u>	<u>\$</u>
<u>New Jersey</u>					
<u>Atlantic County</u>					
Squid Landings					
Fish Otter Trawls	122.9	26.8	0.22		
County Landings					
All Species	13,048.2	5,670.3		0.9	0.5
Finfish & Squid	1,147.9	511.2		10.7	5.2
Fish Otter Trawl	734.0	234.8		16.7	11.4
<u>Cape May County</u>					
Squid Landings					
Fish Otter Trawls	523.5	112.3	0.21		
Scallop Otter Trawls	1.1	0.2	0.20		
Shrimp Otter Trawls	0.1	<0.1	0.13		
Mid-Water Trawls	1.6	.4	0.22		
Total	526.3	112.9	0.21		
County Landings					
All Species	39,896.7	14,961.9		1.3	0.8
Finfish & Squid	22,508.3	4,373.2		2.3	2.6
Fish Otter Trawls	15,150.1	3,234.8		3.5	3.5
Scallop Otter Trawls	821.3	1,192.5		0.1	<0.1
Shrimp Otter Trawls	131.1	161.3		<0.1	<0.1
Mid-Water Trawls	4,525.3	331.5		<0.1	0.1
<u>Morrmouth County</u>					
Squid Landings					
Fish Otter Trawls	10.9	2.8	0.26		
County Landings					
All Species	154,644.9	5,411.1		<0.1	<0.1
Finfish & Squid	153,917.7	4,840.9		<0.1	<0.1
*Food Finfish &					
Squid	3,834.1	553.6		0.3	0.5
Fish Otter Trawls	3,000.8	350.4		0.4	0.8

* Morrmouth County is the center of the New Jersey menhaden industry

< = less than

Table 32. (Continued)

	Thousands of Pounds <u>Quantity</u>	Thousands of Dollars <u>Value</u>	Average <u>\$/Pound</u>	<u>Squid Contribution</u> <u>%</u> <u>Pounds</u> <u>\$</u>	
<u>New Jersey (Continued)</u>					
<u>Ocean County</u>					
<u>Squid Landings</u>					
Fish Otter Trawls	211.0	53.0	0.25		
Lobster Otter Trawls	2.9	1.1	0.39		
Scallop Otter Trawls	1.0	0.4	0.41		
Total	214.9	54.5	0.25		
<u>County Landings</u>					
All Species	15,459.5	6,479.2		1.4	0.8
Finfish & Squid	10,897.4	2,577.7		2.0	2.1
Fish Otter Trawls	8,510.8	1,703.7		2.5	3.1
Lobster Otter Trawls	191.6	276.8		1.5	0.4
Scallop Otter Trawls	445.4	698.2		0.2	<0.1
<u>Maryland</u>					
<u>Worcester County</u>					
<u>Squid Landings</u>					
Fish Otter Trawls	39.3	11.4	0.29		
<u>County Landings</u>					
All Species	11,378.5	5,447.0		0.3	0.2
Finfish & Squid	2,998.3	576.5		1.3	2.0
Fish Otter Trawls	2,706.5	495.2		1.5	2.3

Table 32. (Continued)

	Thousands of Pounds <u>Quantity</u>	Thousands of Dollars <u>Value</u>	Average <u>\$/Pound</u>	Squid Contribution <u>%</u>	
				<u>Pounds</u>	<u>\$</u>
<u>Virginia</u>					
<u>Accomack County</u>					
Squid Landings					
Fish Otter Trawls	2.6	0.6	0.23		
Scallop Otter Trawls	<u>0.3</u>	<u>0.1</u>	0.43		
Total	2.9	0.7	0.25		
County Landings					
All Species	9,437.0	3,574.9		<0.1	<0.1
Finfish & Squid	2,893.7	645.9		0.1	0.1
Fish Otter Trawls	796.8	281.4		0.3	0.2
Scallop Otter Trawls	191.2	245.5		0.2	<0.1
<u>City of Norfolk</u>					
Squid Landings					
Fish Otter Trawls	60.7	6.8	0.11		
Scallop Otter Trawls	<u>0.5</u>	<u><0.1</u>	0.10		
Total	61.2	6.9	0.11		
County Landings					
All Species	3,337.3	1,171.4		1.8	0.6
Finfish & Squid	2,703.5	261.8		2.3	2.6
Fish Otter Trawls	1,303.3	310.5		4.7	2.2
Scallop Otter Trawls	401.0	556.5		0.1	<0.1
<u>City of Hampton</u>					
Squid Landings					
Fish Otter Trawls	45.9	4.8	0.10		
Scallop Otter Trawls	<u>1.9</u>	<u>0.2</u>	0.12		
Total	47.8	5.0	0.11		
County Landings					
All Species	9,382.8	5,618.5		0.5	<0.1
Finfish & Squid	4,343.3	1,025.6		1.1	0.5
Fish Otter Trawls	3,471.9	926.5		1.3	0.5
Scallop Otter Trawls	840.9	1,260.2		0.2	<0.1
<u>Northampton County</u>					
Squid Landings					
Fish Otter Trawls	0.1	<0.1	0.18		
County Landings					
All Species	20,339.7	8,513.6		<0.1	<0.1
Finfish & Squid	2,951.0	265.6		<0.1	<0.1
Fish Otter Trawls	41.5	10.9		0.2	0.2

< = less than

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Total domestic catch for this region in 1968 was 701 million pounds (318,000 tons), 545 million of which were finfish and 156 million shellfish and related organisms. A ranking of species by quantity landed in the Mid-Atlantic Bight shows that for 1968, squid ranked 19 out of 84 with 1,342 tons (2.9 million pounds). Of the top twenty species ranked by quantity (Table 31), only cod, squid, and swellfish (*Sphoeroides maculatus*) did not also rank in the top twenty species by value. Squid ranked 25 out of 76 with an ex-vessel value of \$4,191,000.

Squid caught for use as bait did not show up in reported landings until 1972. In that year a total of 100 pounds was reported, all landed in Rhode Island. In 1973, the reported Rhode Island catch increased to 1,000 pounds. In addition, 7,400 pounds of recreationally caught squid was landed in Massachusetts that same year. Beyond 1974, published data on recreational squid landings are not currently available. However, squid questionnaire returns completed by NMFS Statistical Reporting Specialists indicate that for the years 1974-1976 no overall coast wide recreational squid fishing effort occurred. In local areas, though, periodic angling for squid is known to occur. For example, during summers when squid are abundant in the Cape Cod Canal, anglers will jig for them (Thomas Morrissey, 1977, personal communication). This is where the 1973 Massachusetts recreational landings may have occurred. Also, an undetermined amount of squid is taken by charter boat anglers for bait throughout the region (Bruce Freeman, 1977, personal communication).

The squid's great significance as a prey for many game fish makes it more important as a bait species than as a target species for the recreational angler. At recent meetings, North Carolina fishermen stated that large amounts of squid are caught and utilized as bait on charter boats and much of this goes unrecorded. For this reason, the fishermen believe that reported North Carolina landings are less than amounts actually caught. It is possible that this situation exists for the Atlantic coast in general. It is, therefore, necessary to consider catches from this component of the fishery in future management efforts.

IX-2. Domestic Processing Sector

Analysis of the processing and marketing aspects of the domestic squid industry is currently being carried out through a processor questionnaire and on-site processor interviews. However, squid processing sector information of a general nature has been obtained through questionnaires completed by NMFS Statistics Branch Fishery Reporting Specialists. This information is presented below.

A total of 29 processing firms reportedly participate in the squid fishery. Of the total, eleven are located in Massachusetts, eight in Rhode Island, seven in Virginia, and one each in Maine, New York, and New Jersey. All of these firms handle other fish products in addition to their seasonal squid supply. The market forms of squid were identified as "fresh, fresh frozen, frozen bait, and other". The percentage breakdown for these forms by State was:

Market Forms of Squid Expressed as a Percent of Total Squid Landings

	ME	NH	MA	RI	NY	NJ	MD	VA
Fresh.....	100	100	16	100	50	75	10	75
Fresh frozen.....	0	0	68	0	25	5	13	1
Frozen bait.....	0	0	16	0	25	15	77	24
Other.....	0	0	0	0	0	5	0	0

Notice that Maine, New Hampshire, and Rhode Island are solely "fresh" squid marketers, followed by New Jersey and Virginia at 75% fresh. Massachusetts converts 68% of its

landings to the fresh frozen product; New York 25%.

Table 33 shows the historical production for frozen squid by geographical section. Inspection of the

figures shows the New England, Mid-Atlantic, and Pacific sections to be the dominant producers for frozen squid. New England's dominance through the mid-1950s has been replaced by the Pacific sections, suggesting limited market opportunities.

Canned squid has reportedly been produced by New York and New Jersey firms. Table 34 shows the east coast production of canned squid relative to total U.S. canned squid production. While east coast production has increased in recent years, it is still a minor commodity when compared to Pacific coast production. At the present time canned squid is the only U.S. commercially prepared squid product. The canning is done in oil, in tomato sauce, and in brine with or without the ink sac (Ampola, 1974).

Miller, Kolhonen, and Hall (1973) reported that "technology used in other food processing operations is probably adaptable to processing most types of squid." However, they did not elaborate and it is not known what types of automated machinery (if any) are used to process squid.

The potential for other squid products exists if markets could be developed and cultivated. For example, cephalopod ink has been used as an artists' colorant for many years. Research is ongoing to extract a viscous glue from squid skin and a high grade nitrogenous fertilizer from the pen and viscera (Ampola, 1974). Data are not available to estimate U.S. processor capacity. The reporting requirements proposed in this FMP should result in the necessary data being available for use in updating this FMP.

IX-3. International Trade

Exports of domestic canned squid are presented in Table 35. The volume of exports varied during the 1963-1976 period, reaching a high of 12,787,000 pounds in 1967. While the volume of exports has decreased since 1967, the value has increased to a 1976 high of \$2,095,000. In 1977 most canned squid was exported to Greece (2,154,000 pounds) and the Philippines (2,528,000 pounds).

Data on imports of squid are not available.

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Table 33. Production of Frozen Squid by Section^{1/ 2/}
(in thousands of pounds)

	NE	MID-A	SA	NC	SC	PAC	TOTAL ^{3/}
1939	2066	1321	---	60	7	79	3533
1940	1005	910	6	42	---	74	2037
1941	1217	868	12	1	16	291	2405
1942	85	234	4	9	---	309	641
1943	978	665	---	198	---	273	2114
1944	1057	363	1	1	---	65	1487
1945	967	482	1	---	---	283	1733
1946	1118	659	8	---	1	341	2127
1947	1411	274	9	---	14	538	2246
1948	939	447	97	---	---	281	1764
1949	2263	1251	64	---	3	547	4128
1950	694	286	46	---	1	381	1408
1951	2169	1005	38	---	2	377	3591
1952	1054	250	13	---	2	163	1482
1953	1437	1495	108	---	13	331	3384
1954	864	759	18	---	7	287	1935
1955	905	936	67	---	4	291	2203
1956	668	725	1	---	8	104	1506
1957	1333	1394	115	---	4	46	2892
1958	1018	1250	26	---	2	305	2601
1959	644	1123	2	---	3	554	2326
1960	558	648	13	---	3	7	1229
1961	160	465	28	---	24	105	782
1962	461	823	9	---	52	53	1398
1963	586	963	2	---	118	288	1957
1964	8	400	11	---	81	1001	1501
1965	18	238	9	---	9	3998	4272
1966	30	963	5	---	101	3494	4593
1967	372	384	111	---	105	625	1597
1968	527	164	29	---	118	1806	2644
1969	268	471	53	---	175	3225	4192
1970	51	55	20	---	69	2984	3179
1971	58	369	70	---	---	2215	2712
1972	275	182	40	---	---	1458	1955
1973	470	94	5	---	---	2371	2993 ^{4/}
1974	858	118	144	---	---	5602	6722
1975	432	149	91	---	---	3190	3862

1976 data not yet available.

^{1/} Table gives production of frozen squid by firms voluntarily reporting to NMFS. Excluded were freezings by firms not reporting to NMFS on a monthly basis and by firms operating plate freezers at the end of fillet production lines. Production of fishery products frozen on US fishing or transporting craft is not included in this table.

^{2/} The section designations used include the following states:
NEW ENGLAND--MAINE, MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, AND NEW HAMPSHIRE.

MIDDLE ATLANTIC--NEW YORK, NEW JERSEY, DELAWARE, AND PENNSYLVANIA.

SOUTH ATLANTIC--MARYLAND, DISTRICT OF COLUMBIA, VIRGINIA, NORTH CAROLINA, SOUTH CAROLINA, GEORGIA, AND FLORIDA.

NORTH CENTRAL--OHIO, INDIANA, ILLINOIS, MICHIGAN, WISCONSIN, MINNESOTA, IOWA, MISSOURI, NEBRASKA, KANSAS, NORTH DAKOTA, AND SOUTH DAKOTA.

SOUTH CENTRAL--ARKANSAS, OKLAHOMA, TENNESSEE, ALABAMA, MISSISSIPPI, LOUISIANA, AND TEXAS.

PACIFIC--WASHINGTON, OREGON, CALIFORNIA, ARIZONA, UTAH, COLORADO, NEVADA, AND IDAHO.

^{3/} There is no way of telling what percentage of total freezings went for human consumption, were used as bait, and for other purposes.

^{4/} Includes 53 x 10³ lbs. from the State of Alaska.

Source: NOAA-NMFS Fishery Statistics of the United States 1939-1973
 NMFS Current Fishery Statistics 1974-1975

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Table 34.—U.S. Production of Canned Squid
(In metric tons, thousands of pounds and thousands of dollars)

	Atlantic Coast ¹			Pacific Coast ²		
	MT	lbs.	\$	MT	lbs.	\$
1962.....	24	52	25	3,201	7,042	807
1963.....	30	65	30	3,228	7,102	591
1964.....	30	65	32	4,654	10,238	855
1965.....	28	62	28	5,617	12,358	1,088
1966.....	11	24	18	5,154	11,339	1,130
1967-1971 ³						
1972.....	31	69	65	4,976	10,946	1,227
1973-1975 ³						

¹Represents the output of canning firms in New York and New Jersey. These firms are the only ones reportedly canning east coast squid.

²All canning is done in California. The number of canning firms has fluctuated during the period 1962-1975 from a high of 10 in 1962 to a low of 3 in 1973.

³Statistics on squid canned for these years is not available by coast.

⁴Source: NOAA-NMFS Fishery Statistics of the United States NMFS Current Fishery Statistics.

Table 35.—U.S. Exports of Domestic Canned Squid

Year:	Quantity (thousands of pounds)	Value (thousands of dollars)
1963.....	8,048	742
1964.....	7,005	622
1965.....	11,911	1,160
1966.....	10,159	1,067
1967.....	12,787	1,562
1968.....	11,955	1,418
1969.....	12,216	1,500
1970.....	8,825	1,075
1971.....	10,096	1,339
1972.....	10,051	1,411
1973.....	8,166	1,341
1974.....	8,221	1,712
1975.....	6,759	1,866
1976.....	7,914	2,095
1977.....	5,045	1,411

Source: U.S. Department of Commerce, Bureau of the Census, as reported in *Fisheries of the United States*, 1966 through 1976 editions, NMFS, NOAA, DOC.

X. Descriptions of the Businesses, Markets, and Organizations Associated with the Squid Fishery

X-1. Relationship Among Harvesting, and Processing Sectors

The information for this analysis is not available.

X-2. Fishery Cooperatives or Associations

The information for this analysis is not available for ports in the Mid-Atlantic region. Data for selected ports in New England are presented in Table 36.

X-3. Labor Organizations Concerned With Squid

The information for this analysis is not available for ports in the Mid-Atlantic region. Data for selected ports in New England are presented in Table 36.

X-4. Foreign Investment in the Domestic Squid Fishery

The information for this analysis is not available.

Table 36.—1976 Labor Force Characteristics for Offshore Fishermen in New England Ports

Ports	Number of full-time fishermen	Unions and cooperatives	Approximate average age	Major ethnic groups
MA:				
Boston.....	100	Union and Nonunion	55	Yankee, Port.
Chatham.....	60-80	Cooperative.....	45	Yankee.
Gloucester.....	500	Union and Nonunion	45	Italian, Yankee.
Menemsha.....	30	None.....	40	Yankee.
New Bedford.....	400	Union.....	43	Yank./Norw./Can./Port.
Provincetown.....	150-200	Cooperative and Nonunion.	40	Yankee.
Ri:				
Newport.....	80	Union and Nonunion	45	Yank./Port./Ital.
Pt. Judith.....	120	Cooperative.....	40	Yank./Norw.
ME:				
Portland.....	150	None.....	40	Yankee.
Rockland.....	80	None.....	40	Yankee.
CT:				
Stonington.....	45	None.....	50	Yankee.
NH:				
Rye.....	20	None.....	40	Yankee

Source: Smith and Peterson (1977).

XI. Description of Social and Cultural Framework of Domestic Squid Fishermen and Their Communities

Uniform socio-economic data on fishing communities are not available. Certain information is available from the Federal censuses on a county basis. Therefore, squid landings were tabulated by county and analyzed to identify those counties with a significant involvement in this fishery (Table 37). Barnstable, Massachusetts, Newport and Washington, Rhode Island, Suffolk, New York, and Atlantic, New Jersey were selected as being relatively important in this fishery.

Table 37. Squid and Total Finfish and Squid Landings, 1976
(landings in thousands of pounds)

State	County	Squid	Total Finfish & Squid	Squid Share of County Total	Dist. of Squid
ME	Cumberland	0.5	32,442.4	<0.1%	0.2%
	Sagadahoc	18.0	7,316.1	0.2	0.2
	York	3.9	6,376.4	<0.1	<0.1
MA	Barnstable	1,703.3	32,402.2	5.3	20.3
	Bristol	797.0	55,888.2	1.4	9.5
	Dukes	3.4	2,717.6	0.1	<0.1
	Essex	1,020.0	143,909.1	0.7	12.2
	Plymouth	73.3	2,503.2	2.9	0.9
RI	Newport	874.0	23,021.8	3.8	10.4
	Washington	1,696.5	41,731.7	4.1	20.2
CO	New London	34.9	2,931.3	1.2	0.4
NY	Kings	99.3	2,293.4	4.3	1.2
	Nassau	35.9	1,029.7	3.5	0.4
	New York	0.5	24.8	2.0	<0.1
	Suffolk	971.9	14,311.2	6.8	11.6
NJ	Atlantic	122.9	1,147.7	10.7	1.5
	Cape May	526.3	22,508.3	2.3	6.3
	Morrmouth	10.9	153,916.8	<0.1	0.1
	Ocean	214.9	10,897.7	2.0	2.6
MD	Worcester	39.4	2,998.3	1.3	0.5
VA	Accomack	2.9	2,893.7	0.2	<0.1
	Norfolk	61.2	2,703.5	2.3	0.7
	Hampton (city)	47.8	4,343.3	1.1	0.6
	Northampton	0.1	2,951.0	<0.1	<0.1
Total		8,375.8			100.0%

< = less than

Data from the census are presented in Table 38. The resort nature of the economies of Barnstable and Atlantic Counties is obvious from the data (note retail sales and hotel receipts). The heavy involvement of the military in the Newport economy, and to a significant but lesser extent in the Washington County economy is also apparent. Suffolk County was highly urban and was the place of residence of many persons who worked outside the county (34.4%), probably in New York.

Data on fisheries employment are not available on the county level.

Table 38. Selected 1970 Population and Economic Characteristics for Counties with Significant Squid Landings

	US	Barnstable	Newport	Washington	Suffolk	Atlantic
<u>Population</u>						
Total (000)	203,212	97	95	86	1,295	175
US rank		364	373	403	19	210
Per sq. mi.	57	246	819	267	1,213	308
% Change, 60-70	13.3	37.5	15.1	45.1	69.0	8.8
% Net mig. 60-70	1.7	32.4	.4	24.6	49.3	4.8
% Female	51.3	52.1	44.0	47.5	50.3	53.4
% Urban	73.5	41.3	68.0	59.1	89.8	81.1
% Under 5 yrs.	8.4	7.4	8.3	8.9	10.0	7.5
% 18 yrs. & over	65.6	68.5	69.6	68.0	60.3	68.6
% 65 yrs. & over	9.9	16.9	7.2	7.8	7.6	16.3
Median age	28.3	34.4	23.9	23.7	26.4	35.5
Over 25, median school yrs. completed	12.1	12.6	12.2	12.2	12.2	11.2
<u>Labor force</u>						
Total (000)	82,049	37	47	37	404	70
Civilian (000)	80,051	34	27	28	403	69
% Fem./w husb.	57.0	58.5	56.9	58.3	61.3	51.6
% Unemployed	4.4	3.9	4.6	4.3	3.5	5.7
% Emp. in mfg.	25.9	7.6	17.0	27.9	21.8	16.5
% Emp. outside county	17.8	6.1	13.2	22.1	34.4	14.6
% Families with female head	10.8	10.5	14.1	10.4	7.2	14.7
Median family income (\$)	9,586	9,242	9,162	9,603	12,081	8,757
% Families low income	10.7	8.3	11.7	9.0	4.8	9.9
<u>Mfg. estab.</u>						
Total	311,140	96	53	74	1,475	248
% 20-99 emp.	24.3	10.4	13.2	31.1	26.5	27.4
% 100 or more emp.	11.2	2.1	5.7	12.2	5.8	10.1
% Change, value added, 63-67	36.4	12.5	189.0	160.0	37.3	53.8
<u>Retail sales</u>						
% of total in eating & drinking places	7.7	12.4	10.2	7.6	7.1	16.4
<u>Selected services</u>						
% Receipts, hotels, etc.	11.6	55.7	27.8	25.7	7.4	53.8
% Receipts, amusements	13.7	8.8	22.5	D	15.8	20.9

D = Data not reported

Source: County and City Data Book, 1972.

XII. Determination of Optimum Yield

XII-1. Specific Management Objectives

The Mid-Atlantic Council has adopted eight objectives to guide management and development of the squid fishery in the northwestern Atlantic. They are:

1. Achieve and maintain optimum stocks for future recruitment.
2. Prevent destructive exploitation of squid species.
3. Minimize capture of nontarget species.
4. Achieve efficiency in harvesting and use.
5. Maintain adequate food supply for predator species recognizing that squid are also predators.
6. Minimize user conflicts.
7. Improve understanding of the condition of the stocks.
8. Encourage increased American participation in the squid fishery.

XII-2. Description of Alternatives and

XII-3. Analysis of Beneficial and Adverse Impacts of Potential Management Options

This plan proposes a level of optimum yield, a level of foreign fishing based on the surplus after the US catches its estimated capacity, and area and seasonal limits on foreign fishing. Changes in any of these proposals are possible alternative actions. The probable impact of each group of alternatives relative to the proposed action is discussed below.

1. Increased Optimum Yield (OY) for *Loligo* and *Illex*: This may result in a reduction in future productivity of the stocks for a moderate stock-recruitment relationship. If recruitment were independent of spawning stock, some increase in OY could occur without reducing future productivity. Sufficient information is not available by which to estimate the impact of an increased OY for *Illex* or *Loligo* until response of the squid populations to present OY levels is observed.

2. Reduced OY for *Loligo* and *Illex*: This would decrease the chances of a reduction in long-term future productivity of these stocks, but unless there is a strong stock recruitment relationship, the most likely result is that a resource available for harvest would go underutilized. The Council has rejected this alternative and has adopted instead biologically conservative estimates of OY. This is in part predicated on the fact that the OYs selected for both *Loligo* and *Illex* take into consideration the short lifespan of the species. Based on past catch estimates and trends in abundance, there is little justification for reducing

the OYs for *Loligo* and *Illex* below the MSY levels.

3. Changes in Seasons and Areas for Fishing: These seasonal and area limitations on fishing were established to reduce gear conflicts between the offshore lobster pot fishery and the squid fishery. Based on available data, less severe restrictions are likely to result in increased gear conflicts. Alternatively, the Council has determined that more severe restrictions are not likely to reduce gear conflicts substantially and may make it impossible for foreign nationals to catch their proposed allocation.

4. Take No Action at This Time: This alternative would mean that the PMP, prepared by the NMFS, would continue in force. The PMP regulates foreign, but not domestic, fishermen. The effect of this alternative would be that the data that will be collected on domestic fishing and processing efforts as a result of this FMP could not be collected as effectively and assessments of the scope and development of the domestic fishery would not be as accurate as they would be with the plan.

5. Changes in Gear: Various alternative methods of catching squid to reduce or eliminate bycatch have been considered. These include jigging and the use of lights as well as mid-water trawling. The Council believes that the continuation of the gear regulations set forth in Part 611.13(c) of 50 CFR for foreign fishermen should reduce bycatch. Consideration may be given in future amendments to the plan for imposing gear restrictions on domestic fishermen to improve selectivity.

6. Selection of Various Management Units for Regulation and Optimum Yield: The three possible options for the management unit (i.e., the fishery) to be addressed by this FMP and for the specification of an optimum yield are:

(a) Squid (*Loligo pealei* and *Illex illecebrosus*) Within the fishery conservation zone: Selection of this option would limit the jurisdiction of this FMP to the fishery for squid within the FCZ only. Application of an optimum yield to only this component might render attainment of the objectives of the FMP impossible and might result in the abrupt closure of the US fishery in the FCZ because (1) squid catches in the territorial sea would not be controllable and might grow to a level which would undermine the Council's objectives for this FMP and (2) the provisions of a bilateral agreement could possibly render the FMP void.

(b) Squid (*Loligo pealei* and *Illex illecebrosus*) Within All US Waters: Selection of this option would result in

an OY for squid in the territorial sea and the FCZ combined. This approach would remedy the problems of uncontrollable growth of the territorial sea fishery because of the Secretary's ability to limit squid catches in the FCZ so that the total squid catch in all US waters would not exceed an OY, and if necessary to limit the catch in the territorial sea, if preemption becomes necessary. This option, however, does not address the potential problems of a US/Canadian bilateral agreement.

(c) All Squid (*Loligo pealei* and *Illex illecebrosus*) Under US Jurisdiction in the Atlantic: If the US and Canada successfully reach a bilateral agreement, then the management unit as defined by this option would be the US share of the negotiated TAC. This might conceivably include a US squid fishery in Canadian waters if, as part of a bilateral agreement, the US received fishing privileges in Canadian waters. Under these circumstances, the management unit (and, therefore, the OYs selected for it) would be theoretically free of area restrictions, i.e., the OYs selected would pertain to that fraction of the negotiated TAC which would be assigned to the US. The Canadian share of the TAC would not have to be considered in (i.e., subtracted from) the US optimum yields. If the US and Canada fail to reach a bilateral agreement, the management unit as defined by this option would revert to be squid within all US territory ("US jurisdiction" defined here in the broad sense to include all waters under Federal and State jurisdiction). In other words, the management unit would be the same as the management unit described in (b).

For the above reasons, the Mid-Atlantic Council has determined that the management unit of this FMP is all *Loligo* and *Illex* under US jurisdiction.

7. Preemption of the States' Jurisdiction in the Territorial Sea and/or Regulation of the Squid Fishery in the FCZ: Unless preempted by the Secretary of Commerce, management of fisheries within the territorial sea is within the jurisdiction of the individual coastal States. Management of fisheries in the FCZ is the responsibility of the Federal government in conjunction with the Regional Fishery Management Councils. It is the feeling of the Mid-Atlantic Council that preemption of State jurisdiction over fishery management is a drastic and cumbersome measure that should be avoided if possible and practicable. The Council has determined that the achievement of the objectives and optimum yield can best, most efficiently, and most equitably be accomplished through monitoring the

entire US fishery, both in the territorial sea and the FCZ, and by regulation of the fishery primarily in the FCZ, unless the growth of the domestic commercial fishery in the territorial sea is so great as to jeopardize attainment of the objectives of this plan. Only under such circumstances, therefore, would preemption be warranted. The individual States and the Atlantic States Marine Fisheries Commission, however, are urged to adopt this FMP, so that management of this resource may be as uniform and comprehensive as possible.

XII-4. Tradeoffs Between The Beneficial And Adverse Impacts Of The Preferred Management Option

Optimum Yield and TALFF. The combined optimum yields specified by the proposed action is less than the total annual harvest of squids by nations which have fished in the region in recent years. The 1979-1980 fishing year TALFF in this FMP for *Loligo* is less than the average annual foreign catch of *Loligo* in SA5 and SA6 since 1972. The FMP TALFF for *Illex*, however, is greater than the average annual foreign catch of *Illex* from the same areas over the same period. Therefore, the combined OYs represent an adverse action with respect to foreign fishing.

Increased US landings of squid on the Atlantic coast could require more labor input for processing, but, because of substantial unemployment, no increase in the cost of labor is expected. Increased US landings of squids could also result in a significant reduction in the price of both Atlantic and Pacific squid. An unpublished NMFS study has estimated that squid prices are inelastic and that there is a statistically significant relationship between Atlantic and Pacific squid prices. While this could have an adverse impact on fishermen's earnings, it would possibly benefit consumers. Development of the established European markets by US interests is of obvious importance.

There should be no adverse impact on the recreational fishing industry, which utilizes squid heavily as a bait source, since a reduction in US squid catches will not result from the allocations contained herein. No severe reduction in the availability of squid as a prey organism is expected.

Management Unit Selection. The advantages of the selection of the management unit to be all squid under US jurisdiction in the Atlantic are discussed in Sections XII-2/XII-3. Selection of this management unit provides the greatest possible flexibility for implementation of this FMP. Without such inherent flexibility, it is possible

that an FMP for these species could not be instituted until a bilateral agreement with Canada is reached—which may never occur.

Management of the Fishery Via Regulation in the FCZ. Primary management of the fishery through regulation of its FCZ component is the most efficient and equitable means of achieving the objectives of this Plan. The Secretary of Commerce has authority, outside of this FMP, to preempt the States' jurisdiction in the event that the States' management (or lack thereof) in the territorial sea significantly undermines the attainment of the objectives of this FMP. The Mid-Atlantic Council believes this authority should be invoked for this FMP only if absolutely necessary, for the reasons and under the conditions specified in Sections XX-2/XII-3.

Environmental Considerations. Since the provisions of this FMP should not result in a decline in future abundance of squid due to fishing, the optimum yields, management unit, and all other provisions of this FMP should not have an adverse impact on the environment.

XII-5. Specification of Optimum Yield

The Mid-Atlantic Fishery Management Council, in conjunction with the New England and South Atlantic Fishery Management Councils, has determined in the 1979-1980 fishing year the optimum yield of *Loligo* should be set at 44,000 metric tons. This is equal to the best conservative estimate of MSY for this species. The Mid-Atlantic Council has determined that OY should be equivalent to MSY for this species in 1979-1980 for the following reasons: (1) the best and most recent scientific evidence (from the autumn, 1977, NMFS trawl survey) indicates that this species is neither overfished nor depleted in abundance, (2) the short life-span of this species suggests that the portion of the MSY not taken through fishing would be lost (with no resultant benefit to future recruitment) through natural mortality, and (3) overall demand for squid is great and probably surpasses the combined OYs described in this FMP. Thus, harvesting at the MSY level should allow for the greatest benefit to the nation while guarding against overfishing.

Scientific information for *Illex* is much less complete than that for *Loligo*. Information available to date suggests that the MSY for *Illex* in ICNAF SA 5 and 6 (equivalent for all practical purposes to the management unit specified for this FMP) may be approximately 40,000 mt for a moderate to strong stock-recruitment relationship,

though in some years this amount may be too high, based on USSR estimates of stock size and the application of a 37% exploitation rate (section V-2, p17).

The Council has determined that an *Illex* harvest of 30,000 mt will be the optimum yield from the management unit in fishing year 1979-1980. The Council has determined that this is the greatest harvest consistent with sound conservation and management principles. The following factors were taken into consideration in the establishment of this OY: (1) uncertainties as to *Illex* population structure in the northwest Atlantic and stock-recruitment relationships; (2) environmental considerations stemming from the uncertainties of (1) and recognition of the important role *Illex* plays as prey in the ecosystem; (3) recognition of the fact that current NMFS autumn and spring surveys are suboptimal for this species and produce untimely biological data for *Illex*; (4) recognition of the developing nature of this fishery; (5) the intent to accommodate to a limited degree the foreign squid fishery which will experience declines in its *Loligo* catches over historic levels. This OY for *Illex* is greater than the peak total catch of this species in ICNAF SA 5 and 6, while simultaneously it is conservative biologically.

It is the Council's intention to provide for a cautious development of this fishery, at least until such time as biological and environmental information about this species is more fully developed.

The Council made these determinations of optimum yield in light of the biological and socio-economic data and analyses presented earlier in this plan. In estimating US capacity the Council has considered not only the historical domestic harvesting analysis in VIII but also the program for the development of the fishery in XIII-8, including the possibility of joint ventures that would make use of domestic harvesting capacity. The Council has been advised that a number of US vessels will added to this fishery in the near future.

In setting the domestic capacity for *Loligo* at 14,000mt and for *Illex* at 10,000mt, the Council has attempted to reflect not only the past performance of U.S. fishermen in this fishery, but the anticipated change in traditional fishing patterns and practices which the Council reasonably anticipates will take place in the next few years. The primary objective of the Council in setting such a high level relative to past domestic catch is to ensure that any conceivable

expansion of effort in the fishery will be accommodated.

Traditionally, squid has been harvested only as an incidental catch to more commercially valuable species. Consequently, domestic catch has been small in comparison with the total catch of squid by vessels of foreign nations. For example, the U.S. domestic catch of squid in both 1975 and 1976 amounted to only five percent of the total catch of squid in the northwest Atlantic Ocean (ICNAF SA 5 and 6). Recently, however, squid has become a more sought after commercial species due to, at least in part, an increase in ex-vessel price. The average ex-vessel price of squid has been on the rise for a number of years. Within the past year or so, the availability of foreign markets to U.S. caught squid has caused a dramatic increase in this price. The Council believes that ex-vessel squid prices will remain at attractive levels. This belief stems from the continuing great demand for squid by foreign markets (mainly Japan) and the diminution in allocations of squid in the northwest Atlantic Ocean available to foreign nations as represented by the TALFF.

In the past, top quality squid has commanded a good price, competitive with other finfish species so long as total quantity remained small. As a result, domestic fishermen have had no incentive to harvest squid intensely. Whenever catch rates increased even slightly, significant decreases in price would occur because of the domestic market's inability to absorb increased product supply. With an expanded market through export potential, this ex-vessel price structure of both *Loligo* and *Illex* should change. So long as domestic fishing interests can assure foreign markets of an adequate product supply meeting all specified product criteria, prices will remain at stable levels throughout the fishing season. This should be an added inducement to develop further the domestic squid fishery.

Aside from the incentive represented by current squid ex-vessel prices, the Council expects the current restrictive quotas for regulated species such as groundfish and surf clam and a decline in abundance of presently non-regulated species such as scallop will provide inducement for fishermen and investors to transfer effort and capital into the squid fishery. The Council has been advised that a significant number of vessels both in the New England and mid-Atlantic areas are currently being outfitted to fish exclusively for squid.

In consequence, both the incidental nature and duration of the domestic

fishery are expected to change. This will have a dramatic effect on the level of catch by domestic fishermen.

In addition to accommodating any increase in effort in the domestic squid fishery, the present level of domestic capacity is intended to provide for that part of the domestic catch which is as yet unquantified. Squid represents an important source of bait in the recreational fishery. While data on the recreational fishery are not well developed, reports indicate a minimum of 8,400 pounds of squid landed by private recreational anglers as bait in 1973 in the States of Massachusetts and Rhode Island alone. The Council believes that this figure, when expanded to include those unreported amounts of squid caught as bait by private recreational vessels coupled with the increased levels of recreational catch since 1973, may realistically be 50mt for these two States, once this bait squid catch is projected for the entire east coast, the level may be substantial. These factors must be considered from a fishery management standpoint. Other aspects of the domestic squid fishery for which there are no data include catch by private recreational anglers for their own use and the incidental catch of

squid in other bottom-trawl fisheries which is discarded at sea as trash.

While the Council may adopt a different management strategy to address the various components of the domestic squid fishery in the future, the Council has determined based upon the facts and opinions presented to it that the present level of domestic capacity is reasonable to account for both increases in effort and the unquantified components of the fishery discussed above. As effort levels stabilize, reporting provides a more comprehensive view of the fishery, and angler surveys provide some estimate of the magnitude of the private recreational catch, the Council will be better able to estimate the anticipated domestic harvest for an upcoming fishing year. Until that time, however, the Council believes that the most reasonable approach in light of the uncertainties concerning domestic catch during at least the next fishing year is not to set a domestic harvesting capacity which may potentially restrict U.S. participation in this developing fishery. If U.S. fishermen do not harvest their entire quota, then reallocations to TALFF are provided for in Section XIII-3 of the Plan.

Table 39.—MSY, OY, U.S. Capacity, and Total Allowable Level of Foreign Fishing

(In metric tons)

Species	Maximum sustainable yield	Optimum yield	U.S. capacity	Total allowable level of foreign fishing
<i>Illex</i>	40,000	30,000	10,000	20,000
<i>Loligo</i>	44,000	44,000	14,000	30,000

NOTE.—Relationships Between This FMP and the National Standards.

Section 301(a) of the Fishery Conservation and Management Act states that: "Any fishery management plan prepared, and any regulation promulgated to implement such plan, shall be consistent with the following national standards for fishery conservation and management." The following is a discussion of the standards and how this FMP meets them:

"(1) Conservation and management measures shall prevent overfishing, while achieving, on a continuous basis, the optimum yield from each fishery." The best scientific evidence available indicates that both species of squid are neither currently overfished nor at reduced levels of abundance. Harvests of both species at the optimum yield levels described in this FMP should not endanger future harvests at comparable levels.

"(2) Conservation and management measures shall be based upon the best

scientific information available." This FMP is based on the best scientific evidence currently available, as outlined in Section V-2.

"(3) To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination." This FMP meets the requirements of this standard by simultaneously managing *Loligo* and *Illex* in a complementary manner.

"(4) Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no

particular individual, corporation, or other entity acquires an excessive share of such privileges." The OYs and U.S. capacity estimates described in this FMP will accommodate all U.S. demand for squid in the commercial and recreational fisheries without prejudice to residents of any State. The seasonal movements of these species make it extremely unlikely that fishermen of any State or region could harvest the U.S. capacity before the species become available to other domestic fishermen. Moreover, this FMP contains provisions for adjustment and reallocation of the OYs prior to the start of each fishing season if any of the relevant parameters upon which these figures are based change significantly.

"(5) Conservation and management measures shall, where practicable, promote efficiency in the utilization of the fishery resources; except that no such measure shall have economic allocation as its sole purpose." Since domestic fisheries presently harvest both squid species significantly beneath the respective OY levels, no economic inefficiencies due to surplus investment or fishing effort, or similar considerations, should result from the provisions of this FMP. As U.S. capacity estimates for squid anticipate some redirection to these species of domestic commercial fishing and effort from traditional and currently depleted resources, such as groundfish, this FMP will promote greater overall economic efficiency in domestic commercial fisheries. The combined OYs do not differ from historic patterns to such an extent so as to create significant inefficiencies for foreign fishermen.

"(6) Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches." This FMP and the OYs and allocations described herein take into account possible fluctuations in species abundance (see Section V-2) and expected trends in U.S. demand for squid (see Section VIII). The management unit takes into account the U.S./Canadian negotiations for bilateral fishery agreement.

"(7) Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication." The management measures outlined in this FMP are consistent with and complement, but do not unnecessarily duplicate, management measures contained in other FMPs or PMPs. Costs of domestic management will be limited to collection and processing of basic fishery data which is necessary for future revisions

of this FMP and other NMFS and Coast Guard enforcement costs. Thus, the costs which will be incurred as a result of the implementation of this FMP can be considered as the minimum that would be required for implementation of any fishery management plan. With respect to the foreign effort this plan adopts by reference the foreign fishing regulations presently in effect, and as they may be amended, thereby reducing the impact of implementation of the FMP on foreign fleets.

XIII. Measures, Requirements, Conditions, or Restrictions Proposed to Attain Management Objectives

Note.—All references to the Foreign Fishing Regulations are intended to adopt by reference the Foreign Fishing Regulations as they may exist at the time of the adoption of this FMP by the Secretary of Commerce and as they may be amended from time to time following FMP adoption.

XIII-1. Permits and Fees

(a) Registration—(1) Any owner or operator of a vessel desiring to take any squid within the FCZ, or transport or deliver for sale, any squid taken within the FCZ must obtain a registration for that purpose.

(2) Each foreign vessel engaged in or wishing to engage in harvesting the available surplus must obtain a permit from the Secretary of Commerce as specified in Section 204 of P.L. 94-295.

(3) This section does not apply to recreational fishermen taking squid for their personal use but it does apply to the owners of party and charter boats (vessels for hire).

(b) The owner or operator of a domestic vessel may obtain the appropriate registration by furnishing on the form provided by the NMFS information specifying the names and addresses of the vessel owner and master, the name of the vessel, official number, directed fishery or fisheries, gear type or types utilized to take squid, gross tonnage of vessel, crew size including captain, fish hold capacity (to the nearest 100 pounds), and the home port of the vessel. The registration form shall be submitted, in duplicate, to the Regional Director, NMFS, Gloucester, Massachusetts, 01930, who shall issue the required registration, for an indefinite term; such term to include the calendar year in which the registration is issued. New registrations will be issued to replace lost or mutilated registrations. A registration shall expire whenever vessel ownership changes, or when the master of the vessel changes in the directed fishery or fisheries of such vessel. Application for a new

registration, because of a change in vessel ownership shall include the names and addresses of both the purchaser and the seller and be submitted by the purchaser.

(c) The registration issued by the NMFS must be carried, at all times, on board the vessel for which it is issued, mounted clearly in the pilothouse of such vessel, and such registration, the vessel, its gear and equipment and catch shall be subject to inspection by an authorized official.

(d) Registrations issued under this part may be revoked by the Regional Director for violations of this part.

Vessel Identification. (a) Each domestic fishing vessel shall display its official number on the deckhouse or hull and on an appropriate weather deck.

(b) The identifying markings shall be affixed and shall be of the size and style established by the NMFS.

(c) Fishing vessel means any boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for, fishing, except a scientific research vessel. For the purpose of this regulation, fishing vessel includes vessels carrying fishing parties on a per capita basis or by charter which catch squid for any use.

Sanctions. Vessels conducting fishing operations pursuant to this FMP are subject to all sanctions provided for in the FCMA.

If any foreign fishing vessel for which a permit has been issued fails to pay any civil or criminal monetary penalty imposed pursuant to the act, the Secretary may: (a) revoke such permit, with or without prejudice to the right of the foreign nation involved to obtain a permit for such vessel in any subsequent year; (b) suspend such permit for the period of time deemed appropriate; or (c) impose additional conditions and restrictions on the approved application of the foreign nation involved and on any permit issued under such application, provided, however, that any permit which is suspended pursuant to this paragraph for nonpayment of a civil penalty shall be reinstated by the Secretary upon payment of such civil penalty together with interest thereon at the prevailing U.S. rate.

XIII-2. Time and Area Restrictions

Foreign nations fishing for squid shall be subject to the time and area restrictions set forth in § 611.50 of Title 50 Code of Federal Regulations (CFR).

Fixed Gear Avoidance. Foreign nations fishing for squid shall be subject to the fixed gear avoidance regulations set forth in § 611.50.(e) of 50 CFR.

XIII-3. Catch Limitations

The total allowable level of foreign fishing for *Illex* in the 1979-1980 fishing year is 20,000 metric tons. The total allowable level of foreign fishing for *Loligo* in the 1979-1980 fishing year is 30,000 metric tons.

The catch limits for domestic fishermen are 10,000 metric tons of *Illex* and 14,000 metric tons of *Loligo*.

It is the policy of the Mid-Atlantic Fishery Management Council that the Assistant Administrator for Fisheries, NOAA, be allowed to make an in-season adjustment to the estimated domestic annual harvest (DAH) and Total Allowable Level of Foreign Fishing (TALFF) for *Loligo* and *Illex* based on the criteria specified by the Council as set forth below. The Council further establishes that any reallocation made by the Assistant Administrator in consultation with the Council must be consistent with the objectives of this management plan for the squid fishery. Any in-season adjustment will be made on a species specific basis due to the differing life cycles of and fisheries for *Loligo* and *Illex*. An adjustment is a temporary in-season reduction of USCAP and annual domestic quota and an equivalent temporary in-season increase of TALFF for the affected species. At the end of the fishing year (31 March), USCAPs, annual domestic quotas, and TALFFs shall revert to the amounts specified by the Mid-Atlantic Fishery Management Council in Section XII-5 of this FMP.

The Council's criteria to guide the Assistant Administrator in the reallocation process are as follows:

For *Loligo*

The National Marine Fisheries Service (NMFS) shall review reported domestic harvest (including off-loadings at sea) for *Loligo* for the first six months of the fishing year (1 April to 30 September). Domestic harvest shall be determined based upon vessel and processor reports required by Section XIV of this FMP and additional statistical port sampling data collected by NMFS.

If reported domestic harvest is equal to or greater than fifty percent (50%) of the annual domestic quota, no reallocation of *Loligo* shall be made. However, if reported harvest for this period is less than fifty percent (50%) of the annual domestic quota, the Assistant Administrator consider reallocating a portion of USCAP to TALFF. No reallocation shall be greater than one-half the difference between reported domestic harvest for the first six months of the fishing year and the annual

domestic quota. Any reallocation of USCAP to TALFF for *Loligo* shall be effective on 1 January.

For *Illex*

The National Marine Fisheries Service (NMFS) shall review the reported domestic harvest (including off-loadings at sea) of *Illex* for the first five months of the fishing year (1 April to 31 August). Domestic harvest shall be determined based upon vessel and processor reports required by Section XIV of this FMP and additional statistical port sampling data collected by NMFS.

If reported domestic harvest is equal to or greater than forty percent (40%) of the annual domestic quota, no reallocation of *Illex* shall be made. If, however, reported domestic harvest for this period is less than forty percent (40%) of the annual domestic quota, the Assistant Administrator shall consider reallocating a portion of USCAP to TALFF. No reallocation shall be greater than one-half the difference between reported domestic harvest for the first five months of the fishing year and the annual domestic quota. Any reallocation of USCAP to TALFF for *Illex* shall be effective on 1 December.

The Assistant Administrator shall accomplish any reallocation of *Loligo* and/or *Illex* through the regulatory process. The notice of proposed rulemaking shall reflect the above-mentioned criteria, and be published in the Federal Register. The public shall be given a 15-day comment period from the date of publication. During this time the Assistant Administrator or his designee shall consult with the appropriate committee of the Council to ensure that the proposed reallocation is consistent with the objectives contained in the FMP. The Assistant Administrator shall publish final regulations in the Federal Register to accomplish any reallocation after taking into account: (1) the intent and capability of the domestic industry to harvest *Loligo* and/or *Illex* during the latter portion of the fishing year as expressed during the public comment period; (2) the status of the squid populations; and (3) the current harvest of *Loligo* and *Illex* by foreign nationals. The Council believes these final regulations should be published in the Federal Register approximately 15 days prior to the effective date, to allow for proper notice. When the final regulations are published in the Federal Register, all comments and relevant information received including catch statistics shall be summarized.

The Council has determined that it is inappropriate to provide for reallocation of the entire difference between

reported domestic catch and annual domestic quota for both *Loligo* and *Illex* for the following reasons:

(1) Squid harvested by private domestic recreational vessels for use as bait usually goes unreported and thus is not quantifiable.

(2) The uncertainties which presently exist whereby the Council is unable to manage squid throughout the range of the *Illex* stock because of its transboundary nature.

(3) The unknown amount of incidental catch from both squid stocks which goes unreported by vessels using bottom gear.

(4) The possibility of unforeseen entry into the squid fishery by domestic fishermen late in the season.

The Council anticipates that the Secretary, after consultation with the Council, will implement the intent of the FMP to restrict U.S. harvest by imposing such measures including, but not limited to, trip limitations, quarterly or half yearly quotas, and closed areas, as she deems appropriate in the final regulations. Such measures should ensure the achievement of OY in a manner that does not result in a sudden dislocation of those involved in the fishery. The Council intends that these measures will enable fishermen to redirect their effort in a timely manner should a closure of the fishery or a substantial diminution in allowable catch become necessary.

XIII-4. Types of Gear

Foreign nations fishing for squid shall be subject to the gear restrictions set forth in § 611.50(c) of 50 CFR.

XIII-5. Incidental Catch

Foreign nations fishing for squid shall be subject to the incidental catch regulations set forth in §§ 611.13, 611.14, and 611.50 of 50 CFR.

XIII-6. Restrictions

No operator of any foreign fishing vessel, including those catching squid for use as bait in other directed fisheries, shall conduct a fishery for squid outside the areas designated for such fishing operations in this FMP.

XIII-7. Habitat Preservation, Protection and Restoration

The Council is deeply concerned about the effects of marine pollution on fishery resources in the Mid-Atlantic Region. It is mindful of its responsibility under the Fishery Conservation and Management Act to take into account the impact of pollution on fish. The extremely substantial quantity of pollutants which are being introduced

into the Atlantic Ocean poses a threat to the continued existence of a viable fishery. In the opinion of the Council, elimination of this threat at the earliest possible time is determined to be necessary and appropriate for the conservation and management of the fishery, and for the achievement of the other objectives of the Fishery Conservation and Management Act as well. The Council, therefore, urges and directs the Secretary to forthwith proceed to take all necessary measures, including but not limited to, the obtaining of judicial decrees in appropriate courts, to abate, without delay, marine pollution emanating from the following sources: (1) the ocean dumping of raw sewage sludge, dredge spoils, and chemical wastes; (2) the discharge of raw sewage into the Hudson River, the New York Harbor, and other areas of the Mid-Atlantic Region; (3) the discharge of primary treated sewage from ocean outfall lines; (4) overflows from combined sanitary and storm sewer systems; and (5) discharges of harmful wastes of any kind, industrial or domestic, into the Hudson River or surrounding marine and estuarine waters.

XIII-8. Development of Fishery Resources

Overall development of the squid fishery will be assisted by the pertinent objectives of this plan as recommended by the Mid-Atlantic Fishery Management Council. However, within these objectives, the extent to which the squid fishery develops depends upon which of several developmental paths the fishery follows. These paths are by and large dictated by the market potential for squid. This marketability (e.g., the extent and location of markets) will ultimately be determined by consumer acceptance of squid. Therefore, it is necessary to assess squid's potential in meeting the consumer's preferences for fishery products. This evaluation identifies squid's position as a preferred species in the total array of harvestable species and finally gives an indication of the rate, extent, and nature at which the fishery can potentially develop.

The Mid-Atlantic Council or the Secretary's designee, acting on behalf of the Secretary, will:

(1) continually work with the squid industry to identify industry's perceptions of the squid fishery for development considerations in the years ahead. These perceptions will be evaluated as to their probable impact on the resource, demands of all industry sectors, demands on the consumer, etc.

(2) Implement a campaign of consumer market surveys utilizing available expertise from NMFS, State and private sources to determine consumer preferences for seafood products.

(3) Evaluate the probable long-term impacts on the industry and potential return involved from production of acceptable squid products.

(4) Reexamine and reevaluate industry's perceptions of squid development in view of the consumer preferred seafood products.

(5) Determine an agreed procedural pathway to squid fishery development and the criteria by which to meet this development within the objectives of this plan. These might include technology transfer programs, extension programs, and marketing programs.

(6) Implement controls as needed to maintain the integrity of this development for sustained long-term resource use.

XIII-9. Management Costs and Revenues

It is expected that the initial increased governmental costs of implementing the management measures described in this plan will be limited to those costs incurred in issuing the required registrations. Of this, an as yet undetermined amount may be recovered by the Secretary of Commerce, who is authorized to recover costs of licensing and regulation.

On-going and permanent (for the life of the plan) additional expenses will be limited to costs of processing and manipulating the data from vessel logbooks and processor records, as outlined in the plan, and other enforcement costs.

The Coast Guard will incur enforcement costs that should be similar to those incurred enforcing the squid PMP. It is not possible to specify these costs because of the multi-mission responsibilities of the Coast Guard.

XIV. Specifications and Sources of Pertinent Fishery Data

XIV-1. General

Note: All references to the Foreign Fishing Regulations are intended to adopt by reference the Foreign Fishing Regulations as they may exist at the time of the adoption of this FMP by the Secretary of Commerce and as they may be amended from time to time following FMP adoption.

The following requirements are recommended in order for the Fishery Management Councils and the NMFS to acquire accurate data on the squid catch, by-catch, discards, disposition of such catch, effort in the fishery, and

importance of squid to fishermen relative to all other species caught. These data reporting requirements are necessary to manage the fishery for the maximum benefit of the United States. It is necessary that reporting be as comprehensive as possible and should include the territorial sea and the FCZ. The following suggestions are designed to meet this need. If it is determined that the Secretary does not have the authority to mandate reporting of catches from the territorial sea, alternative methods securing the data must be developed. It is understood that the NMFS is preparing model reporting requirements. The Mid-Atlantic Council will review these model requirements when they have been published to determine whether they meet needs identified in this Section. If such a determination is made by the Council, notice of the action will be published in the Federal Register and the model regulations will be considered as replacing the proposals that follow.

XIV-2. Domestic and Foreign Fishermen

XIV-2(a). Domestic Fishermen. (1). For a vessel registered in the squid fishery, the owner or master of such vessel must maintain an accurate daily log of fishing operations showing at least date, type and size of gear used, locality fished, duration of fishing time, length of tow (where appropriate), time of gear set, and the estimated weight in pounds of each species taken. Such logbooks shall be available for inspection by any authorized official, including (1) any commissioned, warrant, or petty officer of the Coast Guard, (2) any certified enforcement or special agent of the NMFS, (3) any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary of Commerce or the Secretary of Transportation to enforce the Act, or (4) any Coast Guard personnel accompanying and acting under the direction of any person described in category (1), and shall be presented for examination and subsequent return to the owner or master of the vessel upon proper demand by such authorized official at any time during or at the completion of a fishing trip. Such required documentation will be maintained by the owner or master of the vessel at least one year subsequent to the date of the last entry in the log book. Copies of logbook forms will be submitted weekly to an authorized official or designated agent of the NMFS.

(2) All data received under this section be kept strictly confidential and

shall be released in aggregate statistical form only without individual identification as to its source, except as may be required for enforcement of this FMP.

XIV-2. Foreign Fishermen. Foreign fishermen will be subject to the reporting and recordkeeping requirements set forth in § 611.50(e) of 50 CFR.

XIV-3. Processors

(1) All persons, individuals, firms, corporations, or business associations at any port or place in the US, that buy and/or receive squid from US flag vessels shall keep accurate records of all transactions involving squid on forms supplied by the Regional Director, NMFS. These records will be submitted weekly to the Regional Director, NMFS. Records will show at least the name of vessel or common carrier squid was received from, date of transaction, amount of squid received (broken down to *Loligo* and *Illex* if lot is presorted), price paid, capacity to process squid, and amount of that capacity actually used.

(2) The possession by any person, firm, or corporation of squid which such person, firm, or corporation knows, or should have known, to have been taken by a vessel of the United States from the FCZ without a valid registration is prohibited. In addition, all persons, individuals, firms, corporations, or business associations which process squid in any manner whatsoever other than temporarily preserving squid in its fresh state for immediate use, shall keep accurate records of all transactions involving squid. Such records will show at least the name of the entity from whom the squid was received, date of transaction, amount of squid received (broken down to *Loligo* and *Illex* if lot is presorted), price paid, capacity to process squid, and the amount of that capacity actually used.

XV. Relationship of the Recommended Measures to Existing Applicable Laws and Policies

XV-1. Fishery Management Plans

Preliminary fishery management plans (PMPs) for five fisheries of the northwest Atlantic were implemented on March 1, 1977, by the US Department of Commerce. These PMPs presently regulate foreign fishing within the FCZ for Atlantic herring, Atlantic mackerel, silver and red hake, squid (*Loligo* and *Illex*) and finfish caught incidentally to trawling. The New England Fishery Management Council has prepared a Fishery Management Plan (FMP) for the

Atlantic Groundfish fishery. Regulations promulgated by the Secretary of Commerce imposing quotas, minimum size limits, mesh restrictions, etc., went into effect on June 13, 1977, and have been subsequently amended to apply to the fisheries during 1978. Plans for several other species are also in various stages of preparation by the New England and Mid-Atlantic Fishery Management Councils.

This Squid Fishery Management Plan prepared by the Mid-Atlantic Fishery Management Council is related to these other plans as follows: 1. This squid FMP will replace the PMP regulating foreign fishing for squid within the FCZ as prescribed by the FCMA.

2. All fisheries of the Northwest Atlantic are part of the same general geophysical, biological, social, and economic setting. Domestic and foreign fishing fleets, fishermen, and gear often are active in more than a single fishery. Thus, regulations implemented to govern harvesting of one species of a group of related species may impact upon other fisheries by causing transfers of fishing effort.

3. Many fisheries of the Northwest Atlantic result in significant nontarget species fishing mortality. Therefore, each management plan must consider the impact of non-target species fishing mortality on other stocks and as a result of other fisheries.

4. Squid are a food item for many commercially and recreationally important fish species. Also, squid utilize young hake, mackerel, and herring, and possibly many other finfish species, as food items.

5. Present ongoing research programs often provide data on stock size, levels of recruitment, distribution, age, and growth for many species regulated by the PMPs, FMPs, and proposed FMPs.

XV-2. Treaties or International Agreements

No treaties or international agreements, other than GIFAs entered into pursuant to the FCMA, relate to this fishery.

XV-3. Federal Laws and Policies

The only Federal law that controls the fisheries covered by this management plan is the FCMA.

Marine Sanctuary and Other Special Management Systems. The USS Monitor Marine Sanctuary was officially established on January 30, 1975, under the Marine Protection, Research, and Sanctuaries Act of 1972. Rules and regulations have been issued for the Sanctuary (15 CFR Part 924). They prohibit deploying any equipment in the

Sanctuary, fishing activities which involve "anchoring in any manner, stopping, remaining, or drifting without power at any time" (924.3(a)), and "trawling" (924.3(h)). Although the Sanctuary's position off the coast of North Carolina at 35°00'23" N latitude—75°24'32" W longitude is located in the plan's designated management area, it does not occur within, or in the vicinity of, any foreign fishing area. Therefore, there is no threat to the Sanctuary by allowing foreign squid fishing operations under this plan if implemented by the Secretary of Commerce. Also, the Monitor Marine Sanctuary is clearly designated on all National Ocean Survey (NOS) charts by the caption "protected area." This minimizes the potential for damage to the Sanctuary by domestic fishing operations.

Current and/or Proposed Oil, Gas, Mineral, and Deep Water Port Development. While Outer Continental Shelf (OCS) development plans may involve areas overlapping those contemplated for offshore fishery management, we are unable to specify the relationship of both programs without site specific development information. Certainly, the potential for conflict exists if communication between interests is not maintained or appreciation of each other's efforts is lacking. Potential conflicts include, from a fishery management position: (1) exclusion areas, (2) adverse impacts to sensitive, biologically important areas, (3) oil contamination, (4) substrate hazards to conventional fishing gear, and (5) competition for crews and harbor space. We are not aware of pending deep water port plans which would directly impact offshore fishery management goals in the areas under consideration, nor are we aware of potential effects of offshore fishery management plans upon future development of deep water port facilities.

XV-4. State, Local, and Other Applicable Laws and Policies

No State or local laws control the fisheries that are the subject of this management plan.

State Coastal Zone Management (CZM) Programs. The proposed action entails management of squid stocks in an effort to ensure sustained productivity at some optimum level. In order to achieve this goal, all management plans must incorporate means to achieve integrity of fish stocks, related food chains, and habitat necessary for this integrated biological system to function effectively. Inasmuch as CZM plans are presently in the

developmental stages, we are not aware of specific measures on the part of the individual states which would ultimately impact this fishery plan. However, the CZM Act of 1972, as amended, is primarily protective in nature, and provides measures for ensuring stability of productive fishery habitat within the coastal zone. Therefore, each State's CZM plan will probably assimilate the ecological principles upon which this particular fishery management plan is based. It is recognized that responsible long-range management of both coastal zones and fish stocks must involve mutually supportive goals. The Massachusetts and Rhode Island CZM programs have been reviewed relative to this FMP and no conflicts have been identified. Future CZM Programs will be reviewed for consistency with this FMP.

XVI. Council Review and Monitoring of the Plan

The Council will review the plan each year. The review will include the most recent cruise survey data and data on the U.S. harvesting and processing industries. This will permit a review of MSY, OY, U.S. Capacity, and TALFF and the development of any required modifications to the FMP. These reviews will be carried out so that any amendments to the FMP can be reviewed by the Council and the public and be implemented by the Secretary of Commerce by April 1 of each year. This schedule may be modified in the future as the fishery evolves.

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BILLING CODE 3510-22-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 212]

[Docket No. ERA-R-79-32]

Retailer Price Rule for Motor Gasoline

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Proposed Rulemaking and Public Hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a proposed rulemaking and public hearing regarding proposed amendments to the retailer price regulations for motor gasoline. Specifically, ERA proposes the following four amendments to the retailer price rule for motor gasoline.

1. The maximum lawful selling price for each type or grade of gasoline would equal the most recent acquisition cost plus a fixed cents per gallon markup plus certain Federal, state and local taxes.

2. The carry forward of unrecovered increased product costs ("banks") would be eliminated and the passthrough of previously accumulated increased product costs would be prohibited.

3. The cost of acquiring product would be calculated on the basis of the most recent acquisition cost rather than on the weighted average cost of product in inventory.

4. Retailers would be required to post on the face of each gasoline pump the acquisition cost the allowable markup, applicable taxes, and the maximum lawful selling price.

The purpose of the proposed amendments is twofold. First, the proposed amendments would simplify the present rules, thereby easing administrative burdens on retailers and facilitating ERA audit and enforcement activities. Second, DOE wants to identify the appropriate margins for retailers in light of reduced allocations of gasoline and increases in non-product costs due to inflation.

In addition to the proposed amendments, ERA is requesting

comments on three alternative regulatory schemes.

1. Continuation of the present regulatory scheme, except current and prospective "banks" would be eliminated, and the limitation on nonproduct cost increases would be adjusted.

2. Adoption of the proposed amendments but with a maximum fixed percentage of acquisition cost markup rather than a fixed cents markup.

3. Establishment of a single maximum price for gasoline or type of gasoline at a national or regional level for all retail sales. This price would be adjusted periodically to reflect increased costs.

DATES: Comments by July 26, 1979, 4:30 p.m. Requests to speak at San Francisco and Washington, D.C. hearings by July 3, 1979, 4:30 p.m. Hearing dates: San Francisco hearing, July 10, 1979, 9:30 a.m.; Washington, D.C. hearing, July 12, 1979, 9:30 a.m.

ADDRESSES: All comments to Public Hearing Management; Docket No. ERA-R-79-32, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Requests to speak: San Francisco hearing, Department of Energy, attn: Robert Laffel, 111 Pine Street, 3rd floor, San Francisco, California 94111. Request to speak at Washington, D.C. hearing, Office of Public Hearing Management, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461.

Hearing locations: San Francisco hearing, Gold Rush Room, Golden Gateway Holiday Inn, 1500 Van Ness Avenue, San Francisco, California 94109. Washington, D.C. hearing, Forrestal Building, Room GE-086, 1000 Independence Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Robert Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2214 B, 2000 M Street N.W., Washington, D.C. 20461 (202) 254-5201.

William Webb (Office of Public Information), Economic Regulatory Administration, Room B 110, 2000 M Street, N.W., Washington, D.C. 20461 (202) 634-2170.

Ed Mame (Office of Regulations and Emergency Planning), Economic Regulatory Administration, Room 2314, 2000 M Street, N.W., Washington, D.C. 20461 (202) 254-7200.

William Mayo Lee (Office of General Counsel), Department of Energy, Room 6A-127, 1000 Independence Avenue, S.W., Washington, D.C. 20585 (202) 252-6754.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Amendments
- III. Alternative Regulatory Schemes
- IV. Resellers
- V. Written Comments and Public Hearing Procedures

I. Background

On May 14, 1979 ERA issued a notice of intent to review its current price rules for retailers of motor gasoline. The purpose of the review was to determine if the current regulations should be revised and simplified to make them more easily understood by retailers and the public and to facilitate enforcement by DOE. In addition, the review was to determine whether the present regulatory limitation on the passthrough of non-product cost increases permit retailers to earn an adequate rate of return in light of the current reductions in allocations of gasoline and the effects of inflation on nonproduct costs.

The complexity of the present regulations make them difficult for retailers and the public to understand, and for ERA to enforce. About 90 percent of the more than 170,000 retail stations are independently owned and operated. Because the maximum lawful selling price is based on a particular station's historical margin and costs each station has a different legal ceiling price and must be audited individually.

The present pricing system is further complicated by "banking" provisions, which allow dealers to "bank" for passthrough at a later time increased product costs (increases in their cost of gasoline) that were not immediately passed on to customers. Many dealers have not kept adequate records to support the "banks" they would like to pass through in the current spot shortage situation. A few dealers in shortage areas who have kept adequate records are taking advantage of the situation and are charging \$1.30 and more per gallon using "banked" costs.

The widely disparate abilities of retailers to justify large pass-throughs of bank product costs creates pricing anomalies that affect retailers and the motoring public. Elimination of banks,

coupled with a uniform allowable markup, will lead to more uniform prices. This, in turn, should produce more equitable competitive conditions and protect the motoring public from unjustified higher prices based on claims of banked costs.

A new and greatly simplified set of pricing rules based on a uniform markup concept would appear to have several advantages. It would be much easier for dealers and the public to understand and for DOE to enforce. Violators would be detected more easily. Because recordkeeping requirements would be minimal, audits could be performed in less time than is now required, allowing DOE's increased but still limited enforcement resources to monitor retailers more effectively.

The current reduced supply of gasoline, and consequently lower allocations of gasoline at the retail level, are the result of several factors. First, the disruption in the supply of crude oil from Iran resulted in lower refinery utilization rates and less gasoline being refined. Second, there is a need for increased production of middle distillates to build stocks for next winter's heating season. Thus the amount of crude oil available for, and consequently the production of gasoline is further reduced. Third, the demand for gasoline has increased resulting in the depletion of gasoline stocks built in anticipation of the peak spring and summer driving seasons.

The present regulations do not allow upward margin adjustments for decreased allocations to individual stations. In the current shortage situation, many individual dealers have had their monthly allocations cut back from ten to twenty percent or more, with corresponding reductions in total profits.

Under the current rules the maximum lawful price that may be charged for gasoline at the retail level is the May 15, 1973 weighted average selling price, plus increased product costs. In addition, the current rules allow retailers to pass through nonproduct cost increases up to 3¢ per gallon, plus increased rents and a portion of the cost of vapor recovery systems. Except for the rent and vapor recovery passthroughs, the nonproduct cost passthrough allowance has not been increased since 1974. The petitions filed with ERA contend that retailers' nonproduct cost increases are much higher than the limitations imposed by the current rules.

Many retailers are contending that the combination of these two factors—reduced allocations of product and increased nonproduct costs—have

seriously reduced their profits so that the viability of their businesses is threatened. While these factors would operate to reduce gross profits, for many retailers they would be offset, and perhaps more than offset, by substantial increases in total gallons sold. Since the present pricing rules were put into effect in 1974, the total number of retail outlets has declined, while the total gallons sold at each station has increased substantially. A principal purpose of this rulemaking will be to build a solid factual record regarding each of these factors to enable ERA to assess the need for amendments to the reseller price rule.

In addition to the comment invited on the specific amendments and alternative proposals set forth below, ERA invites comments on the broad question of whether it is feasible to devise a system of controls which could be readily understood by station operators and the public, be enforced with limited enforcement resources, and be effective in preventing unjustified increases in the price of gasoline.

ERA also invites comments on the following issues:

A. The need, if any, documented with financial data, to adopt any amendments to the current retail price rules for motor gasoline. In addition to documenting changes in costs, commentors should address the offsetting effect of cost decreases resulting from conversions to self service and shorter hours of operation due to reduced allocations.

B. The economic and administrative effects of eliminating currently existing product cost banks and future banks.

C. The long and short term effects of the proposed amendments and the alternative proposals on prices at the retail level in the event of decreased demand or increased supply of gasoline.

D. The effect of the proposed amendments and alternative proposals on competition at the retail level and, accordingly, appropriate amendments to the refiner and reseller price rules.

E. Alternative regulatory price schemes which fulfill the objectives of the Emergency Petroleum Allocation Act and ERA's mandate.

F. The effect the proposed amendments and alternative proposals will have on the price differential between leaded and unleaded gasoline which was the subject of a prior DOE notice of proposed rulemaking.

G. Whether retailers' margins should be tied to the individual retailers' allocation fraction. For example, should the proposed fixed cents per gallon

markup increase as a retailer allocation fraction decreases?

H. The desirability of delegating to State governments some limited authority to modify otherwise applicable retail gasoline price rules. For example, the state could be delegated the authority to adjust margins at retail outlets to provide economic incentives to encourage longer or staggered hours of operation.

II. Proposed Amendments

ERA proposes four major amendments to its price rules for retailers of motor gasoline. First, the maximum lawful selling price would equal the acquisition cost of the type or grade of gasoline plus a fixed cents markup to reflect non-product cost increases, plus certain taxes. It would be necessary to review the amount of the markup periodically and it is DOE's tentative view that it should be reviewed at least annually. Second, existing and future banks of unrecouped product costs would be eliminated. Third, the requirement to compute the May 15, 1973 selling price and increased product cost on the basis of the weighted average price of product in inventory would be eliminated. Finally, retailers would be required to post on the face of each retail gasoline pump the cost factors used in calculating the maximum lawful selling price.

The proposed amendment is significantly different from the current rules in that it would not require a retailer to calculate product cost increases based on the weighted average cost of product in inventory and eliminates the May 15, 1973 weighted average price as the base price. In other words, the maximum lawful selling price would be computed using the most recent purchase price of the particular type or grade of gasoline. ERA invites comments on the desirability of eliminating the weighted average price provisions. In particular, ERA requests information regarding the frequency and quantity of purchases of each type or grade of gasoline and the possibility of retailers circumventing the regulations by increasing the frequency and lowering the quantity of purchases. Could this problem be resolved by a regulatory scheme based on the last purchase of a specific volume of gasoline divided by the number of pumps at a station?

ERA invites comments documented with financial data on what the amount of the fixed cents per gallon markup should be?

Whether the fixed markup should be a different amount for different types and

grades of gasoline and for self service and full service islands and outlets?

The dollar amount this proposal will increase the value of gasoline currently in inventory.

ERA invites comments on the competitive effects at the retail level of this proposal. For example, are the proposed amendments appropriate for a retailer which purchases gasoline at rack or terminal prices instead of at dealer tank wagon prices (DTW)? Would this option make DTW purchasers less competitive? Should all retailers be required to impute DTW prices?

ERA invites comments on the extent a fixed cents per gallon margin would accommodate both high cost and low cost retailers in various areas of the country. For example, should a high overhead urban station be allowed a higher markup than a relatively low cost rural station? ERA invites comments on how often the fixed margin should be reviewed. Alternatively, should the fixed margin increase automatically with a specific inflation index and, if so, which one?

ERA invites comments on whether similar amendments should be made to the refiner and reseller price rules. In particular ERA invites comments on the short term and long term effects of making corresponding changes to the refiner and reseller rules.

ERA invites comments on the extent banks of increased product cost are being used to cost justify current selling prices. To what extent have banked costs been depleted, if used, and what would be the effect of abolishing banks as proposed in these amendments? What would be the effect on prices at the pump if a fixed cents per gallon non-product cost pass through was adopted and current or prospective banked costs were allowed?

ERA invites comments on the effect this proposal will have on price differentials between leaded and unleaded gasoline at the retail level.

ERA invites comments on any additional expense retailers will incur in complying with the proposed posting rules. In addition, ERA invites comments on what additional penalties ERA should impose on retailers which fail to comply with the posting provisions. For example, should retailers which do not or inaccurately post the cost factors used in computing the maximum lawful selling price be prohibited from recouping the fixed cents per gallon markup (or other proposed markups)?

III. Alternative Regulatory Schemes

A. Increase Amount of Non-Product Cost Increase Permitted Under the Current Price Rules

Under the current rules retailers are permitted to include in the selling price of gasoline up to 3 cents per gallon to reflect increased marketing costs plus rent costs and vapor recovery systems costs. Non-product cost increases are deemed to be recovered after product cost increase (Ruling 1975-16) and may not be carried forward for recoupment in a later period (§ 212.93(e)). One of the alternative amendments proposed today is to adjust the 3 cents per gallon permitted retailers of gasoline to reflect changes in non-product cost. Should this approach be adopted, we tentatively favor abandoning any cost justification requirement for non-product cost increases. The fixed cents per gallon amount would be deemed to cover all non-product increases. Accordingly, the current rules permitting the separate passthrough of rent and vapor recovery system costs would be deleted.

ERA invites comments on whether the 3 cent limitation should be adjusted to reflect retailers' current non-product cost. For example, the National Congress of Petroleum Retailers has suggested increasing the limitation by an additional 3.4 cents a gallon. Under their proposal, § 212.93(b) would be amended to permit up to 6.4 cents per gallon passthrough to reflect increased non-product costs.

ERA invites comments on the following matters:

Desirability of adopting this alternative proposal instead of the proposed amendments

Whether different limitations would be appropriate for self service and full service outlets and what they should be.

The desirability of updating the May 15, 1973 date used to compute the base price to a more recent date. What day should ERA choose as the base date and why?

The desirability of adopting this alternative proposal in conjunction with eliminating the carry forward of unrecouped costs ("banks"), and using acquisition cost to replace the weighted average cost of product in inventory and the May 15, 1973 selling price for computing product cost increases.

The desirability of not requiring that non-product cost increases be cost justified up to the limitation. In particular we invite comments on the expense and difficulty retailers have in complying with the recordkeeping provisions in the ERA price rules.

Whether refiners or resellers should be required to allocate marketing nonproduct cost increases directly to their retail outlets rather than allocating the increased costs equally to all customers? To what extent, if any, do the present rules encourage refiners or resellers to expand their number of salary operated retail outlets?

B. Adopt the Proposed Amendments with a Percentage Markup

An alternative regulatory scheme ERA is considering is to permit retailers to establish maximum lawful selling prices based on the most recent acquisition cost plus a percentage of the acquisition cost to reflect increased non-product plus taxes. The percentage would remain constant.

ERA invites comments on the desirability of adopting this alternative regulatory scheme in conjunction with eliminating the carry forward of unrecouped increased product costs ("banks"). Potential problems that may be encountered by retailers with varying acquisition costs because of purchases from different refiners, from more than one supplier, or at different levels of distribution should be addressed.

ERA invites comments on what the percentage markup should be. Should different percentage markups be used for full and self service and for various types and grades of gasoline?

C. Adopt a Price Periodically Set by DOE That is Applicable to all Retail Sales of Motor Gasoline

A third alternative under consideration would be to have the Administrator set a single price for motor gasoline throughout the nation and adjust it periodically to reflect inflation and increased costs. An advantage of this system would be that motorists would know the maximum lawful price for gasoline.

The simplicity of this approach is apparent in that it requires no calculation by the retailer and raises no question on the reliability of the retailer's posted cost of the gasoline. For example, on the last day of the month the Administrator could announce that for the next month the price of gasoline to motorists would be no more than a specified cents per gallon. Retailers could charge less than the established amount. Refiners' and resellers' retail prices would be subject to the maximum price rule established by DOE.

Comments on this alternative are requested on the following issues:

Should there be different maximum prices by type or grade of gasoline and by type of service?

Should different prices be set for different geographical areas?

Could price controls on motor gasoline be terminated at other than the retail level under this type of control?

How would price differences between suppliers affect a single retail uniform price for gasoline or a multiple price for different types or grades of gasoline?

How often would the retail price or prices need to be adjusted to reflect increased or decreased costs? What would be the most appropriate measure of these costs?

What would be the effect on competition, particularly between branded and unbranded dealers, of adopting this alternative?

To what extent, if any, would dealer margins increase or decrease under this alternative?

IV. Resellers

Under the present regulations, ceilings on resellers' prices are computed in a manner similar to retail price ceilings—i.e., resellers are limited to May 15, 1973 prices, plus product cost increases, plus an increased nonproduct cost passthrough. Resellers allowable profit margins per gallon, like retail margins, have been frozen since 1974. DOE has received comments from resellers indicating that the ceiling price rules applicable to them are in need of revision. The resellers contend that nonproduct costs have increased and that current reduced allocations have reduced profits.

ERA requests comments on whether changes in the present rules are warranted at the reseller level. Specifically, comments are requested on whether DOE should adopt a simplified uniform markup concept at the reseller level, or whether the present regulatory scheme should be left in place, with an adjustment in the allowable nonproduct cost passthrough to reflect cost changes. Although DOE is not proposing a specific amendment regarding the reseller rule, it is DOE's intention to amend the reseller rules if the rulemaking record supports such amendments.

V. Written Comment and Public Hearing Procedures

A. Written Comments.

You are invited to participate in this rulemaking by submitting data, views or arguments with respect to the issues set forth in this Notice. Comments should be identified on the outside envelop and on documents submitted with the

designation "Retail Price Rule for Gasoline" Docket No. ERA-R-79-32. Ten copies should be submitted. All comments received will be available for public inspection in the DOE Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Comments should be received by July 26, 1979, 4:30 p.m. in order to be considered.

B. Public Hearings.

1. Procedure for Requesting

Participation. The times and places for the hearings are indicated in the "DATES" and "ADDRESSES" section of this Notice. If necessary to present all testimony, hearings will be continued at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation at the hearings. The requests should contain a phone number where you may be contacted through the day before the hearing.

We will notify each person selected to be heard before 4:30 p.m., July 6, 1979. Persons scheduled to speak at the hearings must bring 100 copies of their statement to the San Francisco hearing on the date of the hearing and to the Office of Public Hearings Management, Room 2313, 2000 M Street N.W., Washington, D.C. by 4:30 p.m., July 11, 1979, for the Washington hearing.

2. Conduct of the Hearing. We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearings, which will not be judicial in nature. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may submit questions to be asked by the presiding officer of any person making a statement at the hearings. Such questions should be submitted to the address indicated above for requests to speak, for the location concerned, before 4:30 p.m. on the day prior to the hearing. If at the hearing you decide that you would like to ask a question of a

witness, you may submit the question, in writing, to the presiding officer. In either case the presiding officer will determine whether the time limitations permit it to be presented for a response.

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

Transcripts of the hearings will be made, and the entire record of the hearings, including the transcripts, will be retained by the DOE and made available for inspection at the Freedom of Information Office, Room GA-152, James Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

In the event that it becomes necessary for us to cancel a hearing, we will make every effort to publish advance notice in the Federal Register of such cancellation. Moreover, we will give actual notice to all persons scheduled to testify at the hearings. However, it is not possible to give actual notice of cancellations or changes to persons not identified to us as participants. Accordingly, persons desiring to attend a hearing are advised to contact DOE on the last working day preceding the date of the hearing to confirm that it will be held as scheduled.

Under section 7(a) of the Federal Energy Administration Act of 1974 (15 U.S.C. § 787 *et seq.*, Pub. L. 93-275, as amended), the requirements of which remain in effect under section 501(a) of the DOE Act, the delegate of the Secretary of Energy shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action. The Administrator's comments are as follows:

[w]e believe that these amendments should be considered in conjunction with the proposed rule to impose a maximum mandatory price differential between leaded and unleaded gasoline. The Department of Energy should analyze which option will be consistent with the proposed price differential rule, for example, a fixed cents per gallon margin may be more compatible than a fixed percentage markup, since the latter could tend to expand retail price

differentials beyond the wholesale price differentials.

A regulatory analysis as required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 24, 1978) and DOE's implementing procedures, is being prepared by ERA. The regulatory analysis will be available at the time a final rule, if any, is issued regarding these proposed amendments. The regulatory analysis will reflect comments submitted pursuant to this rulemaking proceeding.

Pursuant to the requirements of section 404(a) of the Department of Energy Organization Act ("DOE Act" Pub. L. 95-91), this proposed rule has been referred, concurrently with the issuance hereof, to the Federal Energy Regulatory Commission for a determination as to whether the proposed rule might significantly affect any function within the Commission's jurisdiction under section 402(c) of the DOE Act. The Commission will have until July 26, 1979, the scheduled close of the public comment period on the proposal, to make such determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, 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.)

Issued in Washington, D.C., June 22, 1979.

David J. Bardin,
Administrator, Economic Regulatory
Administration.

1. Section 212.92 is amended to delete the definitions of "Increased rental cost" and "Vapor recovery system cost."

2. Section 212.92 is amended to add two new definitions, "Acquisition cost" and "Tax cost." "Acquisition cost" is added as the first definition in the section and "Tax cost" is added after the definition of "Service agreement" and is the last definition in this section.

§ 212.92 Definitions.

For purposes of this Subpart—

"Acquisition cost" means the purchase price computed on a cents per gallon basis of a covered product and includes transportation costs of bringing the product in inventory.

"Tax cost" means federal, local, and state property, excise, franchise, and other similar taxes computed on a cents per gallon basis. Federal, state, and

local income taxes are not included in this amount.

3. Section 212.93(a) is amended to read as follows:

§ 212.93 Price rule.

(a)(1) A seller may not charge a price for an item subject to this subpart which exceeds the weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973, plus an amount which reflects, on a dollar-for-dollar basis, the increased product costs concerned. Each seller shall maintain records sufficient to justify prices charged which reflect increased product costs, including, if applicable, records which demonstrate that the seller qualifies to determine increased product costs according to separate inventories. With respect to an item which is blended by the seller, and which was not sold by the seller on or before May 15, 1973, the "weighted average price at which the item was lawfully priced by the seller in transactions with the class of purchaser concerned on May 15, 1973" shall be imputed to be the lawful price charged by the seller for the predominant covered product in the blend in transactions with the class of purchaser concerned on May 15, 1973.

(2) Notwithstanding the provisions in paragraph (a), a seller may not charge a price in retail sales of any type or grade of gasoline which exceeds the most recent acquisition cost for that type or grade of gasoline, plus — cents per gallon, plus tax cost attributable to sales of that type or grade gasoline.

4. Section 212.93(b)(1)(i) is amended to read as follows and sections 212.93(b)(1)(ii) and (iii) are deleted.

§ 212.93 Price Rule.

(b) Notwithstanding the provisions of paragraph (a) of this section:

(1) With respect to No. 2 oils: (i) in retail sales, a seller may charge one cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section, and, with respect to all other sales a seller may charge one-half cent per gallon in excess of the amount otherwise permitted to be charged for that item pursuant to the provisions of this section to reflect non-product cost increases that the seller incurred after May 15, 1973.

5. Section 212.93(e) is amended in the first clause and a new subparagraph (e)(3) is added to read as follows:

§ 212.93 Price Rule.

(e) Notwithstanding the provisions of paragraph (a) of this section and except for retail sales of gasoline:

(3) With respect to retail sales of gasoline, increased product cost not recouped on or before the effective date of this subparagraph shall not be carried forward pursuant to subparagraph (1) of this section to be recouped after the effective date of this subparagraph.

6. Section 212.129(b) is amended to read as follows:

§ 212.129 Price Information and Posting.

(b) Each retailer of gasoline shall post and maintain in legible form, in numbers of a conspicuous size (not less than one-half (1/2) inch high), and in a prominent place on each face of each pump used to dispense gasoline in retail sales the (1) acquisition cost as defined in § 212.92, (2) allowable costs per gallon as defined in § 212.93(a)(2), (3) taxes as defined in § 212.92, and (4) the maximum allowable selling price per gallon as computed under Subparts E and F of this Part. Whenever an adjustment is made to any of the four numbers required to be posted, the retailer shall post the new numbers within twenty-four (24) hours after the adjustment is made and remove prior posted numbers.

[FR Doc. 79-19976 Filed 6-25-79; 8:45 am]

BILLING CODE 6450-01-M

[10 CFR Part 476]

Electric and Hybrid Vehicle Program Small Business Planning Grants

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking; cancellation of public hearing.

SUMMARY: The Department of Energy hereby cancels the public hearing on its proposed regulations on Electric and Hybrid Vehicle Small Business Planning Grants which was scheduled for Thursday, June 28, 1979, in Washington, D.C. The public hearing is cancelled due to the lack of requests to speak at the hearing. As stated in the notice of proposed rulemaking, issued on May 22, 1979, (44 FR 30982, May 29, 1979) written comments on the proposed amendments must be received by 4:30 p.m., e.d.t., July 30, 1979.

FOR FURTHER INFORMATION CONTACT:

Anthony H. Ewing, U.S. Department of Energy, Office of Conservation and Solar Applications, 20 Massachusetts Avenue, N.W., Washington, D.C. 20585 (202) 376-4747.

Issued in Washington, D.C., June 22, 1979.

Maxine Savitz,

Deputy Assistant Secretary, Conservation and Solar Applications.

[FR Doc. 79-19975 Filed 6-25-79; 8:45 am]

BILLING CODE 6450-01-M

Notices

Federal Register

Vol. 44, No. 124

Tuesday, June 26, 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

Federal Grain Inspection Service

Voluntary Cancellation of Delegation and Designation by Florida

AGENCY: Federal Grain Inspection Service.

ACTION: Notice.

SUMMARY: Notice is hereby given that the delegation and designation of the Florida Department of Agriculture and Consumer Resources, to perform official inspection and weighing services in the State of Florida, will be canceled, at its request, effective midnight, June 30, 1979, and that the Federal Grain Inspection Service will provide official inspection and weighing services in Florida, effective July 1, 1979. This notice also announces that the Federal Grain Inspection Service is requesting comments from the grain industry and other interested parties regarding the need for designation of a replacement agency to provide official services in the State of Florida at other than export port locations. Contingent upon such need, interested persons are invited to make application for designation to operate as an official agency in all or any part of the State of Florida at other than export port locations.

DATE: Comments and/or applications by August 27, 1979.

FOR FURTHER INFORMATION CONTACT: J. T. Abshier, Director, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-8262.

SUPPLEMENTARY INFORMATION: In accordance with the provisions of the United States Grain Standards Act, as amended, (7 U.S.C. 71 *et seq.*) (hereinafter the "Act"), the State of Florida Department of Agriculture and Consumer Resources (State of Florida) was delegated, effective May 4, 1978, (43

FR 30085-30086), to perform official inspection and weighing services at export port locations in Florida. The State was also designated as an official inspection agency, effective July 1, 1978, to provide official inspection services at other than export port locations in Florida. The State of Florida has advised that by reason of a reduction of grain export operations in Florida, the State has not been able to derive sufficient revenue from remaining inspection fees to support and maintain the program. Therefore, at the State of Florida's request, its delegation and designation of authority to provide official services will be canceled effective midnight, June 30, 1979.

In accordance with Section 7(e)(1) and Section 7A(c)(1) of the Act, the Federal Grain Inspection Service (FGIS) will assume responsibility for providing official inspection and weighing services at export port locations in the State of Florida effective July 1, 1979, (7 U.S.C. 79(e)(1) and 79a(c)(1)). Where a need exists, FGIS will provide official services on an interim basis at other than export port locations until such time as the necessity of a replacement agency is determined and the service can be provided on a regular basis by an official agency (7 U.S.C. 79(h)). Accordingly, FGIS requests comments from the grain trade and other interested parties with respect to the need for designation of a replacement agency to provide official services in all or any part of Florida other than export port locations subsequent to June 30, 1979. All comments should be submitted in writing and mailed to the Office of the Director, Compliance Division, Federal Grain Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, not later than August 27, 1979.

Under the provisions of Section 7(f)(1), and subject to a final determination by the Administrator as to the need for official grain inspection service at other than export port locations in the State of Florida, interested persons are hereby given opportunity to make application for designation to operate as an official agency at other than export port locations in Florida (7 U.S.C. 79(f)(1)). Persons wishing to apply for designation to operate as an official agency in Florida should contact the Office of the Director, Compliance Division, at the

above mentioned address for the appropriate forms and mail their applications to that Director's Office not later than August 27, 1979.

Note.—Section 7(f)(2) of the Act (7 U.S.C. 79(f)(2)) provides that not more than one official agency shall be operative at one time for any geographic area as determined by the Administrator.

In making a final determination as to the need for a replacement agency to provide official services at other than export port locations in Florida, considerations will be given to all comments filed and to any applications submitted and to all other information available to the Administrator. All comments submitted pursuant to this notice will be made available for public inspection at the above indicated Office of the Director during regular business hours.

(Sec. 8, Pub. L. 94-582, 90 Stat. 2870-2873 (7 U.S.C. 79); sec. 9, Pub. L. 94-582, 90 Stat. 2875 (7 U.S.C. 79a); 7 CFR 1.27(b).)

Done in Washington, D.C. on: June 21, 1979.

D. R. Galliat,

Acting Administrator.

[FR Doc. 79-19612 Filed 6-25-79; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Quality Service

Policy on Withdrawal or Denial of Federal Inspection or Grading and Acceptance Services Based Upon Convictions for Bribery and Related Offenses

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the policy of the Food Safety and Quality Service relating to withdrawal or denial of Federal inspection or grading and acceptance service based upon convictions for bribery and related offenses.

EFFECTIVE DATE: June 26, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Robert W. Gonter, Acting Director, Evaluation and Enforcement Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-5643.

SUPPLEMENTARY INFORMATION: In recent years, the Department has instituted a

number of administrative actions seeking the withdrawal or denial of Federal Meat Inspection Services pursuant to section 401 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 671), withdrawal or denial of Poultry Products Inspection Services pursuant to section 18(a) of the Poultry Products Inspection Act (PPIA) (21 U.S.C. 467(a)), withdrawal or denial of Egg Products Inspection Services pursuant to section 18 of the Egg Products Inspection Act (EPIA) (21 U.S.C. 1047), and withdrawal or denial of Federal Meat, Poultry, Egg, Dairy, Fruit, or Vegetable Grading and Acceptance Services pursuant to regulations promulgated in order to effectuate the purposes of the Agricultural Marketing Act of 1946 (AMA) (7 U.S.C. 1621 *et seq.*; 7 CFR 2853.11; 7 CFR 2870.44; 7 CFR 2855.200; 7 CFR 2856.31; 7 CFR 2858.58; 7 CFR 2851.46; 7 CFR 2852.54). Such proceedings have been instituted in order to determine whether certain persons and establishments are unfit to engage in a business requiring egg, meat, or poultry products inspection services or have violated the law or regulations regarding the various grading and acceptance services of the Department.

These administrative proceedings have been instituted in order to effectuate the purposes of these statutes, the protection of the health and welfare of consumers, and the preservation of a sound and efficient system for distributing and marketing agricultural products. The Department's efforts in proceeding against such persons or establishments are based upon a recognition of the importance of maintaining public confidence in the integrity of the inspection and grading systems, and a recognition of the fact that the public interest in the safety of its food supply warrants the imposition of the strictest standard of care.

Recently, many of the Department's actions in this regard have been based upon criminal convictions obtained against federally inspected establishments and/or against individuals responsibly connected with such establishments for bribery and related offenses such as the giving of unlawful gratuities to public officials. In addition to evidencing a lack of basic integrity, such convictions must be considered especially serious in the specific context of the meat and poultry industries. While the FMIA, PPIA, and EPIA require the mandatory inspection of the slaughtering of certain livestock and poultry and processing of products thereof, and of the processing of egg products, it is physically impossible for Federal inspection personnel to oversee

all actions taken by operators and employees of federally inspected establishments. Great reliance must, therefore, be placed upon the integrity of these individuals. Similar reliance must be placed upon the integrity of those involved in the grading process operated under the AMA in order to insure that grading decisions are as accurate as possible and that consumers are accurately informed of the proper grades of products. When such criminal convictions are based upon the giving or offering of bribes or gratuities to Federal inspection or grading personnel, such actions also pose a direct and tangible threat to the integrity of the inspection and grading systems. The Department has recognized the seriousness of such offenses in dealing with its own personnel, who have been subjected to immediate suspension without pay upon being charged with such offenses, and have been dismissed based upon the conviction for such offenses.

After considering these issues in a number of administrative proceedings, the Food Safety and Quality Service (FSQS) now considers it appropriate and in the public interest to publish a statement of general policy with regard to administrative actions for the withdrawal or denial of Federal inspection and/or grading and acceptance services, based upon convictions for bribery and related offenses. For the purposes of this statement, convictions for bribery and related offenses shall include, but not be limited to, convictions for violations of 18 U.S.C. 201, 18 U.S.C. 209, 7 U.S.C. 1622(h), 21 U.S.C. 622, and Federal, State, and municipal statutes of a similar nature.

The policy of FSQS in administrative actions brought for the withdrawal or denial of Federal inspection and/or grading and acceptance services, based upon convictions for bribery and related offenses, shall be as follows: FSQS shall institute an administrative proceeding seeking the indefinite withdrawal or denial of Federal inspection and/or grading and acceptance services from any recipient of or applicant for such services when the Department's action is based upon a criminal conviction or convictions for bribery or related offenses. FSQS will also exercise its authority, whenever it is deemed appropriate, to institute action to withdraw the benefits of such grading and acceptance services from individuals, as well as business entities, convicted of such crimes. Such proceedings shall be conducted in conformity with the applicable Rules of Practice, which afford the respondent

the opportunity for a hearing before an Administrative Law Judge. Decisions rendered in such proceedings may then be appealed to the Judicial Officer of the Department, whose decisions may, in turn, be appealed to the Federal courts.

In the past, the Department has reached settlements in some proceedings of this nature which have included a provision for either the divestiture, by the convicted individual, of all interest in the respondent establishment, or the isolation by the convicted individual from all contact and communication with Federal grading and inspection personnel. Isolation provisions will not be included in future settlements of such cases, but the Department may, under appropriate circumstances, reach settlements which include a provision which assures a complete divestiture, by all convicted individuals, of their entire ownership interest in and operational control or direction of the establishment in question, and the termination of all associations between the convicted individual or individuals and the establishment in question. FSQS will not enter into any specific settlements which does not have this effect. These settlements may also include a provision for actual withdrawal of services for a specified period of time. In addition, such settlement may contain such other terms and conditions as are determined to be appropriate on a case-by-case basis. For example, inspection or grading and acceptance services may be withdrawn immediately if the establishment in question or any of its officers, employees, or agents subsequently violates section 22 of the FMIA, or section 201 or 209 of Title 18 of the United States Code, or commits certain specified violations involving the preparation, sale, or transportation of adulterated or misbranded products. Such subsequent violations may be established either through conviction or final decision as to the facts in a formal adjudicatory proceeding before the Secretary. Further, nothing in this policy is intended to imply that a compromise settlement will be considered in all cases. Accordingly, the determination to consider such settlements will be made on a case-by-case basis.

Proceedings of this nature will be instituted by FSQS whenever the Secretary has jurisdiction to determine whether inspection or grading and acceptance services shall be withdrawn or denied based upon convictions for bribery and related offenses. FSQS will also continue to exercise its authority to institute proceedings for the withdrawal or denial of inspection or grading and

acceptance services based upon other acts or offenses.

In instituting this policy, FSQS is aware that its application may have substantial impact upon affected individuals and establishments. However, after a full consideration of this issue, it has been determined that the institution of such a policy on a uniform basis is essential in order to protect the integrity of Federal Meat Inspection, Poultry Products Inspection, and Egg Products Inspection Programs, and the Federal Meat, Poultry, Egg, Dairy, Fruit, and Vegetable Grading and Acceptance Services. The Agency is, therefore, publishing this statement in order to notify all interested members of the public of its intention of pursuing the strongest possible sanction policy in this area. The intended effect of the adoption of such a policy will be the enhancement of the integrity of the industry and the Federal programs, and the deterrence of bribery and related offenses in the future.

This notice has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations", and has not been classified "significant". A Final Impact Statement has been prepared and is available from Mr. Robert W. Gonter, Acting Director, Evaluation and Enforcement Division, Compliance Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250.

Done at Washington, D.C., on: June 21, 1979.

Donald L. Houston,
Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-19811 Filed 6-25-79; 8:45 am]

BILLING CODE 3410-37-M

Forest Service

Gifford Pinchot National Forest; Control of Undesirable Species of Vegetation for the Purpose of Preparing Site for Planting Trees

An Environmental Assessment that discusses vegetative management on the Wind River Ranger District involving the control of competing vegetation on 4,121 acres of conifer plantations has been prepared. All proposed treatment areas are located on lands administered by the Gifford Pinchot National Forest within Skamania and Clark Counties, Washington. The report is available for public review at the Wind River Ranger District office and the Gifford Pinchot National Forest Supervisor's Office.

The projects involve aerial application of Roundup on 2,412 acres, aerial application of Krenite on 181 acres, hand spray with Roundup on 706 acres, aerial application of dessicant and burn on 237 acres, hack and squirt with Tordon 101 on 39 acres, tractor scarification on 101 acres and no site preparation planned on 445 acres of forest land in need of reforestation for the purpose of reducing moisture competition for planted trees. The Environmental Assessment does not indicate there is a major Federal action significantly affecting the quality of the human environment. Therefore, it has been determined that an Environmental Impact Statement is not needed.

This determination was based upon consideration of the following factors which are discussed in detail in the Environmental Assessment: (a) The compounds are approved by the Environmental Protection Agency for use; (b) There will be no irreversible or irretrievable loss of resources on the project area; (c) The physical and biological effects are limited to the project area; (d) No known threatened or endangered plants or animals have been recorded or observed within the project area.

Some public concern exists over the use of any chemical and the effects it has on water quality. The proposed project includes application measures designed to protect nontarget areas and water quality. State and Federal water quality standards will be met.

No action will be taken prior to July 26, 1979.

The responsible official is Robert D. Tokarczyk, Forest Supervisor, Gifford Pinchot National Forest, 500 West 12th Street, Vancouver, Washington.

Dated: June 12, 1979.

Robert D. Tokarczyk,
Forest Supervisor.

[FR Doc. 19717 Filed 6-25-79; 8:45 am]

BILLING CODE 3410-11-M

Olympic National Forest; Quinalt Ranger District; Roadside Vegetation Control

An Environmental Assessment that discusses a vegetation control project along an estimated 275 side miles of Forest Service Roads on the Quinalt Ranger District in Grays Harbor and Jefferson Counties, is available for public review in the Forest Service Office in Quinalt, Washington.

This project involves the use of the herbicide 2, 4-D on 100 sides miles and a combination of 2, 4-D herbicide application with mechanical brushing on

the remaining 175 side miles. Other roads on the Quinalt Ranger District will receive no treatment.

The Environmental Assessment indicates that this is not a major Federal action significantly affecting the quality of the human environment. Therefore, it has been determined that an environmental impact statement is not needed.

This determination was based upon consideration of the following factors, which are discussed in detail in the Environmental Assessment:

(a) The proposed herbicide project conforms to similar projects which were evaluated and approved in the 1978 Environmental Impact Statement, "Vegetation Management With Herbicides."

(b) No irreversible resource commitments or consequences will occur as a result of the herbicide project, the mechanical brushing, or the action treatment.

(c) No apparent adverse cumulative or secondary effects are anticipated.

(d) No known threatened or endangered plants or animals exist within the affected area.

Some public concern has been expressed about the effects of herbicide applications on the natural environment. However, no adverse environmental effects are anticipated. All herbicide applications will be supervised by certified Washington State Pesticide Applicators. Only EPA approved herbicide formulations and application rates will be used.

No action will be taken prior to July 26, 1979.

The responsible official is Richard D. Beaubien, Forest Supervisor, Olympic National Forest, P.O. Box 2288, Olympia, Washington 98507.

Dated: June 5, 1979.

Richard D. Beaubien,
Forest Supervisor.

[FR Doc. 79-19716 Filed 6-25-79; 8:45 am]

BILLING CODE 3410-11-M

CIVIL AERONAUTICS BOARD

[Order 79-6-125]

Allegheny Airlines, et. al.; Order

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-125.

SUMMARY: The Board is proposing to grant Denver-Washington (National)/Washington (Dulles) authority to Allegheny and Braniff, Denver-Washington (Dulles) authority to Continental, Denver/Colorado Springs-

Washington (National)/Washington (Dulles) authority to National, Denver-Washington (National)/Washington (Dulles)/Baltimore authority to Ozark and Western, and any of the authority at issue to any other fit, willing and able applicant whose fitness can be established by officially noticeable data. The complete text of this order is available as noted below.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than July 23, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All would-be applicants are directed to file applications, motions to consolidate, illustrative service proposals, environmental evaluations, and estimates of fuel to be consumed in the first year no later than July 9, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35098, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Lucille J. Mellema, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428, (202) 673-5105.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Continental Air Lines, Allegheny Airlines, Braniff Airways, National Airlines, Ozark Air Lines and Western Air Lines.

The complete text of Order 79-6-125 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the metropolitan area may send a postcard request for Order 79-6-125 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 20, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-19780 Filed 6-25-79; 8:45 am]
BILLING CODE 6320-01-M

[Order 79-6-121]

Columbia Airlines Ltd.; Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 79-6-121.

SUMMARY: The Board proposes to approve the following application:

Applicant: Columbia Airlines Ltd.
Application Date: March 12, 1979. docket: 35032. Authority Sought: Foreign air carrier permit authorizing small aircraft charters between points in Canada and points in the United States.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than July 16, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Canada in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS: Docket 35032, Docket Section, Civil Aeronautics, Washington, D.C. 20428. Columbia Airlines Ltd., L. F. Hargreaves, President, Box 1565, Prince George, British Columbia, Canada V2L 4V5.

To get a copy of the complete order, request it from the CAB Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: The Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board (202) 673-5880.

By the Civil Aeronautics Board: June 20, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-19778 Filed 6-25-79; 8:45 am]
BILLING CODE 6320-01-M

[Order 79-6-118]

The Flying Tiger, Line, Inc.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 79-6-118.

SUMMARY: The Board proposes to approve the following application:

Applicant: The Flying Tiger, Line, Inc.
Docket: 34127. Application Date: November 29, 1978. Applicant: Seaboard World Airlines,

Inc. Docket: 34167. Application Date: December 5, 1978. Authority Sought: Flying Tiger and Seaboard request authority to operate all-cargo service between Los Angeles/San Francisco and Toronto/Montreal via Chicago. The Board proposes to grant multiple carrier authority pursuant to a 1966 U.S.-Canada Exchange of Notes.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than August 6, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Canada. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other supporting evidence.

ADDRESSES FOR OBJECTIONS:

Docket 34127, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. J. W. Rosenthal (Flying Tiger), Ginsburg, Feldman & Bress, 1700 Pennsylvania Avenue, N.W., Washington, D.C. 20006.

Docket 34167, Docket Section, Civil Aeronautics Board, Washington, D.C. Stephen L. Gelband (Seaboard), Fisher, Gelband & Sinick, P.C., Suite 440, 2020 K Street, N.W., Washington, D.C. 20006.

To get a copy of the complete order, request it from the CAB Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: Glenn M. Datnoff, Legal Division, Bureau of International Aviation, Civil Aeronautics Board (202) 673-5035.

By the Civil Aeronautics Board: June 20, 1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-19775 Filed 6-25-79; 8:45 am]
BILLING CODE 6320-01-M

[Dockets 33361 and 32462]

Former Large Irregular Air Service Investigation; Application of Transocean Airlines, Inc.; Hearing

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that a hearing in the above-entitled proceeding will be held on July 10, 1979, at 9:30 a.m. (local time), in Hearing Room 1003 C, Universal Building North, 1875 Connecticut Avenue, N.W., Washington, D.C. before me.

For information concerning the issues involved and other details in this proceeding, interested persons are referred to the prehearing conference report served November 9, 1978, and other documents which are in the docket of this proceeding on file in the Docket Section of the Civil Aeronautics Board.

Dated at Washington, D.C., June 20, 1979.

Marvin H. Morse,

Administrative Law Judge.

[FR Doc. 79-19774 Filed 6-25-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-119]

Kinki Nippon Tourist Co., Ltd. (Japan) d.b.a. Kintetsu International Express (U.S.A.), Inc.; Order to Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause; Order 79-6-119.

SUMMARY: The Board proposes to approve the following application.

Applicant: Kinki Nippon Tourist Co., Ltd. (Japan) d.b.a. Kintetsu International Express (U.S.A.), Inc. Application Date: October 11, 1978. Docket 33656. Authority Sought: Indirect foreign air carrier permit to engage in foreign air transportation of persons and their accompanying baggage from any point or points in the United States to any point or points outside the United States, and return.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, NO LATER THAN July 21, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Japan in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS: Docket 33656, Docket Section, Civil Aeronautics, Washington, D.C. 20428. Kinki Nippon Tourist Co., c/o Mr. Robert N. Meiser, Suite 307, 1300 Connecticut Avenue, N.W., Washington, D.C. 20036.

To get a copy of the complete order, request it from the CAB Distribution Section, Room 516, 1825 Connecticut

Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: The Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; (202) 673-5880.

By the Civil Aeronautics Board: June 20, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-19775 Filed 6-25-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-123]

Southern Frontier Air Transport Ltd. (Canada)

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause; Order 79-6-123.

SUMMARY: THE BOARD PROPOSES TO APPROVE THE FOLLOWING APPLICATION:

Applicant: Southern Frontier Air Transport Limited (Canada). Application Date: January 23, 1979. Docket: 34563. Authority Sought: Foreign air carrier permit authorizing small aircraft charter operations between Canada and the United States.

OBJECTIONS: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted for a period of three years, as described in the order cited above, shall, no later than July 16, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Canada in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS: Docket 34563, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Mr. William E. Blake, President, Southern Frontier Air Transport Limited, Hangar 1, Calgary International Airport, Calgary, Alberta, Canada T2P 2G3.

To get a copy of the complete order, request it from the CAB Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington

metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: The Regulatory Affairs of the Bureau of International Aviation, Civil Aeronautics Board (202) 673-5880.

By the Civil Aeronautics Board: June 20, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-19779 Filed 6-25-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-120]

Travac, A.G. (Switzerland)

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause; Order 79-6-120.

SUMMARY: The Board proposes to approve the following application;

Applicant: Travac, A.G. (Switzerland). Application Date: February 26, 1979. Docket: 34840. Authority Sought: Indirect foreign air carrier permit to engage in foreign air transportation of persons and their accompanying baggage between any point or points in the United States and any point or points outside the United States, and return.

OBJECTION: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, no later than July 16, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of Switzerland in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS: Docket 34840, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428. Travac, A.G., c/o Burwell, Hansen & Manley, Suite 550, 1815 H Street, N.W., Washington, D.C. 20006.

To get a copy of the complete order, request it from the CAB Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT:
The Regulatory Affairs Division of the
Bureau of International Aviation, Civil
Aeronautics Board (202) 673-5880.

By the Civil Aeronautics Board: June 20,
1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-19777 Filed 6-25-79; 8:45 am]

BILLING CODE 6320-01-M

[Order 79-6-126]

United Air Lines; Order

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-126.

SUMMARY: The Board is proposing to
remove United Air Lines' stop restriction
in the Pittsburgh-Las Vegas market. The
complete text of this order is available
as noted below.

DATES: Objections: All interested
persons having objections to the Board
issuing the proposed authority shall file
and serve upon all persons listed below,
no later than July 25, 1979, a statement
of objection, together with a summary of
the testimony, statistical data, and other
material expected to be relied upon to
support the stated objections.

ADDRESSES: Objections or Additional
Data should be filed in Docket 35242,
Docket Section, Civil Aeronautics
Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT:
Lucille J. Mellema, Bureau of Domestic
Aviation, Civil Aeronautics Board, 1825
Connecticut Ave., Washington, D.C.
20428 (202) 673-5105.

SUPPLEMENTARY INFORMATION:
Objections should be served upon the
following persons: United, the City of
Pittsburgh and the City of Las Vegas.

The complete text of Order 79-6-126
is available from our Distribution
Section, Room 518, 1825 Connecticut
Avenue, N.W., Washington, D.C.
Persons outside the metropolitan area
may send a postcard request for Order
79-6-126 to the Distribution Section,
Civil Aeronautics Board, Washington,
D.C. 20428.

By the Civil Aeronautics Board: June 20,
1979.

Phyllis T. Kaylor,
Secretary.

[FR Doc. 79-19781 Filed 6-25-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Economic Development Administration

Petitions by Eleven Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing
from eleven firms: (1) Lake Center
Industries, 111 Market Street, Winona,
Minnesota 55987, a producer of makeup
mirrors, recreational vehicle hardware,
light switches and assemblies, and
control panels (accepted June 11, 1979);
(2) International Stretch Products, Inc.,
350 Fifth Avenue, New York, New York
10001, a producer of synthetic fabrics
(accepted June 11, 1979); (3) Golo
Footwear Corporation, 717 Fifth Avenue,
New York, New York 10022, a producer
of women's footwear (accepted June 12,
1979); (4) Kutztown Shoe, Inc.,
Greenwich and Schley Streets,
Kutztown, Pennsylvania 19530, a
producer of men's and boys' footwear
(accepted June 13, 1979); (5) I. Appel
Corporation, 99 Madison Avenue, New
York, New York 10016, a producer of
women's robes (accepted June 13, 1979);
(6) Lamiglas, Inc., P.O. Box 148,
Woodland, Washington 98674, a
producer of fishing rods and blanks
(accepted June 14, 1979); (7) Pandora
Industries, Inc., P.O. Box 5240,
Manchester, New Hampshire 03108, a
producer of children's and women's
sweaters, pants and jackets (accepted
June 15, 1979); (8) D B Systems, P.O. Box
187, Jaffrey Center, New Hampshire
03454, a producer of stereo equipment
(accepted June 15, 1979); (9) Pacific
Ascente, 1766 North Helm, Fresno,
California 93727, a producer of jackets,
vests and other outerwear, sleeping
bags, duffle bags and tarpaulins
(accepted June 15, 1979); (10) Murlen
Fastener Corporation, 313 West 37th
Street, New York, New York 10018, a
producer of slide fasteners (zippers)
(accepted June 18, 1979); and (11)
Western Stoneware, 521 West Sixth
Avenue, Monmouth, Illinois 61462, a
producer of stoneware dishes (accepted
June 18, 1979).

The petitions were submitted
pursuant to Section 251 of the Trade Act
of 1974 (Pub. L. 93-618) and § 315.23 of
the Adjustment Assistance Regulations
for Firms and Communities (13 CFR Part
315).

Consequently, the United States
Department of Commerce has initiated
separate investigations to determine
whether increased imports into the
United States of articles like or directly
competitive with those produced by

each firm contributed importantly to
total or partial separation of the firm's
workers, or threat thereof, and to a
decrease in sales or production of each
petitioning firm.

Any party having a substantial
interest in the proceedings may request
a public hearing on the matter. A
request for a hearing must be received
by the Chief, Trade Act Certification
Division, Economic Development
Administration, U.S. Department of
Commerce, Washington, D.C. 20230, no
later than the close of business July 6,
1979.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office
of Eligibility and Industry Studies.

[FR Doc. 79-19810 Filed 6-25-79; 8:45 am]

BILLING CODE 3510-24-M

National Oceanic and Atmospheric Administration

Issuance of General Permits

On June 20, 1979, general permits were
issued to:

1. The Japan Deep Sea Trawlers Association,
Daito Building, 8/F, Ogawa-cho, 3-6 Kanda,
Chiyoda-ku, Tokyo, Japan (Category 1);
2. The National Federation of Medium
Trawlers, Showa Kiakan, 3-2,
Kasumigaseki 3, Chiyoda-ku, Tokyo, Japan
(Category 1);
3. The North Pacific Longline-Gillnet
Association, Zenkeiren Building, 2-7-2,
Hirakawa-cho, Chiyoda-ku, Tokyo, Japan
(Category 5);
4. Sovrybfolt, Moscow, U.S.S.R. (Category 1);
5. Dalmor, Gdynia, Poland (Category 1);
6. Odra, Swinoujscie, Poland (Category 1);
and
7. The Pacific Coast Federation of
Fishermens's Associations, Inc., 300
Bridgeway Building, Room 102, P.O. Box
1626, Sausalito, California 94965
(Categories 1, 3, 4, and 5)

for the taking of marine mammals
incidental to commercial fishing
operations within the U.S. Fishery
Conservation Zone, pursuant to 50 CFR
216.24 (42 FR 64551-64560). The general
permits are available for public review
in the Office of the Assistant
Administrator for Fisheries, 3300
Whitehaven Street, N.W., Washington,
D.C. 20235.

Dated: June 20, 1979.

Winfred H. Meibohm,

Executive Director, National Marine
Fisheries Service.

[FR Doc. 79-19814 Filed 6-25-79; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council and its Scientific and Statistical Committee; Public Meeting With Partially Closed Session

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The Pacific Fishery Management Council and its Scientific and Statistical Committee will conduct a series of meetings.

DATES: July 11-13, 1979.

ADDRESS: The meetings will take place at the Travel Lodge International Hotel, 9750 Airport Boulevard, Los Angeles, California, 90045.

FOR FURTHER INFORMATION CONTACT: Pacific Fishery Management Council, 526 S.W. Mill Street, Second Floor, Portland, Oregon 97201, Telephone: (503) 221-6352.

SUPPLEMENTARY INFORMATION: The Pacific Fishery Management Council was established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), and the Council has established a Scientific and Statistical Committee to assist in carrying out its responsibilities. Meeting Agendas follow:

Scientific and Statistical Committee (SSC) (Open Meeting), July 11-12, 1979 (1 p.m. to 5 p.m. on July 11; 10 a.m. to 5 p.m. on July 12)

Agenda: Discuss fishery management plans (FMP's) under development, hold a public comment period beginning at 3:30 p.m. on July 11, and conduct other business.

Council (Open Meeting), July 12-13, 1979 (10 a.m. to 5 p.m. on July 12; 8 a.m. to 5 p.m. on July 13)

Agenda: Open Session—Review of FMP's; hold a public comment period beginning at 4 p.m. on July 12.

Council (Closed Session), July 12, 1979 (8 a.m. to 10 a.m.)

Agenda: Closed Session—The closed session is being held to discuss classified material on the status of current maritime boundary and resource negotiations between the United States and Canada and to discuss personnel matters concerning appointments to vacancies on subpanels and teams. Only those Council members, Scientific and Statistical Committee members, and related staff having security clearance will be allowed to attend this closed session.

The Assistant Secretary for Administration of the Department of Commerce, with the concurrence of its General Counsel, formally determined on June 20, 1979, pursuant to Section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation

therein, because items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(1), as specifically authorized under criteria established by an executive order to be kept secret in the interests of national defense or foreign policy and (6), as information which is properly classified pursuant to Executive Order and as information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination is available for public inspection and copying in the Central Reference and Records Inspection facility, Room 5317, Department of Commerce.) All other portions of the meeting will be open to the public.

Dated: June 21, 1979.

Winfred H. Meibohm,
Executive Director, National Marine Fisheries Service.

[FR Doc. 79-19815 Filed 6-25-79; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement (DEIS)

To prepare a Draft Environmental Impact Statement (DEIS) for a proposed Department of the Army (DA) Permit for a recreational marina and beach lagoons at the proposed West Beach Resort Project, Ewa District, Oahu, Hawaii.

AGENCY: U.S. Army Corps of Engineers, Honolulu District, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. *Description of the proposed action.* The applicant, West Beach Resorts, a Hawaii General Partnership, proposes to construct a recreational marina of approximately 35 acres with capacity for 700± slips of varying sizes, and a series of bathing beach lagoons fronting the proposed resort hotels. The proposed project requires a DA permit under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) and Section 404 of the Clean Water Act (33 U.S.C. 1344).

2. *Description of reasonable alternatives.* Because of the preliminary nature of the project, details on reasonable alternatives have not been finalized. The applicant is in the process of determining various alternatives, which will include:

(a) Alternative design plans within the project area.

(b) Alternative lagoon and marina systems and their environmental impact.

(c) Alternative uses of the project site and the coastal area.

(d) No-action alternative.

3. *Description of the Scoping Process for the DEIS.* (a) A public notice shall be issued announcing the intent to prepare a DEIS for the proposed permit action and inviting public comments and participation of affected Federal, State and local agencies, and other interested private organizations and parties as to specific factors of concern which should be addressed in the DEIS. Upon preparation of the DEIS, a public notice shall be issued summarizing the facts of the case and announcing the availability of the DEIS. If a public hearing is requested, it will be held after completion of the DEIS.

(b) The DEIS to be prepared will also satisfy the State of Hawaii's requirement for an Environmental Impact Statement pursuant to Chapter 343, Hawaii Revised Statutes, and the State Environmental Quality Commission's *Environmental Impact Statement Regulations*. The State's procedure requirement for the DEIS includes a period of EIS Consultation. After an Environmental Assessment is prepared and an EIS Preparation Notice is filed with the State Environmental Quality Commission, the applicant will send copies of the EIS Preparation Notice to various individuals, governmental agencies, and community groups requesting their review of the Notice and written responses on the areas of their environmental and socioeconomic concerns. During this time, additional organizations and individuals may request to be a "consulting party", which means that they would receive a copy of the EIS Preparation Notice to comment on. This period specifically intends to provide reviewer input and comments at an early stage, before the DEIS is prepared. This would allow the applicant to consider these potential areas of significance in the DEIS. The State's EIS Regulations require a written response to all substantive comments received on the EIS Preparation Notice. The time period in which a reviewer can comment on the document is set at 30 days; if an organization or individual wishes to be a "consulting party," he has 30 days to request a copy of the EIS Preparation Notice. The State's Environmental Quality Commission issues a newsletter, *EQC Bulletin*, on the 8th and 23rd of each month; the preparation notice is

identified as being available in this publication.

(c) The significant issues to be analyzed in depth in the DEIS will include:

- (1) Impacts on the project on the coastal zone.
- (2) Impact of Tsunamis on the project.
- (3) Project impacts on rare or endangered species and flora and fauna.
- (4) Impacts on surface water runoff and drainage.
- (5) Coastal water quality and oceanographic impacts.
- (6) Air quality and noise impacts.
- (7) Aesthetic considerations.
- (8) Socioeconomic impacts, including impacts on public facilities.
- (9) Historic, archaeological and paleontological considerations.
- (10) Land use considerations and impacts.
- (11) Water supply, recreational, and transportation impacts.

4. A scoping meeting has not been scheduled at this time. If a meeting is held, a public notice announcing the time, date, location and nature of the meeting will be issued at least 30 days prior to the meeting date.

5. It is estimated that DEIS will be made available to the public in November-December 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by: Mr. Stanley T. Arakaki, Chief, Operations Branch, Honolulu District, Room 204, Building 230, Fort Shafter, Hawaii 96858, telephone (808) 438-9258.

Dated: June 19, 1979.

Peter D. Stearns,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 79-19845 Filed 6-26-79; 8:45 am]

BILLING CODE 3710-NN-M

Army Department

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Local Flood Protection Project, Labette Creek, Parsons, Kans.

AGENCY: US Army Corps of Engineers, DOD, Tulsa District.

ACTION: Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. The primary purpose of this project is 100-year flood protection for 459 single residence and 29 commercial or industrial establishments in Parsons, Kansas.

2. Reasonable Alternatives. The alternatives evaluated include: no action, flood plain acquisition,

floodproofing, channelization, levee/channel, levee/easement upstream reservoirs and combination of alternatives.

3. Scoping Process.—a. Public Involvement. A comprehensive public involvement program was developed as a means of disseminating information and soliciting public views. A variety of techniques including formal public meetings, public workshops, advisory committee, and the local news media were employed to involve Federal, State, and local agencies, citizen committees, organizations, and the interested public in the planning studies.

b. Significant Issues Requiring Indepth Analysis. None.

c. Assignments. US Fish and Wildlife Service is preparing a Fish and Wildlife Coordination Act Report.

d. Environmental Review and Consultation Requirements.

The draft statement will be circulated for review, and all comments will be incorporated into the final environmental statement.

4. Scoping Meeting will not be held.

5. Estimated date when the DEIS will be available, September 1979.

ADDRESS: Mr. Buell O. Atkins, Chief, Environmental Resources Branch, U.S. Army Corps of Engineers, Tulsa District, PO Box 61, Tulsa, OK 74121, (918) 581-7857, FTS 736-7857.

Dated: June 18, 1979.

Robert G. Bening,
Colonel, CE, District Engineer.

[FR Doc. 79-19687 Filed 6-25-79; 8:45 am]

BILLING CODE 3710-39-M

Navy Department

Board of Visitors to the United States Naval Academy; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 1), notice is hereby given that the Board of Visitors to the United States Naval Academy will meet on September 25-26, 1979, at the United States Naval Academy. The sessions, which are open to the public, will commence at 1:00 p.m., September 25, 1979, and at 8:30 a.m., September 26, 1979, in Room 301, Rickover Hall.

The purpose of the meeting is to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the United States Naval Academy.

For further information concerning this meeting contact:

Rear Admiral Robert W. McNitt, U.S. Navy (Retired), Secretary to the Board of Visitors, Dean of Admissions, United States Naval Academy, Annapolis, Maryland 21402, telephone number (301) 267-2188.

Dated: June 18, 1979.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 79-19754 Filed 6-25-79; 8:45 am]

BILLING CODE 3810-71-M

Department of the Navy

John L. Duntz, Jr.; Intent to Grant Limited Exclusive Patent License

Pursuant to the provisions of Part 746 of title 32, *Code of Federal Regulations* (41 FR 55711-55714, December 22, 1976), the Department of the Navy announces its intention to grant to John L. Duntz, Jr., of Gulf Breeze, Florida, a revocable, nonassignable, limited exclusive license for a period of five years under Government-owned United States Patent Number 3,877,287, issued April 15, 1975, entitled "Low Gas or Liquid Calibrator", inventor, John L. Duntz, Jr.

This license will be granted unless on or before August 27, 1979 a nonexclusive license from a responsible applicant is received by the Office of Naval Research (Code 302), Arlington, VA 22217, and the Chief of Naval Research or his designee determines that such applicant has established that he has already brought or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license, or the Chief of Naval Research or his designee determines that a third party has presented to the Office of Naval Research (Code 302) evidence and argument which has established that it would not be in the public interest to grant the limited exclusive license.

Any objection thereto, together with a request for an opportunity to be heard, if desired, should be directed to the Office of Naval Research (Code 302), Arlington, VA 22217 on or before August 27, 1979. Copies of the patent may be obtained for fifty cents (\$0.50) from the Commissioner of Patents and Trademarks, Washington, D.C. 20231.

For further information concerning this notice, contact: Dr. A. C. Williams, Staff Patent Adviser, Office of Naval Research (Code 302), Ballston Tower No. 1, 800 North Quincy Street, Arlington, VA 22217, Telephone No. (202) 696-4005.

Dated: June 21, 1979.

P. B. Walker,
Captain, JAGC, U.S. Navy, Deputy Assistant
Judge Advocate General (Administrative
Law).

[FR Doc. 79-19822 Filed 6-25-79; 8:45 am]

BILLING CODE 3810-71-M

Office of the Secretary

Defense Intelligence Agency Advisory Committee; Closed Meeting

Pursuant to the provisions of Subsection (d) of Section 10 of Pub. L. 92-463, as amended by Section 5 of Pub. L. 94-409, notice is hereby given that a closed meeting of a Panel of the DIA Advisory Committee will be held as follows:

Tuesday, 24 July 1979, Pomponio Plaza,
Rosslyn, Virginia.

The entire meeting, commencing at 0900 hours is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code and therefore will be closed to the public. Subject matter will be used in a study on the intelligence data base required for intelligence assessments.

H. E. Lofdahl,

Director, Correspondence and Directives,
Washington Headquarters Services,
Department of Defense.

June 21, 1979.

[FR Doc. 79-19743 Filed 6-25-79; 8:45 am]

BILLING CODE 3810-70-M

Defense Science Board Task Force on Enduring Strategic Command Control and Communications

The Defense Science Board Task Force on Enduring Strategic Command Control and Communications will meet in closed session on July 11-12, 1979 in Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Task Force on Enduring Strategic Command Control and Communications has been scheduled for July 11-12, 1979 to review and edit the final report to the Secretary of Defense.

In accordance with 5 U.S.C. App. I § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly, this meeting will be closed to the public.

June 21, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives,
Washington Headquarters Services,
Department of Defense.

[FR Doc. 79-19744 Filed 6-25-79; 8:45 am]

BILLING CODE 3810-70-M

Defense Science Board Task Force on High Energy Lasers; Advisory Committee Meeting

The Defense Science Board Task Force on High Energy Lasers will meet in closed session on July 18-21, 1979 in LaJolla, California.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Defense Science Board Task Force on High Energy Lasers has been scheduled for July 18-21, 1979 to review specific aspects of laser devices, pointing and tracking, and optics technology. The Task Force will focus on major technical issues that may limit the performance characteristics and potential utility of high energy lasers to missions of interest to the Department of Defense.

In accordance with 5 U.S.C. App. I § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

June 21, 1979.

H. E. Lofdahl,

Director, Correspondence and Directives,
Washington Headquarters Services,
Department of Defense.

[FR Doc. 79-19745 Filed 6-25-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

[Case No.: 675S00011]

Diamond Shamrock Corp.; 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 and on

potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: May 24, 1979. Comments by: July 27, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, Southwest District Enforcement, P.O. Box 35228, Dallas, Texas 75235 (phone) 214-749-7626.

SUPPLEMENTARY INFORMATION: On May 24, 1979, the Office of Enforcement of the ERA executed a Consent Order with Diamond Shamrock Corporation of Amarillo, Texas. Under 10 CFR 205.199(j)(b), a Consent Order which involves a sum of less than \$500,000 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.

Because of the complex settlement negotiations in this case and the necessity to conclude this matter simultaneously with other proceedings associated with this Consent Order, as well as the concern to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Diamond Shamrock Corporation effective as of the date of its execution by the DOE and Diamond Shamrock Corporation.

I. The Consent Order

Diamond Shamrock Corporation, with its home office located in Amarillo, Texas, is a firm engaged in the production of crude oil, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Diamond Shamrock Corporation, the Office of Enforcement, ERA, and Diamond Shamrock Corporation entered into a Consent Order, the significant terms of which are as follows:

1. a. Diamond Shamrock Corporation, during the period of September 1, 1973 through October 31, 1974, on the Turk property, overcharged Big Heart Pipeline Corporation by failing to consider all crude oil produced and sold in computing the BPCL.

b. Diamond Shamrock Corporation, in November 1973, on the Bush Federal and in October 1975, on the Inexco-Hoffman

1-32 properties, overcharged the Blackhills Marketers, Incorporated by misclassifying old oil sold as new crude oil.

c. Diamond Shamrock Corporation (Production Division) during the period September 1, 1973 through March 31, 1974, overcharged Diamond Shamrock Corporation (Refining Division) on the Fred Butler, Catherine Whittenbury, F. C. McQuiddy "B", and the McDowell properties by applying an incorrect BPCL in the computations of "new and released" crude oil sales.

d. Diamond Shamrock Corporation, during the period November 1, 1973 through December 31, 1975, overcharged the Permian Corporation on the Ed Hoover Jr., William Dale Nix "R", W. T. Tregellas, I. A. Akers "A", W. H. Dutcher, C. C. Duke #1, Dudley et al. #1-32, S. L. Brillhart, H. A. Fitz-simmons and George E. Beal et al. properties by applying an incorrect BPCL in the computations of "new and released" crude oil sales.

e. Diamond Shamrock Corporation, during the period November 1, 1973 through December 31, 1975, overcharged the National Cooperative Refinery Association on the Roy C. Carter property by applying an incorrect BPCL in the computations of "new and released" crude oil sales.

While on the Robert A. Simonson et al., Diamond Shamrock Corporation incorrectly counted two wells that did not meet the requirements for dual completion wells established in Ruling 1975-12 for stripper well exemption.

2. This Consent Order constitutes neither an admission by Diamond Shamrock Corporation that DOE regulations have been violated nor a finding by the DOE that Diamond Shamrock has violated DOE regulations.

3. The provisions of 10 CFR 205.199j, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Diamond Shamrock Corporation hereby agrees to refund overcharges in the amount of \$339,324.01, plus interest to the National Cooperative Refinery Association within sixty (60) days of the effective date of the Consent Order.

Diamond Shamrock Corporation agrees to refund \$40,874.41, plus interest, 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 Subsection I.1 above, on or before July 23, 1979. These refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and

will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199i(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order. You should send your comments or written notification of a claim to: Wayne I. Tucker, District Manager of Enforcement, P.O. Box 35228, Dallas, Texas 75235.

You may obtain a free copy of this Consent Order by writing to the same address or by calling (214) 749-7626.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the

designation, "Comments on Diamond Shamrock Corporation Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on July 27, 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 Dallas, Texas on the 18th day of June 1979.

Wayne I. Tucker,
District Manager, Southwest District
Enforcement, Economic Regulatory
Administration.

[FR Doc. 79-19816 Filed 6-25-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Connally Oil Co.; 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 and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: June 19, 1979.
Comments by: July 27, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235, Phone 214/749-7626.

SUPPLEMENTARY INFORMATION: On June 19, 1979, the Office of Enforcement of the ERA executed a Consent Order with Connally Oil Company of Abilene, Texas. Under 10 CFR 205.199j(b), a Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Connally Oil Company wish to expeditiously resolve this matter as agreed and to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with

Connally Oil Company effective as of the date of its execution by the DOE and Connally Oil Company.

I. Consent Order

Connally Oil Company with its home office in Abilene, Texas is a firm engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and Connally Oil Company entered into a Consent Order to resolve certain civil actions which could be brought by ERA as a result of its audit of the crude oil sales by Connally Oil Company. This Consent Order settled those matters relative to Connally Oil Company's production and sale of crude during the period September 1, 1973 through November 30, 1977.

The significant terms of the Consent Order with Connally Oil Company are as follows:

1. Connally Oil Company improperly applied the provisions of 10 CFR 212.73 and its predecessor, 6 CFR 150.353 when determining the prices to be charged for certain domestic crude oil.

2. Connally Oil Company understands and agrees to refund \$100,000.00 to the DOE by certified check. This amount is 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 for the following properties:

Theron K. Weatherby
Dent-McAlister
Fasken "C" #1
Harvard "A" #2
McAlister "C"
McClintic "D"
Turner 1-X
Olton Dickenson "A"
Fasken "C" #2
Mabee
McClintic "C"
Penrose-Oldham #1

3. The provisions of 10 CFR 205.199j, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges as described in 2. above will be made in eight equal quarterly installments of \$12,500 each. The first payment is due 90 days after the effective date of the Consent Order and each 90 days thereafter until the total refund has been completed. Delivery of such payments shall be to the Assistant Administrator for Enforcement, Economic Regulatory Administration, in the form of a certified

check made payable to the United States Department of Energy.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "person" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected person, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199j(a).

III. Submission of Written Comments

Potential Claimants: Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established.

Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

Other Comments: The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/749-7626.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Connally

Oil Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on or before July 26, 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 Dallas, Texas on the 19th day of June 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-19824 Filed 6-25-79; 8:45 am]

BILLING CODE 6450-01-M

Homestake Production Co.; 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 and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: June 1, 1979. Comments by: July 26, 1979.

ADDRESS: Send comments to: Mr. Wayne I. Tucker, District Manager of Enforcement, Southwest District, P.O. Box 35228, Dallas, Texas 75235.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne I. Tucker, District Manager of Enforcement, Southwest District, (phone) 214-749-7626.

SUPPLEMENTARY INFORMATION: On June 1, 1979, the Office of Enforcement of the ERA executed a Consent Order with Homestake Production Company of Tulsa, Oklahoma. Under 10 CFR 205.199j(b), a Consent Order which involves a sum of less than \$500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because of the complex settlement negotiations in this case as well as the concern to avoid delay in the payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Homestake effective as of the date of its execution by the DOE and Homestake.

I. The Consent Order

Homestake, with its home office located in Tulsa, Oklahoma, is a firm engaged in crude oil production, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Homestake, the Office of Enforcement, ERA, and Homestake entered into a Consent Order, the significant terms of which are as follows:

1. During the audit period of September 1973 through December 1976, Homestake sold crude oil from twenty-seven (27) properties at prices greater than allowed by ERA regulations. Those firms who were initially overcharged were Koch Oil Company, National Cooperative Refiner Association, and Sun Oil Company.

2. During the audit period Homestake sold an improper amount of "stripper" oil, "new" and "released" oil, and sold "old" crude oil at an improper price. These actions by Homestake constituted violations of 6 CFR 150.353 and 10 CFR 212.73(a).

3. The Consent Order constituted neither an admission by Homestake that ERA regulations were violated nor a finding by the ERA that Homestake violated ERA regulations.

4. The Consent Order represents a settlement between the Department of Energy and the firm and does not require remedies in the full amount that the Department would contend for if the matter proceeded through the Department's hearing process.

5. The provisions of 10 CFR 205.199], including the publication of this notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

In this Consent Order, Homestake 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 \$62,000 on or before January 1, 1980. Refunded overcharges will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable

laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 200.199(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments:* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Mr. Wayne I. Tucker, District Manager of Enforcement, Southwest District, P.O. Box 35228, Dallas, Texas 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214-749-7626.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Homestake Consent Order." We will consider all comments we receive by 4:30 a.m., local time, on July 26, 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 Dallas, Texas on the 18th day of June 1979.

Wayne I. Tucker,

District Manager of Enforcement.

[FR Doc. 79-19625 Filed 6-25-79; 8:45 am]

BILLING CODE 6450-01-M

James M. Forgotson; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to James M. Forgotson, 409 Beck Building, Shreveport, Louisiana 71101. This Proposed Remedial Order charges James M. Forgotson with pricing violations in the amount of \$62,645.88, connected with the sale of crude oil and condensate at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period September 1, 1973 through January 31, 1977, in the State of Louisiana.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749-7626. On or before July 11, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, NW, Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 18th day of June, 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-19626 Filed 6-25-79; 8:45 am]

BILLING CODE 6450-01-M

Texas Recovery Co.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Texas Recovery Company, Palestine, Texas. This Proposed Remedial Order charges Texas Recovery Company with pricing violations in the amount of \$699,512.43, connected with the sale of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period November 27,

1973 through December 31, 1974, in the State of Texas.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749-7626. On or before July 11, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 18th day of June, 1979.

Wayne I. Tucker,
District Manager, Southwest District
Enforcement.

[FR Doc. 79-19817 Filed 6-25-79; 8:45 am]

BILLING CODE 6450-01-M

FEDERAL MARITIME COMMISSION

Agreements Filed

The Federal Maritime Commission hereby gives notice that the following agreements have 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 each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10423 or may inspect the agreements at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before July 16, 1979. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the

agreements and the statement should indicate that this has been done.

Agreement No. 8770-6 and 9988-5.
Filing party: Howard A. Levy, Esq., Suite 727,
17 Battery Place, New York, New York
10004.

Summary: Agreements 8770-6 and 9988-5 would modify, respectively, the basic agreements of the United Kingdom/U.S.A. Gulf Westbound Rate Agreement and the Continental/U.S. Gulf Freight Association to allow carriers providing joint ocean-rail services (minibridge) in the Europe/U.S. Gulf trade via Atlantic Coast ports to become parties thereto.

Notice of the filing of Agreement 8770-6 appeared in the Federal Register of August 19, 1975 (40 F.R. 36177) and Agreement 9988-5 appeared in the Federal Register of August 18, 1975 (40 F.R. 34643).

Proponents of these agreements submitted substantive justification in support of approval on May 5, 1978. The Commission will be acting on these agreements in the near future based upon this justification plus an assessment of current conditions in the trade.

However, due to the time which has elapsed since the filing of these agreements, interested parties will be given a further opportunity to comment thereon before the Commission takes final action.

By Order of the Federal Maritime Commission.

Francis C. Hurney,
Secretary.

Dated: June 21, 1979.

[FR Doc. 79-19740 Filed 6-25-79; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bank Holding Companies; Proposed De Novo Nonbank Activities

Correction

In FR Doc. 79-19175, appearing at page 36114 in the issue of Wednesday, June 20, 1979, the following material should be inserted between the words "York" and "(insurance * * *) in paragraph "A" of column three on page 36114: * * * 10045:

1. Chase Manhattan Corporation, New York, New York * * *

BILLING CODE 1505-01-M

FEDERAL TRADE COMMISSION

Transmittal Rules; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Interstate Properties is granted early termination of the 30-day

waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of certain stock of Vornado, Inc. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to a request for early termination submitted by Interstate Properties. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: December 21, 1978.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. section 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the Federal Register.

By direction of the Commission.
Carol M. Thomas,
Secretary.

[FR Doc. 79-19715 Filed 6-25-79; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 90; Docket No. 794-310]

Proposed Intervention in Rate Increase Proceeding Before New Jersey Board of Public Utilities Involving Public Service Electric and Gas Co.

The Acting Administrator of General Services seeks to intervene in a proceeding before the New Jersey Board of Public Utilities involving an application of Public Service Electric and Gas Company for an increase in its electric and gas revenues. The Acting Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit

them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, N.W., Washington, D.C. 20405, telephone (202) 566-0726, on or before July 26, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 461(a)(4))

Dated: May 31, 1979.

Clarence A. Lee, Jr.,

Acting Administrator of General Services.

[FR Doc. 79-19766 Filed 6-25-79; 8:45 am]

BILLING CODE 6820-38-M

[Intervention Notice 91; Docket No. 1499]

Proposed Intervention in Rate Increase Proceeding Before New Mexico Public Service Commission Involving Gas Co. of New Mexico

The Acting Administrator of General Services seeks to intervene in a proceeding before the New Mexico Public Service Commission involving an application of Gas Company of New Mexico for an increase in its general gas rates. The Acting Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, N.W., Washington, DC 20405, telephone (202) 566-0726, on or before July 26, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 461(a)(4))

Dated: May 31, 1979.

Clarence A. Lee, Jr.,

Acting Administrator of General Services.

[FR Doc. 79-19766 Filed 6-25-79; 8:45 am]

BILLING CODE 6820-38-M

Regional Public Advisory Panel on Architectural and Engineering Services; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on

Architectural and Engineering Services, Region 8, on July 18, 1979, from 10 a.m. to 4 p.m. and July 19, 1979, from 8 a.m. to 4 p.m. in the Wyoming Conference Room, Second Floor of Building 41 at the Denver Federal Center in Denver, Colorado. The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under consideration for selection to furnish professional services for supplemental architect-engineer service contracts, two each for Colorado firms and Utah firms, and for fire safety and energy conservation work at the PO/CT in Denver, Colorado. The meeting will be open to the public.

Dated: June 18, 1979.

Dennis A. Jensen,

Regional Administrator.

[FR Doc. 79-19764 Filed 6-25-79; 8:45 am]

BILLING CODE 6820-23-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming consumer exchange meeting to be chaired by Robert Bartz, District Director, New Orleans District Office, New Orleans, LA.

DATE: The meeting will be held at 1:30 p.m., Thursday, July 12, 1979.

ADDRESS: The meeting will be held at the New Orleans District Office, Food and Drug Administration, 4298 Elysian Fields Ave., New Orleans, LA 70122.

FOR FURTHER INFORMATION CONTACT: Louise Arnolite or Frances Brysson, Consumer Affairs Officers, Food and Drug Administration, New Orleans District Office, 4298 Elysian Fields Ave., New Orleans, LA 70122, 504-589-2420.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and FDA officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and FDA's New Orleans District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: June 19, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-19718 Filed 6-25-79; 8:45 am]

BILLING CODE 4110-03-M

Health Care Financing Administration

National Professional Standards Review Council; Notice of Cancellation

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), announcement is made that the July 16-17 meeting of the National Professional Standards Review Council is cancelled.

The next scheduled meeting will be held on September 10-11, 1979. Notice of that meeting will be published 30 days prior to the meeting date.

All communications regarding this Council should be addressed to Margaret VanAmringe, Staff Director, National Professional Standards Review Council, Health Standards and Quality Bureau, Room 5127, Switzers Building, 330 "C" Street, S.W., Washington, D.C. 20201, (202) 472-5536.

Dated: June 19, 1979.

Margaret VanAmringe,

Staff Director, National Professional Standards Review Council.

[FR Doc. 79-19783 Filed 6-25-79; 8:45 am]

BILLING CODE 4110-35-M

Office of Education

National Advisory Council on the Education of Disadvantaged Children; Meeting

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 on July 20-21, 1979, in Rosslyn, Virginia. The meeting will take place at the Arlington Hyatt House Hotel, 1325 Wilson Blvd., Area code 703-641-9595. The meeting on July 20 will be held from 9:00 a.m. to 5:00 p.m., and on July 21, from 9:00 a.m. to 12 noon.

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 conduct working sessions and discuss plans for developing formal comments

on the Proposed Rulemaking on ESEA, Title I.

Time has been reserved for members to give presentations on various Council activities and also to further plan for upcoming activities.

The meeting will be open to the public. Because of limited space, all persons wishing to attend should call for reservations by July 10, 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 June 21, 1979.

Gloria B. Strickland,
Acting Executive Director.

[FR Doc. 79-19823 Filed 6-25-79; 8:45 am]
BILLING CODE 4110-02-M

Public Health Service

Grants for Mid-Career Training in Health Administration/Planning; Application Announcement

The Bureau of Health Manpower, Health Resources Administration, announces that applications for Grants for Mid-Career Training in Health Administration/Planning will be accepted under the authority of section 788(d) of the Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484). Application materials are expected to be available on July 2, 1979.

Section 788(d) authorizes the award of grants to any health profession, allied health profession, or any nurse training institution, or any other public or nonprofit entity for health manpower projects. Grants will be awarded in fiscal year 1979 to support the conduct of intensive short courses of two to six weeks duration to provide mid-career training in:

(1) health systems administration for administrators of health delivery and related organizations;

(2) health planning, policy, and regulation for health professionals who have policy, planning, or regulatory functions in health organizations;

(3) financial management and health economics strategy in health for managers and financial officers of health organizations.

Requests for application materials and questions regarding grants policy should

be directed to: Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone 301-436-6564.

Questions concerning the programmatic aspects of these grants should be directed to: Director, Division of Associated Health Professions, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 5-41, 3700 East-West Highway, Hyattsville, Maryland 20782, telephone: 301-436-6838.

To be considered for fiscal year 1979 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, at the address above no later than August 7, 1979. Approximately \$750,000 is expected to be available for these grants.

Dated: June 21, 1979.

J. Walsh,
Acting Administrator.

[FR Doc. 79-19818 Filed 6-25-79; 8:45 am]
BILLING CODE 4110-83-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[U-27914]

Utah; Proposed Withdrawal and Reservation of Lands

Correction

In FR Doc. 79-17695 appearing at page 32750 in the issue for June 7, 1979, make the following correction: On page 32750, in the third column, under the heading, "Salt Lake Meridian," in the first land description entry, "T. 13 S., R. 4 W." should be corrected to read, "T. 12 S., R. 4 W."

BILLING CODE 1505-01-M

Winnemucca District Grazing Advisory Board; Meeting

Notice is hereby given in accordance with Pub. L. 92-463 that a meeting of the Winnemucca District Grazing Advisory Board will be held on August 7, 1979. The meeting will begin at 10:00 a.m. in the conference room of the Bureau of Land Management Office at 705 East Fourth Street, Winnemucca, Nevada.

The agenda for the meeting will include: (1) A discussion of the Paradise-Denio Environmental Statement effort as it relates to Allotment Management Plans; (2) Proposed FY 80 range

betterment projects; and (3) The arrangement for the next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Board between 1:00 and 2:00 p.m. on August 7, 1979, or file written statements for the Board's consideration. Anyone wishing to make an oral statement must notify the District Manager, 705 East Fourth Street, Winnemucca, Nevada 89445, by July 6, 1979. Depending on the number of persons wishing to make oral statements, a per person time limit may be established by the District Manager.

Summary minutes of the Board meeting will be maintained in the District Office and be available for public inspection (during regular business hours) within 30 days following the meeting.

Dated: June 18, 1979.

Chester E. Conrad,
District Manager.

[FR Doc. 79-19767 Filed 6-25-79; 8:45 am]
BILLING CODE 4310-84-M

Bureau of Reclamation

Contract Negotiations With the Willwood Irrigation District, Willwood Division, Shoshone Project, Wyo.; Intent To Negotiate a Rehabilitation and Betterment Loan Repayment Contract

In accordance with procedures established by the Department of the Interior concerning public participation in water service and repayment contract negotiations, the Bureau of Reclamation intends to initiate negotiations with the Willwood Irrigation District, Powell, Wyoming, for repayment of a loan covering the cost of a rehabilitation and betterment program to be performed on the Willwood Division, Shoshone Project, Wyoming.

The Willwood Division was constructed on the Shoshone River near Powell, Wyoming, between 1924 and 1927. The divisions facilities were designed to serve approximately 11,500 acres of irrigable land and are operated and maintained by the Willwood Irrigation District. The division contains numerous obsolete and deteriorating facilities. This situation has resulted in excessive water losses, risk of system failures, and high operation and maintenance costs.

The proposed program would include lining of laterals, replacing open laterals with underground pipe, replacing various project structures, and replacing wildlife habitat. The program is estimated to cost \$1,600,000 which is

proposed to be financed by a Federal loan issued pursuant to the Rehabilitation and Betterment (R&B) Act of 1949 (63 Stat. 724), as amended. The district will repay all loan funds to the United States. The execution of the proposed contract is ultimately dependent upon the Commissioner of Reclamation's approval of the district's application for the loan, the Secretary's approval of the form of the proposed contract, and review by congressional committees of the repayment installment as required by the R&B Act.

All meetings scheduled by the Bureau of Reclamation with the district for the purpose of discussing terms and conditions of the proposed repayment contract shall be open to the general public as observers. Advance notice of meetings shall be furnished only to those parties having previously furnished a written request for such notice at least one week prior to any meeting. Requests should be addressed to: Regional Director, Bureau of Reclamation, Attention Code 440, P.O. Box 2553, Billings, Montana 59103. All written correspondence concerning the proposed contract shall be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act (80 Stat. 383), as amended.

The public is invited to submit written comments on the form of the proposed contract not later than 30 days after the completed contract draft is declared to be available to the public. The Commissioner of Reclamation will review comments submitted and based on the number, source, and nature of the comments, he will decide whether to hold a public hearing.

For further information on scheduled contract negotiating sessions and copies of the proposed contract form, please contact: Ms. Elaine Ellingson, Repayment Technician, Division of Water and Land, at the address stated above or by telephone (406) 657-6455.

Dated: June 15, 1979.

Aldon D. Nielsen,

Acting Commissioner of Reclamation.

[FR Doc. 79-19465 Filed 6-25-79; 8:45 am]

BILLING CODE 4310-09-M

Geological Survey

Maximum Attainable Rate of Production (MAR); An Amendment to the Interim Notice to Lessees for Implementing Section 606(d)(1) of the Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA)

AGENCY: Geological Survey, Department of the Interior.

ACTION: Interim Notice.

SUMMARY: The subject Interim Notice to Lessees was published on pages 29988 and 89 in the *Federal Register* on May 23, 1979, and became effective on the same date. An amendment to the last paragraph is necessary to clarify certain requirements of section 606(e) of the OCSLAA. The last paragraph of the Interim Notice is repeated as follows:

For the Congress, the Oil and Gas Supervisor will prepare a report comparing the MAR and the actual production. The report will include graphs by field and region and reasons for any substantial variations in the MAR and actual production. It will be forwarded by December 1, 1979, and every 2 years thereafter.

An amended last paragraph is printed below. It provides the language necessary to carry out section 606(e) provisions as they pertain to MAR reporting.

EFFECTIVE DATE: June 26, 1979.

FOR FURTHER INFORMATION CONTACT: Price McDonald, Conservation Division, Reston, Virginia 22092, telephone (703) 860-7517.

SUPPLEMENTARY INFORMATION: Section 606(e), in part, directs the Secretary to forward a report to Congress by January 1, 1980, and every 2 years thereafter. The report will include the MAR determination for significant fields, estimates of the discovered reserves and undiscovered resources, and the relationship of such information to the requirements of conservation, industry, commerce, and defense. Section 606(e) does not require the forwarding of a MAR versus an actual production analysis to the Congress, even though such an analysis must be prepared for the Secretary as per section 606(c) and (d)(1)(B).

Amendment to Interim Notice to Lessees.

Functions of the Oil and Gas Supervisor.

Replace the last paragraph with the following:

The Oil and Gas Supervisor will prepare a listing of the MAR determinations for significant fields which will be forwarded to the

Secretary for transmittal to the Congress. Also, the Oil and Gas Supervisor will prepare a report comparing the MAR and actual production for submittal to the Secretary. The report will include graphs by field and region and reasons for any substantial variations in the MAR and actual production. Both the listing and the report will be forwarded by December 1, 1979, and every 2 years thereafter.

Dated: June 20, 1979.

J. S. Cragwall, Jr.,

Acting Director.

[FR Doc. 79-19739 Filed 6-25-79; 8:45 am]

BILLING CODE 4310-31-M

Heritage Conservation and Recreation Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before June 15, 1979. Pursuant to section 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, DC 20240. Written comments or a request for additional time to prepare comments should be submitted by July 6, 1979.

Charles A. Harrington,

Acting Keeper of the National Register.

ALABAMA

Madison County

Huntsville, Downtown Huntsville Multiple Resource Area, various locations in Huntsville.

ALASKA

Aleutian Islands Division

Atka vicinity, Atka B-24D Liberator (aircraft)
Attu Island, Temnac P-38G Lightning (aircraft)

ARIZONA

Maricopa County

Glendale, Sahuaro Ranch, N. 58th Dr.

ARKANSAS

Benton County

Rogers, Bank of Rogers Building, 114 S. 1st St.
Siloam Springs, Lakeside Hotel, 119 W. University St.

Bradley County

Warren vicinity, *Adams-Leslie House*, S of Warren

Conway County

Morrilton, *Morrilton Male and Female College*, E. Church St.

Jackson County

Newport, *Jackson County Jail*, 503 3rd St.

Jefferson County

Pine Bluff, *Hotel Plines*, Main St. and W. 5th Ave.

Garland County

Hot Springs, *Citizens Building*, 723 Central Ave.

Hot Springs, *Garland County Courthouse*, Ouachita and Hawthorne Aves.

Polk County

Mena, Shaver, *Judge Benjamin, House*, 501 12th St.

Pulaski County

Little Rock, *Marshall Square Historic District*, bounded by 17th, McAlmont, 18th and Vance Sts.

Little Rock, *Waters, Charles Clary, House*, 2004 W. 22nd St.

CONNECTICUT**Fairfield County**

Stamford, *Octagon House*, 120 Strawberry Hill Ave.

Stamford, *Starr, C. J., Barn-Carriage House*, 200 Strawberry Hill Ave.

Hartford County

Suffield vicinity, *Hastings Hill Historic District*, 987-1308 Hill St., 1242 Spruce St. and 1085-1182 Russell Ave.

Middlesex County

Middletown, *Church of the Holy Trinity and Rectory*, 381 Main St. and 144 Broad St.

FLORIDA**Polk County**

Bartow, *Swearingen, John J., House*, 690 E. Church St.

GEORGIA**Cobb County**

Marietta vicinity, *Cheney, Andrew J., House*, SW of Marietta at 2760 Bankstone Rd., SW.

IOWA**Jackson County**

Canton, *Canton School*, South St.

KENTUCKY**Bourbon County**

Paris vicinity, *Sacred Home (Robinson-Breckinridge House)* W of Paris on Hume-Bedford Rd.

MICHIGAN**Macomb County**

St. Clair Shores, *Ford, Edsel and Eleanor, Estate (Lakeview)* 1100 Lakeshore Dr.

Wayne County

Detroit, *Dunbar Hospital*, 580 Frederick St.

NEW JERSEY**Burlington County**

Jobstown vicinity, *Rosebud Farm*, E of Jobstown on Springfield Meetinghouse Rd.

Hudson County

Jersey City, *Grace Church Van Vorst*, 288 2nd St.

Sussex County

Newton, *Sussex County Courthouse*, High and Spring Sts.

NEW MEXICO**Colfax County**

Springer, *Cowan, R. H., Livery Stable*, 220 Maxwell Ave.

San Miguel County

Las Vegas, *Railroad Avenue Historic District*, U.S. 85

Santa Fe County

Santa Fe, *Vierra, Carlos, House*, 1002 Old Pecos Trail

NORTH CAROLINA**Randolph County**

Archdale vicinity, *Harper House*, S of Archdale at Red Fox Trail and SR 1556

OREGON**Multnomah County**

Portland, *Temple Beth Israel*, 1931 NW. Flanders St.

Portland, *University Club*, 1225 SW. 8th Ave.

Washington County

Tigard, *Tigard, John W., House*, 10310 SW. Canterbury Lane

PENNSYLVANIA**Adams County**

Cashtown vicinity, *Round Barn Farm*, S of Cashtown on Arendtsville Rd.

Allegheny County

Pittsburgh, *Ewart Building*, 921-925 Liberty Ave.

Pittsburgh, *Henderson-Metz House*, 1516 Warren St.

Pittsburgh, *Pennsylvania Railroad Bridge*, 11th St.

Pittsburgh, *Pittsburgh and Lake Erie Railroad Complex*, Smithfield and Carson Sts.

Pittsburgh, *Rodef Shalom Temple*, 4905 5th Ave.

Pittsburgh, *Sixteenth Street Bridge*, spans Allegheny River

Berks County

Reading, *Bethel A.M.E. Church*, 119 N. 10th St.

Wernersville, *Lerch Tavern*, 182-184 W. Penn Ave.

Bucks County

Holicong, *Holicong Village Historic District*, U.S. 202 and Holicong Rd.

Cambria County

Johnstown, *Nathan's Department Store*, 426-432 Main St.

Carbon County

Weissport and vicinity, *Carbon County Section of the Lehigh Canal*, along Lehigh River.

Centre County

Milesburg vicinity, *Harmony Forge Mansion*, S of Milesburg on PA 144.

Oak Hall, *Oak Hall Historic District*, SR 871.

Chester County

Downingtown, *Gen. Washington Inn*, Uwchlan and E. Lancaster Aves.

Glenmoore vicinity, *Springton Manor Farm*, S of Glenmoore at Springton and Creek Rds.

Malvern vicinity, *Wisner, Jacob, House (Rapp House)* NW of Malvern on Yellow Springs Rd.

Marshalltown vicinity, *Taylor House*, E of Marshalltown on W. Strasburg Rd.

Phoenixville vicinity, *Winings, Jacob, House and Clover Mill*, SW of Phoenixville on James Mill Rd.

Clinton County

Logan Mills, *Logan Mills Gristmill*, off PA 880.

Loganton vicinity, *Logan Mill Covered Bridge*, SW of Loganton over Fishing Creek.

Dauphin County

Dauphin vicinity, *Ayres, John, House*, NW of Dauphin on PA 325.

Fort Hunter, *Fort Hunter Historic District*, U.S. 22.

Middletown, *Raymond, Charles and Joseph, Houses*, 38 and 37 N. Union St.

Franklin County

Fort Loudon vicinity, *Fort Loudon Site*, SE of Fort Loudon off U.S. 30.

Greencastle vicinity, *Spring Grove Farm and Distillery*, NW of Greencastle on Williamsport Pike.

Indiana County

Covered Bridges of Indiana County Thematic Resources, various locations in Indiana County.

Indiana, *Old Indiana County Jail and Sheriff's Office*, 6th St. and Nixon Ave.

Jefferson County

Brookville, *Gray-Taylor House*, 9 Walnut St.

Lackawanna County

Scranton, *Central Railroad of New Jersey Freight Station*, 602 W. Lackawanna Ave.

Lancaster County

Marietta, *Bucher, Joseph, House*, 104 E. Front St.

Luzerne County

Kingston, *Wyoming Seminary*, Sprague Ave.

Wyoming, *Luzerne Presbyterian Institute (Wyoming Institute)* Institute St.

Monroe County

Bushkill vicinity, *Shoemaker, Capt. Jacob, House*, NW of Bushkill.

Stroudsburg, *Stroud Mansion*, Main and 9th Sts.

Montour County

Danville, *Montgomery, Gen. William, House*, 1 and 3 Bloom St.

Northumberland County

Covered Bridges of Northumberland County Thematic Resources, various locations in Northumberland County.

Turbotville vicinity, *Hower-Slote House*, W of Turbotville.

Philadelphia County

Philadelphia, *Franklin Institute*, 15 S. 7th St.

Philadelphia, *Philadelphia Racquet Club*, 213-225 S. 16th St.

Philadelphia, *Protestant Episcopal Church of the Saviour*, Ludlow St. and 3723-3725 Chestnut St.

Union County

Lewisburg, *Lewisburg Historic District*, PA 45.

Mifflinburg, *Mifflinburg Historic District*, PA 45.

New Berlin, *New Berlin Historic District*, PA 304.

York County

York Haven vicinity, *Kise Mill Bridge Historic District*.

RHODE ISLAND

Washington County

Kingstown vicinity, *Marchant, Henry, Farm*, W of Kingstown on South County Trail.

Brookings County

Bushnell, *Farmers Store*, Main St.

Lake County

Ramona vicinity, *St. Ann's Catholic Church of Badus*, NE of Ramona.

Union County

Alcester vicinity, *Baker House*, NE of Alcester.

Yankton County

Yankton, *Yankton Carnegie Library*, 4th and Capitol Sts.

UTAH

Salt Lake County

Salt Lake City, *Butler, Robert, House*, 1045 E. 4500 South.

Addison County

Vergennes, *Strong, Samuel Paddock, House*, 82 W. Main St.

VIRGINIA

Fredericksburg (independent city)

Brompton, *Hanover St. and Sunken Rd.*

Mecklenburg County

Baskerville vicinity, *Elm Hill*, SE of Baskerville off PA 4.

Prince George County

Hopewell vicinity, *Evergreen*, E of Hopewell on VA 644.

Southampton County

Courtland vicinity, *Elm Grove*, NE of Courtland on VA 846.

Aboriginal Rock Art Sites in Washington Thematic Resources, various locations in Washington.

Snohomish County

Monroe vicinity, *Biderbost Archeological Site*.

[FR Doc. 79-19429 Filed 6-25-79; 8:45 am]

BILLING CODE 4310-03-M

National Park Service

Montezuma Castle National Monument and the Coconino National Forest; Exclusion and Addition of Certain Lands

Correction

In FR Doc. 79-19170 appearing on page 36119, in the issue of Wednesday, June 20, 1979, the first line of the first land description for the *Gila and Salt River Base and Meridian Yavapai County, Ariz.* should read: "That portion of the N $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ of".

BILLING CODE 1505-01-M

Office of the Secretary

Availability of the Department of the Interior's proposed Water Emergency Plan

AGENCY: Department of the Interior.

ACTION: Notice—Availability of a Draft *Water Emergency Plan*.

SUMMARY: The Department of the Interior, in cooperation with designated representatives of other Federal agencies involved in emergency planning for water for survival and recovery, have prepared a draft *Water Emergency Plan*.

Survival and recovery of water resource systems following a national emergency, as outlined in Executive Order 11490, is of concern to the Federal Government, its political subdivisions, and the numerous industries and private users of water resources. The Executive Order directs the Secretary of the Interior to coordinate the emergency water planning at the Federal level; to provide national leadership for the development of plans; and to coordinate plans at the State, interstate, and local levels through the appropriate Federal departments.

SUPPLEMENTARY INFORMATION: The draft *Water Emergency Plan*, dated May 1979, is the product of several previous rough drafts prepared by an Emergency Water Interagency Planning Group. Although it was developed by representatives of several water resource Federal agencies,

it does not have at this time formal Departmental or agency approval. It is being made available to the States, the local water managers, civil preparedness groups, and others, for their review and comment.

Since the draft is technical in nature, it is being circulated to a representative number of Federal, State, and local civil preparedness officials and water resource organizations for comments and suggestions prior to issuance for public comment. The following is a representative list of persons or organizations which have been invited to comment on the *Water Emergency Plan*:

State clearing houses
American Waterworks Association
Conference of State Sanitary Engineers
Council of State Governments
National Governor's Association
Defense Civil Preparedness Agency (DCPA) Regions I, V, VI, VII
Federal Preparedness Agency (FPA) Regions I, II, VI, VIII, IX
Selected State and local civil preparedness planners and water sector officials in Massachusetts, New York, southern and northern California, Guam, Colorado, Arizona and Texas
Official agency representatives on the Emergency Water Interagency Planning Group

Following receipt of the comments from this effort, the document will be revised and available for public comment before submission to the heads of the following agencies for approval and publication: the Departments of the Interior, Agriculture, Housing and Urban Development, Transportation, Energy, Commerce, Army, the Tennessee Valley Authority, the Environmental Protection Agency, and the Federal Emergency Management Agency.

Request for Comments

Other persons wishing to receive a copy of the Plan at this time, or wishing to make comments or suggestions, should contact the Emergency Water Planning Staff, Land and Water Resources, Department of the Interior, Washington, D.C. 20240. Telephone inquiries may be made by calling William R. Wilson, A/C 202 343-2167. To be considered for the next draft, comments should be received on or before July 30, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

June 20, 1979.

[FR Doc. 79-19768 Filed 6-25-79; 8:45 am]

BILLING CODE 4310-10-M

Alaska Natural Gas Transportation System; Extension of Comment Period for the Proposed Stipulations for the Alaska Segment

The Department of the Interior published a Notice of Availability of the proposed Stipulations for the Alaska Natural Gas Transportation System in the Federal Register on May 4, 1979 (44 FR 26216). The original deadline for the submission of comments was June 22, 1979, for all three segments of the pipeline system.

In response to the large amount of interest in these Stipulations that has been expressed within the State of Alaska, the Department of the Interior is extending the comment period for the Stipulations relating to the Alaska segment until July 6, 1979.

Persons interested in these Stipulations should submit written comments to: Office of the Project Manager, Alaska Natural Gas Transportation System, (105), Department of the Interior, Washington, D.C. 20240.

Guy R. Martin,

Assistant Secretary of the Interior.

June 21, 1979.

[FR Doc. 79-19720 Filed 6-25-79; 8:45 am]

BILLING CODE 4310-84-M

Outer Continental Shelf Advisory Board; Pacific and Alaska Regional Policy Committee; Meeting

This notice is issued in accordance with the provisions of the Federal Advisory Committee Act, Pub. L. No. 92-643, 5 U.S.C. App. I and the Office of Management and Budget's Circular No. A-63, Revised.

Pacific and Alaska Regional Policy Committees will meet jointly on July 10, 1979, from 10:00 a.m. to 3:00 p.m. at the Regional OCS Office Conference Room, 800 A Street in Anchorage, Alaska.

The meeting will cover the following principal subjects:

1. Discussions on the Proposed 5-Year OCS Oil and Gas Leasing Schedule.
 - a. Environmental Impact Statement.
 - b. West Coast Development Scenarios.
 - c. California terminology change.
 - d. Additional Alaska Sales.
 - e. North Aleutian Shelf Leasing Area.
2. Transportation of OCS Oil and Gas.
3. California's Efforts to Encourage Refinery Retrofitting.
4. Consolidation of the Alaska and Pacific Region OCS Policy Committees.
5. Coordination efforts on the Joint State-Federal Beaufort Sea Sale.

The meeting is open to the public. Interested persons may make oral or written presentations to the Board.

Such requests should be made by July 6 to the Chairmen:

Deni Greene, Office of Planning and Research, 1400 10th Street, Sacramento, California 95814, 916-322-8515;

or

Bob LaResche, Commissioner, Department of Natural Resources, Pouch M, Juneau, Alaska 99811, 907-465-2400.

Minutes of the meeting will be available for public inspection and copying 8 weeks after the meeting at the Office of OCS Program Coordination, Room 5150, Department of the Interior, 18th and C Streets, NW., Washington, D.C.

Dated: June 21, 1979.

Alan D. Powers,

Director, Office of OCS Program Coordination.

[FR Doc. 79-19719 Filed 6-25-79; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF JUSTICE

Moberly Asphalt Maintenance, Inc.; Proposed Consent Decree in Action To Enjoin Discharge of Air Pollutants

In accordance with Departmental Policy, 28 CFR § 50.7, 38 FR. 19029, a notice is hereby given that on June 4, 1979, a proposed consent decree in *United States of America v. Moberly Asphalt Maintenance, Inc.*, was lodged with the United States District Court for the District of Wyoming. The proposed consent decree requires Moberly Asphalt Maintenance, Inc. to refrain from operating its asphalt concrete plant, except for testing purposes, unless it complies with the applicable standards of performance for new stationary sources and to pay a penalty of \$5,000.00 for past violations of the standards.

The Department of Justice will receive for 30 days from the date of publication of this notice written comments relating to the proposed judgment. Comments should be addressed to the Assistant Attorney General for the Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States of America v. Moberly Asphalt Maintenance, Inc.*, D.J. Ref. 90-5-3-1080.

The proposed consent decree may be examined at the offices of the United States Attorney, District of Wyoming, U.S. Post Office and Courthouse, Room 2139, 2120 Capitol Avenue, Cheyenne, Wyoming; the Clerk of the District Court, District of Wyoming, U.S. Post

Office and Courthouse, Room 2131, 2120 Capitol Avenue, Cheyenne, Wyoming; and the Pollution Control Section, Land and Natural Resources Division, Department of Justice Building, Ninth and Pennsylvania Avenue, NW., Washington, D.C. 20530. A copy of the proposed consent decree may be obtained in person or by mail from the Pollution Control Section.

James W. Moorman,

Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 79-19769 Filed 6-25-79; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

Proposed Exemption for Certain Transactions Involving John Ostrander Co., Inc. Employees' Profit Sharing Trust and John Ostrander Co., Employees' Pension Trust (Application No. D-842)

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 certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would allow John Ostrander Co., Inc. Employees' Profit Sharing Trust and John Ostrander Co., Inc. Employees' Pension Trust (the Plans) to sell their partnership interests in the Adams Court Holding Company to John N. Ostrander, the sole participant in the Plans, a party in interest. The proposed exemption, if granted, would affect John N. Ostrander and beneficiaries of the Plans.

Since Mr. Ostrander is the sole stockholder and employee of the John Ostrander Co., Inc. and the only participant in the Plans, there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(c)(1). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 27, 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, NW., Washington, D.C. 20216, Attention: Application No. D-842. 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, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Alan H. Levitas of the Department of Labor (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of an application for exemption from 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. The proposed exemption was requested in an application filed on behalf of the trustees of the Plans, pursuant to section 4975(c)(2) of the Code, and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722. The application was filed with 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 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 applicants.

1. The plans are presently partners with unrelated third parties in Adams Court Holding Company, a partnership which owns an apartment complex known as Adams Court Apartments (the property) located at 1050-1100-1200 North Adams Road, Troy, Michigan. The Profit Sharing Trust is a 40% partner and the Pension Trust a 27% partner in the partnership.

2. The property, consisting of land and buildings, was purchased on December 1, 1975 by the individual partners as tenants in common and simultaneously transferred to the partnership. The total cost was \$600,000; \$120,000 was paid in cash and a land contract executed for the balance of the purchase price with interest at nine percent per annum.

3. The Plans propose to sell their partnership interests for fair market value to John Ostrander, the sole participant in the Plans. The fair market value will consist of the capital accounts of the Plans in the partnership, adjusted upward to reflect the fair market value of the property of \$600,000 (established by independent appraisal). As of December 31, 1977, the book value of the property on the partnership books was \$556,586 and the capital accounts were \$90,567. The Plans' total investment, as of December 31, 1977, was \$96,450.

4. The applicant represents that it is necessary for the Plans to sell their interests to Mr. Ostrander for the following reasons:

(1) The investment in the partnership may result in unrelated business income to the Plans, since there was an acquisition indebtedness in acquiring the property and, therefore, the property would be debt financed. In years of profit by the partnership, the Plans would have to pay unrelated business income tax, depriving the Plans of tax-free accumulation of funds.

(2) The partnership realized a loss in its first year of operation and thereafter has only realized a modest profit. In addition, depreciation expense and other expenses of the partnership further reduce the Plans' return on its investment.

(3) The retention of the partnership interest by the Plans will create liquidity problems at such time as the participant wishes to retire. Also, should the participant die prior to receiving his retirement benefits, the beneficiaries of the participant will be harmed since there would not be sufficient liquid assets in the Plans to pay death benefits.

(4) Attempts have been made to sell the partnership interests to third parties, but all negotiations and firm offers have been prevented by the remaining partners. Paragraph 6 of the partnership agreement provides that no additional partners may be admitted except by the unanimous consent of all the members of the partnership. The remaining partners do not want to transfer the bulk of the partnership interest to an unfamiliar third party.

5. The sale to Mr. Ostrander will be accomplished without any broker's fees being paid by the Plans, as would be the case with an unrelated party. Mr. Ostrander will assume the Plans' share of partnership liabilities and pay in cash the balance due for the Plans' present interest in the property.

6. In summary, the applicants represent that this application meets the statutory criteria of section 4975(c)(2) of the Code because (1) it is a one time

transaction for cash, (2) it will provide increased liquidity for the Plans, (3) the sales price, as determined by an independent appraisal, is equal to the fair market value of the partnership interests and (4) it will benefit the Plans because they will be able to dispose of a poor investment.

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 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 Code, including any prohibited transaction provisions to which the exemption does not apply, nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transaction prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interest of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of 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 Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption to the address above, within the time period set forth above. 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 pending 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 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26. If the exemption is granted, 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 to the sale by the Plans of their partnership interests in the Adams Court Holding Company to John N. Ostrander. The proposed exemption, if granted will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 20th day of June 1979.

Ian D. Lanoff,

Administrator Pension, and Welfare Benefits Program, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-19747 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-29]

Exemption from the Prohibitions for Certain Transactions Involving Kern County Electrical Pension Fund (Application No. L-359)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits, retroactively and prospectively, the continuing acts of the common trustees under the terms of a 20 year construction and mortgage loan made on July 26, 1974, by Kern County Electrical Pension Fund (the Plan) to Kern County Electrical Apprenticeship and Training Fund (the Fund).

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On May 4, 1979, notice was published in the *Federal Register* (44 FR 26226) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (the Act), for transactions described in an application filed by the trustees of

the Plan. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act. These provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) This exemption does not extend to transactions prohibited under section 406(a), 406 (b)(1) and (b)(3) of the Act.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

From January 1, 1975, the restrictions of section 406(b)(2) of the Act shall not apply, retroactively or prospectively, to the continuing acts of the common trustees of the Plan and the Fund, under the terms of the 20-year construction and mortgage loan, in the amount of \$100,000, made on July 26, 1974, by the Plan to the Fund.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of June 1979.

Ian D. Lanoff,

Administrator for Pension and Welfare Benefit Programs Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-19748 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-30]

Exemption From the Prohibitions for Certain Transactions Involving Motor Machine and Supply Profit Sharing Plan (Application D-191)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits the Motor Machine and Supply Profit sharing Plan (the Plan) to lease certain real property for a limited period of time to the Parts House, a California corporation, doing business as Motor Machine and Supply (the Employer) and sell the same property to the Employer or to the principal shareholder of the Employer.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 10, 1979, notice was published in the *Federal Register* (44 FR 21400) of the pendency before the Department of Labor (the Department) of a proposal to grant an 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, for transactions described in the application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

The 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 to the lease of land, located at 517 Ninth Street, San Diego, California, by the Plan to the Employer, from January 1, 1975, until 120 days after the grant of this exemption provided the lease remains at least as favorable to the Plan as an arm's-length transaction with an unrelated party, and to the sale of the said land by the Plan to the Employer or to its principal shareholder, Nolan J. Wright, for cash in an amount that is not less than the sum of (A) the current fair market value of the property at the time of the sale and (B) the present value of the right to receive the building on the expiration of the lease, pursuant to the terms, conditions, and representations as set forth in the application.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of June 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-19749 Filed 6-25-79; 6:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-31]

Exemption From the Prohibitions Respecting a Transaction Involving the Briggs-Weaver, Inc. Pension Trust (Application No. D-192)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Briggs-Weaver, Inc. Pension Trust (the Plan) to lease certain real property to Briggs-Weaver, Inc. (the Employer).

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, telephone (202) 523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On February 9, 1979, notice was published in the Federal Register (44 FR 8361) of the pendency before the Department of Labor (the Department) and the Internal Revenue Service (the Service) of an exemption from the provisions of sections 406(a)(1) (A), (C), (D) and (E), 406(a) (2), 406(b) (1) and (2), and 407 (a)(1)(B) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by sections 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of sections 4975(c)(1) (A), (C), (D) and (E) of the Code, for a transaction described in an application filed on behalf of the Plan.

The notice set forth a summary of the facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a hearing be held relating to the requested exemption.

No public comments or requests for a hearing were received by the Department.

The application was filed with both the Department and the Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, 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 proposed to the Secretary of Labor.

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. These provisions include any prohibited transaction provisions to which the exemption does not apply and 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 participants and beneficiaries of the plan and in 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) This exemption does not extend to transactions prohibited under sections 406(a)(1)(B), 406(b)(3) and 407(a)(1)(A), 407(a)(2), (3) and (4) and 407(b), (c), (d) and (e) of the Act and section 4975(d)(1)(F) of the Code.

(3) This exemption is 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.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, the procedures set forth in ERISA Proc. 75-1 (40 FR 18471, April 28, 1975) and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of participants and beneficiaries of the Plan.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Proc. 75-1.

The restrictions of section 406(a)(1)(A), (C), (D) and (E), 406(a)(2), 406(b)(1) and (b)(2), and 407(a)(1)(B) of the Act and the taxes imposed by sections 4975(c)(1)(A), (C), (D) and (E) of the Code shall not apply to the leasing of real property, commonly known as 7740 Ed Bluestein Boulevard, Austin, Texas, from the Plan to the Employer provided

that the rental paid by the Employer is not less than fair market rental value. The exemption will be effective from January 1, 1975 through June 30, 1984.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application accurately describes all material terms of the transaction consummated pursuant to the exemption.

Signed at Washington, D.C. this 20th day of June 1979.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-19750 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-32]

Exemption from the Prohibitions for Certain Transactions Involving Electric Hose & Rubber Co. Pension Trust (Application No. D-017)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption permits 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); and also permits the guarantee by Dayco Corporation (Dayco) of payment of all rent due under the above lease by Electric Hose.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523-8884. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 27, 1979, notice was published in the **FEDERAL REGISTER** (44 FR 24961) of the pendency before the Department of Labor (the Department) of a proposal to grant an 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, for transactions described in an application filed by Electric Hose. The notice set forth a summary of facts and representations contained in the application for

exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted 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 with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interest 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 the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is 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 or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471,

April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interest of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

The 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(c)(1) (A) through (E) of the Code shall not apply until after February 15, 1982, to the lease of real property by the Trustee to Electric Hose, described in the notice of pendency published on April 27, 1979, in the *Federal Register* (44 FR 24961), 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 of all rent due under the aforesaid lease by Electric Hose.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 20th day of June 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs Labor-Management Services Administration, Department of Labor.

[FR Doc. 79-19751 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

[Ta-W-3277]

Freeland Shirt Co., Freeland, Pa.; Revised Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, the Department of Labor issued a Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance on November 6, 1978, applicable to workers and former workers producing men's and ladies' outerwear at the Freeland Shirt Company, Freeland, Pennsylvania. The Notice of Negative Determination was published in the *Federal Register* on November 13, 1978, (43 FR 52555).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the Department's

determination with regard to the petition filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers at Freeland Shirt Company. The Department's initial determination was based on the failure of increased imports of articles like or directly competitive with the articles produced at Freeland Shirt Company to contribute importantly to the decline in production and employment at the firm.

New information obtained by the Department revealed that a major customer of the company had substituted imported articles entirely for the production formerly contracted out to Freeland Shirt Company. This customer represented over one-half of Freeland Shirt Company's 1977 sales.

Freeland Shirt Company produces men's and women's outerwear and women's sportswear with the workers employed interchangeably between product lines. The majority of the firm's production is devoted to men's and women's outerwear. Imports of men's and women's outerwear increased both absolutely and relative to domestic production from 1976 to 1977.

In view of these facts, it is concluded that increases of imports of articles like or directly competitive with the men's and women's outerwear and women's sportswear produced at Freeland Shirt Company contributed importantly to the decline in sales and production and to the total or partial separation of workers of that firm. Therefore, the determination is revised as follows:

All workers of Freeland Shirt Company, Freeland, Pennsylvania, engaged in employment related to the production of men's and women's outerwear who became totally or partially separated from employment on or after February 2, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 20th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration and Planning.

[FR Doc. 79-19786 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5241]

Ferguson Coal Co., Inc. Craigsville, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding

certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 16, 1979, in response to a worker petition received on April 9, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers producing coal at the Ferguson Coal Company, Corporation, Craigsville, West Virginia. The investigation revealed that the correct company name is the Ferguson Coal Company, Incorporated. In the following determination, 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 Ferguson Coal Company, Incorporated, operates two mines on a contract basis for a larger coal company. The coal mined by Ferguson is delivered to the larger company's preparation plant where it is mixed with coal from the larger company's own mines and with coal from other domestic contractors, cleaned and transported to the larger company's customers. Sources stated that all coal cleaned at the preparation plant is sold to domestic customers for use in producing steam.

U.S. imports of bituminous coal are negligible, totally less than one percent of domestic production in each year from 1974 through 1978.

Conclusion

After careful review, I determine that all workers of the Ferguson Mining Company, Incorporated, Craigsville, 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 15th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-19785 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5256]

**H. Warshow and Sons, Inc.; Milton, Pa.;
Negative Determination Regarding
Eligibility To Apply for Worker
Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 18, 1979, in response to a worker petition received on April 11, 1979, which was filed on behalf of workers and former workers dyeing and finishing elastic fabric at the Milton, Pennsylvania plant of H. Warshow and Sons, Incorporated. In the following determination, 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.

A Department of Labor survey of customers of H. Warshow and Sons, Incorporated, revealed that none of the customers purchased imported elastic

fabric in 1977, 1978 or the first quarter of 1979.

Conclusion

After careful review, I determine that all workers of the Milton, Pennsylvania plant of H. Warshow and Sons, 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 15th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-19787 Filed 6-25-79; 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 July 6, 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 July 6, 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 June 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
Donna Coal Corp. (workers).....	Ethel, West Va.....	6/12/79	6/7/79	TA-W-5, 617	Mining of coal.
ERB Transportation Co., Inc. (UMWMA).....	Raleigh County, West Va.....	6/12/79	6/7/79	TA-W-5, 618	Hauling of coal.
Form-O-Uth-Marie Foundations (workers).....	Pampa, Texas.....	6/12/79	6/6/79	TA-W-5, 619	Ladies' foundation garments, some swimsuits in the past.
Grand Fashions, Inc. (company).....	Hoboken, New Jersey.....	6/12/79	5/23/79	TA-W-5, 620	Ladies' coats.
Hayes-Albion Corp., Wildman-Jacquard Division (United Electrical, Radio & Machine Workers of America).....	Norristown, Pa.....	6/12/79	6/8/79	TA-W-5, 621	Knitting machinery & parts.
International Embroidery Work (workers).....	Union City, New Jersey.....	6/12/79	6/7/79	TA-W-5, 622	Embroideries, laces & emblems for the garment industry.
Muncy Coal Co. Inc., Muncy Truck Mine (UMWA).....	McDowell County, West Va.....	5/28/79	5/17/79	TA-W-5, 623	Mining of coal.
National Mines Corp., Pocahontas Division (UMWMA).....	Wyoming County, West Va.....	6/12/79	6/5/79	TA-W-5, 624	Mining of coal.
Paughkeepsie Dye (ACTWU).....	Paterson, New Jersey.....	5/28/79	5/22/79	TA-W-5, 625	Plain dyeing of acetate, cotton, rayon & polyester.
Tucker Knits (ILGWU).....	Secaucus, New Jersey.....	6/12/79	6/5/79	TA-W-5, 626	Ladies' knitted garments.
U & I, Inc., Trucking Division (workers).....	Toppenish, Washington.....	5/28/79	5/19/79	TA-W-5, 627	Haul sugar, potatoes to customers.
Wall Tube & Metal Products Company (USWA).....	Newport, Tennessee.....	6/15/79	6/15/79	TA-W-5, 628	Steel products including bumpers & parts for Ford pickups & utility trucks.
Walworth Company (USWA).....	South Braintree, Mass.....	6/15/79	6/15/79	TA-W-5, 629	Steel valves & similar devices, including all hand-operated & check valves & accessories.

[TA-W-5243]

**Kerstan Corp., Richwood, W. Va.;
Negative Determination Regarding
Eligibility To Apply for Worker
Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 16, 1979, in response to a worker petition received on April 9, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of the Kerstan Corporation, Richwood, West Virginia. In the following determination, 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.

Kerstan Corporation operated one mine on a contract basis for a larger coal company and all metallurgical coal mined by Kerstan was delivered to that larger coal company. Sources indicated that the larger coal company distributes metallurgical coal primarily to foreign users. Therefore, any imports of coal or coke would have a negligible effect on production and employment at the Kerstan Corporation.

Conclusion

After careful review, I determine that all workers of the Kerstan Corporation, Richwood, 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 15th day of June 1979.

C. Michael Aho,
Director, Office of Foreign Economic Research.

[FR Doc. 79-19788 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5264]

**Star Coal Co.; Craigsville, W. Va.;
Negative Determination Regarding
Eligibility To Apply for Worker
Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 18, 1979, in response to a worker petition received on April 9, 1979, which was filed by the United Mine Workers Union on behalf of workers and former workers mining coal at Star Coal Company, Craigsville, West Virginia. In the following determination, 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.

A Departmental survey of the subject firm's customers showed that they primarily export and therefore, any imports of coal or coke will have a negligible impact on employment.

Conclusion

After careful review, I determine that all workers of Star Coal Company, Craigsville, 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 15th day of June 1979.

C. Michael Aho,
Director, Office of Foreign Economic Research.

[FR Doc. 79-19789 Filed 6-25-79; 8:45 am]

BILLING CODE 4510-28-M

NATIONAL COMMISSION ON SOCIAL SECURITY

Privacy Act of 1974; Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, Public Law 93-579,

5 U.S.C. 552a, the National Commission on Social Security, hereafter known as the Commission, hereby publishes for comment those systems of records subject to the Privacy Act of 1974 which are maintained by the Commission. Any person interested in commenting on the routine use portions of the system notices may do so by submitting comments in writing to the Executive Director, National Commission on Social Security, 440 G Street, N.W., Room 126, Washington, D.C., 20218. Comments should be submitted on or before July 26, 1979. The Commission's procedures for access to records in the systems are contained in 1 CFR Part 485.¹

Dated at Washington, D.C., on June 20, 1979.

Francis J. Crowley,
Executive Director.

NCSS-1

System name: Payroll Records—National Commission on Social Security.

System location: General Services Administration, Region 3 Office; copies held by the Commission. (GSA holds records for the National Commission on Social Security under contract.)

Categories of individuals covered by the system: Employees and members of the Commission.

Categories of records in the system: Varied payroll records, including, among other documents, time and attendance cards; payment vouchers, comprehensive listing of employees; health benefits records, requests for deductions; tax forms, W-2 forms, overtime requests; leave data; requirement records. Records are used by Commission and GSA employees to maintain adequate payroll information for Commission employees and otherwise by Commission and GSA employees who have a need for the record in the performance of their duties.

Authority for maintenance of the system: 31 U.S.C. "Money and Finance", generally. Also, PL 95-216.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See Appendix. Records also are disclosed to GAO for audits; to the Internal Revenue Service for investigation; and to private

¹ See the proposed rules section of this issue of the Federal Register.

attorneys, pursuant to a power of attorney.

A copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, also is disclosed to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of the Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or, in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Administrative Officer, National Commission on Social Security, 440 G Street, N.W., Washington, D.C. 20218.

The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to written request from an appropriate city official to the Administrative Officer.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and microfilm.

Retrievability: Social Security Number.

Safeguards: Stored in guarded building; released only to authorized personnel, including among others, GSA liaison staff and finance personnel; and Commission administrative staff.

Retention and disposal: Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition System (OAD P 1820.2).

System manager(s) and address: Administrative Officer, National Commission on Social Security, 440 G Street, N.W., Washington, D.C.

Notification procedure: Contact Administrative Officer or refer to Commission access regulations contained in

Record access procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Contesting record procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Record source categories: The subject individual; the Commission.

NCSS-2

System name: General Financial Records—National Commission on Social Security.

System location: General Services Administration, Central Office; copies held by the Commission. (GSA holds records for the National Commission on Social Security under contract).

Categories of individuals covered by the system: Employees of the Commission and members of the Commission.

Categories of records in the system: SF-1038, Application and account for advance of funds; Vendor register and vendor payment tape. Information is used by accounting technicians to maintain adequate financial information and by other officers and employees of GSA and the Commission who have a need for the record in the performance of their duties.

Authority for maintenance of the system: 31 U.S.C. "Money and Finance", generally; also, PL 95-216.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See appendix. Records also are released to GAO for audits; to the IRS for investigation; and to private attorneys, pursuant to power of attorney.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and tape.

Retrievability: Manual and automated by name.

Safeguards: Stored in guarded building; released only to authorized personnel including among others, GSA liaison staff and finance personnel; and Commission administrative staff.

Retention and disposal: Disposition of records shall be in accordance with the HB GSA Records Maintenance and Disposition.

System manager(s) and address: Administrative Officer, National Commission on Social Security, 440 G Street, N.W. Room 126, Washington, D.C. 20218.

Notification procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Record access procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Contesting record procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Record source categories: The subject individual; the Commission.

NCSS-3

System name: General Informal Personnel Files, National Commission on Social Security.

System location: National Commission on Social Security.

Categories of individuals covered by the system: The commission members, staff and consultants, past and present.

Categories of records in the system: Copies of personnel qualifications statements, personnel action requests and notifications, oaths of office, consultant and/or expert certifications, delegations of authority, statements of employment and financial interests, training materials and correspondence with the members of the Commission.

Authority for maintenance of the system: Title 5, U.S.C., "Government Organization and Employees", generally. Also PL95-216.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: See Appendix.

Policies and practices for storing, accessing, retaining, and disposing of records in the system:

Storage: Paper.

Retrievability: Manual.

Safeguards: Stored in lockable file cabinets, released only to authorized personnel, including among others, GSA liaison staff and Commission administrative staff.

Retention and disposal: Retained until no longer needed, then discarded.

System manager(s) and address: Administrative Officer, National Commission on Social Security, 440 G Street, N.W. Room 126, Washington, D.C. 20218.

Notification procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Record access procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Contesting record procedures: Contact Administrative Officer or refer to Commission access regulations contained in

Record source categories: The subject individual; the Commission.

Appendix.—National Commission on Social Security

In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by

regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether federal, state, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

A record from this system of records may be disclosed as a "routine use" to a federal, state or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

A record from this system of records may be disclosed to a federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement or a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of federal personnel management.

A record from this system of records may be disclosed to officers and employees of a federal agency for purposes of audit.

The information contained in this system of records will be disclosed to the Office of Management and Budget in connection with the review of private relief legislation as set forth in OMB Circular No. A-19 at any stage of the legislative coordination and clearance process as set forth in that Circular.

A record from this system of records may be disclosed as a routine use to a Member of Congress or to a Congressional staff member in response

to an inquiry of the Congressional office made at the request of the individual about whom the record is maintained.

A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc. 79-19883 Filed 6-25-79; 8:45 am]

BILLING CODE 6820-AC-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Ad Hoc Subcommittee on the Three Mile Island, Unit 2 Accident Implications Re Nuclear Power Plant Design; Meeting

The ACRS Ad Hoc Subcommittee on the Three Mile Island, Unit 2 Accident—Implications Re Nuclear Power Plant Design, will hold a meeting on July 11, 1979 in Room 1167, 1717 H St. NW., Washington, DC 20555.

In accordance with the procedures outlined in the Federal Register on October 4, 1978, (43 FR 45926), 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 Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, July 11, 1979

12:30 p.m. Until the Conclusion of Business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendation to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will discuss with representatives of the NRC Staff, the nuclear industry, various utilities, and their consultants, state and local officials, and other interested persons, the implications of the Three Mile Island, Unit 2 Accident.

In addition, it may be necessary for the Subcommittee to hold one or more

closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

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 Designated Federal Employee for this meeting, Mr. Richard K. Major, (telephone 202/634-1414) between 8:15 a.m. and 5:00 p.m., EDT.

Background information concerning this nuclear station can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555 and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Street, Harrisburg, PA 17126.

Dated: June 21, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-19755 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold an open meeting on July 11, 1979, in the Federal Room, Mezzanine, Hotel Washington, 15th St. and Pennsylvania Ave., NW., Washington, D.C. to review NRC sponsored research in the area of extreme external phenomena, and proposed revisions to 10 CFR 100, Appendix A.

In accordance with the procedures outlined in the Federal Register on October 4, 1978 (43 FR 45926), 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 Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, July 11, 1979

8:30 a.m. until the conclusion of business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

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 therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Richard P. Savio (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: June 21, 1979.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 79-19758 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Nuclear Regulatory Commission; Meeting

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232 b.), the Advisory Committee on Reactor Safeguards will hold a meeting on July 12-14, 1979, in Room 1046, 1717 H Street, NW, Washington, DC. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

The agenda for the subject meeting will be as follows:

Thursday, July 12, 1979

8:30 A.M.-12:30 P.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 reports of its Subcommittees on the NRC Safety Research Program and

discuss its proposed annual report regarding the adequacy of this program.

1:30 P.M.-6:30 P.M.: *Executive Session (Open)*—The Committee will hear and discuss the reports of its Subcommittees on the NRC Safety Research Program and discuss its proposed annual report regarding the adequacy of this program.

The Committee will hear and discuss the report of its Subcommittee on the Implications of the March 28, 1979 accident at the Three Mile Island Nuclear Plant Unit 2.

The Committee will hear and discuss the report of its Subcommittee on the Bailly Generating Station Nuclear 1 regarding proposed changes in the piling configuration at this plant.

Portions of this session will be closed as necessary to discuss Proprietary Information related to this matter.

6:30 P.M.-7:30 P.M.: *Bailly Generating Station Nuclear 1 (Open)*—The Committee will hear and discuss presentations by members of the NRC Staff and the applicant regarding the request for a change in the piling design for this plant.

Portions of this session will be closed if required to discuss Proprietary Information related to this matter.

Friday, July 13, 1979

8:30 A.M.-12:30 P.M.: *Executive Session (Open)*—The Committee will discuss its proposed annual report regarding the adequacy of the NRC Safety Research Program.

1:30 P.M.-6:30 P.M.: *Executive Session (Open)*—The Committee will discuss the views of its members and consultants regarding the basic causes contributing to the March 28, 1979 accident at the Three Mile Island Nuclear Plant Unit 2.

The Committee will hear and discuss the report of its Subcommittee and discuss a proposed ACRS report to the NRC regarding its evaluation of Licensee Event Reports resulting from nuclear power plant operations.

The Committee will discuss a proposed report to the NRC regarding reevaluation of primary system integrity based on operating experience at nuclear facilities.

Saturday, July 14, 1979

8:30 A.M.-4:00 P.M.: *Executive Session (Open)*—The Committee will discuss proposed ACRS comments and recommendations regarding the implications of the accident which occurred at TMI-2 on March 28, 1979; and the proposed change in piling configuration at the Bailly Generating Station Unit 1.

The Committee will discuss its proposed annual report regarding the adequacy of the NRC Safety Research Program.

The Committee will discuss its schedule for future activities.

Portions of this session will be closed as necessary to discuss Proprietary Information.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on October 4, 1978 (44 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) P.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)).

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 202/634-1371), between 8:15 A.M. and 5:00 P.M. EDT.

Dated: June 21, 1979.

John C. Hoyle,
Advisory Committee Management Officer.

[FR Doc. 79-19758 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Reactors; Meeting

The ACRS Subcommittee on Advanced Reactors will hold an open meeting on July 11, 1979 in Room 4203, New Executive Office Building, 17th St.,

NW (between H St. and Pennsylvania Ave.), Washington, DC 20555 to continue its review of matters related to the NRC sponsored research on the safety of advanced reactor designs.

In accordance with the procedures outlined in the Federal Register on October 4, 1978 (43 FR 45926), 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 Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, July 11, 1979

8:30 a.m. until the conclusion of business

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, and their consultants, pertinent to the above topics. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

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 therefore can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Thomas G. McCreless (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Dated: June 21, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-19757 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-368]

**Arkansas Power and Light Co.
(Arkansas Nuclear One, Unit 2);
Issuance of Amendment to Facility
Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 12 to Facility Operating License No. NPF-6 to Arkansas Power and Light Company for Operation of Arkansas Nuclear One, Unit 2 (the facility) located at the licensee's site in Pope County, Arkansas. The amended license is effective as of its date of issuance.

The amendment modifies a condition to Facility Operating License No. NPF-6 by removing the restrictions on the making of any software changes on the core protection calculator system based on Commission approval of the licensee's change procedures. Also, the Technical Specifications have been changed to include a Nuclear Software Expert as a member of the licensee's Plant Safety Committee. Finally, the amendment removes another condition regarding implementation of redundant valve position indication in the control room which has been verified to be completed in accordance with design modifications previously approved by the Commission.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations in 10 CFR Chapter I, which are set forth in the amended license. We have concluded, that because the amendment does not involve a significant increase in the probability or consequences of accidents previously considered and does not involve a significant decrease in a safety margin, the amendment does not involve a significant hazards consideration. The application for the license amendment complies with the standards and requirements of the Act and the Commission's regulations.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR Section 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this

action, see (1) Amendment No. 12 to Facility Operating License No. NPF-6 and (2) the Commission's related Safety Evaluation supporting Amendment No. 12 to License No. NPF-6. These items are available for public inspection at the Commission's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 and the Arkansas Polytechnic College, Russellville, Arkansas 72801. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland this 12th day of June 1979.

John F. Stolz,

*Chief, Light Water Reactors Branch No. 1,
Division of Project Management.*

[FR Doc. 79-19759 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 40-8721]

**Availability of Environmental Report
and Intent to Prepare a Draft
Environmental Impact Statement
Concerning Issuance of a Source
Material License To Rocky Mountain
Energy Co., et al**

AGENCY: U.S. Nuclear Regulatory Commission, Division of Waste Management.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement.

SUMMARY: 1. Description of the Proposed Action—Rocky Mountain Energy Company (RMEC), in partnership with Mono Power Company and the Halliburton Company, propose to construct a 227,000 kg (500,000 lb.) per year in situ leach uranium mine and recovery plant in Natrona County, Wyoming, at a site designated as Nine Mile Lake. The proposed project area is approximately 14.5 km (9 miles) north of Casper.

The Atomic Energy Act of 1954, as amended, requires persons who "receive title to, receive, possess, use, transfer, deliver . . . any source material . . ." (i.e., uranium and/or thorium in any form . . .) to obtain a Source Material License. Title 10 of the Code of Federal Regulations, Part 51, provides for the preparation of a detailed environmental statement pursuant to the National Environmental Policy Act of 1969 (NEPA) prior to the issuance of a Source Material License if the issuance of that

license may result in actions which significantly affect the quality of the human environment.

2. The principal alternatives currently planned to be considered include alternative mining methods, alternative leach solutions, alternative uranium recovery processes, alternative waste management methods, alternative energy sources and the alternative of no licensing action.

3. The scoping process will include a meeting to be held at the Wyoming Department of Environmental Quality headquarters, Hathaway Building Basement Auditorium, Cheyenne, Wyoming on July 24, 1979 at 9:00 a.m. This meeting will provide for a briefing of State Agencies and other interested parties concerning the proposed action and alternatives and opportunity for input on the issues. The participation of the public and all interested Government Agencies is invited. Copies of this notice will be mailed to all affected Federal, State, and local agencies, any affected Indian tribes, and other interested persons. Written comments will be accepted until July 17, 1979.

4. The DEIS is expected to be available to the public for review and comment in January, 1980.

5. The Environmental Report and Appendix and any subsequent documents will be available for inspection and copying at the Public Document Room, 1717 H Street, N.W., Washington, DC 20555. Copies of the Environmental Report and Appendix are also being provided to the State Clearing House, State Planning Coordinator, Office of the Governor, 2320 Capitol Avenue, Cheyenne, Wyoming 82002.

Questions about the proposed action, DEIS, or scoping meeting and any written comments should be directed to Jack E. Rothfleisch, U.S. Nuclear Regulatory Commission, Division of Waste Management, 396-SS, Washington, D.C. 20555, phone (301) 427-4103.

Dated at Silver Spring, Maryland, this 13th day of June, 1979.

For the Nuclear Regulatory Commission.

Ross A. Scarano,

Chief, Uranium Recovery Licensing Branch, Division of Waste Management,

[FR Doc. 79-19762 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-409]

Dairyland Power Cooperative (La Crosse Boiling Water Reactor); Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated May 21, 1979, Anne K. Morse requested that an order be issued to suspend License No. DPR-45 issued for operation of the Dairyland Power Cooperative's La Crosse Boiling Water Reactor. This petition is being treated as a request for action under 10 CFR 2.206 of the Commission's regulations, and accordingly, action will be taken on the petition within a reasonable time.

Copies of the petition are available for inspection in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555 and in the local public document room at La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601.

For the Nuclear Regulatory Commission.

Dated at Bethesda, Maryland this 19th day of June, 1979.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 79-19760 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Company, et al.; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment Nos. 55 and 55 to Facility Operating License Nos. DPR-44 and DPR-56, issued to Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company and Atlantic City Electric Company, which revised Technical Specifications for operation of the Peach Bottom Atomic Power Station Units Nos. 2 and 3 (the facility) located in York County, Pennsylvania. The amendments are effective as of the date of issuance.

These amendments revise the Technical Specifications to (1) permit a decrease in the discharge pressure of the High Pressure Service Water pumps from 280 psig to 233 psig; (2) add certain snubbers to the table of Safety Related Shock Suppressors, and (3) revise the wording of the Administrative Controls specifications to clarify staff requirements for audits of facility activities.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments. Prior public notice of these amendments was not required since the amendments do not involve a significant hazards consideration.

The Commission has determined that the issuance of these amendments will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of these amendments.

For further details with respect to this action, see (1) the application for amendments dated January 12, 1979, (2) Amendment Nos. — and to License Nos. DPR-44 and DPR-56, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 15th day of June, 1979.

For the Nuclear Regulatory Commission.

Richard J. Clark,

Acting Chief, Operating Reactors Branch #3, Division of Operating Reactors.

[FR Doc. 79-19761 Filed 6-25-79; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-15939; File No. SR-MSE-79-3]

Midwest Stock Exchange, Inc., Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. NO. 94-29, 16 (June 4, 1975), notice is hereby given that on January 15, 1979, and May 24, 1979, the above-mentioned

self-regulatory organization filed with the Securities and Exchange Commission proposed rule changes as follows:

Statement of the Terms of Substance of the Proposed Rule Changes

Additions Italicized—[Deletions Bracketed] Rules 2 and 14 of Article I are hereby amended as follows:

Rights and Privileges of Membership

Rule 2.(a) A membership shall not be subject to assignment or transfer without the consent of the Exchange. The Exchange shall never be required to recognize any interest in a membership except that of its owner as registered with the Exchange. A nominee or voting designee designated by a member organization is not an owner. No rights shall be acquired by the ownership of a membership except those set forth in Article IX of the Constitution.

(b) Only members and member organizations in good standing may enjoy the rights and privileges of membership, may hold themselves out for any purpose as members, member organizations or otherwise affiliated with the Exchange, and may deal on or with the Exchange on any basis other than as non-members, except as otherwise provided in the Constitution or these Rules. A member is not in good standing if he has voluntarily resigned, if he has been suspended, expelled or declared legally incompetent, or if the member organization with which he is associated is not in good standing. A member organization is not in good standing if it has voluntarily deregistered, if it has been suspended or expelled or has been in process of liquidation for more than one year, or if the only member with which it is associated is not in good standing.

(c) A member or member organization not in good standing shall continue to be liable for membership dues until his or its membership has been transferred and may be proceeded against for any violation of the Constitution or Rules (or of the By-Laws or Rules of the Midwest Clearing Corporation, Midwest Securities Trust Company or the Options Clearing Corporation) committed by him or it either before or after he or it was deemed not in good standing, in all respects as if he or it were in good standing.

(d) A member or member organization which is suspended or expelled or otherwise withdraws from membership in the Exchange may be proceeded against during the period of suspension or within 90 days following expulsion or

withdrawal for any violation of the Constitution or Rules [or for any violation of the By-Laws or Rules of the Midwest Clearing Corporation, Midwest Securities Trust Company, or Options Clearing Corporation] committed either before or after suspension or before expulsion or withdrawal, as if he or it were a member or member organization in good standing.

Distribution of Proceeds

Rule 14. (a) Upon any transfer of a membership, whether made by a member [of] or his legal representative or by a member organization or by the President pursuant to the provisions of the Constitution and Rules, the proceeds thereof shall be applied by the Exchange to the following purposes and in the following order of priority:

1. No change in text.

Stock Clearing Charges

2. The Payment of such sums as the President shall determine are or may become due to the Midwest Clearing Corporation, Midwest Securities Trust Company, [Options Clearing Corporation,] or any corporation, a majority of whose voting stock is owned by the Exchange, from the member or member organization whose membership is transferred or from a member firm in which the transferring member is a general partner or from the member corporation in which the transferring member is an officer or director.

3. No change in text.

4. No change in text.

5. No change in text.

6. No change in text.

- (b) No change in text.

Rules 5, 6, 14, 21 and 23 of Article VIII are hereby amended as follows:

Article VIII

Prohibition of Mis-statements

Rule 5. No member or member organization, or partner, officer, director, principal shareholder or registered employee of a member organization shall make a mis-statement upon a material point to the Board of Governors, or to a committee, officer or employee of the Exchange [, or the board of directors of the Midwest Clearing Corporation, Midwest Securities Trust Company or Options Clearing Corporation or an officer or employee of such corporation]. This prohibition shall also apply to applications made prior to membership, registration as a member organization, admission to partnership and election as

an officer or director of a member corporation.

Adherence to All Rules, By-Laws and the Constitution

Rule 6. No member or member organization or partner, officer, director or registered employee of a member organization shall violate any provision of the Constitution, Rules of the Exchange, [the By-Laws or the Rules of the Midwest Clearing Corporation, Midwest Securities Trust Company or Options Clearing Corporation] or a resolution of the Board of Governors or Executive Committee regulating the conduct or business of members, member organizations or partners in member firms or officers or directors of member corporations.

Prohibited Accounts

Rule 14. (a) No change in text.

(b) No change in text.

Article XXI, Rule 16(c) has become paragraph (c) of Article VIII, Rule 14 as follows:

Order Listed for Non-Member in Attendance

(c) No member or member organization shall execute an order in a security solely listed on the Exchange for the account of a non-member in attendance on the Trading Floor, or an account in which such non-member has an interest, unless the transaction is of stabilizing nature; i.e., purchases shall be at prices lower than the last different-price transaction and sales shall be at prices higher than the last different-price transaction except when a transaction is in liquidation at a loss.

Customer Account—Transfer Contracts

Rule 21. Upon notice from a customer of his intention to transfer his account(s) from one member organization to another, both member organizations shall expedite the transfer.

Upon receipt from a customer of a signed instruction to receive his account from another member organization together with a current statement of such account, the receiving broker may submit such statement to the carrying broker, who must in writing and within five business days following receipt, verify (or take exception to) the positions and money balances (adjusted for interest on a debit balance) carried by him for such customer. Thereafter, the receiving broker may, at his option, give the carrying broker five days written notice to complete the transfer. At the termination of such notice, the receiving broker and the carrying broker shall establish fail to receive-fail to

deliver contracts at current market values upon their respective books of account against the long security positions in the customer's account and the receiving broker shall charge the related money amount (after properly considering the debit or credit balance in the customer's account) to the carrying broker, through [the Midwest Clearing Corporation] a registered clearing agency mutually agreeable between the member organizations. Simultaneously, any short security position in the account shall be delivered by the receiving broker (i.e., the broker who is receiving the account) to the former carrying broker and the customer's account shall thereupon be deemed transferred.

[The fail contracts resulting from the aforementioned procedure, whether or not involving securities listed on this Exchange, shall be treated as written Exchange contracts, "ex Clearing House," made on the date of establishment of the fails and subject to close out in accordance with Article XXV, particularly Rule 3 thereunder.]

Co-ordination of activities with respect to the account by both receiving and carrying organizations should be to the end that the customer shall not incur any loss in respect to improper execution, or failure to execute open orders, or on account of dividends of cash and securities and other similar distributions (rights, warrants, stock splits, etc.), interest, bond or preferred stock calls for redemption and tenders as a result of his account having been transferred. For purposes of subparagraph (m) of SEC Rule 15c3-3, the customer, to the extent his account with the carrying broker contained long positions, will have been deemed to have delivered the securities to the receiving member, if such positions have been sold, but the carrying broker will be deemed to be failing to deliver the securities to the receiving broker and, therefore, subject to the provisions of subparagraph (d)(2) relating to buy-ins if the receiving broker has a requirement to reduce the securities to physical possession or control.

... Interpretations and Policies:

.01 Transfer of a customer's account to or from a nonmember organization shall be handled as expeditiously as a transfer with a member organization.

Article XXIV, Rule 5 has become Article VIII,

Rule 23 as follows:

Floor Employees Prohibited from Borrowing or Lending

Rule 23, No Floor employee of the Exchange shall take any part in the borrowing or lending of Securities.

Rules 1, 3, 4, and 5 of Article XI are hereby amended as follows: [Clearing Member Requirements]

Financing Responsibility and Reporting Requirements

Prerequisite for Clearing [Corporation Membership] Transactions

Rule 1. Before a member or member organization shall [become a member of the Midwest Clearing Corporation, Midwest Securities Trust Company or Options Clearing Corporation] *clear its own transactions* or do business with the public, he or it shall notify the Exchange in writing.

Net Capital and Aggregate Indebtedness

Rule 3. (a)(1) A member organization [using the facilities of the Midwest Clearing Corporation, Midwest Securities Trust Company or Options Clearing Corporation] *clearing its own transactions* (other than a registered specialist whose sole other securities activity is as a floor broker) or doing business with the public and a member or member organization acting as a registered floor trader, as a floor broker (except if its sole other securities activity is as a registered specialist) or introducing customer accounts to another broker or dealer shall at all times—

(i) maintain net capital not less than that prescribed by SEC Rule 15c3-1 (17 CFR 240.15c3-1) and

(ii) maintain subordinated cash borrowings and secured demand notes equal to or greater than 50% of its total subordinated borrowings to the extent that these subordinated borrowing are part of the debt equity total.

(a)(2) No change in text.

(b) No change in text.

(c) No change in text.

(d) No change in text.

(e) No change in text.

Financial Operational Reports

Rule 4. Each member organization doing any business in securities with other than members of a national securities exchange or [uses the facilities of the Midwest Clearing Corporation, Midwest Securities Trust Company or Options Clearing Corporation] *clearing its own transactions* shall:

(a) No change in text.

(b) No change in text.

(c) No change in text.

Annual Information Report

Rule 5. (a) Deleted in its entirety.

[[b)] A member or member organization not [using the facilities of the Midwest Clearing Corporation, Midwest Securities Trust Company, or Options Clearing Corporation and not doing business with the public,] *subject to Rule 4 of this Article*, shall file an annual information report in the [a] form specified in SEC Rule 17a-10(a)(1) (17 CFR 240.17a-10) [acceptable to the Exchange] and upon request, such other reasonable information or material as the Exchange may from time to time require.

Rules 1 and 2 of Article XII are hereby amended as follows:

Article XII

Rule 1. (a) No change in text.

Written Charges

(b) If in the judgment of the President it shall appear from such report that the accused has committed a default or other offense in violation of the Constitution or Rules of the Exchange [or the Rules or By-Laws of the Midwest Clearing Corporation, Midwest Securities Trust Company, or Options Clearing Corporation], the President shall, except as hereinafter provided, direct the staff to prefer written charges against the accused. A copy of such charges shall be served upon the accused. The accused shall also be served with written notice of when and where the charges will be heard.

(c) No change in text.

Summary Procedure

Minor Infraction

Rule 2. (a) If in the judgment of the President, it shall appear from the investigation and report provided for in Rule 1(a) of this Article that the accused has committed a minor infraction of the Constitution or Rules of the Exchange [or the By-Laws or Rules of the Midwest Clearing Corporation, Midwest Securities Trust Company, or Options Clearing Corporation], the President may summarily censure the accused or impose a fine not in excess of \$500 or both. The decision of the President may be appealed to the Executive Committee by a written request therefore submitted within 15 days of the President's action stating the action complained of, the specific reasons why the applicant takes exception thereto and the relief sought. Unless the Executive Committee shall decide to open the record for the introduction of evidence or to hear argument, such review shall be based on the investigation and report cited above

as certified to the Executive Committee by the Secretary. The decision of the Executive Committee shall be final.

Summary Hearing and Penalty

(b) If in the judgment of the President it shall appear from the investigation and report provided for in Rule 1(a) of this Article that the accused has committed a default or other offense in violation of the Constitution or Rules of the Exchange [or the By-Laws or Rules of the Midwest Clearing Corporation, Midwest Securities Trust Company, or Options Clearing Corporation], which is not of such serious nature as to warrant expulsion or suspension, but, on the contrary, lends itself to summary hearing and penalty to be imposed by the President and if, in addition, the accused agrees to such hearing before the President and waives his or its right to written charges and a trial, the President may consider and determine such default or other offense and impose a suitable penalty therefor. The decision of the President shall be final.

(c) No change in text.

(d) No change in text.

Rules 2, 3, 4, 8, 9, 15, 16, 17, 18 and 19 of Article XXI are hereby amended as follows:

Article XXI

Comparison of Transactions

Rule 2. Every [clearing] member or member organization shall keep his or its office open to a sufficiently late hour to enable other members and member organizations reasonably to complete comparisons each day. Members or member organizations who make transactions on the Floor but *give up the name of* [clear through] other members or member organizations shall be responsible for the maintenance of adequate facilities for the comparison of their transactions.

Delivery of Tickets To Be Compared

Rule 3. It shall be the duty of the seller to deliver tickets to the Exchange [Clearing House] for the purpose of making comparison of each transaction effected on the Exchange, not later than one hour following the time of execution. Tickets for all transactions made between 2:30 [2:00] P.M. and 3:00 [2:30] P.M. shall be delivered to the Exchange [Clearing House] no later than one half hour after the last sale on the primary market tape.

It shall be the duty of the buyer in each transaction to investigate within the second hour following the time of execution, all transactions for which a comparison ticket has not been

submitted by the seller. All transactions affected between 2:30 [2:00] P.M. and 3:00 [2:30] P.M. must be checked no later than one half hour after the last sale on the primary market tape.

Responsibility for any loss incurred through failure to comply with this rule shall rest solely on the parties failing to conform.

Procedure for Exchange or Comparison

Rule 4. (a) An exchange of tickets or a comparison of transactions shall be made in the manner prescribed by the [Rules of the Midwest Securities Trust Company] Exchange.

Form and Preparation of Comparison Tickets

(1) Each member must use comparison tickets supplied by the Exchange.

Each comparison ticket shall be legible and shall contain the following information: (a) the clearing code name of the member to whom it is addressed; (b) the quantity of shares, the official ticker symbol for the security, and the price; (c) the clearing code name of the initiating member and (d) such other information as the Exchange may from time to time require.

Deposit Boxes

(2) The Exchange will maintain deposit boxes on the floor of the Exchange for the deposit of comparison tickets. The deposit of comparison tickets shall be the responsibility of the selling broker, except that where one party to a trade is an odd-lot dealer, the clearing ticket shall be deposited by the odd-lot dealer. The contra-broker will verify the comparison ticket before submission to the Exchange.

A transaction as to which a comparison ticket has been deposited will be withheld by the Exchange from the day's business only on the written authorization of both the buying and the selling broker.

Purchase and Sale Reports

(b) From the comparison tickets, the Exchange will prepare, with respect to each member, a purchase and sale report for all Exchange contracts.

(1) The purchase and sale report is a printed confirmation at the contract price of all reported contracts, showing for each transaction the member on the opposite side of the transaction, the ticker symbol of the security, the quantity, the price, the extended valuation, the type of a trade, any applicable commission, transfer tax or fee, and such further information as the Exchange may from time to time include

thereon. The purchase and sale report will also list the total quantity purchased and sold and the value of the sales and purchases.

Errors and Corrections

(2) It shall be the duty of the member to check all purchase and sale reports immediately upon receipt thereof and to advise their Exchange floor broker by telephone or teletype of any item requiring change for any reason whatsoever. It will be the responsibility of the Exchange floor broker to cause the appropriate change to be made.

An error which is not discovered in time to be reflected in reports covering that day's transactions shall be corrected as soon as practicable with the members involved.

Comparison of "Sellers Option," "When Issued" and "When Distributed"

Rule 8. On "seller's option" transactions and on all transactions made "when issued" or "when distributed," comparison on forms approved by the Exchange [Midwest Securities Trust Company] shall be made not later than one hour and a half after the closing of the Exchange.

Give-Ups

Rule 9. An original party to a transaction may give up to the other original party to said transaction, the names of other members or member organizations; but such giving up or the acceptance hereof shall not constitute a substitution of principals. Such give-ups shall be effected either at the time of the transaction or within one hour and a half after the time of the transaction; except that the time limit for effecting give-ups on cleared securities on any day shall be one hour earlier than the time limit on that day for delivering comparison tickets to the Exchange [Midwest Securities Trust Company].

The member or member organization so given up shall have the same duty of comparison as original parties; and no original party shall refuse to compare with a member or member organization given up as provided in this Rule.

In the event a give-up is not effected within the time limit specified in this Rule, the transaction shall be compared and cleared by the party who failed to give-up.

Rule 15. Deleted in its entirety.

Order of Midwest Securities Trust Company Binding

Rule [16] 15. Orders issued by [Midwest Securities Trust Company ("Company")] any registered clearing agency for the receipt or delivery of

securities are binding upon and enforceable against all members and member organizations for whom [Company] the registered clearing agency acts.

Rule [17.] 16. No change in text.

Rule [18.] 17. No change in text.

Rule [19.] 18. No change in text.

Rules 2, 7, 9, 16, 18, 19, 24, 27, 34 and 36 of Article XXII are hereby amended as follows:

Delivery Time of Securities

Rule 2. Deliveries of securities on a full business day, except as provided in Rule 3 of this Article and except for securities to be delivered pursuant to the rules of a registered clearing agency, shall be due before 12:00 Noon unless the [Midwest Securities Trust Company] Exchange shall advance or extend the time within which securities deliverable though it may be delivered, in which event the time within which other securities may be delivered shall thereby be similarly advanced or extended.

Option of Receiver

Rule 7. The receiver of shares of stock other than shares deliverable pursuant to the rules of a registered clearing agency shall have the option of requiring the delivery to be made either in securities therefor or by transfer thereof; except that in cases where personal liability attaches to ownership, the seller shall have the right to make delivery by transfer.

[If the receipt or delivery is made through the Midwest Clearing Corporation/Midwest Securities Trust Company the right to require receipt or delivery by transfer shall be exercised only as prescribed in the Rules of the Midwest Clearing Corporation/Midwest Securities Trust Company.]

The right to require receipt or delivery by transfer shall not obtain while the transfer books are closed.

Payment on Delivery

Rule 9. In all deliveries of securities other than securities deliverable pursuant to the rules of a registered clearing agency, the party delivering shall have the right to require the purchase money to be paid upon delivery. If delivery is made by transfer, payment may be required at the time and place of transfer. [; provided, however, that payment on deliveries through the Midwest Clearing Corporation/Midwest Securities Trust Company shall be in conformity with its Rules.]

Delivery of Securities Subject to Tax on Transfer or Sale

Rule 16. Each delivery of securities subject to tax on transfer or sale must be accompanied by a sales ticket stamped in accordance with the laws of the United States or the securities themselves must be so stamped, except in the case of securities cleared or delivered by [the Midwest Clearing Corporation/Midwest Securities Trust Company] any registered clearing agency, sales ticket or securities so stamped shall be delivered in accordance with [its] such agency's Rules.

Provision for Appointment of Attorney

Rule 18. A separate assignment shall contain provision for the irrevocable appointment of an attorney, with power of substitution and a full description of the security, and shall be in the form approved by the [Midwest Clearing Corporation/Midwest Securities Trust Company] Exchange. The number of shares of stock or the principal amount of the bond shall be expressed in both words and numerals.

Power of Substitution by Individual, Firm or Corporation Member

Rule 19. The following procedure must be followed in the delivery of securities, except for securities to be delivered pursuant to the rules of a registered clearing agency: When the name of an individual, firm or corporation has been inserted in an assignment, as attorney, a power of substitution shall be executed in blank by such individual, firm or corporation.

When the name of an individual, firm or corporation has been inserted in a power of substitution, as substitute attorney, a new power of substitution shall be executed in blank by such substitute attorney.

Facsimile Signature of [Stock Clearing Corporation] Registered Clearing Agency and Nominee

Rule 24. [Stock Clearing Corporation] A registered clearing agency and any nominee of [Stock Clearing Corporation] a registered clearing agency may each assign and execute powers of substitution for any security registered in their respective names or with respect to which they have, respectively, been appointed attorney, by means of mechanically reproduced facsimile signature, provided [Stock Clearing Corporation] such registered clearing agency shall have (1) executed and filed with the Exchange, in the form prescribing by it, an agreement with respect to the use of each such facsimile

signature, (2) filed with the Exchange, in the form prescribed by it, a certified copy of resolutions of the Board of Directors of [Stock Clearing Corporation] such registered clearing agency authorizing the execution and filing with the Exchange of such agreement, and (3) complied with such other requirements as may be prescribed by the Exchange in connection with the use of facsimile signatures.

Assigning of Registered Securities in Name of Member or Member Organization

Rule 27. A member or member organization may authorize one or more persons who are either his or its employees or who are officers or employees of [the Stock Clearing Corporation or who are officers or employees of the Service Corporation,] a registered clearing agency, to assign registered securities in the name of such member or member organization and to guarantee assignments with the same effect as if the name of such member or member organization had been signed under like circumstances by such member or by one of the partners of the member firm or by one of the authorized officers of the member corporation by executing and filing with the Exchange, in a form prescribed by it, a separate Power of Attorney for each person so authorized.

Signature Not in Name of Member

Rule 34. Except with respect to securities to be delivered pursuant to the rules of a registered clearing agency [T] the signature to an assignment of a certificate not in the name of a member or member organization or [Stock Clearing Corporation or a nominee of Stock Clearing Corporation] a nominee of a registered clearing agency whose signatures are on file with and acceptable to the transfer agency shall be guaranteed by a member or member organization of the Exchange, or of the New York Stock Exchange or by a commercial bank or trust company in the locality of the Exchange or a correspondent thereof. Each signature to a power of substitution executed by other than a member or member organization or [Stock Clearing Corporation or a nominee of Stock Clearing Corporation] nominee of a registered clearing agency whose signatures are on file with and acceptable to the transfer agent shall be guaranteed in like manner.

Transfer Books Which Are Closed Indefinitely

Rule 36. The [Stock Clearing Corporation] Exchange may, in particular cases, direct that assignments and powers of substitution on certificates of a company whose transfer books are closed indefinitely be properly acknowledged.

Acknowledgements, affidavits or depositions shall be executed before an officer having authority to take acknowledgements under the laws of the State in which such instruments are executed and shall bear the signature and seal of the officer before whom the acknowledgement is taken.

Article XXIV

Rule 5. Deleted in its entirety. Rule 5 has become Rule 23 of Article VIII.

Rules 2, 4, 5, 7, 8, 10 and 13 of Article XXV are hereby amended as follows:

Article XXV

Insolvency

Rule 2. When an announcement is made of the suspension or expulsion of a member or member organization, other members or member organizations having Exchange Contracts with the suspended or expelled member or member organization for the purchase, sale or loan of securities, shall without unnecessary delay proceed to close such contracts on the Exchange or in the best available market, *unless such contract has been accepted for clearance and settlement by a registered clearing agency in which case such close out should be made in accordance with the rules of such agency.* If such a contract be not closed as above provided, the price of settlement shall be fixed by the fair market value at the time when such contract should have been closed under this Rule.

Default

Rule 4. A contract in securities admitted to dealings on the Exchange *other than a contract the close-out of which has not been fulfilled according to the terms thereof may be officially closed by any officer of the Exchange.*

The order to close such contract shall be delivered to the Exchange and the member or member organization giving such order shall deliver at the office of the member or member organization in default notice of intention to make such closing. Every such order and every such notice shall be in writing, and shall state the name of the member or member organization giving the order, the date of the original contract to be closed, the maturity date of such

contract, and the name of the other party thereto. On full business days such notice shall be delivered before 11:45 a.m. and such orders shall be delivered before 1:30 p.m., but such contracts shall not be closed before 1:35 p.m.; and if the time within which securities may be delivered shall have been extended, the time limits herein referred to shall thereby be similarly extended, and if the time within which securities may be delivered shall have been advanced, the time limit for delivery of such notice of intention to make such closing shall be similarly advanced. When a contract made for "cash" after 1:00 p.m. on a full business day, is to be closed on the same day, the time of the transaction shall be stated on the order and notice, which shall be delivered within 30 minutes after the transaction, and the contract shall not be closed until 35 minutes after the time of the transaction.

The closing of a contract may be deferred by order of a member of the Committee on Floor Procedure whenever, in his opinion, a fair market in which to close the contract is not available, and the Committee on Floor Procedure may defer the closing of a contract if it determines that the default is due to the existence of a general emergency situation, but no such deferment shall relieve the party in default of any resulting damages.

Retransmission of Notice

Rule 5. Every member or member organization receiving notice that a contract is to be closed for his or its account because of non-delivery *including a notice pursuant to the rules of a registered clearing agency that an obligation of the member or member organization to deliver securities to the clearing agency or under its rules is to be closed out for his or its own account* shall immediately retransmit notice thereof to any other member or member organization from whom the securities in question are due. Every such retransmitted notice shall be in writing, and shall be delivered at the office of the member or member organization to whom it is addressed. It shall state the date of the contract upon which the securities are due from such member or member organization, and the name of the member or member organization who has given the original order to close.

Liability Where Contract Closed

Rule 7. The closing of a contract pursuant to these Rules or pursuant to the rules of a registered clearing agency shall be for the account and liability of

each succeeding party in interest in such contract and, in case notice that such contract will be closed has been retransmitted as hereinabove provided, such closing shall also automatically close all contracts with respect to which retransmitted notice shall have been delivered prior to the closing.

If such retransmitted notice is sent by a member or member organization before the contract has been closed, but is not received until after such closing, the member or member organization who sent the same may, unless otherwise agreed, promptly reestablish, by a new sale, the contract with respect to which such notice has been sent.

Any money difference resulting from the closing of a contract, or from the reestablishment of a contract as hereinabove provided, shall be paid not later than 2:00 p.m. on the following full business day to the member or member organization entitled to receive the same.

Immediate Notification Where Contract Closed

Rule 8. When a contract *other than a contract the closeout of which is governed by the rules of a registered clearing agency* has been closed the member or member organization who closed the same, or who gave the order to close the same, shall immediately notify the member or member organization for whose account the contract was closed. Immediate notification shall be given to succeeding parties in interest and to other members or member organizations to whom retransmitted notice as hereinabove provided has been sent. Statements of resulting money differences, if any, shall be rendered immediately.

Delivery of Securities

Rule 10. A member or member organization who has received notice of intention to close a contract, or retransmitted notice thereof, may deliver the securities [to the Stock Clearing Corporation or] at the office of the member or member organization issuing such notice up to 1:30 p.m. He or it may deliver such securities after 1:30 p.m. if notice is given to the Exchange before the execution of the order that he or it has physical possession of the securities.

Over-the-Counter Securities

Rule 13. A contract *other than a contract governed by the rules of a registered clearing agency* in securities not dealt in on the Exchange or in securities which have been suspended from dealings on the Exchange, which

has not been fulfilled according to the terms thereof may be closed in the best available market by the party thereto who is not in default and the provisions of the Rules contained in this Article shall be followed as nearly as possible.

Rules 1, 3 and 4 of Article XXVI are hereby amended as follows:

Article XXVI

Deposits on Contracts

Rule 1. The party who is partially unsecured by reason of a change in the market value of the subject of an Exchange contract *other than a contract as to which marks to the market are governed by the rules of a registered clearing agency* may demand from the other party the difference between the contract price and the market price. The party from whom such difference is demanded shall immediately either (a) pay the same directly or through the [Stock Clearing Corporation] *facilities of a registered clearing agency if permitted by the rules of such clearing agency* to the party who is partially unsecured, in which case the money so paid shall bear interest at the current renewal rate for call loans, except in the case of a loan of securities when the money so paid shall be considered part of such loan, or (b) deposit the same with [the Stock Clearing Corporation] *a registered clearing agency if permitted by its rules.*

Rule 3. Deleted in its entirety.

Rule [4.] 3. No change in text.

Rules 8 and 9 of Article XXVII are hereby amended as follows:

Article XXVII

Form

Rule 8. Due bills shall be rendered on a form approved by the Exchange and shall be signed by or in behalf of a member [of the Stock Clearing Corporation] by an authorized agent.

Securities Sold Before Ex-Dividend or Ex-Rights

Rule 9. Unless otherwise directed by the Exchange *or unless the rules of a registered clearing agency apply* when a security is sold before it is ex-dividend or ex-rights and delivery is made after a date fixed by the Exchange, the seller's delivery to the buyer shall be made as follows:

(a) In the case of stock dividends or rights to subscribe, either the dividend or rights, or a due-bill for such dividends or rights, shall accompany the security delivered;

(b) In the case of cash dividends, due-bills or due-bill checks will not be used. Such dividends accruing on a security deliverable on a contract will be

computed, reported, collected and/or paid by [the Stock Clearing Corporation] *a registered clearing agency* to the member or member organization.

(c) In the case of cash dividends, where delivery of the security is not made through [the Stock Clearing Corporation] *a registered clearing agency*, the security delivered shall be accompanied by a due-bill or a due-bill check for the amount of the dividend.

Rule 7E of Article XXVIII is hereby amended as follows:

Article XXVIII

Requisites for Listing on Exchange

Rule 7.

* * * * *

E. It shall maintain stock transfer and registrar facilities [acceptable to the Exchange] which may be an independent bank or trust company acting as both transfer agent and registrar for any listed security other than its own stock.

Article XLIII, Rule 1, is hereby amended as follows:

Article XLIII

Members Activities on the Floor Must Give Up Clearing Member

Rule 1. For each transaction in which he participates, a member must immediately give up the name of the Clearing Member through whom the transaction will be cleared. If there is a subsequent change in identity of the Clearing Member through whom a transaction will be cleared, the member must, as promptly as possible, report such change to the Clearing Member on the other side of the transaction.

... Interpretation and Policies:

.01 Nothing herein shall be deemed to preclude the clearance of Exchange transactions by a non-member of the Exchange pursuant to the By-Laws of the Options Clearing Corporation so long as a Clearing Member who is a member of the Exchange is also designated as having responsibility under these Rules for the clearance and comparison of such transactions.

Rule 3 of Article XLV and Rule 5 of Article XLVII are hereby amended as follows:

Article XLV

Letters of Authorization

Rule 3. (a) Required of each Floor Broker. No Floor Broker shall act as such on the Exchange unless there is in effect a Letter of Authorization that has been issued for such Floor Broker by a [Clearing Member.] *member organization subject to the financial*

responsibilities and reporting requirements of the Exchange. Unless the Exchange determines otherwise a Floor Broker may not have more than one such letter in effect at one time.

(b) Terms of Letter of Authorization. A Letter of Authorization shall provide that the issuing [Clearing Member shall be responsible for the clearance of the Exchange transactions of the Floor Broker when the name of such Clearing Member] *member organization accepts financial responsibility for all Exchange transactions made by the guaranteed member. [is given up.]*

(c) Revocation of Letter of Authorization. A Letter of Authorization filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange and posted on the Exchange bulletin board. If such written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day. *A revocation shall in no way relieve a member organization of responsibility for transactions authorized prior to the effective date of such revocation.*

[... Interpretations and Policies:

.01. Every member organization which is a clearing member of the Options Clearing Corporation shall be responsible for the clearance of the Exchange option transactions of such member organization and of each member or member organization who gives up the name of such clearing member in an Exchange option transaction, provided the clearing member has authorized such member or member organization to give up its name with respect to Exchange option transactions.]

Article XLVII

Letter of Guarantee

Rule 5. (a) Required of each member. No Market-Maker shall make any transaction on the floor of the Exchange unless a Letter of Guarantee has been issued for such member by a [Clearing Member] *member organization subject to the financial responsibility and reporting requirements of the Exchange,* approved by the Options Clearing Corporation and filed with the Exchange, and unless such Letter has not been revoked pursuant to paragraph (c) of this Rule. A Member may not have more than one such letter in effect at one time except for the purpose of facilitating transfer of that member's Market-Maker account from one [Clearing] *member organization to*

another or unless the Exchange determines otherwise.

(b) Terms of Letter of Guarantee. A Letter of Guarantee shall provide that the issuing [Clearing Member] member organization accepts financial responsibility for all Exchange transactions made by the guaranteed member.

(c) Revocation of Letter of Guarantee. A Letter of Guarantee filed with the Exchange shall remain in effect until a written notice of revocation has been filed with the Exchange and posted on the Exchange bulletin board. If such written notice has not been posted for at least one hour prior to the opening of trading on a particular business day, such revocation shall not become effective until the close of trading on such day. A revocation shall in no way relieve a [Clearing Member] member organization of responsibility for transactions guaranteed prior to the effective date of such revocation.

[. . . Interpretations and Policies:

.01. Every member organization which is a clearing member of the Options Clearing Corporation shall be responsible for the clearance of the Exchange option transactions of such member organization and of each member or member organization who gives up the name of such clearing member in an Exchange option transaction, provided the clearing member has authorized such member or member organization to give up its name with respect to Exchange option transactions.]

Rule 13 of Article XLVIII is hereby deleted and Rule 14 of Article XLVIII is renumbered as Rule 13.

Article XLVIII

Rule 13. Deleted in its entirety.

Rule [14.] 13. No change in text.

Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule changes is as follows:

The rules of the Midwest Stock Exchange contain strictures which hinder the development of a national system for the clearance and settlement of transactions in securities by, among other things, tying the clearance and settlement of securities transactions to the market in which those transactions occur.

These rules which deal with the clearance and settlement of securities transactions, "transaction completion rules", are not in compliance with Sections 6(b), 11A(c)(5), 15A(b) and 17A(a)(2) of the Act. The purpose of these rule deletions and amendments is

to conform the transaction completion rules to the Act.

Section 11A(c)(5) of the Act stipulates that "[n]o national securities exchange or registered securities association may limit or condition the participation of any member in any registered clearing agency."

Sections 6(b)(5) and 15A(b)(6) of the Act require that the rules of a national securities exchange be designed "to foster cooperation and coordination with persons engaged in regulating, clearing, settling . . . and facilitating transactions in securities . . ." and Sections 6(b)(8) and 15A(b)(9) of the Act prohibit the rules of national securities exchanges and associations from imposing any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. These sections complement Section 17 A(a)(2) of the Act, which directs the Commission "to use its authority under [the Act] to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of transactions in securities . . ." having due regard for, among other things, the maintenance of fair competition among brokers and dealers, clearing agencies and transfer agents.

The Midwest Stock Exchange, Incorporated has neither solicited nor received any comments.

The Midwest Stock Exchange, Incorporated believes that no burden has been placed on competition.

On or before July 30, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule changes, or

(B) institute proceedings to determine whether the proposed rule changes should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., 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 within 21 days of the date of this publication.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

June 20, 1979.

[FR Doc. 79-19725 Filed 6-25-79; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 21105; 70-6260]

New England Electric System and New England Energy, Inc.; Notice of Proposed Financing of Fuel Subsidiary

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and its fuel subsidiary, New England Energy Incorporated ("NEEI") 20 Turnpike Road, Westborough, Massachusetts 01581, have filed with this Commission an application-declaration, and an amendment thereto, pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 43, 50(a)(2) and 50(a)(3) promulgated thereunder as applicable to the proposed transactions. All interested persons are referred to the application-declaration, as amended, which is summarized below, for a complete statement of the proposed transactions.

By order dated October 30, 1974 (HCR No. 18635), NEES was authorized to organize NEEI and acquire its capital stock and NEEI was authorized to enter into a partnership agreement with Samedan Oil Corporation ("Samedan") to explore for oil and gas. Jurisdiction was reserved in said order with respect to any transactions between NEEI and other companies within the NEES system. By order dated June 18, 1976 (HCR No. 19580), NEES was authorized to invest in NEEI up to \$45,000,000 through December 31, 1979, to finance exploration and development activities as well as NEEI's procurement and inventory activities. To date, NEEI has been financed exclusively by the issuance to NEES of common stock and the issuance to NEES of subordinated notes. At March 31, 1979, the total amount of subordinated notes of NEEI held by NEES was \$39,685,000, which amount is expected to increase to approximately \$41,000,000 by June 30, 1979.

By order dated July 19, 1978 (HCR No. 20632), NEEI was authorized to

make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract on terms and conditions set forth in said order. Those terms included a pricing policy under which NEEI's total costs related to its exploration and development program, including capital costs as defined, are divided by total estimated equivalent barrels of reserves to determine a unit cost to be applied to each equivalent barrel produced. With respect to capital costs, a method was prescribed for their determination based on a hypothetical capital structure imputed to NEEI approximately equivalent to the capital structure of NEP. In this connection, it was contemplated that NEEI would obtain outside financing and apply the proceeds to reduce the subordinated notes.

NEEI seeks authorization to enter into an agreement (the "Loan Agreement") with the Bank of Montreal (the "Agent") for an \$80,000,000 revolving credit loan by a syndicate of banks (the "Banks") which upon termination would become a term loan. The proposed arrangement could extend for a maximum of ten years.

The proposed loan will provide NEEI with available credit of up to \$40,000,000 in 1979, \$60,000,000 in 1980, and \$80,000,000 in 1981. The revolving credit period runs from January 1, 1979, through December 31, 1981, and may, at NEEI's option, be extended for two additional years. The Banks will make a term loan to NEEI upon termination of the revolving credit period in the amount of the revolving credit balance outstanding on the termination date, such loan to be for a maximum of five years and to require equal quarterly payments amortizing the principal. The loan will bear interest during the revolving credit period at a rate per annum of $\frac{3}{4}$ of 1% over the Agent's United States prime rate, or $\frac{7}{8}$ of 1% over the London Interbank Offered Rate ("LIBOR") for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. The loan will bear interest during its term loan period at a rate per annum of $\frac{3}{4}$ of 1% over the Agent's United States prime rate, or 1% over LIBOR for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. There is a commitment fee on the unused available portion of the loan commitment of $\frac{1}{4}$ of 1% per year during the revolving credit period and $\frac{3}{4}$ of 1% per year during any extension of that period. Interest and the commitment fee are payable quarterly. The loan will be prepayable without penalty, and the commitment amount may be reduced in

whole or in part without penalty. There will also be a facility fee of \$75,000, payable to the Agent upon execution of the Loan Agreement and an additional \$50,000 fee at execution if the Agent syndicates the loan.

A principal condition of the proposed loan is a covenant by NEEI to finance its oil and gas exploration and development program costs on a basis which will include senior debt in the form of the proposed loan up to 60 percent and no less than 40 percent common stock equity and premium, subordinated notes payable to NEES and deferred taxes. For this purpose, applicants-declarants request that the Commission extend for a period coterminous with the maximum period under the proposed loan (i.e., until December 31, 1988) the authority granted in the order of June 18, 1976 (HCAR No. 19580). This would include authority for NEES to continue to invest in subordinated notes of NEEI under the existing Capital Funds Agreement up to a total of \$45,000,000 for the life of the proposed loan.

The Loan Agreement will require NEEI to prepay the proposed loan to the extent of proceeds NEEI receives from any long-term financing secured by any of its oil and gas properties included in the full cost pool. It will also limit modifications which may be made to the fuel purchase contract between NEEI and NEP and will require assignment to the Agent by NEEI of its rights under the fuel purchase contract.

Applicants-declarants expect an initial drawdown on the loan in July 1979, of \$26,500,000 to repay a portion of NEEI's subordinated notes to NEES, reducing the same from about \$41,000,000 to about \$14,500,000. Future drawdowns will be used to assist in financing NEEI's oil and gas exploration and development program.

Applicants-declarants claim exemption from the competitive bidding requirement of Rule 50 for the issuance of notes to the Banks pursuant to Rule 50(a) (2) and for NEEI's issuance of notes to NEES pursuant to Rule 50(a) (3).

The fees and expenses to be incurred in connection with the proposed transactions (excluding the previously mentioned facility fee of \$75,000, syndication fee of \$50,000 and commitment fees) are estimated at \$35,000, including \$25,000 of legal fees of the Agent, and \$8,000 of services to be performed at cost by New England Power Service Company, an affiliate of applicants-declarants. It is stated that no state commission and no federal commission, other than this

Commission, has jurisdiction over the proposed transactions.

Notice is further given that any interested person may, not later than July 10, 1979, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may further be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,
Secretary.

[FR Doc. 79-19726 Filed 6-25-79; 8:45 am]

BILLING CODE 8010-10-M

SMALL BUSINESS ADMINISTRATION

[License No. 05/05-5094]

Independence Capital Formation, Inc.; Filing of Application for Approval of Conflict of Interest Transaction

Notice is hereby given that Independence Capital Formation, Inc. (Independence), 3049 East Grand Boulevard, Detroit, Michigan 48202, a Federal licensee under Section 301(d) of the Small Business Investment Act of 1958, as amended (Act), has filed an application pursuant to 13 CFR 107.1004 (1979) for approval of a conflict of interest transaction.

It is proposed that Independence loan \$30,000 to Double "M" Transportation Services, Inc., a company owned by

Dyctis J. Moses, Jr., 13993 Mansfield, Detroit, Michigan 48219 and Dr. Perry L. Mathis, 1300 E. Lafayette, Apt. 1801, Detroit, Michigan 48207.

The \$30,000, seven year subordinate debenture bearing interest at 12 and ¾ percent is subordinated to a \$45,000 loan from First Independence National Bank.

Mr. Dyctis J. Moses, Jr., was a former Vice President and Board Member of Independence from 1973 through November 1975. However, he was rehired by Inner-City Business Improvement Forum (ICBIF), the parent company of Independence (licensee) on a part-time basis in November of 1978. Mr. Moses' employment with ICBIF was terminated on April 15, 1979, but, nevertheless, pursuant to § 107.3(a) of the Regulations, he is considered to be an associate of the licensee at this time.

Accordingly, the transaction falls within the purview of 13 CFR 107.1004 (1979) requiring prior written approval of the Small Business Administration (SBA).

Notice is further given that any person may, on or before July 11, 1979 submit to SBA, in writing, relevant comments on the proposed transaction. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Detroit, Michigan.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: June 18, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-19734 Filed 6-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 03/03-5142]

Minority Broadcast Investment Corp.; Application for a License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 *et seq.*), has been filed by Minority Broadcast Investment Corporation (applicant) with the Small Business Administration pursuant to 13 CFR 107.102 (1979).

The officers and directors are as follows:

Walter Threadgill, 430 M Street, SW, Washington, D.C. 20024, President, Director & General Manager.

Clarence V. McKee, 1245 4th Street, SW #600, Washington, D.C. 20024, Vice President & Director.

Kenneth Mosher, 4921 Jefferson Street, Hollywood, Florida 33021, Treasurer & Director.

Peter Storer, Quayside, 10669 Quayside Bride Court, Miami, Florida 33138, Director.

Stuart C. Law, 4012 William Lane, Bowie, Maryland 20715, Secretary, Director.

The applicant will maintain its offices at 1220 19th Street, NW, Suite 501, Washington, D.C. 20036. It will begin operations with \$1,100,000 of private capital derived from the sale of 100 shares of common stock to Messrs. Threadgill, McKee, Law and Minority Broadcast Ventures Corporation (MBV) for \$100. MBV, in addition to purchasing 49 percent of the applicant's common stock, will also purchase 10,000 shares of the applicant's 8 percent subordinated cumulative preferred stock for \$1,000,000. Storer Broadcasting Corporation (Storer) will receive from MBV \$333,333 in notes and \$666,667 in preferred stock. Additionally, Storer will receive 60 percent of the common stock of MBV. Messrs. Threadgill, McKee and Law will own in equal shares 40 percent of MBV.

The company will conduct its operations nationwide.

As a small business investment company under Section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed owners and management and the probability of successful operation of the applicant under this management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, on or before July 11, 1979, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Finance and Investment, Small Business

Administration, 1441 L Street, NW, Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Washington, D.C.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

Dated: June 18, 1979.

[FR Doc. 79-19735 Filed 6-25-79; 8:45 am]

BILLING CODE 8025-01-M

SBA Fiscal and Transfer Agent; Selection

In an effort to improve the operation of the Small Business Administration's Secondary Market, SBA determined that installation of a Fiscal and Transfer Agent (FTA) and use of a freely tradeable certificate would give the market added liquidity and broaden the base of potential investors.

SBA advised firms that were interested in acting as the FTA to provide detailed material outlining such firms' capabilities in this area. The proposals were screened for completeness and those meeting the minimum requirements were thoroughly analyzed. The Bradford Trust Company, P.O. Box 54, Bowling Green Station, New York, New York 10004 has been selected as the Fiscal and Transfer Agent for the SBA Secondary Market. SBA and Bradford have entered into a contract which is for a period of five years after the date of full implementation of the program, expected to be October 1, 1979.

Bradford Trust as FTA, will be responsible for receiving payments from participating lenders and forwarding these funds to investors. Using the FTA will allow a lender to send one check for all loans sold in the Secondary market to the FTA rather than sending each investor a separate check for each individual loan. The FTA will in turn send one check to each investor, regardless of how many guaranteed interests that investor owns. Full accounting of payments will be maintained by the FTA. These new procedures will greatly simplify the management of investments in the SBA Secondary Market.

Bradford will also act as the registrar for the SBA certificates. When a sale is completed, the paperwork will be forwarded to Bradford for issuance of a certificate. Free trading of certificates will occur and, at the subsequent sale of a particular loan, the certificate will be

returned to Bradford and a new certificate issued to the new owner of the guaranteed interest.

The first phase of the FTA program which is scheduled to begin on or about July 20, 1979 will be in SBA regions VI and VIII. These regions encompass the states of Texas, Arkansas, Louisiana, New Mexico, Oklahoma, Colorado, Montana, Wyoming, Utah, North Dakota and South Dakota. After July 20, any investor that would like a certificate issued for a newly sold loan should complete SBA Form 1086, "Secondary Participation Guaranty and Certification Agreement" for issuance of a certificate by Bradford. It is anticipated that the program will be available on a nationwide basis by October 1, 1979. On or about October 1, 1979, the certificate will be available for all SBA loans that have been previously sold in the Secondary Market pursuant to SBA Form 1084 "Secondary Participation Agreement." SBA Form 1085, "Request for Certification of SBA Form 1084" will be used to have a certificate issued for a previously sold loan.

SBA views this action as a major step forward in the development of a continuous, liquid market for SBA securities. Further information can be obtained from the Director of Secondary Market Activities, Small Business Administration, 26 Federal Plaza, Suite 1815, New York, New York 10007 or at 212-264-5877.

Dated: June 15, 1979.

A. Vernon Weaver,
Administrator.

[FR Doc. 79-19736 Filed 6-25-79; 8:45 am]

BILLING CODE 8025-01-M

[License No. 06/06-0184]

TSM Corp.; Application for Approval of a Conflict of Interest Transaction Between Associates

Notice is hereby given pursuant to § 107.1004 of the Regulations governing small business investment companies (13 CFR 107.1004 (1979)), by the Small Business Administration (SBA) of a conflict of interest transaction between TSM CORP. (TSM), 4171 North Mesa, El Paso, Texas 79912, a Federal Licensee under the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. et seq.), and an Associate.

TSM was licensed by SBA on November 16, 1976. There are approximately 65 shareholders with Tri-State Wholesale Associated Grocers (Tri-State), 4171 North Mesa, El Paso, Texas 79912, owning approximately a 39 percent equity interest. Tri-State is a non-profit wholesale grocery distributor

which acts as a central purchasing agent for all of its member stores. As a result of this equity interest, Tri-State is deemed to be an Associate of TSM as defined by § 107.3(b) of the SBA Rules and Regulations.

West Texas Supermarkets, Inc. (the Company) was organized in March of 1979 to purchase the assets of Piggly Wiggly #517. The company is presently a wholly owned subsidiary of Tri-State.

It is proposed that TSM participate in a financial Transaction which will enable James Edwin Jordan and the Licensee to purchase the Company from Tri-State. Since all the funds being provided to the Company by the Licensee will accrue to the benefit of Tri-State, the transaction falls within the purview of §§ 107.1004(b)(1) and (b)(5) of the Regulations and requires a written exemption from SBA. SBA is considering a request for such exemption.

Pursuant to the provisions of § 107.812 of the Regulations, Mr. Jordan and TSM will each purchase for \$5,000 from Tri-State, fifty percent of the Company's issued and outstanding stock. In addition, TSM will provide approximately \$43,000 in loan funds to the Company. In view of the proposed fifty percent equity interest to be held by TSM, it will be necessary for TSM to furnish SBA with a plan of divestiture of such control position pursuant to § 107.901(d) of the Regulations.

In conjunction with the above financial assistance, the Company has applied for an SBA guaranteed bank loan from the Bank of El Paso. The proceeds of this loan will also be used in the purchase of the inventory and fixtures from TSM.

Notice is further given that any person may, not later than July 2, 1979, submit to SBA in writing, comments on the proposed transaction.

Any such communication should be addressed to: Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this Notice shall be published in a newspaper of general circulation in El Paso, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

Dated: June 18, 1979.

[FR Doc. 79-17936 Filed 6-25-79; 8:45 am]

BILLING CODE 8025-01-M

[Proposed License No. 06/06-0221]

Roger Cox Small Business Investment Co.; Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1979)), under the name of Roger Cox Small Business Investment Co. (Applicant), 4121 Wyoming Boulevard, N.E., Albuquerque, New Mexico 87111, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 et seq.), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors, and shareholders are as follows:

Roger S. Cox, 9312 Galaxia Way, N.E., Albuquerque, N. M. 87111, President, Treasurer, Director, 100 percent shareholder.

Kent L. Moesser, 3001 La Villita Court, NE., Albuquerque, N.M. 87111 Vice President, Director.

Allan L. Brenner, 7300 Bellrose NE., Albuquerque, N.M. 87110, Secretary, Director.

There will be two classes of stock authorized. One million shares of common with a \$1.00 par value and ten thousand shares of preferred with a \$100.00 par value.

Mr. Cox will purchase initially 305,000 shares of the common stock at par, with a resultant initial private paid-in capital of \$305,000. Such private capital will be increased to at least \$500,000 through the sale of common and preferred stock within a reasonable period of time, i.e., one year from the date of licensing.

The Applicant proposes to conduct its operations within the State of New Mexico. Also, the Applicant will establish a diversified investment policy and will, as much as it is practicable, emphasize equity investments.

Matters involved in SBA's consideration of the application include the general business reputation and character of shareholders and management, and the probability of successful operation of the new company in accordance with the Act and Regulations.

Notice is further given that any person may, not later than July 11, 1979, submit to SBA, in writing, comments on the proposed licensing of this company. Any such communications should be addressed to: Associate Administrator

for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published by the Applicant in a newspaper of general circulation in Albuquerque, New Mexico.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: June 18, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[FR Doc. 79-19737 Filed 6-25-79; 8:45 am]

BILLING CODE 8025-01-M

Fishery codes and designation of Regional Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Council
ABS.....	Atlantic Billfishes and Sharks	New England Mid-Atlantic South Atlantic Gulf of Mexico Caribbean
BSA.....	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet.....	North Pacific
CRB.....	Crab (Bering Sea).....	North Pacific
GOA.....	Gulf of Alaska.....	North Pacific
NWA.....	Northwest Atlantic.....	New England Mid-Atlantic
SMT.....	Seamount Groundfish (Pacific Ocean).....	Western Pacific
SNA.....	Snails (Bering Sea).....	North Pacific
WOC.....	Washington, Oregon, California Trawl.....	Pacific

Activity codes specify categories of fishing operations applied for as follows:

Fishing operations	Activity Code
Catching, processing, and other support	1
Processing and other support only	2
Other support only	3

DEPARTMENT OF STATE

[Public Notice 675]

Fishery Conservation and Management Act of 1976; Application for Permits to Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the Federal Register.

Applications have been received from the Union of Soviet Socialist Republics for fishing during 1979 and are reproduced herewith.

Individual vessel applications for fishing 1979 have been received from Japan, Korea, Taiwan and Mexico and are summarized herein.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F37), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, (Telephone: (202) 634-7265).

Dated: June 20, 1979.

Larry L. Snead,

Acting Director, Office of Fisheries Affairs.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
Japan:			
Ryūho Maru No. 38, medium stern trawler	JA-79-0557	BSA, GOA	1
Suzuran Maru, large stern trawler	JA-79-1152	BSA, CRB, GOA, NWA, SNA	3
Korea:			
Ill Woo No. 58, cargo transport	KS-79-0091	BSA	3
Taiwan:			
Highly No. 301, medium stern trawler.....	TW-79-0002	SMT	1
Highly No. 302, medium stern trawler.....	TW-79-0003	SMT	1
Mexico:			
La Penca, large stern trawler	MX-79-0064	NWA	1

[FR Doc. 79-19770 Filed 6-25-79; 8:45 am]

BILLING CODE 4710-09-M

DEPARTMENT OF THE TREASURY

Customs Service

Dextrines and Soluble or Chemically Treated Starches Derived From Potato Starch From the European Community, Preliminary Countervailing Duty Determination

AGENCY: U.S. Customs Service, Treasury Department

ACTION: Preliminary Countervailing Duty Determination

SUMMARY: This notice is to inform the public that a countervailing duty investigation has resulted in a preliminary determination that the European Community and the Government of the Netherlands have given benefits which are considered to be bounties or grants within the meaning of the countervailing duty law on the manufacture, production, or exportation of dextrines and soluble or

chemically treated starches derived from potato starch. A final determination will be made by December 8, 1979. Interested parties are invited to comment on this action.

EFFECTIVE DATE: June 26, 1979.

FOR FURTHER INFORMATION CONTACT:

Stephen Nyschot, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202-566-5492).

SUPPLEMENTARY INFORMATION: On January 30, 1979, a notice of "Receipt of Countervailing Duty Petition and Initiation of Investigation" was published in the Federal Register (44 FR 5971). The notice stated that a petition in satisfactory form was received on December 8, 1978, from the Corn Refiners Association, Inc., alleging that payments conferred by the European Community (EC) upon the manufacture, production, or exportation of dextrines and soluble or chemically treated

starches derived from potato starch constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303) ("the Act"). The EC comprised Belgium, Denmark, the Federal Republic of Germany, France, Ireland, Italy, Luxembourg, the Netherlands, and the United Kingdom. Imports covered by this investigation are classified under item 493.30, Tariff Schedules of the United States (TSUS).

On the basis of an investigation conducted pursuant to section 159.47(c), Customs Regulations (19 CFR 159.47(c)), it has been preliminarily determined that benefits available to EC producers of dextrines and soluble or chemically treated starches derived from potato starch constitute bounties or grants within the meaning of section 303 of the Act. These benefits are in the form of payments made to processors of potato starch under the EC's Common Agricultural Policy (CAP), by which the price level of potato starch is supported.

Under the EC plan, a minimum price has been established for the produce of potato farmers. A "production refund payment" is made to processors which make contracts in accordance with the minimum price. An additional account, known as a "premium payment," has been paid to processors since August 1978. No criteria beyond those established for the production refund payment must be satisfied to receive the premium. These payments are presently estimated to confer a benefit of 10.1% *ad valorem* on the products concerned.

The petitioner also alleged that the sole potato starch producer in the Netherlands received financial assistance from its government in order to comply with environmental standards. The investigation has determined that financing has been provided by the Government of the Netherlands to the identified potato starch producer under a general government program for regional economic development and not specifically for the purposes alleged by the petitioner. The financial aid provided by the Government of the Netherlands confers a benefit of 3.1% *ad valorem* on the recipient company and is preliminarily determined to constitute a bounty or grant. More information will be sought regarding the scope, purposes, and benefits of this program before a final determination is made.

Where the *ad valorem* size of the benefit conferred is small, it has been the policy of the Treasury to consider whether a preponderance of merchandise benefiting from domestic subsidies of the types described above

was exported before treating the benefit as a bounty or grant within the meaning of the countervailing duty law. However, the size of the benefits which appear to exist is sufficiently great that notwithstanding the fact that a preponderance of the production is not exported, such benefits are preliminarily determined to constitute bounties or grants.

Accordingly, it is preliminarily determined that bounties or grants, within the meaning of section 303 of the Act, are being paid or bestowed, directly or indirectly, upon the manufacture, production, or exportation of the subject merchandise from the EC. A final determination in this case must be made no later than December 8, 1979.

Before a final determination is made, consideration will be given to any relevant data, views or arguments submitted in writing with respect to this preliminary determination. Submissions should be addressed to the Commissioner of Customs, 1301 Constitution Avenue, NW., Washington, D.C. 20229, in time to be received by his office no later than 30 days after publication of this notice in the *Federal Register*. Any request to present views orally should accompany such submission, and a copy of all submissions should be delivered to any counsel who has heretofore represented any party to these proceedings.

This preliminary determination is published pursuant to section 303(a), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order No. 101-5, May 16, 1979, the provisions of Treasury Department Order 165, Revised, November 2, 1954, and section 159.47 of the Customs Regulations (19 CFR 159.47), insofar as they pertain to the issuance of a preliminary countervailing duty determination by the Commissioner of Customs, are hereby waived.

Robert H. Mundheim,
General Counsel of the Treasury.

June 19, 1979.

[FR Doc. 79-19782 Filed 6-25-79; 8:45 am]

BILLING CODE 4810-22-M

Office of the Secretary

[Department Circular; Public Debt Series No. 14-79]

Auction of Treasury Bonds of 1994

June 21, 1979.

1. Invitation for Tenders

1.1. The Secretary of the Treasury,

under the authority of the Second Liberty Bond Act, as amended, invites tenders for approximately \$1,500,000,000 of United States securities, designated Treasury Bonds of 1994 (CUSIP No. 912810 CH 9). The securities will be sold at auction with bidding on the basis of yield. Payment will be required at the price equivalent of the bid yield of each accepted tender. The interest rate on the securities and the price equivalent of each accepted bid will be determined in the manner described below. Additional amounts of the securities may be issued for cash to Federal Reserve Banks as agents of foreign and international monetary authorities.

2. Description of Securities

2.1. The securities will be dated July 9, 1979, and will bear interest from that date, payable on a semiannual basis on February 15, 1980, and each subsequent 6 months on August 15 and February 15, until the principal becomes payable. They will mature August 15, 1994, and will not be subject to call for redemption prior to maturity.

2.2. The income derived from the securities is subject to all taxes imposed under the Internal Revenue Code of 1954. The securities are subject to estate, inheritance, gift or other excise taxes, whether Federal or State, but are exempt from all taxation now or hereafter imposed on the principal or interest thereof by any State, any possession of the United States, or any local taxing authority.

2.3. The securities will be acceptable to secure deposits of public monies. They will not be acceptable in payment of taxes.

2.4. Bearer securities with interest coupons attached, and securities registered as principal and interest, will be issued in denominations of \$1,000, \$5,000, \$10,000, \$100,000, and \$1,000,000. Book-entry securities will be available to eligible bidders in multiples of those amounts. Interchanges of securities of different denominations and of coupon, registered and book-entry securities, and the transfer of registered securities will be permitted.

2.5. The Department of the Treasury's general regulations governing United States securities apply to the securities offered in this circular. These general regulations include those currently in

effect, as well as those that may be issued at a later date.

3. Sale Procedures

3.1. Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Daylight Saving time, Wednesday, June 27, 1979. Noncompetitive tenders as defined below will be considered timely if postmarked no later than Tuesday, June 26, 1979.

3.2. Each tender must state the face amount of securities bid for. The minimum bid is \$1,000 and larger bids must be in multiples of that amount. Competitive tenders must also show the yield desired, expressed in terms of an annual yield with two decimals, e.g., 7.11%. Common fractions may not be used. Noncompetitive tenders must show the term "noncompetitive" on the tender form in lieu of a specified yield. No bidder may submit more than one noncompetitive tender and the amount may not exceed \$1,000,000.

3.3. All bidders must certify that they have not made and will not make any agreements for the sale or purchase of any securities of this issue prior to the deadline established in Section 3.1. for receipt of tenders. Those authorized to submit tenders for the account of customers will be required to certify that such tenders are submitted under the same conditions, agreements, and certifications as tenders submitted directly by bidders for their own account.

3.4. Commercial banks, which for this purpose are defined as banks accepting demand deposits, and primary dealers, which for this purpose are defined as dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, may submit tenders for account of customers if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account.

3.5. Tenders will be received without deposit for their own account from commercial banks and other banking institutions; primary dealers, as defined above; Federally-insured savings and loan associations; States, and their political subdivisions or instrumentalities; public pension and retirement and other public funds; international organizations in which the United States holds membership; foreign central banks and foreign states; Federal Reserve Banks; and Government

accounts. Tenders from others must be accompanied by a deposit of 5% of the face amount of securities applied for (in the form of cash, maturing Treasury securities or readily collectible checks), or by a guarantee of such deposit by a commercial bank or a primary dealer.

3.6. Immediately after the closing hour, tenders will be opened, followed by a public announcement of the amount and yield range of accepted bids. Subject to the reservations expressed in Section 4, noncompetitive tenders will be accepted in full, and then competitive tenders will be accepted, starting with those at the lowest yields, through successively higher yields to the extent required to attain the amount offered. Tenders at the highest accepted yield will be prorated if necessary. After the determination is made as to which tenders are accepted, a coupon rate will be established, on the basis of a $\frac{1}{2}$ of one percent increment, which results in an equivalent average accepted price close to 100.000 and a lowest accepted price above the original issue discount limit of 96.250. That rate of interest will be paid on all of the securities. Based on such interest rate, the price on each competitive tender allotted will be determined and each successful competitive bidder will be required to pay the price equivalent to the yield bid. Those submitting noncompetitive tenders will pay the price equivalent to the weighted average yield of accepted competitive tenders. Price calculations will be carried to three decimal places on the basis of price per hundred, e.g., 99.923, and the determinations of the Secretary of the Treasury shall be final. If the amount of noncompetitive tenders received would absorb all or most of the offering, competitive tenders will be accepted in an amount sufficient to provide a fair determination of the yield. Tenders received from Government accounts and Federal Reserve Banks will be accepted at the price equivalent to the weighted average yield of accepted competitive tenders.

3.7. Competitive bidders will be advised of the acceptance or rejection of their tenders. Those submitting noncompetitive tenders will only be notified if the tender is not accepted in full, or when the price is over par.

4. Reservations

4.1. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders in whole or in part, to allot more or less than the amount of securities specified in Section 1, and to make different percentage allotments to various classes of applicants when the Secretary considers

it in the public interest. The Secretary's action under this Section is final.

5. Payment and Delivery

5.1. Settlement for allotted securities must be made or completed on or before Monday, July 9, 1979, at the Federal Reserve Bank or Branch or at the Bureau of the Public Debt, wherever the tender was submitted. Payment must be in cash; in other funds immediately available to the Treasury; in Treasury bills, notes or bonds (with all coupons detached) maturing on or before the settlement date but which are not overdue as defined in the general regulations governing United States securities; or by check drawn to the order of the institution to which the tender was submitted, which must be received at such institution no later than:

(a) Thursday, July 5, 1979, if the check is drawn on a bank in the Federal Reserve District of the institution to which the check is submitted (the Fifth Federal Reserve District in case of the Bureau of the Public Debt), or

(b) Tuesday, July 3, 1979, if the check is drawn on a bank in another Federal Reserve District.

Checks received after the dates set forth in the preceding sentence will not be accepted unless they are payable at the applicable Federal Reserve Bank. Payment will not be considered complete where registered securities are requested if the appropriate identifying number as required on tax returns and other documents submitted to the Internal Revenue Service (an individual's social security number or an employer identification number) is not furnished. When payment is made in securities, a cash adjustment will be made to or required of the bidder for any difference between the face amount of securities presented and the amount payable on the securities allotted.

5.2. In every case where full payment is not completed on time, the deposit submitted with the tender, up to 5 percent of the face amount of securities allotted, shall, at the discretion of the Secretary of the Treasury, be forfeited to the United States.

5.3. Registered securities tendered as deposits and in payment for allotted securities are not required to be assigned if the new securities are to be registered in the same names and forms as appear in the registrations or assignments of the securities surrendered. When the new securities are to be registered in names and forms different from those in the inscriptions or assignments of the securities presented, the assignment should be to

"The Secretary of the Treasury for (securities offered by this circular) in the name of (name and taxpayer identifying number)." If new securities in coupon form are desired, the assignment should be to "The Secretary of the Treasury for coupon (securities offered by this circular) to be delivered to (name and address)." Specific instructions for the issuance and delivery of the new securities, signed by the owner or authorized representative, must accompany the securities presented. Securities tendered in payment should be surrendered to the Federal Reserve Bank or Branch or to the Bureau of the Public Debt, Washington, D.C. 20226. The securities must be delivered at the expense and risk of the holder.

5.4. If bearer securities are not ready for delivery on the settlement date, purchasers may elect to receive interim certificates. These certificates shall be issued in bearer form and shall be exchangeable for definitive securities of this issue, when such securities are available, at any Federal Reserve Bank or Branch or at the Bureau of the Public Debt, Washington, D.C. 20226. The interim certificates must be returned at the risk and expense of the holder.

5.5. Delivery of securities in registered form will be made after the requested form of registration has been validated, the registered interest account has been established, and the securities have been inscribed.

6. General Provisions

6.1. As fiscal agents of the United States, Federal Reserve Banks are authorized and requested to receive tenders, to make allotments as directed by the Secretary of the Treasury, to issue such notices as may be necessary, to receive payment for and make delivery of securities on full-paid allotments, and to issue interim certificates pending delivery of the definitive securities.

6.2. The Secretary of the Treasury may at any time issue supplemental or amendatory rules and regulations governing the offering. Public announcement of such changes will be promptly provided.

Paul H. Taylor,

Fiscal Assistant Secretary.

Supplementary Statement

The announcement set forth above does not meet the Department's criteria for significant regulations and, accordingly, may be published without compliance with the Departmental procedures applicable to such regulations.

[FR Doc. 79-19859 Filed 6-22-79; 8:45 am]

BILLING CODE 4810-40-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

PENSION BENEFIT GUARANTY CORPORATION

Proposed Revision of Certain Annual Information Return/Reports

AGENCIES: Department of the Treasury, Department of Labor, Pension Benefit Guaranty Corporation.

ACTION: Notice of proposed revision of forms.

SUMMARY: This document contains a proposal of the Internal Revenue Service, Department of Labor, and Pension Benefit Guaranty Corporation of a revised form series to be used in connection with a contemplated transition from annual to triennial filing of the annual return/report for certain plans under the Employee Retirement Income Security Act of 1974 (ERISA). These triennial return/reports and related registration statements would be filed by administrators of pension or welfare benefit plans with fewer than 100 participants at the beginning of the plan year.

DATES: Written comments should be submitted on or before August 21, 1979. These form changes, if adopted, will be effective for plan years beginning on or after January 1, 1979.

ADDRESSES: Written comments (six copies) should be sent to Chairman, Tax Forms Coordinating Committee, Room 5577, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: ERISA Annual Reporting Revisions. All written comments should be clearly referenced to the relevant form, question, and related instructions. All written comments will be available for public inspection in the Public Reading Room, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224.

Copies of the proposed forms may be obtained by writing or calling the chairman of the Tax Forms Coordinating Committee, 202-566-6150 (not a toll free number).

FOR FURTHER INFORMATION CONTACT:

Lynn Murray, 202-566-3695 or Milt Grant, 202-566-4528, Internal Revenue Service, for questions regarding item 6 of the 5500-R and items 25, 26, 27 and 28 of the 5500-C.

John Christensen, Department of Labor, 202-523-7901, for questions regarding item 7 of the 5500-R; items 13,

18, 19, 20, 21, 22 and 23 of the 5500-C; and items 14, 17, 18, 21, 22 and 23 of the 5500-K.

Richard Petta, Pension Benefit Guaranty Corporation, 202-254-4716, for questions regarding item 6 of the 5500-R; items 8 and 11 of the 5500-C; and item 13 of the 5500-K relating to reportable events or plan termination information.

The telephone numbers given above are not toll free numbers.

SUPPLEMENTARY INFORMATION: On August 10, 1978, a series of actions to reorganize and reform the regulation of employee benefit plans was announced at the White House. As part of that reform, the Internal Revenue Service, Department of Labor, and Pension Benefit Guaranty Corporation have under consideration the substitution, for the current system of annual financial reporting, of a system by which certain plans are required to file a complete annual report only every 3 years and a registration form in the other two years. In that connection the Agencies propose adoption of the following three forms and accompanying instructions:

Form 5500-R, Registration Statement of Employee Benefit Plan, with fewer than 100 participants.

Form 5500-C, Return/Report of Employee Benefit Plan, with fewer than 100 participants.

Form 5500-K, Return/Report of Employee Pension Benefit Plan for Sole Proprietors and Partnerships with fewer than 100 Participants and at least one owner employee.

These proposed revised forms, if adopted, would replace current Form 5500-C and Form 5500-K. The new 5500-C and 5500-K would be filed only once every three years. In each of the two intervening years, Form 5500-R—a one page registration statement—would be filed.

The revised Forms 5500-C and 5500-K are compliance oriented return/reports. These forms have been revised to provide information that each of the Agencies believes is necessary to achieve its enforcement objectives. The 5500-R is designed to ensure that the Agencies receive every year certain minimal information to permit monitoring of potential violations of the law.

It is expected that the revised Forms 5500-C and K will generally result in somewhat greater reporting by plans in the year the complete return/report is filed, and in somewhat less reporting in the other two years. It is, accordingly, expected that over the three year cycle there would be a net reduction in reporting and paperwork by the affected plans.

Because the adoption of the proposed forms would substantially change current reporting requirements for plans with fewer than 100 participants, the Agencies are publishing the proposed forms and instructions in the **Federal Register** in order to provide interested persons with an opportunity to submit written comments and suggestions for improving the forms prior to adoption.

If the proposals contained herein are adopted, the Department of Labor contemplates adopting conforming changes to its existing reporting and disclosure regulations in order to effect the transition to a cyclical reporting system.

It should be noted that the proposals contained herein do not affect Forms 5500 and 5500-G. Plans required to file these forms should continue to file them on an annual basis.

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive appearing in the **Federal Register** for Wednesday, November 8, 1978.

The Department of Labor (Department) has determined that this document is not "significant" under the criteria prescribed by Executive Order 12044 and the Department's Final Guidelines implementing the Order (44 FR 5570, January 26, 1979).

The Pension Benefit Guaranty Corporation (PBGC) has determined that this document is not "significant" under the criteria prescribed by Executive Order 12044 and the PBGC's Statement of Policy and Procedures implementing the Order (43 FR 58237, December 13, 1978).

Accordingly, pursuant to the authority in sections 104, 109(a) and 4065 of ERISA, and section 6058 of the Internal Revenue Code, it is proposed that annual return/report Forms 5500-C and 5500-K and the instructions thereto be amended, and that Form 5500-R and the instructions thereto be adopted, as set forth below.

Signed at Washington, D.C. this 18 day of June 1979.

S. A. Winborne,

Assistant Commissioner (Employee Plans and Exempt Organizations), Internal Revenue Service.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Department of Labor.

Matthew M. Lind,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 79-19584 Filed 6-25-79; 8:45 am]

BILLING CODE 7708-01-M

BILLING CODE 4830-01-M

BILLING CODE 4510-29-M

Form **5500-R**Department of the Treasury
Internal Revenue ServiceDepartment of Labor
Pension and Welfare Benefit Programs
Pension Benefit Guaranty Corporation**Registration Statement of Employee Benefit Plan**

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and section 6058 of the Internal Revenue Code, referred to as the Code.

1979This Form is
Open to Public
Inspection

For the calendar plan year 1979 or fiscal plan year beginning , 1979 and ending , 19

▶ File original of this form completed in ink or type. ▶ If any item does not apply, enter "N/A."

▶ File this form for the plan years that Form 5500-C or Form 5500-K are not required to be filed.

1 (a) Name of plan sponsor (employer if for a single employer plan)	1 (b) Employer identification number
Address (number and street)	1 (c) Sponsor's telephone number ()
City or town, State and ZIP code	1 (d) Last return/report filed for this plan? ☐ 5500 ☐ 5500-C ☐ 5500-K
2 (a) Name of plan administrator (if other than plan sponsor)	1 (e) The last return/report was filed for the plan year ended ▶
Address (number and street)	2 (b) Administrator's employer identification no.
City or town, State and ZIP code	2 (c) Administrator's telephone number ()

3 Name, address and identification number of ☐ plan sponsor and/or ☐ plan administrator as they appeared on the last return/report filed for this plan if not the same as in 1 or 2 above ▶

4 (a) Name of plan ▶	4 (b) Effective date of plan ▶
5 Type of plan: (a) ☐ Defined benefit (b) ☐ Defined contribution (c) ☐ Welfare benefit (d) ☐ Other (specify) ▶	4 (c) Enter three digit plan number ▶

6 Plan information:	Yes	No
(a) Was this plan terminated during this plan year or any prior plan year?		
(b) If "Yes," were all trust assets distributed to participants or beneficiaries or transferred to another plan?		
(c) Was this plan amended to reduce benefits during this plan year?		
(d) If this is a defined benefit plan or a defined contribution plan subject to the minimum funding standards, has the plan experienced a funding deficiency in this plan year?		
(e) If (d) is "Yes," has application been made to IRS for a waiver?		
(f) If (d) is "Yes," and (e) is "No," have you filed Form 5330 to pay the excise tax?		
(g) Did one or more reportable events or other events requiring notice to the Pension Benefit Guaranty Corporation occur during this plan year?		
(h) Is this plan covered under the Pension Benefit Guaranty Corporation termination insurance program? ☐ Yes ☐ No ☐ Not determined		
(i) Number of active participants at beginning of the plan year? ▶		

7 Fiduciary information during this plan year:	Yes	No
(a) Did any plan fiduciary who is an officer or employee of the plan sponsor receive compensation from the plan for his or her services to the plan?		
(b) Has the plan acquired any employer real property or employer securities?		
(c) Did the plan receive any non-cash contributions?		
(d) Has any employer owed the plan contributions which were more than three months past due under the terms of the plan?		
(e) Has any plan fiduciary had either a financial interest in any party providing services to the plan worth more than \$1,000, or received anything of value from such a party?		
(f) Were any loans by the plan or fixed income obligations due the plan in default as of the close of the plan year or classified as uncollectable?		
(g) Were any leases, to which the plan was a party, in default or classified as uncollectable?		
(h) (i) Did the plan lend plan assets to, borrow from, or guarantee any indebtedness of a party-in-interest?		
(ii) Has the plan purchased any assets from or sold any assets to a party-in-interest?		
(iii) Has the plan leased any property to a party-in-interest or leased any property from a party-in-interest?		

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct and complete.

Date ▶ Signature of employer/plan sponsor ▶

Date ▶ Signature of plan administrator ▶

Instructions

NOTICE

Form 5500-R is only to be used for plan years beginning in 1979.

Schedule A (Form 5500), Insurance Information, and Schedule B (Form 5500), Actuarial Information, are not required to be attached to Form 5500-R.

Purpose of Form

This form is an interim registration statement to be filed by employee benefit plans who are not required to file Form 5500, Form 5500-C, or Form 5500-K for their current plan year.

General Instructions

A. Who Must File

Each plan administrator or sponsor of an ERISA covered employee benefit plan with fewer than 100 participants at the beginning of the plan year must periodically file Form 5500-R.

B. When to File

Form 5500-R is generally to be filed per the following schedule:

Last digit of plan sponsor's employer identification number is—	File Form 5500-R for—
2, 3, 5, 6, 8, or 9	1979
1, 3, 4, 6, 7, 9, or 0	1980
1, 2, 4, 5, 7, 8, or 0	1981

Exceptions to Above Schedule.—Do not file Form 5500-R for any plan year which is:

- (1) the first year the plan is in existence, or
- (2) the year a final return would be filed.

Instead, file the applicable Form 5500-C or Form 5500-K.

C. Where to File

All forms and schedules should be filed with the Internal Revenue Service Center indicated below.

If the principal office of the plan sponsor or the plan administrator is located in	Use the following Internal Revenue Service Center address
New Jersey, New York City and counties of Nassau, Rockland, Suffolk, and Westchester	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501
Alabama, Florida, Georgia, Mississippi, South Carolina	Atlanta, GA 31101
Michigan, Ohio	Cincinnati, OH 45999

Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, Texas	Austin, TX 73301
Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
Illinois, Iowa, Missouri, Wisconsin	Kansas City, MO 64999
California, Hawaii	Fresno, CA 93888
Indiana, Kentucky, North Carolina, Tennessee, Virginia, West Virginia	Memphis, TN 37501
Delaware, District of Columbia, Maryland, Pennsylvania	Philadelphia, PA 19255

If you have no legal residence, principal place of business or principal office or agency in any Internal Revenue District, file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

D. Definitions

The following definitions are to assist the filer and are only for understanding this form.

(1) Fiduciary.—A person who exercises discretionary control or authority over the management of the plan or discretionary control or authority over the management of plan assets or provides investment advice for a fee, whether direct or indirect, or has discretionary authority or responsibility for plan administration.

(2) Employer Real Property.—Real property (and related personal property) which is leased to an employer of employees covered by the plan, or to an affiliate of such employer.

(3) Employer Security.—A security issued by an employer of employees covered by the plan.

(4) Party-in-interest.—The term "party-in-interest" (for purposes of this form, party-in-interest is deemed to include a disqualified person—see section 4975(e)(2) of the Code) means, as to an employee benefit plan:

- (a) any fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel or employee of such employee benefit plan;
- (b) a person providing services to such plan;
- (c) an employer any of whose employees are covered by such plan;
- (d) an employee organization any of whose members are covered by such plan;
- (e) an owner, direct or indirect, of 50% or more of—(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, (ii) the capital interest or the profits in-

terest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (c) or (d);

- (f) a relative of any individual described in subparagraph (a), (b), (c) or (e);
- (g) a corporation, partnership, or trust or estate of which (or in which) 50% or more of—(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (a), (b), (c), (d) or (e);
- (h) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder directly or indirectly, of a person described in subparagraph (b), (c), (d), (e) or (g), or of the employee benefit plan; or
- (i) a 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (b), (c), (d), (e) or (g).

E. Signature

All returns/reports must be signed by the plan administrator. Also, a return/report filed for a single employer plan must be signed by the employer.

When the plan sponsor or the plan administrator is a joint employer-union board or committee, at least one employer representative and one union representative must sign.

Caution: ERISA imposes penalties for failure to furnish complete information and failure to file statements and returns/reports.

Specific Instructions

Generally items 1 through 5 should be completed in a manner corresponding to items 1 through 5 on your previously filed Form 5500-C or 5500-K.

Line 1(d).—Check box to show which of these return/reports was filed for your plan prior to filing Form 5500-R.

Line 1(e).—Enter the month, day, and year the plan year ended for the last return/report indicated in 1(d).

Form 5500-C
 Department of the Treasury
 Internal Revenue Service
 Department of Labor
 Pension and Welfare Benefit Programs
 Pension Benefit Guaranty Corporation

Return/Report of Employee Benefit Plan

(With fewer than 100 participants)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 and sections 6057(b) and 6058(a) of the Internal Revenue Code, referred to as the Code.

1979

This Form is
Open to Public
Inspection

For the calendar plan year 1979 or fiscal plan year beginning _____, 1979 and ending _____, 19__

File original of this form, including schedules and attachments, completed in ink or type. If any item does not apply, enter "N/A."

- ▶ File this form for the initial plan year and for the plan year in which a final return/report would be filed. This form should be filed for the intervening years according to the schedule included under What to File in the instructions.
- ▶ Do not file this form for Keogh (H.R. 10) plans with fewer than 100 participants and with at least one owner-employee participant. File Form 5500-K instead.
- ▶ Governmental plans and church plans (not electing coverage under section 410(d) of the Code). Do not file this form. File Form 5500-G instead.
- ▶ Pension benefit plans, unless otherwise excepted, complete all items. Annuity arrangements of certain exempt organizations, and individual retirement account trusts of employers complete only items 1 through 6, 8 and 9.
- ▶ Certain welfare benefit plans are not required to file this form—see instructions.
- ▶ Welfare benefit plans required to file this form do not complete items 14, 15, and 25 through 28.
- ▶ Plan number—Your 3 digit plan number must be entered in item 5(c); see instruction 5(c) for explanation of "plan number."

1 (a) Name of plan sponsor (employer if for a single employer plan) Address (number and street) City or town, State and ZIP code	1 (b) Employer identification number 1 (c) Telephone number of sponsor () 1 (d) Employer taxable year ends Month Day Year 19 1 (e) Business code number
2 (a) Name of plan administrator (if other than plan sponsor) Address (number and street) City or town, State and ZIP code	2 (b) Administrator's employer identification no. 2 (c) Telephone number of administrator ()

3 Name, address and identification number of (check applicable box) ☐ plan sponsor and/or ☐ plan administrator as they appeared on the last return/report filed for this plan if not the same as in 1 or 2 above ▶

4 Check appropriate box to indicate the type of plan entity (check only one box):
 (a) ☐ Single-employer plan (c) ☐ Multiemployer plan (e) ☐ Multiple-employer plan (other)
 (b) ☐ Plan of controlled group of corporations (d) ☐ Multiple-employer-collectively-bargained plan
 or common control employers

5 (a) (i) Name of plan ▶ (ii) ☐ Check if name of plan changed since the last Form 5500-C return/report. (iii) ☐ Check if plan year was changed since last Form 5500-C return/report.	5 (b) Effective date of plan 5 (c) Enter three digit plan number ▶
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6 Check at least one item in (a) or (b) and applicable items in (c):

(a) Welfare benefit plan: (i) ☐ Health insurance (ii) ☐ Life insurance (iii) ☐ Supplemental unemployment
 (iv) ☐ Other (specify) ▶

(b) Pension benefit plan:
 (i) Defined benefit plan—(Indicate type of defined benefit plan below):
 (A) ☐ Fixed benefit (B) ☐ Unit benefit (C) ☐ Flat benefit (D) ☐ Other (specify) ▶
 (ii) Defined contribution plan—(Indicate type of defined contribution plan below):
 (A) ☐ Profit-sharing (B) ☐ Stock bonus (C) ☐ Target benefit (D) ☐ Other money purchase
 (E) ☐ Other (specify) ▶
 (iii) ☐ Defined benefit plan with benefits based partly on balance of separate account of participant (section 414(k) of the Code)
 (iv) ☐ Annuity arrangement of a certain exempt organization (section 403(b)(1) of the Code)
 (v) ☐ Custodial account for regulated investment company stock (section 403(b)(7) of the Code)
 (vi) ☐ Trust treated as an individual retirement account (section 408(c) of the Code)
 (vii) ☐ Other (specify) ▶

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ Signature of employer/plan sponsor ▶

Date ▶ Signature of plan administrator ▶

Form 5500-C (1979)

Page 2

6 (Continued)

- (c) Other plan features: (i) ☐ Thrift-savings (ii) ☐ Keogh (H.R. 10) plan (iii) ☐ Employee controlled account plan (iv) ☐ Employee stock ownership plan as part of a qualified plan (check only if you checked a box in (b)(ii) on page 1)

7 Plan amendment information (welfare plans complete only (a), (b)(i) and (c)):

- (a) Were any plan amendments to this plan adopted since the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan?
- (b) If "Yes," (i) And if material modifications were made, have summary descriptions of the modifications—
- (A) Been sent to plan participants?
- (B) Been filed with DOL?
- (ii) Does any such amendment result in the reduction of the accrued benefit of any participant under the plan?
- (iii) Will amendment result in a reduction of current or future benefits?
- (iv) Has a determination letter been received from IRS with respect to such amendment?
- (c) Enter the date the most recent amendment was adopted

Yes	No

8 Plan termination information:

- (a) Was this plan terminated during this plan year or any prior plan year?
- (b) If "Yes," were all trust assets distributed to participants or beneficiaries or transferred to another plan?
- (c) If item 11(a) is to be checked "Yes" and 8(a) is "Yes," has a notice of intent to terminate been filed with PBGC?

Yes	No

9 (a) Was this plan merged or consolidated into another plan or were assets or liabilities transferred to another plan since the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan?

If "Yes," identify other plan(s):

(c) Employer identification number(s)

(d) Plan number(s)

(b) Name of plan(s) ▶

(e) Has Form 5310 been filed with IRS?

☐ Yes ☐ No

10 Indicate funding arrangement:

- (a) ☐ Trust (b) ☐ Fully insured (c) ☐ Combination (d) ☐ Other (specify) ▶

(e) If (b) or (c) are checked enter number of Schedule A's (Form 5500) which are attached

11 (a) Is the plan covered under the Pension Benefit Guaranty Corporation termination

insurance program? ☐ Yes ☐ No ☐ Not determined

If "Yes," list employer identification number and/or plan number used in any filing with PBGC if the number was different than the numbers listed in item 1(b) or 5(c) ▶

- (b) If (a) is "Yes," did one or more reportable events or other events requiring notice to the Pension Benefit Guaranty Corporation occur since the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan?

Yes	No

If "Yes," complete (i) through (vii) below:

- (i) A decrease in active participants to the extent specified in the instructions?
- (ii) An inability to pay benefits when due?
- (iii) A distribution to a substantial owner to the extent specified in the instructions?
- (iv) A cessation of operations at a facility to the extent specified in the instructions?
- (v) A withdrawal of a substantial employer?
- (vi) An amendment which may cause the benefit payable to any participant to be decreased?
- (vii) Other?

Yes	No

12 (a) Surety company name ▶

(b) Amount of bond coverage ▶ \$

- (c) Was any loss discovered since the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan?

Yes	No

13 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan:

- (a) Has there been any change in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian?

If "Yes," explain and include the name, position, address and telephone number of the individual who left or was removed by the plan ▶

Yes	No

- (b) Have any insurance policies or annuities been replaced?

(c) Indicate the amount of insurance sales commissions paid to agents and brokers for the:

(i) preceding year ▶ \$, (ii) the second preceding year ▶ \$

(d) Indicate the amount of administrative expenses for the:

(i) preceding year ▶ \$, (ii) the second preceding year ▶ \$

- (e) Did the plan utilize: (i) ☐ Individual policies or annuities (ii) ☐ Group policies or annuities (iii) ☐ Both

Yes	No

Form 5500-C (1979)

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	Yes	No
14 (a) Is this a defined benefit plan subject to the minimum funding standards for this plan year?		
If "Yes," attach Schedule B (Form 5500).		
(b) Is this a defined contribution plan, i.e., money purchase or target benefit, subject to the minimum funding standards (if a waiver was granted see instructions)?		
If "Yes," complete (i), (ii) and (iii) below:		
(i) Amount of employer contribution required for the plan year	\$	
(ii) Amount of contribution paid by the employer for the plan year under section 412 of the Code	\$	
Enter date of last payment by employer ► Month Day Year		
(iii) Funding deficiency, excess, if any, of (i) over (ii). (File Form 5330 to pay the tax on the deficiency.)	\$	
15 Is this plan an adoption of a:		
(a) ☐ Master/prototype, (b) ☐ Field prototype, (c) ☐ Pattern, (d) ☐ Model plan, or (e) ☐ Bond purchase plan? .		
If "Yes," enter the four or eight digit IRS serial number (see instructions) ►		

- 16 Plan assets and liabilities at the beginning and the end of the current plan year (list all assets and liabilities at current value). A fully insured welfare plan or a pension plan with no trust and which is funded entirely by allocated insurance contracts which fully guarantee the amount of benefit payments should check the box and not complete this item ☐

Note: Include all plan assets and liabilities of a trust or separately maintained fund. If more than one trust/fund, report on a combined basis. Include all insurance values except for the value of that portion of an allocated insurance contract which fully guarantees the amount of benefit payments. Round off amounts to nearest dollar. If you have no assets to report enter zero on line 16(g).

Assets	a. Beginning of year	b. End of year
(a) Cash—		
(i) Interest bearing		
(ii) Non-interest bearing		
(b) Receivables		
(c) Investments—		
(i) Government securities		
(ii) Pooled funds/mutual funds		
(iii) Corporate (debt and equity instruments)		
(iv) Real estate and mortgages		
(v) Other		
(d) Buildings and other depreciable property		
(e) Unallocated insurance contracts		
(f) Other assets		
(g) Total assets, sum of (a) through (f)		
Liabilities and Net assets		
(h) Payables		
(i) Acquisition indebtedness		
(j) Other liabilities		
(k) Total liabilities, sum of (h) through (j)		
(l) Net assets, (g) minus (k)		

- 17 Plan income, expenses and changes in net assets during the plan year. Include all income and expense of a trust(s) or separately maintained fund(s) including any payments made for allocated insurance contracts. Round amounts to nearest dollar.

	a. Amount	b. Total
(a) Contributions received or receivable in cash from—		
(i) Employer(s) (including contributions on behalf of self-employed individuals)		
(ii) Employees		
(iii) Others		
(b) Non-cash contributions (specify nature and by whom made) ►		
(c) Earnings from investments (interest, dividends, rents, royalties)		
(d) Net realized gain (loss) on sale or exchange of assets		
(e) Other income (specify) ►		
(f) Total income, sum of (a) through (e)		
(g) Distribution of benefits and payments to provide benefits—		
(i) Directly to participants or their beneficiaries		
(ii) To insurance carrier or similar organization for provision of benefits (including prepaid medical plans)		
(iii) To other organizations or individuals providing welfare benefits		

Form 5500-C (1979)

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17 (Continued)

	a. Amount	b. Total
(h) Interest expense		
(i) Administrative expenses (salaries, fees, commissions, insurance premiums)		
(j) Other expenses (specify) ▶		
(k) Total expenses, sum of (g) through (j)		
(l) Net income, (f) minus (k)		
(m) Changes in net assets—		
(i) Unrealized appreciation (depreciation) of assets		
(ii) Other changes (specify) ▶		
(n) Net increase (decrease) in net assets for the year (l) plus (m)		
(o) Net assets at beginning of year (line 16(l), column (a))		
(p) Net assets at end of year, (n) plus (o) (equals line 16(l), column (b))		

- 18 (a) What percentage of plan assets are loaned to a party-in-interest? %
 (b) What percentage of plan assets are invested in securities issued by a party-in-interest? %
 (c) What percentage of plan assets are invested in real estate which is leased by a party-in-interest? %

19 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan:

- (a) Did any person who rendered services to the plan receive, directly or indirectly, compensation from the plan? Yes No
 (b) Other than transactions described in (a) or the exceptions outlined in the instructions, were there any transactions, directly or indirectly, between the plan and a party-in-interest? Yes No
 If (a) or (b) is checked "Yes," see specific instructions.

20 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan:

- (a) Has the plan granted an extension on any loan for which prior to the granting of an extension, it has not received all the principal and interest payments due under the terms of the loan? Yes No
 (b) Has the plan granted an extension of time or renewal for the payment of any obligation owed to it which amounts to more than 10% of the plan assets? Yes No
 (c) Did the plan have any investment of the type reportable under item 16(c)(iv) or (v) which exceeded 15% of plan assets in either category? Yes No
 (d) Did the plan make loans to or investments in a single enterprise (other than the United States Government) which exceeded 15% of plan assets? Yes No
 (e) Has the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the assets of the plan? Yes No

21 During the plan year covered by this return:

- (a) Did any plan fiduciary who is an officer or an employee of the plan sponsor receive compensation from the plan for his or her services to the plan? Yes No
 (b) Has the plan acquired any employer real property or employer securities? Yes No
 (c) Has any plan fiduciary had either a financial interest in any party providing services to the plan worth more than \$1,000, or received anything of value from such a party? Yes No
 (d) Has any employer owed the plan contributions which were more than three months past due under the terms of the plan? Yes No
 (e) Were any loans by the plan or fixed income obligations due the plan in default, as of the close of the plan year or classified as uncollectable? Yes No
 (f) Were any leases to which the plan was a party in default or classified as uncollectable? Yes No

22 Who is the plan's designated agent for legal process ▶

23 Give the name and address of each fiduciary (including trustees) to the plan ▶

- 24 (a) Total participants: (i) Beginning of plan year ▶ (ii) End of plan year ▶ Yes No
 (b) Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan: has any participant(s) separated from service with a deferred benefit for which a Schedule SSA (Form 5500) is required to be attached to this form (if "Yes," see instructions)? Yes No

Form 5500-C (1979)

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25 Number of employees and participants as of the end of the plan year (welfare plans DO NOT complete this item).

(a) Does the plan purport to satisfy the percentage tests of section 410(b)(1)(A) ☐ Yes ☐ No

If (a) is "Yes," complete the total column only for item (b) and complete all columns for items (c) and (d). If (a) is "No," complete all columns for all line items.

		Compensation Ranges			
		Top 3rd	Middle 3rd	Bottom 3rd	Total
(b) (i)	Total number of employees				
(ii)	Excluded from plan because:				
(A)	Collective bargaining agreement				
(B)	Other statutory exclusion				
(C)	Ineligible—Not covered by another plan				
(D)	Ineligible—Covered by another plan of this employer				
(c)	List covered active participants by vesting attained:				
(i)	100%				
(ii)	51-99%				
(iii)	1-50%				
(iv)	0%				
(v)	Totals for (i) through (iv)				
(d)	Aggregate number of participants separated from service with forfeitures is:				
(i)	The current plan year				
(ii)	The preceding plan year				
(iii)	The second preceding plan year				
(e)	Amount of forfeitures reallocated:				
(i)	The current plan year				\$
(ii)	Preceding plan year				\$
(iii)	The second preceding plan year				\$

26 Vesting—Check the appropriate box to indicate the vesting provisions of the plan:

	Yes	No
(a) Full and immediate		
(b) Full vesting after 10 years of service		
(c) 5 to 15 year vesting, i.e., 25% after 5 years of service, 5% additional for each of the next 5 years, then 10% additional for each of the next five years		
(d) Rule of 45 (see section 411(a)(2)(c))		
(e) For each year of employment, commencing with the fourth such year, vesting not less than 40% after 4 years of service, 5% additional for the next 2 years, and 10% additional for each of the next five years		
(f) 100% vesting within 5 years after contributions are made (class year plan only)		
(g) Other (specify and see instructions) ▶		

27 (a) Was there a return of contributions to the employer during the year?		
(b) Are any of your continuing, full-time clerical or supporting service positions filled under contract by persons who are not employees? If "Yes," how many positions ▶		
(c) Did any employee's benefit exceed 100% of his compensation or any annual addition to a participant's account exceed 25% of his compensation in any plan year since the last 5500-C filed for this plan?		
(d) If a defined benefit plan, does the maximum projected benefit that is being funded for, including any salary scale projections, exceed this year's limits under section 415 of the Code?		
(e) If a defined benefit plan, did any employees receive lump-sum distributions since the last 5500-C filed for this plan?		
(f) If (e) is "Yes," state the lowest interest assumption used in calculating the amounts of these distributions ▶ %		
28 (a) Is this plan integrated with social security?		
(b) Is it intended that this plan qualify under section 401(a) or 405 of the Code?		
(c) If "Yes," have you received a determination letter from the IRS for this plan?		
(d) If a determination letter was received, was the letter without conditions (caveats)? If "No," (i) specify the conditions (caveats) ▶		
(ii) Enter the file folder number given on the determination letter ▶		
(iii) Enter the accounting period of the trust ▶		
(e) Does the employer/sponsor listed in item 1(a) of this form maintain other plans?		
If "Yes," list the plan number(s) of the other plans ▶		

Department of
the Treasury
Internal
Revenue Service

Department of
Labor
Pension and Welfare
Benefit Programs

Pension
Benefit
Guaranty
Corporation

1979 Instructions for Form 5500-C

Return/Report of Employee Benefit Plan (With fewer than 100 participants)

(Code references are to the Internal Revenue Code, ERISA
refers to the Employee Retirement Income Security Act of 1974.)

NOTICE

For plan years beginning in 1979, only sponsors whose employer identification number has a last digit of 1, 4, 7, or 0 are to file Form 5500-C. All other sponsors who would normally file Form 5500-C should file Form 5500-R, Registration Statement of Employee Benefit Plan.

Who Must File

This form is to be filed for pension benefit plans and welfare benefit plans as described in A. and B. below.

A. Pension Benefit Plans.—Each plan administrator or employer who maintains an employee pension benefit plan (defined benefit or defined contribution plan) covered by Part I of Title I, Title II or Title IV of ERISA must file a return/report.

Such return/report must be filed for each plan, whether or not qualified, including each plan under which benefits have ceased to accrue and/or for each plan for which contributions have been discontinued (sometimes referred to as "frozen plan" or "wasting trust").

Employers or plan administrators that maintain an annuity arrangement under section 403(b)(1) of the Code must file a return/report.

Exception: Governmental plans and church plans (not electing coverage under section 410(d) of the Code) need not file a return/report for any section 403(b)(1) annuity arrangements which they maintain. See 29 CFR 2510.3-2(f) for certain annuity arrangements which need not file.

All exempt organizations that maintain custodial accounts for regulated investment company stock under section 403(b)(7) of the Code must file returns/reports.

Each employer who maintains an individual retirement account trust under section 408(c) of the Code must file a return/report.

Governmental units and churches (not electing coverage under section 410(d) of the Code) that have pension benefit plans (defined benefit or defined contribution) must file an annual return/report on Form 5500-G for governmental and church plans. However, governmental plans and church plans (not electing coverage under section 410(d) of the Code) are not required to file Schedules A, B and SSA.

The administrator of an employee benefit plan which covers residents of Puerto Rico (including a plan that elects to have the provisions of section 1022(i)(2) of ERISA apply), the Virgin Islands, Guam, Wake Island, American Samoa, or the Canal Zone, is required to file a return/report.

B. Welfare Benefit Plans.—Each administrator of a welfare benefit plan covered by Part I of Title I of ERISA must file a return/report.

Exception 1: A welfare benefit plan having fewer than 100 participants at the beginning of the plan year is not required to file a return/report if: (1) benefits are paid as needed solely from the general assets of the employer or employee organization maintaining the plan, (2) benefits are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization (such as Blue Cross, Blue Shield or a health maintenance organization) which is qualified to do business in any state, the premiums for which are paid directly by the employer or employee organization from its general assets, or partly from its general assets and partly from contributions by its employees or members (which are forwarded by the employer or employee organization within 3 months of receipt), or (3) both. See 29 CFR 2520.104-20.

Exception 2: Administrators of welfare benefit plans which participate in group insurance arrangements need not file returns/reports on such plans as single employer plans where a single consolidated return/report for all welfare benefit plans in the group insurance arrangement has been filed by the trust or other applicable entity pursuant to 29 CFR 2520.104-43.

C. Pension Benefit Plans and Welfare Benefit Plans Excluded From Filing.—Plans excluded from filing are:

1. Unfunded pension benefit plans and unfunded or insured welfare plans maintained by an employer for the purpose of providing benefits for a select group of management or highly compensated employees which plan satisfies the requirements of Department of Labor Regulations 29 CFR 2520.104-23 and 2520.104-24;

2. Plans maintained solely for the purpose of complying with workmen's compensation, unemployment compensation or disability insurance laws;

3. Unfunded excess benefit plans;

4. Welfare benefit plans maintained outside the U.S. primarily for persons substantially all of whom are non-resident aliens.

D. Type of Filers.—

1. **Single Employer.**—A single employer plan is a plan which is maintained by one employer or solely by one employee organization. One return/report must be filed for each such plan. A member of a controlled group of corporations or of common control trades or businesses who maintains a plan not involving other members of the controlled group is required to file as a single employer plan. Therefore, one return/report must be filed for each such plan. See specific instructions for special rules for completing item 25.

2. **Controlled Group of Corporations and Common Control Trades or Businesses.**—A plan of only members of a controlled group of corporations or of only members of common control trades or businesses is a plan maintained by such controlled group of corporations or by such common control trades or businesses (as defined in

section 414(b) and (c) of the Code). One return/report must be filed for each such plan. An individual employer is not to file any return/report with respect to such plan.

In the case of a pension benefit plan that includes a controlled group of corporations or a group of common control trades or businesses and, in addition, includes an employer(s) who is not a member of such group, file one return/report for the group and one return/report for each employer who is not a member of the group.

Exception: If the benefits are payable to employees who are covered by the plan from the total assets without regard to their respective employer's contributions, file one return/report for the plan as a whole but complete item 25 only for the employees of the controlled group. In addition each employer who is not a member of the controlled group is to file Form 5500-C (regardless of the number of participants) completing only items 1, 2, 3, 4(e), 5, 6, 9 and 25 or a Form 5500-R, whichever is applicable.

3. **Multiemployer.**—A multiemployer plan is a plan defined in section 3(37) of ERISA or section 414(f) of the Code. One return/report must be filed for each such plan. Contributing employers are not to file individually with respect to such plans.

4. **Multiple Employer - Collectively - Bargained Plan.**—A multiple-employer-collectively-bargained plan involves more than one employer, is collectively bargained and is collectively funded but does not meet the definition of a multiemployer plan. One return/report must be filed for each such plan. Participating employers are not to file individually with respect to such plan.

5. **Multiple-Employer Plan (Other).**—A multiple-employer plan (other) involves more than one employer and is not a multi-employer plan, a collectively-bargained plan or a plan of a controlled group of corporations or of trades or businesses under common control. A multiple-employer plan (other) will only include those plans where individual employer contributions are available to pay benefits to participants of all participating employers. One return/report must be filed for each such plan. In addition, for pension benefit plans each participating employer is to file a Form 5500-C (regardless of the number of participants), completing only items 1, 2, 3, 4(e), 5, 6, 9 and 25 or a Form 5500-R, whichever is applicable.

Note: If a participating employer is also the sponsor of the multiple-employer plan (other), the plan number on the return/report filed for the plan should be 333. The Form 5500-C or Form 5500-R filed by the participating employer should list this appropriate plan number (001 if this is the employer's only pension plan).

In the case of a plan participated in by more than one employer and the plan provides that each employer's contributions are available to pay benefits only for that employer's employees who are covered by the plan, one return/report must be filed for each participating employer. These filers will be considered single employers and should complete the entire form. Filers of Form 5500-C check item 4(a).

General Information

Section 6058 of the Code and sections 104 and 4065 of ERISA provide that each plan administrator/sponsor (sole proprietor, partnership, corporation, association, joint board of trustees, exempt organization or other employer) who maintains an employee benefit plan subject to ERISA must file, annually, information concerning each such plan.

In order to reduce duplication of reporting and the burden of compliance with ERISA by plan administrators and employers, the Internal Revenue Service (IRS), Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) have designed consolidated return/report forms.

The PBGC annual report required under Title IV, section 4065 of ERISA and formerly filed separately with PBGC on Form PBGC-1, Schedule A is now included in this combined report.

General Instructions

A. What to File.—

Form 5500, Annual Return/Report of Employee Benefit Plan, must be filed annually to report for each plan with 100 or more participants at the beginning of the plan year.

Form 5500-C, Return/Report of Employee Benefit Plan, must be filed periodically to report for each pension benefit plan with fewer than 100 participants at the beginning of the plan year (unless otherwise exempted). Form 5500-C is to be filed for (i) the initial plan year, (ii) the year a final return would be filed and (iii) in the intervening years according to the following schedule:

Last digit of plan sponsor's employer identification number is—	File Form 5500-C for—
1, 4, 7, or 0	1979
2, 5, or 8	1980
3, 6, or 9	1981

Form 5500-R, Registration Statement of Employee Benefit Plan (with fewer than 100 participants) must be filed for plan years when Form 5500-C or Form 5500-K is not required to be filed because the last digit of the sponsor's employer identification number does not coincide with the digits for the current year on the above schedule.

Form 5500-K, Return/Report of Employee Pension Benefit Plan, must be filed periodically for each owner-employee plan that has fewer than 100 participants at the beginning of the plan year and at least one owner-employee participant.

Note: An owner-employee means (1) an individual who owns 100% of an unincorporated trade or business or (2) in case of a partnership, a partner who owns more than 10% of either the capital interest or the profits interest in such partnership.

Form 5500-G, Annual Return/Report of Employee Benefit Plan, must be filed annually for each government plan and each church plan (not electing coverage under section 410(d) of the Code).

Schedule A (Form 5500), Insurance Information, should be attached to Forms 5500, 5500-C and 5500-K in every case where any benefits under the plan are provided by an insurance company, insurance service or other similar organization.

Exception: An employee benefit plan which covers only an individual or an individual and his or her spouse who wholly owns a trade or business, whether incorporated or unincorporated, or a partner in a partnership and his or her spouse need not file a Schedule A (Form 5500).

Schedule B (Form 5500), Actuarial Information, should be attached to Forms 5500, 5500-C and 5500-K for most defined benefit plans. See instructions for Schedule B.

Schedule SSA (Form 5500), Registration Statement Identifying Separated Participants With Deferred Vested Benefits, may

be required to be filed for separated participants. See "When to Report Separated Participants" in the instructions to Schedule SSA.

Note: Code section 403(b)(1) annuity arrangements need only complete items 1 through 6, 8 and 9 of Form 5500-C.

Code section 408(c) trusts need only complete items 1 through 6, 8 and 9 of Form 5500-C.

Insured Plans.—Pension plans holding only allocated insurance contracts which fully guarantee the amount of benefit payments and for which no trust is involved need not complete items 16 through 18 of Form 5500-C but must check the box in the heading of item 16. Pension plans and welfare plans for which an intermediary trust is involved need to complete items 16 through 18 of Form 5500-C, but are not to construe the allocated insurance contracts as an asset to be reported in item 16. See 29 CFR 2520.104-44.

B. When to File.—File all required forms and schedules on or before the last day of the 7th month following the close of the plan year unless extensions have been granted.

Request for Extension of Time to File.—An extension of time up to two and one-half months may be granted for filing return/reports if a timely application, Form 5558, is filed requesting such an extension.

Exception: Single employer plans and plans of a controlled group of corporations, which file consolidated Federal income tax returns, are automatically granted an extension of time to file Form 5500, 5500-C, 5500-K or 5500-R to the due date of the Federal income tax return of the single employer or controlled group of corporations if all the following conditions are met:

1. The plan year and the tax year coincide;
2. The single employer or the controlled group has been granted an extension of time to file its Federal income tax return to a date later than the normal due date for filing the Form 5500, 5500-C, 5500-K or 5500-R.
3. A copy of the approved IRS extension of time to file the Federal income tax return is attached to the Form 5500, 5500-C, 5500-K or 5500-R filed with IRS.

C. Where to File.—All forms and schedules should be filed with the Internal Revenue Service Center indicated below.

If the principal office of the plan sponsor or the plan administrator is located in	Use the following Internal Revenue Service Center address
New Jersey, New York City and counties of Nassau, Rockland, Suffolk, and Westchester	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501
Alabama, Florida, Georgia, Mississippi, South Carolina	Atlanta, GA 31101
Michigan, Ohio	Cincinnati, OH 45999
Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, Texas	Austin, TX 73301
Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
Illinois, Iowa, Missouri, Wisconsin	Kansas City, MO 64999
California, Hawaii	Fresno, CA 93888
Indiana, Kentucky, North Carolina, Tennessee, Virginia, West Virginia	Memphis, TN 37501

Delaware, District of Columbia, Maryland, Pennsylvania Philadelphia, PA 19255

If you have no legal residence, principal place of business or principal office or agency in any Internal Revenue District, file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

Note: The annual statement of assets and liabilities of a common/collective trust or a pooled separate account submitted by a bank or insurance company in accordance with 29 CFR 2520.103-9(b)(3) should be sent to: Common/Collective Trust or Pooled Separate Account N4635, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20216.

D. Final Return/Report.—If all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries, write "Final Return" across the top of the return/report filed for such plan. The year of complete distribution is the last year a return/report must be filed with respect to the plan.

The plan year ends upon the merger or consolidation of a plan into another plan or upon the complete distribution of the assets of a plan.

E. Penalties.—

Caution: ERISA imposes penalties for failure to furnish complete information and failure to file statements and return/reports.

A penalty of \$10 (not to exceed \$5,000) for each day for failure to file returns in connection with certain plans of deferred compensation, certain trusts and annuities and bond purchase plans. See section 6652 (f) of the Code.

The following penalties are effective for plan years beginning after December 31, 1975.

A penalty of \$1 (not to exceed \$5,000) for each participant for whom a registration statement (required of certain plans) is not filed. See section 6652(e)(1) of the Code.

A penalty of \$1 (not to exceed \$1,000) for each day for failure to file a notification of change of status of a plan. See section 6652(e)(2) of the Code.

Caution: The following penalties which are imposed by ERISA may be applied upon conviction.

Any individual who willfully violates any provision of Part 1 of Title I of ERISA shall upon conviction be fined not more than \$5,000 or imprisoned not more than one year, or both. See section 501 of ERISA.

A penalty up to \$10,000 or 5 years imprisonment, or both, is provided for any person who makes any false statement or representation of fact, knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact required by ERISA. See section 1027, Title 18, U.S. Code as amended by section 111 of ERISA.

F. Signature.—All returns/reports filed must be signed by the plan administrator. Also, a return/report filed for a single employer plan must be signed by the employer.

When the plan sponsor or the plan administrator is a joint employer-union board or committee, at least one employer representative and one union representative must sign. Participating employers in a Multiple-Employer Plan (Other) who are required to file Form 5500-C or 5500-R are required to sign the return/report. The plan administrator's signature is not required on the Form 5500-C or 5500-R filed by the participating employer.

G. Reproductions.—Original returns/reports are preferred, however, legible reproductions of this form may be made after

insertion of the required information. However, all signatures on forms filed with IRS must be original signatures, affixed subsequent to the reproduction process.

H. Change of Plan Year.—To change a plan year of certain qualified employee pension benefit plans, you should obtain prior approval from IRS. See section 412(c)(5) of the Code, and regulations thereunder, and Form 5308, Request for Change in Plan/Trust Year.

I. Short Plan Year.—For a short plan year resulting from a merger, consolidation, liquidation of all plan assets, change of plan year, etc., file a return/report and all applicable schedules for such short plan year on or before the last day of the seventh month following the close of such short plan year. In the case of a merger or consolidation, enter "Final Return" across the top of the return/report filed for such short plan year. For a short plan year ending on November 30th or earlier, the applicable prior year Form 5500, 5500-C or 5500-K should be filed. Modify the heading of the form to show the beginning and ending of your short plan year.

J. Amended Return/Report.—If you file an amended return/report, write "Amended Return" across the top of the form.

K. Notification Under Section 6057(b)(3) and (4) of the Code.—The filing of the return/report and indicating thereon that the plan was terminated satisfies the notification required by section 6057(b)(3). The filing of Form 5310 satisfies the notification required by section 6057(b)(4).

L. Help the Retiring Employee.—Many retirees are being assessed penalties for failure to file Form 1040-ES, Declaration of Estimated Tax for Individuals. We believe many retirees are not aware that they may be required to file Form 1040-ES. Therefore, we ask all employers and plan administrators to tell retiring employees that they may be required to file Form 1040-ES. Also, please tell them that they may request the payor to withhold income tax for them.

M. Deduction.—Worksheets on page 8 are provided to assist you in determining the deduction under section 404 of the Code. Do not file these worksheets.

Summary of Filing Requirements of Employers and Plan Administrators (File forms ONLY with IRS)

Type of plan	What to file	When to file
Keogh (H.R. 10) plan of a sole proprietor or partnership with no participants other than the sole proprietor or the partners	Not required to file	
Keogh (H.R. 10) plan with at least one owner-employee and at least one common-law employee but fewer than 100 participants	Form 5500-K or 5500-R	
Pension plan with fewer than 100 participants and no owner-employee participant	Form 5500-C or 5500-R	
Pension plan with 100 or more participants	Form 5500	
Annuity under Code section 403(b)(1) and Trust under Code section 408(c)	Form 5500 or 5500-C	
Custodial account under Code section 403(b)(7)	Form 5500 or 5500-C	
Governmental plans and church plans (not electing coverage under section 410(d) of the Code)	Form 5500-G	
Welfare benefit plan	Form 5500, 5500-C or 5500-R	
Pension or welfare plan with benefits provided by an insurance company	Schedule A (Form 5500)	
Pension plan that requires actuarial information	Schedule B (Form 5500)	
Registration statement identifying separated participants with deferred vested benefits from a pension plan	Schedule SSA (Form 5500)	

File all required forms and schedules for each plan on or before the last day of the 7th month following the close of the plan year.

Specific Instructions for Form 5500-C

References are to line items on the form.

1(a). Enter the name and address of the plan sponsor. In all cases where the plan covers only the employees of one employer, enter the name of the employer. When this form is used by an individual employer participating in a multiple-employer plan (other), the name of the employer should appear in (a).

If you received a Form 5500-C with a preaddressed-removable label, please affix the removable label to the name and address area of the return/report you file. If the name or address on the label is wrong, draw a line through the incorrect portion and enter the correct information.

The term "plan sponsor" means—

- (i) the employer in the case of an employee benefit plan established or maintained by a single employer,
- (ii) the employee organization in the case of a plan established or maintained by an employee organization, or

(iii) in the case of a plan established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers—the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

Include enough information in 1(a) to adequately describe the sponsor. For example, Joint Board of Trustees for Local 187 Machinists, rather than just, Joint Board of Trustees.

1(b). Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor/employer. For example, 00-1234567.

Employers and plan administrators who do not have an EIN should apply for one on Form SS-4, available from any IRS or Social Security Administration office. Send Form SS-4 to the same Internal Revenue Service Center to which this form is sent.

Controlled groups of corporations whose sponsor is more than one of the members of the controlled group should only insert the EIN of one of the sponsoring members. 283-199-1

This EIN is to be used in all subsequent filings of the return/report for the controlled group.

If the plan administrator is a group of individuals, get a single EIN for the group. For example, when applying for a number, enter on line 1 of Form SS-4 the name of the group, such as, "Joint Board of Trustees of the Local 187 Machinists' Retirement Plan."

1(d). When filed for an individual employer, enter the date the employer's taxable year ends. For example, if the taxable year is a calendar year, enter 12-31-78. For all plans with more than one employer, enter "N/A."

1(e). From the list of business codes on pages 6 and 7, enter the one that best describes the nature of the employer's business. If more than one employer is involved, enter the business code for the predominant business activity. Church plans enter code number 9002.

2(a). If the document constituting the plan appoints or designates a plan administrator, other than the sponsor, enter the name and address.

2(a) and (b). If plan administrator is also the sponsor, enter "Same."

The term "administrator" means—

(i) the person or a group of persons specifically so designated by the terms of the instrument under which the plan is operated,

(ii) if an administrator is not so designated, the plan sponsor/employer or,

(iii) in the case of a plan for which an administrator is not designated and plan sponsor cannot be identified, such other person as prescribed by regulations of the Secretary of Labor.

2(b). A plan administrator as defined above must have an EIN for reporting purposes. Enter the plan administrator's nine-digit EIN here. If the plan administrator has no EIN, see 1(b) above.

Note: Employees of an employer are not plan administrators unless so designated in the plan document even though they engage in administrative functions of the plan. If an employee of the employer is designated as the plan administrator, that employee must obtain an EIN.

3. Make an entry only if during the year there was a change in the name, EIN or address of the plan sponsor, and/or in the name, EIN or address of the plan administrator. If there was a change, enter the name, address and EIN as they appeared on the prior return/report.

4(a). Check for a single-employer plan, that is a plan which is maintained by one employer, or one employee organization. Also check in the case of a multiple-employer plan (other) in which an individual employer's contributions are available to pay benefits only for that employer's employees who are covered by the plan.

Also check for a single-employer plan that is collectively bargained.

4(b). Check for a plan participated in by more than one employer where each employer is a member of a controlled group of corporations (section 414(b) of the Code) and for a plan participated in by more than one employer where each employer is a member of a group of employers under common control (section 414(c) of the Code).

4(c). Check for a multiemployer plan as defined in section 414(f) of the Code and section 3(37) of ERISA.

4(d). Check for a plan of more than one employer that is collectively-bargained, is collectively funded and is not a multiemployer plan, a plan of a controlled group of

corporations or a plan of trades or businesses under common control.

4(e). Check for a multiple-employer plan (other) when filed by the plan administrator for the plan as a whole. Also check when filed for an employer who is participating in a plan where individual employer contributions are available to pay benefits to participants of all participating employers.

5(a). Enter the formal name of the plan or sufficient information to identify the plan.

5(b). Enter the date the plan first became effective.

5(c). Enter the three-digit number the employer or plan administrator assigned to the plan. All welfare plan numbers will start at 501. All other plans start at 001. If you have only one pension plan enter 001. If you have only one welfare benefit plan enter 501.

Once a plan number is used for a plan it may not be used for any other plan.

6(a). Welfare plans do not complete (b) or (c). Health maintenance organization check (iv) and enter health maintenance organization.

6(b)(i). In the case of a defined benefit plan, check the box that will best indicate the method used to determine the retirement benefit, for example:

(A) a benefit of X% of compensation is a fixed benefit,

(B) a benefit of X% of compensation times years of service is a unit benefit, and

(C) a benefit of a stated dollar amount payable after a specified number of years of service is a flat benefit.

6(b)(ii). Check (C) for a money purchase plan if the contribution is determined by a target benefit calculation. Check (D) for all money purchase plans that do not have a target benefit calculation.

7(a). Check "Yes," if an amendment to the plan was adopted since the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan regardless of the effective date of the amendment.

8(a). Check "Yes," if plan was terminated or if plan was merged or consolidated into another plan.

8(b). If plan was terminated and trust assets were not completely distributed, a return/report must be filed for each year that the trust has assets. In such case, the return/report must be filed by the plan administrator, designated, or by the person or persons actually responsible for the control, disposition or management of the cash or property received by or contributed to the plan.

If all the trust assets were allocated to purchase individual annuity contracts and the contracts were distributed to the participants, check "Yes."

9. If this plan was merged or consolidated into another plan(s), or plan assets or liabilities were transferred to another plan(s), it is necessary to show what other plan or plans were involved.

9(a). Check "Yes" if plan was terminated or if plan was merged or consolidated into another plan.

9(c). Enter the EIN of the sponsor, employer if for a single-employer plan, of the other plan.

10(b). Check for a trust or arrangement providing benefits exclusively through insurance and/or annuity contracts.

10(c). Check for a trust or arrangement providing benefits partially through insurance and/or annuity contracts.

11(a). If uncertainty exists as to coverage status of the plan under Title IV of ERISA, check the box "not determined" and a coverage determination will be made by PBGC.

11(b). If "Yes" was checked indicating that certain reportable events or another event requiring notification to the PBGC occurred during the plan year being reported, items (i) through (vii) must be completed.

Completion of this item satisfies the reporting requirement under ERISA, Section 4065. However, completion of this item does not replace any of the specific reporting requirements under ERISA, Sections 4043(b), 4062(e) and 4063(a).

11(b)(i). Check "Yes" if, at any time during the plan year, the number of active participants was less than 80 percent of the number of such participants at the beginning of the plan year; or less than 75 percent of the number of such participants at the beginning of the previous plan year (Section 4043(b)(3) of ERISA).

11(b)(ii). Check "Yes" if, at any time during the plan year, the plan was unable to pay any benefit when due (Section 4043(b)(6) of ERISA).

11(b)(iii). Check "Yes" if, at any time during the plan year, a distribution was made to a substantial owner (other than on account of death) as defined in Section 4022(b)(6) of ERISA, which had a value of \$10,000 or more and immediately after, the plan had unfunded nonforfeitable benefits (Section 4043(b)(7) of ERISA). The term "substantial owner" means an individual who:

- (a) owns the entire interest in an unincorporated trade or business;
- (b) in the case of a partnership is a partner who owns directly or indirectly, more than 10 percent of either the capital interest or profits in such partnership; or
- (c) in the case of a corporation owns, directly or indirectly, more than 10 percent in the value of either the voting stock of that corporation or all the stock in that corporation.

The constructive ownership rules of Section 1563(e) of the Code apply in the case of a corporation without regard to Section 1563(a)(4) and 1563(e)(3)(C) of the Code. An individual is also treated as a substantial owner under the plan at any time within sixty (60) months preceding the date on which the determination is made.

11(b)(iv). Check "Yes" if, at any time during the plan year, operations ceased at a facility of an employer maintaining a plan, resulting in the separation from employment of more than 20 percent of the active participants in the plan (Section 4062(e) of ERISA).

11(b)(v). Check "Yes" if, at any time during the plan year, a substantial employer withdrew from a plan under which more than one employer makes contributions (Section 4063(a) of ERISA).

The term "substantial employer" means for any plan year an employer who has made contributions to a plan under which more than one employer contributes for each of (a) the two preceding plan years or (b) the second and third preceding plan years—equaling or exceeding 10 percent of all employer contributions paid to or under the plan for each such year.

11(b)(vi). Check "Yes" if, during the plan year, an amendment was adopted

under which the benefit payable with respect to any participant may be decreased (Section 4043(b)(2) of ERISA).

12(c). Loss means, any loss to the plan caused by the fraud or dishonesty of any plan official or employee of the plan or of other person handling funds of the plan.

13(b). Replaced means a policy has been discontinued and a new policy written. It does not include incremental policies. For example, it does not include individual life policies written to reflect salary increases.

13(c) and (d). These lines must be completed to reflect only the plan years for which a Form 5500-R was required to be filed. Do not include in 13(d) any amounts shown in 13(c).

14(b). If a waiver of a funding deficiency has been granted, do not complete (i), (ii) and (iii) but complete 1, 2, 3 and 7 of Schedule B (Form 5500). An enrolled actuary need not sign Schedule B under these circumstances.

14(b)(iii). File Form 5330 with IRS to pay the 5% excise tax on the funding deficiency.

15. The IRS serial number is the eight digit letter serial number provided by the IRS for master, prototype, field prototype, and pattern plans (e.g. C7600630) or the four digit serial number provided on the cover of the model plan, or the four-digit Form number of the applicable bond purchase plan (either 4178 or 6022).

16. The financial information for 16 and 17 may be based on either the cash, modified accrual or accrual basis for recognition of transactions as long as one method is applied consistently throughout items 16 and 17.

The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary pursuant to the terms of the plan, assuming an orderly liquidation at the time of such determination.

If the assets of two or more plans are maintained in one trust (except common/collective trusts) such as where an employer has two plans which are funded through a single trust, items 16 and 17 should be completed by entering the plan's allocable portion of each line item.

In case of any plan in which plan assets are maintained in two or more trust funds (except common/collective trusts) financial information must be reported on a combined basis in 16 and 17.

Common/Collective Trusts and Pooled Separate Accounts.—For plans with assets in common or collective trusts or pooled separate accounts, the value of the units of participation is to be reported in item 16 (c)(ii). Additionally, the return/report must also include either (1) the most recent statement of assets and liabilities of any common or collective trust or pooled separate account or (2) a certification that the plan has received a copy of such statement from the bank or insurance company together with the EIN of the bank or insurance company and the number(s) they use to identify such trust or separate accounts. Item 17 should include information regarding the value of units of participation held by the plan in common or collective trust or separate accounts and transactions involving the acquisition and disposition by the plan of units of participation in the trust or separate account but should not include individual transactions of the common or collective trust or separate account. For further details see 29 CFR sections 2520.103-3, 2520.103-4, 2520.103-5 and 2520.103-9.

16(c)(i). Investments in securities of U.S. or State and municipal quasi-governmental corporations should be included here.

16(d). Show value of building and other depreciable property used in the operation of the plan. Buildings and other property held for investment should be shown in 16(c).

16(e). The current value of unallocated insurance contracts as shown on line item 16(e) may be determined by using the same method used to complete line 6(e) and 7 of Schedule A (Form 5500) as long as it is stated as at the beginning and the end of the plan year.

Enter the current value of the plan's interest in non-pooled separate accounts as of the beginning and end of the plan year. Unallocated insurance contracts funded with pooled separate accounts should be entered in 16(c)(ii).

16(f). Enter the current value of any assets other than those categories listed in (a) through (e) above.

Liabilities.—Do not include the value of future pension payments in 16(h), (i), or (j).

16(h). Enter total amount of claims which have been processed and approved for payment directly from the trust but have not been paid. Do not include the value of future pension payments.

16(i). Acquisition Indebtedness.

(1) General Rule.—The term "acquisition indebtedness" means with respect to any debt-financed property, the outstanding amount of the principal indebtedness incurred:

(a) by the organization in acquiring or improving such property;

(b) before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement; and

(c) after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

For further explanation see section 514(c) of the Code.

17(a). If trust is on the accrual basis, enter amount or contributions received or accrued.

17(b). Show current value, at date contributed, of securities or other noncash property contributed to the plan.

17(g)(i). If distributions include securities or other property, show the current value, at date distributed, in this figure.

17(g)(iii). Include here such items as amount for prepaid legal services, day care services, training and apprenticeship services.

17(m)(i). This amount shall be computed as follows: (1) Subtract the cost or adjusted basis of all assets from the current value of all assets at the beginning of the year; (2) Subtract the cost or adjusted basis of all assets from the current value of all assets at the end of the year; (3) if the result under (2) is greater than the result under (1), enter the difference on line (m)(i); if the result under (1) is greater than the result under (2), enter the difference in parentheses on line (m)(i).

17(m)(ii). Adjustments that are not shown on line (i) should be entered on line (ii). For example, material adjustments relating to prior years such as the write-off of an account receivable, bond or note.

18. The term "party-in-interest" (for purposes of this form, party-in-interest is deemed to include a disqualified person—see section 4975(e)(2) of the Code) means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50% or more of—(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, (ii) the capital interest or the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative of any individual described in subparagraph (A), (B), (C) or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50% or more of—(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D) or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E) or (G), or of the employee benefit plan; or

(I) a 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E) or (G).

19. If any item is checked "Yes," complete the appropriate schedules as shown below in the following or similar format using the same size paper.

19(a). Persons Rendering Services.—Furnish the following information with respect to any person who rendered services to the plan and received, directly or indirectly, compensation from the plan.

a. Name	b. Official plan position	c. Relationship to employer, employee organization or person known to be a party-in-interest	d. Gross salary or allowances paid by plan	e. Fees and commissions paid by plan	f. Nature of service code

Include all persons (1) whose duties with respect to a plan and plan assets involve the exercise of any discretion or control over plan assets or (2) who, as an employee of the plan, receives compensation from the plan of more than \$1,000 per month or (3) who, if other than an employee, receive compensation of more than \$1,000 per year from the plan. Do not include persons whose sole compensation in relation to the plan consists of insurance fees and commissions listed in Schedule A (Form 5500). Do not list persons whose compensation was not paid by the plan, except for any person who received payment from a plan sponsor or other party which payment was or will be reimbursed, directly or indirectly, by the plan. (Section 103(c) of ERISA.)

Do not report brokerage where the broker is not granted any discretion. See 29 CFR 2510.3-21, paragraph (d) regarding "discretion." All other commissions and fees on investments are to be shown regardless of whether they are capitalized as part of the investment costs. Summary information should be furnished (in the format provided) for the plan year as a whole for each person.

Any person who provides administrative services should be listed and that person's employer's EIN should follow the name in column (a). Example: John Smith (99-1234567).

From the list below, select the code that best describes the nature of services provided to the plan and enter the number in column f. If more than one service was

provided, enter the code of the primary service.

Code	Service
10	Accounting (including auditing)
11	Actuarial
13	Administration
14	Brokerage (real estate)
15	Brokerage (stocks, bonds, commodities)
16	Computing, tabulating, ADP, etc.
17	Consulting (general)
18	Custodial (securities)
19	Insurance agents and brokers
20	Investment advisory
21	Investment management
22	Legal
23	Printing and duplicating
24	Recordkeeping
25	Trustee (individual)
26	Trustee (corporate)
27	Pension/insurance advisor
28	Valuation services (appraisals, asset valuations, etc.)
29	Investment evaluations
99	Other (specify)

19(b). Other Party-in-Interest Transactions.—Describe each transaction in the following or similar format, except for the following transactions:

- (1) Payments of insurance premiums;
- (2) Benefit payments authorized by the plan; and

Code

Machinery, except electrical:

- 3520 Farm machinery.
- 3530 Construction, mining, and materials handling machinery and equipment.
- 3540 Metalworking machinery.
- 3550 Special industry machinery, except metalworking machinery.
- 3560 General industrial machinery.
- 3570 Office, computing, and accounting machines.
- 3598 Engines and turbines, service industry machinery, and other machinery, except electrical.

Electrical and electronic machinery, equipment, and supplies:

- 3630 Household appliances.
- 3665 Radio, television, and communication equipment.
- 3670 Electronic components and accessories.
- 3698 Other electric equipment.

Transportation equipment:

- 3710 Motor vehicles and equipment.
- 3725 Aircraft, guided missiles and parts.
- 3730 Ship and boat building and repairing.
- 3798 Other transportation equipment.

Measuring and controlling instruments; photographic and medical goods, watches and clocks:

- 3815 Scientific instruments and measuring devices; watches and clocks.
- 3845 Optical, medical, and ophthalmic goods.
- 3860 Photographic equipment and supplies.
- 3998 Other manufacturing products.

TRANSPORTATION, COMMUNICATION, ELECTRIC, GAS, AND SANITARY SERVICES**Transportation:**

- 4000 Railroad transportation.

Local and interurban passenger transit:

- 4121 Taxicabs.
- 4189 Other passenger transportation.

Trucking and warehousing:

- 4210 Trucking, local and long distance.
- 4289 Public warehousing and trucking terminals.

Other transportation including transportation services:

- 4400 Water transportation.
- 4500 Transportation by air.
- 4600 Pipe lines, except natural gas.
- 4722 Passenger transportation arrangement.
- 4723 Freight transportation arrangement.
- 4799 Other transportation services.

Communication:

- 4825 Telephone, telegraph, and other communication services.
- 4830 Radio and television broadcasting.

Electric, gas, and sanitary services:

- 4910 Electric services.
- 4920 Gas production and distribution.
- 4930 Combination utility services.
- 4990 Water supply and other sanitary services.

WHOLESALE TRADE**Durable:**

- 5010 Motor vehicles and automotive equipment.
- 5020 Furniture and home furnishings.
- 5030 Lumber and construction materials.
- 5040 Sporting, recreational, photographic, and hobby goods, toys, and supplies.
- 5050 Metals and minerals, except petroleum and scrap.
- 5060 Electrical goods.
- 5070 Hardware, plumbing and heating equipment.
- 5083 Farm machinery and equipment.
- 5089 Other machinery, equipment, and supplies.
- 5098 Other durable goods.

Nondurable:

- 5110 Paper and paper products.
- 5129 Drugs, drug proprietaries, and druggists' sundries.
- 5130 Apparel, piece goods, and notions.
- 5140 Groceries and related products, except meats and meat products.
- 5147 Meats and meat products.
- 5150 Farm-product raw materials.
- 5160 Chemicals and allied products.
- 5170 Petroleum and petroleum products.
- 5180 Alcoholic beverages.
- 5190 Misc. nondurable goods.

RETAIL TRADE**Building materials, hardware, garden supply, and mobile home dealers:**

- 5211 Lumber and other building materials dealers.

Code

- 5231 Paint, glass, and wallpaper stores.
- 5251 Hardware stores.
- 5261 Retail nurseries and garden stores.
- 5271 Mobile home dealers.

General merchandise:

- 5331 Variety stores.
- 5398 Other general merchandise stores.

Food stores:

- 5411 Grocery stores.
- 5420 Meat and fish markets and freezer provisions.
- 5431 Fruit stores and vegetable markets.
- 5441 Candy, nut, and confectionery stores.
- 5451 Dairy products stores.
- 5460 Retail bakeries.
- 5490 Other food stores.

Automotive dealers and service stations:

- 5511 New car dealers (franchised).
- 5521 Used car dealers.
- 5531 Auto and home supply stores.
- 5541 Gasoline service stations.
- 5551 Boat dealers.
- 5561 Recreational vehicle dealers.
- 5571 Motorcycle dealers.
- 5599 Aircraft and other automotive dealers.

Apparel and accessory stores:

- 5611 Men's and boys' clothing and furnishings.
- 5621 Women's ready-to-wear stores.
- 5631 Women's accessory and specialty stores.
- 5641 Children's and infants' wear stores.
- 5651 Family clothing stores.
- 5661 Shoe stores.
- 5681 Furriers and fur shops.
- 5699 Other apparel and accessory stores.

Furniture, home furnishings, and equipment stores:

- 5712 Furniture stores.
- 5713 Floor covering stores.
- 5714 Drapery, curtain, and upholstery stores.
- 5719 Home furnishings, except appliances.
- 5722 Household appliance stores.
- 5732 Radio and television stores.
- 5733 Music stores.

Eating and drinking places:

- 5812 Eating places.
- 5813 Drinking places.

Miscellaneous retail stores:

- 5912 Drug stores and proprietary stores.
- 5921 Liquor stores.
- 5931 Used merchandise stores.
- 5941 Sporting goods stores and bicycle shops.
- 5942 Book stores.
- 5943 Stationery stores.
- 5944 Jewelry stores.
- 5945 Hobby, toy, and game shops.
- 5946 Camera and photographic supply stores.
- 5947 Gift, novelty, and souvenir shops.
- 5948 Luggage and leather goods stores.
- 5949 Sewing, needlework, and piece goods stores.
- 5961 Mail order houses.
- 5962 Merchandising machine operators.
- 5963 Direct selling organizations.
- 5982 Fuel and ice dealers (except fuel oil and bottled gas dealers).
- 5983 Fuel oil dealers.
- 5984 Liquefied petroleum gas (bottled gas).
- 5992 Florists.
- 5993 Cigar stores and stands.
- 5994 News dealers and newsstands.
- 5996 Other miscellaneous retail stores.

FINANCE, INSURANCE AND REAL ESTATE**Banking:**

- 6030 Mutual savings banks.
- 6060 Bank holding companies.
- 6090 Banks, except mutual savings banks and bank holding companies.

Credit agencies other than banks:

- 6120 Savings and loan associations.
- 6140 Personal credit institutions.
- 6150 Business credit institutions.
- 6199 Other credit agencies.

Security, commodity brokers, dealers, exchanges, and services:

- 6212 Security underwriting syndicates.
- 6218 Security brokers and dealers, except underwriting syndicates.
- 6299 Commodity contracts brokers and dealers; security and commodity exchanges; and allied services.

Insurance:

- 6355 Life insurance.
- 6396 Mutual insurance, except life or marine and certain fire or flood insurance companies.
- 6359 Other insurance companies.
- 6411 Insurance agents, brokers, and services.

Code

Real Estate:

- 6511 Real estate operators (except developers) and lessors of buildings.
- 6516 Lessors of mining, oil, and similar property.
- 6518 Lessors of railroad property and other real property.
- 6531 Real estate agents, brokers and managers.
- 6541 Title abstract offices.
- 6552 Subdividers and developers, except cemeteries.
- 6553 Cemetery subdividers and developers.
- 6599 Other real estate.
- 6611 Combined real estate, insurance, loans and law offices.

Holding and other investment companies:

- 6742 Regulated investment companies.
- 6743 Real estate investment trusts.
- 6744 Small business investment companies.
- 6749 Holding and other investment companies, except bank holding companies.

SERVICES**Hotels and other lodging places:**

- 7012 Hotels.
- 7013 Motels, motor motels, and tourist courts.
- 7021 Rooming and boarding houses.
- 7032 Sporting and recreational camps.
- 7033 Trailer parks and camp sites.
- 7041 Organizational hotels and lodging houses on a membership basis.

Personal services:

- 7215 Coin-operated laundries and dry cleaning.
- 7219 Other laundry, cleaning, and garment services.
- 7221 Photographic studios, portrait.
- 7231 Beauty shops.
- 7241 Barber shops.
- 7251 Shoe repair and hat cleaning shops.
- 7261 Funeral services and crematories.
- 7299 Miscellaneous personal services.

Business services:

- 7310 Advertising.
- 7340 Services to buildings.
- 7370 Computer and data processing services.
- 7392 Management, consulting, and public relations services.
- 7394 Equipment rental and leasing.
- 7398 Other business services.

Automotive repair and services:

- 7510 Automotive rentals and leasing, without drivers.
- 7520 Automobile parking.
- 7531 Automobile top and body repair shops.
- 7538 General automobile repair shops.
- 7539 Other automotive repair shops.
- 7540 Automotive services, except repair.

Miscellaneous repair services:

- 7622 Radio and TV repair shops.
- 7628 Electrical repair shops, except radio and TV.
- 7641 Reupholstery and furniture repair.
- 7680 Other miscellaneous repair shops.

Motion pictures:

- 7812 Motion picture production, distribution, and services.
- 7830 Motion picture theaters.

Amusement and recreation services:

- 7920 Producers, orchestras, and entertainers.
- 7932 Billiard and pool establishments.
- 7933 Bowling alleys.
- 7980 Other amusement and recreation services.

Medical and health services:

- 8011 Offices of physicians.
- 8021 Offices of dentists.
- 8031 Offices of osteopathic physicians.
- 8041 Offices of chiropractors.
- 8042 Offices of optometrists.
- 8048 Registered and practical nurses.
- 8050 Nursing and personal care facilities.
- 8060 Hospitals.
- 8071 Medical laboratories.
- 8072 Dental laboratories.
- 8098 Other medical and health services.

Other Services:

- 8111 Legal services.
- 8200 Educational services.
- 8911 Engineering and architectural services.
- 8932 Certified public accountants.
- 8933 Other accounting, auditing, and book-keeping services.
- 8999 Other services, not elsewhere classified.

TAX-EXEMPT ORGANIZATIONS

- 9001 Church.
- 9002 Church plans making an election under section 410(d) of the Internal Revenue Code.
- 9319 Other tax-exempt organization.
- 9904 Governmental instrumentality or agency.

WORKSHEET A

Worksheet for determining the deduction for contributions made on behalf of common-law employees and for contributions made on behalf of self-employed individuals to defined benefit plans. This may be made part of your permanent record—it should not be filed.

1	Limitation on amount deductible under a defined benefit plan: (a) Amount of employer contributions for the taxable year	_____
	(b) Contribution carryover from prior year	_____
	(c) Total, (a) plus (b)	_____
	(d) Amount necessary to meet minimum funding standards	_____
	(e) Amount deductible under section 404(a)(1)(A)(ii)	_____
	(f) Amount deductible under section 404(a)(1)(A)(iii)	_____
	(g) Amount equal to the full funding limitation determined under section 412 of the Code	_____
	(h) Deduction, applicable line (d), (e) or (f) not to exceed the lesser of line (c) or (g)	_____
2	Primary limitation on amount deductible under a profit-sharing or stock bonus plan:	_____
	(a) Amount of employer contributions for the taxable year	_____
	(b) Contribution carryover from prior year	_____
	(c) Total, (a) plus (b)	_____
	(d) 15% of compensation paid to all participants	_____
	(e) Deduction, lesser of line (c) or (d)	_____
3	Secondary limitation on amount deductible under a profit-sharing or stock bonus plan:	_____
	(a) Amount of employer contributions for the taxable year	_____
	(b) 25% of compensation paid to all participants	_____
	(c) Aggregate primary limitations for all prior years and current year	_____
	(d) Aggregate prior years' deductions	_____
	(e) Excess of (c) over (d)	_____
	(f) Lesser of (b) or (e)	_____
	(g) Deduction, smaller of (a) or (f)	_____
4	Limitation on amount deductible under a money purchase plan: (a) Amount of employer contributions for the taxable year	_____
	(b) Contribution carryover from prior year	_____
	(c) Total, (a) plus (b)	_____
	(d) Normal cost (current year's service costs)	_____
	(e) Credits and gains	_____
	(f) Basic limit on deduction, (d) less (e)	_____
	(g) Minimum contributions required under section 412 if larger than (f)	_____
	(h) Deduction, (f) or (g) but not to exceed (c)	_____
5	Limitation on amount deductible under overlapping plans, section 404(a)(7) of the Code:	_____
	(a) 25% of compensation paid to all participants	_____
	(b) Total amount of employer contributions otherwise deductible under all overlapping plans	_____
	(c) Smaller of (a) or (b)	_____
	(d) Carryover from prior year under section 404(a)(7) of the Code	_____
	(e) Lesser of (a) or the sum of (c) and (d)	_____
	(f) Amount contributed to meet minimum funding standards	_____
	(g) Deduction, greater of (e) or (f)	_____
6	Limitation on deduction for employer contributions to a non-qualified plan:	_____
	(a) Amount* of employer contributions for the taxable year that is nonforfeitable to the participants	_____
	(b) Amount* of prior years' employer contributions that became nonforfeitable to the participants this year	_____
	(c) Allowable deduction for this year, (a) plus (b)	_____

*Such amount must be reported on the employees' Forms W-2.

WORKSHEET B

Worksheet for determining the deduction for contributions made on behalf of self-employed individuals to defined contribution plans ONLY. For determining the deduction for contributions to defined benefit plans use Worksheet A lines 1(a) through (h). This may be made part of your permanent record—it should not be filed.

1	Employer contributions made to the plan for sole proprietor or partners	_____
2	Less amount allocated to life insurance protection (the term insurance premium)	_____
3	Net contributions	_____
4	Earned income of sole proprietor or of all participating partners but not in excess of \$50,000 for a sole proprietor or for any one partner	_____
5	15% of line 4. (Exceptions: If a sole proprietor or a partner has less than \$5,000 earned income and his or her adjusted gross income, computed without regard to this deduction, does not exceed \$15,000, enter the lesser of the amount on line 4 or \$750 with respect to such sole proprietor or partner.)	_____
6	Deduction: For defined contribution plan, enter the smaller of line 3 or 5	_____

Form **5500-K**
 Department of the Treasury
 Internal Revenue Service
 Department of Labor
 Pension and Welfare Benefit Programs
 Pension Benefit Guaranty Corporation

Return/Report of Employee Pension Benefit Plan for Sole Proprietorships and Partnerships

(With fewer than 100 participants and at least one owner-employee)

This form is required to be filed under sections 104 and 4065 of the Employee Retirement Income Security Act of 1974 (ERISA) and sections 6057(b) and 6058(a) of the Internal Revenue Code (the Code)

1979

This Form is
 Open to Public
 Inspection

For calendar plan year 1979 or fiscal plan year beginning , 1979, and ending , 19
 File original of this form, including schedules and attachments, completed in ink or type. If an item does not apply, enter "N/A."

Note: Partnerships with Keogh (H.R. 10) plans that do not have an owner-employee participant must file Form 5500 or 5500-C.

- ▶ File one Form 5500-K for each plan you have in which an owner-employee is a participant.
- ▶ Plans in which an owner-employee(s) (sole proprietor or partners) is the only participant, see instructions.
- ▶ Plans in which the owner-employee(s) (sole proprietor or partners) and spouse are the only participants need to complete only items 1 through 11(d), 12, 14(b), 19 and 20 of this form.
- ▶ Plan Number—Your 3 digit plan number must be entered in item 5(c); see instruction 5(c) for explanation of "plan number."

1 (a) Name of plan sponsor (employer if single employer plan)	1 (b) Employer identification number
Address (number and street)	1 (c) Telephone number of sponsor ()
City or town, State and ZIP code	1 (d) Employer taxable year ends Month Day Year 19
2 (a) Name of plan administrator (if other than plan sponsor)	1 (e) Business code number
Address (number and street)	2 (b) Administrator's employer identification no.
City or town, State and ZIP code	2 (c) Telephone number of administrator ()

3 Name, address and identification number of (check applicable box) ☐ plan sponsor and/or ☐ plan administrator as they appear on the last return/report filed for this plan, if not the same as in 1 or 2 above ▶

4 Check appropriate box to indicate the type of plan entity (check only one box):

- (a) ☐ Single-employer
 (b) ☐ Other (specify) ▶

5 (a) (i) Name of plan ▶	(b) Effective date of plan
(ii) ☐ Check if name of plan changed since the last return/report	(c) Enter three digit plan number ▶
(iii) ☐ Check if plan year changed since the last return/report	

6 Type of plan (check applicable box(es)):

- (a) ☐ Defined benefit (pension plan)
 (b) ☐ Money purchase
 (c) ☐ Profit-sharing
 (d) ☐ Check if this is an employee controlled account plan

7 (a) Participants employed and active participants at the end of plan year:		
(i) Self-employed		
(ii) Other participants (include participating spouse of self-employed, if applicable)		
(iii) Total (add lines 7(a)(i) and (ii))		
(b) Total participants (see specific instruction 7(b)):		
(i) At beginning of the plan year		
(ii) At the end of the plan year		
(c) Total employees other than self-employed		
(d) During this plan year or the prior plan year, if any participant(s) separated from service with a deferred vested benefit is a Schedule SSA (Form 5500) required to be filed with this Form 5500-K (see instructions)?	Yes	No
8 Was any amendment to this plan adopted in this plan year?		
9 Termination information:		
(a) Was this plan terminated during this plan year or any prior plan year?		
(b) If "Yes," were all trust assets distributed to participants or beneficiaries or transferred to another plan?		
(c) If item 13 is to be checked "Yes" and 9(a) is "Yes," has a notice of intent to terminate been filed with PBGC?		

Under penalties of perjury and other penalties set forth in the instructions, I declare that I have examined this report, including accompanying schedules and statements, and to the best of my knowledge and belief it is true, correct, and complete.

Date ▶ Signature of employer/plan sponsor ▶

Date ▶ Signature of plan administrator ▶

Form 5500-K (1979)

Page 2

A Plans in which only an owner-employee(s) (sole proprietor or partner) and spouse are the only participants—On pages 2 and 3 complete only 10, 11(a) through (d), 12, 14(b), 19 and 20; and, check this box ☐ **Yes** ☐ **No**

- 10 (a) In this plan year, was this plan merged or consolidated into another plan or were assets or liabilities transferred to another plan? ☐ Yes ☐ No
If "Yes," enter information about other plan(s): (c) Employer identification number(s) (d) Plan number(s)

(b) Name of plan(s) ☐

(e) Has Form 5310 been filed with IRS? ☐ Yes ☐ No

- 11 Indicate funding arrangement: (a) ☐ Trust

(b) ☐ Fully insured

(c) ☐ Combination

(d) ☐ Other (specify) ☐

(e) If (b) or (c) is checked enter number of Schedule A's (Form 5500) which are attached. ☐

- 12 Please furnish the following financial information for the plan (round off amounts to nearest dollar):

(a) Net assets (current value) at beginning of plan year. ☐

(b) Contributions by employer and employees for the plan year. ☐

(c) Plan's income for the plan year. ☐

(d) Expenditures for the plan year. ☐

(e) Distributions made for the plan year. ☐

(f) Other changes in net assets. ☐

(g) Net assets (current value) at end of the plan year. ☐

- 13 (a) Is the plan covered under the Pension Benefit Guaranty Corporation Insurance Program? ☐ Yes ☐ No ☐ Not determined

If "Yes," list employer identification number and/or plan number used in any filing with PBGC if the number was different than the numbers listed in item 1(b) or 5(c) ☐

- (b) If (a) is "Yes," did one or more reportable events or other events requiring notice to PBGC occur since the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan? ☐ Yes ☐ No

If "Yes," complete (i) through (vii):

(i) A decrease in active participants to the extent specified in the instructions? ☐

(ii) An inability to pay benefits when due? ☐

(iii) A distribution to a substantial owner to the extent specified in the instructions? ☐

(iv) A cessation of operations at a facility to the extent specified in the instructions? ☐

(v) A withdrawal of a substantial employer? ☐

(vi) An amendment which may cause the benefit payable to any participant to be decreased? ☐

(vii) Other ☐

- 14 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan:

(a) Did any person who rendered services to the plan receive, directly or indirectly, compensation from the plan? ☐

(b) Other than transactions described in (a) or the exceptions outlined in the instructions were there any transactions, directly or indirectly, between the plan and a party in interest? ☐

If (a) or (b) is checked "Yes," see specific instructions. ☐

- 15 Has there been any change since the last report in the appointment of any trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager or custodian? ☐

If "Yes," attach an explanation including the name, position, address and telephone number of the individual who left or was removed by the plan. ☐

- 16 (a) Is the plan insured by a fidelity bond? ☐

(i) If "Yes," enter name of surety company ☐

(ii) Amount of bond coverage ☐

(b) Was any loss discovered during plan year? ☐

- 17 Since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K which was required to be filed for this plan:

(a) Has the plan granted an extension on any loan for which prior to the granting of an extension, it has not received all the principal and interest payments due under the terms of the loan? ☐

(b) Has the plan granted an extension of time or renewal for the payment of any obligation owed to it which amounts to more than 10% of plan assets? ☐

(c) Has the aggregate fair market value of employer securities and employer real property held by the plan exceeded 10% of the fair market value of the assets of the plan? ☐

(d) Did the plan make loans to or investments in a single enterprise (other than United States Government) which exceeds 15% of plan assets? ☐

(e) Did the plan receive any non-cash contributions? ☐

Form 5500-K (1979)

Page 3

[illegible]

If additional space is required for any item, attach additional sheets the same size as this form.

Department of
the Treasury
Internal
Revenue Service

Department of
Labor
Pension and Welfare
Benefit Program

Pension
Benefit
Guaranty
Corporation

1979 Instructions for Form 5500-K

Return/Report of Employee Pension Benefit Plan for Sole Proprietorships and Partnerships (with fewer than 100 participants and with at least one owner-employee)

(Code references are to the Internal Revenue Code. ERISA refers
to the Employee Retirement Income Security Act of 1974.)

NOTICE

For plan years beginning in 1979, only sponsors whose employer identification number has a last digit of 1, 4, 7, or 0 are to file Form 5500-K. All other sponsors who would normally file Form 5500-K should file Form 5500-R, Registration Statement of Employee Benefit Plan.

Owner-Employee Plans Which are Not Required to File.—Defined Contribution Plans in which owner-employees are the only participants during the current plan year and have been the only participants in all prior plan years need not file Form 5500-K or Form 5500-R for plan year 1979.

All Defined Benefit Keogh plans must file a return/report for 1979.

Who Must File

A. Pension Benefit Plans.—Every sole proprietor, partnership, administrator or plan administrator who administers or maintains a Keogh plan, including plans under which benefits have ceased to accrue and/or for which contributions have been discontinued, with fewer than 100 participants at the beginning of the plan year and with at least one owner-employee, must file a return/report.

Note: An owner-employee means (1) an individual who owns 100% of an unincorporated trade or business or (2) in case of a partnership, a partner who owns more than 10% of either the capital interest or the profits interest in such partnership.

Exception: Defined Contribution plans (money purchase, profit sharing or stock bonus plans) in which owner-employees are the only participants during the current plan year and have been the only participants in all prior plan years need not file Form 5500-K or Form 5500-R for plan year 1979.

B. Type of Filers.

1. Single Employer.—A single employer plan is a plan which is maintained by one employer. One return/report must be filed for each such plan.

A member of common control trades or businesses who maintains a plan

not involving other members of the common control trades or businesses is required to file as a single employer. Therefore, one return/report must be filed for each such plan.

2. Common Control Trades or Businesses.—A plan of only members of common control trades or businesses is a plan maintained by such common control trades or businesses. See section 414(c) of the Code. One return/report must be filed for each plan. An individual employer is not to file any return/report with respect to such plan.

In the case of a plan that includes a group of common control trades or businesses and, in addition, includes an employer(s) who is not a member of such group, file one return/report for the group and one return/report for each employer who is not a member of the group. Exception: if the benefits are payable to employees who are covered by the plan from the total assets without regard to their respective employer's contributions, file one annual return/report for the plan as a whole—in addition, each employer who is not a member of the common control trades or businesses is to file Form 5500-C (regardless of the number of participants) completing only items 1, 2, 3, 4(e), 5, 6, 9 and 25 or a Form 5500-R, whichever is applicable.

3. Multiemployer.—A multiemployer plan is a plan defined in section 3(37) of ERISA or section 414(f) of the Code. One return/report must be filed for each such plan. Contributing employers are not to file individually, with respect to such plans.

4. Multiple-Employer-Collectively-Bargained Plan.—A multiple-employer-collectively-bargained plan involves more than one employer, is collectively bargained and is collectively funded but does not meet the definition of a multi-employer plan. One return/report must be filed for each such plan. Participating employers are not to file individually, with respect to such plan.

5. Multiple-Employer Plan (Other).—A multiple-employer plan (other) involves more than one employer and is

not a multiemployer plan, a collectively-bargained plan or a plan of trades or businesses under common control. A multiple-employer plan (other) will only include those plans where individual employer contributions are available to pay benefits to participants of all participating employers. One return/report must be filed for each such plan. In addition, each participating employer is to file a Form 5500-C (regardless of the number of participants), completing only items 1, 2, 3, 4(e), 5, 6, 9 and 25 or a Form 5500-R, whichever is applicable.

Note: If a participating employer is also the sponsor of the multiple-employer plan (other), the plan number on the return/report filed for the plan should be 333. The Form 5500-C or Form 5500-R filed by the participating employer should list the appropriate plan number (001 if this is the employer's only plan).

In the case of a plan participated in by more than one employer, and the plan provides that each employer's contributions are available to pay benefits only for that employer's employees who are covered by the plan, one return/report must be filed for each participating employer. These filers will be considered single employers and should complete the entire form. Filers of a Form 5500-K check item 4(a).

General Information

Section 6058 of the Code and sections 104 and 4065 of ERISA provide that each plan administrator/sponsor (sole proprietor or partnership) who maintains an employee pension benefit plan subject to ERISA must file, annually, information concerning each such plan.

In order to reduce duplication of reporting and the burden of compliance with ERISA by plan administrators and employers, the Internal Revenue Service (IRS), Department of Labor (DOL) and Pension Benefit Guaranty Corporation (PBGC) have designed consolidated return/report forms.

The PBGC annual report required under Title IV, section 4065 of ERISA and formerly filed separately with PBGC on Form PBGC-1, Schedule A is now included in this combined report.

General Instructions

A. What to File.—Form 5500-K, Return/Report of Employee Pension Benefit Plan, must be filed periodically for each owner-employee plan that has fewer than 100 participants at the beginning of the plan year and at least one owner-employee participant.

Note: An owner-employee means (1) an individual who owns 100% of an unincorporated trade or business or (2) in case of a partnership, a partner who owns more than 10% of either the capital

interest or the profits interest in such partnership.

Form 5500-K is to be filed for (i) the initial plan year, (ii) the year a final return would be filed and (iii) in the intervening years according to the following schedule:

Last digit of plan sponsor's employer identification number is—	File Form 5500-K for—
1, 4, 7, or 0	1979
2, 5, or 8	1980
3, 6, or 9	1981

Form 5500-R, Registration Statement of Employee Benefit Plan (with fewer than 100 participants), must be filed for plan years when Form 5500-C or Form 5500-K is not required to be filed because the last digit of the sponsor's employer identification number does not coincide with the digits for the current year on the above schedule.

Schedule A (Form 5500), Insurance Information, must be attached to Form 5500-K in every case where any benefits under the plan are provided by an insurance company, insurance service or other similar organization.

Exception: An employee benefit plan which covers only an individual or an individual and his or her spouse who wholly owns a trade or business, whether incorporated or unincorporated, or a partner in a partnership and his or her spouse need not file a Schedule A (Form 5500).

Schedule B (Form 5500), Actuarial Information, must be attached to Form 5500-K for defined benefit plans. See instructions to Schedule B.

Schedule SSA (Form 5500), Registration Statement Identifying Separated Participants With Deferred Vested Benefits, may be required to be filed for separated participants. See "When to Report Separated Participants" in the instructions to Schedule SSA.

Keogh plans with no owner-employee participant may not file Form 5500-K.

Keogh plans with 100 or more participants, whether or not there is an owner-employee in the plan, must file Form 5500, Annual Return/Report of Employee Benefit Plan.

Keogh plans with no owner-employee participant and fewer than 100 participants must file Form 5500-C, Return/Report of Employee Benefit Plan.

A plan in which the owner-employee and spouse are the only participants must complete only items 1 through 11(d), 12, 14(b), 19 and 20 of this form and check the box in item A at the top of page 2.

Insured Plans.—Pension plans holding only allocated insurance contracts and for which no trust is involved need not complete items 12 and 14 of Form 5500-K. Pension plans holding allocated insurance contracts for which an inter-

mediary trust is involved need to complete items 12 and 14 of Form 5500-K, but are not to construe the allocated insurance contracts as an asset to be reported in item 12. See 29 CFR 2520.104-44.

B. When to File.—File all required forms and schedules for each plan on or before the last day of the 7th month following the close of the plan year.

Request for Extension of Time to File.—An extension of time up to two and one-half months may be granted for filing return/reports if a timely application, Form 5558, is filed requesting such an extension.

Exception.—Single Employer Plans where plan year and employer's tax year coincide. If the employer has been granted an extension to file the employer's tax return beyond the due date of the Form 5500, 5500-C, 5500-K or 5500-R, such extension also applies to the Form 5500, 5500-C, 5500-K or 5500-R. A copy of the approved IRS extension to file the income tax return must be attached to the Form 5500, 5500-C, 5500-K or 5500-R that is filed after the normal due date.

C. Where to File.—All forms and schedules should be filed with the Internal Revenue Service Center indicated below:

If the principal office of the plan sponsor or the plan administrator is located in:	Use the following Internal Revenue Service Center
New Jersey, New York City and counties of Nassau, Rockland, Suffolk, and Westchester	Holtsville, NY 00501
New York (all other counties), Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont	Andover, MA 05501
Alabama, Florida, Georgia, Mississippi, South Carolina	Atlanta, Ga 31101
Michigan, Ohio	Cincinnati, OH 45999
Arkansas, Kansas, Louisiana, New Mexico, Oklahoma, Texas	Austin, TX 73301
Alaska, Arizona, Colorado, Idaho, Minnesota, Montana, Nebraska, Nevada, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming	Ogden, UT 84201
Illinois, Iowa, Missouri, Wisconsin	Kansas City, MO 64999
California, Hawaii	Fresno, CA 93888
Indiana, Kentucky, North Carolina, Tennessee, Virginia, West Virginia	Memphis, TN 37501
Delaware, District of Columbia, Maryland, Pennsylvania	Philadelphia, PA 19255

If you have no legal residence, principal place of business or principal office or agency in any Internal Revenue District, file your return with the Internal Revenue Service Center, Philadelphia, PA 19255.

D. Final Return/Report.—If all assets under the plan (including insurance/annuity contracts) have been distributed to the participants and beneficiaries, write "Final Return" across the top of the return/report filed for such plan. The year of complete distribution is the last

year a return/report must be filed with respect to the plan.

The plan year ends upon the merger or consolidation of a plan into another plan or upon the complete distribution of the assets of a plan.

E. Penalties.

Caution: ERISA imposes penalties for failure to furnish complete information and failure to file statements and returns/reports.

A penalty of \$10 (not to exceed \$5,000) may be imposed for each day for failure to file returns in connection with certain plans of deferred compensation, certain trusts and annuities and bond purchase plans. See section 6652 (f) of the Code.

A penalty of \$1,000 for failure to file an actuarial report. See section 6692 of the Code.

The following penalties are effective for plan years beginning after December 31, 1975:

A penalty of \$1 (not to exceed \$5,000) for each participant for whom a registration statement (required of certain plans) is not filed. See section 6652(e)(1) of the Code.

A penalty of \$1 (not to exceed \$1,000) for each day for failure to file a notification of change of status of a plan. See section 6652(e)(2) of the Code.

Caution: The following penalties which are imposed by ERISA may be applied upon conviction.

Any individual who willfully violates any provision of Part I of Title I of ERISA shall upon conviction be fined not more than \$5,000 or imprisoned not more than one year, or both. See section 501 of ERISA.

A penalty up to \$10,000 or 5 years imprisonment, or both, is provided for any person who makes any false statement or representation of fact knowing it to be false, or knowingly conceals, covers up, or fails to disclose any fact required by ERISA. See section 1027, Title 18, U.S. Code as amended by section 111 of ERISA.

F. Signature.—All returns/reports must be signed by the plan administrator. Also, a return/report filed for a single employer plan must be signed by the employer.

Exception.—Return/report of plans in which the owner-employee or the owner-employee and spouse are the only participants (see specific instruction 7(b) regarding total participants) only needs to be signed by either the employer or the plan administrator.

When the plan sponsor or the plan administrator is a joint employer-union board or committee, at least one employer representative and one union representative must sign.

G. Reproductions.—Original returns/reports are preferred. However, legible

reproductions of this form may be made after insertion of the required information. All signatures on forms filed with IRS must be original signatures affixed subsequent to the reproduction process.

H. Change of Plan Year.—To change a plan year of certain qualified employee pension benefit plans, you should obtain prior approval from IRS. See section 412(c)(5) of the Code and the regulations thereunder, and Form 5308, Request for Change in Plan/Trust Year.

I. Short Plan Year.—For a short plan year resulting from a merger, consolidation, liquidation of all plan assets, change of the plan year etc., file a return/report for such short plan year on or before the last day of the seventh month following the close of such short plan year. In the case of a merger or consolidation or liquidation of all plan assets, enter "Final Return" across the top of the return/report filed for such short plan year. For a short plan year ending on November 30th or earlier, the applicable prior year Form 5300, 5500-C or 5500-K should be filed. Modify the heading of the form to show the beginning and ending date of your short plan year.

J. Amended Return/Report.—If you file an amended return/report, write "Amended Return" across the top of the form.

K. Notification Under Section 6057(b)(3) and (4) of the Code.—The filing of the annual return/report and indicating thereon that the plan was terminated satisfies the notification required by section 6057(b)(3). The filing of Form 5310 satisfies the notification of the merger or consolidation of the plan with any other plan or its division into two or more plans as required by section 6057(b)(4).

L. Help the Retiring Employee.—Many retirees are being assessed penalties for failure to file Form 1040-ES, Declaration of Estimated Tax for Individuals. We believe many retirees are not aware that they may be required to file Form 1040-ES. Therefore, we ask all employers and plan administrators to tell retiring employees that they may be required to file Form 1040-ES. Also, please tell them that they may request the payor to withhold income tax for them.

M. Deduction.—Worksheets on pages 7 and 8 are provided to assist you in determining the deduction under section 404 of the Code. Do not file these worksheets.

N. Excess Contributions.—File Form 5330 to pay the excise tax on excess contributions made on behalf of an owner-employee.

O. Premature Distribution.—A distribution from a Keogh (H.R. 10) plan to an owner-employee before age 59½ is

subject to an additional income tax under section 72(m)(5) of the Code. This tax is to be reported on Form 1040.

Specific Instructions for Form 5500-K

References are to line items on the form.

1(a). Enter the name and address of the plan sponsor. In all cases where the plan covers only the employees of one employer, enter the name of the employer.

If you received a Form 5500-K with pre-addressed-removable label, please affix the removable label to the name and address area of each return/report you file. If the name or address on the label is wrong, draw a line through the incorrect portion and enter the correct information.

The term "plan sponsor" means—

(i) the employer in the case of an employee benefit plan established or maintained by a single employer;

(ii) the employee organization in the case of a plan established or maintained by an employee organization; or

(iii) in the case of a plan established or maintained jointly by one or more employers and one or more employee organizations, or by two or more employers—the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

Include enough information in 1(a) to adequately describe the sponsor. For example, Joint Board of Trustees for Local 187 Machinists, rather than just, Joint Board of Trustees.

1(b). Enter the nine-digit employer identification number (EIN) assigned to the plan sponsor/employer. For example, 00-1234567. Do not enter your Social Security number.

Employers and plan administrators who do not have an EIN should apply for one on Form SS-4, available from any IRS or Social Security Administration office. Send Form SS-4 to the same Internal Revenue Service Center to which this form is sent.

1(d). When filed for an individual employer, enter the date the employer's taxable year ends. For example, if the taxable year is a calendar year, enter 12-31-79. For all plans with more than one employer, enter "N/A."

1(e). From the list of business codes on pages 6 and 7, enter the one that best describes the nature of the employer's business.

2(a). If the document constituting the plan appoints or designates a plan administrator other than the sponsor, enter the name and address.

2(a) and (b). If plan administrator is also the sponsor, enter "Same."

The term "administrator" means—

(i) the person or a group of persons specifically so designated by the terms of the instrument under which the plan is operated;

(ii) if an administrator is not so designated, the plan sponsor/employer, or

(iii) in the case of a plan for which an administrator is not designated and plan sponsor cannot be identified, such other person as prescribed by regulations of the Secretary of Labor.

2(b). A plan administrator as defined in 2(a) and (b) above must have an EIN for reporting purposes. Enter the plan administrator's nine-digit EIN here. If the plan administrator has no EIN, see 1(b) above.

Note: Employees of an employer are not plan administrators unless so designated in the plan document even though they engage in administrative functions of the plan. If an employee of the employer is designated as the plan administrator, that employee must obtain an EIN.

3. Make an entry only if during the year there was a change in the name, EIN or address of the plan sponsor, and/or in the name, EIN or address of the plan administrator. If there was a change, enter the name, address and EIN as they appeared on the prior return/report.

4. If this return/report is for a sole proprietor or a partnership, check box (a). Check box (b) in all other cases, such as a plan of common control employers.

5(a)(i). Enter the formal name of the plan or sufficient information to identify the plan.

5(b). Enter the date the plan first became effective.

5(c). Enter the three-digit number the employer or plan administrator assigned to the plan. All welfare plan numbers will start at 501. All other plans start at 001. If you have only one pension plan enter 001. If you have only one welfare plan enter 501.

6(a). Check if the amount of contributions is established to fund predetermined retirement benefits. Check if plan is other than a money purchase plan or a profit-sharing plan.

6(b). Check if the amount of contributions is a fixed percentage of compensation or earned income, regardless of profits.

6(c). Check if the amount of contributions is determined as a percentage of profits.

6(d). If this box applies it is to be checked in addition to box (a), (b) or (c).

7. The description of "participant" in the instructions below is only for purposes of item 7 of this form. Active participants include individuals presently employed by an employer(s), and those

not presently so employed and not presently entitled to future benefits, who are retaining or earning credited service under the terms of the plan. Do not include nonvested former employees who have incurred breaks in service of the greater of one year or the break in service period specified in the plan. Do not include participants to whom an insurance company has made irrevocable commitments to pay the benefits to which the individuals are entitled under the plan.

7(a). Complete as of the end of the plan year.

7(a)(i). Self-employed includes partners no matter what their percentage of ownership in capital interest or profits interest.

7(a)(ii). Plans in which the spouse of the self-employed (sole proprietor or partners) is a participant should include the spouse in line 7(a)(ii).

7(b). Total participants includes: (i) the total in 7(a), (ii) retired or separated participants receiving benefits, (iii) retired or separated participants entitled to future benefits and (iv) deceased participants whose beneficiaries are receiving or are entitled to receive benefits.

7(d). If "Yes," you may be required to file Schedule SSA (Form 5500) as an attachment to the return/report. Plan administrators are cautioned that section 6057(e) of the Code provides that the plan administrator is required to furnish each such participant an individual statement which must include the same information reported on Schedule SSA with respect to such participant.

8. Check "Yes," if an amendment to the plan was adopted in this plan year, regardless of the effective date of the amendment.

9. If plan was terminated and trust assets were not completely distributed, a return/report must be filed for each year that the trust has assets. In such case, the return/report must be filed by the plan administrator, if designated, or by the person or persons actually responsible for the control, disposition or management of the cash or property received by or contributed to the plan.

9(a). Check "Yes," if plan was terminated or if plan was merged or consolidated into another plan.

9(b). If all the trust assets were allocated to purchase individual annuity contracts and the contracts were distributed to the participants, check "Yes."

10. If this plan was merged or consolidated into another plan(s), or plan assets or liabilities were transferred to an-

other plan(s), it is necessary to show what other plan or plans were involved.

10(a). Check "Yes" if plan was terminated or if plan was merged or consolidated into another plan.

10(c). Enter the EIN of the sponsor, employer if for a single-employer plan, of the other plan.

11(a). A trust which provides no benefits through insurance or annuity contracts.

11(b). Check for a trust or arrangement providing benefits exclusively through insurance and/or annuity contracts.

11(c). Check for a trust or arrangement providing benefits partially through insurance and/or annuity contracts.

12. The financial information may be based on either the cash, modified accrual or accrual basis for recognition of transactions as long as one method is applied consistently throughout item 12. Include insurance contracts with unallocated funds, etc.

The term "current value" means fair market value where available and otherwise the fair value as determined in good faith by a trustee or a named fiduciary pursuant to the terms of the plan at the time of such determination.

12(a). Enter the amount of net assets as of the end of the previous plan year as shown on the previous year's Form 5500-K.

12(b). Any contributions made for the plan year before the due date of the employer's Federal income tax return (including any extension thereof) should be included on this line.

12(e). Include all distributions of benefits paid directly to participants or their beneficiaries and payments to provide benefits made to insurance carriers or similar organizations.

12(f). Other changes include unrealized appreciation/depreciation on investments.

12(g). All contributions entered on line 12(b) should be included in net assets at the end of the plan year.

13. If uncertainty exists as to coverage status of the plan under Title IV of ERISA check box "Not determined" and a determination will be made by PBGC.

13(b). If "Yes" was checked indicating that certain reportable events or another event requiring notification to PBGC occurred, items (i) through (vii) must be completed.

Completion of this item satisfies the reporting requirement under ERISA, sec-

tion 4065. However, completion of this item does not replace any of the specific reporting requirements under ERISA, sections 4043(b), 4062(e) and 4063(a).

(i) Check "Yes" if, at any time during the plan year the number of active participants was less than 80% of the number of such participants at the beginning of the plan year; or less than 75% of the number of such participants at the beginning of the previous plan year (section 4043(b)(3) of ERISA).

(ii) Check "Yes" if, at any time during the plan year, the plan was unable to pay any benefit when due (section 4043(b)(6) of ERISA).

(iii) Check "Yes" if, at any time during the plan year, a distribution was made to a substantial owner (other than on account of death) as defined in Section 4022(b)(6) of ERISA, which had a value of \$10,000 or more and immediately after, the plan had unfunded nonforfeitable benefits (Section 4043(b)(7) of ERISA). The term "substantial owner" means an individual who:

- (a) owns the entire interest in an unincorporated trade or business;
- (b) in the case of a partnership is a partner who owns, directly or indirectly, more than 10 percent of either the capital interest or profits in such partnerships; or
- (c) in the case of a corporation owns, directly or indirectly, more than 10 percent in the value of either the voting stock of that corporation or all the stock in that corporation.

The constructive ownership rules of Section 1563(e) of the Code apply in the case of a corporation without regard to Section 1563(a)(4) and 1563(e)(3)(C) of the Code. An individual is also treated as a substantial owner under the plan at any time within sixty (60) months preceding the date on which the determination is made.

(iv) Check "Yes" if, at any time during the plan year, operations ceased at a facility of an employer maintaining a plan, resulting in the separation from employment of more than 20 percent of the active participants in the plan (Section 4062(e) of ERISA).

(v) Check "Yes" if, at any time during the plan year, a substantial employer withdrew from a plan under which more than one employer makes contributions (Section 4063(a) of ERISA).

The term "substantial employer" means, for any plan year, an employer who has made contributions to a plan

under which more than one employer contributes for each of (a) the two preceding plan years or (b) the second and third preceding plan years—equaling or

exceeding 10 percent of all employer contributions paid to or under the plan for each such year.

(vi) Check "Yes" if, during the plan

year, an amendment was adopted under which the benefit payable with respect to any participant may be decreased (section 4043(b)(2) of ERISA).

14(a). Furnish the following information with respect to any person who rendered services to the plan and received, directly or indirectly, compensation from the plan since the end of the plan year covered by the last return/report Form 5500, 5500-C or 5500-K required to be filed for this plan.

a. Name	b. Official plan position	c. Relationship to employer, employee organization or person known to be a party-in-interest	d. Gross salary or allowances paid by plan	e. Fees and commissions paid by plan	f. Nature of service code
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Include all persons (1) whose duties with respect to a plan and plan assets involve the exercise of any discretion or control over the plan assets or (2) who, as an employee of the plan, receive compensation from the plan of more than \$1,000 per month or (3) who, if other than an employee, receive compensation of more than \$1,000 per year from the plan. Do not include persons whose sole compensation in relation to the plan consists of insurance fees and commissions listed in Schedule A (Form 5500). Do not list persons whose compensation was not paid by the plan, except for any person who received payment from a plan sponsor or other party which payment was or will be reimbursed, directly or indirectly, by the plan.

Do not report brokerage where the broker is not granted any discretion. See 29 CFR 2510.3-21, paragraph (d) regarding "discretion." All other commissions and fees on investments are to be shown regardless of whether they are capitalized as part of the investment costs. Summary information should be furnished (in the format provided) for the plan year as a whole for each person.

Any person who provides administrative services should be listed and that person's employer's EIN should follow the name in column (a). Example: John Smith (99-1234567).

Column f. From the list below, select the code that best describes the nature of services provided to the plan and enter the number in column f. If more than

one service was provided, enter the code of the primary service.

Code	Service
10	Accounting (including auditing)
11	Actuarial
13	Administration
14	Brokerage (real estate)
15	Brokerage (stocks, bonds, commodities)
16	Computing, tabulating, ADP, etc.
17	Consulting (general)
18	Custodial (securities)
19	Insurance agents and brokers
20	Investment advisory
21	Investment management
22	Legal
23	Printing and duplicating
24	Recordkeeping
25	Trustee (individual)
26	Trustee (corporate)
27	Pension/insurance advisor
28	Valuation services (appraisals, asset valuations, etc.)
29	Investment evaluations
99	Other (specify)

14(b). Other Party-in-Interest Transactions.—Describe each transaction in the following or similar format, except for the following transactions:

- (1) Payments of insurance premiums;
- (2) Benefit payments authorized by the plan; and
- (3) The investment of plan assets in—(i) deposits in a bank or similar financial institution supervised by a State or Federal agency, (ii) a common or collective trust fund or pooled investment fund maintained by a bank or trust company supervised by a State or Federal agency, or (iii) a pooled investment fund of an insurance company qualified to do business in a State.

If the assets or investments of two or more plans are maintained in one trust (except common or collective trusts) the entries in the schedule which relate to the trust shall be complete by entering the plan's applicable portion of the total dollar amounts.

If you relied upon a statutory or administrative exemption in entering into a transaction described in the schedule, enter in column k ("exemption") the section of ERISA or the number of the administrative exemption upon which you relied. Also use column k to indicate that an application for an administrative exemption is pending.

a. Identity of party involved	b. Relationship to plan, employer or other party in interest	c. Description of transactions including maturity date, rate of interest, collateral, par or maturity value	d. Purchase price	e. Selling price	f. Lease rental	g. Expense incurred in connection with transaction	h. Cost of asset	i. Current value of asset	j. Net gain or (loss) on each transaction	k. Exemption

The term "party-in-interest" (for purposes of this form, party-in-interest is deemed to include a disqualified person—see section 4975(e)(2) of the Code) means, as to an employee benefit plan—

(A) any fiduciary (including, but not limited to, any administrator, officer, trustee or custodian), counsel or employee of such employee benefit plan;

(B) a person providing services to such plan;

(C) an employer any of whose employees are covered by such plan;

(D) an employee organization any of whose members are covered by such plan;

(E) an owner, direct or indirect, of 50% or more or—(i) the combined voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of a corporation, (ii) the capital interest or the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, which is an employer or an employee organization described in subparagraph (C) or (D);

(F) a relative of any individual described in subparagraph (A), (B), (C) or (E);

(G) a corporation, partnership, or trust or estate of which (or in which) 50% or more of—(i) the combined

voting power of all classes of stock entitled to vote or the total value of shares of all classes of stock of such corporation, (ii) the capital interest or profits interest of such partnership, or (iii) the beneficial interest of such trust or estate, is owned directly or indirectly, or held by persons described in subparagraph (A), (B), (C), (D) or (E);

(H) an employee, officer, director (or an individual having powers or responsibilities similar to those of officers or directors), or a 10% or more shareholder directly or indirectly, of a person described in subparagraph (B), (C), (D), (E) or (G), or the employee benefit plan; or

(l) a 10% or more (directly or indirectly in capital or profits) partner or joint venturer of a person described in subparagraph (B), (C), (D), (E) or (G).

16. Loss means any loss to the plan caused by the fraud or dishonesty of any plan official or employee of the plan or of other person handling funds of the plan.

19. The IRS serial number is the eight-digit letter serial number provided by the IRS for master, prototype, and pattern plans (e.g. 07600630).

20(b). If a waiver of a funding deficiency has been granted, do not complete (i), (ii) and (iii) but complete 1, 2, 3 and 9 of Schedule B (Form 5500). An enrolled actuary need not sign Schedule B under these circumstances.

20(b)(i) (ii) and (iii). Sole proprietors or partnerships with no employees during the plan year enter "N/A".

20(b)(iii). File Form 5330 with IRS to pay the 5% excise tax on the funding deficiency.

21(c). This line must be completed to reflect only the plan years for which Form 5500-R was required to be filed.

21(d)(i). Complete this item for the current plan year.

21(d)(ii) and (iii). These items must be completed to reflect only the plan years for which Form 5500-R was required to be filed.

Codes for Principal Business Activity and Principal Product or Service

These industry titles and definitions are based, in general, on the Enterprise Standard Industrial Classification system developed by the Office of Management and Budget, Executive Office of the President, to classify enterprises by type of activity in which they are engaged. The system follows closely the Standard Industrial Classification used to classify establishments.

AGRICULTURE, FORESTRY, AND FISHING

Code
Farms:
0120 Field crop.
0150 Fruit, tree nut, and vegetable.
0180 Horticultural specialty.
0230 Livestock.
0270 Animal specialty.
Agricultural services and forestry:
0740 Veterinary services.
0750 Animal services, except veterinary.
0780 Landscape and horticultural services.
0790 Other agricultural services.
0800 Forestry.
Fishing, hunting, and trapping:
0930 Commercial fishing, hatcheries and preserves.
0970 Hunting, trapping, and game propagation.

MINING

Code
Metal mining:
1010 Iron ores.
1070 Copper, lead and zinc, gold and silver ores.
1098 Other metal mining.
1150 Coal mining.
Oil and gas extraction:
1330 Crude petroleum, natural gas, and natural gas liquids.
1380 Oil and gas field services.
Nonmetallic minerals (except fuels) mining:
1430 Dimension, crushed and broken stone; sand and gravel.
1498 Other nonmetallic minerals, except fuels.

CONSTRUCTION

Code
General building contractors and operative buildings:
1510 General building contractors.
1531 Operative buildings.
Heavy construction contractors:
1611 Highway and street construction.
1620 Heavy construction, except highway.
Special trade contractors:
1711 Plumbing, heating, and air conditioning.
1721 Painting, paper hanging, and decorating.
1731 Electrical work.
1740 Masonry, stonework, and plastering.
1750 Carpentry and flooring.
1761 Roofing and sheet metal work.
1771 Concrete work.
1781 Water well drilling.
1790 Miscellaneous special trade contractors.

MANUFACTURING

Code
Food and kindred products:
2010 Meat products.
2020 Dairy products.
2030 Preserved fruits and vegetables.
2040 Grain mill products.
2050 Bakery products.
2060 Sugar and confectionery products.
2081 Malt liquors and malt.
2088 Alcoholic beverages, except malt liquors and malt.
2089 Bottled soft drinks, and flavorings.
2096 Other food and kindred products.
2100 Tobacco manufacturers.

Code
Textile mill products:
2228 Weaving mills and textile finishing.
2250 Knitting mills.
2298 Other textile mill products.
Apparel and other textile products:
2315 Men's and boys' clothing.
2345 Women's and children's clothing.
2388 Hats, caps, millinery, fur goods, and other apparel and accessories.
2390 Misc. fabricated textile products.
Lumber and wood products, except furniture:
2415 Logging camps and logging contractors, sawmills and planing mills.
2430 Millwork, plywood, and related products.
2498 Other wood products, including wood buildings and mobile homes.
2500 Furniture and fixtures.
Paper and allied products:
2625 Pulp, paper, and board mills.
2699 Other paper products.
Printing, publishing, and allied industries:
2710 Newspapers.
2720 Periodicals.
2735 Books, greeting cards, and misc. publishing.
2799 Commercial and other printing and printing trade services.
Chemicals and allied products:
2815 Industrial chemicals, plastics materials and synthetics.
2830 Drugs.
2840 Soap, cleaners, and toilet goods.
2850 Paints and allied products.
2898 Agricultural and other chemical products.
Petroleum refining and related industries (including those integrated with extraction):
2910 Petroleum refining (including those integrated with extraction).
2998 Other petroleum and coal products.
Rubber and misc. plastics products:
3050 Rubber products; plastics footwear, hose and belting.
3070 Misc. plastics products.
Leather and leather products:
3140 Footwear, except rubber.
3198 Other leather and leather products.
Stone, clay, glass, and concrete products:
3225 Glass products.
3240 Cement, hydraulic.
3270 Concrete, gypsum, and plaster products.
3298 Other nonmetallic mineral products.
Primary metal industries:
3370 Ferrous metal industries; misc. primary metal products.
3380 Nonferrous metal industries.
Fabricated metal products, except machinery and transportation equipment:
3410 Metal cans and shipping containers.
3428 Cutlery, hand tools, and hardware; screw machine products, bolts, and similar products.
3430 Plumbing and heating, except electric and warm air.
3440 Fabricated structural metal products.
3460 Metal forgings and stampings.
3470 Coating, engraving, and allied services.
3480 Ordnance and accessories, except vehicles and guided missiles.
3490 Misc. fabricated metal products.

Code

Machinery, except electrical:
3520 Farm machinery.
3530 Construction, mining, and materials handling machinery and equipment.
3540 Metalworking machinery.
3550 Special industry machinery, except metalworking machinery.
3560 General industrial machinery.
3570 Office, computing, and accounting machines.
3598 Engines and turbines, service industry machinery, and other machinery, except electrical.
Electrical and electronic machinery, equipment, and supplies:
3630 Household appliances.
3665 Radio, television, and communication equipment.
3670 Electronic components and accessories.
3698 Other electric equipment.
Transportation equipment:
3710 Motor vehicles and equipment.
3725 Aircraft, guided missiles and parts.
3730 Ship and boat building and repairing.
3798 Other transportation equipment.
Measuring and controlling instruments; photographic and medical goods, watches and clocks:
3815 Scientific instruments and measuring devices; watches and clocks.
3845 Optical, medical, and ophthalmic goods.
3860 Photographic equipment and supplies.
3998 Other manufacturing products.

TRANSPORTATION, COMMUNICATION, ELECTRIC, GAS, AND SANITARY SERVICES

Transportation:
4000 Railroad transportation.
Local and interurban passenger transit:
4121 Taxicabs.
4189 Other passenger transportation.
Trucking and warehousing:
4210 Trucking, local and long distance.
4289 Public warehousing and trucking terminals.
Other transportation including transportation services:
4400 Water transportation.
4500 Transportation by air.
4600 Pipe lines, except natural gas.
4722 Passenger transportation arrangement.
4723 Freight transportation arrangement.
4799 Other transportation services.
Communication:
4825 Telephone, telegraph, and other communication services.
4830 Radio and television broadcasting.
Electric, gas, and sanitary services:
4910 Electric services.
4920 Gas production and distribution.
4930 Combination utility services.
4990 Water supply and other sanitary services.

WHOLESALE TRADE

Durable:
5010 Motor vehicles and automotive equipment.
5020 Furniture and home furnishings.
5030 Lumber and construction materials.
5040 Sporting, recreational, photographic, and hobby goods, toys, and supplies.
5050 Metals and minerals, except petroleum and scrap.
5060 Electrical goods.
5070 Hardware, plumbing and heating equipment.
5083 Farm machinery and equipment.
5089 Other machinery, equipment, and supplies.
5098 Other durable goods.
Nondurable:
5110 Paper and paper products.
5129 Drugs, drug proprietaries, and druggists' sundries.

Code

5130 Apparel, piece goods, and notions.
5140 Groceries and related products, except meats and meat products.
5147 Meats and meat products.
5150 Farm-product raw materials.
5160 Chemicals and allied products.
5170 Petroleum and petroleum products.
5180 Alcoholic beverages.
5190 Misc. nondurable goods.

RETAIL TRADE

Building materials, hardware, garden supply, and mobile home dealers:

5211 Lumber and other building materials dealers.
5231 Paint, glass, and wallpaper stores.
5251 Hardware stores.
5261 Retail nurseries and garden stores.
5271 Mobile home dealers.

General Merchandise:

5331 Variety stores.
5398 Other general merchandise stores.

Food stores:

5411 Grocery stores.
5420 Meat and fish markets and freezer provisions.
5431 Fruit stores and vegetable markets.
5441 Candy, nut, and confectionery stores.
5451 Dairy products stores.
5460 Retail bakeries.
5490 Other food stores.

Automotive dealers and service stations:

5511 New car dealers (franchised).
5521 Used car dealers.
5531 Auto and home supply stores.
5541 Gasoline service stations.
5551 Boat dealers.
5561 Recreational vehicle dealers.
5571 Motorcycle dealers.
5599 Aircraft and other automotive dealers.

Apparel and accessory stores:

5611 Men's and boys' clothing and furnishings.
5621 Women's ready-to-wear stores.
5631 Women's accessory and specialty stores.
5641 Children's and infants' wear stores.
5651 Family clothing stores.
5661 Shoe stores.
5681 Furriers and fur shops.
5699 Other apparel and accessory stores.

Furniture, home furnishings, and equipment stores:

5712 Furniture stores.
5713 Floor covering stores.
5714 Drapery, curtain, and upholstery stores.
5719 Home furnishings, except appliances.
5722 Household appliance stores.
5732 Radio and television stores.
5733 Music stores.

Eating and drinking places:

5812 Eating places.
5813 Drinking places.

Miscellaneous retail stores:

5912 Drug stores and proprietary stores.
5921 Liquor stores.
5931 Used merchandise stores.
5941 Sporting goods stores and bicycle shops.
5942 Book stores.
5943 Stationery stores.
5944 Jewelry stores.
5945 Hobby, toy, and game shops.

Code

5946 Camera and photographic supply stores.
5947 Gift, novelty, and souvenir shops.
5948 Luggage and leather goods stores.
5949 Sewing, needlework, and piece goods stores.
5961 Mail order houses.
5962 Merchandising machine operators.
5963 Direct selling organizations.
5982 Fuel and ice dealers (except fuel oil and bottled gas dealers).
5983 Fuel oil dealers.
5984 Liquefied petroleum gas (bottled gas).
5992 Florists.
5993 Cigar stores and stands.
5994 News dealers and newsstands.
5996 Other miscellaneous retail stores.

FINANCE, INSURANCE, AND REAL ESTATE

Banking:

6030 Mutual savings banks.
6060 Bank holding companies.
6090 Banks, except mutual savings banks and bank holding companies.

Credit agencies other than banks:

6120 Savings and loan associations.
6140 Personal credit institutions.
6150 Business credit institutions.
6199 Other credit agencies.

Security, commodity brokers, dealers, exchanges, and services:

6212 Security underwriting syndicates.
6218 Security brokers and dealers, except underwriting syndicates.
6299 Commodity contracts brokers and dealers; security and commodity exchanges; and allied services.

Insurance:

6355 Life insurance.
6356 Mutual insurance, except life or marine and certain fire or flood insurance companies.
6359 Other insurance companies.
6411 Insurance agents, brokers, and services.

Real Estate:

6511 Real estate operators (except developers) and lessors of buildings.
6516 Lessors of mining, oil, and similar property.
6518 Lessors of railroad property and other real property.
6531 Real estate agents, brokers and managers.
6541 Title abstract offices.
6552 Subdividers and developers, except cemeteries.
6553 Cemetery subdividers and developers.
6599 Other real estate.
6611 Combined real estate, insurance, loans and law offices.

Holding and other investment companies:

6742 Regulated investment companies.
6743 Real estate investment trusts.
6744 Small business investment companies.
6749 Holding and other investment companies, except bank holding companies.

SERVICES

Hotels and other lodging places:

7012 Hotels.
7013 Motels, motor hotels, and tourist courts.
7021 Rooming and boarding houses.
7032 Sporting and recreational camps.
7033 Trailer parks and camp sites.
7041 Organizational hotels and lodging houses on a membership basis.

Code

Personal services:

7215 Coin-operated laundries and dry cleaning.
7219 Other laundry, cleaning, and garment services.
7221 Photographic studios, portrait.
7231 Beauty shops.
7241 Barber shops.
7251 Shoe repair and hat cleaning shops.
7261 Funeral services and crematories.
7299 Miscellaneous personal services.

Business services:

7310 Advertising.
7340 Services to buildings.
7370 Computer and data processing services.
7392 Management, consulting, and public relations services.
7394 Equipment rental and leasing.
7398 Other business services.

Automotive repair and services:

7510 Automotive rentals and leasing, without drivers.
7520 Automobile parking.
7531 Automobile top and body repair shops.
7538 General automobile repair shops.
7539 Other automotive repair shops.
7540 Automotive services, except repair.

Miscellaneous repair services:

7622 Radio and TV repair shops.
7628 Electrical repair shops, except radio and TV.
7641 Upholstery and furniture repair.
7680 Other miscellaneous repair shops.

Motion pictures:

7812 Motion picture production, distribution, and services.
7830 Motion picture theaters.

Amusement and recreation services:

7920 Producers, orchestras, and entertainers.
7932 Billiard and pool establishments.
7933 Bowling alleys.
7980 Other amusement and recreation services.

Medical and health services:

8011 Offices of physicians.
8021 Offices of dentists.
8031 Offices of osteopathic physicians.
8041 Offices of chiropractors.
8042 Offices of optometrists.
8048 Registered and practical nurses.
8050 Nursing and personal care facilities.
8060 Hospitals.
8071 Medical laboratories.
8072 Dental laboratories.
8098 Other medical and health services.

Other services:

8111 Legal services.
8200 Educational services.
8911 Engineering and architectural services.
8932 Certified public accountants.
8933 Other accounting, auditing, and bookkeeping services.
8999 Other services, not elsewhere classified.

TAX-EXEMPT ORGANIZATIONS

9001 Church.
9002 Church plans making an election under section 410(d) of the Internal Revenue Code.
9319 Other tax-exempt organization.
9904 Governmental instrumentality or agency.

Worksheet A

Worksheet for determining the deduction for contributions made on behalf of common-law employees and self-employed individuals who are participants in a defined benefit plan. This may be made part of your permanent record—it should not be filed.

1 Limitation on amount deductible under a defined benefit plan:

(a) Amount of employer contributions for the taxable year	_____
(b) Contribution carryover from prior year	_____
(c) Total, (a) plus (b)	_____
(d) Amount necessary to meet minimum funding standards	_____
(e) Amount deductible under section 404(a)(1)(A)(ii) of the Code	_____
(f) Amount deductible under section 404(a)(1)(A)(iii) of the Code	_____
(g) Amount equal to the full funding limitation determined under section 412 of the Code	_____
(h) Deduction, applicable line (d), (e) or (f) not to exceed the lesser of line (c) or (g)	_____

2 Primary limitation on amount deductible under a profit-sharing or stock bonus plan:

(a) Amount of employer contributions for the taxable year	_____
(b) Contribution carryover from prior year	_____
(c) Total, (a) plus (b)	_____
(d) 15% of compensation paid to all participants	_____
(e) Deduction, lesser of line (c) or (d)	_____

Worksheet A—Continued

3 Secondary limitation on amount deductible under a profit-sharing or stock bonus plan:	
(a) Amount of employer contributions for the taxable year	
(b) 25% of compensation paid to all participants	
(c) Aggregate primary limitations for all prior years and current year	
(d) Aggregate prior years' deductions	
(e) Excess of (c) over (d)	
(f) Lesser of (b) or (e)	
(g) Deduction, lesser of line (a) or (f)	
4 Limitation on amount deductible under a money purchase plan:	
(a) Amount of employer contributions for the taxable year	
(b) Contribution carryover from prior year	
(c) Total, (a) plus (b)	
(d) Normal cost (current year's service costs)	
(e) Credits and gains	
(f) Basic limit on deduction, (d) less (e)	
(g) Minimum contributions required under section 412 if larger than (f)	
(h) Deduction, (f) or (g) but not to exceed (c)	
5 Limitation on amount deductible under overlapping plans, section 404(a)(7) of the Code:	
(a) 25% of compensation paid to all participants	
(b) Total amount of employer contributions otherwise deductible under all overlapping plans	
(c) Smaller of (a) or (b)	
(d) Carryover from prior year under section 404(a)(7) of the Code	
(e) Lesser of (a) or the sum of (c) and (d)	
(f) Amount contributed to meet minimum funding standards	
(g) Deduction, greater of (e) or (f)	
6 Limitation on deduction for employer contributions to a non-qualified plan:	
(a) Amount* of employer contributions for the taxable year that is nonforfeitable to the participants	
(b) Amount* of prior year's employer contributions that became nonforfeitable to the participants this year	
(c) Allowable deduction for this year, (a) plus (b)	
*Such amounts must be reported on the employees' Forms W-2.	

Worksheet B

Worksheet for determining the deduction for contributions made on behalf of self-employed individuals for defined contribution plans only. For determining the deduction for defined benefit plans use Worksheet A lines 1(a) through (h). This may be made part of your permanent record—it should not be filed.

1 Employer contributions made to the plan for sole proprietor or partners	
2 Less amount allocated to life insurance protection (the term insurance premium)	
3 Net contributions	
4 Earned income of sole proprietor or of all participating partners but not in excess of \$50,000 for a sole proprietor or for any one partner	
5 15% of line 4. (Exceptions: If a sole proprietor or a partner has less than \$5,000 earned income and his or her adjusted gross income, computed without regard to this deduction, does not exceed \$15,000, enter the lesser of the amount on line 4 or \$750 with respect to such sole proprietor or partner.)	
6 Deduction, enter the smaller of lines 3 or 5	

BILLING CODE 7708-01-C
 BILLING CODE 4830-01-C
 BILLING CODE 4510-29-C

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28905 (Sub-No. 7)]

Baltimore & Ohio Chicago Terminal Railroad Co. and Louisville & Nashville Railroad Co.—Construction and Operation—Connection at Dolton, Cook County, IL.

Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT), Baltimore, MD, 21201 and Louisville & Nashville Railroad Company (L&N), Louisville, KY 40232, represented by René J. Gunning, General Attorney, The Baltimore and Ohio Chicago Terminal Railroad Company, 2 North Charles Street, Baltimore, MD 21201, and R. Lyle Key, Jr., Assistant General Attorney, Louisville and Nashville Railroad Company, P.O. Box 32290, Louisville, KY 40232, hereby give notice that on the 21st day of May, 1979, they filed with the Interstate Commerce Commission at Washington, DC, a joint application pursuant to 49 U.S.C. § 10901 for a decision approving and authorizing the construction and operation of a connection between the lines of the B&OCT and the Indiana Harbor Belt Railroad Company (IHB) at Dolton, in Cook County, IL. The total trackage proposed to be constructed is 410 feet of main line connecting track, which is approximately 0.08 mile.

L&N has two main lines to Chicago, IL, one from Louisville KY, via Monon, IN, terminating at South Hammond Yard, and the other from Evansville, IN, terminating at Yard Center. Yard Center is a joint facility used by L&N and operated by Missouri Pacific Railroad Company. In related applications, L&N seeks trackage rights over B&OCT and proposed to construct with B&OCT a new connection at State Line, IN/IL. The trackage rights, State Line connection and the connection proposed in this application will permit L&N to consolidate its yard operations in the Chicago area. The connection proposed in this application, in conjunction with a portion of the proposed trackage rights over B&OCT, will also provide L&N a shorter, more direct route for the interchange of trains between itself and Chicago South Short and South Bend Railroad at East Chicago, IN. Additionally, The Chesapeake and Ohio Railway Company (C&O) operates over the B&OCT to reach Yard Center and the Illinois Central Gulf Railroad Company's (ICG) yard at Markham, IL. C&O will also use this new connection to reach Yard Center and the ICG yard, and it will provide a more direct route than the trackage currently used.

B&OCT is a wholly-owned subsidiary of the Baltimore and Ohio Railroad Company (B&O) and is part of the Chessie System, which is comprised of C&O, B&O, Western Maryland Railway Company and affiliated lines. L&N is a wholly-owned subsidiary of Seaboard Coast Line Railroad Company (SCL) and is part of the Family Lines System, which is comprised of SCL, L&N, Clinchfield Railroad Company, Georgia Railroad, The Western Railway of Alabama, Atlanta and West Point Railroad Company, and affiliated lines.

This application is related to CSX Corporation-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 1), the Baltimore and Ohio Chicago Terminal Railroad Company and Louisville and Nashville Railroad Company Construction and Operation Connection at or near Calumet City, Cook County, IL and at or near Hammond, Lake County, IN, Finance Docket No. 28905 (Sub-No. 6) and a concurrently filed application where L&N seeks to acquire trackage rights over the Baltimore and Ohio Chicago Terminal Railroad Company between East Chicago, IN, and Rockwell Street Junction, Chicago, IL.

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No.4), *Implementation-National Environmental Policy Act*, 1969 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence or any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation-National Environmental Policy Act*, 1969, *supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsels for applicants, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the

Commission that it approve, disapprove,

or take any other specified action with respect to such application.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-19710 Filed 6-25-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28905 (Sub-No. 10)]

Baltimore & Ohio Railroad Co. and Louisville & Nashville Railroad Co.— Construction and Operation— Connection at East St. Louis, St. Clair County, IL.

The Baltimore and Ohio Railroad Company (B&O), Baltimore, MD 21201, and Louisville and Nashville Railroad Company (L&N), Louisville, KY 40232, represented by René J. Gunning, General Attorney, The Baltimore and Ohio Railroad Company, 2 North Charles Street, Baltimore, MD 21201, and R. Lyle Key, Jr., Assistant General Attorney, Louisville and Nashville Railroad Company, P.O. Box 32290, Louisville, KY 40232, hereby give notice that on the 21st day of May 1979, they filed with the Interstate Commerce Commission at Washington, DC, a joint application pursuant to 49 U.S.C. § 10901 for a decision approving and authorizing the construction and operation of a connection between the lines of the B&O and L&N at East St. Louis, in St. Clair County, IL. The total trackage proposed to be constructed is 615 feet of main line connecting track, which is approximately 0.12 mile.

The B&O and L&N have similar operations in East St. Louis, where they have adjacent flat switching yards. The B&O reaches its yards by its line from Cincinnati, OH, and L&N reaches its yards by its line from Evansville, IN. B&O and L&N intend to consolidate their yard operations at East St. Louis, IL, and retire a portion of the L&N yard. The proposed connection between the B&O and L&N lines will provide L&N with improved access from its main line to the B&O's yard and will enhance the consolidation of their yard activities in East St. Louis.

B&O is controlled by The Chesapeake and Ohio Railway Company (C&O) and is part of the Chessie System, which is comprised of C&O, B&O, Western Maryland Railway Company and affiliated lines. L&N is controlled by Seaboard Coast Line Railroad Company (SCL) and is part of the Family Lines System, which is comprised of SCL, L&N, Clinchfield Railroad Company, Georgia Railroad, The Western Railway of Alabama, Atlanta and West Point Railroad Company, and affiliated lines.

The application is related to CSX Corporation-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 1) and a concurrently filed application where L&N seeks to acquire trackage rights over the Baltimore and Ohio Railroad Company between Mitchell, IN, and East St. Louis, IL, and Coordination of Operations Louisville and Nashville Railroad Company and Baltimore and Ohio Railroad Company between Washington, IN, and East St. Louis, IL, Finance Docket No. 28905 (Sub-No. 9).

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the required Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsels for applicants, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19712 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 28905 (Sub-No. 15)]

Chesapeake & Ohio Railway Co. and Louisville & Nashville Railroad Co.—Construction and Operation—Connection Near Deane, Letcher County, KY

The Chesapeake and Ohio Railway Company (C&O), Baltimore, MD 21201, and Louisville and Nashville Railroad Company (L&N), Louisville, KY 40232, represented by René J. Gunning, General Attorney, The Chesapeake and Ohio Railway Company, 2 North Charles

Street, Baltimore, MD 21201, and R. Lyle Key, Jr., Assistant General Attorney, Louisville and Nashville Railroad Company, P.O. Box 32290, Louisville, KY 40232, hereby give notice that on the 21st day of May, 1979, they filed with the Interstate Commerce Commission at Washington, DC, a joint application pursuant to 49 U.S.C. § 10901 for a decision approving and authorizing the construction and operation of a connection between the lines of the C&O and L&N near Deane in Letcher County, KY. The total trackage proposed to be constructed is 1,187 feet of branch line connecting track, which is approximately 0.22 mile.

A substantial amount of coal is generated on the L&N in Eastern KY which is destined to points in the Southeast. The movement of this coal is circuitous because of existing routings and the terrain characteristics of the territory in which L&N operates. Both C&O and L&N have lines to Deane, KY, and have a physical connection in the vicinity of the connection proposed in this application. The construction of and operation over the proposed connection will permit the movement of the above-described coal shipments over shorter routes, thereby producing significant transportation savings and improvements in car utilization.

C&O is a wholly-owned subsidiary of Chessie System, Inc., and is part of the Chessie System, which is comprised of C&O, The Baltimore and Ohio Railroad Company, Western Maryland Railway Company and affiliated lines. L&N is a wholly-owned subsidiary of Seaboard Coast Line Railroad Company (SCL) and is part of the Family Lines System, which is comprised of SCL, L&N, Clinchfield Railroad Company, Georgia Railroad, The Western Railway of Alabama, Atlanta and West Point Railroad Company, and affiliated lines.

This application is related to CSX Corporation-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 1).

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National*

Environmental Policy Act, 1969, supra, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsels for applicants, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19713 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 28905 (Sub-No. 4)]

Chesapeake & Ohio Railway Co. and Louisville & Nashville Railroad Co.—Construction and Operation of Connection at Newport, Campbell County, Ky.

Chesapeake and Ohio Railway Company (C&O), Baltimore, MD 21201 and Louisville and Nashville Railroad Company (L&N), Louisville, KY 40232, represented by René J. Gunning, General Attorney, The Chesapeake and Ohio Railway Company, 2 North Charles Street, Baltimore, MD 21201, and R. Lyle Key, Jr., Assistant General Attorney, Louisville and Nashville Railroad Company, P.O. Box 32290, Louisville, KY 40232, hereby give notice that on the 21st day of May, 1979, they filed with the Interstate Commerce Commission at Washington, DC, a joint application pursuant to 49 U.S.C. § 10901 for a decision approving and authorizing the construction and operation of a connection between the lines of the C&O and L&N at Newport, in Campbell County, KY. The total trackage proposed to be constructed is approximately 886 feet of branch line connecting track, which is approximately 0.17 mile.

Cincinnati, Ohio, is a major gateway for L&N coal. In the Cincinnati area, L&N's principal yard for the classification and handling of coal is DeCoursey Yard at or near Covington, KY. This L&N Yard is subject to congestion due to the volume of traffic handled there. To alleviate the congestion, L&N will lease C&O's Stevens Yard at Stevens, KY, and use that facility as a coal switching, train assembly, interchange and storage yard.

In order to reach Stevens Yard, L&N will acquire trackage rights over C&O.

C&O is a wholly-owned subsidiary of Chessie System, Inc., and is part of the Chessie System, which is comprised of C&O, The Baltimore and Ohio Railroad Company, Western Maryland Railway Company and affiliated lines. L&N is a wholly-owned subsidiary of Seaboard Coast Line Railroad Company (SCL) and is part of the Family Lines System, which is comprised of SCL, L&N, Clinchfield Railroad Company, Georgia Railroad, The Western Railway of Alabama, Atlanta and West Point Railroad Company, and affiliated lines.

This application is related to CSX Corporation-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 1) and a concurrently filed application where L&N seeks to acquire trackage rights over the Chesapeake and Ohio Railway Company between KC Junction in Covington, KY, and a point east of Stevens Yard at or near Melbourne, KY, and lease Stevens yard from C&O, Finance Docket No. 28905 (Sub-No. 3).

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969*, supra, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsels for applicants, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approved,

disapprove, or take any other specified action with respect to such application.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19708 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 28905 (Sub-No. 8)]

Chicago South Shore & South Bend Railroad—Acquisition and Operation—Over Louisville & Nashville Railroad Co. Line, Michigan City Branch, in Laporte County, IN

Chicago South Shore and South Bend Railroad (CSS&SB), Baltimore, MD 21201, represented by René J. Gunning, General Attorney, Chicago South Shore and South Bend Railroad, 2 North Charles Street, Baltimore, MD 21201, hereby give notice that on the 21st day of May, 1979, it filed with the Interstate Commerce Commission at Washington, DC, an application pursuant to 49 U.S.C. § 10901 for a decision approving and authorizing the acquisition and operation of a line of railroad known as the Michigan City Branch, owned and operated by the Louisville and Nashville Railroad Company (L&N).

The portion of L&N's Michigan City Branch commences at L&N milepost 55.67 adjacent to Keiffer Road just south of Michigan City, IN, in LaPorte County, IN, and extends northerly to the terminus of the branch at L&N milepost 60.03 in Michigan City, LaPorte County, IN, a distance of 4.36 miles. L&N proposes to abandon the northern portion of its Michigan City Branch, which Branch includes the line segment subject of this application.

CSS&SB is a subsidiary of The Chesapeake and Ohio Railway Company (C&O) and is part of the Chessie System, which is comprised of C&O, The Baltimore and Ohio Railroad Company, Western Maryland Railway Company, and affiliated lines. CSS&SB has no subsidiary.

This application is related to CSX Corporation-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 1) and a concurrently filed application where L&N seeks to abandon its line of railroad between Medaryville and Michigan City, in Pulaski, Starke, and LaPorte Counties, IN, AB-2 (Sub-No. 25).

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), *Implementation—National Environmental Policy Act, 1969*, 352 I.C.C. 451 (1976), any protests may include a statement indicating the presence or absence of any effect of the

requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969*, supra at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsel for applicant, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19711 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-43 (Sub-No. 51)]

Illinois Central Gulf Railroad Co. Abandonment Near Brockton and Union in Lauderdale and Newton Counties, MS

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 24, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen*, —I.C.C.—, decided February 9, 1979, provided, however, that Illinois Central Gulf Railroad Company will continue to use the now-existing rail distances between milepost 5.6 near Brockton, MS, and milepost 31.4 near Union, MS, and intermediate points over the line authorized to be abandoned in computing rail distances to and from stations on the Illinois Central Gulf Railroad Company for the purpose of determining freight rates applicable to wood chips and pulpwood that are made on shortest distances, the present and future public convenience and necessity permit the abandonment by the Illinois Central Gulf Railroad Company of its line of railroad known

as the Pearl River District, extending from railroad milepost 5.6 near Brockton, MS, to milepost 31.4 near Union, MS, a distance of 25.8 miles, in Lauderdale and Newton Counties, MS. A certificate of public convenience and necessity permitting abandonment was issued to the Illinois Central Gulf Railroad Company. After completion of the investigation, the requirements of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the *Federal Register* be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than July 11, 1979. The offer, as filed, shall contain information required pursuant to §§ 1121.38(b)(2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective on or before August 10, 1979.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19706 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

[Notice No. 99]

June 12, 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 110988 (Sub-387TA), filed May 2, 1979. Applicant: SCHNEIDER TANK LINES, INC., 431 West College Avenue, Appleton, Wisconsin 54911. Representative: John R. Patterson, 2480 East Commercial Blvd., Fort Lauderdale, FL. *Liquid chemicals*, in bulk, in tank vehicles, from the facilities of Union Carbide Corporation at or near Charleston, WV to points in IL, IN, MI, MO, PA and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Union Carbide Corporation, 270 Park Avenue, New York, NY 10017. Send protests to: Mr. John E. Ryden, DS, ICC, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 112188 (Sub-11TA), filed May 15, 1979. Applicant: MC BREEN TRUCKING, INC., 3641 N. W. Front Avenue, Portland, OR 97210. Representative: Lawrence V. Smart, Jr., 419 N. W. 23rd Avenue, Portland, OR 97210. *Magazines, paperback books, periodicals and printed matter* between Portland, OR, on the one hand, and on the other hand, Longview, WA, for 180 days. Supporting shipper(s): Cascade News Inc., 1055 Commerce Avenue, Longview, WA 98632. Send protests to: R. V. Dubay, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 112989 (Sub-99TA), filed April 27, 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. *Aluminum sheet and plate* from the facilities of Kaiser Aluminum & Chemical Corp., at Ravenswood, West Virginia, to points in

California, Oregon and Washington, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kaiser Aluminum & Chemical Corp., 300 Lakeside Dr., Oakland, Ca 94643. Send protests to: A. E. Odoms, DS, 114 Pioneer Courthouse, Portland, OR 97204.

MC 112989 (Sub-100TA), filed May 2, 1979. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John A. Anderson, Suite 1440-200 Market Building, Portland, OR 97201. *Paper and paper articles* from Portland, OR to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Crown Zellerbach, 1500 S.W. First Ave., Portland, OR 97201. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 113528 (Sub-42TA), filed May 16, 1979. Applicant: MERCURY FREIGHT LINES, INC., 67 Midtown Park, E., Mobile, AL 36606. Representative: Joy Stephenson, 67 Midtown Park, E., Mobile, AL 36606. *General commodities*, between the facilities of Jim Walter Door Corp., at or near Century, FL, on the one hand, and points in AL, GA, LA, MS, NC, SC, TN, TX and VA, on the other, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jim Walter Door Corp., P.O. Box 335, Century, FL 32535. Send protests to: Mabel E. Holston, T/A, ICC, Suite 1616, 2121 Building, Birmingham, AL 35203.

MC 113828 (Sub-267TA), filed April 4, 1979. Applicant: O'BOYLE TANK LINES, INC., P.O. Box 30006, Washington, DC 20014. Representative: William P. Sullivan, 1320 Fenwick Lane, Silver Spring, MD 20910. *Liquid chemicals*, from Port Wentworth, GA to points in FL, SC, and NC, for 180 days. Supporting shipper(s): George-Pacific Corp.—Chemical Resins, P.O. Box 4188, Port Wentworth, GA 31407. Send protests to: T. M. Esposito, TA, ICC, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 113908 (Sub-472TA), filed May 3, 1979. Applicant: ERICKSON TRANSPORT CORP., 2105 East Dale Street—P.O. Box 10068, G.S., Springfield, MO 65804. Representative: B. B. Whitehead, same Address as Applicant. *Alcohol and Alcoholic Liquors, in bulk*, from Pekin, IL and the commercial zone thereof to Philadelphia, PA and the commercial zone thereof, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Distilling Co., South Front St., Pekin, IL 61554. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 114028 (Sub-32TA), filed April 25, 1979. Applicant: ROWLEY INTERSTATE TRANSPORTATION COMPANY, INC., 2010 Kerper Blvd., Dubuque, IA 52001. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60604. Foodstuffs, except in bulk, from Clifton, NJ to IL, IN, IA, KS, MI, MN, MO, NE, OH, and WI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Globe Products, Inc., P. O. Box 1927, Clifton, NJ 07015. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 114569 (Sub-306TA), filed April 4, 1979. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N.L. Cummins (same as applicant). Motorcycles, recreational vehicles and those commodities used by and dealt in by manufacturers of motorcycles and recreational vehicles (except those commodities which by reason of size and weight require special equipment, commodities in bulk, and self-propelled vehicles weighing individually in excess of 1,500 pounds). I. From Houston, TX; Savannah and Atlanta, GA; Edison, NJ; and ports of entry in the states of NY and NJ; Baltimore, MD; Charleston, SC; and Norfolk, VA and their commercial zones to points in the United States (Except AK and HI) II. From Seattle, WA and its commercial zone to points in the United States (Except AK, HI, AL, CT, DE, FL, GA, KY, LA, ME, MD, MA, MO, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WA, WV, and DC) III. From Los Angeles and Orange Counties, CA to points in the United States (except AK, HI, CT, DE, FL, GA, KY, LA, ME, MD, MA, MI, MS, NH, NJ, NY, NC, OH, PA, RI, SC, TN, VT, VA, WV, DC, IL, WI, MN, IA, MO, AR, AL, KS, OK, TX, IN, and CA) (1) Restricted to traffic moving for the account of Kawasaki Motors Corp., U.S.A., and (2) Against traffic moving to Lincoln, NE and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kawasaki Motors Corp., USA, 2009 E. Edinger Ave., Santa Ana, CA 92711. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm 3238, Phila., PA 19106.

MC 114569 (Sub-307TA), filed April 19, 1979. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N.L. Cummins (same address as applicant). Confectionery, cocoa, chocolate, and related products (except in bulk), and materials, supplies, equipment and machinery used in the manufacture, production, distribution or sale of the

commodities described above (except in bulk), from the facilities of Hershey Chocolate Co., Y&S Candies, Inc. plant located in Lancaster County, Lancaster, PA to pts. in AL, AZ, AR, Oakdale, CA, CO, IL, IN, IA, KS, KY, LA, MI, MN, MO, NE, ND, OH, OK, SD, TN, TX, WI, and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hershey Foods Corp., 19 E. Chocolate Ave., Hershey, PA 17033. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 114569 (Sub-308TA), filed April 19, 1979. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins (same address as applicant). Bakery goods, NOI, from the facilities of Mothers Cookies located at Louisville, KY, to pts. in the U.S. in and east of ND, SD, NE, CO, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mothers Cookies, Division of Beatrice Foods, 2287 Ralph Ave., Louisville, KY 40216. Send protests to: Peter R. Guman, D/S, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 114569 (Sub-309TA), filed April 30, 1979. Applicant: SHAFFER TRUCKING, INC., P.O. Box 418, New Kingstown, PA 17072. Representative: N. L. Cummins, same as above. Foodstuffs (except in bulk), from Jersey City, NJ, New York, NY, Philadelphia, PA, to Burlington, IA, Sparks, NV, Lawrence, KS, Los Angeles and San Francisco, CA, and points in MN, MI, and WI, and their commercial zones, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Atlanta Corp., 17 Varick St., New York, NY 10013. Send protests to: ICC, Federal Reserve Bank Bldg., 101 N. 7th St., Room 620, Phila., PA 19106.

MC 114608 (Sub-36TA), filed April 24, 1979. Applicant: CAPITAL EXPRESS, INC., 5635 Clay Avenue, SE, Grand Rapids, MI 49508. Representative: Miss Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. Contract Carrier: irregular routes; Household appliances and parts therefore, from the facilities of White Westinghouse Appliance Company, Division of White Consolidated Industries, Inc. at or near Columbus, Ohio to points and places in the Lower Peninsula of MI. For 180 days. Supporting shipper(s): White Westinghouse Appliance Company, 930 Fort Duquesne Boulevard, Pittsburgh, PA 15222. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 117119 (Sub-743TA), filed April 30, 1979. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188,

Elm Springs, AR 72728. Representative: Martin M. Geffon, P.O. Box 156, Mt. Laurel, NJ 08504. Plastic containers from Middletown, DE to Waseca, MN, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hercules, Incorporated, 910 Market Street, Wilmington, DE 19899. Send protests to: William H. Land, Jr., D/S, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 117119 (Sub-744TA), filed May 8, 1979. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: Martin M. Geffon, P.O. Box 156, Mt. Laurel, NJ 08504. Foodstuffs, (except in bulk), in vehicles equipped with mechanical refrigeration, from the facilities of Hershey Chocolate Company, Y & S Candies, Inc. in East Hempfield Township, Lancaster County, PA, to points in AR, CO, IA, IL, KS, MN, MO, NE, OK, TX, WI and Memphis, TN, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hershey Chocolate Company, 19 East Chocolate Avenue, Hershey, PA 19033. Send protests to: William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 117119 (Sub-745TA), filed May 8, 1979. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: Martin M. Geffon, P.O. Box 156, Mt. Laurel, NJ 08504. Chemicals, (except in bulk), in vehicles equipped with mechanical refrigeration, from Deepwater, NJ to Portland, OR, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. I. DuPont de Nemours & Co., 1007 Market Street, Wilmington, DE 19898. Send protests to: William H. Land, Jr., 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 117119 (Sub-746TA), filed May 8, 1979. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Representative: L. M. McLean, same as applicant. Chemicals in containers, blood analysis instruments, supplies, and parts (except in bulk) in vehicles equipped with mechanical refrigeration, from Houston, TX to points in CA, IL and NJ, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hycel, Inc., 7920 Westpark Drive, Houston, TX 77063. Send protests to: William H. Land, Jr., 3108 Federal Office

Building, 700 West Capitol, Little Rock, AR 72201.

MC 118159 (Sub-330TA), filed April 23, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Plastic containers*, from the facilities of Sewell Plastics, Inc., located at Dallas, TX, to Tulsa and Oklahoma City, OK, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sewell Plastics, Inc., 511 Phillip Lee Drive, Atlanta, GA 30336. Send protests to: D/S, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 118159 (Sub-331TA), filed April 25, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Paper bags, plastic bags, and wrapping paper*, from Jackson, TN, to points in TX, LA, CO, & KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): International Paper Company, 220 E. 42nd St., New York, NY 10017. Send protests to: District Supervisor, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 118159 (Sub-332TA), filed April 26, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Foodstuffs* (except in bulk), from the facilities of Welch Foods, Inc., at Westfield, NY and North East, PA, to points in AR, KS, LA, MS, MO, NM, OK, TN, and TX, for 180 days. Supporting shipper(s): Welch Foods, Inc., 2 South Portage Street, Westfield, NY 14787. Send protests to: District Supervisor, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 118159 (Sub-333TA), filed April 27, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Paper and paper products* (except commodities in bulk), from the facilities of the Mead Packaging Division of The Mead Corporation, located in Cobb and Fulton Counties, GA, to points in AR, KS, LA, MS, OK, and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mead Packaging/Division of The Mead Corporation, P.O. Box 4417, Atlanta, GA 30302. Send

protests to: District Supervisor, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 118159 (Sub-334TA), filed April 30, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Such commodities as are used in the construction and operation of nuclear power plants*, between the facilities of the Black Fox Nuclear Power Plant, located in Rogers County, OK, on and south of OK Hwy 33, on the one hand, and, on the other, points in and east of MN, IA, MO, AR, and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Public Service Company of Oklahoma, P.O. Box 201, Tulsa, OK 74102. Send protests to: District Supervisor, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 118159 (Sub-335TA), filed May 10, 1979. Applicant: NATIONAL REFRIGERATED TRANSPORT, INC., P.O. Box 51366, Dawson Station, Tulsa, OK 74151. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Plumbing fixtures and fittings*, from Spartanburg, SC, and Brownwood, TX, to points in the United States, restricted to traffic originating at the facilities of the Kohler Company, for 180 days. Supporting shipper(s): Kohler Company, Kohler, WI 53044. Send protests to: Connie Stanley, TA, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 120419 (Sub-6TA), filed May 11, 1979. Applicant: SERVICE TRANSFER, INC., 1501 West Main Street, Henryetta, OK 74437. Representative: Clifford Neal (same address as applicant). *Glass containers and closures therefor*, from Okmulgee, OK, to points in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ball Corporation, 345 South High Street, Muncie, IN 47302. Send protests to: Connie Stanley, TA, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 121649 (Sub-7TA), filed April 27, 1979. Applicant: MILAN EXPRESS, INC., P.O. Box 439, U.S. Highway 45 South, Milan, TN 38358. Representative: Walter Harwood, Attorney, P.O. Box 15214, Nashville, TN 37215. (1) *Steel doors, steel door frames, and brass, copper and steel hardware*, from the facilities of Ceco Corporation at or near Milan, TN to the facilities of Ceco Corporation at or near Broadview and South Bartonville, IL and the facilities of Morton Building, Inc. at or near Morton, IL, and (2) *Flat Steel*, from the facilities

of Jones & Laughlin Steel Co., Hennepin, IL; Bethlehem Steel Corp., Burns Harbor, IN; Midwest Steel Corp., Portage, IN; and Inland Steel Corp., East Chicago, IN to the facilities of the Ceco Corporation at or near Milan, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Ceco Corporation, 5601 West 26th Street, Chicago, IL 60650. Send protests to: Floyd A. Johnson, D/S, ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 121658 (Sub-18TA), filed April 24, 1979. Applicant: STEVE D. THOMPSON TRUCKING, INC., 1205 Percy Street, P.O. Drawer 149, Winnsboro, LA 71295. Representative: Donald B. Morrison, 1500 Deposit Guaranty Plaza, P.O. Box 22628, Jackson, MS 39205. (1) *Insulated copper wire and empty reels* from the facilities of Belden Corporation at or near Jena, LA to the facilities of Belden Corporation at or near Clinton, AR and (2) *Electric cord sets* from the facilities of Belden Corporation at or near Clinton, AR to the facilities of Belden Corporation at or near Jena, LA, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting shipper(s): Belden Corporation, 2000 Batavia Avenue, Geneva, IL 60134. Send protests to: William H. Land, Jr., D/S, 3108 Federal Building, 700 West Capitol, Little Rock, AR 72201.

MC 123048 (Sub-439TA), filed April 27, 1979. Applicant: DIAMOND TRANSPORTATION SYSTEM, INC., 5021 21st St., Racine, WI 53406. Representative: John L. Bruemmer, 121 W. Doty St., Madison, WI 53703. *Aluminum and aluminum products*, from the facilities of Aluminum Company of America at or near Massena, NY to points in IL, IN, MI & OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Aluminum Co. of America, 1501 Alcoa Bldg., Pittsburgh, PA 15219. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 123819 (Sub-81TA), filed May 14, 1979. Applicant: ACE FREIGHT LINE, INC., 3359 Cazassa Road, P.O. Box 16589, Memphis, TN 38116. Representative: Bill R. Davis, Suite 101—Emerson Center, 2814 New Spring, Atlanta, GA 30339. *Tires, tubes, batteries, accessories and service station equipment and supplies*, from the facilities of Exxon Company U.S.A. at or near Baton Rouge, LA to points in TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Exxon Company, U.S.A., P.O. Box 367,

1211 Union Avenue, Memphis, TN 38101. Send protests to: Floyd A. Johnson, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 124078 (Sub-963TA), filed May 10, 1979. Applicant: SCHWERMAN TRUCKING CO., 611 S. 28th St., Milwaukee, WI 53215. Representative: Richard Prevette "same address as applicant". *Sand*, in bulk, from Calico, SC to Jackson, MS, for 180 days. Supporting shipper(s): Glass Containers Corp., 535 N. Gilbert Ave., Fullerton, CA 92634. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 124109 (Sub-16TA), filed May 3, 1979. Applicant: B. F. C. TRANSPORTATION, INC., P.O. Box 985, Cedar Rapids, IA 52406. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Contract Authority. *Foodstuffs and pet foods, (except commodities in bulk and frozen commodities)* between ST. Joseph, MO and Cedar Rapids, IA, and from Cedar Rapids, IA to points in IL, MN, NE, and WI under contract with The Quaker Oats Company, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Quaker Oats Company, Merchandise Mart Plaza, Chicago, IL 60654. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 124839 (Sub-42TA), filed April 23, 1979. Applicant: BUILDERS TRANSPORT, INC., P.O. Box 7057, Savannah, GA 31408. Representative: B. M. Shirley, same as applicant. *Contract carrier, irregular routes, Roofing and building materials, and materials, equipment and supplies used in the distribution or installation of roofing and building materials*, from Franklin, OH to points in NC, VA, TN and WV under continuing contract(s) with Georgia Pacific Corp. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Georgia-Pacific Corporation, 1062 Lancaster Avenue, Rosemont, PA 19010. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 125299 (Sub-6TA), filed May 2, 1979. Applicant: WITTE BROTHERS EXCHANGE, INC., 690 East Cherry, Troy, MO 63369. Representative: Herman W. Huber, Atty., 101 E. High St., Jefferson City, MO 65101. *Animal feed and feed ingredients*, except in bulk, in tank vehicles, from the facilities of Miner-OL Company, Inc., Warsaw, IL, to points in the Continental U.S., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Miner-OL Company, Inc., Warsaw, IL 62379.

Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 125368 (Sub-57TA), filed May 7, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher, same address as applicant. *Plastic products* between the facilities of H. H. Mink Company, Inc., at or near Rochester, NY, on the one hand, and, on the other, points in CO, CT, FL, GA, IL, MA, NJ, OH, PA, TX, VA, and WV, for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): H. H. Mink Company, Inc., 1525 Brooks Avenue, Rochester, NY 14624. Send protests to: Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 125368 (Sub-58TA), filed May 7, 1979. Applicant: CONTINENTAL COAST TRUCKING COMPANY, INC., P.O. Box 26, Holly Ridge, NC 28445. Representative: C. W. Fletcher, same address as applicant. *Foodstuffs and supplies used in the manufacture of foodstuffs* between the facilities of J. H. Filbert, Inc., at or near GA and MD, on the one hand, and, on the other, points in AL, AR, CT, DE, DC, FL, IL, IN, IA, KS, KY, LA, ME, MA, MI, MN, MS, MO, NE, NH, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VT, VA, WV, and WI, for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): J. H. Filbert, Inc., 3701 Southwestern Blvd., Baltimore, MD 21229. Send protests to: Archie W. Andrews, D/S, ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 125368 (Sub-59TA), filed May 8, 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 the facilities of Shapiro Packing Company, Inc., Augusta, (Richmond County), GA, on the one hand, and, on the other, points in the U.S. except AK and HA for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting Shipper(s): Shapiro Packing Company, Inc., P.O. Box 119, Augusta, GA 30903. Send protests to: Archie W. Andrews, D/S ICC, P.O. Box 26896, Raleigh, NC 27611.

MC 125708 (Sub-168TA), filed April 9, 1979. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 W. 152nd St., East Chicago, IN. Representative: Anthony C. Vance, 1307 Dolley Madison Blvd., McLean, VA

22101. *Non-ferrous metals and products* (1) between Houston, TX, on the one hand, and, on the other, points in VA, WV, OK, KS, MO, AR, LA, MS, AL, GA, FL, NC, SC, TN, KY, PA, IL, IN, OH, MI, IA, NE and CO, restricted to shipments originating at or destined to facilities of Gulf Metal Industries; (2) from East Point, GA to points in AL, FL and TX, restricted to shipments originating at the facilities of Southern Zinc; (3) between Rockdale and Point Comfort, TX, on the one hand, and, on the other, points in OK, KS, MO, AR, LA, MS, AL, GA, FL, NC, VA, WV, SC, TN, KY, PA, IL, OH, MI, IA, NE, IN and CO, restricted to shipments where Gulf Metal Industries name appears on the bill of lading as consignor, consignee, or beneficial owner, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Gulf Metal Industries, 6030 Esperson, P.O. Box 611, Houston, TX 77001. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 125708 (Sub-169TA), filed April 23, 1979. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 W. 152nd Street, East Chicago, IN 46312. Representative: Anthony C. Vance, 1307 Dolley Madison Blvd., McLean, VA 22101. *Iron and aluminum pipe fittings*, from Martins Ferry, OH to points in CA and WA, restricted to shipments originating at the facilities of Picoma Industries, Inc. and destined to CA and WA, for 180 days. Supporting Shipper(s): Picoma Industries, Inc., P.O. Box 488, Martins Ferry, OH 43935. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 125708 (Sub-170TA), filed April 27, 1979. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 W. 152nd Street, East Chicago, IN 46312. Representative: Anthony C. Vance, 1307 Dolley Madison Blvd., McLean, VA 22101. *Fabricated steel articles*, from Tampa, FL to points in the United States (except AK and HI), restricted to shipments originating at the facilities of Tampa Steel Erecting Co., for 180 days. Supporting Shipper(s): Tampa Steel Erecting Co., Rt. 3, Box 511, Tampa, FL 33619. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 125708 (Sub-171TA), filed May 9, 1979. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 W. 152nd St., East Chicago, IN 46312. Representative: Anthony C. Vance, 1307 Dolley Madison Blvd., McLean, VA 22101. (1) *iron and steel articles*, from the facilities of Chaparral Steel Company

located at Midlothian, TX, to points in KY, LA, KS, IA, IN, IL, CO, AR, AL, MS, MO, NE, NM, OH, OK, PA, TN, UT, SC, VA and WV; and (2) *materials, supplies, parts and equipment used in the production of iron and steel articles and scrap metal*, from points in KY, LA, KS, IA, IN, IL, CO, AR, AL, MS, MI, MO, NE, NM, OH, OK, PA, TN, UT, SC, VA and WV, to the facilities of Chaparral Steel Company located at Midlothian, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chaparral Steel Company, P.O. Box 1100, Midlothian, TX. Send protests to: David Hunt, TA, 219 S. Dearborn St., Room 1386, Chicago, IL 60604.

MC 126118 (Sub-153TA), filed May 9, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). *Ground limestone, in bags*, from Sylacauga, AL and points in its commercial zone to points in IL, IA, KS, MN, MO, NE, NJ, OK, PA, TX, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. P. Bailey, Inc., P.O. Box 180, Whitewater, KS 67154. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 126118 (Sub-154TA), filed May 9, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same as above). *Unfinished cotton, burlap or synthetic woven piece goods*, from points in AL, GA, LA, SC, and TN to Hutchinson, KS and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hutchinson Bag Corporation, P.O. Box 1286, Hutchinson, KS 67501. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 126118 (Sub-155TA), filed May 11, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as above). *Plastic articles*, from Everett, WA; Los Angeles, CA; Mountain Top, PA; Passaic, Bound Brook, and Trenton, NJ and points in their commercial zones to Lincoln, NE and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Land & Sky, Inc., 5001 So. 18th St., Lincoln, NE 68502. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 126679 (Sub-12TA), filed April 19, 1979. Applicant: DENNIS TRUCK LINE, INC., P.O. Box 189, Vidalia, GA 30474.

Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd., Atlanta, GA 30349. (1) *Hot rolled steel products, steel roof deck, and barjoist*, from points in AL, PA, MD, and SC to points in Burke County, GA; and, (2) *Fabricated structural steel and miscellaneous steel*, from Burke County, GA to points in AL, FL, GA, DE, NC, SC, MS, TN, NY, NJ, PA, MD, and VA for 180 days. Supporting shipper(s): Cowart Iron Works, Inc., P.O. Box 237, Midville, GA 30441. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 126709 (Sub-12TA), filed March 2, 1979. Applicant: SABER, INC., 514 Floyd Blvd., Sioux City, IA 51101. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Animal fats and oils, greases*, between points in IL, IA, KS, MN, MO, NE, ND, SD, and WI, for 180 days. Restricted against the transportation of (1) *Non-edible tallow, in bulk in tank vehicles*, from Sioux City, IA, to points in NE, SD, and that part of MN, south and west of a line beginning at the SD-MN state line at or near Marietta, MN, and extending east along U.S. Hwy 212 to junction MN Hwy 15, thence south along MN Hwy 15 to junction U.S. Hwy 14 at or near New Ulm, MN, thence southeast along U.S. Hwy 14 to junction U.S. 218 at or near Owatonna, MN, thence south along U.S. Hwy 218 to the MN-IA state line at or near Lyle, MN; (2) *Animal fats, oils and inedible tallows and greases, in tank vehicles*, from Windom, MN to Sioux City, IA; (3) *Inedible tallow and greases*, from points in NE, ND, and SD to Sioux City, IA, of transportation of traffic having an immediate subsequent movement by rail or barge; (4) *Animal fats and oils, greases* from the facilities of Spencer Foods, Inc., at Spencer, IA, to points in IL, MN, MO, NE, SD, and WI. An underlying ETA seeks 90 days authority. Supporting shipper(s): R. A. Fischer, The Pillsbury Company, 608 2nd Avenue South, Minneapolis, MN 55402. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 126898 (Sub-7TA), filed May 15, 1979. Applicant: BULLDOG HIWAY EXPRESS, P.O. Box 506, Charleston, SC 29402. Representative: Frank A. Graham, Jr., 707 Security Federal Building, Columbia, SC 29201. *General commodities (except Class A & B explosives) in marine containers, empty marine containers and chassis*, between Charleston, SC, Savannah, GA and Jacksonville, FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Southeastern

Maritime Co., P.O. Box 978, Charleston, SC 29402. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens St., Columbia, SC 29201.

MC 127019 (Sub-16TA), filed April 18, 1979. Applicant: LA RUE LAMB, d.b.a. LA RUE LAMB TRUCKING, P.O. Box 374, Myton, UT 84052. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. *Gilsonite*, in bulk, from Bonanza, UT to Bossier City, LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Gilsonite Company, 1150 Kennecott Building, Salt Lake City, UT 84133. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Building, Salt Lake City, UT 84138.

MC 127539 (Sub-77TA), filed March 23, 1979. Applicant: PARKER REFRIGERATED SERVICE, INC., 1108 54th Ave. E., Tacoma, WA 98424. Representative: Michael D. Duppenhaler, 211 S. Washington St., Seattle, WA 98104. *Merchandise as is dealt in by wholesale, retail and chain grocery and food business houses, and in connection therewith, equipment, materials and supplies used in the conduct of such business*, in vehicles equipped with mechanical refrigeration, from points in CA and OR to the Seattle, WA Commercial Zone, for 180 days. Restricted to shipments having a subsequent movement by water. An underlying ETA seeks 90 days authority. Supporting shipper(s): Totem Ocean Trailer Express, Inc., P.O. Box 24908, Seattle, WA 98124. Send protests to: Shirley M. Holmes, T/A, ICC, 858, Federal Bldg., Seattle, WA 98174.

MC 128279 (Sub-36TA), filed May 17, 1979. Applicant: ARROW FREIGHTWAYS, INC., 150 Woodward Rd. SE, P.O. Box 25125, Albuquerque, NM 87125. Representative: Olif Q. Boyd, President (same as applicant). (1) *Preconstructed panels for erection of motels*, and (2) *construction supplies used in or useful in the construction of preconstructed panels for erection of motels*, (1) from Albuquerque, NM to CA, CO, KS, NV, TX, and WY, and (2) from CA, CO, KS, NV, TX, and WY to Albuquerque, NM, of commodities described in (2), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Assoc. Prof. Builders, Inc., 8501 Jefferson NE, P.O. Box 25131, Albuquerque, NM 87125. Send protests to: DS, ICC, 1106 Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101.

MC 128279 (Sub-37TA), filed May 18, 1979. Applicant: ARROW FREIGHTWAYS, INC., 150 Woodward Rd. SE, P.O. Box 25125, Albuquerque,

NM 87125. Representative: Olif Q. Boyd (same as applicant). *Gypsum wallboard*, from Amarillo, TX, to points in AZ. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mark Keister & Associates, 310 Southwest 4 Avenue, Portland, OR 97204. Send protests to: DS, ICC, 1106 Federal Office Building, 517 Gold Avenue SW, Albuquerque, NM 87101.

MC 128648 (Sub-19TA), filed April 18, 1979. Applicant: TRANS-UNITED, INC., 425 West 152nd Street, P.O. Box 2081, East Chicago, IN 46312. Representative: Joseph Winter, 29 South LaSalle St., Chicago, IL 60603. *Contract carrier*: irregular routes: *Paper and paper products*, from the facilities of Scott Paper Company at Chester, PA to points in IL, IN, MI and OH, for the account of Scott Paper Company, 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: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 128648 (Sub-20TA), filed May 14, 1979. Applicant: TRANS-UNITED, INC., 425 West 152nd Street, P.O. Box 2081, East Chicago, IN 46312. Representative: Joseph Winter, 29 South LaSalle Street, Chicago, IL 60603. *Contract carrier*: irregular route: *Such commodities as are used in the manufacture and erection of steel storage tanks* (except commodities in bulk), from the facilities of GATX Tank Erection Corp., at East Chicago, IN to points in IL, IN, IA, KS, KY, MN, MO, OH, and WI for the account of GATX Tank Erection Corp. Supporting shipper(s): GATX Tank Erection Corporation, P.O. Box 440, East Chicago, IN 46312. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 128698 (Sub-18TA), filed May 2, 1979. Applicant: ERDNER BROS., INC., Davidson Road, Swedesboro, NJ 08085. Representative: Chester A. Zyblut, 366 Executive Bldg., 1030 15th Street, NW., Washington, DC 20005. *Canned and preserved foodstuffs*, from the facilities of Heinz USA, at or near Holland, MI to points in DE, MD, NJ, points in NY on and south of Interstate Hwy 84 and east of Interstate Hwy 87, points in PA on and east of Interstate Hwy 81, and DC and points in its commercial zone, restricted to traffic originating at the named origin and destined to the named states, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Heinz USA, Division of H. J. Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protests to: District

Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 129189 (Sub-3TA), filed April 13, 1979. Applicant: WING CARTAGE COMPANY, 4141 George Place, Schiller Park, IL 60176. Representative: Arnold L. Burke, 180 North LaSalle St., Chicago, IL 60601. *Prestressed concrete building materials*, from Hodgkins, IL to points in WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Composite Structures, Inc., 6400 S. East Ave., Hodgkins, IL 60525. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 133689 (Sub-272TA), filed May 17, 1979. Applicant: OVERLAND EXPRESS, INC., 719 First Street, Southwest, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Pet foods (except commodities in bulk)* from Minnetonka, MN to points in and east of ND, SD, NE, MO, AR and LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Morton Pet Foods, 11401 West 47th Street, Minnetonka, MN. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 133928 (Sub-22TA), filed May 18, 1979. Applicant: OSTERKAMP TRUCKING, INC., P.O. Box 5546, 764 N. Cypress St., Orange, CA 92667. Representative: Michael Eggleton, 2500 Old Crow Canyon Rd., Suite 325, San Ramon, CA 94583. *Contract*: Irregular: *Gypsum and gypsum products and accessories*, from the facilities of the United States Gypsum Company at Heath, Montana and Sigurd, Utah, to points in Colorado, for 180 days. Supporting shipper(s): United States Gypsum Co., 620 N. Brand Blvd., Glendale, CA 91203. Send protests to: Irene Carlos, T/A, I.C.C., P.O. Box 1551, Los Angeles, CA 90053.

MC 134289 (Sub-6TA), filed May 15, 1979. Applicant: CALDWELL TRUCK RENTALS, INC., 625 South Blvd., Lenoir, NC 28645. Representative: Jack L. Hawn, same as applicant. *New furniture, crated or uncrated, and new furniture parts* from points on and West of NC, Hwy 301 to VA, MD, PA, NJ, NY, DC, DE, RI, MA, CT, VT, ME, NH, WV, OH and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are approximately 30 shippers. Their statements may be examined at the office below or Headquarters. Send protests to: D/S Terrell Price, 800 Briar Creek Rd-Rm CC516, Charlotte, NC 28205.

MC 134369 (Sub-16TA), filed March 30, 1979. Applicant: CARLSON

TRANSPORT, INC., P.O. Box R, Byron, IL 61010. Representative: Allan C. Zuckerman, 39 So. LaSalle St., Chicago, IL 60603. *Bentonite, in bulk*, from facilities of Federal Bentonite Company, at or near Colony, WI to facilities of A. E. Schultz Corporation, at or near Neenah, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Federal Bentonite Company, 1019 Jericho Road, Aurora, IL 60605. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 134599 (Sub-173TA), filed April 12, 1979. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. *Contract carrier*; irregular route carrier; *Children's vehicles*, from Cannonsburg and Houston, PA to points in the United States (except AK and HI), for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): Mattel Toys, 5150 Rosecrans Avenue, Hawthorne, CA 90250. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 135078 (Sub-51TA), filed May 11, 1979. Applicant: AMERICAN TRANSPORT, INC., 7850 "F" St., Omaha, NE 68127. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. *Bolts and nuts*, from the facilities of Heads & Threads Company at Northbrook, IL, to the commercial zones of Denver, CO; Des Moines, IA; Kansas City, MO; and Lincoln and Omaha, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heads & Threads Company 2727 Shermer Road, Northbrook, IL 60062. Send protests to: Carol Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 135438 (Sub-1TA), filed May 10, 1979. Applicant: SHELDON OIL COMPANY, 426 Main Street, Suisun, CA 94585. Representative: Marvin Handler, Handler, Baker & Greene, 100 Pine Street, San Francisco, CA 94111, Phone (415) 988-1414. 180 days common carrier, over irregular routes. *Residual Fuel Oils used in paving operations, Asphalt, Road Oils and Road Asphalt Emulsions*, in bulk, in tank vehicles. From San Jose, CA To points in Washoe, Storey, Carson City, Douglas, Lyon, Mineral, Churchill, Pershing, Humboldt and Lander counties, NV. An underlying ETA seeks 90 days authority. Supporting shipper(s): Reed & Graham, Inc., 690 Sunol Street, San Jose, CA 95150. Send protests to:

District Supv. A. J. Rodrigues, ICC, San Francisco, CA 94105.

MC 135598 (Sub-23TA), filed May 15, 1979. Applicant: SHARKEY TRANSPORTATION, INC., Box 3156, Quincy, IL 62301. Representative: Carl L. Steiner, 39 South LaSalle St., Chicago, IL 60603. Malt beverages (a) from Milwaukee, WI; St. Paul, MN; and Omaha, NE to Fort Madison, IA (a) from Evansville, IN to Quincy, IL. An underlying ETA seeks 90 days authority. Supporting shipper(s): Manka Distributing Co., 1620 Luendam, Fort Madison, IA 52627. Send protests to: Charles D. Little, D/S, ICC, Room 1386, 219 South Dearborn St., Chicago, IL 60604.

MC 135678 (Sub-5TA), filed May 1, 1979. Applicant: MIDWESTERN TRANSPORTATION, INC., 20 S.W. 10th, Oklahoma City, Oklahoma 73125. Representative: C. L. Phillips, Room 248—Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, Oklahoma 73106. *Heating and Air Conditioning Units, and related parts and accessories* from the facilities of Rheem Manufacturing Company, at or near Fort Smith, AR to points in AZ, CA, CO, NV, NM, for 180 days. Supporting shipper(s): Rheem Manufacturing Company, 5600 Old Greenwood Road, Fort Smith, Arkansas 72902. Send protests to: Connie Stanley, Room 240, 215 N.W. Third Street, Oklahoma City, Oklahoma 73102.

MC 135779 (Sub-9TA), filed May 3, 1979. Applicant: BALDWIN TRUCKING, INC., 192-98th Ave., Oakland, CA 94577. Representative: M. C. Leiden, P.O. Box 8594, Emeryville, CA 94662. 180 days common carrier by motor vehicle over irregular routes. *Palletized 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.* From Modesto, CA to Hillsboro, OR. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pan Can Container Company, P.O. Box 3190, Modesto, CA 95353. Send protests to: A. J. Rodriguez, D/S, ICC, 211 Main St., Suite 500, San Francisco, CA 94105.

MC 136008 (Sub-105TA), filed April 27, 1979. Applicant: JOE BROWN COMPANY, INC., 20 Third Street N.E., Ardmore, OK 73401. Representative: John Tipsword, P.O. Box 6210, Moore, OK 73153. *Petroleum coke, in bulk, in dump vehicles, from the facilities of Great Lakes Carbon Corp., at Kremlin, OK, to Rockdale and Port Arthur, TX, Scottsboro, AL, Alcoa, TN, Savannah, GA, Badin, NC, Warrick, IN, New*

Madrid, MO, Ashtabula, OH, and Baltimore, MD, for 180 days. Supporting Shipper(s): Great Lakes Carbon Corporation, 299 Park Ave., New York, NY 10017. Send protests to: District Supervisor, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 136899 (Sub-39TA), filed April 27, 1979. Applicant: HIGGINS TRANSPORTATION LTD., P.O. Box 192, Richland Center, WI 53581. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53581. *Paper products and cellulose products* from facilities of Procter & Gamble Paper Products Co. at or near Neelys Landing, MO to points in IA, KS, NE, and WI, 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, TA, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 136939 (Sub-3TA), filed April 24, 1979. Applicant: CLAYTON'S INCORPORATED, P.O. Box 38, Ucon, ID 83454. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. *Fertilizer, dry, in bulk, from Trentwood and Kennewick, WA to points in ID on and east of U.S. Hwy 93, for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): The Pillsbury Company, P.O. Box 404, Idaho Falls, ID 83401. Send protests to: Barney L. Hardin, D/S, ICC, Suite 110, 1471 Shoreline Dr., Boise, ID 83706.

MC 138328 (Sub-91TA), filed May 3, 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. *Such commodities as are dealt in by retail and discount stores (except household goods, foodstuffs, commodities in bulk, or those which by reason of size or weight require the use of special equipment), from Seattle, WA and Los Angeles, CA and points in their commercial zones to the facilities of Pamida, Inc., at Omaha, NE, for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Pamida, Inc., 8800 F St., Omaha, NE 68137. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 138328 (Sub-92TA), filed May 8, 1979. Applicant: CLARENCE L. WERNER d.b.a. WERNER ENTERPRISES, I-80 and Highway 50, Omaha, NE 68137. Representative: James F. Crosby, P.O. Box 37205, Omaha, NE 68137. *Iron or steel articles, from Chicago, IL and points in its*

commercial zone to the facilities of Maytag Co., at Newton, IA (except from the facilities of United States Steel Corporation, Gary, IN; Joliet, South Chicago and Waukegan, IL), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Maytag Company, 403 West 4th St. N., Newton, IA 50208. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 138438 (Sub-48TA), filed March 26, 1979. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Leather and materials, supplies and equipment used in the manufacture and distribution thereof, between the facilities of Walter Kidde Corporation located at or near Williamsport, MD, Reading and Fleetwood, PA, on the one hand, and on the other, points in and east of WI, IA, IL, KY, TN, and AL, for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Walter Kidde & Co., Inc., 215 Lexington Ave., New York, N.Y. 10016. Send protests to: T. M. Esposito, TA, ICC, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

MC 138438 (Sub-49TA), filed March 29, 1979. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Brick and clay products, from Alliance, Canton, Magnolia, Midvale, Newcomerstown, Stonecreek, and Waynesburg, OH; Franklinville, NJ, and Binghamton, NY, and their respective commercial zones, to points in MD, VA, DC and Brick, from Alliance and Bowerston, OH, and their respective commercial zones, to points in CT, MA, NY, RI, for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): K-F Brick Co., Route 5, East Windsor, Hill, CT 06028, United Materials & Services, Inc., 129 Park St., Vienna, VA 22180, Masonry Materials & Services, Inc., P.O.B. 4433, Silver Spring, MD 20904. Send protests to: T. M. Esposito, Trans. Asst., 101 S. 7th St., Room 620, Philadelphia, PA 19106.

MC 138438 (Sub-50TA), filed April 16, 1979. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Brick from Williamsport, MD, and its commercial zone, to points in OH, for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Koppes Clay Product Company, 4491 Blake Road,

Seville, OH 44273. Send protests to: T. M. Esposito, TA, ICC, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 138438 (Sub-51TA), filed April 30, 1979. Applicant: D. M. BOWMAN, INC., Route 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Pipe, pipe fittings, conduit, couplings, PVC building materials, and materials and supplies used in the installation thereof*, from Ambler, PA, and its commercial zone, to points in the United States in and east of WI, IL, KY, TN, MS, and LA, for 180 days. Supporting shipper(s): CertainTeed Corp., P.O. Box 860, Valley Forge, PA 19482. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 138438 (Sub-52TA), filed May 4, 1979. Applicant: D. M. BOWMAN, INC., Rte 2, Box 43A1, Williamsport, MD 21795. Representative: Edward N. Button, 1329 Pennsylvania Ave., Hagerstown, MD 21740. *Masonry building materials* from York and Middletown, PA, and their respective commercial zones, to pts. in CT, DE, ME, MD, NH, NJ, NY, RI, VT, VA, WV, and D.C., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): NABCO Glazed Prods. Div., Trenwyth Industries, Inc., P.O. Box 247, Emigsville, PA 17318. Send protests to: I.C.C., Fed. Reserve Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 138469 (Sub-147TA), filed April 23, 1979. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, Oklahoma City, OK 73107. Representative: William J. Green (same address as applicant). *Kitchen cabinets, and component parts thereof*, from San Antonio, TX, to the facilities of Customline Products, Inc., at Grand Junction, CO, restricted to transportation of traffic originating at named origin and destined to indicated destination, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Customline Products, Inc., P.O. Box 1512, Grand Junction, CO 81501. Send protests to: Connie Stanley, TA, ICC, Room 240, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 138869 (Sub-22TA), filed March 23, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202—2200 Century Parkway, Atlanta, GA 30345. *Contract carrier, irregular routes, plumbers fittings, fixtures and supplies, vanities and vanity cabinets and plastic articles, and (2) materials, equipment and supplies used in the manufacture or distribution of commodities named in*

(1) above (except commodities in bulk), between the facilities of Universal-Rundle Corporation located at or near Rensselaer and Crawfordsville, IN, on the one hand, and, on the other, Corsicana and Hondo, TX, Leominster, MA, Monroe, and Union Point, Ga, Salem, OH, Ottumwa, IA and New Castle, PA. An underlying ETA seeks 90 days authority. Supporting shipper(s): Universal-Rundle Corporation, 217 N. Mill St., New Castle, PA 16101. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 138869 (Sub-23TA), filed March 23, 1979. Applicant: W. T. MYLES TRANSPORTATION CO., P.O. Box 321, Conley, GA 30027. Representative: Archie B. Culbreth, Suite 202—2200 Century Parkway, Atlanta, GA 30345. *Contract carrier, irregular routes, plumbers fittings, fixtures and supplies, vanities and vanity cabinets and plastic articles, and (2) materials, equipment and supplies used in the manufacture or distribution of commodities named in (1) above (except commodities in bulk)*, between the facilities of Universal-Rundle Corporation located at or near Monroe and Union Point, GA on the one hand, and, on the other, points in AR, AZ, CO, ID, IL, IN, IA, KS, LA, MI, MO, MT, NV, OH, OK, PA, TX, WI and WY. An underlying ETA seeks 90 days authority. Supporting shipper(s): Universal-Rundle Corp., 217 N. Mill St., New Castle, PA 16101. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 139619 (Sub-2TA), filed April 10, 1979. Applicant: ANDOR TRUCKING, INC., 117 Weiler St., Elk Grove, IL 60007. Representative: Philip A. Lee, 120 W. Madison St., Chicago, IL 60602. *Carpet, Carpet pads and related floor coverings*, between Cook County, IL and points in IN north of U.S. Rte. 70 & 74, points in MI south of Michigan State Highway 20 & U.S. Rte. 10 into Bay City, MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Monarch Carpet Co., 2050 Lively Blvd., Elk Grove, IL 60007; Beattie Mfg., Inc., Merchandise Mart, Chicago, IL; Trend Carpet, 950 Lunt, Elk Grove, IL 60191. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 146049 (Sub-1TA), filed April 30, 1979. Applicant: SOLAR TRUCKING, INC., 211 Eighth St., Perrysburg, OH 43551. Representative: Gary R. Eber (same address as applicant). *Lime, Limestone, and Lime and Limestone Products*, from Woodville, OH to

Carleton, MI, Detroit, MI and points in its commercial zone, and Gary, IN for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ohio Lime Co., P.O. Box 128, Woodville, OH 43469. Send protests to: ICC, Fed. Res. Bank Bldg., Rm 620, 101 N. 7th St., Phila., PA 19106.

MC 146049 (Sub-2TA), filed April 30, 1979. Applicant: SOLAR TRUCKING, INC., 211 Eighth St., Perrysburg, OH 43551. Representative: Dale Eber (same address as applicant). *Scrap iron*, from Pontiac, MI to Fremont, OH for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sam Allen & Son, Inc., 500 Collier Road, P.O. Box 2, Pontiac, MI 48056. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 146079 (Sub-4TA), filed March 28, 1979. Applicant: JACKSON TRANSPORTATION, INC., R.R. 1 Box 410A, Clayton, IN 46118. Representative: Donald W. Smith, Suite 945—9000 Keystone Crossing, Indianapolis, IN 46240. *Automotive parts and/or empty containers and materials, supplies, equipment and related articles used in the manufacture or production of motor vehicles*, between Indianapolis, IN on the one hand and Laredo and Dallas, TX on the other, for 180 days. Supporting shipper(s): General Motors Corporation Chevrolet Motor Div. of Indianapolis Plant, 340 White River Pkwy W. Dr. South, Indianapolis, IN 46206. Send protests to: Beverly J. Williams, Transportation Assistant, ICC 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 146189 (Sub-1TA), filed April 10, 1979. Applicant: POTATO TRANSPORT COMPANY, 927 Naomi Avenue, Los Angeles, CA 90021. Representative: Art Bennis, 927 Naomi, Los Angeles, CA 90021. *Common: Irregular: General Commodities*, from the plant site of LAWI/CSA Consolidators, Inc., located at 805 North Brand Avenue, Glendale, CA, to Phoenix and/or Tucson, AZ; from the facilities of LAWI/CSA Consolidators, Inc. at Phoenix, AZ to Tucson, AZ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Art Bennis, Sole Owner, 18142 Delano, Reseda, CA 91335. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, CA 90053.

MC 146258 (Sub-9TA), filed April 23, 1979. Applicant: M. R. BRUTON, INC., P.O. Box 547, Cuba, MO 65453. Representative: Stephen H. Loeb, Atty., Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. *Iron and steel articles (except commodities in bulk)* from St.

Louis, MO and points in its commercial zone to points in AZ, AR, CA, LA, NM, OK and TX, restricted to the transportation of traffic for the account of LaBarge, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): LaBarge, Inc., 20 S. 4th St., St. Louis, MO 63102. Send protests to: P. E. Binder, OC, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146409 (Sub-2TA), filed April 17, 1979. Applicant: WESTSHIP TRUCKING, INC., 3980 Quebec St., Suite 113, Denver, CO 80207. Representative: Donald K. Smith, 219 So. 3rd St., Sterling, CO 80751. *Electric household appliances and equipment; kitchen and bathroom appliances and equipment; oral hygiene appliances and equipment; hydro therapy equipment; sink and shower fixtures; smoke alarms; food processing machines; filters; and materials, equipment and supplies used in the manufacture or distribution of the commodities named above between facilities of Teledyne Water Pik located in Larimer County, CO, on the one hand, and on the other, San Diego, CA and Seattle, WA, serving all intermediate Pacific coast ports and also serving Salt Lake City, UT, for 180 days. Underlying ETA filed seeks 90 days authority. Restriction: Restricted to use of intermodal container equipment. Supporting shipper(s): Teledyne Water Pik, 1730 E. Prospect, Ft. Collins, CO 80521. Send protests to: D/S Roger L. Buchanan, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.*

MC 146409 (Sub-3TA), filed May 17, 1979. Applicant: WESTSHIP TRUCKING, INC., 3980 Quebec St., Suite 113, Denver, CO 80207. Representative: Donald K. Smith, 219 So. 3rd St., Sterling, CO 80751. *Uranium ore concentrates (other than bulk) and materials, equipment and supplies used in the production of ore concentrates between Petrotomics Uranium Mill, Div. of Getty Oil Co., near Shirley Bain, WY; Kerr McGee Uranium Mine and Mill, located between Ambrosia Lake and Grants, NM and mine site near Church Rock, NM and Baltimore, MD; Norfolk, Portsmouth and Hampton Roads, VA for 180 days. Restricted to traffic moving in intermodal container equipment. Underlying ETA filed seeks 90 days authority. Supporting shipper(s): Edlow International, 1100 17th St. NW, Washington, DC. Send protests to: D/S Roger L. Buchanan, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.*

MC 146558 (Sub-1TA), filed May 19, 1979. Applicant: READY-TOUR CORPORATION, 1017 Borette Lane,

Napa, CA 94558. Representative: J. H. Gulseth, 100 Bush St., 21st Floor, San Francisco, CA 94104. 180 days motor common carrier, over irregular routes. *Passengers and their baggage in charter service. Between Napa, Yountville, Vallejo, Santa Rosa, Sonoma and Petaluma, California, on the one hand, and, on the other, Stateline, Reno and Sparks, NV. Supporting shipper(s): Curt's Tours, 3638 Primrose Ave., Santa Rosa, CA 95401; Institute of Systemology, 184 Harrison Ave., Napa, CA 94558; Sully's, 359 First St., Napa, CA 94558; Western Tours, 743 First St., Napa, CA 94558. Send protests to: A. J. Rodriguez, D/S, ICC, 211 Main St., Suite 500, San Francisco, CA 94105.*

MC 146688 (Sub-2TA), filed May 7, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. Representative: Peter R. Atchison, 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. *Contract: Irregular: Equipment, materials and supplies used in the electro-plating and metal finishing industries, from Morenci and Warren, MI, to Buena Park, CA and Salt Lake City, UT, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Oxy Metal Industries, 32100 Stephenson Highway, Madison Heights, MI 48071. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, California 90053.*

MC 146688 (Sub-3TA), filed May 7, 1979. Applicant: ROAD WEST, INC., 1315 East Holt Blvd., P.O. Box 3637, Ontario, CA 91761. Representative: Peter R. Atchison, 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. *Contract: Irregular: Building materials and equipment and supplies used in the manufacture, prefabrication, construction, erection or installation of building and building siding, from Cuyahoga Falls, West Salem and Wadsworth, OH, to Hot Springs, AR, Little Rock, AR, Phoenix, AZ, Alameda, CA, Culver City, CA, Sacramento, CA, San Diego, CA, San Francisco, CA, Los Angeles, CA, Colorado Springs, CO, Denver, CO, Ft. Collins, CO, Boise, ID, Idaho Falls, ID, Twin Falls, ID, Billings, MT, Great Falls, MT, Missoula, MT, Las Vegas, NV, Reno, NV, Albuquerque, NM, Guymon, OK, Oklahoma City, OK, Tulsa, OK, Eugene, OR, Portland, OR, Amarillo, TX, Corpus Christi, TX, Dallas, TX, Houston, TX, San Antonio, TX, Waco, TX, Wichita Falls, TX, Salt Lake City, UT, Seattle, WA, and Spokane, WA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Alsides, Inc., 3773 State*

Road, Cuyahoga Falls, OH 44223. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, CA 90053.

MC 146688 (Sub-4TA), filed May 7, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. Representative: Peter R. Atchison, 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. *Contract: Irregular: Auto parts, and equipment, materials and supplies used in the manufacture, display, sale or merchandising thereof, from Lynchburg, VA, to Burlington, IA, and from Lynchburg, VA and Burlington, IA to Compton and Hayward, CA, and Dallas, TX, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Champion Spark Plug Co., P.O. Box 910, Toledo, OH 43661. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, CA 90053.*

MC 146688 (Sub-5TA), filed May 8, 1979. Applicant: ROAD WEST, INC., 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. Representative: Peter R. Atchison, 1315 E. Holt Blvd., P.O. Box 3637, Ontario, CA 91761. *Contract: Irregular: Plastic liquid, NOI, and Resin, coal tar or petroleum or resin compounds, from the facilities of Reichhold Chemicals, Inc. at Detroit, Mich. to Azusa, CA; So. San Francisco, CA; Grand Junction, CO; and Tacoma, WA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Reichhold Chemicals, Inc., 607-707 Woodward Heights Blvd., Detroit, MI 48220. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, CA 90053.*

MC 146689 (Sub-1TA), filed April 19, 1979. Applicant: LARK LEASING CO., 261 Maplewood Dr., Pottstown, PA 19464. Representative: Richard D. Linderman, 41 High St., Pottstown, PA 19464. *Contract carrier, irregular routes, Empty glass containers, and such commodities as are dealt in, manufactured and distributed by glass manufacturers and supplies, materials and equipment used in the manufacture of glass containers, from facilities of Diamond Glass Co. at Royersford and Linfield, PA to points in CT, NJ, NY, MD, VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Diamond Glass Co., First Ave., Royersford, PA. Send protests to: T. M. Esposito, TA, 101 S. 7th St., Room 620, Philadelphia, PA 19106.*

MC 146759 (Sub-2TA), filed April 9, 1979. Applicant: RASK TRANSPORTATION, INC., 210 South Street, Victoria, IL 61485. Representative: Michael E. Massie, 115 Northwest Third Ave., Galva

Professional Bldg., Galva, IL 61434. *Petroleum and petroleum products, in bulk, in tank vehicles*, from Bettendorf and Burlington, IA to Knoxville and Victoria, IL. An underlying ETA seeks 90 days authority. Supporting shipper(s): M & R Oil Corporation, Victoria, IL; Nordgren Oil Company, 221 West North, Knoxville, IL 61448. Send protests to: Annie Booker, TA, ICC, 1386 Dirksen Bldg., 219 So. Dearborn St., Chicago, IL 60604.

MC 146808 (Sub-1TA), filed May 8, 1979. Applicant: D & B TRUCKING, INC., Alco Express, 4800 West Jefferson, Detroit, MI 48209. Representative: James A. Russo, 4800 West Jefferson, Detroit, MI 48209. Steel articles; restricted to traffic having a prior or subsequent movement by rail, water or air, beyond the State of Michigan, between points in the Lower Peninsula of MI. For 180 days. Supporting shipper(s): Marubeni American Corporation, 3000 Town Center Suite 2960, Southfield, MI 48075. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933. An underlying ETA seeks 90 days authority.

MC 146809 (Sub-1TA), filed April 16, 1979. Applicant: BARRY JACOBSON, d/b/a Barry Jacobson Trucking, South Shore Drive, Albert Lea, MN 56007. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. *Contract carrier: irregular routes: Lard and tallow, in bulk*, from the facilities of Wilson Foods Corporation at or near Cherokee, IA to the facilities of The Miami Margarine Co., at or near Albert Lea, MN, under a continuing contract or contracts with The Miami Margarine Co., Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Miami Margarine Co., Inc., 919 14th Street, Albert Lea, MN 56007. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 146829 (Sub-2TA), filed April 26, 1979. Applicant: MURRAY TRUCK LINE, INC., Box 172, Pleasanton, KS 66075. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Insulation and Insulation Materials*, from the facilities of Owens-Corning Fibreglas at Kansas City and Pauline, KS to points and places in TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fibreglas, Inc., P.O. Box 15139, Fairfax St., Kansas City, KS 66115. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 444 SE Quincy, Topeka, KS 66683.

MC 146848 (Sub-1TA), filed April 20, 1979. Applicant: ARDEN BOELTER AND WALTER NOWATZSKI d/b/a. NOBEL TRUCKING, Route 2, Markesan, WI 53946. Representative: James Robert Evans, 145 W. Wisconsin Ave., Neenah, WI 54956. *Contract carrier: irregular routes: Polystyrene products*, from Markesan, WI to points in IL, IN, IA, MI, MN, and OH, for 180 days. Supporting shipper(s): Robin II, Inc., 251 East John St., Markesan, WI 53946. Send protests to: G. Daugherty, TA, ICC, 517 E. Wisconsin Ave. Rm. 619, Milwaukee, WI 53202.

MC 146858 (Sub-1TA), filed May 15, 1979. Applicant: AMHERST ENTERPRISES, INC., 9 East Pleasant Street, Amherst, Massachusetts 01002. Representative: Patrick A. Doyle, 60 Robbins Road, Springfield, MA 01104. *Contract carrier: irregular routes: Beer*, from Oswego County, NY to points in NY, ME, NH, VT, MA, RI and CT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Luey & Abercrombie, Inc., North Street, So. Deerfield, MA 013173. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

By the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-19714 Filed 6-25-79; 8:45 am]

BILLING CODE 7035-01-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28905 (Sub-No. 6)]

Baltimore and Ohio Chicago Terminal Railroad Co. and Louisville and Nashville Railroad Co. Construction and Operation Connection at or Near Calumet City, Cook County, IL, and at or Near Hammond, Lake County, IN.

Baltimore and Ohio Chicago Terminal Railroad Company (B&OCT), Baltimore, MD 21201, and Louisville and Nashville Railroad Company (L&N), Louisville, KY 40232, represented by René J. Gunning, General Attorney, The Baltimore and Ohio Chicago Terminal Railroad Company, 2 North Charles Street, Baltimore, MD 21201, and R. Lyle Key, Jr., Assistant General Attorney, Louisville and Nashville Railroad Company, P.O. Box 32290, Louisville, KY 40232, hereby give notice that on the 21st day of May, 1979, they filed with the Interstate Commerce Commission at Washington, DC, a joint application pursuant to 49 U.S.C. § 10901 for a decision approving and authorizing the construction and operation of a

connection between the existing lines of railroad of the B&OCT and L&N in Cook County, IL and Lake County, IN. The total trackage proposed to be constructed is 701 feet of main line connecting track, which is approximately 0.13 mile.

L&N has two main lines to Chicago, IL., one from Louisville, KY., via Monon, IN., terminating at South Hammond Yard, and the other from Evansville, IN., terminating at Yard Center. Yard Center is a joint facility used by L&N and operated by Missouri Pacific Railroad Company. In a related application, L&N seeks trackage rights over B&OCT, in part, to reach Yard Center from its above-described line terminating at South Hammond Yard. In order to efficiently traverse the B&OCT, the proposed connection is necessary. The proposed connection, in conjunction with the proposed trackage rights and a new connection at Dolton, IL., the subject of other applications, will permit L&N to consolidate its yard activities in the Chicago area.

B&OCT is wholly-owned subsidiary of The Baltimore and Ohio Railroad Company (B&O) and is part of the Chessie System, which is comprised of The Chesapeake and Ohio Railway Company, B&O, Western Maryland Railway Company and affiliated lines. L&N is wholly-owned subsidiary of Seaboard Coast Line Railroad Company (SCL) and is part of the family Lines System, which is comprised of SCL, L&N, Clinchfield Railroad Company, Georgia Railroad, The Western Railway of Alabama, Atlanta and West Point Railroad Company, and affiliated lines.

This application is related to CSX Corporation-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc., Finance Docket No. 28905 (Sub-No. 1), the Baltimore and Ohio Chicago Terminal Railroad Company and Louisville and Nashville Railroad Company Construction and Operation Connection at Dolton, Cook County, IL, Finance Docket No. 28905 (Sub-No. 7) and a concurrently filed application where L&N seeks to acquire trackage rights over the Baltimore and Ohio Chicago Terminal Railroad Company between east Chicago, IN, and Rockwell Street Junction, Chicago, IL, Finance Docket No. 28905 (Sub-No. 5).

In accordance with the Commission's regulations (49 CFR 1108.8) in Ex Parte No. 55 (Sub-No. 4), any protests may include a statement indicating the presence or absence or any effect of the requested Commission action on the quality of the human environment. If any such effect is alleged to be present, the statement shall indicate with

specific data the exact nature and degree of the anticipated impact. See *Implementation—National Environmental Policy Act, 1969, supra*, at p. 487.

Pursuant to the provisions of the Interstate Commerce Act, as amended, the proceeding will be handled without public hearings unless comments in support or opposition on such application are filed with the Secretary, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Washington, DC 20423, and the aforementioned counsels for applicants, within 30 days after date of first publication in a newspaper of general circulation. Any interested person is entitled to recommend to the Commission that it approve, disapprove, or take any other specified action with respect to such application.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19709 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Docket No. AB-176 (Sub-No. 2F)]

**Valley & Siletz Railroad Co.
Abandonment Near Pedee and
Independence in Polk County, Oreg.**

Notice is hereby given pursuant to 49 U.S.C. § 10903 (formerly Section 1a of the Interstate Commerce Act) that by a Certificate and Decision decided May 30, 1979, a finding, which is administratively final, was made by the Commission, Review Board Number 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in AB-36 (Sub-No. 2), *Oregon Short Line R. Co.—Abandonment Goshen* — I.C.C. —, decided February 9, 1979, and further that applicant shall keep intact all of the right-of-way underlying the track, including all of the bridges and culverts for a period of 120 days from the effective date of this certificate and decision to permit any state or local government agency or other interested party to negotiate the acquisition for public use of all or any portion of the right-of-way, the present and future public convenience and necessity permit the abandonment by the Valley & Siletz Railroad Company of a portion of its line of railroad extending from railroad milepost 17.000 at Pedee, OR, to milepost 3.125 near Independence, OR, a distance of 13.875 miles in Polk County, OR. A certificate of public convenience and necessity permitting abandonment was issued to the Valley & Siletz Railroad Company. After the investigation was completed, the

requirement of § 1121.38(a) of the Regulations that publication of notice of abandonment decisions in the **Federal Register** be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the Regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than July 11, 1979. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the Regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 45 days from the date of this publication.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19707 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

Fourth Section Application for Relief

June 21, 1979.

This application for long-and-short-haul relief has been filed with the I.C.C.

Protests are due at the I.C.C. on or before June 11, 1979.

FSA No. 43707, Karlander (Australia) Pty. Limited No. 5, intermodal rates on general commodities in containers, from rail terminals on the United States Gulf Coast to ports in Australia, by way of interchange points on the Pacific Coast, in Karlander (Australia) Pty. Limited Westbound Intermodal Tariff ICC KRP 303, FMC No. 10, effective July 14, 1979. Grounds for relief—water competition.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19830 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Notice No. 100]

Motor Carrier Temporary Authority Applications

June 12, 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 2229 (Sub-210TA), filed May 4, 1979. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Blvd., Dallas, TX 75247. Representative: Jackie Hill, same address as above. *Cast iron pipe, fittings, valves, hydrants and accessories* thereof, from the facilities of United States Pipe and Foundry Co. at Birmingham and Bessemer, AL to points in OK and TX for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): United States Pipe and Foundry Company, 3300 First Avenue North, Birmingham, AL 35202. Send protests to: Opal M. Jones, TA, ICC, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 2229 (Sub-211TA), filed May 7, 1979. Applicant: RED BALL MOTOR FREIGHT, INC., 3177 Irving Blvd., Dallas, TX 75247. Representative: Jackie Hill, same address as applicant. *Plastic film or sheeting and accessories used in the installation of plastic film or sheeting*, from Denver, CO to points in CT, ME, NH, RI, MA, VT, PA, and FL for 180 days. Supporting shipper(s):

Watersaver Co., 35th & Wynkoop, Denver CO 80216. Send protests to: Opal M. Jones, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 2368 (Sub-93TA), filed March 23, 1979. Applicant: BRALLEY-WILLETT TANK LINES, INC., P.O. Box 495, Richmond, VA 23204. Representative: William T. Marshburn, same address as above. *Lubricating oils*, in bulk, from Marcus Hook, PA, to Richmond, VA, for 180 days. Supporting shipper(s): Industrial Chemical Inc., P.O. Box 25096, Richmond, VA 23260. Send protests to: Paul D. Collins, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 5618 (Sub-1TA), filed April 19, 1979. Applicant: GEM CITY TRANSFER LINE, INC., 1811 North 30th St., Quincy, IL 62301. Representative: Douglas G. Brown, P.C., The INB Center—Suite 555. *Auto body parts* 1) from Adrian, MI to Keokuk, IA and Quincy, IL 2) from Keokuk, IA to Quincy, IL, Belvidere, IL and points in MI 3) from Quincy, IL to points in MI. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sheller-Globe Corp., 3200 Main St., Keokuk, IA 52632. Send protests to: Charles D. Little, D/S, ICC, Room 414 Leland Bldg., 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 5888 (Sub-48TA), filed April 20, 1979. Applicant: MID-AMERICAN LINES, INC., 127 West Tenth St., Kansas City, MO 64105. Representative: Louis A. Hoger, same address as applicant. *Windows, Screens, Doors, Building Woodwork and Materials used in the installation thereof*, from the facilities of Andersen Corporation at Bayport, MN to points and places in MI (Lower Peninsula), for 180 days. Supporting shipper(s): Andersen Corporation, Bayport, MN 55003. Send protests to: John V. Barry, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 9859 (Sub-6TA), filed May 14, 1979. Applicant: KANE TRANSFER COMPANY, 4661 Hollins Ferry Road, Baltimore, MD 21227. Representative: Frank H. Stricker, 1050 17th St., N.W., Washington, DC 20036. *General commodities, except livestock, Classes A & B explosives, commodities in bulk, those of unusual value and those requiring special equipment*, between Baltimore, MD, Washington, DC and points in their commercial zone, and points and places in Delaware and Maryland, east of the Chesapeake Bay and south of the Chesapeake and Delaware Canal, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): 7 supporting

shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 18459 (Sub-11TA), filed April 30, 1979. Applicant: BRITTON MOTOR SERVICE, INC., 1660 Terrace Drive, St. Paul, MN 55113. Representative: Allan C. Zuckerman, 39 LaSalle Street, Chicago, IL 60603. *Iron and steel articles* from the facilities of North Star Steel Company located at or near Newport, MN to points in WI, IL, IN, MI, OH, PA, MD, KY, and MO for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Star Steel Company, 1678 Red Rock Road, St. Paul, MN 55164. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 18738 (Sub-58TA), filed May 14, 1979. Applicant: SIMS MOTOR TRANSPORT LINES, INC., 610 West 138th Street, Riverdale, IL 60627. Representative: Eugene Cohn, One North LaSalle Street, Chicago, IL 60606. *Iron and steel articles and materials used in the manufacture of iron and steel articles*, from and to facilities of United States Steel Corporation located in Allegheny and Westmoreland Counties, PA, Youngstown, Cleveland and Lorain, OH and points in IN, IL, and KY, for 180 days. An underlying ETA was granted for 90 days' authority. Supporting shipper(s): United States Steel Corp., 600 Grant Street, Room 568, Pittsburgh, PA 15230. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 24379 (Sub-49TA), filed April 23, 1979. Applicant: LONG TRANSPORTATION COMPANY, 14510 W. Eight Mile Road, Oak Park, MI 48237. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. *Iron and steel articles* from the facilities of Wheeling Pittsburgh Steel Corporation at Canfield, Martins Ferry, Mingo Junction, Steubenville, and Yorkville, OH; Allenport and Monessen, PA and Beech Bottom, Benwood, Fallonsbee and Wheeling, WV to OH, IN and MI, for 180 days. An underlying ETA seeks 90 days authority.

MC 25518 (Sub-22TA), filed May 14, 1979. Applicant: JOHN BUNNING TRANSFER COMPANY, INC., Box 128, Rock Springs, WY 82901. Representative: Truman A. Stockton, Jr., The 1650 Grant St. Bldg., Denver, CO 80203. See attached sheet. Supporting shipper(s): There are (8) shippers. Their statements may be examined at the office listed below and Headquarters.

Send protests to: Paul A. Naughton, Rm. 105 Federal Bldg., 111 South Wolcott, Casper, WY 82601.

MC 30618 (Sub-17TA), filed April 25, 1979. Applicant: HENRY V. RABOUIN, INC., Richmond Road, Hancock, MA 01237. Representative: Sherwood Guernsey II, 57 Wendell Avenue, Pittsfield, MA 01201. Talc from Windham and Windsor Counties, VT to points in NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Metropolitan Talc Co., Metuchen & Harmich Roads, South Plainfield, NJ 07080. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 35628 (Sub-411TA), filed May 1, 1979. Applicant: INTERSTATE MOTOR FREIGHT SYSTEM, 134 Grandville Ave. S.W., Grand Rapids, MI 49502. Representative: Michael P. Zell, 134 Grandville Ave. S.W., Grand Rapids, MI 49503. Common Carrier, by motor vehicle over regular routes transporting: *General Commodities* (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, Commodities in bulk, and those requiring special equipment); from and to points in Lycoming, Columbia, Montour, Union, Northumberland, Snyder, Dauphin and Perry Counties, PA in connection with applicant's presently authorized regular route service. Applicant intends to tack and interline with other carriers. For 180 days. Supporting shipper(s): Ames Shower Curtain Co., 17 Gerhart St., Millersburg, PA 17061; Mae Denim Den, 6 N Market, Selinsgrove, PA 17870; Plaza Shopping Center, Inc., Rt. No. 2, Selinsgrove, PA 17870; McVey's Furniture, 122 Center St., Danville, PA; and 28 others. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 40978 (Sub-60TA), filed May 15, 1979. Applicant: CHAIR CITY MOTOR EXPRESS CO., 3321 Business 141 South, Sheboygan, WI 53081. Representative: Daniel Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. *New furniture* from facilities of Simmons Co. at Kansas City, KS to points in IL, IA, IN, MO and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Simmons Co., 353 Jones Ave., N.W., Atlanta, GA 30301. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 44449 (Sub-2TA), filed April 12, 1979. Applicant: BLUE BIRD VAN & STORAGE COMPANY, INC., N. 15 Grant, Spokane, WA 99002. Representative: George R. LaBissoniere,

1100 Norton Bldg., Seattle, WA 98104. (a) *Containers, container ends and closures*, (b) *commodities manufactured or distributed by manufacturers and distributors of containers when moving in mixed loads with containers*, and (c) *material, equipment and supplies used in the manufacture and distribution of containers, container ends and closures*, from the plantsites of Boise Cascade Corporation at or near Spokane, and Wallula, WA to points in the States of ID and MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Boise Cascade Corporation, P.O. 7747, Boise, ID 83707. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 50069 (Sub-547TA), filed April 13, 1979. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Avenue, Oregon, OH 43616. Representative: William P. Fromm, (same address as applicant). *Special kerosene, in bulk, in tank vehicles*, West Branch, MI to Brook Park, Canton and Lima, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Sun Petroleum Products Co., Div. of Sun Oil Company of Pennsylvania, P.O. Box 920, Toledo, OH 43693. Send protests to: P. J. Crawford, TCS, ICC, 600 Arch St., Rm. 3238, Phila., PA 19106.

MC 50069 (Sub-548TA), filed April 23, 1979. Applicant: REFINERS TRANSPORT & TERMINAL CORP., 445 Earlwood Ave., Oregon, OH 43616. Representative: William P. Fromm (same address as applicant). *Petroleum products, in bulk, in tank vehicles*, from, to or between the following points or areas: From Dayton, OH to points (a) North of a line beginning at the IN-OH State line and extending along Hwy 14 to Jct. U.S. Hwy 41 and thence along County Hwy via Elmer, IN to the IN-IL State line, and (b) Points in KY west of Hwy 231 for 180 days. Supporting Shipper(s): Sun Petroleum Products Co., Div. of Sun Oil Co. of PA, P.O. Box 920, Toledo, OH 43693. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 50069 (Sub-549TA), filed April 23, 1979. Applicant: REFINERS TRANSPORT & TERMINAL CORPORATION, 445 Earlwood Ave., Oregon OH 43616. Representative: William P. Fromm (same address as applicant). *Roofing materials*, from Heath, OH to points in PA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Koppers Company, Inc., 850 Koppers Bldg., Pittsburgh, OH 15219. Send

protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 52709 (Sub-361TA), filed May 2, 1979. Applicant: RINGSBY TRUCK LINES, INC., P.O. Box 7240, Denver, CO 80207. Representative: Rick Barker (same as above). *Automobile and railway car parts* from the facilities of General Tire & Rubber Co. near Ionia, MI to points in ID, IL, IN, IA, KS, NE and PA for 180 days. Underlying ETA seeks 90 days authority. Supporting Shipper(s): General Tire & Rubber Co., 1 General St., Akron, OH 44329. Send protests to: D/S Roger L. Buchanan, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 52709 (Sub-362TA), filed May 8, 1979. Applicant: RINGSBY TRUCK LINES, INC., 3980 Quebec Street, Denver, CO 80207. Representative: Rick Barker (same address as above). *Automobile Parts and Accessories*, between Nogales, AZ and the United States-Canadian border near Oroville, WA—Restricted to transportation of shipments originating at or destined to the facilities of the White Western Star Division, White Motor Corp., of Canada, Ltd., at Kelowna, British Columbia, for 180 days. Supporting Shipper(s): White Motor Corp., Truck Group, 35129 Curtis Blvd., Eastlake, OH 44094. Send protests to: R. L. Buchanan, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 55709 (Sub-13TA), filed April 20, 1979. APPLICANT TRANSIT, INC., P.O. Box 112, Arena, WI 53503. Representative: James A. Spiegel, Olde Towne Office Park, 6425 Odana Road, Madison, WI 53719. *Cheese*, between Sioux Center, IA, and that part of IA north and east of U.S. Interstate Highways I-80 and I-35 on the one hand, and on the other hand, Rochester, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Rochester Cheese Sales, Inc., 4219 N. Frontage Rd., Hwy. 14 West, Rochester, MN 55901. Send protests to: G. Daughtery, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 55898 (Sub-56TA), filed May 8, 1979. Applicant: DECATO BROS., INC., Heater Rd., Lebanon, NH 03766. Representative: David M. Marshall, Marshall and Marshall, 101 State St., Suite 304, Springfield, MA 01103. *Lumber, lumber products, and finished lumber products*, from the facilities of the Weyerhaeuser Company located at or near Askin, Lewiston, Plymouth and Jacksonville, NC to points in VA, WV, OH, PA, MD, DE, DC, NJ, NY, CT, RI, MA, VT, NH, and ME, for 180 days. An underlying ETA seeks 90 days authority.

Supporting Shipper(s): Weyerhaeuser Company, P.O. Box 787, Plymouth, NC 27962. Send protests to: Ross J. Seymour, DS, ICC, Rm. 3, 6 Loudon Rd., Concord, NH 03301.

MC 55898 (Sub-57TA), filed May 9, 1979. Applicant: DECATO BROS., INC., Heater Rd., Lebanon, NH 03766. Representative: David M. Marshall, Marshall and Marshall, 101 State St., Suite 304, Springfield, MA 01103. *Building boards, wallboards, and insulation boards, and moldings, fasteners, and accessories used in connection therewith*, between the facilities of Masonite Corporation, located in Bradford County, PA, on the one hand, and, on the other, points, in ME, NH, VT, MA, CT, RI, and NY, 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: Ross J. Seymour, DS, ICC, Rm. 3, 6 Loudon Rd., Concord, NH 03301.

MC 56879 (Sub-118TA), filed April 19, 1979. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same as applicant). *Such merchandise as is dealt in by wholesale and retail food and drug outlets (except commodities in bulk)* from the facilities of Procter & Gamble at Iowa City and Riverdale, IA to points in IL on and north of U.S. Hwy 24 for 180 days. An ETA seeks 90 days authority. Supporting Shipper(s): The Procter & Gamble Distributing Company, P.O. Box 599, Cincinnati, OH 45201. Send protest to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 56679 (Sub-119TA), filed April 26, 1979. Applicant: BROWN TRANSPORT CORP., 352 University Ave., SW., Atlanta, GA 30310. Representative: Leonard S. Cassell (same as applicant). *Crude silicon carbide* from Buffalo, NY to points in Elbert County, GA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Oglethorpe Tool & Supply Co., P.O. Box 958, Elberton, GA 36035. Send protest to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 58549 (Sub-30TA), filed April 26, 1979. Applicant: GENERAL MOTOR LINES, INC., 1634 Granby Street, NE., Post Office Box 13727, Roanoke, VA 24034. Applicant's Representative: Jerry D. Beard, 1634 Granby Street, NE., Post Office Box 13727, Roanoke, VA 24034. 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, commodities in bulk, household goods as defined by the Commission, and those requiring the use of special equipment), (1) between Ridgeway, VA and the junction of U.S. Hwy 601 and NC Hwy 268, from Ridgeway over U.S. Hwy 220 to junction NC Hwy 770, then over NC Hwy 770 to junction NC Hwy 704, then over NC Hwy 704 to junction NC Hwy 89, then over NC Hwy 89 to junction U.S. Hwy 601, then over U.S. Hwy 601 to junction NC Hwy 268, and return over the same route, (2) between Stuart, VA and junction NC Hwys 8 and 704, from Stuart over VA Hwy 8 to the VA-NC State line, then over NC Hwy 8 to junction NC Hwy 704, and return over the same route, (3) between junction of VA Hwys 8 and 103 and the junction of NC Hwy 103 and U.S. Hwy 601, from junction VA Hwy 8 and 103 over VA Hwy 103 to the VA-NC State line, then over NC Hwy 103 to junction U.S. Hwy 601, and return over the same route, (4) between junction VA Hwys 103 and 773, near Claudville, VA and junction NC Hwy 104 and U.S. Hwy 601, from junction VA Hwys 103 and 773 over VA Hwy 773 to the VA-NC State line, then over NC Hwy 104 to junction U.S. Hwy 601, and return over the same route, (5) between Pulaski, VA and junction U.S. Hwy 601 and U.S. Hwy 52, from Pulaski over VA Hwy 100 to junction U.S. Hwy 221, then over U.S. Hwy 221 to junction U.S. Hwy 52, then over U.S. Hwy 52 to junction U.S. Hwy 601, and return over the same route, (6) between Galax, VA and junction U.S. Hwy 601 and NC Hwy 89, from Galax over VA Hwy 89 to the VA-NC State line, then over NC Hwy 89 to junction U.S. Hwy 601, and return over the same route, (7) between junction NC Hwys 89 and 18 and West Jefferson, NC, from junction NC Hwys 89 and 18 over NC Hwy 18 to junction NC Hwy 88, then over NC Hwy 88 to junction NC Hwy 16, then over NC Hwy 16 to junction U.S. Hwy 221, then over U.S. Hwy 221 to West Jefferson, and return over the same route, (8) between Independence, VA and the junction of NC Hwy 16 and U.S. Hwy 221, (a) over U.S. Hwy 221, and (b) from Independence over U.S. Hwy 58 to junction VA Hwy 16, then over VA Hwy 16 to the VA-NC State line, then over NC Hwy 16 to junction U.S. Hwy 221, and return over the same route. Serving all intermediate points and their commercial zones on Routes (1) through (8) above, and serving points in Ashe, Alleghany, Surry, and Stokes Counties, NC and their commercial zones as off-route points in connection with carrier's operations over Routes (1) through (8)

described above. Supporting Shipper(s): Estes express Line, 1405 Gordon Ave., Richmond, VA 23224. Send protest to: Charles F. Myers, DS, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 61129 (Sub-7TA), filed May 10, 1979. Applicant: B & H FREIGHT LINES, INC., P.O. Box 354, Harrisonville, MO 64701. Representative: Tome B. Kretsinger, 20 East Franklin, Liberty, MO 64068. General Commodities, (except those of unusual value: Class A & B explosives; household goods as defined by the Commission; motor vehicles; liquid commodities, in bulk, in tank vehicles; and commodities which because of size or weight require the use of special vehicles, between Kansas City, MO and Warsaw, MO serving the intermediate points of Clinton, Calhoun, Windsor, Lincoln and Warsaw, MO, and off-route points within Henry, Johnson and Pettis counties in MO. From Kansas City, MO over U.S. Highway 50 to its junction with MO Highway 13, thence over MO Highway 13 to Clinton, MO, thence over MO Highway 52 to its junction with U.S. Highway 65, thence over U.S. Highway 65 to Warsaw, MO and return over the same route. Between Kansas City, MO and Warsaw, MO serving the intermediate and off-route points of Clinton, Calhoun, Windsor, Lincoln and Warsaw, MO and off-route points in Henry, Johnson and Pettis counties in MO. From Kansas City, MO over U.S. Highway 71 to Harrisonville, MO, thence over U.S. Highway 7 to Warsaw, MO and return over the same route. An underlying ETA seeks 90 days authority for 180 days. Supporting shipper(s): Focklers Ben Franklin, Windsor, MO 65360. Send protests to: John V. Barry, DS, ICC, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

MC 64808 (Sub-41TA), filed May 2, 1979. Applicant: W.S. THOMAS TRANSFER, INC., 1854 Morgantown Ave., Fairmont, WV 26554. Representative: Henry M. Wick, Jr., Esq., 2310 Grant Bldg., Pittsburgh, PA 15219. Aluminum sheet and aluminum industrial foil, from the facilities of Alcan Aluminum Corporation at or near Fairmont, WV, to points in IL, IN, KY, MI, NC, TN, VA and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Alcan Aluminum Corporation, P.O. Box 6977, Cleveland, OH 44114. Send protests to: J.A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 67419 (Sub-6TA), filed April 23, 1979. Applicant: PHILIP STINGER, INC., N.E. Corner of 35th and Moore Sts.,

Phila., PA 19145. Representative: Raymond A. Thistle, Jr., Five Cottman Court Homestead Road & Cottman St., Jenkintown, PA 19046. Contract carrier: irregular route, (1) Insulation materials, insulation board and supplies and materials used in the manufacture and installation thereof (except commodities in bulk) from Pennsauken, NJ to pts in CT, DC, DE, MA, MD, ME, NC, NJ, NH, NY, OH, PA, RI, SC, VA, VT, WV; (2) Insulation materials, insulation board and supplies and materials used in the manufacture and installation thereof (except commodities in bulk) from Elizabethtown, KY to pts in DE, MD, PA, NJ, and NY; (3) Roofing felt from Lockland, OH to Pennsauken, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): The Celotex Corporation, Tampa, FL 33607. Send protests to: T.M. Esposito, TA, ICC, Federal Reserve Bank Bldg., 101 W. 7th St., Rm. 620, Phila., PA 19106.

MC 72069 (Sub-21TA), filed May 2, 1979. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 1030-15th St. NW., Washington, DC 20005. Bananas, from Norfolk, VA, and points in its commercial zone, to points in MA, CT, RI, NY, NJ, PA, OH, IN, IL, MI, WI, KY, TN, WV, MD, DE, DC, VA, NC, SC, GA and AL, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): Robert Rogers, Terminal Manager, The Best Banana Company, Inc., 3616 E. Virginia Beach Blvd., Norfolk, VA 23502. Send protests to: W.L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 72069 (Sub-22TA), filed May 10, 1979. Applicant: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representative: Chester A. Zyblut, 1030-15th St. NW., Washington, DC 20005. Canned goods from Sussex County, DE to points in NC, SC, GA, FL, TN, KY, AL, MX, LA and TX, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): William P. Dellinger, Jr., Draper-King Cole, Inc., Milton, DE 19968. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 73688 (Sub-88TA), filed May 14, 1979. Applicant: SOUTHERN TRUCKING CORPORATION, P.O. Box 7195, 1500 Orenda Avenue, Memphis, TN 38107. Representative: Paul Costin (same as applicant). Aluminum Ingots from Gum Springs and Jones Mills, AR to Lister Hill, AL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Reynolds Metals Company, P.O. Box 128, Malvern, AR. Send protests to: Floyd A. Johnson, D/S,

ICC, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 78228 (Sub-121TA), filed April 27, 1979. Applicant: J. MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Esq., 23109 Grant Bldg., Pittsburgh, PA 15219. *Petroleum fuel oil flue dust*, in bulk, in dump vehicles, from Oswego, NY, Portsmouth, VA and Strasburg, VA to Bellaire, OH and Freeport, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Philipp Brothers, 1221 Ave. of the Americas, New York, New York 10020. Send protests to: J.A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

78228 (Sub-122TA), filed May 10, 1979. Applicant: J. MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Esq., 2310 Grant Bldg., Pittsburgh, PA 15219. *Aragonite, in bulk, in dump vehicles*, from Baltimore, MD to Perth Amboy, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Thatcher Glass Manufacturing Co., P.O. Box 265, Elmira, NY 14902. Send protests to: J. A. Niggemyer, DS, 416 Old P.O. Bldg., Wheeling, WV 26003.

MC 82079 (Sub-77TA), filed March 27, 1979. Applicant: KELLER TRANSFER LINE, INC., 5635 Clay Avenue SW, Grand Rapids, MI 49508. Representative: Edward Malinzak, 900 Old Kent Building, Grand Rapids, MI 49503. *Frozen foodstuffs*, from the facilities utilized by Stokely-Van Camp, Inc. at Indianapolis, IN to points in MI. Restricted to transportation in mechanically refrigerated vehicles and restricted against the transportation of commodities in bulk. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Stokely-Van Camp, Inc., P.O. Box 1113, Indianapolis, IN 46206. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 82808 (Sub-18TA), filed May 8, 1979. Applicant: C. L. HUNT, DBA HUNT & SONS, P.O. Box 433, Corner Business Hwy 50 & Washington St., Warrensburg, MO 64093. Representative: C. L. Hunt, Corner Bus. Hwy 50 & Washington St., Warrensburg, MO 64093. *Grain By-Products*, from Kansas City, MO to Russellville, AR, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: John V. Barry, D/S, ICC, 600 Federal Building, 911 Walnut St., Kansas City, MO 64106.

MC 82808 (Sub-19TA), filed May 16, 1979. Applicant: C. L. HUNT, dba HUNT & SONS, Box 433, Warrensburg, MO 64093. Representative: C. L. Hunt, Box 433, Warrensburg, MO 64093. *Plasticware, styrocups & food containers*, between Higginsville, MO., and points in IL, IA, NE, KS, OK, AR, KY, and TN. For 180 days. Supporting shipper(s): Thompson Industries Company, 313 East 15th, Higginsville, MO 64037. Send protests to: John V. Barry, D/S, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 84268 (Sub-2TA), filed May 10, 1979. Applicant: JOHN S. HUGHES CARTAGE CO., 4751 West Lake Street, Chicago, IL 60644. Representative: Daniel O. Hands, Attorney at Law, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Contract Carrier: irregular routes: Candy* (except in bulk), in vehicles equipped with mechanical refrigeration for 180 days for the account of E. J. Brach & Sons. An underlying ETA seeks 90 days authority. Supporting shipper(s): E. J. Brach & Sons, P.O. Box 802, Chicago, IL 60690. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 84428 (Sub-21TA), filed April 26, 1979. Applicant: CHESTER JACKSON CO., 475 Schuyler Avenue, Kearny, NJ 07032. Representative: Charles J. Irwin, Esq., 744 Broad Street, Newark, NJ 07102. *Chemicals*, in bulk, in tank and hopper vehicles. Between points in CT, DE, ME, MD, MA, NH, NJ, NY, NC, OH, PA, RI, SC, VT, VA, & WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): 14 Supporting shippers. Send protests to: Robert E. Johnston, D/S, ICC, 9 Clinton St., Newark, NJ 07102.

MC 88368 (Sub-34TA), filed April 6, 1979. Applicant: CARTWRIGHT VAN LINES, INC., 11901 Cartwright Avenue, Grandview, MO 64030. Representative: C. Max Stewart, 11901 Cartwright Avenue (same as applicant), Grandview, MO 64030. (a) *Recreational Park, Restaurant, Playground and Show furniture, fixtures, equipment, displays, murals, panels, plaques and materials and accessories, supplies and parts*, thereto, (b) from the facilities of Miracle Recreation Equipment Company at or near Grinnell (Poweshiek County), IA to points in AR, CA, ID, IN, LA, MD, MIS, NJ, NM, NY, NC, OH, OK, SC, TX, UT, VA, WA, and between points in HI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Miracle Recreation Equipment Company, Highway 6 West, P.O. Box 275, Grinnell, IA 50112. Send protests to: John V. Barry, DS, ICC, 600 Federal

Building, 911 Walnut Street, Kansas City, MO 64106.

MC 98689 (Sub-3TA), filed April 27, 1979. Applicant: D. A. BROWN TRUCKING CO., 4319 Rosedale Highway, Bakersfield, CA 93302. Representative: Fred H. Mackensen, Murchison & Davis, 9454 Wilshire Blvd., Suite 400, Beverly Hills, CA 90212. *Steam generators, heaters, machinery and pipe, plus parts, used in secondary recovery and maintenance of oil and gas wells*, from Tulsa, OK to oilfield locations in the State of CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Struthers Thermo-Flood Corporation, 1017 30th Street, Bakersfield, CA 93301. Send protests to: Irene Carlos, TA, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 99439 (Sub-12TA), filed May 11, 1979. Applicant: SUWANNE TRANSFER, INC., 1830 East 21st Street, Jacksonville, FL 32206. Representative: Norman J. Bolinger, 1729 Gulf Life Tower, Jacksonville, FL 32207. *Roofing materials; asbestos building, roofing or sheathing paper; composition or prepared roofing; shingles or siding; roofing cement; and asbestos wallboard*; from the plantsite of Johns-Manville Sales Corp. at or near Savannah, GA to all points in FL, for 180 days. Supporting Shipper(s): Johns-Manville Sale Corp., P.O. Box 4487, Atlanta, GA 30302. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 99919 (Sub-2TA), filed May 1, 1979. Applicant: FREMONT EXPRESS, INC., 620 East Factory, P.O. Box Q, Fremont, NE 68025. Representative: Scott T. Robertson, Peterson, Bowman, Swanson & Johanns, 521 S. 14th St., Suite 500, Lincoln, NE 68501. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Sections A and C of Appendix I to Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766 (except hides and commodities in bulk)*, from the facilities of Geo. A. Hormel & Co. at or near Fremont, NE to Denver, CO and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Geo. A. Hormel & Company, P.O. Box 800, Austin, MN 55913. Send protests to: Carroll Russell, ICC, suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 103498 (Sub-61TA), filed May 11, 1979. Applicant: B & L TRUCK LINES, INC., 339 East 34th Street, Lubbock, TX 79404. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. (1)

Building materials, gypsum and gypsum products; (2) materials, equipment and supplies used in the manufacture and distribution of such commodities. (1) from the facilities of National Gypsum Co. at Westwego, LA to points in AR, OK, and TX, and (2) from points in AR, OK, and TX to the facilities of National Gypsum Co. at Westwego, LA, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper: Gold Bond Building Products, Division, National Gypsum Company, 2001 Rexford Road, Charlotte, NC 28211. Send protests to: Martha Powell, Transportation Assistant, Room 9A27 Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

MC 103798 (Sub-39TA), filed May 10, 1979. Applicant: MARTEN TRANSPORT, LTD., Route 3, Mondovi, WI 54755. Representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. *Foodstuffs* from the facilities of the Creamette Company at Minneapolis, MN and New Hope, MN to Los Angeles, CA, Phoenix, AZ and Sparks, NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Creamette Company, 7300 36th Avenue North, New Hope, MN. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 106398 (Sub-902TA), filed April 26, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, 525 South Main, Tulsa, OK 74103. *Board, building wall or insulating, fiberboard or pulpboard, from Woodstock, VA, to OH, IN, and WV, for 180 days.* Supporting Shipper(s): Johns Manville Sales Corp., 200 No. Main St., Manville, NJ 08835. Send protests to: District Supervisor, ICC, Room 240, Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 106398 (Sub-903TA), filed May 4, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, 525 South Main, Tulsa, OK 74103. *Materials, equipment and supplies used in manufacture, sale, and distribution of metal buildings and metal building parts (except commodities in bulk) from points in the states of IL, IN, and OH to the facilities of Butler Manufacturing Co. at or near Annville, PA, Birmingham, AL, and Kansas City, MO. For 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Butler Manufacturing Co., 1020 So. Henderson St., Galesburg, IL 61401. Send protests to: Connie Stanley, TA, ICC, Room 240,

Old Post Office Building, 215 N.W. Third Street, Oklahoma City, OK 73102.

MC 106398 (Sub-904TA), filed May 7, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, (Same address as applicant). *Lumber and lumber mill products, from the facilities of Darlington Veneer Co., Inc., Darlington, SC, to points and places in VA, MD, PA, NJ, NY, GA, NC, CT, MA, IL, IN, and OH, for 180 days.* Supporting shipper(s): Darlington Veneer Co., P.O. Box 492, Darlington, SC 29532. Send protests to: Connie Stanley, TA, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 106398 (Sub-906TA), filed May 7, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, (Same address as applicant). *Iron and steel articles from the facilities of East Coast Steel, Inc., at Eastover, SC, to all points in the United States, (except AK and HI), for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): East Coast Steel, Inc., P.O. Box 276, Eastover, SC 29044. Send protests to: D/S, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 106398 (Sub-906TA), filed May 10, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull (Same address as applicant). *Pulpboard and/or fiberboard, not corrugated, from the facilities of South Carolina Industries, Inc., Florence, SC, to points and places in NC, IN, IL, WI, MN, MO, GA, TN, NJ, PA, OH, CT, ME, MD, FL, and LA, for 180 days.* Supporting shipper(s): South Carolina Industries, Inc., P.O. Box 4000, Florence, SC 29501. Send protests to: Connie Stanley, TA, ICC, Room 240 Old Post Office, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 106398 (Sub-907TA), filed May 21, 1979. Applicant: NATIONAL TRAILER CONVOY, INC., 525 South Main, Tulsa, OK 74103. Representative: Irvin Tull, (Same address as applicant). *Iron and steel articles, from the facilities of Union Steel Products Division of Eagle Picher, located at Elizabethtown, KY, to all points in the United States, (except AK and HI), for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Union Steel Products, Division of Eagle Picher, 1101 W. Park Road, Elizabethtown, KY 42701. Send protests to: Connie Stanley, Room 2450, 215 N.W. 3rd, Oklahoma City, OK 73102.

MC 107478 (Sub-47TA), filed May 2, 1979. Applicant: OLD DOMINION FREIGHT LINE, INC., P.O. 2006, High

Point, NC 27261. Representative: C. T. Harris, 506 Mayo Street, Wilson, NC 27893. *Lumber and particleboard, faced or finished, between Patrick County, VA; on the one hand, and, on the other, point in CT, DE, DC, MA, NJ, NY, NC, PA, RI, TN, and WV, for 180 days.* An underlying ETA has been filed seeking 90 days authority. Support shipper(s): Masonite Corporation, P.O. 378, Waverly, VA 23890. Send protests to: Archie W. Andrews, D/S, P.O. Box 26896, Raleigh, NC 27611.

MC 108119 (Sub-153TA), filed May 10, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. *Cast iron pipe from the facilities of U.S. Pipe & Foundry, Bessemer, AL to Montrose, CO, for 180 days.* An underlying ETA seeks 90 days authority. Support shipper(s): U.S. Pipe & Foundry Company, 3300 First Avenue North, Birmingham, AL. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 108119 (Sub-154TA), filed May 16, 1979. Applicant: E. L. MURPHY TRUCKING COMPANY, P.O. 43010, St. Paul, MN 55164. Representative: Andrew R. Clark, 1000 First National Bank Building, Minneapolis, MN 55402. *Compressors and compressor parts from the facilities of Joy Manufacturing Company at or near Wilson, NC to points in the United States, for 180 days.* Support shipper(s): Joy Manufacturing Company, Oliver Building, Pittsburgh, PA 15222. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 108859 (Sub-69TA), filed May 16, 1979. Applicant: CLAIRMONT TRANSFER CO., 1803 Seventh Avenue North, Escanaba, MI 49829. Representative: Elmer J. Wery, 2666 Gross Avenue, P.O. Box 3548, Green Bay WI 54303. *General Commodities (except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk and commodities requiring special equipment). Between points in Anoka, Carber, Dakota, Hennepin, Ramsey, Scott, Sherburne, Washington, and Wright Counties, MN, on the one hand, and, on the other points in Alger, Baraga, Cheboygan, Chippewa, Delta, Dickinson, Gogebic, Houghton, Iron, Keweenaw, Luce, Mackinac, Marquette, Menominee, Ontonagon and Schoolcraft Counties, MI and in Brown, Florence, Forest, Marinette and Oconto Counties,*

WI. For 180 days. Applicant intends to interline with other carriers. Supporting shipper(s): There are approximately 109 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: C. R. Fleming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 109449 (Sub-31TA), filed May 10, 1979. Applicant: KUJAK TRANSPORT, INC., 6366 West 6th Street, Winona, MN 55987. Representative: Gary Huntbatch (same address as applicant). *Wrapping paper N.O.I.* from Mosinee, WI to points in the states of IN, IL, KS, MO, MI, OH and PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Mosinee Paper Company, Mosinee, WI 54455. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 109449 (Sub-32TA), filed May 10, 1979. Applicant: KUJAK TRANSPORT, INC., 6366 West 6th Street, Winona, MN 55987. Representative: Gary Huntbatch (same address as applicant). *Coke, in bulk*, from Milwaukee, WI to Winona, MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Badger Foundry Company, 1058 East Mark, Winona, MN 55987. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 109449 (Sub-33TA), filed May 18, 1979. Applicant: KUJAK TRANSPORT, INC., 6366 West 6th Street, 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 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 Britt and Mason City, IA on the one hand, and, on the other, points in IL, IN, MN, ND, OH, SD and WI, restricted to shipments originating at or destined to the facilities utilized by Lauridson Foods, Inc. at or near Britt, IA and Armour & Co. at Mason City, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armour and Co., Greyhound Tower, Phoenix, AZ 85077. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 109449 (Sub-34TA), filed May 18, 1979. Applicant: KUJAK TRANSPORT, INC., 6366 West 6th Street, Winona, MN 55987. Representative: Gary Huntbatch (same address as applicant). *Fertilizer and fertilizer materials, in bulk*, from Mason City, IA to points in MN, WI, ND,

SD and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Land O'Lakes Agricultural Services Division, 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 109449 (Sub-35TA), filed May 18, 1979. Applicant: KUJAK TRANSPORT, INC., 6366 West 6th Street, Winona, MN 55987. Representative: Gary Huntbatch (same address as applicant). *Building stone* from Winona, MN to points in WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Biesanz Stone Company, Highway 51 North and 44th Avenue, Winona, MN 55987. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 109689 (Sub-350TA), filed May 10, 1979. Applicant: W. S. HATCH CO., 643 South 800 West Woods Cross, UT 84087. Representative: Mark K. Boyle, 10 West Boradway Bldg., Suite 400, Salt Lake City, UT 84101. *Silica sand*, from Overton, NV to Portland, OR, for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): Simplot Silica Products, P.O. Box 308, Overton, NV 89040. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 109689 (Sub-351TA), filed May 10, 1979. Applicant: W. S. HATCH CO., 643 South 800 West Woods Cross, UT 84087. Representative: Mark K. Boyle, 10 West Boradway Bldg., Suite 400, Salt Lake City, UT 84101. *Lime, in bulk* from Castleton, NV to Carr Cork, UT, for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): Sierra Chemical Co., 1490 E. 2nd Street, Reno, NV 89502. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 109708 (Sub-96TA), filed May 1, 1979. Applicant: INDIAN RIVER TRANSPORT CO. d/b/a INDIAN RIVER TRANSPORT, INC., 2580 Executive Rd., P.O. Box AG, Dundee, FL 33838. Representative: William C. Bailey (same address as applicant). *Vinegar and apple juice*, in bulk, in tank vehicles, from Kent City, MI, Winchester and Timberville, VA, and Martinsburg, WV to Lincolnton, NC for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): National Fruit Product Co., Inc., 550 Fairmont Ave., Winchester, VA 22601. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

MC 109708 (Sub-97TA), filed May 4, 1979. Applicant: INDIAN RIVER TRANSPORT CO. d/b/a INDIAN

RIVER TRANSPORT, INC., 2580 Executive Rd., Dundee, FL 33838. Representative: William C. Bailey (same address as applicant). *Cranberry juice*, in bulk, in tank vehicles, from Middleboro, MA and Bordentown, NJ to Lake Wales, FL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ocean Spray Cranberries, Inc., Water St., Plymouth, MA 02360. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19831 Filed 6-25-79; 8:45 am]

BILLING CODE 7035-01-M

[Notice No. 104]

Motor Carrier Temporary Authority Applications

June 12, 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 protest 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 107295 (Sub-919TA), filed May 2, 1979. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr, P.O. Box 146, Farmer City, IL 61842. Materials, equipment and supplies used in the manufacture, sale and distribution of metal building and metal building parts (except commodities in bulk), from Cleveland, OH, Hennepin, IL and Indiana Harbor, IN to the plantsite and storage facilities of Butler Manufacturing Co. at or near Annville, PA, Birmingham, AL and Laurinburg, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Butler Manufacturing Co., 1020 S. Henderson, Galesburg, IL 61401. Send protests to: Charles D. Little, DS, Interstate Commerce Commission, Room 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

MC 110325 (Sub-104TA), filed May 25, 1979. Applicant: TRANSCON LINES, P.O. Box 92220, Los Angeles, CA 90009. Representative: Wentworth E. Griffin, Esq., Midland Building, 1221 Baltimore Avenue, Kansas City, MO 64105. **COMMON:** Regular: 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 Lincoln, NE and Sacramento, CA, serving all intermediate points and the off-route points of Alda, Aurora, Doniphan, Grand Island, York, NE; Carson City, NV; Tooele, UT; and Green River, WY; and the off-route points in Morga, Lyon, Salt Lake, Davis, Utah, and Weber Counties, UT; Lyon, Douglas and Storey Counties, NV; and those points in Washoe County, NV on and south of Interstate Hwy 80, over Interstate Hwy 80, and return over the same route, for 180 days. **NOTE:** Applicant request authority to interline at various terminal points throughout Transcon's system of routes, and to tack this authority with authority it presently holds in MC-110325. Supporting Shipper(s): There are approximately 466 shippers. Their statements may be examined at the Office listed below and at Interstate Commerce Commission Headquarters. Send protests to: Irene Carlos, T/A, I.C.C., P.O. Box 1551, Los Angeles, CA 90053.

MC 116645 (Sub-29TA), filed May 22, 1979. Applicant: DAVIS TRANSPORT CO., P.O. Box 56, Gilcrest, CO 80623. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. *Ammonium poly phosphate and blends thereof*, in bulk, in tank vehicles, from Cargill facility at Sterling, CO to points in KS, NE, OK, SD, TX and WY for 180 days. Underlying ETA filed seeking 90 days authority. Supporting Shipper(s): Cargill, Inc., Box 9300, Minneapolis, MN 55440. Send protests to: D/S Roger L. Buchanan, Interstate Commerce Commission, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 125674 (Sub-14TA), filed May 15, 1979. Applicant: JACK RABBIT EXPRESS COMPANY, 5600 Diplomat Circle, Suite 108, Orlando, FL 32810. Representative: Larry J. Cicale, same as applicant. *General commodities (except Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment)*. (1) Between points in FL on, south, and east of a line beginning at Yankeetown and extending along FL Hwy 40 to junction I-75, then along I-75 to junction FL Hwy 24, then along FL Hwy 24 to Waldo, then along US Hwy 301 to the FL-GA state line, then along the FL-GA state line to the Atlantic Ocean (excluding points in Monroe City); (2) Between points in FL, on, south and east of a line beginning at Yankeetown and extending along FL Hwy 40 to junction I-75, then along I-75 to junction FL Hwy 24, then along FL Hwy 24 to Waldo, then along US Hwy 301 to the FL-GA State line, then along the FL-GA State line to the Atlantic Ocean (excluding points in Monroe City) on the one hand, and on the other, points in Douglas, Fulton, DeKalb, Cobb, Gwinnet, Clayton, Rockdale and Henry Counties, GA; and (3) between points in Douglas, Fulton, DeKalb, Cobb, Gwinnet, Clayton, Rockdale and Henry Counties, GA, for 180 days. An underlying ETA seeks 90 days authority. **RESTRICTION:** The operations authorized herein are restricted against the transportation of any single package or article weighing more than 125 pounds. Supporting Shipper(s): There are 89 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 125895 (Sub-1TA), filed May 11, 1979. Applicant: A. L. SEYMORE, RONALD SEYMORE, TERRY SEYMORE, AND MICHAEL SEYMORE, dba. SEYMORE TRUCK LINE, P.O. Box 7590, Greenville, SC 29610.

Representative: Mitchell King, Jr., P.O. Box 1628, Greenville, SC 29602. *Fiber staple, synthetic thread waste, and textile products, having a prior or subsequent movement by water*, between Greenville County, SC, on the one hand, and, on the other Norfolk, VA, for 180 days. An underlying ETA seek 90 days authority. Supporting Shipper(s): Belwool Corporation, 1270 Broadway, New York, NY 10001. Send protests to: E. E. Strotheid, D/S, ICC, Rm. 302, 1400 Bldg., 1400 Pickens Street, Columbia, SC 29201.

MC 129784 (Sub-10TA), filed May 16, 1979. Applicant: DAVISON TRANSPORT, INC., P.O. Drawer 846, Ruston, LA 71270. Representative: Tom E. Moore, (same address as applicant). *Diesel fuel*, in bulk, in tank vehicles, from facilities of Cross Oil Refinery at Smackover, AR to Monroe, LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Cross Oil Refinery, P.O. Box 105, Smackover, AR 71762. Send protests to: Robert J. Kirspe, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 135874 (Sub-171TA), filed May 10, 1979. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Representative: Paul Nelson (same address as applicant). *Alcoholic beverages (except in bulk)* from points in KY and Peoria, IL to St. Paul, MN Commercial Zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Griggs Cooper & Co., Inc., 489 North Prior Avenue, St. Paul, MN 55104. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 133655 (Sub-151TA), filed April 24, 1979. Applicant: TRANS-NATIONAL TRUCK, INC., P.O. Box 31300, Amarillo, TX 79120. Representative: Warren L. Troupe, 2480 E. Commercial Blvd., Fort Lauderdale, FL 33308. *Adhesives, glues, pastes, cleaning, preserving and sealing compounds and products, solvents, stains, and related installation supplies and equipment, plastic carpeting, carpet strip and moldings and related flooring installation supplies and equipment*, between Kalamazoo, MI; Los Angeles and Calexico, CA; and Dayton, OH on the one hand, and, on the other, points in the United States (except AK and HI); restricted to the transportation of shipments originating at or destined to the facilities of Roberts Consolidated Industries, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting Shipper(s): Roberts Consolidated Industries, 600 N. Baldwin

Blvd., City of Industry, CA 91749. Send protests to: District Supervisor Haskell E. Ballard, Box F-13206 Federal Building, Amarillo, TX 79101.

MC 134064 (Sub-27TA), filed April 18, 1979. Applicant: INTERSTATE TRANSPORT, INC., 1600 Highway 129 South, Gainesville, GA 30501. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Such merchandise as is dealt in by retail, discount, department or variety stores, except commodities in bulk from points in GA, NJ, NY, PA and VA to the facilities of Wal-Mart Stores, Inc. at or near Bentonville, Searcy and Ft. Smith, AR for 180 days. Supporting Shipper(s): Wal-Mart Stores, Inc., 702 Southwest 8th Street, P.O. Box 116, Bentonville, AR 72712. Send protests to: Sara K. Davis, T/A, ICC, 1252 W Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.*

MC 142765 (Sub-7TA), filed March 23, 1979. Applicant: AMERICAN TRANSPORTATION, INC., 797 Amity Road, Bethany, CT 06525. Representative: Wrape, Hernly, Booker & Swersky, 110 South Columbia Street, Alexandria, VA 22314. Contract carrier, irregular routes, transporting such merchandise as is marketed by home products distributors (except in bulk) from the facilities of the Shaklee Corporation at or near Dayton, NJ to points in ME, NH, VT, NY, MA, RI, CT, PA, NJ, DE, MD, VA, WV and DC, under a continuing contract or contracts with the Shaklee Corporation of Oakland, CA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Shaklee Corporation, 2201 Broadway, Oakland, CA 94608. Send protests to: District Supervisors, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 147065 (Sub-1TA), filed May 8, 1979. Applicant: LEONARD EXPRESS, INC., P.O. Box 23, Charleroi, PA 15022. Representative: William A. Gray, Esq., Wick Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. *Contract Carrier, Irregular Routes, Pharmaceuticals, animal feed supplements, chemicals and laminated plastic sheets and materials, equipment and supplies used in the manufacture and distribution of said commodities (except commodities in bulk in tank vehicles) between Pearl River, NY, Cincinnati, OH, Piscataway, NJ and South Lee, MA, under a continuing contract or contracts with American Cyanamid Co and its subsidiary, Formica Corp., of Wayne, NJ for 180 days. An underlying ETA seeks 90 days operating authority. Supporting Shipper(s): American Cyanamid*

Company, Wayne, NJ 07470. Send protests to: J. J. England, DS, ICC 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 147094 (Sub-1TA), filed May 4, 1979. Applicant: DON BYBEE & SONS TRUCKING, INC., 145 East Main St., Hyrum, UT 84319. Representative: Donald Bybee, (same address as applicant). (1) *Office furniture, new furniture, and other related products* (2) *cheese, cheese products, and cheese packing materials*, (3) *equipment, material, and supplies used in packaging and the distribution of cheese*. (1) From points in CA, UT, AZ, NM, ID to points in CA. (2) From the facilities of Mountain Farms Cheese in Cache County, UT to points in UT, CA, ID, WA, OR, MT, WY, CO, NM, NV, and AZ and (3) from points in UT, CA, ID, WA, OR, MT, WY, CO, NM, NV, and AZ to the facilities of Mountain Farms Cheese in Cache County, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Equipment Distributors, Inc., 560 N. 500 W., Salt Lake City, UT 84116. Mountain Farms Incorporated, P.O. Box 376, 3663 N. Hwy. 91 Hyde Park, UT 84138. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 147195 (Sub-1TA), filed May 11, 1979. Applicant: CHAMSY TRANSFER, INC. 6310 S.W. 108th Place, Miami, FL 33173. Representative: Richard B. Austin, 5255 N.W. 87th Ave., Miami, FL 33178. *General commodities (except articles which require special handling, Classes A & B explosives, household goods, and commodities in bulk) between points in Miami, FL, commercial zone, restricted to traffic having an immediately prior or subsequent movement by water in interstate or foreign commerce for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): There are nine supporting shippers. Their statements may be examined at the office listed below and headquarters. Send protests to: Donna M. Jones, T/A, ICC, Suite 101, 8410 N.W. 53rd Terr., Miami, FL 33166.*

MC 147334 (Sub-TA), filed May 11, 1979. Applicant: ROBERT J. SALZ, 3446 Longview Road, Erie, CO 80516. Representative: Thompson & Kelley, Raymond M. Kelley, Esq., 450 Capitol Life Center, Denver, CO 80203. *Malt Beverages in containers and empty containers, and Pallets on return, from St. Paul, MN and Omaha, NE to Denver and Greeley, CO for 180 days. An underlying ETA seeks authority for 90 days. Supporting Shippers: Colorado Feed & Seed Co., Ltd. dba Gold Seal Distributing Co. 2123 Second Avenue,*

Greeley, CO 80631. Colorado Delivery, Div. of Best Brands, Inc. 4900 Moline Street, Denver, CO 80239. Send protests to: District SUPERVISOR R. L. Buchanan, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 147335 (Sub-TA), filed May 16, 1979. Applicant: JACK METZGER dba SANTIAM TRUCKING, Rt 2 Box 238, Albany, OR 97321. Representative: Philip G. Skofstad, P.O. Box 594, Gresham, OR 97030. Contact, Irregular Routes: (1) *Materials and supplies used in the manufacture of mobile homes, including, but not limited to, I Beam steel chassis parts, roofing aluminum, doors, windows, carpeting and pads, furniture, insulation, paneling, rafters, artificial stone, water heaters, appliances, nuts, bolts, screws, bath tubs and showers*, FROM Rialto, Whittier, Wilmington, Los Angeles, City of Industry, Baldwin Park, Santa Ana, Sacramento, and Woodland, California, TO Albany and Pendleton, Oregon. (2) *Lumber* FROM Lyons, Springfield, Eugene, Independence, and Lebanon, Oregon, TO Santa Anna, California, (3) *Matches*, FROM Oxnard, California, TO Phoenix, Arizona; Denver, Colorado; Las Vegas, Reno, and Sparks, Nevada; Albuquerque, New Mexico; Klamath Falls, Portland, Roseburg, and Salem, Oregon; Amarillo, El Paso, Dallas, and Houston, Texas; Salt Lake City, Utah; Bellevue, Kennewick, Seattle, Spokane, and Walla Walla, Washington. (4) *Paper in Rolls*, FROM Lewiston, Idaho and Portland, Oregon, TO Oxnard, California, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): D. D. Bean & Sons (California) Inc., 1278 Mercantile St., Oxnard, California, Golden West Homes, 2500 South Walnut, Albany, OR 97321. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, 555 S.W. Yamhill Street, Portland, OR 97204.

MC 140665 (Sub-No. 49TA), filed March 30, 1979, and published in FR issue May 10, 1979, and republished as corrected this issue. Applicant: PRIME, INC., Route 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 736, Ravenna, OH 44266. *Roof coatings and cement, paint, petroleum oil and grease, rust preventing compounds, caulking compounds, and materials and supplies used in the marketing or distribution of the above commodities (except in bulk), from Elkhart, IN to points in AZ, CA, CO, NM, NV, UT, WY, MT, ID, OR, TX, and WA. Supporting Shipper(s) Parr, Inc., 18400 Syracuse Avenue, Cleveland, OH 44100. Send protests to John V. Barry,*

DS, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106. The purpose of this republication is to show origin and destination which was inadvertently omitted.

MC 140665 (Sub-No. 52TA), filed March 1, 1979, and published in FR issue May 10, 1979, and republished as corrected this issue. Applicant: PRIME, INC., Route 1, Box 115-B, Urbana, MO 65767. Representative: Clayton Geer, P.O. Box 736, Ravenna, OH 44266. *Such commodities as are used, dealt in, or distributed by retail and wholesale, department, hardware, drug, and food stores; and equipment, materials and supplies, used in the conduct of the businesses described above (except in bulk) from the warehouse and storage facilities utilized by The Drackett Company located at or near Dayton, OH and Nashville, TN to points in AZ, CA, ID, MI, NV, OR, UT, and WA for 180 days. An underlying ETA seeks 90 days. Supporting Shipper(s) The Drackett Company, 5020 Spring Grove Ave., Cincinnati, OH 45232. Send protests to John V. Barry, DS, 600 Fed Bldg, 911 Walnut, Kansas City, MO 64106. The purpose of this republication is to show correct destination.*

By the Commission
H. G. Homme, Jr.,
Secretary.

[FR Doc. 19833 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Notice No. 96]

Motor Carrier Temporary Authority Applications

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 protests 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 10797 (Sub-2 TA), filed May 10, 1979. Applicant: Gary J. Warner dba, WARNER WAREHOUSING COMPANY, 1582 Likens Rd., Marion, OH 43302. Representative: Edwin M. Snyder, Sullivan and Leavitt, P.C., P.O. Box 400, Northville, MI 48167. *New electrical and gas appliances and materials, equipment and supplies used in the manufacturing of these products between the facilities of White Consolidated Industries, Inc., located at or near Belding, Greenville, and Grand Rapids, MI, on the one hand, and, on the other, points in OH, IN, IL, and KY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Greenville Products Corporation, a Division of White Consolidated Industries, Inc., 635 W. Charles St., Greenville, MI 48838. Send protests to: DS/ICC, Room 620, 101 N. 7th St., Philadelphia, PA 19106.*

MC 26396 (Sub-246 TA), filed May 18, 1979. Applicant: POPELKA TRUCKING CO. d/b/a The WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Barite from points in UT to the U.S.-Canada International Boundary line located in MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wyo-Ben, 1242 North 28th Street, Billings, MT 59101. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.*

MC 26396 (Sub-247 TA), filed May 18, 1979. Applicant: POPELKA TRUCKING CO. d/b/a THE WAGGONERS, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Feed*

equipment and supplies utilized in the feeding of livestock and poultry from points in AL, GA, IN, IL, IA, KS, MI, MN, MS, MO, MT, NE, OH and TX to points in MT, ID and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Agri Systems, 3115-1st Ave South, Billings, MT 59101. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 34087 (Sub-10TA), filed May 16, 1979. Applicant: NORMAN HILLS, RD #1, McAllister Road, Fredonia, NY 14063. Representative: Same as above. *Contract carrier—irregular routes. Lubricating Oils and Greases, from the facilities of STP Corporation at Painesville, OH to all points in CT, RI, PA, MA, NY, NJ, MD, MI, KY, WV and IN, for 180 days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER: STP Corporation, Painesville, OH. SEND PROTESTS TO: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 West Huron Street, Buffalo, NY 14202.*

MC 51146 (Sub-692TA), filed May 17, 1979. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, Green Bay, WI 54306. Representative: John Patterson, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. *Such commodities as are dealt in by home improvement stores from Red Lion, PA; Shelby, OH; and Mount Pleasant and Centerville, IA to facilities of the Wickes Corp. located in CT, DE, IL, IN, IA, ME, MD, MA, MI, MN, NE, NH, NJ, NY, OH, PA, RI, VT, WV, WI & DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Wickes Lumber, 515 N. Washington Ave., Saginaw, MI 48607. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.*

MC 55896 (Sub-115TA), filed May 14, 1979. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. *Auto parts and related articles between Adrian, MI and Keokuk, IA. For 180 Days. An underlying ETA seeks 90 days authority. SUPPORTING SHIPPER(S): Sheller-Globe Corporation, 3200 Main St., Keokuk, IA 52632. SEND PROTESTS TO: C.R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.*

MC 55896 (Sub-116TA), filed May 14, 1979. Applicant: R W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. *Metal containers from*

LaPorte, IN to Detroit, MI and Sharonville, OH. For 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): National Can Corporation, 8101 West Higgins Road, Chicago, IL 60631. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI, 48933.

MC 59457 (Sub-45TA), filed May 14, 1979. Applicant: SORENSEN TRANSPORTATION COMPANY, INC., Old Amity Road, Bethany, Connecticut 06525. Representative: Thomas W. Murrett, 342 North Main Street, West Hartford, CT 06117. *Fiberboard, paperboard, and pulpboard, boxes and sheets, flat and on rolls*, (1) between Roanoke, VA and Augusta, GA, on the one hand, and, on the other, Montville and Franklin, CT; (2) from Riegelwood, NC to Montville and Franklin, CT; and (3) from Montville and Franklin, CT to Lakewood, NJ, Greencastle, PA, Pulaski, TN and Fayetteville, NC; limited at Montville and Franklin, CT to service at the facilities of Robertson Paper Box Co., Inc., Montville, CT, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Robertson Paper Box Co., Inc., Route 163, Montville, CT 06353. Send protests to: J. D. Perry, Jr., DS, ICC, 135 High Street, Hartford, CT 06103.

MC 59957 (Sub-55TA), filed May 8, 1979. Applicant: MOTOR FREIGHT EXPRESS, P.O. Box 1029, York, PA 17405. Representative: Walter M. F. Neugebauer, P.O. Box 1029, York, PA 17405. Common carrier: *regular route: General commodities with the usual exceptions*, serving points in the Counties of Columbia, Cumberland, Dauphin, Juniata, Lebanon, Luzerne, Montour, Northumberland, Perry, Schuylkill, Snyder, and Union, PA, as off-route points in connection with carrier's authorized regular-route operation, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): There are 52 supporting shippers. Their statements may be examined at the office listed below or at Headquarters. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm 620, Phila., PA 19106.

MC 69116 (Sub-237TA), filed May 14, 1979. Applicant: SPECTOR INDUSTRIES, INC. d.b.a., Spector Freight Systems, 1050 Kingery Highway, Bensenville, IL 60106. Representative: Joel H. Steiner, 39 South LaSalle Street, Chicago, IL 60603. (1) *Metal roofing and siding and fabricated metal products*, from the facilities of Fabral at/near Lancaster, PA and Gridley, IL to points in IL, IN, IA, KY, MI, MN, OH, PA, WV, WI and (2) *Materials and supplies used*

in the manufacture of (1) above from all points in the States shown to the facilities of Fabral located at or near Lancaster, PA and Gridley, IL. Supporting Shipper(s): Donald Shipley, Fabral, Alcan Building Products, Division of Alcan Aluminum Corp., 3449 Hemplod Road, Lancaster, PA 17601. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 95876 (Sub-279TA), filed May 16, 1979. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Avenue North, St. Cloud, MN 56301. Representative: Robert D. Gisvold, 1000 First National Bank Building, Minneapolis, MN 55402. *Steel pipe* from points in the United States-Canada International Boundary Line at or near International Falls and Pigeon River, MN to St. Louis, MO, Houston, TX, Salt Lake City, UT, Fort Lauderdale, FL and Savannah, GA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Gensco, Inc., P.O. Box 67, Uvalde, TX 78801. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 96877 (Sub-2TA), filed May 16, 1979. Applicant: YUMA COUNTY TRANSPORTATION CO., 310 East Second Ave., Yuma, CO 80759. Representative: Charles J. Kimball, Kimball, Williams & Wolfe, P.C., 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. *Common carrier; regular routes General commodities*, except those of unusual value, Classes A & B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, between Haigler, NE and Wray, CO serving all intermediate points, from Haigler, NE via U.S. Hwy 34 to Wray, CO and return over the same route, to be tacked with applicant's present routes, for 180 days. Applicant plans to tack. Underlying ETA filed requesting 90 days authority. Supporting shipper(s): 8 supporting statements may be inspected at Denver, CO field office or Headquarters, ICC, Washington, D.C. Send protests to: D/S Roger L. Buchanan, 721 19th St., 492 U.S. Customs House, Denver, CO 80202.

MC 100666 (Sub-469TA), filed May 11, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71101. Representative: Paul L. Caplinger (same address as applicant). Applicant is seeking authority to operate as a common carrier over irregular routes transporting *Steel Pipe* from the facilities or storage facilities of Edison Pipe & Tubing Inc. at East St. Louis, IL;

Tampa, FL and Houston, TX and the facilities of Wheeling Pittsburgh Steel Mill at Wheeling, WV to points in AL, AR, IL, IN, IA, KS, LA, MI, MS, MO, NE, NC, OH, OK, PA, SC, TN, TX, and WI, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Edison Pipe & Tubing, Inc., 721 Olive Street, St. Louis, MO 63101. Send protests to: Robert J. Kirspe, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 100666 (Sub-470TA), filed May 11, 1979. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71101. Representative: Wilburn L. Williamson, Suite 615-East, The Oil Center, 2601 Northwest Expressway, Oklahoma City, OK 73112. Applicant is seeking authority to operate as a common carrier over irregular routes transport *Environmental control equipment and supplies* from Durant, OK to points in NM, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Environmental Systems Co., 1015 Roma, N.W., Albuquerque, NM 87102. Send protests to: Robert J. Kirspe, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 102567 (Sub-230TA), filed May 21, 1979. Applicant: McNAIR TRANSPORT, INC., P.O. Drawer 5357, Bossier City, LA 71111. Representative: Joe C. Day, 13403 Northwest Fwy., Suite 130, Houston, TX 77040. Applicant is seeking authority to operate as a common carrier over irregular routes transporting *liquid chemicals*, in bulk, in tank vehicles from the plantsite of Union Carbide Corporation near Taft, LA to points in the U.S. (except AR, LA, AK, and HI), for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Union Carbide Corporation, 270 Park Avenue, New York, NY 10017. Send protests to: Robert J. Kirspe, DS, ICC, T-9038 Federal Bldg., 701 Loyola Avenue., New Orleans, LA 70113.

MC 103926 (Sub-95TA), filed May 1, 1979. Applicant: W. T. MAYFIELD SONS TRUCKING CO., INC., P.O. Box 947, Mableton, GA 30059. Representative: Kim G. Meyer, P.O. Box 56387, Atlanta, GA 30343. *Such commodities as are dealt in or used by agricultural equipment and industrial equipment dealers and manufacturers* from the facilities of J. I. Case Company at or near Racine, WI, Bettendorf and Burlington, IA to points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, VA and WV for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. I. Case Company, 700 State Street, Racine, WI 53404. Send protests

to: Sara K. Davis, T/A, ICC 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 105856 (Sub-14TA), Filed March 30, 1979. Applicant: TOM PASQUALE d.b.a. PASQUALE TRUCKING, P.O. Box 295, Logansport, IN 46947. Representative: Stephen H. Loeb, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. *Frozen foods*, from the facilities of Stouffer Corporation at Cleveland, OH and its Commercial Zone, to points in IL, IN, IA, KS, KY, MI, MN, MO and WI, for 180 days. Supporting shipper: Stouffer Corporation, 5750 Harper Road, Solon, OH 44139. Send protests to: Beverly J. Williams, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 108676 (Sub-140TA), filed May 14, 1979. Applicant: A. J. METLER HAULING & RIGGING, INC., 117 Chicamunga Avenue, Knoxville, TN 37917. Representative: Mark S. Roach (same address as applicant). *Glass and glass products* from the plantsite of Buchmin Industries in Reedley, CA to points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Buchmin Industries, 1485 East Curtis Avenue, Reedley, CA 93654. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

MC 112617 (Sub-431TA), filed May 17, 1979. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (as above). *Chemicals*, in bulk, in tank vehicles, from the plantsite and storage facilities of Monsanto Co., at or near Chocolate Bayou and Texas City, TX, and the Houston, TX commercial zone, to all points in the US, in and east of LA, AR, MO, IO, and MN. Supporting shipper(s): Robert W. Bradshaw, Supv., Bulk Transp., Monsanto Company, 800 No. Lindbergh, St. Louis, MO 63166. Send protests to: Linda H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 112617 (Sub-432TA), filed May 18, 1979. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Representative: Charles R. Dunford (as above). *Chemicals*, in bulk, in tank vehicles, from New Albany, IN, to points in TN, NC, and SC. Supporting shipper(s): Gary Walker, Secretary, Blue Grass Chemicals, Inc., 895 Industrial Blvd., New Albany, IN 47150. Send protests to: Linda H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 112696 (Sub-62TA), filed May 20, 1979. Applicant: HARTMANS

INCORPORATED, P.O. Box 898, Harrisonburg, VA 22801. Representative: Lawrence E. Lindeman, 425 13th Street NW, Suite 1032, Washington, D.C. 20004. (1) *Frozen foodstuffs*; and (2) *agricultural commodities* the transportation of which is otherwise exempt from economic regulation pursuant to 49 USC 10526 when transported in the same vehicle and at the same time as frozen foodstuffs, from Bedford and Harrisonburg, VA and Martinsburg, WV, to points in and east of Minnesota, Iowa, Missouri, Arkansas, and Louisiana for 180 days. Supporting shipper(s): McCormick Foods, Inc., P.O. Box 334, Bedford, VA 24523. Send protests to: Charles F. Myers, D/S, ICC, Room 10-502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 113666 (Sub-168TA), filed May 9, 1979. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Representative: R. Scott Mahood, House Counsel (same address as applicant). *Pyrex, A.B.B. for use in formulation of agricultural chemicals* from Robbins, NC to Randolph, WI for 180 days. An underlying ETA seeks 90 days operating authority. Supporting shipper(s): Hopkins Agricultural Chemical Co., P.O. Box 7532, Madison, WI 53707. Send protests to: J. J. England, D/S, ICC, 2111 Federal Bldg., Pittsburgh, PA 15222.

MC 113666 (Sub-169TA), filed May 9, 1979. Applicant: FREEPORT TRANSPORT, INC., 1200 Butler Road, Freeport, PA 16229. Representative: R. Scott Mahood House Counsel (same as applicant). *Ammonium nitrate* from Edinburg, PA to points in PA. Restricted to shipments having a prior movement by rail for 180 days. Supporting Shipper(s): Beaver Explosives, Inc., P.O. Box 61, Edinburg, PA 16116. Send protest to: J. J. England, D/S, ICC, 2111 Federal Building, Pittsburgh, PA 15222.

MC 114457 (Sub-514TA), filed May 16, 1979. Applicant: DART TRANSIT COMPANY, 2102 University Avenue, St. Paul, MN 55114. Representative: James H. Wills (same address as applicant). (1) *Foodstuffs, canned or preserved*, from the facilities of Heinz USA at Muscatine and Iowa City, IA to points in the state of WI; (2) *Foodstuffs, canned or preserved*, from the facilities of Heinz USA at Fremont, OH and Holland, MI to points in the states of WI, MN, ND, SD and IA; and (3) *Empty foodstuffs containers* from the facilities of Heinz USA at Holland, MI to the facilities of Heinz USA at Muscatine and Iowa City, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Heinz USA, Division of H. J.

Heinz Company, P.O. Box 57, Pittsburgh, PA 15230. Send protest to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 115357 (Sub-11TA), filed May 7, 1979. Applicant: TAT, INC., 800 Wyoming Street, P.O. Box 4013, Kansas City, MO 64101. Representative: Marvin Handler, 100 Pine St., Suite 2550, San Francisco, CA 94111. *Automobiles and trucks* (weighing less than 15,000 pounds) in secondary movements, in truckaway service, between Kansas City, MO and points in the state of MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Mazda Motors of America, 3040 East Ana St., Compton, CA 90221. Send protest to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 115826 (Sub-468TA), filed May 17, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore (Same address as above). *Meats, meat products, and meat by-products, and articles distributed by meat packinghouses*, 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 tank vehicles between facilities of Armour & Co. at or near Mason City, IA, on the one hand and on the other, points in the United States (except AK and HI), for 180 days. Restricted to transportation of traffic originating at or destined to the facilities of Armour & Co. Supporting Shipper(s): Armour & Co., Greyhound Towers, Phoenix, AZ 85077. Send protest to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-469TA), filed May 16, 1979. Applicant: W. J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Transportation of (1) household electric appliances and equipment; oral hygiene appliances and equipment; hydro therapy equipment; sink and shower fixtures; smoke alarm; food processing machines; filters; (2) materials, equipment and supplies use in the manufacture and distribution of the commodities named in (1) above, between Ft. Collins, CO and its commercial zone, on the one hand and on the other, points in the United States (except AK and HI), for 180 days. Supporting shipper(s): Teledyne Water Pik, 1730 East Prospect, Ft. Collins, CO 80525. Send protests to: Herbert C.*

Ruoff, D/S, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-470TA), filed May 16, 1979. Applicant: W.J. DIGBY, INC., 6015 East 58th Ave., Commerce City, CO 80022. Representative: Howard Gore (same address as above). *Commodities as dealt in by retail department stores* (except commodities in bulk in tank vehicles) from Ft. Worth and Dallas, TX and Kansas City, MO commercial zones to Denver, CO and its commercial zone, for 180 days. Restricted to transportation of traffic originating at or destined to the facilities of Montgomery Ward & Co. Supporting shipper(s): Montgomery Ward & Co., Montgomery Ward Plaza, Chicago, IL 60671. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 115826 (Sub-471TA), filed May 10, 1979. Applicant: W.J. DIGBY, INC., 6015 East 58th Avenue, Commerce City, CO 80022. Representative: Howard Gore, (same address as above). *Meats and meat products*, from points in CO (except Denver, Greeley, Colorado Springs) to Ogden, UT and its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Parke Meat Company, Inc., 724 West 21st Street, Ogden, UT 84402. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 119777 (Sub-376TA), filed May 10, 1979. Applicant: LIGON SPECIALIZED HAULER, INC., Highway 85-East (P.O. Drawer L), Madisonville, KY 42431. Representative: Carl U. Hurst, Atty. (as above). Salt and Salt Products, except in bulk, from Manistee, MI, to points in IN, IL, OH, KY, PA, IA, MD, MO, NJ, NY, TN, WI, NC, VA, and WV. Supporting shipper(s): Eaph Lowe, Jr., Hardy Salt Company, P.O. Drawer 449, St. Louis, MO 63166. Send protests to: Linda H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, Ky. 40202.

MC 119777 (Sub-377TA), filed May 18, 1979. Applicant: LIGON SPECIALIZED HAULER, INC., P.O. Drawer "L", Madisonville, KY 42431. Representative: Carl U. Hurst, Attorney (as above). Hardware, from the facilities of Solar Hardware Corp., at or near Taylorsville, MS and Anderson Metal Products Corp., at or near Enterprise, MS, to points in IL, IN, CO, MO, TX, MI, WI, KS, LA, PA, NY, and NJ. Supporting shipper(s): Wayne R. Anderson, Vice President, Solar Hardware Corp., and Anderson Metal Products Corp., P.O. Box 525, Taylorsville, MS 39168. Send protests to:

Linda H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 121046 (Sub-7TA), filed May 16, 1979. Applicant: B. A. MILLER & SONS TRUCKING, INC., State Route 109, Liberty Center, OH 43532. Representative: A. Charles Tell, 100 E. Broad St., Columbus, OH 43215. (1) *Plastic articles*, from the facilities of S. F. Plastics, Inc. at or near Liberty Center, OH to points in MI; and (2) *materials and supplies* used in the manufacture and sale of plastic articles from points in MI to the shipper's facilities named in (1) above, restricted in (1) and (2) against transportation of commodities in bulk, for 180 days. Supporting shipper(s): S. F. Plastics, Inc., County Road 7, Liberty Center, OH 43532. Send protests to: DS/ICC, Room 620, 101 N. 7th St., Philadelphia, PA 19106.

MC 124236 (Sub-95TA), filed April 26, 1979. Applicant: CHEMICAL EXPRESS CARRIERS, INC., 4645 North Central Expressway, Dallas, TX 75205. Representative: Sam Hallman, 4555 First National Bank Building, Dallas, TX 75202. *Diesel fuel, in bulk in tank vehicle*, from Ardmore, OK to Dallas, Fort Worth, Hillsboro, Palmer, and Weatherford, TX for 180 days. Underlying ETA for 90 days filed. Supporting shipper(s): Reeder Distributors, Inc., P.O. Box 8237, Fort Worth, TX 76112; Knox Oil of Texas, Inc., 4255 LBJ Freeway, Suite 186, Dallas, TX 75234. Send protests to: Opal M. Jones, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

MC 124887 (Sub-81TA), filed May 15, 1979. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Iron and steel articles*, from the facilities of Fort Worth Pipe & Supply Co. at or near Conroe, TX, to points in the United States in the east of ND, SD, NE, KS, OK and TX for 180 days. Supporting shipper(s): Ft. Worth Pipe and Supply P.O. Box 2108, Ft. Worth, TX 76113. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124887 (Sub-82A), filed May 9, 1979. Applicant: SHELTON TRUCKING SERVICE, INC., Route 1, Box 230, Altha, FL 32421. Representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. *Fertilizer, not in bulk*, from Pascaquola, Meridian and Yazoo City, MS and Donaldsonville, LA, to points in AL, FL and GA for 180 days. Supporting shipper(s): Mississippi Chemical Corporation, P.O. Box 388, Yazoo City, MS 39194. Send protests to: G. H. Fauss,

Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 124896 (Sub-89TA), filed May 16, 1979. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3485, Wilson, NC 27893. Representative: Larry Knox, 600 Hubbell Building, Des Moines, IA 50309. *Canned pickles* from the facilities of Pilgrim Farms, Inc., Plymouth, IN to points in NC, SC, VA, WV, and GA, for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Pilgrim Farms, Inc., 1430 Western Avenue, Plymouth, IN 46574. Send protests to: Archie W. Andrews, D/S, P.O. Box 26896, Raleigh, NC 27611.

MC 124896 (Sub-90TA), filed May 16, 1979. Applicant: WILLIAMSON TRUCK LINES, INC., P.O. Box 3485, Wilson, NC 27893. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Foodstuffs* from the facilities of C. F. Mueller Company, Jersey City, NJ to points in VA, NC, SC, GA, and FL for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): C. F. Mueller Company, 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: Archie W. Andrews, P.O. Box 26896, Raleigh, NC 27611.

MC 126276 (Sub-202TA), filed May 10, 1979. Applicant: FAST MOTOR SERVICE, INC., 9100 Plainfield Road, Brookfield, IL 60513. Representative: Albert A. Andrin, 180 North LaSalle Street, Chicago, IL 60601. *Contract Carrier: irregular routes: Plastic containers*, from the facilities of Cutler Plastics Corporation in Champaign, IL to Bayonne, NJ for 180 days for the account of Cutler Plastics Corporation. An underlying ETA was granted for 90 days authority. Supporting shipper(s): Cutler Plastics Corporation, 3202 C West Clark, Champaign, IL 61820. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 126736 (Sub-120TA), filed May 14, 1979. Applicant: FLORIDA ROCK AND TANK LINES, INC., 155 East 21st Street, P.O. Box 1559, Jacksonville, FL 32201. Representative: L. H. Blow (same as applicant). *Silica sand, in bulk, in dump vehicles*, from the plantsite of Midland Glass Co. at or near Columbia, SC to Warner Robbins, GA for 180 days. Supporting shipper(s): Midland Glass Company, Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 25008, 400 West Bay Street, Jacksonville, FL 32202.

MC 127047 (Sub-37TA), filed May 18, 1979. Applicant: ED RACETTE & SON, INC., 6021 No. Broadway, Wichita, KS 67219. Representative: William B.

Barker, 641 Harrison, Topeka, KS 66603. (1) *Axles, Tires, Wheels, and Hub and Drum Assemblies, and Materials and Supplies used in the manufacture and distribution thereof*, between Chicago Ridge, IL, on the one hand, and on the other Rolling Prairie, IN; Grand Prairie, TX; Pine Grove, PA; and Ashburn, Ga. (2) *Axles, Tires, Wheels and Hub and Drum Assemblies*, from Rolling Prairie, IN; Grand Prairie, TX; Ashburn, GA; and Cartersville, GA, to points in AL, AZ, AR, CA, CO, GA, ID, IL, IN, LA, KS, KY, LA, MI, MN, MS, MO, MT, NE, OH, OK, SD, TN, TX, UT, WI and WY. 180 days. Supporting shipper(s): Foreman-Geneva Manufacturing Co., Suite 450, Interstate 380, North Atlanta, GA 30339. Send protests to: M. E. Taylor, ICC, 101 Litwin Bldg. Wichita, KS 67202.

MC 129857 (Sub-6TA), filed April 16, 1979. Applicant: G.R.M. Inc., d.b.a. PORT TERMINAL TRANSPORT, INC., 700 Henry Ford Avenue, Long Beach, CA 90801. Representative: Patricia M. Schnegg, Knapp, Grossman & Marsh, 707 Wilshire Blvd., Los Angeles, CA 90017. *Imported trucks and automobiles*, from points in CA to points in AZ, NV, NM and UT, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): American Honda Motor Company, Inc., 100 W. Alondra Blvd., Gardena CA 90247; Peugeot Motors of America, Inc., 1020 E. 230th, Carson, CA 90744; Toyota Motor Sales, U.S.A., Inc., 2055 W. 190th Street, Torrance, CA 90504; British Motor Car Dist., Ltd., 19100 Susana Road, Compton, CA 90221. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, CA 90053.

MC 135797 (Sub-214TA), filed May 18, 1979. Applicant: J. B. HUNT TRANSPORT, INC., P.O. Box 130, Lowell, AR 72745. Representative: Paul R. Bergant (same as applicant). (1) *Aluminum and aluminum foil*, from Lebanon, PA; Terre Haute, IN; Richmond, VA; Sumter, SC and San Jose, CA to Fayetteville, AR. (2) *Aluminum trays* from Fayetteville, AR to Omaha, NE, for 180 days. Supporting shipper(s): Campbell Soup Company, P.O. Box G, Fayetteville, AR 72701. Send protests to: William H. Land, Jr., 3108 Federal Building, 700 West Capitol, Little Rock, AR 72201.

MC 136877 (Sub-4TA), filed May 11, 1979. Applicant: P & G MOTOR EXPRESS, INC., P.O. Box 485, 601 Collinsville Ave., East St. Louis, IL 62201. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. *Common, Irregular: Iron and steel articles* between St. Louis, MO, on the one hand and on the other points in IN,

OH, MI, IA, WI, MO, and IL. Supporting shipper(s): S. J. Iron and Steel Corp., 600 East Athlone St., St. Louis, MO 63147; LaBarge, Inc., 20 South Fourth St., St. Louis, MO 63102. Send protests to: Charles D. Little, ICC, Room 414 Leland Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

MC 139006 (Sub-13TA), filed May 14, 1979. Applicant: RAPIER SMITH, R.R. 5, Loretto Road, Bardstown, KY 40004. Representative: Robert H. Kinker, Atty., P.O. Box 464, Frankfort, KY 40602. *Alcoholic beverages*, (except commodities in bulk in tank vehicles), from Peoria, IL, and its commercial zone, to Charleston, WV, and its commercial zone. Supporting shipper(s): Dean J. Anderson, Traffic Mgr., Hiram Walker & Sons, Inc., P.O. Box 479, Peoria, IL 61651. Send protests to: Linda H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, KY 40202.

MC 139667 (Sub-3TA), filed May 8, 1979. Applicant: CHARLES SCHMIDT, Jr., 906 Meadow Lane, Salem, IL 62881. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Iron and steel articles* from the plantsites of Jones and Laughlin Steel Corporation near East Chicago and Hammond, IN to points in IL; St. Louis, MO; Davenport and Bettendorf, IA. Supporting shipper(s): Jones and Laughlin Steel Corporation, 3001 Dickey Road, East Chicago, IN 46312. Send protests to: ICC, Room 414, Leland Building, 527 East Capitol Avenue, Springfield, Illinois 62701.

MC 140176 (Sub-17TA), filed May 14, 1979. Applicant: POWELL TRUCKING COMPANY, INC., Rt. 3, Box 13, Sumrall, MS 39482. Representative: Fred W. Johnson, Jr., P.O. Box 22628, Jackson, MS 39205. *Contract carrier: irregular routes: Air compressors* from the facilities of Joy Manufacturing Co., at or near Michigan City, IN and Wilson, NC to points in AL, AR, FL, LA, MS, OK and TX, for the account of Joy Manufacturing Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Joy Manufacturing Company, 900 S. Woodland Ave., Michigan City, IN 46360. Send protests to: Alan Tarrant, D/S, ICC, Rm. 212, 145 E. Amite Bldg., Jackson, MS 39201.

MC 140186 (Sub-33TA), filed May 14, 1979. Applicant: TIGER TRANSPORTATION, INC., P.O. Box 2248, Missoula, MT 59801. Representative: Joel E. Guthals, P.O. Box 2533, Billings, MT 59103. *Pipes, tubes, ductwork, pipe fittings and fabricated metal accessories* related thereto from Seattle, WA and the commercial zone

thereof to Missoula and Frenchtown, MT for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Alaskan Copper Works, P.O. Box 3546, Seattle, WA 98124. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 140587 (Sub-13TA), filed May 1, 1979. Applicant: CECIL CLAXTON, Route 3, Box 7, Wrightsville, GA 31096. Representative: Ronald K. Kolins, 1055 Thomas Jefferson Street NW., Suite 308, Washington, DC 20007. (1) *Malt beverages and related advertising materials* from the plantsite of Pabst Brewing Co., in Pabst (Houston County) GA and Newark, NY to points in DE, FL, IN, KY, MI, NC, OH, SC, VA, WA, DC and (2) *Malt beverages and material* used in the sale, manufacture and distribution of malt beverages from, to and between the facilities of the Pabst Brewing Co., located at Pabst (Houston County) GA, Newark, NJ and Peoria, IL for 180 days. Supporting shipper(s): Pabst Brewing Co., 917 W. Juneau Avenue, Milwaukee, WI. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 141076 (Sub-26TA), filed May 16, 1979. Applicant: ROGERS MOTOR LINES, INC., R.D. No. 2, PO Box 388 D-2, Hackettstown, NJ 07840. Representative: Eugene M. Malkin, Suite 6193 5 World Trade Center, New York, NY 10048. *Canned and preserved foodstuffs*, from the facilities of Heinz USA at or near Holland, MI to points in NJ, NY and those in PA on and East of US Hwy 15 for 180 days. Restricted to shipments originating at the named origin and destined to the named states. An underlying ETA seeks 90 days authority. Supporting shipper(s): Heinz USA, Division of H.J. Heinz Company; P.O. Box 57, Pittsburgh, PA 15230. Send protest to: Joel Morrows, D/S, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 141197 (Sub-36TA), filed May 8, 1979. Applicant: FLEMING-BABCOCK, INC., 4106 Mattox Road, Riverside, MO 64151. Representative: Tom B. Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Coke, in dump type vehicles*, from Kansas City, MO to points in IA, for 180 days. Supporting shipper(s): Alcan Aluminum Corporation, P.O. Box 6977, Cleveland, Ohio 44101. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 141197 (Sub-37TA), filed May 15, 1979. Applicant: FLEMING-BABCOCK, INC., 4106 Mattox Road, Riverside, MO 64151. Representative: Tom B.

Kretsinger, Kretsinger & Kretsinger, 20 East Franklin, Liberty, MO 64068. *Feed Ingredients*, from Kansas City, KS to points in AR, CO, IA, LA, MO, NE and OK, for 180 days. Supporting shipper(s): International Bakerage of Kansas, Inc., 3300 Northeast Expressway, Suite 1-M, Atlanta, GA 30341. Send protests to: Vernon V. Coble, DS, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 141867 (Sub-8TA), filed May 3, 1979. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Ronald R. Brader (same as above). *Paper and paper products*, from the facilities of Potlatch Corporation at Lewiston, ID to points in CA, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Potlatch Corporation, P.O. Box 1016, Lewiston, ID 83501. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 141867 (Sub-9TA), filed April 17, 1979. Applicant: SPECIALIZED TRUCKING SERVICE, INC., 2301 Milwaukee Way, Tacoma, WA 98421. Representative: Ronald R. Brader (same as above). (1) *Containers, container ends and closures*, (2) *commodities manufactured or distributed by manufacturers or distributors of containers, when moving in mixed loads with containers* and (3) *materials, equipment and distribution of containers, container ends and closures*, from the plantsite of Boise Cascade Corporation at or near Wallula, WA to North Salt Lake City and Salt Lake City, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Boise Cascade Corporation, P.O. Box 7747, Boise, ID 83707. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 143236 (Sub-33TA), filed May 16, 1979. Applicant: WHITE TIGER TRANSPORTATION, INC., 40 Hackensack Avenue, Kearny, NJ 07032. Representative: Elizabeth Eleanor Murphy, 40 Hackensack Avenue, Kearny, NJ 07032. *Swimming pool parts and accessories*. The facilities of Hayward Mfg. Co. in or near Elizabeth, NJ and FL, GA, AL and MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hayward Manufacturing Co., Inc., 900 Fairmount Avenue, Elizabeth, NJ 07207. Send protests to: Robert E. Johnston, DS, ICC, 744 Broad Street, Room 522, Newark, NJ 07102.

MC 143276 (Sub-16TA), filed April 19, 1979. Applicant: WEAVER TRANSPORTATION COMPANY, 5452 Oakdale Road, Smyrna, GA 30080. Representative: James L. Brazee, Jr., 3355 Lenox Rd., Suite 795, Atlanta, GA 30326. *Roofing materials and roofing products and material used in the installation of roofing materials and roofing products; also equipment, raw materials, supplies and machinery used in the manufacture and packaging of roofing materials and products* between the plantsites of Owens-Corning Fiberglas Corp. at Atlanta, GA on the one hand, and all points and places in the States of FL, VA, AR and MS on the other hand and between the plantsites of Owens-Corning Fiberglas Corp. at Jacksonville, Ft. Lauderdale and Miami, FL, on the one hand, and all points and places in the States of MS, VA, AR and GA on the other hand, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Owens-Corning Fiberglas Corp., Fiberglas Tower, Toledo, OH 43659. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St. NW., Rm. 300, Atlanta, GA 30309.

MC 143616 (Sub-17TA), filed May 16, 1979. Applicant: M & S TRANSPORT LINES, INC., P.O. Box 417, Sultana, CA 93666. Representative: Dwight L. Koerber, Jr., 805 McLachlen Bank Bldg., 666 Eleventh Street, NW., Washington, DC 20001. *Contract: Irregular: Ink, ink materials, wallpaper pulp covering, chemicals and paints (except commodities in bulk)*, from Woodlawn, Ohio, to points in Texas and California, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Borden Chemical Division of Borden, Inc., 180 E. Broad Street, Columbus, OH 43215. Send protests to: Irene Carlos, P.O. Box 1551, Los Angeles, California 90053.

MC 144927 (Sub-19TA), filed April 2, 1979. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. Hwy 24 West, Remington, IN 47977. Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., Indianapolis, IN 46204. *Plastic and metal cabinets*, from Columbus, IN, to Chicago, IL; Minneapolis, MN; and points in the states of CT, MA, NJ, NY, PA and RI, for 180 days. Supporting Shipper: RAACO Corporation, 4325 Middle Road, Box 1377, Columbus, IN 47201. Send Protests to: Beverly J. Williams, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.

MC 144927 (Sub-20TA), filed April 2, 1979. Applicant: REMINGTON FREIGHT LINES, INC., Box 315, U.S. Hwy 24 West, Remington, IN 47977.

Representative: Warren C. Moberly, 777 Chamber of Commerce Bldg., Indianapolis, IN 46204. *Malt beverages, (1) from St. Louis, MO, to Columbus, OH, and to points in CT, in DE, MA, MO, NH, NJ, NY, PA, RI, VT and Chicago, IL, for 180 days. Supporting shipper: Anheuser-Busch, Inc., 721 Pestalozzi Street, St. Louis, MO 63118. Send Protests to: Beverly J. Williams, ICC, 46 E. Ohio St., Rm 429, Indianapolis, IN 46204.*

MC 145256 (Sub-2TA), filed May 3, 1979. Applicant: L.K.M. COMPANY, INC., 16637 Sylvester Rd. SW., Seattle, WA 98166. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. *Farm machinery, farm equipment and parts for farm machinery and farm equipment*, from the facilities of Massey-Ferguson, Inc. at Des Moines, IA, Detroit, MI, points on the U.S.-Canada Boundary in MI and NY to points in Chelan, Douglas and Yakima Counties, WA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tilly Equipment, Inc., 1447 N. Wenatchee Ave., Wenatchee, WA 98801. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 145577 (Sub-8TA), filed April 2, 1979. Applicant: GULLETT-GOULD, LTD., P.O. Box 406, Union City, IN 47390. Representative: Jerry Selman, 50 West Broad Street, Columbus, OH 43215. *Dry animal feed*, from Dayton, and Lewisburg, OH, to points in San Diego, Santa Anna, San Jose, Modesto, Fresno, Sacramento, Santa Rosa, Santa Fe Springs, Westlake Village and Redding, CA; Tuscon and Phoenix, AZ; Reno and Las Vegas, NV; Portland and Rosenberg, OR; Seattle, Tacoma and Spokane, WA; Boise, ID and Missoula, MT, for 180 days. Supporting shipper(s): J. H. Machdao & Co., Inc., d.b.a. Hamilton Enterprises, P.O. Box 26491, San Jose, CA 95159, Iams Food Company, 3622 Delphos Avenue, Dayton, OH 45317. Send protests to: Beverly J. Williams, ICC, 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204.

MC 145636 (Sub-4TA), filed May 15, 1979. Applicant: BOB BRINK, INCORPORATED, 165 Stueben Street, Winona, MN 55987. Representative: Samuel Rubenstein, 301 North Fifth Street, Minneapolis, MN 55403. *Metal ware and commodities which are otherwise exempt from regulation under Section 10526(6) (formerly 203(b)(6)) of the Interstate Commerce Act, when moving in mixed loads with commodities above from the facilities of H. Behrens Mfg. Co., at Winona, MN to points in AZ, AR, CA, CO, ID, IA, KS,*

LA, MO, MT, NE, NM, ND, OK, OR, SD, TX, UT, WA and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): H. Behrens Mfg. Co., 471 West Third Street, Winona, MN 55987. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.

MC 145676 (Sub-2TA), filed May 16, 1979. Applicant: JOHN BREITWEISER TRUCKING, INC., RR 1, Dow, IL 62022. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract, irregular:* Carbonated beverages and flavored syrups from Granite City, IL to points in WI. Supporting shipper(s): Shasta Beverages, Box 738, Granite City, IL 62040. Send protests to: Charles D. Little, ICC, Room 1386, 219 South Dearborn Street, Chicago, IL 60604.

MC 146256 (Sub-3TA), filed May 11, 1979. Applicant: SHORT LINE TRUCKING CO., INC., P.O. Box 20026, Louisville, KY 40220. Representative: Mr. Lavern R. Holdeman, P.O. Box 81849, Lincoln, NE 68501. Such Commodities as are dealt in by wholesale and retail chain, grocery drug and food business houses, and return of products used in the manufacture of the above (except in bulk), between the facilities of Colgate-Palmolive Co., Inc., at or near Jeffersonville, IN, on the one hand, and, on the other, all points in the states of OH and MI. Supporting shipper(s): H. Robert Schroeder, Traffic Mgr., Colgate-Palmolive Co., Inc., State & Woerner Sts., Jeffersonville, IN 47130. Send protests to: Linda H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, KY 40220.

MC 146587 (Sub-2TA), filed May 1, 1979. Applicant: J & D TRUCKING, INC., P.O. Box 183, Littlestown, PA 17340. Representative: John M. Musselman, c/o Rhoads, Sinon & Hendershot, P.O. Box 1146, 410 N. 3rd St., Harrisburg, PA 17108. *Such merchandise as is dealt in by retail, wholesale and chain grocery and food businesses houses (exc. commodities in bulk and frozen foods),* from pts. in Adams Cnty, PA, and Inwood, WV, to pts. in VA, NC, SC, GA, FL, AL, and TN, for 180 days. Supporting shipper(s): Musselman Fruit Prods., Div. Pet, Inc., Biglerville, PA 17307. Send protests to: I.C.C., Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 146867 (Sub-1TA), filed May 15, 1979. Applicant: DEPENDABLE FEED SERVICE, INC., Route 1, Box 105, Bear Creek, NC 27207. Representative: Vaughan S. Winborne, Attorney, 1108 Capital Club Bldg., Raleigh, NC 27601. *Animal and poultry feed, feed materials, seeds, and agricultural lime between*

points in FL, GA, MD, NC, SC, VA, PA, and NJ, on the one hand, and, on the other, points in NC, SC, and VA for 180 days. An underlying ETA seeking 90 days authority has been filed. Supporting shipper(s): Holly Farms Poultry Industries, Inc., P.O. Box 88, Wilkesboro, NC 28697. Send protests to: Archie Andrews, ICC, PO Box 26896, Raleigh, NC 27611.

MC 146897 (Sub-1TA), filed April 23, 1979. Applicant: LOOMIS COURIER SERVICE LTD., 3057 Grandview Hwy, Vancouver, B.C., Canada V5M 2E4. Representative: Jack R. Davis, 1100 IBM Bldg., Seattle, WA 98101. (a) *Commercial documents, business records, accounting and audit media, automated data processing media and advertising materials;* (b) *commercial papers, documents and written instruments (except currency and negotiable securities) as are used in the business of banks and banking institutions, between points in King and Snohomish Counties, WA on the one hand, and, on the other, points on the International Boundary line between the U.S. and Canada in WA.* Supporting shipper(s): There are 27 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 147026 (Sub-1TA), filed April 24, 1979. Applicant: ALTERNATE ENERGY SUPPLY, INC., 313 Dividend Drive, Peachtree City, GA 30269. Representative: John E. Hallberg, (same as applicant), *liquified petroleum gas (LPG) in bulk, in tank vehicles from* Milner, Albany and Alma, GA to points in FL and GA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Rebel Propane Gas Company, Inc., 8017 West Beaver Street, Jacksonville, FL 32205. Send protests to: Sara K. Davis, T/A, ICC, 1252 West Peachtree St., N.W., Rm. 300, Atlanta, GA 30309.

MC 147087 (Sub-1TA), filed May 8, 1979. Applicant: W. L. GOOD TRUCKING, INC., Mingo, IA 50168. Representative: Richard D. Howe, 600 Hubbell Bldg., Des Moines, IA 50309. *Liquid fertilizer, in bulk, in tank vehicles from Hoag, La Platte and Fremont, NE to points in IA for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Carpenter Sales, Inc., 10825 NE Hubbell, Bondurant, IA 50035. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 147107 (Sub-1TA), filed May 10, 1979. Applicant: ROBERT L. BUELL

AND LAWRENCE W. DERRY, d.b.a. Spokane-St. Maries Auto Freight Service, 3810 Boone Ave. E., Spokane, WA 99202. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. *Lumber and lumber products, from St. Maries, ID and points in its commercial zone, to points in OR, CA, NV, ID, UT, MT, WY, CO, ND, SD, NE, KS, MN, IA, WI, IL, IN and OH for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): REGULUS STUD MILLS, INC., P.O. Box 337, St. Maries, ID 83861. Send protests to: Shirley M. Holmes, T/A, ICC, 858 Federal Bldg., Seattle, WA 98174.

MC 147196 (Sub-1TA), filed May 16, 1979. Applicant: ECONOMY TRANSPORT, INC., 1338 Gause Blvd., Slidell, LA 70458. Representative: Fletcher W. Cochran (same address as applicant). Applicant is seeking authority to operate as a contract carrier over irregular routes transporting *paper and paper products* from the plant sites of Crown Zellerbach Corp. located at Bogalusa, LA and Zee, LA to all points in the states of AL, AR, DL, FL, GA, IL, IN, KS, KY, MD, MI, MN, MS, MO, NJ, NY, NC, OH, OK, SC, TN, TX, VA, WV, and WI, for 180 days. This will be under a continuing contract or contracts with Crown Zellerbach Corp. Restricted against the transportation of liquid or commodities in bulk. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Crown Zellerbach Corporation, P.O. Box 1060, Bogalusa, LA 70427. Send protests to: Robert J. Kirspe, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 147197 (Sub-1TA), filed May 16, 1979. Applicant: ANDY BELITSKY, 270A Lincoln St. SW., Hartsville, OH 44532. Representative: Michael L. Moushey, 275 E. State St., Columbus, OH 43215. *Contract carrier-irregular routes: General commodities (except those of unusual value, Classes A and B explosives, livestock, household goods as defined by the Commission, and commodities requiring special equipment), between points in OH, IL, IN, MI, NY, PA, KY, GA, FL, and WI, for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Olson Electronics, a Division of Teledyne Ind., Inc., 260 S. Forge St., Akron, OH 44327. Send protests to: DS/ICC, Room 620, 101 N. 7th St., Philadelphia, PA 19106.

MC 147217 (Sub-1TA), filed May 17, 1979. Applicant: WESTERN TRANSPORTATION, INC., 708 North Main Street, Lamar, CO 81052. Representative: Edward C. Hastings,

Attorney, 666 Sherman Street, Denver, CO 80203. *Petroleum and petroleum products*, in bulk, in tank vehicles, from the truck loading facility of Chase Terminal Co., eight miles North of Scott City, KS, to points in Prowers County, CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Travelers Oil Company, Inc., West Highways 50 and 287, Lamar, CO 81052. Send protests to: Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 81052.

MC 100666 (Sub-456TA), filed April 18, 1979 and published in the Federal Register issue of June 1, 1979 and republished as corrected in this issue. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, Shreveport, LA 71107. Representative: Mr. Paul L. Caplinger (same address as applicant). Common, irregular; *Such commodities as are dealt in or used by agricultural, industrial, and construction machinery equipment dealers (except in bulk)* from the facilities of Badger Northland, Inc., at or near Kaukauna, WI to points in AL, AR, FL, GA, KS, LA, MS, MO, NM, NC, OK, SC, TN, and TX, and KY, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Badger Northland, Inc., 1215 Hyland Ave., Kaukauna, WI 54130. Send protests to: Robert J. Kirspeil, DS, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113. The purpose of this republication is to add KY to the list of destination states, and to renumber the sub from 422.

MC 32166 (Sub-13TA), filed March 29, 1979 and published in the Federal Register issue of May 9, 1979 and republished as corrected in this issue. Applicant: Bronaugh Motor Express, Inc., 1025 Nandino Blvd., Lexington, KY. 40511. Representative: John W. Bronaugh, President (address above). 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 Lexington, KY, and its commercial zone, and Nashville, TN, and its commercial zone, serving no intermediate points; from Lexington, KY, over U.S. Hwy. 60 to its junction with Blue Grass Parkway, then over Blue Grass Pkwy. to its junction with Interstate Hwy. 65, then over I-65 to Nashville, TN, and return over the same route. (Carrier intends to 'tack' authority with that outlined in its lead certificate (MC-32166) and to interline with other carriers at Cincinnati, OH; Knoxville,

TN; Lexington and Louisville, KY.) Supporting shipper(s): Thirty-two (32) Supporting Shippers. Send protests to: Linds H. Sypher, D/S, ICC, 426 Post Office Bldg., Louisville, Ky. 40202.

Note.—This authority is republished to indicate applicant's desire to tack and interline this authority.

MC 27817 (Sub-155TA), filed March 29, 1979 and published in the Federal Register issue of May 9, 1979 and republished as corrected in this issue. Applicant: H. C. Gabler, Inc., RD #3 P.O. Box 220, Chambersburg, PA 17201. Representative: Christian V. Graf, Esquire, 407 North Front Street, Harrisburg, PA 17101. *Common carrier*, by motor vehicle, irregular routes: *Canned and preserved foodstuffs*, from the facilities of Heinz U.S.A., Division of H. J. Heinz Company, at or near Pittsburgh, PA; Holland, MI; Fremont and Toledo, OH to points in SC, restricted to traffic originating at and destined to the above-named origins and destination state, for 180 days. Supporting shipper(s): Heinz U.S.A., P.O. Box 57, Pittsburgh, PA 15230. Send protests to: Interstate Commerce Commission, 600 Arch Street, Room 3238, Philadelphia, PA 19106. The purpose of this republication is to indicate the proper territorial scope of this application.

By the Commission.
H. G. Homme, Jr.,
Secretary.
[FR Doc. 79-19832 Filed 6-25-79; 8:45 am]
BILLING CODE 7035-01-M

[Notice No. 105]

Motor Carrier Temporary Authority Applications

June 14, 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 1824 (Sub-94TA), filed May 24, 1979. Applicant: PRESTON TRUCKING COMPANY, INC., 151 Easton Blvd., Preston, MD 21655. Representative: C. S. Perry (same as above). *Petroleum and petroleum products, except commodities in bulk*, from Rouseville, PA to points in MD, DC and VA, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): George A. Anderson, ATM, Pennzoil Company, P.O. Box 808, Oil City, PA 16301. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 1824 (Sub-95TA), filed May 24, 1979. Applicant: Preston Trucking Company, Inc., 151 Easton Blvd., Preston, Md 21655. Representative: C. S. Perry (same as above). *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)*, between Rockford, IL, on the one hand, and on the other, Freeport, Rock Falls and Sterling, IL and points in their respective commercial zones, for 90 days. An underlying ETA seeks 90 days. Supporting shipper(s): There are 7 supporting shippers. Statements may be examined at the office listed below or at headquarters. Send protests to: W. L. Hughes, DS, ICC, 1025 Federal Bldg., Baltimore, MD 21201.

MC 3854 (Sub-50TA), filed May 31, 1979. Applicant: BURTON LINES, INC., P.O. Box 11306, Durham, NC 27703. Representative: G. E. Martin, Jr., 815 Ellis Rd., Durham, NC 27703. *Boards*,

building, wall or insulating, and materials and supplies used in the installation thereof (except commodities in bulk) from the facilities of Armstrong Cork Company at or near Macon, GA to points in CT, DE, DC, KY, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, TN, VT, VA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Armstrong Cork Company, P.O. Box 3001, Lancaster, PA 17604. Send protests to: D/S Terrell Price, 800 Briar Creek Rd., Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 8544 (Sub-35TA), filed May 23, 1979. Applicant: GALVESTON TRUCK LINE CORPORATION, 7415 Wingate, Houston, TX 77011. Representative: Joe G. Fender, 711 Louisiana, Suite 1150, Houston, TX 77002. *Rubber, natural and crude synthetic, and rubber compounds*, from Port Neches, TX to Ardmore, OK, for 180 days. Supporting Shipper(s): Uniroyal, Inc., Oxford Management & Research Center, Middlebury, CT. Send protests to: John F. Mensing, DS, ICC, 515 Rusk Ave., Houston, TX 77002.

MC 8515 (Sub-17TA), filed May 23, 1979. Applicant: TOBLER TRANSFER, INC., Junction Interstate 80 and IL 89, Spring Valley, IL 61362. Representative: Leonard R. Kofkin, Esq., 39 South La Salle St., Chicago, IL 60603. *Plastics, other than foam group, rubber preservatives and rubber accelerators or softeners (except in bulk)*, from Henry, IL to points in IN, IA, KY, MI, MN, MO and OH for 180 days. Applicant has also filed an underlying ETA for 90 days. Supporting shipper(s): B. F. Goodrich Chemical Company, R.R. 1, P.O. Box 15, Henry, IL 61537. Send protests to: David Hunt, TA, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 27754 (Sub-20TA), filed May 29, 1979. Applicant: FRANK J. KUBLY TRANSFER, INC., Monroe, WI 53566. Representative: Rolfe Hanson, 121 W. Doty St., Madison, WI 53703. *Cheese in vehicles equipped with mechanical refrigeration and empty barrels and cheese factory supplies* from Winsted, Pine Island, Zumbrota, Rochester, Watkins, and the unincorporated community of Bongards in Carver County, MN to Monroe, Mayville, Mosinee, Waupaca, Manitowoc, Kaukauna, Plymouth, Spencer, Green Bay, Marshfield, Wisconsin Rapids and Fremont, WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Purity Cheese Co., 1301 18 St., Monroe, WI 53566. Send protests to: Gail Daugherty, TA, ICC, 517 E. Wisconsin Ave., Rm. 619, Milwaukee, WI 53202.

MC 41404 (Sub-157TA), filed May 31, 1979. Applicant: ARGO-COLLIER TRUCK LINES CORPORATION, Fulton Highway, P.O. Drawer 440, Martin, TN 38237. Representative: Mark L. Horne (same as applicant). *Foodstuffs (except in bulk)*, in vehicles equipped with mechanical refrigeration, from Louisville, KY to points in AL, AR, FL, GA, IL, IN, LA, MI, MO, MS, NC, SC, TN and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Louisville Freezer Center, 2000 South Ninth Street, Louisville, KY 40208. Send protests to: Floyd A. Johnson, Suite 2006, 100 North Main Street, Memphis, TN 38103.

MC 94265 (Sub-303TA), filed May 23, 1979. Applicant: BONNEY MOTOR EXPRESS, P.O. Box 305, Route 460 West, Windsor, VA 23487. Representative: Clyde W. Carver, P.O. Box 720434, Atlanta, GA 30328. (1) *Foodstuffs (except in bulk, in tank vehicles)*; and (2) *Materials and supplies used in the manufacture of foodstuffs*, (1) from Sauquatuck and Holland, MI, to points in the states AL, DE, FL, GA, MD, NJ, NY, NC, PA, SC, TN, VA, WV, and DC; and (2) from points in destination states named above to the origin points named above. Restricted to the transportation of traffic originating at or destined to the facilities of Lloyd J. Harris Pie Company, for 180 days. Supporting shipper(s): Lloyd J. Harris Pie Company, 303 Culver St., Sagatuck, MI 49453. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Phila., PA 19106.

MC 95084 (Sub-138TA), filed May 14, 1979. Applicant: HOVE TRUCK LINE, Stanhope, IA 50246. Representative: Kenneth F. Dudley, P.O. Box 279, Ottumwa, IA 52501. *Agricultural machinery and equipment, industrial machinery and equipment and parts, attachments and accessories for agricultural machinery and equipment and industrial machinery and equipment*, from Allenton, WI to points in NY, OH and PA for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kasten Mfg. Co., P.O. Box 328, Alleton, WI 53002. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 107295 (Sub-921TA) filed May 29, 1979. Applicant: PRE-FAB TRANSIT CO., P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr, P.O. Box 146, Farmer City, IL 61842. *Composition board*; from Beaumont, Galveston and Houston, TX to points in AL, AR, CT, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MS, MO, NE, NJ, NY, NC, OH, OK, PA, RI, SC, TN, VA, WV and WI for 180 days. Supporting shipper(s): Magnolia

Compress Company, P.O. Box 209, Galveston, TX 77553. Send protests to: Annie Booker, TA, 219 South Dearborn Street, RM. 1386, Chicago, IL 60604.

MC 107515 (Sub-1241TA), filed May 31, 1979. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, Forest Park, GA 30050. Representative: Alan E. Serby, Fifth Floor, Lenox Towers South, 3390 Peachtree Road, NE., Atlanta, GA 30326. *Adhesives and adhesive products (except commodities in bulk)* from Bainbridge, NY to Dallas, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Borden Chemical, Div. of Borden, Inc., 180 East Broad Street, Columbus, OH 43215. Send protests to: Sara K. Davis, T/A ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 107934 (Sub-29TA), filed May 24, 1979. Applicant: BYRD MOTOR LINE, INC., Hargrave Rd., Lexington, NC 27292. Representative: Melvin L. Byrd (same as applicant). *Pulpboard or fibreboard* from St. Francisville, LA to Charlotte, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Amico, Inc., P.O. Box 11756, Charlotte, NC 28209. Send protests to: Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 111045 (Sub-170TA), filed May 29, 1979. Applicant: REDWING CARRIERS, INC., 8515 Palm River Road, P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (same address as applicant). *Chemicals*, in bulk from Selma, AL to Points in MS for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Chemwood Corporation, P.O. Box 9158, Memphis, TN 38109. Send protests to: Donna M. Jones, T/A, ICC, 8410 NW 53rd Terr., Miami, FL 33166.

MC 112184 (Sub-66TA), filed May 18, 1979. Applicant: THE MANFREDI MOTOR TRANSIT CO., 11250 Kinsman Road, Newbury, OH 44065. Representative: John P. McMahon, 100 E. Broad St., Columbus, OH 43215. *Contract carrier, irregular routes: Paint and paint products, in bulk, in tank vehicles*, from Mount Clemens, MI to Cleveland, OH, under a continuing contract or contracts with PPG Industries, Inc. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): PPG Industries, Inc., One Gateway Center, Pittsburgh, PA 15222. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm. 620, Philadelphia, PA 19106.

MC 113855 (Sub-488TA), filed May 31, 1979. Applicant: INTERNATIONAL TRANSPORT, INC., 2450 Marion Road,

Southeast, Rochester, MN 55901. Representative: Michael E. Miller, 502 First National Bank Building, Fargo, ND 58126. (1) *Geodesic domes*; (2) *polyframe domes*; (3) *crystogon structures*; (4) *parts and materials used in the manufacture and construction of* (1), (2), and (3) *above from Torrence, CA to points in the United States (except AK and HI), for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Temcor, 2825 Toledo Street, Torrence, CA 90503. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building, 110 South 4th Street, Minneapolis, MN 55401.*

MC 114274 (Sub-63TA), filed May 18, 1979. Applicant: VITALIS TRUCK LINES, INC., P.O. Box 1703, Des Moines, IA 50306. Representative: William H. Towle, 180 N. LaSalle St., Chicago, IL 60601. *Spices, flavoring, extracts, teas, cake confectionary and display racks, from the facilities of Tones at or near Des Moines, IA to Grand Rapids and Plymouth, MI for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Tone Brothers, Inc., 4900 N.E. 22nd St., Des Moines, IA. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.*

MC 115654 (Sub-149TA), filed May 29, 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. (1) *Wrapping paper in rolls and bundles and* (2) *Scrap and waste paper for recycling between the facilities of Damsky Paper Co., located at or near Birmingham, AL, on the one hand, and, on the other, points in GA, TN, KY, OH, IN, IL, MO, AR, LA, and MS. for 180 days. Supporting shipper(s): Damsky Paper Company, P.O. Box 31282, 43rd Street & Morris Avenue, Birmingham, AL 35172. Send protests to: Glenda Kuss, TA, ICC, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.*

MC 119634 (Sub-36TA), filed May 21, 1979. Applicant: DICK IRVIN, INC., P.O. Box F, Shelby, MT 59474. Representative: Mark A. Cole (same address as applicant). *Steel bins and buildings and grain handling equipment from Houghton and Atlantic, IA; LaCygne, Hutchinson and Silver Lake, KS; Carson City, NV; Clay Center, NE and Aurora, CO to points in MT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pondera Distributing, Rt. 3, Box 43, Conrad, MT 59425. Send protests to:*

Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 126904 (Sub-29TA), filed May 24, 1979. Applicant: H. C. PARRISH TRUCK SERVICE, INC., Rural Route 2, P.O. Box 264, Freeburg, IL 62243. Representative: James W. Patterson, Esquire, 1200 Western Savings Bank Building, Philadelphia, PA 19107. *Malt Beverages, from Frankemuth, MI to Belleville, IL for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): G. Heilman Brewing Company, 925 South Third Street, LaCrosse, WI 54601. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.*

MC 128205 (Sub-80TA), filed May 30, 1979. Applicant: Bulkmatric Transport Company, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Soda ash, in bulk, from Chicago, IL to points in IL, IN, IA, MI, OH, WI, and MO for 180 days. Supporting shipper(s): Allied Chemical Corporation, P.O. Box 1139R, Morristown, NJ 07960. Send protests to: Annie Booker, TA, Interstate Commerce Commission, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.*

MC 128205 (Sub-81TA), filed May 18, 1979. Applicant: BULKMATRIC TRANSPORT COMPANY, 12000 South Doty Avenue, Chicago, IL 60628. Representative: Arnold L. Burke, 180 North LaSalle Street, Chicago, IL 60601. *Coke, in bulk, from Joliet and Chicago, IL to Logansport and Cayuga, IN for 180 days. An underlying ETA was granted for 90 days authority. Supporting shipper(s): International Minerals & Chemical Corp., 421 E. Hawley Street, Mundelein, IL 60060. Send protests to: Annie Booker, TA, 219 South Dearborn Street, Chicago, IL 60604.*

MC 128304 (Sub-3TA), filed May 23, 1979. Applicant: I.T.L., INC., P.O. Box 280, 2155 North 10th Street, Gering, NE 69341. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. *Contract carrier: irregular routes: Such merchandise as is dealt in by wholesale and retail grocery business (except commodities in bulk), from points in AR, IN, MI, NM, and OK to the facilities of Associated Grocers of Nebraska Cooperative, Inc. of Gering, NE, under continuing contract(s) with Associated Grocers of Nebraska Cooperative, Inc. of Gering, NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Associated Grocers of Nebraska Cooperative, Inc., P.O. Box 280, Gering, NE 69341. Send*

protests to: Carroll Russell, ICC, Suite 620, 110 N. 14th St., Omaha, NE 68102.

MC 128964 (Sub-8TA), filed June 4, 1979. Applicant: REES TRUCKING CO., INC., P.O. Box G, Houston, MO 65483. Representative: Herman W. Huber, 101 East High Street, Jefferson City, MO 65101. *Iron and steel articles, from the facilities of U.S. Steel Corporation at or near Gary, IN; South Chicago, Joliet and Waukegan, IL to points in the states of AR, MO, and OK, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): United States Steel Corporation, 1000 E. 80th Place, Merrillville, IN 46410. Send protests to: John V. Barry, DIS, ICC, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.*

MC 133095 (Sub-257TA), filed May 24, 1979. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, Euless, TX 76039. Representative: Rocky Moore, P.O. Box 434, Euless, TX 76039. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses, from the plantsite of Armour and Co., at or near Hereford, TX and facilities used by Armour and Co., at or near Lubbock, TX to Houston, TX; restricted to shipments having a subsequent movement by water, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Armour Food Company, Greyhound Tower, Phoenix, AZ 85077. Send protests to: Martha A. Powell, TA, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.*

MC 133805 (Sub-26TA), filed May 29, 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. *Such merchandise as is dealt in by wholesale, retail, chain grocery and food business houses from the facilities used by Ralston Purina Company, at or near Battle Creek, MI; Lancaster and Sharonville, OH to points in GA, FL and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Ralston Purina Company, Checkerboard Square, St. Louis, MO 63188. Send protests to: Martha A. Powell, TA, ICC, Room 9A27, Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.*

MC 134335 (Sub-4TA), filed May 22, 1979. Applicant: ALL FREIGHT, INC., 238 Sheldon Road, Berea, OH 44017. Representative: E. H. van Deusen, P.O. Box 97, 220 West Bridge St., Dublin, OH 43017. *Contract carrier: irregular routes: Foundry Supplies, Refractories, Exo-*

Thermics, and Steel Mill Supplies, between the facilities of Foseco, Inc., at or near Berea, OH and Brookpark, OH, on the one hand, and, on the other, points in the U.S. for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Foseco, Inc., 20200 Sheldon Rd., Brookpark, OH 44142. Send protests to: ICC, Fed. Res. Bank Bldg., 101 N. 7th St., Rm 620, Phila., PA 19106.

MC 134755 (Sub-188TA), filed May 30, 1979. Applicant: CHARTER EXPRESS, INC., P.O. Box 3772, Springfield, MO 65804. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Such commodities as are dealt in by wholesale, retail and chain grocery and food business houses, and equipment, materials, and supplies used in the conduct of such business* (except commodities in bulk), from the facilities of the Kroger Company at or near Cincinnati and Columbus, OH, and Indianapolis, IN, to Atlanta, GA; Dallas, TX; Little Rock, AR; St. Louis, MO; Houston, TX; Memphis, TN; and Nashville, TN for 180 days. Supporting shipper(s): The Kroger Company, 1014 Vine Street, Cincinnati, OH 45201. Send protests to: DS John V. Barry, ICC, 600 Federal Bldg., 911 Walnut St., Kansas City, MO 64106.

MC 136464 (Sub-45TA), filed May 31, 1979. Applicant: CAROLINA WESTERN EXPRESS, INC., Box 3995, Gastonia, NC 28052. Representative: W. C. Sutton (same as applicant). *Contract carrier-Irregular routes; (1) textiles and textile products and (2) materials and supplies used in the manufacture and sale of the commodities named in (1) above* between the facilities utilized by Adams-Millis at or near Mt. Airy, NC on the one hand, and, on the other, Edmond, OK and points in CA under a continuing contract or contracts with Adams-Millis Corporation of High Point, NC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Adams-Millis Corporation, P.O. Box 2650, High Point, NC 27261. Send protests to: D/S, Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 136605 (Sub-116TA), filed June 1, 1979. Applicant: DAVIS BROS. DIST., INC., P.O. Box 8058, Missoula, MT 59807. Representative: Allen P. Felton (same address as applicant). *Building materials and cement pipe containing asbestos fibre* from the facilities of Johns-Manville Sales Corporation located at or near Waukegan, IL to points in CA, 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: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 139495 (Sub-455TA), filed May 24, 1979. Applicant: NATIONAL CARRIERS, INC., P.O. Box 1358, Liberal, KS 67901. Representative: Herbert Alan Dubin, 1320 Fenwick Lane, Silver Springs, MD 20910. *Refined sugar in packages, from Gramercy, LA to points and places in MO., 180 days, common, irregular.* Supporting shipper: Colonial Sugars, Borden, Inc., Gramercy, LA. Send protests to: M. E. Taylor, DS, ICC, 101 Litwin Bldg., Wichita, KS 67202.

MC 141804 (Sub-222TA), filed May 29, 1979. Applicant: WESTERN EXPRESS, division of INTERSTATE RENTAL, INC., P.O. Box 3488, Ontario, CA 91761. Representative: Frederick J. Coffman (address same as applicant). *Common: Irregular: Bicycles and bicycle parts, from Azusa, Torrance and City of Industry, CA, to points in and east of MN, IA, MO, AR and LA.* Restricted to traffic originating at the facilities of Huff Corporation, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Huff Corp., 1120 W. Foothill Blvd., Azusa, CA 91702. Send protests to: Irene Carlos, T/A, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 142664 (Sub-6TA), filed May 31, 1979. Applicant: IMPORT DEALERS SERVICE CORPORATION, 2222 East Sepulveda Blvd., Carson, CA 90744. Representative: William P. Jackson, Jr., 3426 N. Washington Blvd., P.O. Box 1240, Arlington, VA 22210. *Pickup trucks, from Los Angeles, CA, and points in its commercial zone, to points in AZ, NV and NM, for 180 days.* An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Rivlex Industries, Inc., 301 E. Stevens Ave., Santa Ana, CA 92707. Off Road Marketing Corp., 2201 W. 1st St., Santa Ana, CA 92702. Send protests to: Irene Carlos, T/A, ICC, P.O. Box 1551, Los Angeles, CA 90053.

MC 144574 (Sub-1TA), filed May 31, 1979. Applicant: RUSSELL TRANSFER COMPANY, INC., P.O. Box 829, Washington, GA 30673. Representative: Frank D. Hall, Suite 713, 3384 Peachtree Rd., NE, Atlanta, GA 30326. *Charcoal, charcoal briquets, and materials, equipment and supplies used in the manufacture, sale and distribution of such commodities between the facilities of Huskey Industries, Inc., at or near Ocala, FL, Romeo, FL and Pachuta, MS and points in AL, FL, GA, KY, MS, NC, SC, TN, VA and WV for 180 days.* An underlying ETA seeks 90 days authority.

Supporting Shipper(s): Huskey Ind. Inc., 62 Perimeter Center East, Atlanta, GA. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree St., NW., Rm. 300, Atlanta, GA 30309.

MC 145364 (Sub-1TA), filed May 23, 1979. Applicant: FIVE G'S TRUCKING CO., INC., P.O. Box 87, Eldora, IA 50627. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Contract authority. (1) *Plastic articles and plastic products, and materials supplies and parts used in the manufacture of plastic articles and plastic parts*, between Eldora, IA, on the one hand, and, on the other, points in CA, IL, KS, MN, MO, NE, OK, TX, UT, and WI, under contract with Quality Products, Inc., of Eldora, IA, and (2) *New furniture and materials and supplies used in the manufacture of furniture*, between Eldora, IA, on the one hand, and, on the other, points in AR, AZ, CO, IL, IN, KS, MI, MN, MO, MT, NE, ND, OH, OK, PA, SD, TX, WI, and WY, under contract with Dunlap Industries, Inc., of Eldora, IA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Quality Products, Inc., 1901 21st St., Eldora, IA 50627. Dunlap Industries, Inc., 1801 Edgington, Eldora, IA 50627. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Bldg., Des Moines, IA 50309.

MC 145884 (Sub-3TA), filed May 21, 1979. Applicant: INTERLEAGUE CORPORATION d.b.a. W. T. TRANSPORT CO., 2604 Texas Avenue, P.O. Box 3964, Lubbock, TX 79452. Representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. *Lumber, lumber mill products and wood products, from points in AZ, CO, and NM to points in TX, for 180 days.* An underlying ETA seeks 90 days authority. Supporting shipper(s): Southwestern Sales, Inc., P.O. Box 25783, Albuquerque, NM 87125. Kaibab Industries, Inc., P.O. Box 20506, Phoenix, AZ 85036. Navajo Forest Products, Inc., P.O. Box 1280, Navajo, NM 87328. Send protests to: Martha A. Powell, TA, ICC, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, TX 76102.

MC 146174 (Sub-2TA), filed April 9, 1979. Applicant: PD EXPRESS, INC., 817 W. Fifth Ave., Columbus, Ohio 43212. Representative: David H. Rowe, 817 W. Fifth Ave., Columbus Ohio 43212. *Ale, beer, beer tonic or stout* (other than in bulk), in truckload quantities, and *related advertising matter* from Evansville to Chicago commercial zone from Newport, KY to Chicago commercial zone and the State of Ohio, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s):

G. Heileman Brewing Company, Inc., 925 S. 3rd Street, P.O. Box 459, La Crosse, WI. Send protests to: ICC, Wm. Green Jr., Federal Bldg., 600 Arch Street, Philadelphia, PA 19106.

MC 146284 (Sub-2TA), filed May 11, 1979. Applicant: JAMES A. GOULD, 3663 Mavis Road, Unit 15, Mississauga, ON L5A 2Y9. Representative: William J. Hirsch, Atty., Suite 1125, 43 Court Street, Buffalo, NY 14202. *Contract carrier*, irregular routes. *Lumber*, for the account of Claybelt Lumber Limited, from ports of entry on the International Boundary line between the United States and Canada located in MI and NY, to points in the states of IL, IN, NY, OH and PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Claybelt Lumber Limited, P.O. Box 1510, Hearst, ON POL 1NO. Send protests to: Richard H. Cattadoris, DS, ICC, 910 Federal Bldg., 111 W. Huron Street, Buffalo, NY 14202.

MC 147024 (Sub-1TA), filed May 17, 1979. Applicant: CHERRY LAND EXPRESS, INC., 16141 Center Road, Traverse City, MI 49684. Representative: George R. Thompson, 402 E. Front Street, Traverse City, MI 49684. (1) *Passengers* having a prior or subsequent movement by air, and their baggage and (2) *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment); Restricted to traffic having an immediately prior or immediately subsequent movement by air and restricted to shipments weighing less than 500 pounds each; between Cherry Capital Airport, Traverse City, MI on the one hand, on the other, points in Leelanau, Benzie, Manistee, Mason, Wexford, Lake Osceola, Missaukee, Grand Traverse, Kalkaska, Antrim, Crawford, Charlevoix and Otsego Counties, MI. For 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): North Central Airlines, P.O. Box 603, Traverse City, MI 49684. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 147054 (Sub-1TA), filed May 24, 1979. Applicant: JAMES RAY BRADY, d.b.a. J. R. BRADY TRUCKING, Rt. 3, Box 265, Kannapolis, NC 28081. Representative: James Ray Brady (same address as applicant). *Fabrics, cotton and rayon*, from Concord, NC to Los Angeles and San Francisco, CA and their respective commercial zones and San Antonio, TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Concord

Warehousing Co., Division of Lancot-Arlen Fabrics, Inc., P.O. Box 1212, Concord, NC 28025. Send protests to: Terrell Price, 800 Briar Creek Rd., Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 147064 (Sub-1TA), filed April 24, 1979. Applicant: CANDLEBROOK DELIVERY SERVICE, INC., 12 Rivers Edge Dr., Unit 1, Jeffersonville, PA 19401. Representative: Raymong A. Thistle, Jr., Five Cottman Court, Homestead Rd. and Cottman St., Jenkintown, PA 19046. *Mechanical* (original art work in the form of camera-ready copy), *master audio-visual tapes, cassette tapes and printed matter*, in parcels and packages not to exceed 50 lbs. in weight, between King of Prussia and Blue Bell, Montgomery County, PA and Wayne, Chester County, PA, on the one hand, and, on the other, Dayton, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Sperry Univac, Division of Sperry Rand Corp., P.O. Box 500, Blue Bell, PA 19420. Send protests to: T. M. Esposito, TA, 101 S. 7th St., Room 620, Philadelphia, PA 19106.

MC 147304 (Sub-1TA), filed June 1, 1979. Applicant: MONTE L. THOEN and DORIS R. THOEN d.b.a. THOEN TRUCK RENTALS, 13124 N.W. Sue Street, Portland, OR 97229. Representative: Lawrence V. Smart, Jr., 419 N.W. 23rd Avenue, Portland, OR 97210. *Malt beverages* from the facilities of the Blitz-Weinhard Brewery at Portland, OR to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Blitz-Weinhard Brewing Company, 1133 W. Burnside Street, Portland, OR 97209. Send protests to: A. E. Odoms, DS, ICC, 114 Pioneer Courthouse, 555 S.W. Yamhill Street, Portland, OR 97204.

MC 145335 (Sub-2TA), filed March 6, 1979, published in the *Federal Register* issue of May 15, 1979, and republished, as corrected, this issue: Applicant: RIVER ENTERPRISES, INC., Rural Route 6, Edwardsville, IL 62087. Representative: Robert T. Lawley, 300 Reisch Bldg., Springfield, IL 62701. *Contract, irregular: Engines, engine parts, marine parts, and equipment used in the repair, installation, and maintenance of engines, ships and marine equipment*, for the account of Marine Service, between Hartford, IL, on the one hand, and, on the other, points in the United States (including Alaska but excluding Hawaii), for 180 days. An underlying ETA seeks 90 days authority. The purpose of this republication is to indicate the proposed origin and destination points which

were inadvertently omitted from the previous publication.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-19834 Filed 6-25-79; 8:45 am]

BILLING CODE 7035-01-M

[Decision; Ex Parte No. 311]

Expedited Procedures for Recovery of Fuel Costs

Decided: June 19, 1979.

In a decision served June 15, 1979, the Commission implemented Special Permission No. 79-2800, which authorized regulated carriers employing owner-operators to file for fuel-based surcharges on one day's notice. The surcharge is based on price data derived from a Commission fuel index to be published weekly. As stated in the prior decision, the index is an average of diesel fuel prices at selected truck stops in various areas in the United States. By use of this price index and by deriving a national average of the percentage of fuel expense of total operating revenue from transportation performed by owner-operators, the Commission indicated the maximum allowable surcharge to be taken for the period from January, 1979 to June 15, 1979. In the June 15 decision, the percentage surcharge authorized was on average, 5.6 percent, with a maximum of 6.7 percent.

In addition, the Commission ordered that all regulated carriers, whether or not they have filed or intend to file for X-311 fuel-based increases, are to compensate their respective owner-operators for increased fuel costs from June 15 forward. The base date for measuring fuel expense increases is January 1, 1979. At a minimum, the Commission ordered that owner-operators shall receive compensation at the average surcharge figure set forth in the index, or 5.6 percent.

The Commission took this action because of the extreme urgency of the situation regarding owner-operators, and the need to alleviate the impending emergency and to avoid the possibility of curtailment of service. We stated in the decision that the Commission would consider possible future adjustments to the formula so that it could also be used for increased fuel costs incurred when owner-operators are not utilized.

We find that certain amendments to both Special Permission No. 79-2800 and the fuel index are required to clarify and simplify its use, and to extend its

coverage to those carriers not using owner-operators.

In this week's fuel index, published today in the attached appendix, and in the updated indices to be published every Tuesday in each succeeding week, only a single percentage surcharge figure will be set forth. The figure in the index will be derived from an average of diesel fuel prices at selected truck stops in the United States, and from a national average of the percentage of fuel expense of total operating revenues from transportation performed by owner-operators. This percentage surcharge figure, 6.0 percent,¹ is the allowable increase to be taken for the period January, 1979 to the present.² In each succeeding week, the Commission will indicate in its published index the maximum adjustment permissible under these special procedures.

The Commission intends that these one-day notices procedures, and the filing for the 6.0 percent surcharge, be used by those carriers utilizing owner-operators³ and by all carriers when providing transportation at truckload or volume rates as defined in applicable tariffs.

In addition, the Commission is establishing under this Special Permission a second surcharge figure to be used by carriers not utilizing owner-operators for that portion of their traffic which moves at less-than-truckload rates. This figure is also derived from the above described Commission fuel price index and by a national average of the percentage of fuel expense of total operating revenue from transportation performed by regulated general commodity carriers (excluding owner-operators). This percentage surcharge figure, 2.7 percent as published in the attached appendix, is the maximum allowable increase to be taken for the period January, 1979 to the present. In the following weeks, the Commission will indicate in its published index the maximum adjustment permissible.

The amendments to Special Permission No. 79-2800 are specified below. In all other respects, the terms of the Special Permission remain the same. We specifically call to the carriers' attention paragraph 8 of that Special

Permission which states that only one surcharge as to a tariff may be in effect at one time, and that increases of less than .5 percent shall not be requested.

In addition, the Commission reiterates its order in the June 15 decision that all regulated carriers, whether or not they have filed for Ex Parte No. 311 fuel-based increases, are to compensate their respective owner-operators for increased fuel costs from June 15 forward. The base date for measuring expense increases is January 1, 1979. At a minimum, the owner-operators shall receive compensation at the 6.0 level set forth in the Commission's weekly fuel index.

It is ordered: Special Permission No. 79-2800 is amended by deleting paragraph 1 and 2, and substituting the following:

1. All regulated carriers which employ owner-operators and all other motor common carriers when providing transportation at truckload or volume rates as defined in the applicable tariffs, or the authorized publishing agents of such carriers that have tariffs or schedules on file with this Commission, or those qualifying carriers or agents that may in the future file tariffs or schedules with this Commission, are authorized to depart from the terms of the governing tariff circulars to file and post on one day's notice to this Commission and the public, an increase in freight charges for line-haul transportation and charges for other services which consume fuel, such as a pickup and delivery, which must be specified in the tariff, by means of a percentage surcharge. Carriers may continue to use Special Permission Nos. 79-2620 or 76-350, where appropriate, but they must use these two special permissions when seeking a surcharge above the maximum allowable percentage defined below.

1a. The relief in paragraph 1 also applies to carriers for that portion of their traffic that moves in less-than-truckload shipments. For these carriers, a different percentage surcharge figure applies, as defined in paragraph 2a.

2. For the carriers listed in paragraph 1, the maximum percentage surcharge allowed under this Special Permission will be determined by publication by the Commission of a national fuel index, on a weekly basis. This index is an average of diesel fuel prices at selected truck stops in various areas in the United States. In the Appendix to this decision, the Commission, by use of an index and by deriving a national average of the percentage of fuel expense of total operating revenues from transportation performed by owner-operators, has

indicated the maximum allowable surcharge to be taken from January, 1979 to today. In each succeeding week, the Commission will indicate in its published index the maximum additional adjustment to this surcharge. Carriers may utilize these procedures by submitting a tariff schedule indicating a surcharge not to exceed the allowable percentage. No further justification statement is required. If such schedule is in conformity with this decision, the Commission will not exercise its suspension power.

2a. For that traffic of a carrier noted in paragraph 1a, the maximum percentage surcharge allowed under this Special Permission will also be determined by the same Commission fuel index described above. By use of the index, and by deriving a national average of the percentage of fuel expense of total operating revenues of traffic hauled by regulated general commodity carriers, the Commission has indicated the maximum allowable surcharge to be taken from January, 1979 to today. In each succeeding week, the Commission will indicate in its published index the maximum additional adjustment to this surcharge. The same terms and conditions listed in paragraph 2 apply here.

Notice of the amendments to Special Permission No. 79-2800 shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C. for public inspection, and by delivering a copy to the Director, Office of the Federal Register, for publication herein.

This decision shall become effective when served.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian. Commissioner Christian dissenting in part and concurring in part.

H. G. Homme, Jr.,
Secretary.

Commissioner Christian, dissenting in part and concurring in part:

I encourage and expect carriers to take full advantage of the opportunity offered by this decision. However, as indicated in my separate expression to the June 15, 1979, decision in this proceeding, I do not think it appropriate for the Commission to require carriers to compensate owner-operators for increased fuel costs in the absence of X-311 filings. Aside from this continued reservation, I agree with this decision.

¹ Although only one figure will be published in the future and deviations will not be set forth or updated, the 6.7 percent surcharge under our decision of June 15, may still be utilized. Surcharges, if any, in a greater amount must be obtained under other X-311 procedures.

² Other surcharges above the updated weekly figures, must be filed under the normal X-311 procedures in Special Permission No. 79-2620.

³ LTL carriers shall increase the compensation of their owner-operators by 6 percent of the revenue attributed to the operations which the owner-operator performs.

APPENDIX

Fuel Surcharge

Base Date and Price Per Gallon (Including Tax): January 1, 1979—63.6 cents.

Date of Current Price measurement and Price Per gallon (Including Tax): June 18, 1979—86.1 cents.

Average Percent: Fuel Expenses (Including Taxes) of Total Revenue.

(1) From transportation performed by owner operators. (Apply also to truckload traffic.)—16.9%. Percent surcharge—6.0%.

(2) Less than truckload traffic (provided by other than owner operators)—7.5%. Percent surcharge—2.7%.

[FR Doc. 79-19733 Filed 6-25-79; 8:45 am]

BILLING CODE 7035-01-M

Sunshine Act Meetings

Federal Register

Vol. 44, No. 124

Tuesday, June 26, 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

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-1240-79 (44 FR 36582).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. to Noon and 2 p.m. to Adjustment, Tuesday, June 26, 1979.

CHANGE IN THE MEETING: Correction of title of matter to be considered in part open to the public:

1. Proposed contracts for computer analyses and expert witness services in connection with pending court cases.

CONTACT PERSON FOR MORE

INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748

[S-1264-79 Filed 6-22-79; 11:38 am]

BILLING CODE 6570-06-M

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Thursday, June 21, 1979.

PLACE: Room 856, 1919 M Street., N.W., Washington, D.C.

STATUS: Additional item to be considered at Open Commission Meeting.

MATTER TO BE CONSIDERED:

Agenda, Item No., and Subject

Aural—2—Requests by the Trustees of the University of Pennsylvania, former licensee of WXPB(FM), Philadelphia, Pennsylvania, for waiver of Section 1.519 of the Rules to permit the acceptance of their application

for construction permit to replace WXPB; for authority to operate the station on an interim basis; and for extension of operating authority.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: June 21, 1979.

[S-1267-79 Filed 6-22-79; 3:54 pm]

BILLING CODE: 6712-01-M

3

FEDERAL MARITIME COMMISSION.

TIME AND DATE: June 22, 1979, 11 a.m.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: CLOSED.

MATTER TO BE CONSIDERED: Legislative Proposals.

CONTACT PERSON FOR MORE

INFORMATION: Francis C. Hurney, Secretary, (202) 523-5725.

[S-1263-79 Filed 6-22-79; 10:02 am]

BILLING CODE 6730-01-M

4

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, July 3, 1979.

PLACE: Room 117, 701 E Street N.W., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints, if necessary: a. Coat hangers (Docket No. 581).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE

INFORMATION: Kenneth R. Mason, Secretary, (202) 523-0161.

[S-1261-79 Filed 6-22-79; 10:02 am]

BILLING CODE 7020-02-M

5

NATIONAL TRANSPORTATION SAFETY BOARD.

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: 44 FR 36336, June 21, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: Thursday, June 28, 1979, 9 a.m. [NM-79-20].

CHANGE IN MEETING: A majority of the Board has determined by recorded vote that the business of the Board requires revising the agenda of this meeting and that no earlier announcement was possible. The agenda as now revised is set forth below.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Aircraft Accident Report*.—Antilles Air Boats, Inc., Grumman G21A, N7777V, St. Thomas, V.I., on September 2, 1978.

2. *Recommendation*.—To the Federal Aviation Administration re Antilles Air Boats accident of September 2, 1978.

3. *Special Study*.—Noncompliance with Hazardous Materials Regulations.

4. *Letter*.—To the Federal Aviation Administration re Dkt. 17320, petition for rulemaking by the National Federation for the Blind.

CONTACT PERSON FOR MORE

INFORMATION: Sharon Flemming, 202-472-6022.

June 22, 1979.

[S-1266-79 Filed 6-22-79; 3:54 pm]

BILLING CODE 4910-58-M

6

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: June 21, 26 and 28, 1979.

PLACE: Commissioners' Conference Room, 1717 H St., N.W., Washington, D.C.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Thursday, June 21, 11:30 a.m.

The meeting titled Briefing on Reactor Licensing Schedules was Postponed.

Tuesday, June 26, 10 a.m.

Briefing on Rancho Seco (Approximately 1 hour—Public meeting).

Thursday, June 28, 9:30 a.m.

1. Briefing on Seismic Design Criteria of Operating Reactors (Approximately 1 hour—Public meeting).

2. Briefing on Emergency Planning (Approximately 1½ hours—Public meeting).

Thursday, June 28, 1:30 p.m.

1. Meeting on Defense and Space Program Review Scope Matters (Approximately 2 hours—Closed—Exemption 1).

2. Discussion of Personnel Matter (Approximately 1½ hours—Closed—Exemption 6).

ADDITIONAL INFORMATION: The Commission voted 5-0 on June 21 that pursuant to 5 U.S.C. 552b(e)(1) and

§ 9.107(a) of the Commission's Rules, Commission business required that the Briefing on Feedwater Nozzle Cracks, held that day, be held on less than one week's notice to the public. Prompt discussion was required for this important item.

CONTACT PERSON FOR MORE INFORMATION: Roger Tweed, (202) 634-1410.

Roger M. Tweed,
Office of the Secretary.

[S-1285-79 Filed 6-22-79; 3:54 pm]
BILLING CODE 7590-01-M

7

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on July 2, 1979.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Mrs. Patricia Bausell, (202) 634-4015.

Dated: June 20, 1979.
[S-1258-79 Filed 6-22-79; 10:02 am]
BILLING CODE 7600-01-M

8

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on July 12, 1979.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634-4015.

Dated: June 20, 1979.
[S-1259-79 Filed 6-22-79; 10:02 am]
BILLING CODE 7600-01-M

9

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.

TIME AND DATE: 1 p.m. on July 19, 1979.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION: Ms. Patricia Bausell, (202) 634-4015.

Dated: June 20, 1979.
[S-1280-79 Filed 6-22-79; 10:02 am]
BILLING CODE 7600-01-M

10

TENNESSEE VALLEY AUTHORITY.

TIME AND DATE: 9:30 a.m., Thursday, June 28, 1979.

PLACE: Conference Room B-32, West Tower, 400 Commerce Avenue, Knoxville, Tennessee.

STATUS: Open.

MATTERS FOR ACTION:

Old Business

1. Reg. No. 108204—Construction of a 24.4-mile section of the West Point-Miller 500-kV Transmission Line.

New Business

Personnel actions

1. Change of status for LeRoy Rogers from Program Analyst to Acting Chief, Planning & Policy Analysis Staff, Office of the General Manager, Knoxville, Tennessee.¹

2. Change of status for David T. Shereda, Chief, Budget Staff, Office of the General Manager, Knoxville, Tennessee.¹

3. Change of status for Minard I. Foster from Director, Division of Economic Development, Office of Community Development, to Economist, Office of the General Manager, Knoxville, Tennessee.¹

4. Change of status for William L. Osteen, Jr., from Assistant General Counsel to Associate General Counsel (General), Office of the General Counsel, Knoxville, Tennessee.¹

5. Change of status for David C. Powell from Executive Assistant to the General Manager to Associate General Counsel (Nuclear Regulatory and Energy R&D), Office of the General Counsel, Knoxville, Tennessee.¹

6. Recommendations on rates of pay and certain monetary fringe benefits for Salary Policy Employees in represented positions resulting from Twenty-Eighth Annual Salary Negotiations—1979.¹

7. Proposed salary adjustments for certain Management Schedule Employees and other Nonsalary Policy Employees; and proposed Merit Pay Plan for Management Schedule Employees.¹

Purchase awards

1. Reg. No. 119957—15-kV capacitor assemblies for Section, Alabama, Substation, 46-kV.

2. Reg. No. 274572—Steel pipe for John Sevier Steam Plant.

¹These items were approved by Individual Board members. This would give formal ratification to the Board's action.

3. Amendment to Indefinite Quantity Term Contract No. 78T3-540503 with NVIP, Trevase, Pennsylvania, for computer and related services.

Project authorizations

1. No. 3247.2—Amendment to Widows Creek Unit 8 Wet Limestone Scrubber Research Project—Sludge Treatment Demonstration and Evaluation (in collaboration with the U.S. Environmental Protection Agency).

2. No. 3407.1—Amendment to Acceleration of Commercial and Industrial Energy Conservation Project.

Power items

1. Memorandum of Understanding with Department of the Army covering arrangements for TVA to make transmission line modifications for the Tennessee-Tombigbee Waterway Project near Amory, Mississippi.

2. Letter Agreement with East Kentucky Power Cooperative covering establishment of a new 161-kV interconnection.

3. Lease and Amendment Agreement with the city of Albertville, Alabama, covering lease of TVA's Albertville District Substation and section of TVA's Albertville District-Alder Springs Tap 46-kV Line; and Bill of Sale and Quitclaim Deed covering conveyance of additional section of TVA's Albertville District-Alder Springs Tap 46-kV Line.

4. Standard form agreements between TVA and participating customers to be used in implementing the accelerated Commercial and Industrial Energy Conservation Program.

Real property transactions

1. Grant of permanent easement to the State of Tennessee for development of Mousetail Landing State Rustic Park affecting 1,196.7 acres of Kentucky Reservoir land—Tract XTGIR-115RE.

2. Grant of permanent easement to the town of Kimball, Tennessee, for a sewerline affecting approximately 0.97 acre of Guntersville Reservoir land—TRACT XTGR-1318.

3. Filing of condemnation of suits.

Unclassified

1. Proposal for purchase or lease of airplane.

Dated: June 21, 1979.

CONTACT PERSON FOR MORE

INFORMATION: James L. Bentley, Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-3257, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 566-1401.

Federal Register

Tuesday
June 26, 1979

Part II

Department of Health, Education, and Welfare

Food and Drug Administration

Prescription Drug Advertising; Content
and Format for Labeling of Human
Prescription Drugs

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Parts 201 and 202

[Docket No. 75N-0066]

Labeling and Prescription Drug Advertising; Content and Format for Labeling for Human Prescription Drugs

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This rule designates a required format for the physician labeling of prescription drugs for human use and provides standards for the kind of information that must appear in each section of the required format. The Food and Drug Administration (FDA) is taking this action to improve prescription drug labeling by establishing standards that will bring all prescription drug labeling up to the level of the better labeling currently available.

DATES: Effective December 26, 1979, except that § 201.100(e) will not be effective until printing plates are revised in the normal course of business or until June 26, 1980, whichever occurs first.

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

SUPPLEMENTARY INFORMATION: In the Federal Register of April 7, 1975 (40 FR 15392), the Commissioner of Food and Drugs proposed to revise the format for prescription drug labeling by revoking what was then § 3.74 (21 CFR 3.74) and establishing the new labeling format in new § 1.112 (21 CFR 1.112). The Commissioner also proposed amendments to § 1.105 (21 CFR 1.105), relating to prescription drug advertisements, and § 1.106(b) (21 CFR 1.106(b)), relating to an exemption from adequate directions for use for prescription drugs for human use, to conform those sections to the revised format for prescription drug labeling. After the proposal was signed, but before it was published, §§ 1.105, 1.106(b), and 3.74 were recodified in the Federal Register of March 27, 1975 (40 FR 13996) as §§ 202.1, 201.100, and 201.56 (21 CFR 202.1, 201.100, and 201.56), respectively. Because of the 1975 recodification and to make the regulations easier to read, proposed § 1.112(a), (b), and (d) is being finalized

as a revision of § 201.56, proposed § 1.112 (c) and (e) is being finalized as new § 201.57 (21 CFR 201.57), and proposed § 1.112(f) is being finalized as new § 201.58 (21 CFR 201.58). The recodified section numbers are used throughout this preamble and in the final regulation.

Before publishing the proposal, FDA circulated a draft of it to pharmaceutical associations and to a wide segment of the medical community through a number of medical associations and interested individual physicians. A copy of the draft was placed on public display in the office of the Hearing Clerk, FDA, and notice of its availability was published in the Federal Register of March 7, 1974 (39 FR 8946). The draft was sent to all who requested it.

Fifty-nine comments on the draft were received from physicians, professional societies, drug manufacturers, trade associations, and individual consumers. Those comments were reviewed and a number of the suggested changes were included in the April 7, 1975 proposal. Others were addressed in the preamble to the proposal. At that time, the Commissioner advised that comments not addressed in the preamble to the proposal and those not addressed satisfactorily, as indicated by subsequent comments, would be answered in the final regulation.

Interested persons were given 60 days to comment on the proposal, but, in the Federal Register of June 11, 1975 (40 FR 24909), the Commissioner extended the time for submitting comments to August 6, 1975. Ninety-seven comments on the proposal were received from physicians, professional societies, drug manufacturers, trade associations, individual consumers, and consumer organizations, as well as individuals and organizations who had commented on the draft.

A summary of the comments on the draft that were not previously or satisfactorily addressed, comments on the April 7, 1975 proposal, and the Commissioner's conclusions are as follows.

General Comments

1. Two comments suggested that the name and place of business of the manufacturer of a drug product, if other than the packer or distributor, be required to appear on the labeling for the product.

The Commissioner notes that he has recently proposed regulations addressing this specific issue (see the Federal Register of October 3, 1978 (43 FR 45614)). In view of that proposal, the Commissioner believes that it would be

improper to adopt in this order, as a final regulation and without the opportunity for public comment, a requirement that the name and place of business of the manufacturer (in addition to that of the packer or distributor) appear on all labeling other than the actual label of the drug.

2. One comment requested that, because of the increasing importance of such information, the format for prescription drug labeling include a section on the bioavailability and/or the bioequivalence of drug products.

The Commissioner does not agree with this comment. In the Federal Register of January 7, 1977 (42 FR 1624), regulations were established in Part 320 (21 CFR Part 320) providing procedures for determining the in vivo bioavailability of drug products and for establishing bioequivalence requirements for drug products. Although the evaluation of bioavailability and bioequivalence data, as provided by those regulations, is necessary to establish the proper dosage and administration schedule for a drug product, as well as to evaluate warnings, precautions, and other labeling statements, it would be redundant to include a separate section in prescription drug labeling to present such data when they are already reflected in the other sections of the labeling. Accordingly, the section has not been added to the labeling format.

3. Two comments suggested that prescription drug labeling include a discussion of the stability of the drug formulation in relation to length of time and varying conditions of storage and that drugs be required to bear expiration dates.

The Commissioner does not agree with the first of these comments and finds that the second has now been fulfilled. The final regulation relating to current good manufacturing practices in the manufacture, processing, packing, or holding of drugs, published in the Federal Register of September 29, 1978 (43 FR 45014) requires that the labels and certain labeling of most drug products bear an expiration date determined by appropriate stability tests and related to any stated storage conditions as determined by such tests. In addition, § 201.57(k)(4) under this final rule requires information on special handling and storage conditions, e.g., "Keep in a cold place, avoid freezing," to be included in the "How Supplied" section of prescription drug labeling. The Commissioner concludes that a discussion of stability data for a drug in relation to varying storage conditions should not be included in prescription

drug labeling so long as the drug's labeling bears information on special handling and storage conditions and an expiration date based upon such information. Physicians can contact the manufacturer if they desire information about the stability of a particular drug under abnormal conditions or if they or their patients are unable to comply with any special storage conditions. Accordingly, no change in the final rule is warranted by these comments.

4. Two comments suggested that FDA draft a guideline copy of labeling, with the exception of description, how supplied, and date, for each drug, as has been done for drugs subject to abbreviated new drug applications (ANDA's), and provide updated versions to manufacturers or publish them in the Federal Register.

The Commissioner rejects this suggestion. Although FDA currently prepares required labeling statements for certain drugs, e.g., certain drugs subject to Drug Efficacy Study Implementation (DESI) notices and ANDA's, and reviews labeling for new drugs before approval of a new drug application (NDA), the agency does not have the resources necessary to undertake the task of drafting guideline labeling for all drugs. The Commissioner advises that FDA is initiating a long-range program that will develop class labeling for certain drugs (see paragraph 107 of this preamble). Manufacturers should consult with FDA to ascertain whether the agency has access to data or information that might require the updating of the labeling of specific drugs.

5. One comment recommended that a request for a waiver under § 201.57(b)(2)(ii), (c)(2), (c)(3)(i) and (v), (f)(9), or (g)(4) and § 201.58 that a labeling statement be based on substantial evidence be considered to be granted unless the applicant receives a denial from the FDA within 90 days of the request.

The Commissioner does not accept this recommendation. Labeling statements about the effectiveness of a drug for an indication for use under § 201.57(c)(2), (c)(3)(i), and (f)(9) are required to be supported by substantial evidence derived from adequate and well-controlled studies. Comparative statements in labeling about the safety or effectiveness of a drug under § 201.57(b)(2)(ii), (c)(3)(v), and (g)(4) are also required to be supported by adequate and well-controlled studies. Substantial evidence of effectiveness is defined in section 505(d) of the act to consist of adequate and well-controlled studies that are further defined by FDA

in § 314.111(a)(5)(ii) (21 CFR 314.111(a)(5)(ii)). It is FDA's position that labeling statements about effectiveness that are not supported by substantial evidence derived from adequate and well-controlled studies are false and misleading in violation of section 502(a) of the act. In addition, comparative statements of safety or effectiveness of a drug are false and misleading unless they are adequately substantiated and, in general, adequate and well-controlled studies are required to provide that substantiation. Because contemporary standards for these labeling statements require that they be based upon adequate and well-controlled studies, requests for waivers from those requirements should only be granted if it can be shown that adequate and well-controlled studies are clearly unnecessary and that alternative procedures have been followed that provide an acceptable basis for the labeling statements. Accordingly, before granting a request for a waiver under § 201.58, the agency must consider carefully both whether a proposed labeling statement can be based upon an alternative procedure to an adequate and well-controlled study and whether the alternative procedure selected is acceptable and, thus, it would be inappropriate to set an arbitrary time limit within which such a request must be denied or automatically granted. Every request for a waiver, however, will be reviewed and ruled upon as soon as possible.

6. Several comments reiterated the objections made to the draft of the proposal concerning the legal status of prescription drug labeling. The comments contended that the required format for prescription drug labeling will be accepted in malpractice litigation and will result in "drug of choice" claims in labeling with the potential to force physicians to modify prescribing habits to match statements in the labeling. These comments suggested that requiring indications for use to be based upon adequate scientific evidence of safety and substantial evidence of effectiveness would result in prescription drug labeling reflecting less than current medical and scientific knowledge. Such labeling would force physicians to choose between providing modern, up-to-date medical care with the concomitant risk of malpractice charges and litigation, or providing conservative, and possibly outmoded, medical care.

Some of the comments suggested that the Commissioner require that prescription drug labeling explain the legal status of the labeling and point out

that FDA recognizes that such labeling does not always contain the most current information available to physicians about the proper use of a drug and that good medical practice requires that physicians be free to use drugs according to their best knowledge and judgment. Some comments suggested wording for the statement, much of which was taken from the Commissioner's analysis of this subject in the preamble to the proposal. One comment suggested that the statement not be made because it would encourage physicians to misuse drugs.

The Commissioner addressed the legal status of prescription drug labeling in paragraph 1 of the preamble to the April 7, 1975 proposal and now reaffirms that discussion. The Commissioner recognizes that drug labeling does not always contain the most current information and opinion available to physicians about a drug because advances in medical knowledge and practice inevitably precede formal submission of proposed new labeling by the manufacturer and approval by FDA. Good medical practice and patient welfare require that physicians remain free to use drugs according to their best knowledge and judgment, and the liability of a physician in his or her use of a drug depends upon all of the facts surrounding that use, not merely upon whether that use is approved in the labeling of the drug. Nevertheless, exposition of these principles in the labeling of each drug will in no way affect physician liability for malpractice, but might tend to depreciate the cautions and warnings set forth in the labeling.

As explained more fully elsewhere in this preamble, prescription drug labeling is intended to provide physicians with a clear and concise statement of the data and information necessary for the safe and effective use of the drug. That prescription drug labeling may be used as evidence in malpractice litigation is an unintended byproduct of FDA's regulatory activities.

The Commissioner concludes that it would be inappropriate to require statements in drug labeling that do not contribute to the safe and effective use of the drug, but instead are intended solely to influence civil litigation in which the agency has no part. Thus, the Commissioner does not agree that prescription drug labeling should contain a statement concerning the legal status of labeling.

7. A comment argued that these regulations are an invalid invasion of the field of medicine by the Federal government and unconstitutionally

interfere in the practice of medicine by physicians. The comment cited several Federal and State court decisions in support of its argument that the Federal government can neither unduly infringe on a physician's right to practice medicine nor regulate the practice of medicine within the States.

The Commissioner disagrees with this comment. The Commissioner finds that the court cases cited by the comment are not in point and concludes that this comment evidences a misunderstanding of the purpose of prescription drug labeling. As stated in paragraph 6 above, a physician may deviate from recommendations or suggestions made in prescription drug labeling according to his or her best knowledge and judgment. Accordingly, the Commissioner concludes that these regulations specifying the content and format of prescription drug labeling do not infringe on a physician's right to practice medicine, nor do they attempt to regulate the practice of medicine.

8. A comment objected to the proposal on the ground that requiring labeling to contain affirmative and negative statements on selection and monitoring of patients, recommendations on duration of treatment, and inhibitions on use in pregnant and pediatric patients will force the manufacturer to make medical judgments that, for its own protection, will be conservative. The comment further contended that the regulations inhibit the transmittal to the physician of information about effectiveness of the drug, while requiring the labeling to include information based on clinical experience indicating potential hazards, without proof of a causal relationship. Another comment stated that this proposal, in conjunction with the revision of § 1.3 (21 CFR 1.3) (recodified in the Federal Register of March 22, 1977 (42 FR 15553) as § 1.21 (21 CFR 1.21)) relating to the failure to reveal material facts in labeling, places a heavy obligation on the average physician to evaluate the potential seriousness of warnings and other similar information in drug labeling.

The Commissioner disagrees with these comments. Section 502(f)(1) of the act requires that a drug's labeling bear adequate directions for use. For a prescription drug to be exempt from section 502(f)(1) of the act, § 201.100(d) (21 CFR 201.100(d)) requires that the labeling for the drug contain adequate information for the drug's safe and effective use. In addition, labeling of a drug may be misleading under § 1.21(a) if it fails to reveal facts that are material in light of other representations made or suggested by statement, word, design,

device, or any combination thereof, or material with respect to consequences that may result from use of the drug under the conditions prescribed in the labeling or the conditions of use that are customary or usual. Accordingly, when a manufacturer prescribes, recommends, or suggests an intended use for a drug in its labeling, the labeling must also include any necessary statements on selection or monitoring of patients, duration of treatment, and other subjects, or risk misbranding the drug product under section 502 of the act. Although the Commissioner recognizes that the manufacturer may make conservative medical judgments in preparing labeling for its drugs to protect itself from civil liability, the Commissioner believes that that is the not unexpected outcome of our drug labeling laws and civil liability system.

The Commissioner believes that these comments relating to the responsibilities of physicians for prescribing drugs fail to recognize the statutory constraints on prescription drug labeling under the act. The law permits labeling statements about effectiveness only if they are supported by "substantial evidence," which is defined in section 505(d) of the act (21 U.S.C. 355(d)) as "adequate and well-controlled investigations, including clinical investigations * * *." In addition, the statute requires that a warning be placed on drug labeling whenever reasonable evidence indicates an association between a drug and a serious hazard. A causal relationship need not have been proved. This statutory scheme for drug labeling is intended to provide physicians, in straightforward and concise terms, with the information they need to prescribe a drug under conditions that maximize the drug's effectiveness and minimize its risks. Physicians are always in a position to pursue additional information through normal educational sources, such as treatises and medical journals. The Commissioner agrees that heavy obligations are placed on physicians when they prescribe drugs for patients, but concludes that those obligations are neither imposed under, nor can they be relieved by, the act or FDA regulations.

9. One comment suggested adding a statement to the labeling format advising physicians that the benefit-to-risk considerations in the use of a drug should be discussed with the patient.

Although benefit-to-risk considerations in the use of a drug are clearly appropriate matters to be discussed with patients, the Commissioner does not agree that general statements on good professional

practice are appropriate for drug labeling. There are potentially many such statements, which, if all were included in drug labeling, would transform labeling into small textbooks of medicine. As a general policy, therefore, these regulations will not require such statements to be included in labeling. Whenever the safe and effective use of a drug requires a benefit-to-risk decision by the patient, however, the Commissioner believes the issue can be best addressed in labeling directed to the patient. Such information, for example, is currently required to be provided to users of oral contraceptives under § 310.501 (21 CFR 310.501) and to users of estrogens under § 310.515 (21 CFR 310.515). As described in paragraph 21 of this preamble, FDA has initiated a prescription drug labeling project to consider the appropriateness of patient labeling for other drugs.

10. One comment suggested that labeling be required to be updated at specific time intervals, e.g., every 3 years, following a thorough review directed at the emergence of new or additional information during that time.

The Commissioner does not agree with this comment. Under section 502(a) of the act, a drug is misbranded if its labeling is false or misleading. Under § 1.21 of the regulations, the labeling of a drug is misleading if it fails to reveal material facts. Accordingly, emergence of new or additional information that causes the labeling of the drug to be false or misleading in any particular necessitates that the labeling be updated to reflect such information to prevent the drug from being misbranded under the act.

In addition, the Commissioner advises that FDA does not possess the resources necessary to conduct a periodic review of all prescription drug labeling every 3 years to ensure that it has been properly updated. However, the agency supports the idea of periodic reassessment of the labeling and benefit-to-risk status of marketed drugs and will attempt such reassessments within the limits of available resources.

11. A comment suggested the addition of a sentence to the labeling format acknowledging that pharmacists and other health care professionals need and use the information provided in prescription drug labeling.

The Commissioner realizes that the information provided in prescription drug labeling is needed and used by health care professionals other than physicians, but concludes that a statement to that effect would be extraneous to the purpose of prescription drug labeling. Accordingly,

the suggested statement is not required under the final regulation.

12. A comment contended that the attempt to regulate advertising and inform physicians through labeling in the same required format is not realistic.

The Commissioner advises that the required format for prescription drug labeling is intended to provide the essential information the practitioner needs to use a drug safely and effectively in the care of patients. Prescription drug advertisements are required, under § 202.1(e), to present a true statement of information in brief summary relating to side effects, contraindications, and effectiveness of the drug. Accordingly, the Commissioner believes that it is not inappropriate for prescription drug labeling and advertisements to present clear and specific information in a uniform format.

13. A comment contended that FDA was currently the sole arbiter of the information provided to the physician in prescription drug labeling and recommended that FDA provide for independent review of labeling by selected panels of practicing physicians. Another comment contended that the labeling for a particular drug is the result of a compromise between the manufacturer and FDA in which the practicing physician is denied the opportunity to participate. That comment further contended that such a compromise acts to insulate the manufacturer from liability by shifting the burden to the physician.

The Commissioner disagrees with these comments. There is substantial input into prescription drug labeling by practicing physicians. During the development of drugs, clinicians serve as investigators and advise the sponsor on their experiences relating to both the safety and the effectiveness of the drug. Practicing physicians also act as members of FDA advisory committees and evaluate the proposed labeling or revisions in labeling for many prescription drugs. Special panels of physicians are also involved in the development of class labeling for certain drugs under FDA's contract with the American Society of Hospital Pharmacists (discussed in paragraph 107 of this preamble).

The Commissioner acknowledges that the final labeling for a drug is often the result of interactions between FDA and the manufacturer when a manufacturer seeks approval for a prescription drug. The purpose of these consultations, however, is to fulfill the agency's mandate that the labeling bear adequate information under which practitioners may use the drug safely and for the

particular indications or conditions for which the drug is advertised or represented. It is not the intent of FDA to influence the civil tort liability of the manufacturer or of the physician. Rather, it is the agency's intent to ensure that a complete and accurate explanation of the drug is provided to the medical community.

14. A comment suggested that the labeling format as proposed would result in labeling too lengthy to receive the consideration it deserves. The comment recommended that statements concerning unknown properties of unavailable data, e.g., "It is not known whether use of this drug during labor and delivery has * * *." "It is not known whether this drug is excreted in human milk," be eliminated on the ground that physicians should understand that the absence of positive statements in the labeling indicates the absence or inadequacy of data on the particular subject.

The Commissioner does not agree that most physicians would consider the absence of a positive statement in drug labeling concerning a property of the drug to mean that data on the particular subject are unavailable or inadequate. The labeling format for prescription drugs is intended to provide a uniform standard for the kinds of data and information necessary to enable physicians to use drugs safely and effectively. Accordingly, the Commissioner has provided specific wording for statements in the absence of particular data or information.

15. A comment suggested that the regulations be revised to provide for two official kinds of labeling for each drug, one containing only the prescribing information, but on standard letter-size paper and in larger and more legible type, and the other containing the description of approved indications and those precautions requiring special attention in all promotional materials.

The Commissioner does not agree that the regulations should require multiple labeling. Labeling is intended to provide information, in a single concise and clear format, adequate to enable practitioners to use a drug safely and effectively for its intended purposes. A separation of the information currently required for prescription drug labeling would provide no advantage over the current format for such information and would, in fact, defeat the intended purpose of prescription drug labeling.

The Commissioner advises, however, that FDA supports the use of larger and more legible type in drug labeling, and a minimum type size for labeling is under consideration by the agency. In addition,

the printing of labeling on standard letter-size paper for insertion in a regular notebook might be a worthwhile exercise for pharmaceutical manufacturers, but such labeling would not obviate the requirements under § 201.100(c) regarding inserts in each drug package.

16. A comment urged the adoption of a looseleaf compendium of FDA approved labeling to supplant the package insert.

The Commissioner encourages private individuals or associations to develop a compendium of FDA approved labeling. This revision of the prescription drug labeling regulations is intended, in part, to improve prescription drug labeling to the point where a compendium can be developed. The Commissioner believes it is premature, however, to consider the possibility of a compendium supplanting package inserts, until the compendium system is operational.

17. One comment stated that section 502(n) of the act requires prescription drug advertising regulations to be issued in accordance with the hearing procedures under section 701(e) of the act (21 U.S.C. 371(e)).

The Commissioner agrees with this comment. Section 502(n) of the act, relating to prescription drug advertising, requires that regulations under that section be issued in accordance with the procedure specified in section 701(e) of the act. However, the Commissioner advises that section 502(n) of the act applies only to prescription drug advertising and not to labeling. Accordingly, the amendment of § 202.1(e)(6)(ii) and (vii) of FDA's prescription drug advertising regulations is subject to the procedures specified in section 701(e) of the act, and any person who will be adversely affected by this final regulation only insofar as it amends § 202.1(e)(6)(ii) and (vii) may file objections with the Commissioner. Objections must specify the provisions of the final regulation that are objectionable, state the grounds for the objections, and request a public hearing on the objections. Objections must be filed on or before July 26, 1979. The filing of objections would operate to stay the effectiveness of only those provisions of this final rule to which objections are made. The provisions would be stayed until final action upon the objections is taken by the Commissioner under section 701(e)(3) of the act.

The Commissioner advises that the hearing procedures specified in section 701(e) of the act do not apply to the amendment of § 201.100(d)(3) and (e), the revision of § 201.56, or new §§ 201.57 and 201.58, because those regulations relate to prescription drug labeling

rather than advertising and they are not issued under section 502(n) of the act. Accordingly, objections and a request for hearing upon objections cannot be filed to those regulations under section 701(e) of the act.

18. A comment contended that the requirement for full disclosure labeling for prescription drugs under § 201.100 is based on a legal fiction that is no longer necessary. The comment observed that a drug is misbranded under section 502(f) of the act unless its labeling bears adequate directions for use, but FDA can exempt drugs from that requirement when it is not necessary for the protection of the public health. Section 201.100 exempts prescription drugs from the requirement that they bear adequate directions for use, but the conditions of the exemption require that prescription drug labeling contain directions for physician use of the drug. The comment contended that this regulatory maze for requiring directions for use for prescription drugs is confusing and suggested the proposal be republished as a new section concerning adequate directions for physician use of prescription drugs under section 502(f) of the act.

The Commissioner advises that the phrase "adequate directions for use" in section 502(f)(1) of the act has been defined in § 201.5 (21 CFR 201.5) to mean directions under which a layman can use a drug safely and for the purposes for which it is intended. The interpretation of the phrase "adequate directions for use" in § 201.5 is founded upon the legislative history of section 502(f)(1) of the act. Whether that interpretation is still useful may be appropriate for legislative consideration, but to repropose these labeling regulations would delay their implementation without any substantive change in their content or applicability. Thus, the Commissioner rejects the suggestion.

19. A comment suggested that articles in newspapers and lay periodicals about specific drugs should be more closely regulated.

The Commissioner disagrees with this comment. The Federal Trade Commission Act (15 U.S.C. 41 et seq.) empowers the Federal Trade Commission (FTC), among other things, to regulate unfair and deceptive drug advertising. The Commissioner of Food and Drugs has authority, to the exclusion of the FTC, under section 502(n) of the Federal Food, Drug, and Cosmetic Act, to regulate prescription drug advertising in certain respects. The Commissioner also has authority under section 502 (a) and (f) of the act to

regulate drug labeling. Articles in newspapers and lay periodicals that are supported or influenced by pharmaceutical manufacturers and, therefore, constitute labeling or advertising for a drug are subject to close scrutiny by both FDA and FTC. Printed matter issued or caused to be issued by the manufacturer or distributor of a drug may not be false or misleading. The Commissioner concludes, however, that FDA does not have authority to regulate articles about specific drugs in newspapers and lay periodicals, other than those that constitute labeling or advertisements, and that any attempt to regulate such articles would raise substantial constitutional questions.

20. One comment contended that these regulations should not be finalized until the proposals on bioavailability, bioequivalence, good manufacturing practices, and other related matters are published and an opportunity for comment is provided. Another comment requested clarification of whether an opportunity for comment will be afforded interested parties on Federal Register notices published under the proposed implementation schedule of these labeling regulations. One comment also requested clarification as to whether revision of labeling in advance of a particular effective date would be permitted.

The Commissioner does not find a sufficiently close relationship between these regulations, relating to prescription drug labeling and advertising, and the proposals mentioned in the comment to justify a delay in implementing these regulations. In any event, final good manufacturing practice regulations were published in the Federal Register of September 29, 1978 (43 FR 45014), and final bioavailability and bioequivalence regulations were published in the Federal Register of January 7, 1977 (42 FR 1624).

The Commissioner advises that an opportunity for comment will not be provided in the Federal Register notices published under the implementation schedule of these labeling regulations. The notices, however, will provide an opportunity for persons to request a change in the effective date of the regulations for a specific drug product. Revision of labeling in advance of a particular effective date will be permitted for prescription drugs, except biologics or drugs subject to sections 505 or 507 of the act (21 U.S.C. 355, 357). The revision of prescription drug labeling for biologics and drugs subject to sections 505 and 507 of the act as a result of this

final regulation will require the review and approval of a large number of labeling submissions by FDA. The Commissioner will publish notices in the Federal Register establishing a schedule for the revision of labeling for those drugs. To permit revision of labeling in advance of a particular effective date for those drugs could pose serious problems for FDA's small review staff. Therefore, revised labeling in the format and containing the information specified in these final regulations may not be submitted to FDA in advance of the scheduled revision date for the particular drug without specific permission from the agency. Earlier revisions will be permitted under special circumstances, e.g., if labeling is being revised to add a new indication for a drug before the scheduled revision date of the drug's labeling. Labeling revisions that may be placed into effect without FDA approval, such as the addition of a warning under § 314.8(d) (21 CFR 314.8(d)), would neither require nor permit the revision of the labeling to comply with these final regulations in advance of the scheduled revision date for the drug.

21. A comment objected to the proposal on the ground that it would increase the costs of prescription drugs to consumers because of the expenses incurred by manufacturers in rewriting prescription drug labeling. Several consumers supported the proposal in the mistaken belief that it was a format for patient labeling for prescription drugs, and they requested informative labeling in lay language on drug actions, dosages, schedules and procedures for administration, adverse reactions, contraindications, and precautions.

As the Commissioner stated in the preamble to the proposal, the principles enunciated in these regulations are based upon past experience and precedent. The purpose of these labeling regulations is not to establish new regulatory requirements, but to provide standards so that all prescription drug labeling can be brought up to the level of the best labeling written in the past. The Commissioner concludes that any increase in costs to consumers for prescription drugs because of expenses incurred by manufacturers in rewriting prescription drug labeling will be minimal because these regulations provide a prolonged implementation schedule for making changes in labeling and do not ordinarily require recalls of old labeling.

The Commissioner advises that the prescription drug labeling to which these regulations apply is directed to health care professionals and not to the

ultimate consumer of the drugs. The Commissioner also advises, however, that patient labeling for prescription drugs is under consideration by the agency. FDA has initiated a prescription drug labeling project, which has been evaluating the usefulness of patient labeling for certain drugs and how the necessary information can best be presented to patients. In the *Federal Register* of November 7, 1975 (40 FR 52075), the Commissioner gave notice of availability of a petition requesting the FDA to require written warning information on labels of certain classes of drugs and invited interested persons to submit comments. In a notice published in the *Federal Register* of December 11, 1975 (40 FR 57705), the time for submitting comments was extended to March 3, 1976. Over 1,000 comments were received and have been reviewed by the agency. The Commissioner expects to publish a notice of proposed rulemaking on this subject in the future.

22. A comment suggested the addition of a statement in the "Precaution" or "Warning" section of the labeling format that all parenteral drugs should be inspected visually for particulate matter or discoloration, or both, before administration, whenever the solution and container permit.

The Commissioner agrees with this comment and, accordingly, has added a requirement to the "Dosage and Administration" section (§ 201.57(j)) of the labeling regulations that parenteral drugs are required to include a statement that they should be visually inspected for particulate matter and discoloration before administration. The Commissioner concludes that the statement should be included with the dosage and administration information because such inspection should be made at the time the drug is administered.

23. A comment contended that reminder advertisements should be prohibited, because pure promotion without other information does not inform physicians about the proper uses and consequences of a drug. The comment also contended that information about serious hazards noted in animal tests should be required to appear with reminder advertisements as it would if such information appeared in the "Warnings" section of the labeling format, instead of in the "Animal Pharmacology" or "Pregnancy" section.

The Commissioner concludes that it would be inappropriate for this final regulation to address, without the opportunity for public comment, a total prohibition of reminder advertisements. The Commissioner advises, however,

that § 201.57(l) provides that significant animal data necessary for safe and effective use of a drug in humans is required to be included in the appropriate sections of the labeling other than the "Animal Pharmacology and/or Animal Toxicology" section. Accordingly, animal data that warrant such attention will be required in the "Warnings" section of the labeling and § 201.57(e) has been revised to so state.

24. One comment objected to the proposal on the ground that FDA currently has sufficient sanctions available to it to prevent misleading or unfair use of in vitro, animal, or comparative data in prescription drug advertising.

The Commissioner disagrees with this comment. The efficient enforcement of the act by FDA requires that the regulated industry be apprised of the criteria under which labeling will be in compliance with legal requirements. The purpose of these regulations is to provide a more concise statement of those criteria. Although FDA does have sanctions to prevent or correct misleading or unfair prescription drug advertisements, the efficient enforcement of the act requires the use of regulations to ensure compliance.

25. A comment suggested that FDA had not seriously reviewed the comments submitted on the March 1974 draft before publishing the proposal in April 1975.

The Commissioner advises that all comments on the March 1974 draft of these regulations were seriously reviewed before the publication of the proposal and many of the comments were either adopted or answered in that notice. Those comments to the draft that were not addressed in the proposal, or not satisfactorily addressed in it, as indicated by the subsequent comments on the proposal, are answered in this preamble. Nevertheless, the Commissioner advises that the failure to respond to a specific comment submitted in response to the March 1974 draft in no way affected the rights of persons to comment on the April 1975 proposal or the authority of the Commissioner to issue final regulations based on that proposal.

26. A comment suggested that prescription drug labeling include dispensing information for pharmacists, as a subsection in the "Precautions" section, and a checklist in the labeling for use by the prescriber and dispenser of the drug. The comment also recommended that indications appear first in the required format, that the drug name appear at the end of the labeling, and that the language in the labeling be

standardized in lay language, e.g., "headache" instead of "cephalgia" and "high blood pressure of unknown cause" instead of "essential hypertension."

The Commissioner concludes that the labeling format includes the information necessary for pharmacists in dispensing prescription drugs and that to add a particular subsection containing dispensing information would be redundant. The Commissioner also does not agree with the other suggestions made in this comment. A checklist, such as the one suggested, might distract the prescriber's or dispenser's attention from equally important information contained in the labeling but not in the checklist, thus giving the information in the checklist greater conspicuousness than it deserves. A change in the order of the labeling format, e.g., placing the "Indications" section first, would not provide any advantage over the proposed format, because any standardized format will permit quick access to particular information regardless of the placement of that information in the format. The Commissioner finds that standardization of prescription drug labeling in lay language is not warranted because the labeling for prescription drugs is directed to the health professional and not the layperson; therefore, the language used in labeling should be that most capable of informing the professional practitioner. In addition, as stated in paragraph 21 of this preamble, prescription drug labeling for patients is under consideration by the agency.

27. A comment suggested that the labeling format include a statement of whether the drug is required to be dispensed in a child-resistant container or whether the container in which the drug is marketed is child-resistant.

The Commissioner rejects this comment. Under section 4(b) of the Poison Prevention Packaging Act of 1970 (Pub. L. 91-601; 84 Stat. 1671 (15 U.S.C. 1473(b))) a prescription drug subject to the special packaging requirements of that act may be dispensed in noncomplying, i.e., non-child-resistant, packages, when the prescriber so directs in the prescription or when the purchaser so directs. Therefore, because any prescription drug may be dispensed in a non-child-resistant container, a change in the prescription drug labeling in this respect is not warranted.

28. Two comments suggested that the use of corn starch, lactose, corn sirup, color additives, and artificial sweeteners be required to be listed in the labeling because such ingredients

may be contraindicated for some persons.

The Commissioner concludes that it would be inappropriate at this time to require these ingredients to be listed in prescription drug labeling. Little or no data are available to demonstrate the relationship between many prescription drug ingredients and possible adverse reactions. As information becomes available to the Commissioner indicating a relationship between a particular inactive ingredient and a potential hazard to consumers, appropriate steps will be taken either to require labeling to contain information about the relationship or to prohibit the ingredient's use in prescription drugs.

29. A comment contended that the preamble to the proposal did not adequately clarify the effect of these regulations on the DESI labeling requirements in § 201.200 (21 CFR 201.200).

The Commissioner disagrees with this comment. As stated in paragraph 2 of the preamble to the April 7, 1975 proposal, these regulations are not incompatible with the requirement in § 201.200 that labeling of drugs reviewed in the Drug Efficacy Study and containing indications with less-than-effective ratings include an appropriate qualification. Under § 201.200(b)(1), the failure to disclose the boxed statement regarding the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group's conclusions concerning the effectiveness of the drug constitutes a failure to disclose a material fact within the meaning of section 201(n) of the act (21 U.S.C. 321(n)) and causes the drug to be misbranded.

30. A comment urged that all recent changes in labeling language be accented and recent additions to labeling be highlighted.

The Commissioner does not agree with this comment. Accenting or highlighting particular language in labeling would give greater conspicuousness to that language and might detract from other language of equal or greater importance, and thus mislead or confuse physicians. Accordingly, the Commissioner rejects this suggestion.

General Requirements on Content and Format of Labeling for Human Prescription Drugs

31. Several comments objected to the proposed requirement that labeling not be promotional in tone on the grounds that such a standard is too vague to be equitably enforced and that promotional labeling is not prohibited by the act.

One comment contended that, because the package insert is reproduced in promotional labeling, the purely promotional copy should not be restricted as § 201.56 requires.

The Commissioner concludes that these comments misinterpret the provisions of § 201.56. Section 201.56 applies to the portion of prescription drug labeling that furnishes or purports to furnish adequate information for the safe and effective use of a drug. Accordingly, § 201.56 does not prohibit, nor does it restrict, purely promotional copy in drug labeling. Instead, it requires that the portion of the labeling that provides information for use, or that prescribes, recommends, or suggests a dosage for the use of a drug, not be promotional in tone. The Commissioner concludes that this interpretation is inherent in § 201.56, as proposed, and therefore no change in that section is necessary. In addition, the prohibition against the use of labeling that provides adequate information for use of a drug and is promotional in tone is sufficiently definite to apprise prescription drug manufacturers and distributors of the kind of labeling statements that are prohibited.

32. A comment suggested that § 201.56(a) be revised to state that a summary of the essential scientific information on a drug is sufficient. Another comment suggested that § 201.56(c), regarding general criteria concerning the sources of data and information upon which labeling statements are based, be deleted on the ground that the requirements are already expressed in the act and the regulations and would, therefore, be redundant.

The Commissioner has revised § 201.56(a) to state that prescription drug labeling need contain only a summary of the essential scientific information required for the safe and effective use of the drug. The Commissioner does not agree, however, that § 201.56(c) is superfluous. The comment did not cite any specific sections of the act or the regulations that result in § 201.56(c) being unnecessarily repetitious. Although the act and the regulations clearly restrict the use of statements in labeling such as those prohibited by § 201.56(c), that paragraph appropriately restates such restrictions in conjunction with the prescription drug labeling format in §§ 201.56(d) and 201.57. Accordingly, the Commissioner rejects the suggestion that § 201.56(c) is redundant.

33. A comment suggested that the "Product Title" section precede the "Description" section and that the

information in § 201.57(a)(1)(i) through (iv) should not be repeated in the "Description" section if that information is stated in the title.

The Commissioner agrees that a "Product Title" section may precede the "Description" section of the labeling if it otherwise complies with the act and the other labeling regulations, and has revised § 201.56(d) accordingly. The "Product Title" section of prescription drug labeling may contain the following: the proprietary name and the established name of the drug; the type of dosage form and/or the route of administration to which the labeling applies; the same qualitative and/or quantitative ingredient information required for labels; if the product is sterile, a statement to that effect; and the name and/or place of business of the manufacturer, packer, or distributor of the drug. On the ground that prescription drug labeling should properly be in a standard format and address the same subjects under each specific section heading, however, the Commissioner concludes that the inclusion of particular information in the "Product Title" section of prescription drug labeling should not exempt the labeling from any requirement that that information also appear elsewhere in the labeling.

34. One comment suggested that § 201.56(e), concerning the inclusion of the issuance or latest revision date in drug labeling, be revised to refer only to prescription drug labeling required under § 201.100(c), that is, the package insert.

The Commissioner rejects this comment. The date that the labeling for a particular drug was originally issued or revised is valuable information for practitioners. It will inform them of the currentness of the labeling and may apprise them, in the case of an old issuance or revision date, that the labeling may have been superseded. Accordingly, no distinction should be made between placing a revision date on the package insert and other labeling. The Commissioner has revised § 201.56(e), however, to provide that the date, identified as such, of the original issuance or most recent revision of the labeling must be prominently placed immediately after the last section of the labeling. That placement of the date conforms to the present practice of most manufacturers.

35. Two comments objected to the elimination of comparative clinical data and quantitative statements of safety and effectiveness on the ground that the practicing physician does not otherwise

have ready access to this kind of information.

The Commissioner shares the concern of the comments that communication of significant medical information should be encouraged, not restricted. The Commissioner concludes, however, that this is not a proper basis for including comparative clinical data and quantitative statements of safety and effectiveness in prescription drug labeling. Labeling is not intended to be a dispositive treatise of all possible data and information about a drug. It is intended instead to advise about potential hazards and to convey documented statements concerning safety and effectiveness. The act permits labeling statements with respect to safety only if they are supported by scientific evidence and are not false or misleading in any particular. It permits labeling statements about effectiveness only if they are supported by "substantial evidence." To avoid giving physicians possibly erroneous and incomplete information, comparative statements concerning safety and effectiveness must be limited to those that are derived from adequate and well-controlled studies designed for that specific purpose. The regulations provide for waivers from that requirement where there is significant evidence in the scientific literature substantiating such claims.

The Commissioner recognizes that some physicians have limited time to devote to medical journals, treatises, meetings of professional societies, and other sources of the types of data and information mentioned in the comment. Labeling, however, cannot be transformed into the primary source of such information if it is to continue to be as concise and clear as possible.

Specific Requirements on Content and Format of Labeling for Human Prescription Drugs

Description

36. Many comments were received on § 201.57(a), relating to the information and format contained under the section heading "Description." Several comments suggested the inclusion or exclusion of particular information in that section, while other comments suggested changes in the format under that section heading. One comment suggested that the quantitative ingredient information would be better placed in the "How Supplied" section of the format, while another comment suggested that the information contained in the "How Supplied" section should be placed in conjunction

with the proposed "Description" section. A comment also suggested that the information relating to the storage conditions and stability of the drug, included in the "Dosage and Administration" section of the proposed format, should be placed in the "Description" section in conjunction with the physical and chemical information.

Although the proposed format for prescription drug labeling might be changed without changing the substantive requirements of § 201.57, the Commissioner concludes that the comments suggesting changes in the format do not persuasively show why the changes presented any advantage over the proposed format. Accordingly, the suggested changes in the prescription drug labeling format have not been made. Within the labeling format as proposed, however, certain information may properly be included in different sections of the labeling for different drugs, e.g., storage conditions and stability data for a drug may properly be required in the "Dosage and Administration" section of the labeling if it pertains to reconstituting the drug, but in the "How Supplied" section if it pertains to the drug as marketed. The Commissioner finds that such an interpretation was inherent in the proposal and, therefore, no change is warranted in the final rule.

37. Two comments suggested that terms in prescription drug labeling be standardized. One comment suggested that dosage forms be stated according to the National Drug Code Directory, that chemical nomenclature in labeling be required according to the Chemical Abstracts system, and that the American Hospital Formulary Service classification system name or number, or both, of drugs be required in addition to the pharmacological and therapeutic class of the drugs. Another comment contended that the listing of the pharmacological or therapeutic class of the drug is impractical because many drugs have multiple pharmacological actions. That comment suggested that the phrase "if practical" be added to this requirement if it is retained.

The Commissioner agrees that standardization of dosage form descriptions and chemical nomenclature is desirable and would create a uniform terminology in prescription drug labeling and facilitate communication between health care professionals concerning prescription drugs. The Commissioner does not agree, however, that particular dosage form descriptions or chemical nomenclature for drugs should be required for prescription drug labeling at

this time. The standardization of terms in drug labeling is under consideration by the agency. The use of a required classification system for drugs in drug labeling is also under consideration by the agency in conjunction with the class labeling project described in paragraph 107 of this preamble. At the conclusion of that project, the agency may determine whether a particular classification system should be required for all prescription drugs. The Commissioner concludes that the labeling of drugs with multiple pharmacological actions should list the pharmacological or therapeutic class for only those indications for which the drug is marketed.

38. Two comments asked that the requirement for including the chemical structural formula of the drug be made optional, unless there are compelling reasons for its inclusion for a particular drug. Two comments contended that the structural formula should not be included because it is meaningful only to nonclinical experts, it is accessible from other sources, and it would add considerably to the expense of the package insert. One comment contended that the chemical name is only necessary when no established name exists.

The Commissioner concludes that including the chemical name and structural formula of the drug in prescription drug labeling will not significantly increase its cost, and that it is useful information for many practitioners and medical specialists. Accordingly, the requirement is retained in the final regulation.

39. The Commissioner has added a new subsection to the "Description" section of the prescription drug labeling format to clarify that the important nuclear physical characteristics of a radioactive drug are required under that section of its labeling. That information would have been required under the general provisions of the "Description" section as proposed.

40. Several comments suggested changes in the kind of information required in the labeling under § 201.57(a)(2). A comment contended that additional physico-chemical data should be restricted to data with practical relevance. One comment suggested that the word "shall" be substituted for the word "should" to require the type of information listed, if it is appropriate. Two comments asked that the words "or properties" be added after the words "or physical information" so important information would not be excluded. Another comment asked that this sentence be

broadened to include important chemical or physical information about both the active ingredients and the final formulation of the drug, as well as information on stability, chemical and physical incompatibilities, sugar content, alcohol content, preservatives, and stabilizers.

The Commissioner advises that § 201.57(a)(2) is intended to require the inclusion of the kinds of descriptive information concerning a drug, other than that provided for in paragraph (a)(1) of that section, that are necessary for the safe and effective use of the drug. Different dosage forms or routes of administration of a particular drug may require that certain labeling statements be included under this subsection of prescription drug labeling to ensure that the labeling is not false or misleading. It would not be feasible to suggest or specify each kind of information that may be necessary for every particular prescription drug. Accordingly, the Commissioner concludes that § 201.57(a)(2), as proposed, sufficiently appraises the regulated industry of the kinds of information that are required in prescription drug labeling for their particular drugs, if appropriate. The Commissioner agrees with the comment that the word "shall" be substituted for the word "should," but rejects the other comments.

Clinical Pharmacology

41. Two comments objected to "Clinical Pharmacology" as the heading for § 201.57(b). One comment contended that the word "clinical" is gratuitous and that the word "pharmacology" would be appropriate when pharmacologic information is available and necessary for clinical use of a drug; but such information is seldom available and, therefore, the term "actions" is as descriptive as "pharmacology." Another comment argued that this section would be more correctly entitled "Mechanism of Action and Pharmacokinetics," because other sections in the labeling format also require information on clinical pharmacology.

The Commissioner disagrees with these objections to the title of § 201.57(b). The phrase "Clinical Pharmacology" was selected to describe the type of information listed in that section because it is a recognized discipline concerned with that kind of information and because the agency wishes to stress that labeling should contain pharmacological information that is clinically relevant.

42. One comment contended that information should be included in this section of the labeling only if it is of

significant, normal, and practical clinical applicability. Two comments argued that § 201.57(b)(1) should be rewritten in permissive terms whereby such information would be included only if it is relevant and available, rather than in the mandatory terms contained in the proposal. Another comment contended that requiring "important" pharmacokinetic information creates a subjective standard incapable of equitable enforcement.

The Commissioner concludes that no change in § 201.57(b)(1) is warranted as a result of these comments. Section 201.56(d)(3) provides that any section or subsection of the labeling format may be omitted if it clearly does not apply to a particular drug; accordingly, pharmacological information that clearly lacks clinical applicability is not required by § 201.57(b) to be included in prescription drug labeling. The Commissioner also concludes that the requirement to include, in prescription drug labeling, pharmacokinetic information that is important to the safe and effective use of a drug sets an appropriate standard under which manufacturers can determine what pharmacokinetic information is required in prescription drug labeling. Such information is important, and therefore properly included in prescription drug labeling, if practitioners would find it to be of value in the safe and effective use of the drug.

43. Several comments suggested that the discussion of pharmacokinetic information in this section of the labeling was incomplete and that data on the following should be included to inform practitioners fully about this aspect of clinical pharmacology: blood and urine levels; dissolution tests, if possible, for all solid dosage forms; route of excretion of the drug and its active metabolites and physiologic variables influencing excretion; blood levels achieved with the recommended dosage; therapeutic blood levels; toxic blood levels; passage across placenta or blood-brain barrier; percentage of a dose as unchanged drug and as metabolites, both inactive and active; rate or half-time of elimination in healthy adult subjects and others, such as neonates or patients with renal or hepatic impairment; information on the dialyzability of all drugs that, taken in excess, may be fatal; and the number of doses of potentially lethal nondialyzable drugs that may be prescribed.

The Commissioner does not agree that the discussion of pharmacokinetic information in § 201.57(b)(1) is incomplete. That section requires known

pharmacokinetic information that is important to the safe and effective use of a drug to be included in its labeling. While examples of the kind of information required are listed, that list was not, nor was it intended to be, a complete list of such information. Because of the comments received on that section of the labeling, however, the Commissioner added two additional examples of pharmacokinetic information that may be important for the safe and effective use of particular drugs. Generally, however, the Commissioner believes that an attempt to list all possible types of such information would provide no advantage over the list of examples included in the proposal.

44. Several comments objected to the requirement in § 201.57(b)(1) that a statement be made in the labeling if the pharmacological mode of action of the drug is unknown or if important human metabolic or pharmacokinetic data are unavailable, on the ground that this information may be unavailable for older drugs, causing the statement to be misleading. One comment objected to that requirement on the ground that acquiring these data would involve risks to patients and, therefore, animal or in vitro data should be permitted. Another comment objected to the statement restricting the inclusion of pharmacokinetic information to that which relates to clinical use of the drug, on the ground that it implies that physicians will be misled by scientific data.

The Commissioner disagrees with these comments. Prescription drug labeling should, if possible, provide practitioners with the kind of information they may find valuable for the safe and effective use of drugs. If such information is unknown or unavailable for a drug, the labeling should properly include a statement to that effect. The regulation does not demand that such information be obtained; rather, it requires that labeling either include the information if it is available or include a statement concerning its unavailability. The Commissioner does not believe that the statement would mislead physicians, but the failure to include any reference to that information would itself be misleading. Although pharmacokinetic information, other than that which relates to the clinical use of the drug, may be of value to certain individuals, it is not relevant to the intended function of prescription drug labeling and, therefore, is not properly included in labeling. The Commissioner therefore rejects these comments.

45. A comment suggested requiring statements as to whether pharmacology data were obtained on the specific drug covered by the labeling or on another manufacturer's product and, if they were obtained on another product, whether information is available on the product covered by the labeling.

The Commissioner concludes that whether pharmacology data obtained on a specific drug are relevant to that drug alone or to other members of a class of drugs depends on the facts in each particular case and, accordingly the types of statements suggested in the comment are not required under the final regulation.

46. A comment contended that the proposed required disclaimer in § 201.57(b)(2) that in vitro data for anti-infective drugs are available but "their clinical significance is unknown," is inappropriate. The comment urged that the statement be revised to read "their clinical significance has not been adequately documented," because many physicians have used drugs on the basis of in vitro data with good success, although they may not have reported it to FDA, to the manufacturer, or in the literature. Another comment questioned whether the required statement means that FDA recognizes that bacterial susceptibility data have no clinical significance or whether FDA asserts that anti-infective drugs have unique characteristics that can be explained by in vitro studies.

The Commissioner disagrees with these comments. The impressions or beliefs of physicians, although they are honest and may prove to be valid, are an improper ground upon which to base statements in prescription drug labeling. (See *Weinberger v. Hynson, Wescott & Dunning, Inc.*, 412 U.S. 609 (1973).) The act generally requires that statements about effectiveness of a drug be founded upon adequate and well-controlled clinical investigations. Accordingly, the qualification statement in § 201.57(b)(2) is necessary if in vitro data for anti-infective drugs, that have not been shown by adequate and well-controlled clinical studies to be pertinent to clinical use of the drug, are permitted in prescription drug labeling. That section of the labeling permits the use of in vitro data for anti-infective drugs without the qualifying statement if they have been shown by adequate and well-controlled studies to be pertinent to clinical use; in vitro data, if properly qualified, should also be allowed in prescription drug labeling when their clinical significance is unknown, on the ground that physicians traditionally use in vitro data in practice to judge whether a drug may

be clinically useful in a particular situation. Accordingly, the Commissioner believes that the comment questioning FDA's position regarding the clinical significance of bacterial susceptibility data and the particular characteristics of anti-infective drugs misinterprets that section of the labeling format and, except for editorial changes, § 201.57(b)(2) is finalized as proposed.

47. A comment suggested that a third subparagraph be added to § 201.57(b) to require manufacturers of antibiotic drugs to provide information concerning spectrum and resistance because that information, although it does not apply to most prescription drugs, is essential for the rational use of antibiotics. The comment also suggested that it would be useful to practitioners to have selective studies on these subjects available in the labeling.

Section 201.57(b)(2) permits information on spectrum and resistance in the labeling of antibiotic drugs if it is properly qualified. The Commissioner concludes, however, that requiring that information in the labeling of all antibiotic drugs would impose a burden on manufacturers without a corresponding benefit to prescribers of the drugs, because that information may be subject to frequent change and become rapidly outdated as new information is developed. Accordingly, the Commissioner does agree with the comment. As discussed in paragraph 139 of this preamble, references to articles in the scientific literature may be included in prescription drug labeling under certain circumstances.

Indications and Usage

48. Several comments objected to the apparent disparity between requiring the inclusion of only those indications supported by substantial evidence based on adequate and well-controlled studies and requiring the inclusion of adverse reactions that are reasonably associated with the use of the drug. These comments suggested that two categories be established in both the "Indications" and "Adverse Reactions" sections of the labeling: one category for indications and adverse reactions supported by substantial evidence, and another for indications and adverse reactions based on uncontrolled studies, published literature, and clinical observations. The comments recognized that advertising and promotional labeling containing information in the second category should be required to specify the basis for those indications or adverse reactions. Another comment suggested that § 201.57(c)(1) be

reworded to read "This section shall state explicitly those situations in which the drug should be prescribed as supported by adequate evidence of safety and efficacy." One comment contended that adverse reactions for a class of drugs should not be required in the labeling if indications for other members of a class of drugs are not permitted for each drug in the class. Two comments argued that the requirement in § 201.57(c)(2) that all indications must be supported by substantial evidence based on adequate and well-controlled studies should be deleted on the ground that it may be illegal and inconsistent for some DESI-reviewed drugs, pre-1938 drugs, and drugs that may be subject to an old drug monograph system. One comment contended that this section is inconsistent with FDA's statutory mandate that an NDA be approved if adequate evidence of safety and substantial evidence of effectiveness have been submitted and that this requirement should be reworded to require only those indications in the approved NDA.

The Commissioner rejects these comments. As stated in the preamble to the proposal, it is essential to the safe use of a drug for the physician to know all adverse reactions that are likely to occur with it. For drugs that are closely related chemically or pharmacologically, the inclusion of all adverse reaction information, whether or not all such reactions have been reported with the specific drug, is medically sound.

The Commissioner believes that the comments reflect a misunderstanding of the statutory requirements for prescription drug labeling:

First, the labeled indications for every new drug, as defined in section 201(p) of the act, must be supported by substantial evidence of effectiveness, which is defined in section 505(d) of the act to consist of adequate and well-controlled studies. It is true that claims for certain new drugs that are subject to the DESI program have not yet been found to be supported by such evidence; however, the application of the effectiveness requirements of the Drug Amendments of 1962 (Pub. L. 87-781; 76 Stat. 780-796) is proceeding under a timetable and will ultimately cover all DESI drugs. In the meantime, as explained in paragraph 29 of this preamble and required in § 201.200, those indications that have not yet been found by FDA to be supported by substantial evidence of effectiveness must be separated from other indications, placed in a box, and appropriately qualified.

Second, regarding prescription drugs which may be subject to an old drug monograph system, the Commissioner advises that no proposal for such a system is pending and that, in any event, the agency will not declare a drug to be generally recognized as effective (and otherwise not a new drug as defined in section 201(p) of the act) unless there exists evidence similar to that required in section 505(d) of the act and the implementing regulations (§ 314.111(a)(5)(ii) (21 CFR 314.111(a)(5)(ii))). The Supreme Court of the United States has said that "the hurdle of 'general recognition' of effectiveness requires at least 'substantial evidence' of effectiveness for approval of an NDA. In the absence of any evidence of adequate and well-controlled investigation supporting the efficacy of [the drug involved in that case], a fortiori [that drug] would be a 'new drug' subject to the provisions of the act." (See *Weinberger v. Hynson, Westcott & Dunning*, 412 U.S. 609, 629-630 (1973) (footnote omitted).)

Third, as to drugs marketed before 1938, only those that have been continuously marketed with the same composition and unchanged labeling since 1938 are exempt from the definition of "new drug" in section 201(p) of the act and consequently not subject to section 505 of the act. But these "grandfather drugs," as well as those that were "grandfathered" in section 107(c)(4) of the Drug Amendments of 1962, remain subject to section 502 of the act. If such drugs are not effective for one or more indications in their labeling, the labeling could not bear adequate directions for use, contrary to section 502(f) of the act. A prescription drug may be exempted from the requirements of section 502(f) by FDA regulation. The Commissioner concludes that the standard of substantial evidence of effectiveness demonstrated by adequate and well-controlled studies by experts, which was adopted by Congress for new drugs in section 505(d) of the act and has been interpreted by FDA in § 314.111(a)(5)(ii) and upheld by the Supreme Court, is lawful and appropriate as the standard for an exemption from section 502(f) of the act, and the Commissioner has set forth that standard in § 201.57(c)(2) of these regulations.

The Commissioner also advises that it is the position of FDA that labeling indications not supported by adequate and well-controlled studies are false and misleading, in violation of section 502(a) of the act. Although it is true that the agency has the burden of proving that labeling violates section 502(a) of the

act, the absence of substantial evidence of effectiveness, particularly for a product marketed continuously for at least 40 years, creates a presumption that the drug has been neither generally recognized as effective by experts nor demonstrated to be effective under contemporary scientific standards; such a presumption places the burden of coming forward with evidence of effectiveness on the manufacturer or distributor. Thus, the Commissioner rejects the comments to the effect that § 201.57(c)(2) may be illegal or inconsistent for certain prescription drugs, and to the effect that this section should be reworded to apply only to prescription drugs with approved NDA's.

49. A comment suggested that the introductory phrase in § 201.57(c)(1) "Under this section heading, the labeling shall state," be revised to read, "the indications for the drug shall be stated in accordance with the following sections," and that the word "or" be deleted before § 201.57(c)(1)(ii) and (iii), because some drugs may have indications in each of the three areas described. One comment objected to the example given in proposed § 201.57(c)(1)(i) on the ground that an antibiotic is indicated for the treatment of infections due to susceptible organisms. Another comment objected to any change in present claim structures on the ground that it might alter currently effective physician usage patterns.

The Commissioner agrees that some drugs may be indicated for use in more than one of the three areas described in § 201.57(c)(1) and has revised that section to provide for multiple statements of indications. The example in § 201.57(c)(1)(i) has also been revised as suggested in the comment. The Commissioner advises, however, that the purpose of the examples of indications in § 201.57(c) is to demonstrate that indications that are site specific or organism specific are generally preferable to vague or general claims. In that respect, the Commissioner does not agree with the comment that a change in the format for presenting information on indications for a drug in prescription drug labeling presents any disadvantage over that currently used. The Commissioner is convinced that more precision under § 201.57(c)(1) concerning indications given in labeling, if it alters physicians' usage patterns at all, will improve the usage patterns.

50. A comment objected to the proposed requirement in § 201.57(c)(1)(iv) that a drug used only

as an adjunct to a primary mode of therapy be so labeled, on the ground that a determination of what therapy is primary and what is secondary is a complicated decision that must be made by the practicing physician concerning the individual patient, rather than by FDA or the drug manufacturer.

The Commissioner advises that § 201.57(c)(1)(iv) provides that a drug need be labeled as an adjunct to a primary mode of therapy only if it is used for a particular indication in conjunction with that therapy. If a drug has been shown to be safe and effective for an indication only as an adjunct to another mode of therapy, it must be so labeled. If the drug is used for a particular indication, either as the primary mode of therapy or as an adjunct, however, a qualifying statement is not required.

51. Several comments objected to the proposed list of additional information in § 201.57(c)(3) to be included under the "Indications and Usage" section of the labeling. The comments argued that the information listed is overly restrictive, that it would limit a physician's flexibility in unusual or special clinical situations, that the information is often unknown when a new drug is first marketed, and that, when the information is available, it should be placed in a medical text rather than labeling. One comment suggested that this information be included in the labeling in the form of suggestions to the physician.

The Commissioner rejects these comments, which appear to be based on a lack of understanding of the proper function of prescription drug labeling. As previously stated, prescription drug labeling is intended to provide the physician with the information necessary for the safe and effective use of the drug. If certain information is inappropriate for a particular drug, it is not required in drug labeling. Similarly, a physician's decision to use a drug in a given situation depends upon all of the facts surrounding that use, and not solely upon whether or not that use is indicated in the drug's labeling. Accordingly, the Commissioner has made no change in the final regulation because of these comments.

52. One comment suggested that, if the requirement of § 201.57(c)(3)(i) to state limitations of usefulness of a drug is interpreted together with the proposed list of adverse reactions for the class of drugs required by § 201.57(g), physicians could be confused and misdirected about the use of the drug in therapy. Another comment thought that § 201.57(c)(3)(i) would require a listing of

all indications for which the drug should not be used.

The Commissioner advises that the information required concerning the limitations of usefulness of a drug is that which applies to the approved indications for the drug; e.g., if a drug is indicated for the treatment of hypertension, but substantial evidence is not available to support the effectiveness of the drug in severe cases, then the labeling is required to state that fact. The Commissioner believes that the increased accuracy of the statements on the usefulness of drugs for their labeled indications, together with the information concerning adverse reactions, will aid physicians in using drugs safely and effectively and for the purposes for which they are intended. A listing of all indications for which the drug should not be used is not required, nor was that the intent of the proposal. Therefore, no changes are justified by these comments.

53. A comment suggested that the word "substantial" be added before the word "evidence" in the first sentence of § 201.57(c)(3)(i) to make it correspond with the degree of support needed for other efficacy information and as defined in section 505(d) of the act.

The Commissioner does not agree with this comment. The "substantial evidence" standard clearly reflects prevailing scientific and medical views, and was established by Congress, as the type of information necessary to demonstrate drug effectiveness. It is an inappropriate standard, however, for requiring statements in drug labeling on potential hazards from the use of a drug, such as its lack of effectiveness in a particular population.

54. Several comments objected to the provision in § 201.57(c)(3)(i) requiring a statement of specific tests needed for selection or monitoring of the patients who need the drug; the comment argued that such a statement could be voluminous and that, if a particular test is necessary for the safe and effective use of a drug, the law as written already requires its inclusion in the labeling.

The Commissioner concludes that a statement in prescription drug labeling of the specific tests needed for selection or monitoring of the patients who need the drug is appropriately required in the labeling format. Statements on specific tests may be necessary to convey benefit-to-risk considerations in the use of a drug, e.g., restricting the use of certain toxic drugs to very narrow indications defined by laboratory tests. Whether listing tests in drug labeling will greatly lengthen prescription drug labeling will depend upon the particular

drug to which the labeling applies; however, current labeling that provides this information is not voluminous. The Commissioner also concludes that restating the requirement in the final regulation will help to ensure compliance with the legal requirements for drug labeling.

55. Several comments objected to the requirement in § 201.57(c)(3)(i) that the labeling include information on the approximate kind, degree, and duration of improvement to be anticipated with use of the drug; the comment stated that the requirement is unrealistic with the information usually available and the information could mislead physicians. One comment suggested that this type of information be included in the "Dosage and Administration" section of the labeling, because that section includes information on dosages, route and duration of administration, and modification of dosage in special patient populations. Another comment suggested that the requirement be deleted because the information is not relevant to the use of the drug and could rapidly become outdated. Other comments also cautioned that FDA not interpret this requirement in a manner that would force manufacturers to use language guaranteeing certain results from the use of the drug. Yet another comment suggested that the maximum number of days recommended for daily use of the drug should be stated for drugs whose efficacy varies as a function of duration of use because of adaptation or tolerance.

The Commissioner concludes that information on the approximate kind, degree, and duration of improvement to be anticipated is valuable to physicians in the safe and effective use of a drug if it is based upon adequate and well-controlled studies or other adequate scientific substantiation. Obviously, if substantiation is unavailable, this information should be omitted from the labeling. The Commissioner also advises that this provision is not intended to, and will not, cause manufacturers to guarantee results from the use of their products in individual patients; rather, it requires that general information on anticipated improvement be included in prescription drug labeling. This subsection of the labeling would include information such as the maximum number of days recommended for daily use of a drug. The Commissioner agrees that this type of information, in certain instances, may be more appropriately included in the "Dosage and Administration" section of the labeling format and has revised the final regulation accordingly.

56. A comment considered the distinction in § 201.57(c)(3)(iii) between "short-term use" and "long-term use" of a drug to be arbitrary and suggested that it be clarified to ensure that it not have a general impact upon all chronically administered drugs.

The Commissioner concludes that definite time periods cannot be established in the labeling format for differentiating between the short-term and long-term use of all drugs. Application of this requirement to drug labeling must be done on an individual basis. When data exist demonstrating differences between the use of a drug over a short period of time and the chronic administration of the drug, or demonstrating specific conditions that should be met before the drug is administered chronically, they are appropriately referenced in prescription drug labeling. If no distinction exists between the short- and long-term use of a drug or if a drug is intended only for chronic administration, this section of the labeling format would not apply to the drug and could be omitted from its labeling.

57. Several comments objected to § 201.57(c)(3)(iv) relating to a required statement of the lack of evidence of effectiveness for a certain use of a drug if there is a common belief of effectiveness or a common use of a drug for a condition. Comments contended that the terms "common belief" and "common use" are too subjective to be equitably enforced and that FDA has no authority to impose such a requirement. A comment argued that this requirement would force the manufacturer to monitor the medical profession to determine for what uses, other than approved indications, a drug is being administered. Two comments contended that such a statement would limit common drug usage by physicians and thus raise their risk of malpractice litigation. Another comment suggested that this requirement would be more appropriate under the "Warnings" or "Contraindications" section of the labeling. One comment suggested broadening this requirement to include a statement of a lack of evidence that a class of drugs is effective for a certain use, if there is a common belief that all drugs of the same class may be effective for a certain use, or if there is a common use of a class of drugs for a condition, but there is a lack of substantial evidence that the class of drugs is effective for that use. A comment requested clarification of the "preponderance of evidence" standard for requiring this statement and questioned the authority of FDA to use

any standard other than substantial evidence. One comment requested that labeling be required to include a statement of the common belief that a drug may be effective for a particular indication, when such a common belief exists, although substantial evidence of effectiveness for that indication is lacking.

The Commissioner concludes that § 201.57(c)(3)(iv) requires clarification because it was intended only to require a statement in drug labeling when a drug continues to be used for a condition in the face of a preponderance of scientific evidence that it is ineffective for the condition. Accordingly, paragraph (c)(3)(iv) has been revised to state that FDA may require a statement in labeling for a drug if the agency finds that there is a common belief that the drug may be effective for a certain use, or if there is a common use of the drug for a condition, but the preponderance of evidence related to the use indicates that the drug is ineffective.

The Commissioner rejects the remaining comments concerning this provision. The act requires that indications in drug labeling be supported by substantial evidence of effectiveness, as discussed in paragraph 48 of this preamble. Accordingly, the "common belief" of the effectiveness of a drug for a particular indication is an impermissible ground upon which to base statements of effectiveness in drug labeling. However, if there is a common belief that a drug may be effective for a certain use or if there is a common use of the drug for a condition, but the preponderance of evidence related to the use indicates that the drug is ineffective, the lack of effectiveness of the drug for that use is a material fact, and the failure to reveal that fact in the drug's labeling causes the labeling to be misleading under § 1.21 (21 CFR 1.21). Accordingly, it is appropriate to require in § 201.57(c)(3)(iv) the affirmative disclosure of the ineffectiveness of the drug for the use. The Commissioner believes that FDA will be able to determine whether or not a "common belief" or "common use" exists for a particular drug on the basis of information available to the agency, including articles in the scientific literature.

The Commissioner does not find it necessary to extend this requirement to a class of drugs. If there is a common belief of the effectiveness of, or a common use of, a class of drugs for a condition, and the scientific evidence indicates a lack of effectiveness of the members of the class for that use, each member of the class will be subject to

the requirements of § 201.57(c)(3)(iv), an appropriate statement will be required in the "Indications and Usage" sections of their labeling. Although past practice has sometimes placed these types of statements in the "Warnings" section of labeling, their placement in the "Indications" section of drug labeling on grounds of lack of effectiveness, or, as discussed in paragraph 66 of this preamble, the "Warnings" section on grounds of lack of safety, will be more effective in transmitting this information to the prescriber.

The Commissioner believes that including this kind of information in prescription drug labeling will limit drug usage by physicians only insofar as they might use a drug for an indication for which the preponderance of scientific evidence indicates a lack of effectiveness. Therefore, the Commissioner concludes that the objection to this requirement on that ground does not warrant any change in the labeling format.

58. Several comments objected to § 201.57(c)(3)(v), which requires that statements comparing a drug's safety and effectiveness with the safety and effectiveness of other agents for the same indication be supported by substantial evidence, alleging that it would require too much effort to prove the obvious and that physicians may be deprived of important information on the relative effectiveness of drugs. One comment asked whether a manufacturer whose drug has been shown to be inferior to another drug by substantial evidence supported by adequate and well-controlled studies will be required to reveal that information in its labeling. Another comment asked whether the agency will require that comparative effectiveness data be developed before a drug is approved, or whether this restriction applies only to advertising claims. A comment suggested that FDA require comparative data for drugs of the same therapeutic or pharmacologic class.

The Commissioner concludes that comparative statements of safety and effectiveness for drugs are properly included in drug labeling only if they are supported by substantial evidence derived from adequate and well-controlled studies. A labeling statement that a drug is safer or more effective than another drug is false or misleading, and the drug is misbranded under section 502(a) of the act, unless the statement is properly substantiated. Drug consumers and prescribing physicians are entitled to expect that comparative statements of safety or effectiveness will not be made without

verification. The Commissioner recognizes, however, that a requirement that comparative labeling statements be supported by substantial evidence may be unreasonable for some drugs. Accordingly, § 201.57(c)(3)(v) provides for a waiver of that requirement upon a showing that the substantial evidence standard is not reasonably applicable to the drug and that the comparative statements of safety or effectiveness can be substantiated by an alternate method of investigation. The Commissioner advises that § 201.57(c)(3)(v) does not require that comparative safety or efficacy data be developed for a drug; rather, it requires that comparative statements of safety or effectiveness in prescription drug labeling be supported by substantial evidence or other adequate scientific evidence. Similarly, if substantial evidence derived from adequate and well-controlled studies has shown a drug to be inferior or superior to another drug, a statement based on the studies is not required to be included in the labeling for the drug under this section.

Contraindications

59. A comment suggested that the Commissioner modify the requirement that a contraindication be stated when "the risk of use clearly outweighs any possible benefit" because it would overly restrict proper medical practice. Another comment urged deletion of the second sentence of § 201.57(d) because the examples of information necessitating a contraindication statement are of a type that requires the physician, not the manufacturer, to make a final judgment concerning the benefit-to-risk ratio for patients.

The Commissioner does not agree with these comments. The use of a drug is properly contraindicated when the risks associated with that use cannot be justified by any benefit that may result. The examples given in § 201.57(d), as they apply to a particular drug, are situations in which the possible benefits from the use of the drug would not justify the risks to the patient. The Commissioner concludes that requiring in the labeling a description of those conditions in which the risk to the patient cannot be justified by any possible benefit from the use of a drug does not restrict proper medical practice. Accordingly, no change is made in the final regulation because of these comments.

60. A comment urged that the statement "known hazards and not theoretical possibilities shall be listed" be deleted on the ground that a manufacturer may have a valid reason

for contraindicating a theoretical possibility.

The Commissioner concludes that drug labeling should include a contraindication only when reasonable evidence exists indicating an association between the drug and a hazard. The Commissioner believes that including theoretical hazards as contraindications in drug labeling would cause that very important section of the labeling to lose its significance. Accordingly, the statement is retained in the final regulation with an editorial change.

61. Several comments objected to the requirement that if no contraindications are known, this section of the labeling must state "None." The comments contended that if no contraindications are known, this section of the labeling should be deleted or should state "None known" or "Unknown," on the ground that the use of the word "None" alone would increase the risk of product liability suits to the manufacturer.

The Commissioner agrees that, if no contraindications are known, this section of the labeling should state "None known," rather than "None," and has revised the final regulation accordingly.

62. Another comment suggested that the following sentences be added to § 201.57(d): "Hypersensitivity information should be divided into allergies and supersensitivities. A distinction between relative and absolute contraindications shall be included."

The Commissioner concludes that the term "hypersensitivity" includes both allergies and supersensitivities and that no advantage would result from separating it into the two categories suggested. In addition, the Commissioner does not agree that a distinction should be made between relative and absolute contraindications in drug labeling. The contraindications section of labeling is intended to contain only those conditions of drug use under which the risk to the patient cannot be justified by any possible benefit and, therefore, would contain only so-called absolute contraindications. The term "relative contraindication" includes situations that are more properly considered under the "Warnings" and "Precautions" sections of the new prescription drug labeling format.

Warnings

63. Several comments contended that a definition of "reasonable evidence" associating a serious hazard with a drug is necessary, when a causal relationship has not been proved, to clarify when a

serious hazard must be included in the labeling under § 201.57(e). A comment suggested this requirement be reworded to read: "A warning should be included in labeling when a panel of experts on an appropriate specialty board concludes that the association of a serious hazard with a drug exists prior to the time when a causal relationship is proved."

The Commissioner rejects these comments. A serious hazard must be included in the "Warnings" section of the labeling of a drug when evidence exists on the basis of which experts qualified by scientific training and experience can reasonably conclude that the hazard is associated with the use of the drug. A causal relationship need not be proved. As discussed fully in the preamble to the proposed revision of § 1.21 (formerly § 1.3), published in the Federal Register of September 16, 1974 (39 FR 33229), the act requires labeling to include warnings about both potential and verified hazards. Accordingly, when medical information justifies a warning, the act requires that it be included in drug labeling. Although FDA often refers questions of whether a warning should be included in the labeling of a drug to its standing advisory committees, the decision as to whether a warning is legally required for the labeling of a drug must rest with the agency.

The Commissioner also advises that these labeling regulations do not prohibit a manufacturer, packer, relabeler, or distributor from warning health care professionals whenever possibly harmful adverse effects associated with the use of the drug are discovered. The addition to labeling and advertising of additional warnings, as well as contraindications, adverse reactions, and precautions regarding the drug, or the issuance of letters directed to health care professionals (e.g., "Dear Doctor" letters containing such information) is not prohibited by these regulations. As stated above, the act and FDA regulations require a warning in drug labeling as soon as a hazard is associated with the use of a drug. In the case of a drug subject to an approved NDA, § 314.8(d) (21 CFR 314.8(d)) permits the addition to the drug's labeling or advertising of information about a hazard without advance approval of the supplemental application by FDA. In considering these regulations in a product liability case, at least one court has held that an NDA holder may have a duty to add a warning before FDA approval of a supplemental application. See *McEwen*

v. Ortho Pharmaceutical Corp., 528 P. 2d 522 (Ore. 1974).

64. One comment suggested that the inclusion of a serious hazard associated with a drug when no causal relationship has been shown, together with the class adverse reaction requirements in § 201.57(g), will be misleading to physicians.

The Commissioner does not agree that physicians will be misled by clear and concise statements in prescription drug labeling regarding serious hazards associated with the use of a drug or a listing of adverse reactions that occur with the drug or with drugs of the same chemical or pharmacologic class. The Commissioner believes that practicing physicians will welcome such information so that they can make their best informed medical judgments in the care of their patients.

65. A comment objected to the requirement that steps to be taken if a serious adverse reaction occurs with a drug be included in the "Warnings" section of the drug's labeling. The comment contended that a complete discussion of emergency procedures to be taken when serious adverse reactions occur would make prescription drug labeling voluminous.

The Commissioner concludes that a clear and concise statement of the steps to be taken when a serious adverse reaction suddenly occurs is properly included in prescription drug labeling for the drug. The regulation does not require a complete discussion of emergency treatment, nor does it require information concerning serious adverse reactions that do not require emergency treatment. This requirement is intended to provide health care professionals with a source of information of emergency treatment of serious adverse reactions from drugs when the rapid and unexpected onset of the reaction would not permit traditional kinds of research of this information. Accordingly, the requirement is retained in the final regulation.

66. One comment contended that the requirement of a warning statement for a drug use that is not provided for under the "Indications and Usage" section of the labeling is too vague to be implemented. Another comment argued that warnings should be limited to approved indications because use of a drug for an unapproved indication is within the practice of medicine.

The Commissioner disagrees with these comments. Because drug labeling is intended to advise health care professionals about potential hazards in the use of a drug and convey documented statements about its safety

and effectiveness, the Commissioner concludes that there is no legitimate basis for limiting the labeling to hazards arising from the approved use of the drug, particularly when dangerous unapproved use of the drug has been found. Thus, this requirement has been retained in the final regulation.

67. One comment contended that the warning section should contain information based on animal data, because that may be the only information available on serious hazards, particularly long-term hazards (e.g., cancer, birth defects). Another comment suggested that the sentence describing data to be included in boxed warnings be rewritten to require that boxed warnings be based on clinical data.

The Commissioner concludes that animal data, in certain circumstances, are an appropriate ground upon which to base warning statements, including boxed warnings, and the labeling format so provides in § 201.56(a)(3). In addition, § 201.57(e) has been revised to state clearly that serious animal toxicity data may require warnings in drug labeling.

68. A comment asked whether a manufacturer may include a boxed warning without prior FDA approval and whether FDA would consider the labeler's desires when specifying the location of boxed warnings in labeling.

The Commissioner advises that, to ensure the significance of boxed warnings in drug labeling, they are permitted in labeling only when specifically required by FDA. The labeler's desires about location and wording of boxed warnings, however, will be considered.

69. A comment asked what sources of information would be permitted to provide the frequency of serious adverse reactions and the approximate mortality and morbidity rates of patients sustaining such reactions. A comment contended that, because pertinency is a subjective standard, the words "if pertinent," relating to mortality and morbidity rates, should be changed to "if known."

The Commissioner advises that, in general, information concerning the frequency and the approximate mortality and morbidity rates of serious adverse reactions will be obtained in the same manner as that for frequency of adverse reactions in § 201.57(g)(4) discussed in paragraph 117 of this preamble. The data may be obtained, in certain cases, from the same source as the information upon which the warning is based, e.g., the study or studies demonstrating an association of the hazard with the drug. In addition, the

Commissioner has revised the requirement to clarify that approximate mortality and morbidity rates for patients sustaining the reaction shall be listed if they are known and if they are important to the safe and effective use of the drug. Although the rates are known, if they are not important to the safe and effective use of the drug, they are not required to appear in drug labeling.

70. A comment suggested that the regulation provide for referencing substantial differences of opinion among experts or for discussing other serious medical controversies relating to the "Warnings" section of the labeling format.

The Commissioner rejects this comment. This comment was discussed fully in the preamble to the final regulation revising § 1.21 (formerly § 1.3) published in the Federal Register of July 7, 1975 (40 FR 28582). The statutory scheme for drug labeling requires that potential hazards, as well as known hazards, be included in labeling. Including conflicting opinions about such warnings would result in uncertainty and confusion and, accordingly, decrease the usefulness of the warnings in protecting the public.

Precautions

71. A comment contended that because certain labeling requirements for habit-forming drugs are stated in § 329.10 (21 CFR 329.10), repetition of that information should not be required in the "Precautions" section of the labeling format.

The Commissioner agrees that information should not be unnecessarily duplicated in drug labeling. It was not intended that information required under § 329.10 be repeated in this part of the labeling format. Therefore, the Commissioner has revised § 201.57(f)(1) to require that general precautions include only that information not required to appear under any other specific section or subsection of the labeling format.

72. Several comments objected to § 201.57(f)(2) requiring that complete patient information on a drug be included in physician labeling, on the ground that patient labeling is a controversial matter that should be the subject of a separate proposal, rather than being included in the proposal concerning prescription drug labeling format directed at professionals. One comment contended that issuing regulations requiring printed patient information before thoroughly investigating the best language and modalities for informing the patient is

irresponsibly premature. Several comments alleged that printed patient labeling on prescription drugs would interfere with the practice of medicine and the physician-patient relationship, in violation of section 503(b)(2) of the act (21 U.S.C. 353(b)(2)).

Several comments requested that the Commissioner clarify whether § 201.57(f)(2) permits giving professional labeling to patients upon request, whether a request can be refused, whether this part covers all "patient aids" relating to a drug or only to printed instructions containing information specifically directed to the use of the drug by the patient, whether the professional labeling will be required to be updated with the preparation of each new printed patient information piece, whether the pharmacist, when dispensing a prescription, must provide the printed information to the patient, and whether a sufficient number of reprints of the patient information will be required for each package of a drug shipped to the pharmacist to accommodate the number of prescriptions that may be dispensed from it.

Two comments suggested that patient information should contain warnings concerning drug interactions, information about side effects, and special instructions concerning clinically significant information that the patient should report to the physician. Three comments objected to including information relating to possible adverse reactions, asserting that the risks from the use of drugs may induce unwarranted anxiety in patients, who will develop symptoms of the adverse reactions through suggestion. Therefore, the comments contended, patient information concerning the use of a drug should be disseminated under a physician's discretion. Another comment asked that the second sentence clearly refer to patient labeling.

The Commissioner concludes that these comments misunderstand the intent of § 201.57(f)(2). The Commissioner does not intend that patient labeling must be prepared for distribution to patients for all prescription drugs. The regulation requires only that information necessary for a patient's safe and effective use of the labeled drug be stated; e.g., if a drug may cause drowsiness and the patient taking it should therefore be cautioned against driving or operating machinery, a statement to that effect is required to be included in this subsection of the physician labeling for the drug.

The Commissioner advises that, as discussed in paragraph 21 of this preamble, FDA has initiated a prescription drug labeling project to consider the suitability of required patient labeling information for prescription drugs. That project is concerned with the tone and educational level of language to be used in patient labeling, the content of the labeling, the classes of drug for which patient labeling is necessary or desirable, the way in which the requirements should be implemented, and the way in which labeling should be distributed to both patients and physicians. A notice of proposed rulemaking on this subject will be published in a future issue of the **Federal Register**.

73. On the grounds that it would add measurably to the length of the insert, thus obscuring essential information, and that most patient information is graphic and not readily reproducible in prescription drug labeling, several comments objected to a requirement that patient information be reprinted at the end of the labeling. A comment suggested that a separate patient insert be sent to physicians rather than reprinted in the labeling.

The Commissioner does not agree with these comments. Nevertheless, the Commissioner has revised § 201.57(f)(2) to clarify that only the text of the printed patient information specifically required by FDA to be distributed to patients must be referenced under the "Precautions" section of the labeling and reprinted at the end of the package insert, e.g., the patient package information required for oral contraceptives under § 310.501 and for estrogens under § 310.515. That type of information is reproducible in prescription drug labeling, and the commissioner concludes that that is a proper manner in which to make it available to physicians. Because the text of the patient information appears at the end of the labeling, the commissioner concludes that that information will not affect adversely the communication of the other information in the labeling.

74. On the ground that this information has nothing to do with precautions, one comment argued that patient information would be better placed in the "Dosage and Administration" section of the labeling format.

The Commissioner does not agree that patient information would be better placed in the "Dosage and Administration" section of the labeling format and rejects this suggestion. The type of information required to be

included in this section of the labeling is not limited to instructions on the frequency or duration of use of the drug, but, instead, includes information that the patient needs to use the drug safely and effectively.

75. Two comments objected to § 201.57(f)(2), arguing that it is contradictory to require lay directions for use in prescription drug labeling when the labeling is based on an exemption from section 502(f)(1) of the act, which requires adequate directions for the layperson's use of the drug. One comment contended that, with the Commissioner's acknowledgement in the proposal preamble that the purpose of section 503(b)(2) of the act is to avoid lay self-diagnosis and self-administration of drugs requiring professional supervision, the argument that printed patient information does not contradict that purpose is not convincing.

The Commissioner is convinced that information on the care to be taken by patients for the safe and effective use of a drug neither promotes lay self-diagnosis and self-administration of prescription drugs nor constitutes adequate directions for use of the drug within the meaning of section 502(f)(1) of the act. The purpose of § 201.57(f)(2) is simply to provide information that will better ensure the safe and effective use of prescription drugs by patients after the drug has been prescribed by the physician. The Commissioner therefore rejects these objections.

76. Another comment objected to § 201.57(f)(2) on the ground that it could create potential liability for the manufacturer if the manufacturer failed to include in the patient information the warning of a hazard that, although remote and unexpected, might occur.

The Commissioner concludes that this requirement will not increase the potential liability of manufacturers for the failure to include warnings of remote and unexpected hazards. Section 201.57(f)(2) requires only that prescription drug labeling include precaution information necessary for the safe and effective use of the drug by patients, e.g., the importance of closely adhering to the dosage and administration schedule, or avoiding the concomitant use of particular substances. It does not require the inclusion of information equivalent to that directed to the physician.

77. One comment contended that patients should receive all drug labeling, unless the physician directs the pharmacist to withhold it. Another comment suggested that § 201.57(f)(2) could be construed to mean that the

information appearing under this section of the labeling is the only information that need be provided to the patient.

The Commissioner believes that much prescription drug labeling directed to physicians would not be helpful to patients. For that reason, FDA is currently considering the subject to specify prescription drug labeling for the patient discussed in paragraphs 21 and 72 of this preamble. The Commissioner also recognizes that the information provided to patients concerning the use of a drug is often determined by the medical judgment of the attending physician. The Commissioner advises, however, that the distribution to patients of physician labeling for prescription drugs is not prohibited by either the act or FDA regulations, and the Commissioner encourages its distribution to patients who desire it.

78. Several comments were received concerning the requirement in § 201.57(f)(3) that prescription drug labeling list laboratory tests needed to follow the patient's response or to identify possible adverse reactions concerning the use of a drug. The comments argued that, because listing "essential" tests could force physicians to conduct all the tests listed or risk the threat of malpractice litigation, regardless of the physician's medical judgment concerning the necessity of the tests for particular patients or the costs to the patient for unnecessary tests, the wording should be changed to state that the listed tests are suggested rather than essential to following the patient's progress. One comment suggested that this section be changed to read: "This subsection shall list suggested laboratory tests which may be used to follow the patient's response or to identify possible adverse reactions." Another comment suggested the required list be limited to tests necessary for primary safety monitoring.

The Commissioner agrees that this section of the labeling should list laboratory tests that may be helpful in following a patient's response or identifying possible adverse reactions and has revised the final regulation accordingly.

79. Two comments suggested that § 201.57(f)(3) also include information concerning the frequency with which laboratory tests should be conducted and information concerning steps that should be taken if the test results are abnormal.

The Commissioner agrees in part with these comments, and this section of the labeling format has been revised to require information, when appropriate, on such factors as the range of normal

and abnormal values to be expected in laboratory tests and the recommended frequency of conducting the tests before, during, and after therapy. Because it would add greatly to the length of the labeling without corresponding benefits to physicians and because it is available from more traditional sources, information concerning steps to be taken if the test results are abnormal is not required.

80. A comment questioned at what point a drug interaction becomes "clinically significant," thereby requiring its inclusion in prescription drug labeling.

The Commissioner has deleted the words "clinically significant" from the title of § 201.57(f)(4)(i), because the text clearly states that only information on clinically significant drug interactions is required. If information on an interaction would not contribute to the safe and effective use of the drug, the interaction would not be clinically significant and, accordingly, is unnecessary in prescription drug labeling. If reasonable evidence exists demonstrating a clinically significant interaction between a drug and a food, laboratory test, or other drug, a statement to that effect should be included in the labeling of the drug. A casual relationship need not have been proved.

81. Comments contended that § 201.57(f)(4) should require that only "known" clinically significant interactions be stated in drug labeling. One comment requested deletion of the prohibition against including nonclinical data concerning drug interactions.

The Commissioner concludes that this subsection, as proposed, is limited to "known" clinically significant interactions. The Commissioner has revised the regulation, however, to permit disclosure of drug interaction information supported only by animal or in vitro experiments, if the information is shown to be clinically relevant to the use of the drug. Drug interaction information that is not clinically relevant would not be appropriately included in prescription drug labeling.

82. One comment suggested that § 201.57(f)(4) should be expanded to include information on interactions that may occur with the drug and foods or laboratory tests.

The Commissioner agrees that this subsection of the labeling format should also include information on preventing interactions between the drug and foods, laboratory tests, or other drugs and has revised the final regulation accordingly.

83. One comment requested that information regarding drug interactions appear under its own section heading rather than under "Precautions." Another comment contended that this section of the labeling should be deleted on the grounds that it would congest the limited space of the labeling and that the information is easily available from other sources.

The Commissioner concludes that this information is properly included as a distinct subsection in the "Precautions" section of the labeling format because it informs physicians about other factors and intervening events that affect the safety and effectiveness of the drug. Although this subsection may add to the length of prescription drug labeling, it is important and useful information for the physician, and, for many drugs, it may not be easily accessible from other sources. Accordingly, the Commissioner rejects these comments.

84. One comment requested the deletion of the requirement for information on the handling of drug interactions, because the handling of interactions will vary in almost all cases.

The Commissioner agrees with this comment and has substituted the word "preventing" for the phrase "avoiding and/or handling" in § 201.57(f)(4)(i) in reference to drug interactions. The Commissioner believes the revised wording better describes the kind of information that should be included in this section of prescription drug labeling. Although the handling of a particular drug/drug or drug/food interaction may vary in different patients, drug labeling should contain clear and concise information on the principles of preventing drug interactions that are likely to occur in patients.

85. One comment suggested that § 201.57(f)(5) require that animal data be stated in the labeling only if there is a valid factual indication that it is relevant to the use of the drug in humans. Comments suggested that carcinogenicity data be placed under the "Warnings" section of the labeling and contended that it is redundant to refer to the "Warnings" section in the "Precautions" section of the labeling.

The Commissioner rejects these comments. This section of the labeling format is intended to convey animal data concerning the relationship of a drug and carcinogenesis, mutagenesis, or impairment of fertility in animals before a relationship is shown in humans. This information may be of value to physicians in deciding whether to prescribe a particular drug for an indication, when animal data

demonstrate a relationship between the use of the drug and carcinogenesis, mutagenesis, or impairment of fertility in animals and no comparable human data exist, and when equally effective alternative drugs that do not present a risk are available. The Commissioner concludes that such data are appropriately placed in the "Precautions" section of drug labeling when they are based solely upon animal data and placed in the "Warnings" section when they are based upon human data.

86. Several comments were received concerning the pregnancy subsection of the labeling format. One comment contended that the statement in § 201.57(f)(6) that this subsection shall be omitted for drugs not absorbed systemically should be clarified. Another comment contended that the statement should be deleted because some drugs not absorbed systemically may also pose a threat to a pregnant woman or a fetus. A third comment suggested that the wording be changed to "For drugs not absorbed in significant amounts systemically, this subsection of the labeling shall be omitted" to ensure that a topical drug that may be absorbed would also have a pregnancy warning. A comment also suggested that this section be omitted for drugs such as vaccines or local anesthetics that are ordinarily administered either infrequently or in a single dose, and for old drugs that have never been associated with abnormalities.

On the basis of these comments, the Commissioner has revised the first sentence of § 201.57(f)(6) to state that the pregnancy subsection of the labeling may be omitted only if a drug is not absorbed systemically and it also is not known to have a potential for indirect harm to the fetus. That change will require a statement concerning the drug use during pregnancy for all systemically absorbed drugs, as well as for drugs that are not absorbed systemically but that may cause harm to the fetus. Concerning the recommendation that the section be omitted for vaccines or local anesthetics, the Commissioner advises that § 201.56(d) provides that any section or subsection of the labeling format may be omitted from the labeling of a particular drug if the information clearly does not apply to that drug. However, regardless of factors such as marketing history or administration patterns, if a drug either is absorbed systemically or has a potential for indirect harm to the fetus, this subsection must be included in its labeling.

87. Several comments objected to the categorizing of pregnancy warnings, arguing that this section attempts to quantify the degrees of risk concerning the use of drugs in pregnant women more precisely than the state of the art allows and may subject both the physician and the manufacturer to a greater risk of litigation involving alleged drug-related fetal abnormalities.

The Commissioner disagrees with these comments. Because the specific pregnancy precaution categories require that the data supporting the precaution statement be disclosed, they do not unreasonably quantify the degrees of risk for drugs used in pregnant women. Accordingly, the labeling will reveal whether the precaution is based upon the availability or the unavailability of particular data. The pregnancy categories are necessary to provide consistency in prescription drug labeling through clear and concise statements concerning the safe and effective use of prescription drugs in pregnant patients. Physicians can then obtain additional and more detailed information concerning particular drugs from the manufacturer, FDA, or other sources available to physicians.

The Commissioner has, however, revised the pregnancy subsection of the labeling format to reduce the number of categories from six to five. The Commissioner believes fewer categories will permit easier use of this important information by physicians. Although the Commissioner has made several editorial changes in the descriptions of the categories and the required statements, the revised categories differ little in substance from those initially proposed. Proposed pregnancy categories A and X are retained without significant changes; proposed category E has been renamed category D; proposed category D has been incorporated into category C; and proposed category B has been expanded.

Proposed categories C and D were distinguished primarily by whether or not adequate animal reproduction studies that demonstrate fetal abnormalities had been performed. Both categories were, however, based upon the unavailability of adequate and well-controlled studies in pregnant women. Because the absence of adequate and well-controlled human studies, with or without animal studies demonstrating fetal risk, is the important message conveyed by this precaution, the Commissioner believes a single pregnancy category combining proposed categories C and D will be more useful in prescription drug labeling.

Pregnancy category B, as proposed, applied to drugs for which adequate reproduction studies in animals are negative and for which adequate and well-controlled studies in humans are unavailable. Under this final rule, category B has been expanded to include drugs for which adequate reproduction studies in animals demonstrate an adverse effect, but for which adequate and well-controlled studies in pregnant women have failed to demonstrate a risk.

Accordingly, under this final rule pregnancy category A (§ 201.57(f)(6)(i)) applies to drugs for which adequate and well-controlled human studies have failed to demonstrate a risk to the fetus. Category B (§ 201.57(f)(6)(ii)) applies to drugs for which human fetal risk is relatively unlikely based upon either negative animal studies and no adequate and well-controlled human studies, or positive animal studies and negative adequate and well-controlled human studies. Category C (§ 201.57(f)(6)(iii)) applies to drugs for which human fetal risk is unknown based upon positive animal studies (or no animal studies), and no adequate and well-controlled human studies. Category D (§ 201.57(f)(6)(iv)) applies to drugs for which positive human evidence of fetal risk is available, but whose use in a pregnant woman may be necessary. Finally, category X (§ 201.57(f)(6)(v)) applies to drugs for which positive animal studies or positive human evidence of fetal risk is available, and whose use in a pregnant woman is contraindicated. The Commissioner advises that, for categories D and X, the evidence of fetal risk in humans from the use of a drug may be obtained from a clinical study or other source that demonstrates a relationship between the drug and the adverse effect in the fetus. A causal relationship need not be shown.

The Commissioner has separated the pregnancy subsection of the labeling into the teratogenic and nonteratogenic effects of the drug. The teratogenic effects of the drug are identified and discussed under the appropriate pregnancy category, and the nonteratogenic effects of the drug are identified and discussed independently of the pregnancy category.

88. Several comments objected to the wording of the required pregnancy statements in § 201.57(f)(6). One comment contended that phrases such as "use only when the benefit justifies the potential risk" should be omitted in favor of more direct information because they apply to all drug prescribing situations and convey no

information about specific risks. Another comment argued that the labeling should require reports of known data only and not of speculative statements.

The Commissioner agrees in part with these comments and has revised the required pregnancy precaution statements to require that available human data on the use of the drug in pregnant patients and its effect on the unborn child be described in this section of prescription drug labeling. If pertinent animal data are available, they also must be described in this section of the labeling. These revisions provide for the inclusion of more data and information about the specific risks involved in the use of drugs in pregnant patients. The Commissioner advises, however, that conclusions on the use of a drug are appropriately required in labeling when they help to describe the basis under which a drug is placed in a particular pregnancy category. For example, a drug that has been shown to cause fetal abnormalities in humans may be placed in pregnancy category D only if the benefit-to-risk considerations in the use of the drug are such that the use of the drug may be necessary in a pregnant woman.

89. A comment suggested that § 201.57(f)(6) include a precaution statement in the pregnancy categories concerning the effect of the drug on the subsequent physical, neurological, and mental development of the child and concerning the amount of the drug that constitutes an overdose to the fetus. Because almost any drug may be taken during pregnancy, the physician should be informed if the product has not been established as safe for the child exposed to it in utero.

The Commissioner agrees that the absence of drug related fetal abnormalities at birth does not ensure against subsequent adverse effects on the child from the exposure to a drug in utero. Accordingly, the "Pregnancy" section of the labeling format has been revised to require that available data and information on the effect of the drug on the subsequent growth, development, and functional maturation of the child be included in the labeling. This information is equally important for drugs with a recognized use during labor or delivery, and the Commissioner has revised that subsection of the labeling format accordingly. The Commissioner believes the phrase "subsequent growth, development, and functional maturation" is more comprehensive and, accordingly, more appropriate than that suggested by the comment. Obviously, if available data show a specific amount

of the drug that constitutes an overdose to the fetus, such information must be included.

90. A comment objected to a statement requiring that prescription drug labeling specify in which trimester of pregnancy a drug can be administered without established risk to the fetus. The comment argued that such a statement would constitute a product warranty by the manufacturer on the safety of the drug, which cannot be made on such an absolute basis for any drug.

The Commissioner agrees with this comment and has revised § 201.57(f)(6)(i) and (ii) to require the labeling to specify the trimester of pregnancy to which the available human data apply.

91. Two comments contended that the pregnancy provisions in the labeling should provide statements of all available factual information, both analytical and clinical, as well as animal and human data, and should not attempt to instruct physicians in the use of drugs based on that information.

The Commissioner disagrees and concludes that each required pregnancy precaution statement, together with a description of the data upon which it is based, is a reasonable expression of the limitations of the data. The pregnancy precaution statements are intended to provide only a summary of the available factual information on the use of drugs during pregnancy. They provide concise information to physicians concerning the safe and effective use of prescription drugs in pregnant patients.

92. One comment objected to the use of the phrase "the possibility of termination of the pregnancy should be discussed" in proposed pregnancy categories E and X because the language raises medical, religious, and ethical considerations. The comment suggested that the phrase be revised to read "a possibility of potential hazard to the fetus must be considered."

The Commissioner agrees that the proposed wording of those pregnancy statements was inappropriate and § 201.57(f)(6) has been revised to eliminate any direct suggestion that the possibility of the termination of pregnancy be discussed with the patient. If a pregnant patient is exposed to a drug with teratogenic potential, however, she should be informed of the possibility of the drug's teratogenic effects so that she can make her own decision regarding the termination of the pregnancy, and the final rule so provides.

93. A comment suggested that the labeling be required to state that the pregnant patient must be informed of the

benefit-to-risk considerations involved in the use of a drug.

As stated in paragraph 9 of this preamble, the Commissioner concludes that prescription drug labeling directed to physicians is generally an inappropriate means by which to require that patients be informed of the benefit-to-risk considerations in the use of a drug. As discussed in paragraphs 21 and 72 of this preamble, FDA is currently considering requiring, and has required (e.g., for oral contraceptive drug products), that particular information concerning some prescription drugs be made available to patients.

94. A comment suggested that the wording used in this section implies that studies to determine teratogenic and mutagenic effects of a drug on the fetus should be conducted in pregnant women to provide the information FDA wants. Another comment suggested that FDA require clinical studies in pregnant women for some drugs and recommended that phase IV studies include pregnant subjects.

The Commissioner concludes that the wording of § 201.57(f)(6) neither requires nor should require that studies in humans be conducted to determine the effect of a drug on the fetus or the pregnant patient. This subsection of prescription drug labeling is intended to provide only a summary of available data on the safety and effectiveness of the drug in pregnant women. Whether clinical studies on particular drugs in pregnant women should be required by FDA is beyond the scope of this regulation.

95. One comment suggested that the word "essentially" be inserted before the word "negative" in pregnancy category A.

The Commissioner concludes that the use of the phrase "essentially negative" to describe the data regarding fetal abnormalities is not appropriate because it would eliminate the distinction between category A and other pregnancy categories in the labeling format. Accordingly, the Commissioner rejects the suggestion.

96. A comment suggested that § 201.57(f)(7) require the labeling to contain information on the effect of a drug during labor and delivery only for drugs that are indicated for use during labor or delivery.

The Commissioner does not agree that this subsection should be limited to drugs that are indicated for use during labor and delivery because some drugs that are not specifically indicated for such use are commonly so used. Accordingly, drugs with a recognized

use during labor or delivery should be labeled as required by this subsection.

97. Another comment suggested that this subsection of the labeling include information concerning the effect of the drug on the mother, as well as on the fetus, when the drug is used during labor and delivery. The comment also suggested that detailed pharmacokinetic information on both the mother and the fetus be included in prescription drug labeling.

Section 201.57(f)(7) has been revised to require inclusion of information on the effect that a drug with a recognized use in labor and delivery will have on both the mother and the fetus. The Commissioner has also revised this section to require inclusion of information on whether the drug increases the likelihood that resuscitation of the newborn will be necessary. The prescription drug labeling format, as proposed, properly includes available pharmacokinetic information with respect to both the mother and the fetus for drugs with a recognized use during labor and delivery, and for all systemically absorbed drugs, in the "Pregnancy" section of the labeling.

98. A comment suggested that § 201.57(f)(8) require a statement in the labeling that the nursing patient must be informed of the benefit-to-risk considerations involved in the use of a drug.

The Commissioner disagrees with this comment. As stated in paragraph 9 of this preamble, prescription drug labeling directed to physicians is generally an inappropriate mechanism for requiring that general benefit-to-risk information be given to patients.

99. One comment objected to the proposed wording of the required statement concerning the unavailability of data on the excretion of a drug in human milk, on the ground that drugs are too often prescribed unnecessarily during lactation. The comment suggested that the statement be rephrased to state that nursing mothers should not take drugs.

The Commissioner has substantially revised § 201.57(f)(8). The revised requirement emphasizes that information about the excretion of drugs in human milk and their effect on the nursing infant must be included in the labeling for systemically absorbed drugs. In addition, the revised wording of the required labeling statements emphasizes that a determination of whether to discontinue nursing or the use of a drug with a potential for causing a serious adverse reaction in the nursing infant should take into account

the importance of the drug to the mother.

100. One comment contended that the proposed language of the required statement in § 201.57(f)(9) might deter physicians from using potentially effective drugs in children and suggested the following alternative wording: "Although sufficient data are not available to establish the safety and/or efficacy in children below the age of —, the physician should use his clinical discretion in prescribing this drug for children when accepted alternatives for treating pediatric patients for the specific condition are either not available or ineffective."

The Commissioner rejects this comment and concludes that the suggested wording provides no advantages over that in the proposal. The requirements of § 201.57(f)(9) for labeling statements concerning the pediatric use of drugs reflect the statutory standard for drug labeling. As stated in paragraph 6 of this preamble, a physician may, however, deviate from recommendations or suggestions made in prescription drug labeling.

101. Another comment argued that precautions regarding pediatric use should be required only when pediatric use is specifically cited in the "Indications" or "Dosage" section of the labeling.

The Commissioner concludes that a pediatric use labeling statement for drugs should not be limited to drugs for which pediatric use is specifically cited in the "Indications" and "Dosage" sections of the labeling. Prescription drug labeling should inform physicians if data are unavailable concerning the safe and effective use of a drug in pediatric patients for indications for which the drug has been shown to be safe and effective in adults, because many drugs not specifically indicated for pediatric patients are commonly prescribed for them. Accordingly, the Commissioner rejects this comment.

102. One comment pointed out that it would be unlikely that adequate and well-controlled studies would be performed in pediatric subjects with older medications under the current informed consent requirements of FDA and Department of Health, Education, and Welfare (HEW) regulations.

The Commissioner advises that prescription drug labeling is intended to provide only a summary of available data or the lack of it on a prescription drug. The labeling format in § 201.57 neither requires nor is intended to require that studies be performed to develop data for inclusion in prescription drug labeling. Accordingly,

a thorough discussion of both current and proposed requirements for clinical studies of drugs in particular population groups would not be relevant to this final regulation on the prescription drug labeling format.

Adverse Reactions

103. Several comments asked for a more precise definition of an adverse reaction and for clarification of the type of information required by § 201.57(g). One comment contended that undesirable effects "coincidental" with the use of the drug should be included in the definition to protect manufacturers from product liability actions. One comment asked whether FDA considers "Adverse Effects" and "Adverse Experiences" to be interchangeable with "Adverse Reactions." A comment contended that the definition includes unsubstantiated reactions and that incorrect diagnosis could result from attributing a disease symptom to an adverse reaction. That comment suggested that "uncommon nuisance reactions," especially unestablished ones, be eliminated from this section and that symptoms commonly associated with the disease treated not be listed as adverse reactions unless the incidence of the symptom with the use of the drug is clearly higher than the background.

The Commissioner concludes that § 201.57(g) adequately defines an adverse reaction as an undesirable effect reasonably associated with the drug. That definition would not include unsubstantiated reactions, disease symptoms, or apparently undesirable effects coincidental to the use of a drug, because they would not be reasonably associated with the use of the drug. The Commissioner advises, however, that in determining whether an undesirable effect is reasonably associated with the use of a drug, analysis of available data (including comparison with appropriate control groups), detailed study of individual cases, and new investigations with the drug may be necessary.

The Commissioner advises that, although § 310.300 (21 CFR 310.300) requires that records and reports be made of experiences and effects that are reported for a drug subject to an approved NDA, adverse effects and adverse experiences with a drug are not necessarily "reasonably" associated with the use of the drug. Accordingly, adverse effects and adverse experiences are not synonymous with adverse reactions and should not be included in prescription drug labeling.

104. Another comment suggested that the inclusion in the labeling of some

adverse reactions might divert medical attention from other therapeutic or disease factors actually giving rise to the particular condition for which the drug is being used.

The Commissioner concludes that an appropriate listing of adverse-reaction information will encourage the safe and effective use of drugs by physicians and will not divert their attention from other therapeutic or disease factors that produce symptoms similar to the adverse reactions caused by particular drugs. Accordingly, the Commissioner has made no change in the final regulation because of this comment.

105. A comment questioned the sources of adverse-reaction data required in labeling, especially whether they are to be obtained from literature references, FDA adverse reaction files, or the manufacturer's files of directly reported adverse reactions. The comment also asked whether, if the data are to be obtained from the manufacturer's files, a manufacturer has access to the adverse-reaction data of other companies marketing the same drug or a drug of a similar class.

The Commissioner advises that adverse-reaction data in drug labeling should be based on all the information available to the manufacturer concerning the drug. Manufacturers who market the same drug or a drug of a similar class are encouraged to cooperate in providing the best and most accurate adverse-reaction information in the labeling for their drug products. FDA's adverse-reaction files contain a compilation of all data submitted to the agency on adverse reactions from drugs. The data are available to labelers under FDA's public information regulations (Part 20 (21 CFR Part 20)).

106. One comment suggested that FDA develop standards for reporting the frequency of adverse reactions associated with drugs and require statements in labeling concerning the conditions under which the adverse reactions occurred.

The Commissioner points out that under § 310.300, holders of NDA's approved under section 505 of the act are required to submit information concerning the quantity of the drug distributed and reports of clinical experience, studies, investigations, and tests conducted by, or reported to, the NDA holder. The FDA encourages individual physicians to submit reports to the agency of adverse experiences that they observe with marketed drug products. The agency also supports a variety of epidemiological surveys and special studies related to drug use and

adverse reactions. Furthermore, the Commissioner concludes that many sections of the labeling specified in this final rule define the conditions under which adverse reactions may occur. Accordingly, the Commissioner believes the current activities of the agency, and particularly this final rule, address the concerns of the comment.

107. Several comments objected to the requirement that the labeling list adverse reactions that occur with the drug to which the labeling applies and with drugs of the same chemical or pharmacologic class, if applicable, arguing variously that the standard ("same chemical or pharmacologic class") is unclear and too general, that the potential for adverse reactions from a drug depends upon the actual experience with the specific drug and not the class to which it belongs, and that no proof exists that adverse reactions occur equally among all drugs in a class. A comment suggested that only those adverse reactions for drugs in the same pharmacologically active and chemically related class be required in the labeling for the drug.

The Commissioner agrees that, in addition to adverse reactions reported for the drug to which the labeling applies, only those adverse reactions for drugs in the same pharmacologically active and chemically related class are required, if applicable, to be included in the labeling for a drug and has modified § 201.57(g) accordingly.

The Commissioner concludes that the remainder of these comments apparently do not understand the class labeling requirements for adverse-reaction information. As a part of its labeling revision program, FDA contracted with the American Society of Hospital Pharmacists to draft 20 class labels for classes of drugs including the digitalis glycosides, cephalosporines, corticosteroids, oral anticoagulants, and tetracyclines. Drug classes were selected for this project on the basis of close clinical, pharmacologic, and therapeutic relationships. Accordingly, class labeling is being drafted for thiazide diuretics, but not for all diuretics. In this program, adverse reactions within a class of drugs are considered to pertain to all members of that class unless it can be shown that drugs within a class are in fact different; e.g., a difference among members of the tetracycline class has been shown with respect to photosensitivity potential and safety in the presence of renal disease. The Commissioner believes the standard for inclusion of class adverse reactions, i.e., "same pharmacologically active and chemically related class," is

clear and specific enough to apprise manufacturers of the adverse reaction data that are required in prescription drug labeling.

108. A comment contended that this section of the labeling format should state that the only adverse reactions from the pharmacologic or chemical class of a drug to which § 201.57(g) applies are those that pertain specifically to the pharmacologic action of the particular class of drugs, rather than to the so-called toxic effects of the drugs.

The Commissioner concludes that some toxic effects of a drug may also exist for each member of the class to which it belongs, whether or not they are pharmacological reactions. Accordingly, a distinction between the toxic effects of a drug and other adverse reactions must be based on the facts of each case.

109. Several comments argued that class labeling of adverse reactions should not be approved in the absence of a specified procedure by which a drug whose labeling contains an adverse reaction that is associated with other drugs in its class, but that is not associated with, or, based on adequate and well-controlled studies, does not apply to, the drug, can be relieved of the requirement that the adverse reaction be stated in the drug's labeling.

The Commissioner advises that a listing in drug labeling of the adverse reactions that occur with drugs of the same pharmacologically active and chemically related class as the drug is appropriate, if the reactions can be reasonably associated with the use of that drug, e.g., through similarity in pharmacological action or chemical structure. If adequate scientific evidence demonstrates, however, that an adverse reaction that occurs for a class of drugs does not occur with a particular member of that class, the reaction would not be reasonably associated with the drug and would not be appropriately included in its labeling. The Commissioner concludes that this interpretation is inherent in the regulation as proposed and, accordingly, that no change in § 201.57(g) is warranted.

110. Several comments contended that the prescription drug labeling format should permit adverse reactions to be listed in two categories: one for adverse reactions observed and reported for the drug, and one for adverse reactions observed and reported for the class of drugs to which the drug belongs. Concurrent with the second list should be a statement that the adverse reactions have not been reported for the drug or that the frequency of reports is

higher or lower for the drug than for the class. Another comment asked whether a manufacturer's adverse-reaction data concerning a drug should be stated separately from other manufacturers' data concerning closely related products. One comment suggested an additional category for adverse reactions reported as placebo effects.

The Commissioner does not agree that adverse reactions should be listed in separate categories depending upon the source of the data upon which they are based. The distinctions raised by the comments for separately listing adverse reactions are inappropriate because those groupings of adverse reactions in drug labeling would give conspicuousness to the absence of particular adverse reactions that apply to related drugs but are not observed with the drug to which the labeling applies, when no basis exists to suggest that the adverse reaction will not occur with that drug as it does with the related drugs. Accordingly, the Commissioner concludes that separate listings of adverse-reaction information would be misleading.

The Commissioner also believes that the incidence of placebo effects is sometimes overstated and that the incidence does not necessarily disprove the incidence of adverse reactions from the drug. The association of an undesirable effect with the use of a drug may depend on factors other than an increase in the incidence of the effect, e.g., the severity of the undesirable effect or its temporal relationship to the use of the drug. Although a number of apparent adverse effects are associated with nonpharmacological factors, i.e., placebo effects, prescription drug labeling should be limited to adverse reactions reasonably associated with drug use.

111. A comment suggested that adverse reactions be separated to indicate those reactions associated with each dosage form being marketed.

The Commissioner agrees that adverse reactions may be separated to indicate those reasonably associated with a particular dosage form, when the reactions are not reasonably associated with every dosage form.

112. Another comment suggested that adverse reactions derived from animal studies, but not seen clinically, be so identified.

The Commissioner concludes that § 201.56(c) provides that adverse reactions derived from animal studies, but not seen clinically, may be included in this section of the labeling format if the information is necessary for the safe and effective use of the drug in humans

and if the animal data are identified as such. The Commissioner finds that these interpretations were inherent in the regulation as proposed and, therefore, that no change in § 201.57(g) is necessary.

113. One comment suggested that a general statement about the pharmacological class of the drug and its effect on humans be substituted for a class list of adverse reactions.

Because the statement would not be as useful to physicians as a clear and concise listing of the adverse reactions that occur with drugs of the same pharmacologically active and chemically related class, the Commissioner concludes that a general statement about the pharmacological class of the drug cannot substitute for a class list of adverse reactions.

114. One comment suggested that disclosure of significant medical and scientific controversy surrounding a reported adverse reaction be permitted.

The Commissioner advises that inclusion in drug labeling of medical or scientific controversy concerning labeling statements would be highly confusing, and thus misleading, in violation of section 502(a) of the act. This conclusion was fully discussed in the preamble to the July 7, 1975 rule revising § 1.21. The Commissioner reaffirms this conclusion and rejects the suggestion.

115. Several comments objected to the requirement in § 201.57(g)(1) that the labeling include specific information on the severity and mechanism of the important adverse reactions associated with the drug, as well as information on the clinical management of the reactions, alleging that it will be impossible to comply with such a blanket requirement, that there will be difficulty in determining which adverse reactions are "important," that information on severity and mechanism may be unknown, that this information is already required under the "Warnings" section of the labeling format, and that it is not necessary or desirable to tell physicians what good medical practice requires in the clinical management of adverse reactions. One comment observed that the existence of predisposing pathological conditions concomitant with an adverse reaction presents a complex clinical situation that may be too broad to place in labeling to describe the mechanism, severity, and management of an adverse reaction. Another comment suggested that such information be required only when, under the specific circumstances, the methods and procedures required would be novel and not generally within

the knowledge of physicians practicing good medical care. A comment suggested that the words "if available" be added at the end of § 201.57(g)(1).

The Commissioner agrees in part with these comments. Information on steps that should be taken by health care professionals in the management of serious adverse reactions must be stated in the "Warnings" section of the labeling, as discussed in paragraph 65 of this preamble. The Commissioner concludes that it would be impractical to distinguish further between "important" and other adverse reactions and to require specific information on the management of "important" adverse reactions in drug labeling. Accordingly, the requirement that the "Adverse Reactions" section of the labeling bear information on the severity, mechanism, and clinical management of "important" adverse reactions has been deleted from the final rule.

The Commissioner also agrees with the comment that a predisposing pathological condition may affect labeling statements concerning adverse reactions, as well as warnings, contraindications, and other sections of prescription drug labeling. Labeling statements based on such conditions must be determined on a case-by-case basis, however, because they will vary greatly among drugs and the kinds of conditions that may occur. Accordingly, no change in the final regulation is warranted in that respect.

116. Several comments were received concerning the format in § 201.57(g)(2) for listing adverse reactions. One comment contended that they should be listed in order of seriousness, while another asserted that listing adverse reactions in terms of approximate frequency is unrealistic and suggested that they be listed in descending order of frequency. One comment argued that specific criteria for the categories of frequent, less frequent, and few adverse reactions be established to provide consistency among labeling for different drugs. Two comments suggested that rough orders of magnitude be allowed for drugs marketed for a significant period of time and that specific adverse reactions and frequencies encountered in clinical trials be allowed for new drugs.

The Commissioner believes that these comments show a misunderstanding of this section of the labeling format and has revised the final regulation to eliminate the potential for future misunderstandings of these requirements. Adverse reaction information may be categorized under this section of the labeling by organ

system, severity, frequency, or toxicological mechanism. The Commissioner has revised the requirement, however, to clarify that any one of those categories for reporting adverse reaction information, or a combination of them, may be used in prescription drug labeling. The Commissioner has also revised the regulation to clarify that the categories themselves, and the adverse reactions within each category, are required to be listed in descending order of frequency. An adverse reaction that is significantly more severe than the other reactions listed in a category, however, is required to be listed before those other reactions. The Commissioner believes that drug labelers have experience in writing labeling in this format and concludes that this uniform format for listing adverse reactions will be most helpful to physicians. If frequency information from adequate clinical studies is not available for a drug, the categories and adverse reactions within each category are required to be listed in decreasing order of severity.

117. A comment objected to 201.57(g)(1), arguing that it is virtually impossible to state the "approximate frequency" of each adverse reaction, particularly for those drugs that have been marketed for several years. Several comments requested clarification of how frequency and severity data on adverse reactions are to be generated, especially for drugs produced by many different manufacturers. Another comment suggested that the regulation not require numerical estimates for frequency of adverse reactions because the estimates can easily be misleading and would require constant revision to reflect continuing receipt of clinical data. The comment suggested that word classifications alone would be more satisfactory.

The Commissioner does not agree that the provisions of § 201.57(g)(1) will require frequent revision of the "Adverse Reactions" section of labeling to reflect the continuing receipt of clinical data, unless reliable studies demonstrate a significant change in the frequency of adverse reactions. Word classifications of the frequency of such reactions, however, would not convey useful information to physicians and, accordingly, would be unsatisfactory. Section 201.57(g)(1) requires that, when information on the frequency of adverse reactions is available, it be expressed in rough estimates or orders of magnitude that will provide physicians with clear and concise statements of the frequency of the reactions. The labeling format, as

proposed, establishes criteria that will provide consistent labeling statements on adverse reactions.

The Commissioner believes that information to categorize adverse reactions can be obtained from, among other sources, (1) adequate and well-controlled studies, as described in § 314.111 (21 CFR 314.111), e.g., phase II and III studies conducted under § 312.1 (21 CFR 312.1) (particularly for newly marketed drugs); (2) long-term experience (particularly for drugs marketed for a significant period of time); and (3) epidemiological studies. Reasonable ranges for incidences of adverse reactions, e.g., 10 to 20 in 1,000 patients, may be included in prescription drug labeling if the range is supported by adequate studies. If many studies are available, however, and they demonstrate a wide range in the incidence of an adverse reaction, the incidence range should be restricted to that obtained from the most representative and reliable studies, to avoid burdening physicians with irrelevant ranges for each adverse reaction. More detailed discussions are permitted for more significant adverse reactions. If no reliable studies are available to provide incidence data, adverse reactions are required to be listed in decreasing order of severity.

118. Two comments objected that specific criteria for categories of adverse reactions might misleadingly appear to be a tool for users to compare directly the safety of different drugs merely by examining the labeling to determine which drug has the highest incidence of reactions of any given type. The comments contended that such a format is contrary to other proposed provisions prohibiting the inclusion of statements of comparative or quantitative safety in prescription drug labeling.

Although comparative statements of safety within the labeling for a particular drug are misleading unless they are supported by substantial evidence, the Commissioner concludes that, if the "Adverse Reactions" sections of the labeling for different drugs comply with these final regulations, there should be no restrictions upon the physician's comparing labeling for different drug products. The Commissioner, therefore, rejects these comments.

119. Two comments questioned the prohibition in § 201.57(g)(2) against the use of percent figures to indicate frequency of adverse reaction, even though frequency of adverse reactions per 100 patients is acceptable.

The Commissioner believes the use of percent figures often conveys a greater

degree of certainty than can be concluded from the data. For that reason, the labeling format requires that frequency statements be modified by the word "about" or "approximately." Percent figures may be used, however, if they appropriately reflect general experience and do not falsely imply a greater degree of accuracy than actually exists.

120. One comment objected to permitting percent figures from adequate and well-controlled studies, even though the incidence of adverse reactions for an active drug and a placebo may not be significantly different.

As stated in paragraph 110 of this preamble, the Commissioner believes that "placebo effects" are sometimes overstated and that the incidence of placebo effects does not necessarily disprove the incidence of adverse reactions associated with a drug. The Commissioner, therefore, rejects this comment.

121. Two comments objected to § 201.57(g)(3) on the ground that it fails to indicate the criteria to be used to determine whether an adverse reaction is "potentially fatal" and, when that determination has been made, whether the statement must be placed in the "Warnings" or the "Contraindications" section of the labeling.

The Commissioner advises that an adverse reaction is potentially fatal if it may result in death to the patient. If, under certain conditions, the risk of a potentially fatal adverse reaction is so great that it clearly outweighs any benefit to be derived from using the drug, the use of the drug under those conditions should be contraindicated in the drug's labeling. If the benefit-to-risk considerations for the use of a drug are favorable despite the possibility of a potentially fatal adverse reaction, that adverse reaction should be described in the "Warnings" section of the drug's labeling. Accordingly, no change is needed in the final regulation because of these comments.

122. One comment objected to § 201.57(g)(4) and contended that data comparing the drug to which the labeling applies with other drugs in terms of frequency, severity, or character of adverse reactions derived from adequate and well-controlled studies, should be required in all labeling.

The Commissioner reiterates that the prescription drug labeling format is an inappropriate place in which to require that particular data or information be generated on drugs. The labeling format is intended to provide drug labeling for physicians that presents available data

and information in a clear and concise manner. The comparative data that the comment urges be placed in prescription drug labeling, however, is not generally available for most drugs.

Drug Abuse and Dependence

123. Several comments suggested the adoption of either a separate section concerning the abuse and dependence potential of the drug or inclusion of information on these subjects under other sections of the labeling format, e.g., the "Clinical Pharmacology," "Contraindications," "Warnings," "Precautions," or "Adverse Reactions" section.

The Commissioner concludes that the proposed labeling format would have required the inclusion of information on the drug abuse and dependence potential of a drug under other sections of the labeling format. The Commissioner agrees, however, with the comments that this information should be placed in a separate section of the labeling format. Accordingly, § 201.57(h) requires the labeling of a prescription drug to include the following: (1) if the drug is controlled by the Drug Enforcement Administration (DEA), the schedule in which it is controlled; (2) information on the types of abuse that occur with the drug and the adverse reactions pertinent to them; (3) information on the types of psychological or physical dependence that occur with the drug; (4) susceptible populations; (5) identification of the quantity of the drug over a period of time that may lead to tolerance or dependence, or both; (6) information on the effects of chronic abuse and abrupt withdrawal; and (7) a description of the procedures necessary to diagnose the dependent state and treat the effects of abrupt withdrawal. The Commissioner also advises that the identification of the schedule in which a drug is controlled by DEA in this section of the labeling format is in addition to the identification required under DEA's regulations in 21 CFR 1302.03(b) and 1302.05.

Overdosage

124. Several comments were received on the section of the prescription drug labeling format concerning the signs, symptoms, laboratory findings, and general principles of treatment for overdosage of the drug. One comment contended that the words "if known" be added before the word "describe" in the first sentence of § 201.57(i) on the ground that overdosage information from human data may not be available for a newly marketed drug. Another

comment suggested that this section be written in a liberal manner because data on other drugs of the same class as the drug to which the labeling applies may be the only information available relating to overdosage of a drug, especially for newly marketed drugs.

The Commissioner does not agree that this information should be required in drug labeling only if information based on human data is known. However, the Commissioner has revised this section of the labeling format to state that the information must be based on human data, if available, but if human data are unavailable, the information may be based on appropriate animal and in vitro data. Also, as revised, § 201.57(i) provides that overdosage statements may be based on data and information concerning other drugs of the same class as the drug to which the labeling applies if data and information concerning the drug are unavailable.

125. One comment contended that the "Overdosage" section of the labeling should contain the following information: (1) signs and symptoms of overdose and time of onset; (2) laboratory procedures to confirm or exclude the presence of the drug; (3) applicable treatment procedures for limiting absorption, reducing severity of clinical effects (e.g., antidotes), promoting excretion (e.g., diuresis and dialysis), and support of vital functions; (4) commonly occurring complications (e.g., organ toxicity, delayed acidosis, etc.); (5) amount of a single dose ordinarily associated with symptoms of overdose; (6) amount of a single dose likely to be life-threatening; (7) blood concentration range likely to be associated with overdose; and (8) specific treatment procedures known to be ineffective or hazardous (e.g., central nervous system stimulant for sedative drug overdose). That comment also suggested that approaches to treatment discussed in the "Overdosage" section should be limited to procedures of established effectiveness, because naming a procedure without comment implies the advocacy of the procedure. One comment argued that serum levels associated with toxicity should, when applicable, be defined. A comment contended that a comprehensive description of overdosage is incomplete without information on acute or chronic toxicity experienced with the drug. Another comment contended that a statement of the value of therapeutic measures such as forced emesis or diuresis or dialysis should be required in this section of the labeling.

The Commissioner believes the proposed "Overdosage" section of the

labeling format would have required much of the information detailed in these comments to appear in that section of prescription drug labeling, but agrees that § 201.57(i) should be expanded to list more thoroughly those kinds of information necessary to describe adequately the signs, symptoms, and laboratory findings of acute overdosage and the general principles of treatment. Accordingly, the "Overdosage" section of the labeling format has been extensively revised in the final rule.

126. One comment suggested that only specific antidotal and therapeutic measures, e.g., those available from the National Clearinghouse for Poison Control Centers, be required in this section of the labeling.

The Commissioner does not believe that the information in this section of the labeling format should be limited to a particular source. Prescription drug labeling should include accurate antidotal and therapeutic information from whatever source may be available. The Commissioner therefore rejects the comment.

127. One comment suggested that this section be optional because overdosage of some drugs, e.g., many topical drugs, is either unlikely or not harmful. Another comment suggested that this section be qualified by the phrase "if applicable."

The Commissioner reiterates that § 201.56(d) provides that any section or subsection of the labeling format may be omitted if clearly inapplicable. Accordingly, the "Overdosage" section of prescription drug labeling may be omitted for a drug if an overdose is highly improbable or not harmful.

Dosage and Administration

128. Several comments objected to any requirements that prescription drug labeling state in mandatory language the recommended usual dosage, the usual dosage range, an upper limit dosage, and dosages for each indication, arguing that those requirements fail to recognize unusual circumstances concerning individual patients who can be evaluated only by the attending physician. One comment contended that this section must be worded in a manner that acknowledges that the physician can prescribe outside the dosage information stated in the labeling for the patient who falls outside the usual range of conditions and who can be evaluated only by the attending physician. Two comments suggested that the words "where appropriate" be added after the words "the usual duration of treatment" in this section. Two other comments

contended that information on the usual duration of treatment should be required only when there is a clear medical need to require a specific treatment period or when other safety considerations are involved in the use of a drug. One comment urged that this section end following the phrase "for each indication when appropriate," on the ground that the information required by the remainder of this section will vary for each patient based on the severity of the illness and the individual's response to treatment.

The Commissioner concludes that these comments have misunderstood the intent of § 201.57(j). The requirement to include the "usual" dose, dosage range, duration of treatment, etc., in effect recognizes that "unusual" situations may occur under which usual dosage information may be inappropriate and the medical judgment of the attending physician will be required. The Commissioner reiterates that prescription drug labeling is intended only to provide a summary of the essential scientific information needed for the safe and effective use of the drugs and not to restrict a physician from exercising his or her best professional judgment.

The Commissioner has clarified § 201.57(j) to require that the "Dosage and Administration" section of the labeling format include a statement of the upper dosage limit beyond which the safety and effectiveness of the drug have not been established. Defining the upper dosage limit as that point beyond which the safety and effectiveness of the drug have not been established, rather than the point beyond which the drug should not be prescribed, will provide a clearer standard in writing this section of prescription drug labeling. The Commissioner has also further revised § 201.57(j) to state that radiation dosimetry information, concerning both the patient receiving a radioactive drug and the person administering it, is required in the "Dosage and Administration" section of the labeling. That information is currently stated in this section of the labeling for most radioactive drugs.

129. A comment suggested that storage conditions for a drug are better described under the "How Supplied" section of the labeling than under "Dosage and Administration."

The Commissioner agrees that storage conditions for most drugs are appropriately placed in the "How Supplied" section of the labeling. In the case of drugs that are reconstituted before use, however, that information

should accompany the directions in this section for reconstitution.

130. A comment contended that much of the information concerning dosage range for a drug is often available only after the drug has been in clinical use for a period of time and that much of the required information may never be available.

The Commissioner does not agree with this comment. Before approval of an NDA, the applicant must demonstrate a safe and effective dose for the proposed indications for the drug. Although additional information concerning the dosage range for a drug may be gathered as a result of clinical experience, adequate dosage and administration information must be available for the safe and effective use of all marketed drugs.

131. One comment suggested that § 201.57(j) require that dosages be expressed in milligrams per kilogram of body weight or milligrams per square meter of body surface area.

Because systems for determining appropriate dosage, e.g., milligrams per kilogram body weight, can vary for particular drugs, the Commissioner concludes that it would be inappropriate at this time to require that a particular system for expressing dosage information be required in drug labeling.

132. One comment suggested that the labeling of an injectable drug include the strength of a final dosage in terms of milligrams of active ingredient per milliliter of reconstituted solution when diluted or prepared according to labeling instructions, to ensure an accurate concentration of the drug in an injectable solution.

The Commissioner agrees that the labeling for injectable drugs should, when appropriate, include a statement concerning the strength of a final dosage solution when prepared according to instructions, and has revised § 201.57(j) accordingly. In addition, as previously stated in paragraph 22 of this preamble, the Commissioner has added a requirement to this section that the following statement be included in the labeling for parenteral and injectable drugs: "Parenteral drug products should be inspected visually for particulate matter and discoloration prior to administration whenever solution and container permit."

133. A comment contended that modification of dosages for pediatric and geriatric patients should be required in drug labeling only when the drug is specifically indicated for use in those classes of patients.

The Commissioner believes that, if the safe and effective use of a drug in

pediatric or geriatric patients requires any modification in dosage, the labeling for the drug would be misleading if it does not describe the modification that is necessary for those patient populations. This comment is rejected and the requirement is retained as proposed.

134. A comment suggested that a statement be added to the labeling format to require that an expression of dosage be clearly distinguished and identified whenever it is expressed in terms of an equivalency standard of a drug other than the drug identified in the labeling; the comment contended that dosages suggested in the labeling may be based upon clinical trials with the drug base or a particular salt or ester different from the actual drug product being dispensed, and that such information is important to the physician or pharmacist in the use of the drug.

The Commissioner rejects this comment. Although some studies in the scientific literature report dosage information based upon equivalency standards, dosage information given in prescription drug labeling must be based upon data and information derived from studies of the particular drug to which the labeling applies.

How Supplied

135. A comment requested clarification of the requirement in § 201.57(k) that information on special handling and storage conditions appear in the labeling.

The Commissioner concludes that further definition of special handling and storage conditions, e.g., "Keep in a cold place, avoid freezing," in the labeling format would be impractical because special conditions vary greatly among drugs. Manufacturers can recognize whether special handling or storage conditions are necessary for their drugs and provide appropriate labeling statements concerning them. Accordingly, this comment is rejected.

136. Two comments objected to the requirement that the units in which the dosage form is marketed be identified, arguing that package sizes are subject to frequent change that would make the labeling obsolete, that this information is easily available elsewhere, and that generic drug manufacturers often issue any number of units per customer order. One comment suggested that the dosage form needs to be identified only when the insert applies to more than one form or strength of the drug and then only a practical physical description should be attempted. A comment questioned any requirement that the National Drug

Code number for the drug be included in labeling when it is legally optional for the label.

The Commissioner concludes that information concerning the strength of dosage forms, the units in which they are marketed, and the means to facilitate their identification is helpful to health professionals in the prevention or treatment of cases of abuse or overdose or similar medical problems. Accordingly, this information should be included in prescription drug labeling for the safe and effective use of the drug. This section has been revised, however, to state that only the units in which the dosage form is ordinarily available for prescribing by physicians must be included in the labeling. The Commissioner advises that § 201.57(k) does not require that a manufacturer include the National Drug Code number in drug labeling; rather, § 201.57(k) suggests inclusion of the number as an example of information appropriate to facilitate the identification of a dosage form.

137. One comment contended that this section of the labeling format should be amended so that other dosage forms can be listed in the section without requiring separate labeling in the "Physician's Desk Reference."

The Commissioner believes that this section of the labeling properly includes information concerning only those dosage forms to which the labeling applies. The inclusion of information about a dosage form in this section of prescription drug labeling without including necessary information in other sections of the labeling for the safe and effective use of that dosage form would cause the labeling for that dosage form to be misleading within the meaning of § 1.21 and cause the drug to be misbranded within the meaning of section 502(a) of the act.

Animal Pharmacology and/or Animal Toxicology

138. One comment suggested that § 201.57(l) should be reworded as follows: "This section should be used to provide physicians with important information concerning animal pharmacology and/or animal toxicology and also in vitro data that are provided by reliable studies and which may not otherwise be available in clinical data." The comment also suggested that such data be prefaced by a statement that clearly demonstrates the purpose for which the data are presented and indicates that there is an absence of clinical data in support of the proposition advanced.

The Commissioner rejects this comment. The suggested rewording would permit the use of animal data to suggest the use of a drug for indications for which it has not been shown to be safe and for which substantial evidence of effectiveness is lacking. This section of the labeling format may include only clinically significant animal data that are necessary for the safe and effective use of the drug in humans and that cannot be appropriately incorporated into other sections of the labeling format.

Clinical Studies and References

139. Two comments objected to the broad exclusion of the "Clinical Studies" and "References" sections from prescription drug labeling on the grounds that those sections contain basic information needed by the physician, especially for newly marketed drugs, and that such a ban, because it denies physicians the references to studies that may contain descriptions of drug use for indications not approved in the labeling, contradicts FDA's position that drug labeling is to be specific and provide explicit information on indications for use (see § 1.112(e) of the April 1975 proposal). One comment doubted that drug manufacturers would place this type of information in other kinds of labeling, such as brochures, if it is not permitted in the package insert as stated in the preamble to the proposal. One comment stated that, contrary to the statement in the preamble, this kind of information would also not be permitted in other kinds of labeling because the proposed regulations apply to all labeling. Another comment suggested that the last sentence be rewritten to require only that the main thrust of the clinical studies or references be within the requirements of the labeling regulations and that appropriate qualifications concerning other information be made because most studies and references refer to unapproved indications or uses. Yet another comment suggested that the words "unless the studies or references cited also refer to the use of the product for indications in the insert" be added to the last sentence of that section.

The Commissioner agrees in part with the comments. The "Clinical Studies" and "References" sections of prescription drug labeling are intended to provide health care professionals with basic information on the safe and effective use of the drug that is too detailed for inclusion in the labeling for the drug. Accordingly, § 201.57(m) has been established to permit, at the option of the person responsible for the

labeling, the inclusion of "Clinical Studies" and "References" sections in prescription drug labeling. Clinical studies and references may also be cited in other sections of prescription drug labeling when the citation is essential to an understandable presentation of the available information in that section.

Citation in prescription drug labeling of clinical studies or references is permitted, however, only to the extent that the citation contributes to clear and concise drug labeling and avoids detailed descriptions of subjects that are of limited interest but nonetheless important. The Commissioner does not agree, as one of the comments suggests, that citations are intended to provide physicians with references to studies that may contain descriptions of drug use for indications not approved in the labeling. Although many clinical studies and references refer to unapproved uses of a drug, clinical studies and references may be cited in prescription drug labeling only to the extent that they contribute to an understanding of the labeled uses of the drug. A clinical study or reference that is primarily directed to an unapproved use of the drug would not serve that function and, accordingly, would not be appropriately cited in prescription drug labeling. Likewise, clinical studies or references that are primarily concerned with a risk or risks from the use of the drug may be cited in prescription drug labeling only to the extent that they contribute to an understanding of the risk or risks. A clinical study or reference that contains a detailed description of a risk from the use of a drug, whether or not the risk was observed in the use of the drug for an unapproved indication, would be appropriately cited in prescription drug labeling only to the extent that it contributes to an understanding of the risk. In contrast, if studies of the drug for approved indications are also available demonstrating the same risk, the citation of a study involving an unapproved use would be inappropriate.

Prescription Drugs for Human Use

140. One comment objected to the application of the required labeling format to labeling under § 201.100(d), which concerns all labeling including the package insert, rather than under § 201.100(c), which concerns the package insert, on the ground that the labeling format properly applies only to the package insert. Two other comments contended that § 201.100(d) should be amended to indicate clearly that § 201.57 applies only to the package insert and the full-disclosure portions of other labeling. One comment suggested

that proposed § 201.100(d)(3) be deleted and the phrase "and in the format specified by § 201.57 or, where applicable, § 809.10 of this chapter," be added to § 201.100(d)(1) after the word "emphasis."

The Commissioner advises that any labeling, as defined in section 201(m) of the act, for a prescription drug complies with § 201.100(d)(3) if it contains the information required, and in the format specified, by § 201.57. Because of the enactment of the Medical Device Amendments of 1976 (Pub. L. 94-295; 90 Stat. 539-583), the labeling of in vitro diagnostic products (some of which were formerly considered prescription drugs) under § 809.10 (21 CFR 809.10) is not affected by this final regulation. Section 201.100(d)(3) clearly applies only to the package insert and the full-disclosure portion of other labeling, and no change as a result of these comments is necessary.

The Commissioner concludes that the objections to including the required labeling format in § 201.100(d) rather than in § 201.100(c) were fully answered in paragraph 9 of the preamble to the April 7, 1975 proposal and that no new information justifying a change in the final regulation was provided by these comments. The Commissioner rejects the suggested amendment of § 201.100(d)(1) because the change would make the labeling format in § 201.57, which properly applies to all prescription drugs, apply only to articles subject to sections 505 and 507 of the act.

141. Several comments stated that the proposed amendment to § 201.100 to require the placement of the issuance or revision date in the labeling was confusing. Comments suggested that the issuance or revision date be allowed anywhere in the labeling so long as it is prominent, that the revision date might be confused with an expiration date, that clarification of the date as a revision date and not a printing date is necessary, and that, because issuance dates are generated throughout the life of labeling as it is reprinted, it would be more meaningful to identify the date the promotional piece issued. One comment suggested that the proposal be revised to indicate that the date should be placed in the top right-hand corner of the first page of the text of the package insert information that appears in the labeling, and that existing regulations should continue to apply to other pieces of promotional labeling. Another comment suggested that because the proposed labeling format specified the location of the issuance or revision date in drug labeling, this proposed

amendment of § 201.100 should not be finalized.

The Commissioner is persuaded by the suggestion that the proposed amendment of § 201.100 to specify the location of the issuance or revision date in drug labeling is unnecessary. As described in paragraph 34 of this preamble, § 201.56(e) has been revised to require that the original issuance date or the date of the most recent revision of prescription drug labeling be identified as such and be prominently placed immediately after the last section of the labeling. A standard location for, and the identification of, that date will prevent confusion regarding it. Accordingly, § 201.100(d)(3) cross-references § 201.56 and thus requires that the original issuance or revision date be included in all labeling, as specified in § 201.56(e).

142. One comment objected to proposed § 201.100(e) and argued that the identity of the drug manufacturer, packer, or distributor, currently required for nonpromotional prescription drug labeling, because it would require unnecessary costs and efforts of a generic drug manufacturer to inventory labeling that is separately referenced for private label customers. A comment suggested that, to avoid confusion concerning the location of the name and place of business of the manufacturer, packer, or distributor, the phrase "in conjunction with a presentation of adequate information for use required by § 201.57" be added after the word "conspicuously."

The Commissioner does not agree with these comments. Labeling for a drug properly includes the name and address of the manufacturer, packer, or distributor, and the Commissioner believes that inexpensive methods for complying with this requirement can be found, e.g., stamping the name and address on printed labeling during the packaging process. Requiring a specific location of prescription drug labeling for this information is unnecessary, but, for clarity, the Commissioner has revised this section to conform it to the requirements for the specification of the name of the manufacturer, packer, or distributor on the label of a drug under § 201.1 (21 CFR 201.1).

Prescription Drug Advertisements

143. Several comments objected to the use of the phrase "quantitative statement of safety or effectiveness" in § 202.1(e)(6)(ii) as being too vague to be enforceable. They contended that the phrase must be either clarified or deleted, because it could result in a

preclearance requirement for virtually all advertisements. One comment contended that this phrase could prohibit the use of results of clinical studies showing percentages of effectiveness or adverse reactions, even though they were obtained from adequate and well-controlled studies, and therefore, the comment contended, the prohibition against quantitative statements must refer to quantitative statements in conjunction with comparative data.

The Commissioner does not agree with these comments. The phrase "quantitative statement of safety or effectiveness" adequately describes the types of statements that are prohibited in drug advertisements unless otherwise permitted under § 202.1(e)(6)(ii), e.g., percentage statements of the effectiveness of a drug when administered for a particular indication, or percentage statements of the incidence of a particular adverse reaction to a drug.

Section 202.1(e)(6)(ii) does not create a preclearance requirement for the use of quantitative statements of safety or effectiveness in drug advertisements; rather, it sets forth the conditions under which the information may be used in compliance with the requirements of the act and the regulations in Part 202. The use of quantitative statements of safety or effectiveness is permitted in drug advertisements when the representation has been approved as part of the labeling in a new drug or antibiotic application or biologic license, or if, for other drugs, it is supported by substantial evidence derived from adequate and well-controlled studies, or if this requirement is waived on the basis that other adequate scientific substantiation exists. Those conditions for the use of this information are in full accord with the current requirements of the act and the regulations (see, e.g., § 201.1(e)(4)). The prohibition against quantitative statements of safety or effectiveness is not limited to those made in conjunction with comparative data; rather, it applies to all quantitative statements.

144. A comment argued that the prohibition against a comparison with another drug or the use of a quantitative statement of safety or effectiveness, unless the representation is proved by substantial evidence or a waiver is obtained, is not authorized by the act.

The Commissioner does not agree with this comment. Section 502(n) of the act provides, among other things, that prescription drug advertisements may be required to contain a "true statement," in brief summary, relating to

the safety and effectiveness of the drug. Under § 202.1(e)(5)(i), an advertisement does not present such a "true statement" if it is false or misleading with respect to safety and effectiveness. The Commissioner concludes that comparative or quantitative statements of safety and effectiveness are misleading unless they are adequately substantiated, i.e., supported in most cases by substantial evidence derived from adequate and well-controlled studies.

145. A comment argued that the burden is on the government to prove that safety and effectiveness claims for "grandfathered" drugs constitute misbranding and suggested that the verb relating to substantial evidence in § 202.1(e)(6)(ii) be changed from "proved" to "supported." A comment suggested that for comparative claims for drugs not subject to section 505 or 507 of the act, the evidence only be required to be on file with the manufacturer. One comment contended that the prohibition against the use of comparative claims "by implication" in advertising is too vague to be enforced.

The Commissioner agrees with the comments that the verb in § 202.1(e)(6)(ii) relating to substantial evidence should be changed from "proved" to "supported," and that data supporting comparative claims for drugs not subject to section 505 or 507 of the act need only be on file with the manufacturer. The final regulation has been revised accordingly. The Commissioner does not agree, however, that the prohibition against the use in advertising of comparative claims "by implication" is too vague to be enforced. Advertising for a drug can imply a comparative claim for the drug by a statement that, although not directly making a comparative claim, directly or logically can be expected to put into the mind of the reader the unexpressed idea that the drug is safer or more effective than another drug. The Commissioner concludes that such implied statements, as well as direct statements, comparing the safety and effectiveness of drugs are misleading unless they are adequately supported.

146. A comment objected to the application of the term "substantial evidence" to drugs other than new drugs and antibiotics, i.e., drugs subject to sections 505 and 507 of the act, and argued that advertisements containing comparative claims or in vitro or animal data should be acceptable as long as they are not misleading.

The Commissioner disagrees with this comment. As stated in paragraph 48 of this preamble, it is the position of FDA

that labeling statements not supported by substantial evidence of effectiveness demonstrated by adequate and well-controlled studies are false and misleading, in violation of section 502(a) of the act. Advertisements for drugs that contain comparative claims or claims based on in vitro or animal data are also false or misleading unless they are supported by "substantial evidence."

147. A comment objected to the prohibition against the use of comparative claims concerning new drugs, antibiotics, and biologics as a violation of section 502(n) of the act because the use of such statements in drug advertising does not represent "extraordinary circumstances" that might require preclearance of advertising. The comment also objected to the requirement that such claims be approved as part of the labeling in a new drug or antibiotic application or biologic license.

The Commissioner concludes that this comment has apparently misinterpreted § 202.1(e)(6)(ii)(a). That section prohibits comparative and quantitative statements of safety or effectiveness for new drugs, antibiotics, and biologics unless the representation has been approved as part of the labeling in a new drug or antibiotic application or biologic license. That section does not establish a preclearance requirement for advertisements; rather, it requires that advertisements for such products be based on their approved labeling. Accordingly, the Commissioner concludes that no change in the final regulation is warranted on the basis of this comment.

148. One comment objected to the provision for a waiver of the substantial evidence requirement, arguing that the provision was vague and would permit arbitrary and uneven administration. Two comments contended that the grounds for a waiver of the requirement for substantial evidence should include the use of substantial clinical experience or significant evidence in the scientific literature.

The Commissioner does not agree with these comments. The proviso in § 314.111(a)(5)(ii)(a) describes the showing required and provides for obtaining a waiver of the substantial evidence requirement for a clinical investigation in an NDA. Section 202.1(e)(6)(ii) and (vii) has been revised to state clearly that the provision for a waiver of the substantial evidence requirement in § 314.111(a)(5)(ii) also applies to such a waiver under § 202.1. The Commissioner finds that FDA's experience in applying the waiver provisions of the new drug regulations

to clinical investigations demonstrates that procedures for such waivers are neither vague nor arbitrary.

149. Several comments objected to proposed § 202.1(e)(6)(ii) on the grounds that it would deprive physicians of information concerning the comparative value of drugs and that existing regulations are adequate to accomplish the purpose sought through this amendment.

The Commissioner disagrees with these comments. The revision of § 202.1(e)(6)(ii) does not expand the prohibitions against the use of information on the comparative value of a drug; rather, it sets forth in more definitive terms the conditions under which either a statement that represents that a drug is safer or more effective than another drug, or a quantitative statement of safety or effectiveness in prescription drug advertisements, will comply with the requirements of section 502(n) of the act.

150. Several comments objected to the limitations placed on the use of in vitro and animal data in prescription drug advertisements under proposed § 202.1(e)(6)(vii) on the ground that it would deprive physicians of comparative drug study reports from the industry and handicap them in making therapeutic decisions. Two comments specifically objected to the required caution statement concerning the clinical significance of in vitro data relating to anti-infective drugs on the ground that such data are the primary basis for determining the clinical choice of anti-infective drugs and therefore have clinical significance. One comment suggested that, if a qualifying statement is necessary with the use of in vitro data for anti-infective drugs, it should read "The following in vitro data are available but they may not correlate with clinical experience."

The Commissioner disagrees with these comments. Section 202.1(e)(6)(vii) properly restricts the use of in vitro and animal data in prescription drug advertisements. Under that section, such data may be used without qualification in prescription drug advertisements if they have been shown by adequate and well-controlled studies to be pertinent to clinical use. In vitro data for anti-infective drugs that have not been shown to be pertinent to clinical use by adequate and well-controlled studies have traditionally been used by physicians in practice to aid in determining whether a particular drug may be clinically useful in a particular situation. Such data, if properly qualified, should continue to be permitted in prescription drug

advertising; however, the clinical significance of the data in a particular situation, in the absence of adequate and well-controlled clinical studies demonstrating their pertinence to clinical use, is necessarily unknown. The Commissioner therefore rejects the revised qualifying statement suggested by the comment because it improperly suggests that in vitro data not founded upon adequate and well-controlled studies may correlate with clinical experience.

151. One comment argued that the phrase "or full disclosure" should be deleted from § 202.1(e)(6)(vii) because it is not used elsewhere in that section and because the current regulations and FDA recognize that prescription drug advertising need only contain a true statement of information in "brief summary" relating to side effects, contraindications, and effectiveness.

The Commissioner agrees with this comment and the regulation has been revised accordingly.

152. Several comments contended that in vitro and animal data are valuable information for physicians and should be allowed in "promotional" sections of advertising, at least when there is a relationship between the data and clinical use. One comment contended that if a proper qualification for such data in the "brief summary" portion of advertising can negate the data's potential to mislead, such a qualification can also permit it to be placed in "promotional" sections of advertising. Two comments suggested that alternative wording of this section could permit the use of such data in promotional advertising without permitting misuse of it, and one comment suggested specific wording for this purpose.

The Commissioner concludes that the proposal's distinction between the brief summary section and the promotional section of prescription drug advertisements is inappropriate, because many prescription drug advertisements are not divided into easily discernible sections. Accordingly, § 202.1(e)(6)(vii) is revised to permit in vitro and animal data in any part of a prescription drug advertisement if they otherwise comply with that section.

The potential environmental effects of this action have been carefully considered, and FDA has concluded that the action will not significantly affect the quality of the human environment. This action is one of a type for which the agency has determined that the preparation of an environmental impact statement is not required, except in rare and unusual circumstances (21 CFR

25.1(f)(12)). Accordingly, the preparation of an environmental impact analysis report for this action is not required under 21 CFR 25.1(g).

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 502, 503, 505, 506, 507, 701, 52 Stat. 1050-1053 as amended, 1055-1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 355, 356, 357, 371)) and the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)), and under authority delegated to the Commissioner (21 CFR 5.1), Parts 201 and 202 are amended as follows:

1. Part 201 is amended:

a. In Subpart B by revising § 201.56 and by adding new §§ 201.57 and 201.58 to read as follows:

§ 201.56 General requirements on content and format of labeling for human prescription drugs.

Prescription drug labeling described in § 201.100(d) shall contain the information in the format required by § 201.57 and shall meet the following general requirements:

(a) The labeling shall contain a summary of the essential scientific information needed for the safe and effective use of the drug.

(b) The labeling shall be informative and accurate and neither promotional in tone nor false or misleading in any particular.

(c) The labeling shall be based whenever possible on data derived from human experience. No implied claims or suggestions of drug use may be made if there is inadequate evidence of safety or a lack of substantial evidence of effectiveness. Conclusions based on animal data but necessary for safe and effective use of the drug in humans shall be identified as such and included with human data in the appropriate section of the labeling, headings for which are listed in paragraph (d) of this section.

(d)(1) The labeling shall contain specific information required under § 201.57 under the following section headings and in the following order:

Description.
Clinical Pharmacology.
Indications and Usage.
Contraindications.
Warnings.
Precautions.
Adverse Reactions.
Drug Abuse and Dependence.
Overdosage.
Dosage and Administration.
How Supplied.

(2) The labeling may contain the following additional section headings if appropriate and if in compliance with § 201.57(l) and (m):

Animal Pharmacology and/or Animal Toxicology.

Clinical Studies.

References.

(3) The labeling may omit any section or subsection of the labeling format if clearly inapplicable.

(4) The labeling may contain a "Product Title" section preceding the "Description" section and containing only the information required by § 201.57(a)(1)(i), (ii), (iii), and (iv) and § 201.100(e). The information required by § 201.57(a)(1)(i), (ii), (iii), and (iv) shall appear in the "Description" section of the labeling, whether or not it also appears in a "Product Title."

(e) The labeling shall contain the date of the most recent revision of the labeling, identified as such, placed prominently immediately after the last section of the labeling.

§ 201.57 Specific requirements on content and format of labeling for human prescription drugs.

Each section heading listed in § 201.56(d), if not omitted under § 201.56(d)(3), shall contain the following information in the following order:

(a) "Description":

(1) Under this section heading, the labeling shall contain:

(i) The proprietary name and the established name, if any, as defined in section 502(e)(2) of the act, of the drug;

(ii) The type of dosage form and the route of administration to which the labeling applies;

(iii) The same qualitative and/or quantitative ingredient information as required under § 201.100(b) for labels;

(iv) If the product is sterile, a statement of that fact;

(v) The pharmacological or therapeutic class of the drug;

(vi) The chemical name and structural formula of the drug;

(vii) If the product is radioactive, a statement of the important nuclear physical characteristics, such as the principal radiation emission data, external radiation, and physical decay characteristics.

(2) If appropriate, other important chemical or physical information, such as physical constants, or pH, shall be stated.

(b) "Clinical Pharmacology":

(1) Under this section heading, the labeling shall contain a concise factual summary of the clinical pharmacology and actions of the drug in humans. The summary may include information based on in vitro and/or animal data if the information is essential to a description of the biochemical and/or

physiological mode of action of the drug or is otherwise pertinent to human therapeutics. Pharmacokinetic information that is important to safe and effective use of the drug is required, if known, e.g., degree and rate of absorption, pathways of biotransformation, percentage of dose as unchanged drug and metabolites, rate or half-time of elimination, concentration in body fluids associated with therapeutic and/or toxic effects, degree of binding to plasma proteins, degree of uptake by a particular organ or in the fetus, and passage across the blood brain barrier. Inclusion of pharmacokinetic information is restricted to that which relates to clinical use of the drug. If the pharmacological mode of action of the drug is unknown or if important metabolic or pharmacokinetic data in humans are unavailable, the labeling shall contain a statement about the lack of information.

(2) Data that demonstrate activity or effectiveness in in vitro or animal tests and that have not been shown by adequate and well-controlled clinical studies to be pertinent to clinical use may be included under this section of the labeling only under the following circumstances:

(i) In vitro data for anti-infective drugs may be included if the data are immediately preceded by the statement "The following in vitro data are available but their clinical significance is unknown."

(ii) For other classes of drugs, in vitro and animal data that have not been shown by adequate and well-controlled clinical studies, as defined in § 314.111(a)(5)(ii) of this chapter, to be pertinent to clinical use may be used only if a waiver is granted under § 201.58 or § 314.111(a)(5)(ii) of this chapter.

(c) "Indications and Usage":

(1) Under this section heading, the labeling shall state that:

(i) The drug is indicated in the treatment, prevention, or diagnosis of a recognized disease or condition, e.g., penicillin is indicated for the treatment of pneumonia due to susceptible pneumococci; and/or

(ii) The drug is indicated for the treatment, prevention, or diagnosis of a recognized disease or condition, e.g., penicillin is indicated for the treatment of pneumonia due to susceptible pneumococci; and/or (ii) The drug is indicated for the treatment, prevention, or diagnosis of an important manifestation of a disease or condition, e.g., chlorothiazide is indicated for the

treatment of edema in patients with congestive heart failure; and/or

(iii) The drug is indicated for the relief of symptoms associated with a disease or syndrome, e.g., chlorpheniramine is indicated for the symptomatic relief of nasal congestion in patients with vasomotor rhinitis; and/or

(iv) The drug, if used for a particular indication only in conjunction with a primary mode of therapy, e.g., diet, surgery, or some other drug, is an adjunct to the mode of therapy.

(2) All indications shall be supported by substantial evidence of effectiveness based on adequate and well-controlled studies as defined in § 314.111(a)(5)(ii) of this chapter unless the requirement is waived under § 201.58 or § 314.111(a)(5)(ii) of this chapter.

(3) This section of the labeling shall also contain the following additional information:

(i) If evidence is available to support the safety and effectiveness of the drug only in selected subgroups of the larger population with a disease, syndrome, or symptom under consideration, e.g., patients with mild disease or patients in a special age group, the labeling shall describe the available evidence and state the limitations of usefulness of the drug. The labeling shall also identify specific tests needed for selection or monitoring of the patients who need the drug, e.g., microbe susceptibility tests. Information on the approximate kind, degree, and duration of improvement to be anticipated shall be stated if available and shall be based on substantial evidence derived from adequate and well-controlled studies as defined in § 314.111(a)(5)(ii) of this chapter unless the requirement is waived under § 201.58 or § 314.111(a)(5)(ii) of this chapter. If the information is relevant to the recommended intervals between doses, the usual duration of treatment, or any modification of dosage, it shall be stated in the "Dosage and Administration" section of the labeling and referenced in this section.

(ii) If safety considerations are such that the drug should be reserved for certain situations, e.g., cases refractory to other drugs, this information shall be stated in this section.

(iii) If there are specific conditions that should be met before the drug is used on a long-term basis, e.g., demonstration of responsiveness to the drug in a short-term trial, the labeling shall identify the conditions; or, if the indications for long-term use are different from those for short-term use, the labeling shall identify the specific indications for each use.

(iv) If there is a common belief that the drug may be effective for a certain use or if there is a common use of the drug for a condition, but the preponderance of evidence related to the use or condition shows that the drug is ineffective, the Food and Drug Administration may require that the labeling state that there is a lack of evidence that the drug is effective for that use or condition.

(v) Any statements comparing the safety or effectiveness, either greater or less, of the drug with other agents for the same indication shall be supported by adequate and well-controlled studies as defined in § 314.111(a)(5)(ii) of this chapter unless this requirement is waived under § 201.58 or § 314.111(a)(5)(ii) of this chapter.

(d) "Contraindications": Under this section heading, the labeling shall describe those situations in which the drug should not be used because the risk of use clearly outweighs any possible benefit. These situations include administration of the drug to patients known to have a hypersensitivity to it; use of the drug in patients who, because of their particular age, sex, concomitant therapy, disease state, or other condition, have a substantial risk of being harmed by it; or continued use of the drug in the face of an unacceptably hazardous adverse reaction. Known hazards and not theoretical possibilities shall be listed, e.g., if hypersensitivity to the drug has not been demonstrated, it should not be listed as a contraindication. If no contraindications are known, this section of the labeling shall state "None known."

(e) "Warnings": Under this section heading, the labeling shall describe serious adverse reactions and potential safety hazards, limitations in use imposed by them, and steps that should be taken if they occur. The labeling shall be revised to include a warning as soon as there is reasonable evidence of an association of a serious hazard with a drug; a causal relationship need not have been proved. A specific warning relating to a use not provided for under the "Indications and Usage" section of the labeling may be required by the Food and Drug Administration if the drug is commonly prescribed for a disease or condition, and there is lack of substantial evidence of effectiveness for that disease or condition, and such usage is associated with serious risk or hazard. Special problems, particularly those that may lead to death or serious injury, may be required by the Food and Drug Administration to be placed in a prominently displayed box. The boxed warning ordinarily shall be based on

clinical data, but serious animal toxicity may also be the basis of a boxed warning in the absence of clinical data. If a boxed warning is required, its location will be specified by the Food and Drug Administration. The frequency of these serious adverse reactions and, if known, the approximate mortality and morbidity rates for patients sustaining the reaction, which are important to safe and effective use of the drug, shall be expressed as provided under the "Adverse Reactions" section of the labeling.

(f) "Precautions": Under this section heading, the labeling shall contain the following subsections as appropriate for the drug:

(1) General: This subsection of the labeling shall contain information regarding any special care to be exercised by the practitioner for safe and effective use of the drug, e.g., precautions not required under any other specific section or subsection of the labeling.

(2) Information for patients: This subsection of the labeling shall contain information to be given to patients for safe and effective use of the drug, e.g., precautions concerning driving or the concomitant use of other substances that may have harmful additive effects. Any printed patient information required under this chapter to be distributed to the patient shall be referenced under the "Precautions" section of the labeling and the full text of such patient information shall be reprinted at the end of the labeling.

(3) Laboratory tests: This subsection of the labeling shall identify any laboratory tests that may be helpful in following the patient's response or in identifying possible adverse reactions. If appropriate, information shall be provided on such factors as the range of normal and abnormal values expected in the particular situation and the recommended frequency with which tests should be done before, during, and after therapy.

(4)(i) Drug interactions: This subsection of the labeling shall contain specific practical guidance for the physician on preventing clinically significant drug/drug and drug/food interactions that may occur in vivo in patients taking the drug. Specific drugs or classes of drugs with which the drug to which the labeling applies may interact in vivo shall be identified, and the mechanism(s) of the interaction shall be briefly described. Information in this subsection of the labeling shall be limited to that pertaining to clinical use of the drug in patients. Drug interactions supported only by animal or in vitro

experiments may not ordinarily be included, but animal or in vitro data may be used if shown to be clinically relevant. Drug incompatibilities, i.e., drug interactions that may occur when drugs are mixed in vitro, as in a solution for intravenous administration, shall be discussed under the "Dosage and Administration" section of the labeling rather than under this subsection of the labeling.

(ii) Drug/laboratory test interactions: This subsection of the labeling shall contain practical guidance on known interference of the drug with laboratory tests.

(5) Carcinogenesis, mutagenesis, impairment of fertility: This subsection of the labeling shall state whether long-term studies in animals have been performed to evaluate carcinogenic potential and, if so, the species and results. If reproduction studies or other data in animals reveal a problem or potential problem concerning mutagenesis or impairment of fertility in either males or females, the information shall be described. Any precautionary statement on these topics shall include practical, relevant advice to the physician on the significance of these animal findings. If there is evidence from human data that the drug may be carcinogenic or mutagenic or that it impairs fertility, this information shall be included under the "Warnings" section of the labeling. Also, under "Precautions," the labeling shall state: "See 'Warnings' section for information on carcinogenesis, mutagenesis, and impairment of fertility."

(6) Pregnancy: This subsection of the labeling may be omitted only if the drug is not absorbed systemically and the drug is not known to have a potential for indirect harm to the fetus. For all other drugs, this subsection of the labeling shall contain the following information:

(i) *Teratogenic effects.* Under this heading the labeling shall identify one of the following categories that applies to the drug, and the labeling shall bear the statement required under the category:

(a) *Pregnancy category A.* If adequate and well-controlled studies in pregnant women have failed to demonstrate a risk to the fetus in the first trimester of pregnancy (and there is no evidence of a risk in later trimesters), the labeling shall state: "Pregnancy Category A. Studies in pregnant women have not shown that (*name of drug*) increases the risk of fetal abnormalities if administered during the first (*second, third, or all*) trimester(s) of pregnancy. If this drug is used during pregnancy, the possibility of fetal harm appears remote. Because studies cannot rule out the

possibility of harm, however, (*name of drug*) should be used during pregnancy only if clearly needed." The labeling shall also contain a description of the human studies. If animal reproduction studies are available and they fail to demonstrate a risk to the fetus, the labeling shall also state: "Reproduction studies have been performed in (*kinds of animal(s)*) at doses up to (*x*) times the human dose and have revealed no evidence of impaired fertility or harm to the fetus due to (*name of drug*). The labeling shall also contain a description of available data on the effect of the drug on the later growth, development, and functional maturation of the child.

(b) *Pregnancy category B.* If animal reproduction studies have failed to demonstrate a risk to the fetus and there are no adequate and well-controlled studies in pregnant women, the labeling shall state: "Pregnancy Category B. Reproduction studies have been performed in (*kind(s) of animal(s)*) at doses up to (*x*) times the human dose and have revealed no evidence of impaired fertility or harm to the fetus due to (*name of drug*). There are, however, no adequate and well-controlled studies in pregnant women. Because animal reproduction studies are not always predictive of human response, this drug should be used during pregnancy only if clearly needed." If animal reproduction studies have shown an adverse effect (other than decrease in fertility), but adequate and well-controlled studies in pregnant women have failed to demonstrate a risk to the fetus during the first trimester of pregnancy (and there is no evidence of a risk in later trimesters), the labeling shall state: "Pregnancy Category B. Reproduction studies in (*kind(s) of animal(s)*) have shown (*describe findings*) at (*x*) times the human dose. Studies in pregnant women, however, have not shown that (*name of drug*) increases the risk of abnormalities when administered during the first (*second, third, or all*) trimester(s) of pregnancy. Despite the animal findings, it would appear that the possibility of fetal harm is remote, if the drug is used during pregnancy. Nevertheless, because the studies in humans cannot rule out the possibility of harm, (*name of drug*) should be used during pregnancy only if clearly needed." The labeling shall also contain a description of the human studies and a description of available data on the effect of the drug on the later growth, development, and functional maturation of the child.

(c) *Pregnancy category C.* If animal reproduction studies have shown an adverse effect on the fetus, if there are

no adequate and well-controlled studies in humans, and if the benefits from the use of the drug in pregnant women may be acceptable despite its potential risks, the labeling shall state: "Pregnancy Category C. (*Name of drug*) has been shown to be teratogenic (or to have an embryocidal effect or other adverse effect) in (*name(s) of species*) when given in doses (*x*) times the human dose. There are no adequate and well-controlled studies in pregnant women. (*Name of drug*) should be used during pregnancy only if the potential benefit justifies the potential risk to the fetus." The labeling shall contain a description of the animal studies. If there are no animal reproduction studies and no adequate and well-controlled studies in humans, the labeling shall state: "Pregnancy Category C. Animal reproduction studies have not been conducted with (*name of drug*). It is also not known whether (*name of drug*) can cause fetal harm when administered to a pregnant woman or can affect reproduction capacity. (*Name of drug*) should be given to a pregnant woman only if clearly needed." The labeling shall contain a description of any available data on the effect of the drug on the later growth, development, and functional maturation of the child.

(d) *Pregnancy category D.* If there is positive evidence of human fetal risk based on adverse reaction data from investigational or marketing experience or studies in humans, but the potential benefits from the use of the drug in pregnant women may be acceptable despite its potential risks (for example, if the drug is needed in a life-threatening situation or serious disease for which safer drugs cannot be used or are ineffective), the labeling shall state: "Pregnancy Category D. See 'Warnings' section." Under the "Warnings" section, the labeling states: "(*Name of drug*) can cause fetal harm when administered to a pregnant woman. (*Describe the human data and any pertinent animal data.*) If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to the fetus."

(e) *Pregnancy category X.* If studies in animals or humans have demonstrated fetal abnormalities or if there is positive evidence of fetal risk based on adverse reaction reports from investigational or marketing experience, or both, and the risk of the use of the drug in a pregnant woman clearly outweighs any possible benefit (for example, safer drugs or other forms of therapy are available), the labeling shall state: "Pregnancy Category X. See 'Contraindications'

section." Under "Contraindications," the labeling shall state: "(Name of drug) may (can) cause fetal harm when administered to a pregnant woman. (Describe the human data and any pertinent animal data.) (Name of drug) is contraindicated in women who are or may become pregnant. If this drug is used during pregnancy, or if the patient becomes pregnant while taking this drug, the patient should be apprised of the potential hazard to the fetus."

(ii) *Nonteratogenic effects.* Under this heading the labeling shall contain other information on the drug's effects on reproduction and the drug's use during pregnancy that is not required specifically by one of the pregnancy categories, if the information is relevant to the safe and effective use of the drug. Information required under this heading shall include nonteratogenic effects in the fetus or newborn infant (for example, withdrawal symptoms or hypoglycemia) that may occur because of a pregnant woman's chronic use of the drug for a preexisting condition or disease.

(7) *Labor and delivery:* If the drug has a recognized use during labor or delivery (vaginal or abdominal delivery), whether or not the use is stated in the indications section of the labeling, this subsection of the labeling shall describe the available information about the effect of the drug on the mother and the fetus, on the duration of labor or delivery, on the possibility that forceps delivery or other intervention or resuscitation of the newborn will be necessary, and the effect of the drug on the later growth, development, and functional maturation of the child. If any information required under this subsection is unknown, this subsection of the labeling shall state that the information is unknown.

(8) *Nursing mothers:*

(i) If a drug is absorbed systemically, this subsection of the labeling shall contain, if known, information about excretion of the drug in human milk and effects on the nursing infant. Pertinent adverse effects observed in animal offspring shall be described.

(ii) If a drug is absorbed systemically and is known to be excreted in human milk, this subsection of the labeling shall contain one of the following statements, as appropriate. If the drug is associated with serious adverse reactions or if the drug has a known tumorigenic potential, the labeling shall state: "Because of the potential for serious adverse reactions in nursing infants from (name of drug) (or, "Because of the potential for tumorigenicity shown for (name of drug) in (animal or human) studies), a

decision should be made whether to discontinue nursing or to discontinue the drug, taking into account the importance of the drug to the mother." If the drug is not associated with serious adverse reactions and does not have a known tumorigenic potential, the labeling shall state: "Caution should be exercised when (name of drug) is administered to a nursing woman."

(iii) If a drug is absorbed systemically and information on excretion in human milk is unknown, this subsection of the labeling shall contain one of the following statements, as appropriate. If the drug is associated with serious adverse reactions or has a known tumorigenic potential, the labeling shall state: "It is not known whether this drug is excreted in human milk. Because many drugs are excreted in human milk and because of the potential for serious adverse reactions in nursing infants from (name of drug) (or, "Because of the potential for tumorigenicity shown for (name of drug) in (animal or human) studies), a decision should be made whether to discontinue nursing or to discontinue the drug, taking into account the importance of the drug to the mother." If the drug is not associated with serious adverse reactions and does not have a known tumorigenic potential, the labeling shall state: "It is not known whether this drug is excreted in human milk. Because many drugs are excreted in human milk, caution should be exercised when (name of drug) is administered to a nursing woman."

(9) *Pediatric use:* A specific pediatric indication, if any, shall be described under the "Indications and Usage" section of the labeling, and appropriate pediatric dosage shall be stated under the "Dosage and Administration" section of the labeling. Statements on pediatric use of the drug for an indication approved for adults shall be based on substantial evidence derived from adequate and well-controlled studies as defined in § 314.111(a)(5)(ii) of this chapter unless this requirement is waived under § 201.58 or § 314.111(a)(5)(ii) of this chapter. If the requirements of § 314.111(a)(5)(ii) of this chapter cannot be met, this section of the labeling shall contain one of the following statements: "Safety and effectiveness in children have not been established," or "Safety and effectiveness in children below the age of () have not been established." If use of the drug in premature or neonatal infants, or in older children, is associated with a specific hazard, the hazard shall be described in this subsection of the labeling; or, if appropriate, the hazard shall be stated

in the "Contraindications" or "Warnings" section of the labeling and this subsection of the labeling shall refer to it.

(g) *"Adverse Reactions":* An adverse reaction is an undesirable effect, reasonably associated with the use of the drug, that may occur as part of the pharmacological action of the drug or may be unpredictable in its occurrence.

(1) This section of the labeling shall list the adverse reactions that occur with the drug and with drugs in the same pharmacologically active and chemically related class, if applicable.

(2) In this listing, adverse reactions may be categorized by organ system, by severity of the reaction, by frequency, or by toxicological mechanism, or by a combination of these, as appropriate. If frequency information from adequate clinical studies is available, the categories and the adverse reactions within each category shall be listed in decreasing order of frequency. An adverse reaction that is significantly more severe than the other reactions listed in a category, however, shall be listed before those reactions, regardless of its frequency. If frequency information from adequate clinical studies is not available, the categories and adverse reactions within each category shall be listed in decreasing order of severity. The approximate frequency of each adverse reaction shall be expressed in rough estimates or orders of magnitude essentially as follows: "The most frequent adverse reaction(s) to (name of drug) is (are) (list reactions). This (these) occur(s) in about (e.g., one-third of patients; one in 30 patients; less than one-tenth of patients). Less frequent adverse reactions are (list reactions), which occur in approximately (e.g., one in 100 patients). Other adverse reactions, which occur rarely, in approximately (e.g., one in 1,000 patients), are (list reactions)." Percent figures may not ordinarily be used unless they are documented by adequate and well-controlled studies as defined in § 314.111(a)(5)(ii) of this chapter, they are shown to reflect general experience, and they do not falsely imply a greater degree of accuracy than actually exists.

(3) The "Warnings" section of the labeling or, if appropriate, the "Contraindications" section of the labeling shall identify any potentially fatal adverse reaction.

(4) Any claim comparing the drug to which the labeling applies with other drugs in terms of frequency, severity, or character of adverse reactions shall be based on adequate and well-controlled studies as defined in § 314.111(a)(5)(ii) of

this chapter unless this requirement is waived under § 201.58 or § 314.111(a)(5)(ii) of this chapter.

(h) "Drug Abuse and Dependence": Under this section heading, the labeling shall contain the following subsections, as appropriate for the drug:

(1) Controlled Substance: If the drug is controlled by the Drug Enforcement Administration, the schedule in which it is controlled shall be stated.

(2) Abuse: This subsection of the labeling shall be based primarily on human data and human experience, but pertinent animal data may also be used. This subsection shall state the types of abuse that can occur with the drug and the adverse reactions pertinent to them. Particularly susceptible patient populations shall be identified.

(3) Dependence: This subsection of the labeling shall describe characteristic effects resulting from both psychological and physical dependence that occur with the drug and shall identify the quantity of the drug over a period of time that may lead to tolerance or dependence, or both. Details shall be provided on the adverse effects of chronic abuse and the effects of abrupt withdrawal. Procedures necessary to diagnose the dependent state shall be provided, and the principles of treating the effects of abrupt withdrawal shall be described.

(i) "Overdosage": Under this section heading, the labeling shall describe the signs, symptoms, and laboratory findings of acute overdosage and the general principles of treatment. This section shall be based on human data, when available. If human data are unavailable, appropriate animal and in vitro data may be used. Specific information shall be provided about the following:

(1) Signs, symptoms, and laboratory findings associated with an overdosage of the drug.

(2) Complications that can occur with the drug (for example, organ toxicity or delayed acidosis).

(3) Oral LD₅₀ of the drug in animals; concentrations of the drug in biologic fluids associated with toxicity and/or death; physiologic variables influencing excretion of the drug, such as urine pH; and factors that influence the dose response relationship of the drug, such as tolerance. The pharmacokinetic data given in the "Clinical Pharmacology" section also may be referenced here, if applicable to overdoses.

(4) The amount of the drug in a single dose that is ordinarily associated with symptoms of overdosage and the amount of the drug in a single dose that is likely to be life-threatening.

(5) Whether the drug is dialyzable.

(6) Recommended general treatment procedures and specific measures for support of vital functions, such as proven antidotes, induced emesis, gastric lavage, and forced diuresis. Unqualified recommendations for which data are lacking with the specific drug or class of drugs, especially treatment using another drug (for example, central nervous system stimulants, respiratory stimulants) may not be stated unless specific data or scientific rationale exists to support safe and effective use.

(j) "Dosage and Administration": This section of the labeling shall state the recommended usual dose, the usual dosage range, and, if appropriate, an upper limit beyond which safety and effectiveness have not been established; dosages shall be stated for each indication when appropriate. This section shall also state the intervals recommended between doses, the optimal method of titrating dosage, the usual duration of treatment, and any modification of dosage needed in special patient populations, e.g., in children, in geriatric age groups, or in patients with renal or hepatic disease. Specific tables or monographs may be included to clarify dosage schedules. Radiation dosimetry information shall be stated for both the patient receiving a radioactive drug and the person administering it. This section shall also contain specific direction on dilution, preparation (including the strength of the final dosage solution, when prepared according to instructions, in terms of milligrams active ingredient per milliliter of reconstituted solution, unless another measure of the strength is more appropriate), and administration of the dosage form, if needed, e.g., the rate of administration of parenteral drug in milligrams per minute; storage conditions for stability of the drug or reconstituted drug, when important; essential information on drug incompatibilities if the drug is mixed in vitro with other drugs; and the following statement for parenterals: "Parenteral drug products should be inspected visually for particulate matter and discoloration prior to administration, whenever solution and container permit."

(k) "How Supplied": This section of the labeling shall contain information on the available dosage forms to which the labeling applies and for which the manufacturer or distributor is responsible. The information shall ordinarily include:

(1) The strength of the dosage form, e.g., 10-milligram tablets, in metric system and, if the apothecary system is

used, a statement of the strength is placed in parentheses after the metric designation;

(2) The units in which the dosage form is ordinarily available for prescribing by practitioners, e.g., bottles of 100;

(3) Appropriate information to facilitate identification of the dosage forms, such as shape, color, coating, scoring, and National Drug Code; and

(4) Special handling and storage conditions.

(l) "Animal Pharmacology and/or Animal Toxicology": In most cases, the labeling need not include this section. Significant animal data necessary for safe and effective use of the drug in humans shall ordinarily be included in one or more of the other sections of the labeling, as appropriate. Commonly for a drug that has been marketed for a long time, and in rare cases for a new drug, chronic animal toxicity studies have not been performed or completed for a drug that is administered over prolonged periods or is implanted in the body. The unavailability of such data shall be stated in the appropriate section of the labeling for the drug. If the pertinent animal data cannot be appropriately incorporated into other sections of the labeling, this section may be used.

(m) "Clinical Studies" and "References": These sections may appear in labeling in the place of a detailed discussion of a subject that is of limited interest but nonetheless important. A reference to a specific important clinical study may be made in any section of the format required under §§ 201.56 and 201.57 if the study is essential to an understandable presentation of the available information. References may appear in sections of the labeling format, other than the "Clinical Studies" or "References" section, in rare circumstances only. A clinical study or reference may be cited in prescription drug labeling only under the following conditions:

(1) If the clinical study or reference is cited in the labeling in the place of a detailed discussion of data and information concerning an indication for use of the drug, the reference shall be based upon, or the clinical study shall constitute, an adequate and well-controlled clinical investigation under § 314.111(a)(5)(ii) of this chapter.

(2) If the clinical study or reference is cited in the labeling in the place of a detailed discussion of data and information concerning a risk or risks from the use of the drug, the risk or risks shall also be identified or discussed in the appropriate section of the labeling for the drug.

§ 201.58 Requests for waiver of requirement for adequate and well-controlled studies to substantiate certain labeling statements.

A request under § 201.57(b)(2)(ii), (c)(2), (c)(3)(i) and (v), (f)(9), and (g)(4) for a waiver of the requirements of § 314.111(a)(5)(ii) of this chapter shall be submitted in writing as provided in § 314.111(a)(5)(ii) to the Director, Bureau of Drugs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or, if applicable, the Director, Bureau of Biologics, Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20014. The waiver shall be granted or denied in writing by such Director or the Director's designee.

b. In § 201.100, by adding new paragraph (d)(3) and by revising paragraph (e) to read as follows:

§ 201.100 Prescription drugs for human use.

(d) ***

(3) The information required, and in the format specified, by §§ 201.56 and 201.57.

(e) All labeling described in paragraph (d) of this section bears conspicuously the name and place of business of the manufacturer, packer, or distributor, as required for the label of the drug under § 201.1.

2. Part 202 is amended in § 202.1 by revising paragraph (e)(6)(ii) and (vii) to read as follows:

§ 202.1 Prescription-drug advertisements.

(e) ***
(6) ***

(ii) Represents or suggests that a prescription drug is safer or more effective than another drug in some particular when the difference has not been demonstrated by substantial evidence. An advertisement for a prescription drug may not, either directly or by implication, e.g., by use of comparative test data or reference to published reports, represent that the drug is safer or more effective than another drug, nor may an advertisement contain a quantitative statement of safety or effectiveness (a) unless the representation has been approved as part of the labeling in a new drug or antibiotic application or biologic license, or (b) if the drug is not a new drug or a certified or released antibiotic, or biologic, unless the representation of safety or effectiveness is supported by substantial evidence derived from adequate and well-controlled studies as defined in § 314.111(a)(5)(ii) of this chapter, or unless the requirement for

adequate and well-controlled studies is waived as provided in § 314.111(a)(5)(ii) of this chapter.

(vii) Suggests, on the basis of favorable data or conclusions from nonclinical studies of a prescription drug, such as studies in laboratory animals or in vitro, that the studies have clinical significance, if clinical significance has not been demonstrated. Data that demonstrate activity or effectiveness for a prescription drug in animal or in vitro tests and have not been shown by adequate and well-controlled clinical studies to pertain to clinical use may be used in advertising except that (a), in the case of anti-infective drugs, in vitro data may be included in the advertisement, if data are immediately preceded by the statement "The following in vitro data are available but their clinical significance is unknown" and (b), in the case of other drug classes, in vitro and animal data that have not been shown to pertain to clinical use by adequate and well-controlled clinical studies as defined in § 314.111(a)(5)(ii) of this chapter may not be used unless the requirement for adequate and well-controlled studies is waived as provided in § 314.111(a)(5)(ii) of this chapter.

Effective date. These regulations are effective on December 26, 1979. On or after December 26, 1979, no person may initially introduce or initially deliver for introduction into interstate commerce any drug to which the regulations apply, unless the drug's labeling complies with the requirements set forth in the regulations, with the following exceptions:

(1) Sections 201.56, 201.57, and 201.100(d)(3) are effective for prescription drugs that are not biologics, or not subject to section 505 or 507 of the act, on June 26, 1980.

(2) The provisions of §§ 201.56, 201.57, and 201.100(d)(3) shall not apply to any prescription drug that on December 26, 1979, is a licensed biologic, subject to an approved new drug application under section 505 of the act, or an antibiotic drug subject to an approved Form 5 or Form 6, until a notice is published in the Federal Register that states the effective date for the particular product.

(3) Section 201.100(e) is effective June 26, 1980, or when printing plates are revised in the normal course of business, whichever occurs first.

Although the proposed rule was covered by Executive Order 11821, an inflation impact statement was not prepared for it. However, in accordance

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

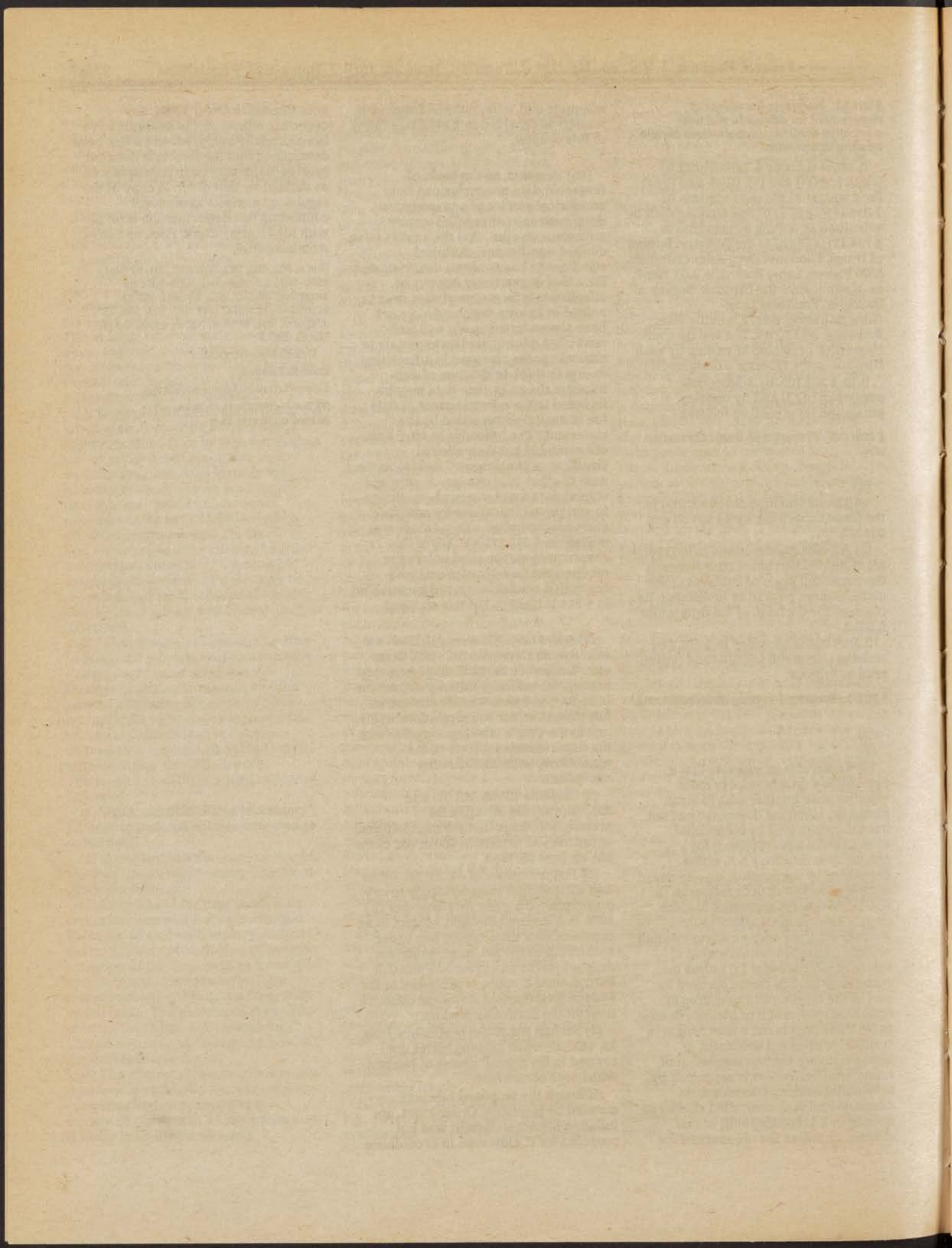
(Secs. 502, 503, 505, 506, 507, 701, 52 Stat. 1050-1053 as amended, 1055-1056 as amended, 55 Stat. 851, 59 Stat. 463 as amended (21 U.S.C. 352, 353, 355, 356, 357, 371); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).)

Dated: June 19, 1979.

Donald Kennedy,
Commissioner of Food and Drugs.

[FR Doc. 79-19723 Filed 6-25-79; 8:45 am]

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Investment Federal Register

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June 26, 1979

Part III

Securities and Exchange Commission

Performance-Based Compensation of
Registered Investment Advisers to
Business Development Companies;
Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 275]

[Release No. IA-680, File No. S7-788]

Performance-Based Compensation of Registered Investment Advisers to Business Development Companies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is issuing for public comment a proposed rule under the Investment Advisers Act of 1940 ("Advisers Act") which would permit certain registered investment advisers to business development companies to be compensated on the basis of a share of net capital gains upon, or net capital appreciation of, the funds, or any portion of the funds, of the business development company. Such means of compensation is currently prohibited by the Advisers Act.

DATE: Comments must be received on or prior to August 31, 1979.

ADDRESSES: Interested persons should submit their views and comments in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. All submissions will be made available for public inspection at the Commission's Public Reference Section, Room 6101, 1100 L Street, NW., Washington, D.C. and should refer to File No. S7-788.

FOR FURTHER INFORMATION CONTACT: W. Scott Cooper, Esq., Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 755-3507.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission has under consideration the adoption of new Rule 205-3 (17 CFR 275.205-3) under the Investment Advisers Act of 1940 ("Advisers Act") (15 U.S.C. 80b-1 et seq.).

I. Background

Business development companies¹ are enterprises engaged in the business of investing in relatively small and unseasoned companies in the

developmental stage. These investee companies are typically privately held and may be managed by persons who do not have extensive entrepreneurial abilities. In addition, such companies are generally considered to represent risky investment opportunities and, therefore, have limited access to public and institutional financial markets. Since there is usually no ready market for the securities of investee companies, investments in these companies are generally illiquid in nature. Accordingly, business development companies frequently must be willing to take long-term positions in such companies and play an active role in nurturing their growth in order to realize a return on their investment commensurate with the risks involved.

The rule the Commission is proposing is designed to exempt certain registered investment advisers to business development companies from the provisions of Section 205(1) of the Advisers Act (15 U.S.C. 80b-5(1)). That section prohibits an investment adviser, unless exempt from registration, from receiving compensation which is based on a share of capital gains upon, or capital appreciation of, the funds, or any portion of the funds, of clients.²

Congress enacted Section 205(1) to protect advisory clients from profit-sharing fee arrangements which could encourage an investment adviser to take undue risks with such clients' funds in order to realize or increase an advisory fee.³ The Commission believes that the practices and abuses that Section 205(1) was designed to prevent are unlikely to develop in the limited circumstances, described below, under which performance fees could be paid to investment advisers to business development companies pursuant to the proposed rule. In addition, the Commission believes that the proposed rule will have the effect of facilitating the flow of needed capital into new and developing companies which are frequently unable to obtain financing from sources other than business development companies. In this regard, it appears to the Commission that investment advisers to business development companies have traditionally received performance-based fees which are not permitted to be

paid to registered investment advisers under Section 205(1). Because of the types of activities in which business development companies engage, many investment advisers might be reluctant to serve such companies unless their compensation can be based upon a share of the capital gains or capital appreciation of the company. To the extent that such reluctance might impede investments in small and developing enterprises, the Commission believes it appropriate to take action designed to remedy this difficulty.

Section 206A of the Advisers Act authorizes the Commission, by rule, regulation or order, to exempt conditionally or unconditionally any person or transaction from any of the provisions of the Advisers Act, if and to the extent such action is necessary or appropriate in the public interest and consistent with the protection of investors.⁴ In enacting Section 206A, Congress specifically contemplated Commission action in appropriate cases "to exempt persons * * * from the ban on performance-based advisory compensation in * * * Section 205(1) of the Advisers Act."⁵

Pursuant to Section 206A, the Commission has recently granted two applications for orders of exemption from the provisions of Section 205(1) to permit registered investment advisers to companies engaged in business development-type activities to be compensated on the basis of a share of capital gains, in one case,⁶ and capital appreciation, in the other.⁷ Certain common conditions existed in both applications, such as the limited number and sophisticated nature of the investors in each business development company and the substantial investments made in the business development companies by the respective investment advisers to each business development company, which, together with other facts and circumstances, made the exemptions appropriate.

The Commission believes that investment in small and developing companies would be facilitated by a rule of general applicability which provides certain relief from the performance-based fee limitations of the Advisers Act with respect to business development companies. The rule proposal contained herein reflects certain of the conditions and concepts set forth in the aforementioned applications. The rule proposal also

¹ The Commission is not here suggesting a position as to whether a limited partnership formed for the purpose of making business development investments should be construed as one client or whether the limited partners of a business development partnership should be counted individually for purposes of the exception to registration provided by Section 203(b)(3) of the Advisers Act (15 U.S.C. 80b-3(b)(3)).

² See H.R. Rep. No. 2639, 76th Cong., 3d Sess. 29 (1940).

⁴ 15 U.S.C. 80b-6a.

⁵ S. Rep. No. 91-184, 91st Cong., 1st Sess. 46 (1969).

⁶ *In re Weiss, Peck & Greer, Investment Advisers Act Release No. 625* (April 25, 1978).

⁷ *In re Foster Management Company, Investment Advisers Act Release No. 651* (November 28, 1978).

¹ Depending on the precise nature of their activities, business development companies might also be referred to as "venture capital companies." However, because the term "venture capital company" is used in a variety of contexts, the Commission is defining and using the term "business development company" for purposes of the proposed rule.

contains certain other conditions and limitations which the Commission believes may be necessary and appropriate to include in a rule of general application.

II. General Provisions of the Proposed Rule

A. Exemption

Paragraph (a) of the proposed rule would provide relief from Section 205(1) of the Advisers Act so as to permit a registered investment adviser to enter into, extend, renew or perform an advisory contract which provides for compensation on the basis of a share of net capital gains upon, or net capital appreciation of, the funds or any portion of the funds of a business development company provided that all of the conditions set forth in the proposed rule are satisfied.* The proposed rule would apply to any advisory agreement pursuant to which an investment adviser to a business development company is compensated, whether it be a separate advisory contract, or some other form of agreement or arrangement such as a partnership agreement or a corporate charter.

B. Business Development Company

A "business development company" is defined by paragraph (b) of the rule proposal as a company which is formed and operated primarily for the purpose of directly acquiring, in transactions eligible for the exemption from registration provided by Section 4(2) of the Securities Act of 1933 ("Securities Act") (15 U.S.C. 77d(2)), securities of eligible portfolio companies, as defined in paragraph (c) of the proposed rule, and which, in general, has all of its assets invested in securities purchased directly from and issued by such companies.

Paragraph (b)(3) of the proposed rule would require a business development company to own beneficially at least five percent of the voting securities of each eligible portfolio company in which it invests. However, if the failure of the business development company to own at least five percent of the voting securities of any eligible portfolio company in which it has an investment is due solely to issuance of additional voting securities by the eligible portfolio company, subsequent to the initial investment therein by the business development company, this condition would be deemed to be satisfied. This condition could also be met by the

ownership of securities of the eligible portfolio company which are not voting securities, but which are immediately convertible at the option of the holder into voting securities of the eligible portfolio company without restriction or additional payment by the holder. The beneficial ownership condition is proposed in view of the Commission's understanding that business development companies typically own a sufficiently large portion of their portfolio companies so as to enable the business development company, generally acting through its investment adviser, to participate actively in the management of the portfolio company, and it is this active participation which, in part, might justify the payment of a performance-based fee to the investment adviser.

Paragraph (b)(4) of the proposed rule also contains provisions which would tend to limit the availability of the exemption to business development companies whose investors are relatively sophisticated persons, able to appreciate and evaluate the nature and effects of a performance-based advisory fee, as well as to bear the economic risks of the investment. Specifically, under paragraph (b)(4)(i) all of the securities of the business development company (other than those issued to its officers, directors or employees pursuant to a profit-sharing, stock option or stock purchase plan) would have to be issued in transactions not involving any public offering of securities.

In addition, under paragraph (b)(4)(ii) of the rule proposal, such securities would have to be issued in transactions wherein the business development company, and any person acting on its behalf, shall have reasonable grounds to believe, and shall believe, immediately prior to making any sale of securities of the business development company, after making reasonable inquiry, either (i) that the purchaser has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment in the business development company, or (ii) that the purchaser and the purchaser's representative(s) together have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment in the business development company and that the purchaser is able to bear the economic risk of the investment. This provision of the rule proposal is similar to paragraph (d)(2) of Rule 146 under the Securities Act (17 CFR 230.146(d)(2)) which concerns offeree qualifications.

Accordingly, interpretations relating to that provision of Rule 146 would be relevant to paragraph (b)(4)(iii) of the proposed rule.

Under paragraph (b)(4)(iii) of the proposed rule, prior to the sale of any securities of the business development company, purchasers must have access to, or be furnished with, all material information reasonably necessary under the circumstances to enable such persons to make an informed decision as to an investment in the business development company. Satisfaction of this condition would, of course, depend on all the facts and circumstances regarding any transaction. The information required by paragraph (b)(4)(iii) would generally include, but not necessarily be limited to, information relating to the business development company, the nature of the offering, the terms of the performance-based compensation to be paid to the investment adviser, the fact that the purchaser must bear the economic risks involved in purchasing securities of the business development company and the limitations concerning the disposition of securities of the business development company. Paragraph (b)(4)(iii) is intended to require information which would, in many cases, be largely similar to the information required under paragraph (e) of Rule 146 (17 CFR 230.146(e)). Accordingly, if the conditions specified in paragraph (e) of Rule 146 relating to the type of information which must be furnished to offerees or to which offerees must have access are satisfied, then the conditions of paragraph (b)(4)(iii) would be deemed to be met.⁹

Paragraph (b)(4)(iv) of the proposed rule would require each purchaser of securities in the business development company to purchase securities in the business development company in a unit or units of at least \$150,000 each. Furthermore, the units could not be fractionalized or otherwise divided into smaller units, except as permitted by paragraph (f), and could not be sold, transferred or otherwise disposed of, in a transaction or transactions involving a public offering of securities. Thus, if any purchaser of a unit later resold it to a third person, the price of the unit on resale would presumably be at least \$150,000 unless the unit had declined in value.

Paragraph (f) of the proposed rule would permit the business development company to fractionalize or otherwise divide the units issued by such company to any person, including its investment

* It should be noted that the proposed rule would provide no relief from any other applicable provision of law, including Section 206 of the Advisers Act (15 U.S.C. 80b-6).

⁹ Compliance with the requirements of paragraph (b)(4)(iii) would not, however, relieve the business development company of any other applicable disclosure requirements under the federal securities laws.

adviser and persons associated with the investment adviser, provided that such fractionalization or division is approved by the vote of a majority of the outstanding securities of the business development company entitled to vote thereon, and that, immediately following such fractionalization or division, each outstanding unit of the business development company has a net asset value of at least \$150,000.

If payments for the units were made on a deferred or installment basis, all such payments would be required to be due within 12 months from the date of purchase of the securities and would have to be evidenced and secured by a full recourse note or notes of the purchaser.

Paragraph (b)(5) provides that a business development company cannot be an investment company which is required to be registered under the Investment Company Act of 1940 ("Investment Company Act") (15 U.S.C. 80a-1 et seq.). This requirement would have the practical effect of limiting the number of investors in the business development company to not more than 100 persons, taking into account the attribution provisions of Section 3(c)(1) of the Investment Company Act,¹⁰ unless some other statutory or administrative relief from the registration requirements of the Investment Company Act was available.¹¹

Paragraph (e) of the proposed rule would permit business development companies to hold assets in the form of cash, money-market instruments with a maturity not exceeding one year, or securities received by the business development company in exchange for securities of eligible portfolio companies, provided it intends and reasonably anticipates to invest or reinvest those assets in securities of eligible portfolio companies. This limited exception is intended to provide business development companies with a reasonable period of time in which to invest or reinvest their funds without having their performance-

based fee arrangements become disqualified under the proposed rule.

C. Eligible Portfolio Companies

Eligible portfolio companies are defined, in part, in paragraph (c) of the rule proposal as companies which did not have an average annual net income after Federal income taxes in excess of \$400,000 for the two fiscal years immediately preceding the initial investment of the business development company therein, and which were not making and had not made any public offering of their securities. Furthermore, at the time of any investment (whether or not initial) by a business development company, an eligible portfolio company could not be a company subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934 ("Exchange Act") (15 U.S.C. 78m)¹² nor could it be an investment company as defined in Section 3 of the Investment Company Act (15 U.S.C. 80a-3). With respect to the latter condition, the eligible portfolio company's exclusion from the definition of investment company in Section 3 of the Investment Company Act must be based upon some factor other than Section 3(c)(1) thereof.¹³ Thus, the rule would prohibit a business development company from investing in any company, such as a hedge fund or other business development company, which is excluded from the meaning of investment company solely by reason of having not more than 100 shareholders and meeting the other conditions of Section 3(c)(1).

The condition relating to the eligible portfolio company's net income at the time of the business development company's initial investment, set forth in paragraph (c)(1)(i) of the proposed rule, is one of the financial characteristics used by the Small Business Administration ("SBA") to define a small business concern for the purpose of receiving financial or other assistance from a small business investment or development company (see 13 CFR 121.3-11 (1978)). The Commission is considering, and requests public comment upon, the feasibility and desirability of using certain other standards used in that SBA rule to define further an eligible portfolio company. For example, using the SBA standards, the Commission might

provide also that an eligible portfolio company cannot have assets exceeding \$9 million and cannot have a net worth exceeding \$4 million.

The Commission does not believe that it is appropriate to apply the net income limitation with respect to subsequent investments in an eligible portfolio company by the business development company. Although the proposed rule is designed to provide relief only with respect to business development companies which invest in relatively small and unseasoned enterprises, it would appear desirable for business development companies to be able to further their initial investments in eligible portfolio companies by making additional investments in such companies, even though the portfolio company might have developed to a stage where it no longer meets the net income test. However, such additional investments could be made only if the eligible portfolio company continued to meet the condition that it had not made a public offering of its securities, and that the business development company had maintained a continuous investment in the eligible portfolio company. The latter condition is set forth in paragraph (c)(2)(ii) of the proposed rule, which provides that, at the time of each additional investment the business development company cannot have sold, transferred, or otherwise disposed of, any securities of the eligible portfolio company which it had previously acquired, except for securities of the eligible portfolio company converted into or exchanged for other securities of such company.

The proposed rule would not restrict the business development company to investments in any specific type of security. Thus, it would permit investments in either equity or debt securities of eligible portfolio companies. In addition, the business development company would be permitted to invest in companies engaged in any manner of business, so long as such companies meet the requirements set forth in paragraph (c) of the proposed rule. Subsequent investments in an eligible portfolio company would not be limited to the same class of securities which comprised the initial investment in the eligible portfolio company by the business development company.

Although the proposed rule would not permit a business development company to make additional investments in an eligible portfolio company if the portfolio company's securities became publicly traded, the proposed rule would not specifically prohibit a business

¹⁰ Section 3(c)(1) of the Investment Company Act (15 U.S.C. 80a-3(c)(1)) excludes from the definition of investment company any issuer whose outstanding securities (other than short-term paper) are beneficially owned by not more than 100 persons which is not making and does not presently propose to make a public offering of securities.

¹¹ As noted below, however, the Commission is considering issuing a proposed rule under the Investment Company Act to provide exemptive relief for business development companies. If, by reason of such a rule, a business development company were not required to register under the Investment Company Act, the rule now being proposed to permit performance-based fees under the Advisers Act could be applicable even if the business development company had more than 100 shareholders.

¹² Under Section 13 of the Exchange Act, issuers of securities registered on national securities exchanges, or issuers who have assets in excess of \$1 million and a class of equity securities held of record by 500 or more persons, must, unless otherwise excluded, file such reports and information as the Commission shall specify by rule.

¹³ See note 9 *supra*.

development company from continuing to hold an investment in an eligible portfolio company if, after the business development company had made its investment, the securities of the portfolio company became publicly traded and the company no longer qualified as an eligible portfolio company. However, a business development company which had a substantial portion of its assets invested in large, publicly traded companies would no longer be operating "primarily" for the purpose of directly acquiring securities of eligible portfolio companies, and therefore the company would cease to qualify as a business development company under paragraph (b)(1) of the proposed rule. The Commission is of the tentative view that the "primarily" standard will prevent performance-based fees from being paid in cases where a business development company's investments have matured and the investment adviser is no longer performing the types of services which would justify such a fee, while at the same time avoiding an unduly restrictive condition which might have the effect of forcing a business development company to dispose of an investment at an inopportune time. However, public comment is requested as to whether the "primarily" standard set forth in paragraph (b)(1) is sufficiently specific to ensure that, in general, performance-based fees will not be paid where the business development company holds securities of mature companies. As an alternative to, or in addition to, that standard, the rule could require that any investment by a business development company be disposed of within a specified period of time, such as 10 years.

Another matter concerning which the Commission specifically requests comment is whether the requirement that all of a business development company's assets be invested in eligible portfolio companies (except for interim investments as permitted by paragraph (e)) is unduly restrictive. It might be appropriate to provide that some percentage of the business development company's assets, such as 10 percent, could be invested without restriction, particularly if the Commission ultimately determines to impose a general requirement that investments in eligible portfolio companies be disposed of within a stated period of time.

D. Additional Conditions

Paragraph (d) of the rule proposal sets forth certain additional conditions which would have to be satisfied in order for performance-based compensation to

be paid to an investment adviser by a business development company.

The investment adviser, and associated persons of the investment adviser, would generally be required by paragraph (d)(1) to beneficially own, at all times, by reason of having purchased, for cash or other tangible property, securities (other than senior securities as defined in Section 18(g) of the Investment Company Act (15 U.S.C. 80a-18(g))¹⁴ in the business development company in an amount not less than the greater of one percent of the amount invested or agreed to be invested in the business development company by all other persons who purchased or agreed to purchase securities in the business development company, or \$150,000. Such required investment is intended to help ensure that the investment adviser has a sufficient amount of money invested in the business development company so as to reduce the likelihood of the adviser taking undue risks with the funds of the business development company, since his own funds will be subject to the same risks. The investment adviser's purchase, like that of other investors, would have to be in units of at least \$150,000 each which could not be fractionalized or otherwise divided, except as permitted by paragraph (f), and which could not be sold, transferred, or otherwise disposed of, in a transaction or transactions involving a public offering.

Paragraphs (d)(2) and (3) of the proposed rule relate to the computation of an investment adviser's compensation. Under paragraph (d)(2), the adviser's performance-based fee must be computed on the basis of capital gains or capital appreciation, net of all realized capital losses and unrealized capital losses (capital depreciation). Thus, for example, even if the fee was based only upon capital gains and not unrealized capital gains (capital appreciation), unrealized capital losses would have to be taken into account. Paragraph (d)(3) would require that the compensation be based upon a written valuation of the assets of the business development company, prepared or reviewed by a qualified independent appraiser who is not a person associated with the investment adviser or a person otherwise providing services to the investment adviser pursuant to any agreement or understanding. The appraiser would have to certify to the business

development company that the valuation is fair and reasonable. This requirement is proposed in recognition of the fact that the potential for abuse in this area is higher where, as would usually be the case, the business development company's holdings have no ready market.

III. Possible Proposed Rule under the Investment Company Act of 1940

The Commission currently is considering the possibility of issuing a proposed rule to provide exemptive relief for business development companies under the Investment Company Act. The Commission anticipates that any such proposed rule will be consistent with, and largely similar to, such rule as the Commission might ultimately adopt as a result of the present rule proposal under the Advisers Act.

Authority

The rule proposed herein would be adopted pursuant to the authority contained in Sections 206A (15 U.S.C. 80b-6a) and 211(a) (15 U.S.C. 80b-11(a)) of the Advisers Act.

Commission Action

It is proposed to amend Part 275 of Chapter II of Title 17 of the Code of Federal Regulations under the Investment Advisers Act of 1940 by adding new § 275.205-3 as follows:

§ 275.205-3 Exemption from the compensation prohibitions of Section 205(1) for registered investment advisers to business development companies.

(a) *General.* The provisions of Section 205(1) of the Act shall not prohibit any registered investment adviser from entering into, extending, renewing or performing an investment advisory contract which provides for compensation to the investment adviser on the basis of a share of net capital gains upon, or net capital appreciation of, the funds, or any portion of the funds, of a business development company if all of the conditions set forth in this section are satisfied.

(b) *Business development company.* For purposes of this section, "business development company" shall mean any company which

(1) Is formed and operated primarily for the purpose of directly acquiring, in transactions eligible for the exemption from registration provided by Section 4(2) of the Securities Act of 1933, securities issued by eligible portfolio companies;

(2) Except as provided in paragraph (e) of this section, has all of its assets

¹⁴ Section 18(g) defines a "senior security" as any bond, debenture, note, or similar obligation or instrument constituting a security and evidencing indebtedness, and any stock of a class having priority over any other class as to distribution of assets or payment of dividends.

invested in securities acquired directly from and issued by eligible portfolio companies;

(3) Beneficially owns at least five percent of all the voting securities (including securities immediately convertible without restriction into voting securities at the option of, and without the payment of any additional consideration by, the holder thereof) of each eligible portfolio company in which it has an investment: *Provided however*, that the foregoing condition shall be deemed to be satisfied if the business development company's failure to own at least five percent of such securities results solely from the issuance of additional voting securities by the eligible portfolio company subsequent to the initial investment therein by the business development company;

(4) Has issued all of its outstanding securities (other than those issued to its officers, directors or employees pursuant to a profit-sharing, stock option or stock purchase plan)

(i) In transactions not involving any public offering of securities;

(ii) In transactions wherein the business development company, and any person acting on its behalf, shall have reasonable grounds to believe and shall believe, immediately prior to making any sale of securities of the business development company, after making reasonable inquiry, either (A) that the purchaser has such knowledge and experience in financial and business matters that he is capable of evaluating the merits and risks of the prospective investment in the business development company or (B) that the purchaser and the purchaser's representative(s) together have such knowledge and experience in financial and business matters that they are capable of evaluating the merits and risks of the prospective investment in the business development company and that the purchaser is able to bear the economic risk of the investment;

(iii) To persons each of whom, prior to the sale of any securities of the business development company to such persons, have access to, or are furnished with, all material information reasonably necessary under the circumstances to enable such persons to make an informed decision as to an investment in the business development company; and

(iv) To persons, other than the investment adviser, and persons associated with the investment adviser, each of whom purchases, or agrees in writing to purchase, securities of the business development company in a unit or units of at least \$150,000 which may not be fractionalized or otherwise

divided, except as provided in paragraph (f) of this section, and which may not be sold, transferred or otherwise disposed of, by the purchaser in a transaction or transactions involving a public offering of securities, and such persons pay for such securities in cash, or other tangible property, in a single payment of, or in installment payments in the aggregate amount of, \$150,000 or more (all deferred and installment payments to be due within 12 months from the date of purchase of the securities and evidenced and secured by a full recourse note or notes of the purchasers); and

(5) Is not required to be registered as an investment company under the Investment Company Act of 1940.

(c) *Eligible portfolio company.* For the purposes of this section, an "eligible portfolio company" shall mean any company which—

(1) At the time of the initial investment therein by a business development company—(i) Did not have an average annual net income, after Federal income taxes, for the immediately preceding two fiscal years in excess of \$400,000 (average annual net income to be computed without the benefit of any loss carryover);

(ii) Is not making and has not made a public offering of its securities;

(iii) Is not subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934; and

(iv) Is not an investment company as defined in Section 3 of the Investment Company Act of 1940: *Provided*, That the sole basis therefor is not the exclusion set forth in Section 3(c)(1) of such Act.

(2) At the time of each additional investment therein by the business developing company—(i) Satisfies all of the conditions described in paragraphs (c)(1) (ii), (iii) and (iv) of this section, and

(ii) Has not previously issued to the business development company any securities which have been sold, transferred, or otherwise disposed of, by such company, except for securities converted into, or exchanged for, other securities of the eligible portfolio company.

(d) *Additional conditions.* The exemptive relief provided in paragraph (a) of this section shall not be available unless all of the following conditions are satisfied:

(1) The investment adviser, and persons associated with the investment adviser, shall at all times beneficially own, by reason of having purchased for cash or other tangible property (which shall have been received by the

business development company), securities (other than senior securities as defined in Section 18(g) of the Investment Company Act of 1940), or such business development company (i) in a unit or units of at least \$150,000 which may not be fractionalized or otherwise divided, except as provided in paragraph (f) of this section, and which may not be sold, transferred, or otherwise disposed of, by the investment adviser, or persons associated with the investment adviser, in a transaction or transactions involving a public offering of securities and (ii) in an amount not less than the greater of: (A) One percent of the aggregate amount of the cash and other tangible property invested (or agreed to be invested) in the business development company by all other persons who have purchased (or have agreed in writing to purchase) securities of such business development company; or (B) \$150,000;

(2) Any computation of net capital gains or net capital appreciation for purposes of determining compensation of a type described in paragraph (a) of this section shall be made net of all realized capital losses and unrealized capital losses (capital depreciation) of the business development company during the period for which the computation is made; and

(3) Any compensation paid pursuant to paragraph (a) of this section shall be based on a written valuation of the business development company's assets which is prepared or reviewed by a qualified independent appraiser (i) who is not (A) a person associated with the investment adviser or (B) a person otherwise providing services to the investment adviser, pursuant to any agreement or understanding, and (ii) who certifies in writing to the business development company that the valuation is fair and reasonable.

(e) *Permissible interim investments.* Notwithstanding any other provision of this section, a business development company may hold assets in the form of (1) cash or money-market instruments maturing in one year or less from the time of investment or (2) securities received by the business development company in exchange for securities of eligible portfolio companies: *Provided*, That such business development company intends, and reasonably anticipates, to invest or reinvest such assets in securities of eligible portfolio companies.

(f) *Fractionalization of units.* Notwithstanding any other provision of this section, units issued by a business development company may be

fractionalized or otherwise divided by such company: *Provided*, (1) That such fractionalization or division is approved by the vote of a majority of the outstanding securities of such company entitled to vote thereon and (2) that, immediately following such fractionalization or division, each outstanding unit of the business development company has a net asset value of at least \$150,000.

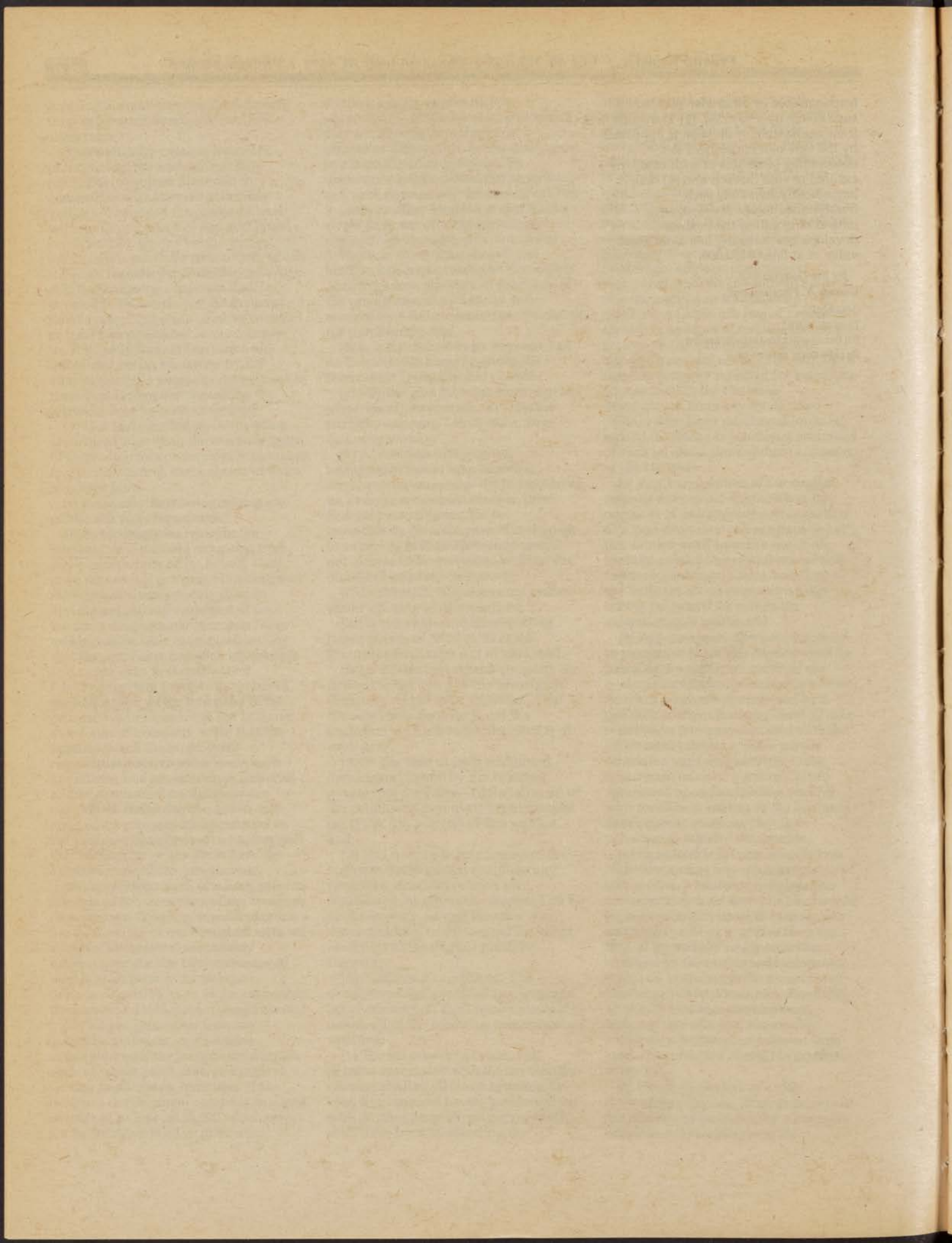
By the Commission.

George A. Fitzsimmons,
Secretary.

June 19, 1979.

[FR Doc. 79-19742 Filed 6-25-79; 8:45 am]

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Part IV

Department of Housing and Urban Development

Office of Assistant Secretary for
Community Planning and Development

Community Development Block Grants;
Small Cities Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-79-671]

Community Development Block Grants; Small Cities Program

AGENCY: Department of Housing and Urban Development.

ACTION: Interim Rule.

SUMMARY: This rule revises Subpart F to incorporate changes necessary for operation by HUD of the Small Cities Community Development Block Grant Program.

DATES: Effective date: July 26, 1979; Comments due: August 27, 1979.

ADDRESS: Interested persons should file written comments on or before due date with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 5218, 451-7th Street, S.W., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT: Subpart F: Richard J. Kennedy, Small Cities Division, Office of Community Planning and Development; Department of Housing and Urban Development, Washington, D.C., 20410, 202-755-6322.

SUPPLEMENTARY INFORMATION: This subpart F is being promulgated as interim rule effective 30 days after publication to clarify portions of the regulations that have caused some confusion in the past, and to permit earlier filing by applicants in Federal Fiscal Year 1980. This will give approved applicants greater flexibility in planning their schedules and earlier startup time for projects, as well as enabling the Department to meet its responsibility for reviewing and approving Fiscal Year 1980 applications in a timely manner. Accordingly, the Assistant Secretary for Community Planning Development has determined that it is impracticable to follow a notice of proposed rulemaking procedure and that good cause exists for making this rule effective 30 days after publication. However, interested persons are invited to participate in the making of the final rule by providing written comments. All comments received by August 27, 1979, will be considered in the development of the final rule. Such comments should be filed with the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room

5218, 451 Seventh Street, S.W., Washington, D.C. 20410. Copies of comments received will be available for inspection and copying at that address.

The Department has determined that an environmental impact statement is not required with respect to this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk, Room 5218, 451-7th Street, S.W., Washington, DC. 20410.

The issues in the interim rule are covered in the following discussion.

§ 570.420(c) Eligible Applicants.

A typographical error is corrected which deals with New Communities applicants.

§ 570.420(g) Restrictions on applying for grants.

The first sentence is revised to clarify that for each fiscal year an applicant may only apply for either a Comprehensive or a Single Purpose Grant. Performance and capacity however will continue to be considered in accepting and ranking preapplicants who have been funded in previous years. It should be recognized that a Fiscal Year 1978 or 1979 grantee who received a multiyear commitment will be applying for an annual grant as part of the multiyear commitment and therefore will not be eligible to compete for an additional Comprehensive or Single Purpose Grant, except those Counties or States applying in behalf of different units of general local government than those applied for in Fiscal Years 1978 and 1979, will be eligible to submit a preapplication for additional grants. Imminent Threat grants however may now be considered from applicants in addition to a Comprehensive or Single Purpose Grant.

§ 570.421 Applications by States and Counties; Joint Applications.

Two minor changes are made in this subpart. At § 570.421(b) *Preapplications and applications in behalf of others.* The word "cooperation" is added to ensure consistency in the paragraph since "written cooperation agreement" is referred to elsewhere in this subpart. At § 570.421(g) Urban counties and Metropolitan cities, language is added to enunciate clearly the statutory prohibition that communities who are participating units of an Urban County and that have portions of their community outside of the Urban County may not apply for Small Cities funds even for that portion of the community which is outside of the Urban County. Since several communities have not

realized this statutory prohibition, it is deemed necessary to state it explicitly in the regulations.

§ 570.423(a)(1) Comprehensive General Program Requirements.

The definition is clarified to indicate that a Comprehensive Program may address needs in noncontiguous areas. The Department has operated on this basis during Fiscal Years 1978 and 1979.

§ 570.424 and § 570.428 Selection System for Comprehensive and Single Purpose Grants.

Several changes are made to the selection systems for the Comprehensive and Single Purpose Grant Programs.

At § 570.424(e) and § 570.428(e), the word "insignificant" replaces the word "no" in the lowest of the four standards for which impact points are awarded. Communities have argued that almost any program will have at least some impact on the appropriate criteria. HUD wishes to clarify that its intent is to achieve as much of a differentiation as possible on impact points and that it expects to award 0 to applicants on some of the criteria where appropriate. The word insignificant better conveys HUD's intended meaning.

At § 570.424(f) and § 570.428(f), *Benefit to low- and moderate-income persons*, language is added to permit HUD to modify the geographic area used in the definition of low- and moderate-income persons. Generally HUD intends to use a Statewide area in establishing income levels to determine low- and moderate-income beneficiaries as it has in the past. However, there may be special cases where substantial differences in median income exist within the same State. HUD merely wishes to reserve the right to address such cases, and it is necessary to establish this intention in the regulations.

At § 570.424(g) and § 570.428(g), *Performance in Housing and Equal Opportunity*, HUD has added two more ways in which communities can achieve points for performance in equal opportunity. Wording has been added to include the New Horizons Fair Housing Assistance Project which represents a major effort by HUD to encourage a comprehensive approach to fair housing needs by communities. Also in addition to contracts, HUD is adding local funds deposited in minority owned banks exceeding the percentage of minorities in the area as an achievement for which points can be awarded. In neither case are additional points added, but rather additional methods are provided to obtain points.

At § 570.424(j) and § 570.428(i), *Final Ranking for Comprehensive and Single Purpose Grants*, language is added to deal with procedural errors. Experience has shown in rating over 6,000 preapplications each year that invariably a few procedural errors occur. When corrected, these errors would in some cases provide sufficient difference in points to warrant invitation by bringing the applicant above the established funding line. Unfortunately all funds are usually targeted by that time. HUD recognizes that there should be a way to correct procedural errors and provide an opportunity for funding to the deserving applicant. HUD may now invite an applicant who would have been invited in the previous year's competition but for a procedural error, to submit a full application for funding from the current year's funds. Examples of procedural errors would be processing errors or mathematical errors. The Small Cities selection system necessarily requires a large number of subjective judgments; procedural errors will not be interpreted to include area office judgments that are made within the provisions of, and required by, this subpart.

§ 570.425 and § 570.429 *Preapplications for Comprehensive and Single Purpose Grants.*

Two requirements for Comprehensive preapplications are being deleted. At § 570.425 (a)(2)(v) and (a)(4)(v), descriptions of housing strategies and housing locations are requested. This language inadvertently remained in the March 1, 1978 regulations for the comprehensive program, but was deleted from the Single Purpose program. HUD did not, in fact, expect its applicants to submit this information during Fiscal Years 1978 and 1979. Information on housing strategies and location as well as other housing assistance information remains of critical concern to HUD and continues to be required at the full application stage. Also at § 570.425(a)(4)(iv) and at § 570.429(a)(3)(iii), concentrations of low- and moderate-income persons will also no longer be required to be shown on a map at the preapplication stage. This does not mean that other information necessary to justify the applicant's claim on beneficiaries or impact should not be submitted, but rather census bureau information on concentrations of low- and moderate-income persons need not be shown on the map since it is already available to the Area Offices.

§ 570.426 *Applications for Comprehensive Grants.*

A new provision is added to establish the submission period for annual applications of a multiyear comprehensive commitment. Area Office will establish individual dates but in no case shall the date be later than 45 days prior to the end of the fiscal year. HUD wishes to establish a funding process that assures that the vast majority of funds are available to applicants in the same fiscal year that funds are appropriated. Since the multiyear commitment process provides funds yearly, it is critical that this principle be clearly established in the funding cycle.

§ 570.426 *Single purpose program general requirements.*

The Single Purpose program permits an applicant to apply for several projects providing the total is within grant limits established by the Area Office. Language is added to clarify that the projects will be rated separately with respect to factors at § 570.428 (e), (f) and (h)(1) which are project related. Other ranking factors are applicant related. This is in fact the procedure used in Fiscal Years 1978 and 1979.

§ 570.428(f) *Selection system for single purpose grants—Benefit to low- and moderate-income persons.*

Two changes are made. At § 570.428(f) a provision is added to exclude the costs of planning, management, and administration from the calculations of beneficiaries. This provision is already included in the Single Purpose Program calculation and was inadvertently omitted in the Comprehensive Program section, and does not represent any change.

In rating program impact in the Single Purpose Program, one of three problem areas is chosen by the applicant and each project is comparatively rated against other projects addressing the same problem area. This was done to encourage applicants to choose projects which they felt were most needed and avoid, in so far as possible, choosing projects which would merely maximize the rating. The same rationale is being extended to include benefits to low- and moderate-income persons so that the basic intent of rating problem areas can be more fully achieved.

Language is added to state that points will be awarded comparatively by problem area. This means that public facility or economic development projects, for which it is almost impossible to have 100 percent of funds benefitting low- and moderate-income persons, will still be able to achieve the maximum points. It is HUD's intention

to avoid allowing projects to achieve points which are essentially undeserved, but at the same time recognize that certain projects cannot be limited in benefit only to persons of low- and moderate-income.

§ 570.429 *Preapplication for single purpose grants.*

It is necessary to clarify at § 570.429(a)(2)(i) that the applicant must identify the project, not the activities, that the problem area is chosen to address based on the applicants needs. In the Single Purpose program, projects, not activities are ranked.

A typographical error occurred at § 570.429(a)(4) in the original printing of the regulations and is now corrected.

§ 570.430 *Applications for single purpose grants.*

§ 570.430(g) was incorrectly titled "Certificates of Assurance" and is changed to read "Certifications."

The citizen participation requirements are different for the Single Purpose Program. § 570.430(g) calls for certifications as required by § 570.307 of the entitlement regulations. This is acceptable except for the differences for citizen participation. Accordingly a revised assurance is now provided with respect to citizen participation, although no substantive changes are made.

§ 570.432 *Single purpose grants for imminent threat to public health or safety.*

The word "Secretary" is changed to "HUD" at § 570.432(d) to indicate that the Area Office may authorize applicants to incur certain costs.

§ 570.433 *HUD review and actions on full applications for single purpose and comprehensive grants.*

The language at § 570.433(a)(5) is corrected to indicate that an applicant must submit its full application to the clearinghouse prior to or concurrently with submission to HUD. The clarification is necessary to provide consistency with § 570.435, Modified OMB Circular A-95 procedures for the Small Cities Program. The existing language is incorrect in expecting that the A-95 clearinghouse comments would be attached since the process may be concurrent with submission to HUD.

The revisions and clarification contained in this rule revising Subpart F are urgently needed in order to allow the Department to make funds available to applicants as early as possible and to assure that practically all funds will be obligated before the end of Fiscal Year 1980. In all cases, changes merely represent clarifications.

Accordingly, 24 CFR 570 is amended by revising Subpart F as follows:

Subpart F—Small Cities Program**Sec.**

- 570.420 General.
- 570.421 Applications by States and counties; joint applications.
- 570.422 State participation. [Reserved]
- 570.423 Comprehensive program general requirements.
- 570.424 Selective system for comprehensive grants.
- 570.425 Preapplications for comprehensive grants.
- 570.426 Applications for comprehensive grants.
- 570.427 Single purpose program general requirements.
- 570.428 Selection system for single purpose grants.
- 570.429 Preapplications for single purpose grants.
- 570.430 Applications for single purpose grants.
- 570.431 Citizen participation requirements for single purpose grants.
- 570.432 Single purpose grants for imminent threat to public health or safety.
- 570.433 HUD review and action on full applications for single purpose and comprehensive grants.
- 570.434 Program amendments for single purpose and comprehensive grants.
- 570.435 Modified OMB Circular No. A-95 procedures for the Small Cities Program.

Subpart F—Small Cities Program**§ 570.420 General.**

(a) *Scope and Applicability.* This Subpart describes the policies and procedures that will be used to implement the Small Cities Program. Funds for this program are those provided through the metropolitan and nonmetropolitan balances describes in § 570.104(c) in Subpart B of this part. Except as modified in this Subpart, the policies and procedures set forth in Subparts A, B, C, J, K, and O of this part, as well those Sections of Subpart D of this part which are specifically cited in this Subpart shall apply to the Small Cities Program. The HUD Environmental Review Procedures contained in 24 CFR Part 58 also apply to this Subpart.

(b) *Program Objectives.* The Small Cities Program will provide grants to States and units of general local government in both metropolitan and nonmetropolitan areas to undertake the same community development activities as may be funded in the entitlement grant program. The Small Cities Program, however, is competitive in nature and the demand for funds far exceeds the amount available. Therefore, eligible applicants selected for funding will be those communities having the greatest need as evidenced by poverty and substandard housing and whose applications most adequately address locally-determined

needs of low- and moderate-income persons, consistent with one or more of the following purposes.

(1) Support realistic and attainable strategies for expanding low and moderate income housing opportunities;

(2) Promote deconcentration of lower-income housing;

(3) Promote more rational land use;

(4) Provide increased economic opportunities for low- and moderate-income persons;

(5) Correct deficiencies in public facilities which affect the public health or safety, especially of low- and moderate-income persons.

(c) *Eligible applicants.* Eligible applicants are States and units of general local government, excluding metropolitan cities, urban counties, units of government which are participating in urban counties or metropolitan cities, even if only part of the participating unit of government is located in the urban county or metropolitan city, and Indian tribes eligible for assistance under Section 107(a)(7) of the Act. For the purpose of this Subpart, a unit of general local government includes those entities described in § 57.403(b) (1) (2) and (3). Applications may be submitted individually, jointly, or by counties and States on behalf of other units of government.

(d) *Types of grants.* Recognizing that needs of communities vary widely, the Small Cities Program will consist of grants for two general type programs—Comprehensive and Single Purpose.

(e) *Distribution of funds between comprehensive grants and the single purpose grants.* Within both the metropolitan and nonmetropolitan balances for each Area Office's jurisdiction, 25 to 35 percent of the funds will be reserved for the Single Purpose Program, with the remainder reserved for the Comprehensive Program. Exceptions to these percentage may be made where there is insufficient demand for Comprehensive Grants to justify a 65 percent reservation or where the demand for Comprehensive Grants would justify a reservation of more than 75 percent.

(f) *Size of Grants.*—(1) *Ceilings.* Within the metropolitan and nonmetropolitan areas of each Area Office's jurisdiction, HUD may establish general ceilings per applicant for both Single Purpose and Comprehensive Grants. Separate ceilings may be established for Comprehensive Grants with multiyear commitments, or joint applications, or for applications in behalf of other units of government.

(2) *Individual Grant Amounts.* Both Single Purpose and Comprehensive

Grants for specific grantees will be provided in amounts commensurate with the size of the applicant and the applicant's program. In determining appropriate grant amounts for each applicant, HUD may consider an applicant's population, need, proposed activities, ability to carry out the proposed program, previous funding levels, and availability of hold-harmless funds.

(g) *Restrictions on applying for grants.* Applicants may only apply for a Comprehensive Grant or a Single Purpose Grant, but not both, in any fiscal year, except for States or counties applying in behalf of other units of government as described in § 570.421(b), in which case the State or county may apply for both a Single Purpose and a Comprehensive Grant, provided the applications are in behalf of different units of general local government. A preapplication for a Comprehensive Grant which does not meet the definition of such a program will be considered for a Single Purpose Grant. In addition, applicants may apply at any time for imminent threat grants, as described in § 570.432.

(h) *Method of selecting grantees.* (1) HUD will establish national selection and rating systems for both the Comprehensive and Single Purpose Programs which identify the criteria that will be used in selecting among applicants. Preapplications are required for both programs. These will be divided into metropolitan and nonmetropolitan pools for both programs and rated and ranked pursuant to §§ 570.424 and 570.428, respectively. Applicants must include sufficient information in the preapplication to permit HUD to rate the preapplication against the various selection criteria, and must advise HUD of the source of information and the method used to compile the information for the preapplication. Existing sources of information, such as areawide analyses, State plans or needs assessments, should be used whenever possible. Decisions made by HUD in selecting grantees will be documented and made available to the general public upon request.

(2) HUD will establish deadlines for submission of preapplications by publication of a Notice in the *Federal Register*.

(i) *Data.* Data used in this Subpart with respect to the needs factors (§ 570.424(a)–(d) and § 570.428(a)–(d)), in the selection criteria shall be based on information acquired by HUD from the United States Bureau of the Census for use in allocating funds pursuant to Subpart B of this part for the same fiscal

year appropriation. However, a HUD Regional office may authorize the use of updated data developed by a State agency for the entire nonmetropolitan area or all metropolitan areas of the State in lieu of Federal census data if the following criteria are met:

(1) The data have been updated in such a manner that they can be applied to all potential applicants in the nonmetropolitan or metropolitan areas of a State;

(2) The data are generally available and can be verified by HUD;

(3) The data can be submitted in a usable form no later than 30 days prior to the deadline for submission of preapplications.

(j) *Previous audit findings.* A preapplication will not be accepted from any community that has an outstanding audit finding for any HUD program undertaken by the community or has an outstanding monetary obligation to HUD as a result of such a finding. Waivers to this prohibition may be provided by the Regional Administrator, but in no instance shall a waiver be provided when funds are due HUD, unless a satisfactory arrangement for repayment of the debt has been made.

(k) *Program Design.* The program as a whole must principally benefit low- and moderate-income persons. In addition, the selection process of the Small Cities Program is heavily weighted toward those programs which have the greatest benefit to low- and moderate-income persons. All activities contained within such programs must either benefit low- and moderate-income families, or aid in the prevention or elimination of slums or blight, or meet other community development needs having a particular urgency.

§ 570.421. Applications by States and counties; joint applications.

(a) *General.* In addition to applications by cities in behalf of themselves, States and counties may apply for Single Purpose or Comprehensive Grants for use in specific locations within metropolitan or nonmetropolitan areas in behalf of themselves and in behalf of other units of general local government. For purposes of this section, the term "county" does not include urban counties.

(b) *Preapplications and applications in behalf of others.* Applications by States and counties submitted in behalf of other units of general local government shall be pursuant to a written cooperation agreement between the county or State and the participating units of general local government. Such

agreements must be submitted with the preapplication.

(c) *Joint preapplications and applications.* Units of general local government, including counties, may submit a joint preapplication or application which would address common problems faced by the jurisdictions. These preapplications and applications must be pursuant to written cooperation agreements, submitted with the preapplications, will be submitted by only the unit of government designated as the lead unit for administrative purposes. The lead unit of government shall be considered the applicant.

(d) *Limits on applying for assistance.* Units of general local government included in an application submitted by a State or County in their behalf, or included in a joint application, may not otherwise apply for assistance under this Subpart.

(e) *Data considerations.* With respect to county and State applications in behalf of themselves, only data relating to those unincorporated and incorporated areas where community development activities are to take place shall be included for use in rating the needs factor of the selection criteria (§ 570.424(a)-(d) and § 570.428(a)-(d)). With respect to State and county applications in behalf of units of general local government, and for joint applications, only data relating to the unincorporated or incorporated places in which activities are to take place shall be considered in rating the needs factor of the selection criteria.

(f) *Housing Assistance Plans.* (1) If there is a HUD-approved Housing Assistance Plan for a unit of general local government in which the State or county intends to carry out activities, the State or county may satisfy its Housing Assistance Plan requirements by indicating its support of the existing plan.

(2) For joint applications and applications in behalf of units of general local government, the Housing Assistance Plan (HAP) shall relate to each unit of government in which activities are to be carried out. The plan shall be adopted by each unit of general local government included in the application and shall be consistent with any other HAP applicable to these jurisdictions.

(g) *Urban counties and metropolitan cities.* A state or a county may not apply for funds provided under this subpart for use in a metropolitan city or an urban county, including any unit of general local government that is participating in the metropolitan city or urban county,

even if only part of the participating unit of government is located in the urban county.

§ 570.422 State participation. [Reserved]

§ 570.423 Comprehensive program general requirements.

(a) *Definition.* A comprehensive program must meet all of the following criteria:

(1) Address a substantial portion of the identifiable community development needs within a defined concentrated area, or areas;

(2) Involve two or more activities that bear a relationship to each other, excluding administration, planning, and management, and which either in terms of support or necessity are carried out in a coordinated manner;

(3) Have beneficial impact within a reasonable period of time;

(4) Be developed through assessment of the applicant's community development, housing, and economic needs;

Exceptions to the requirement that the activities be concentrated within a designated area may be made if the applicant can demonstrate to HUD's satisfaction that the proposal represents a reasonable means of addressing the needs identified.

(b) *Funding Commitments.* (1) HUD will make commitments of up to three years for the Comprehensive Program, subject to the availability of appropriations. In determining the number of years for which a commitment will be made, HUD will consider the nature of the program proposed, the previous performance of the applicant, including both community development and housing; the capacity of the applicant to carry out the program proposed; the scheduling of the program; and the year-by-year fund requirements. Special consideration for funding commitments beyond one year will be given to those applicants currently carrying out a Comprehensive Program and subject to the phase out provisions of Section 106(h) of the Housing and Community Development Act of 1974, as amended. Grant requests must either by themselves, or in combination with other stated funding sources, be sufficient to complete the program described.

(2) Once a community has been selected for a multiyear commitment and funds are available, it will not have to compete in the selection process for funding during subsequent years. Funds will be provided in subsequent fiscal years after the grantee has submitted the Annual Community Development

Program, and HUD has determined that the annual program either is consistent with that described in the original application or has been properly amended pursuant to § 570.434, and the community's performance is adequate. Performance determinations will be made based on the criteria described in § 570.423(c).

(c) *Capacity and performance considerations.* No grant will be made to an applicant that does not have the capacity to undertake the proposed program. In addition, applicants which have participated in the Block Grant Program previously must have performed adequately. In determining whether an applicant has performed adequately, HUD will examine the applicant's performance in the following areas:

(1) *Community development activities.* (i) The rate of progress achieved in moving activities into execution;

(ii) The rate of expenditure or obligation of community development funds.

(2) *Housing assistance.* (1) The actual progress achieved in meeting goals established under an approved Housing Assistance Plan;

(ii) Absent achievement of such goals, the actions taken by the community to facilitate the provision of housing assistance for low- and moderate-income persons, such as:

(A) Removal of impediments such as restrictive zoning or building codes;

(B) Changes in land use to facilitate construction;

(C) Provision of sites and/or necessary infra-structure;

(D) Organization of a housing authority or other similar entity;

(E) Development of a Section 701 land use or housing element.

(3) *Compliance with applicable laws and regulations.* (1) The compliance of the community with the laws, regulations, and Executive Orders applicable to the Community Development Block Grant program;

(ii) Resolution of findings made as a result of HUD monitoring;

(iii) Resolution of audit findings.

§ 570.424 Selection system for Comprehensive Grants.

Preapplications will be rated and scored against each of the following nine factors. All points for each factor will be rounded to the nearest whole number. The maximum score possible is 1025 points.

	Points
(c) Need—Absolute number of substandard housing units.....	30
(d) Need—Percent of substandard housing units.....	20
(e) Program factor—Impact of the proposed program.....	400
(f) Benefit to low- and moderate-income persons.....	200
(g) Performance:	
Housing.....	100
Local equal opportunity efforts.....	50
(h) Housing opportunity plan (HOP):	
Applicant participating.....	50
(i) Hold-harmless phaseout communities.....	25

Preapplications from counties in behalf of themselves, States in behalf of themselves or in behalf of counties, or joint preapplications in which a county is participating, will be scored separately with respect to the needs factors of § 570.424 (a)–(d).

(a) *Need—absolute number of poverty persons (100 points).* All applicants will be ranked in terms of the number of persons whose incomes are below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's absolute number of persons in poverty by the greatest number of persons in poverty of any applicant and multiplying by 100.

(b) *Need—percent of poverty persons (50 points).* All applicants will be ranked in terms of the percentage of their population below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's percentage of persons in poverty by the highest percentage of persons in poverty of any applicant and multiplying by 50.

(c) *Need—absolute housing need (30 points).* All applicants will be ranked in terms of their absolute housing needs, as identified in the latest data available from the Bureau of the Census. Need will be measured by the number of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's absolute housing need by the highest number of such units of any applicant and multiplying the results by 30.

(d) *Need—percent of housing need (20 points).* All applicants will be ranked in terms of their percent of housing need, as identified in the latest data available from the Bureau of the Census. Need will be measured by the percent of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's percentage of housing need by the highest percentage of such housing needs of any applicant and multiplying the results by 20.

(e) *Program factor—impact of the proposed program (400 points).* Each applicant shall select four program design criteria from among the following eleven. HUD will measure the impact of

the program on each of the program design criteria selected, based on the results to be achieved when considering the amounts of funds sought, the persons to be benefitted, the degree and nature of the benefit, additional actions that may be necessary to fully resolve the need, previous actions the applicant may have taken to address that need, environmental considerations, and where appropriate, site selection standards.

(1) *Program design criteria.* (i) Supports comprehensive neighborhood stabilization and/or revitalization in low and moderate income areas, or conserves the housing supply for low- and moderate-income persons;

(ii) Provides housing opportunities for low- and moderate-income families and minorities on a regional basis; or implements a HUD-approved Housing Opportunity Plan;

(iii) Provides opportunities for spatial deconcentration within the locality of low- and moderate-income families and minorities;

(iv) Supports the expansion of housing for low- and moderate-income persons;

(v) Addresses a serious deficiency in a community's public facilities for the principal benefit of low- and moderate-income persons;

(vi) Provides for expanded economic opportunities for persons of low- and moderate-income in the form of permanent employment;

(vii) Benefits low- and moderate-income persons by removing slums or blighted conditions;

(viii) Implements a State growth or resource coordination plan;

(ix) Enhances a community's position as a regional center, economic development center, or growth center;

(x) Resolves a serious threat to the health or safety of low- and moderate-income persons;

(xi) Deals with the impact caused by other Federal actions or policies particularly on low- and moderate-income persons, and/or supports other Federal programs being undertaken in the community.

(2) *Rating and ranking methods.* This factor requires a two-step rating process. First, the potential of the proposed program of activities to achieve the results intended by each selected criterion when considered in relation to other communities addressing the same criterion will be assessed and a numerical value assigned, based on the following:

The results would have insignificant impact.....	0
The results would have minimal impact.....	2
The results would have a moderate impact.....	4
The results would have a significant impact.....	6

(a) Need—Absolute number of poverty persons.....	Points 100
(b) Need—Percent of poverty persons.....	50

After each of the four criteria selected by an applicant has been rated and values assigned, the total is added (Program Impact Score Maximum is 32). Then, the actual points are determined by dividing each applicant's Program Impact Score by the highest Program Impact Score achieved by any applicant and multiplying the result by four hundred.

(f) *Benefit to low- and moderate-income persons (200 points)*. All applicants will be ranked in terms of the percent of funds which will benefit low- and moderate-income persons. Individual scores will be obtained by dividing each applicant's percentage by the highest percentage achieved by any applicant and multiplying the results by 200. Costs of planning, management and administration will not be included in this computation. The appropriate median income amounts for low and moderate income will be supplied by HUD, and where appropriate HUD may modify the geographic area used in the definition of low- and moderate-income persons at § 570.3 (o) and (p).

(g) *Performance in housing and equal opportunity (150 points total)*. (1) *Housing efforts*. Twenty points for each of the following criterion will be awarded to each applicant that can demonstrate outstanding performance in: (i) providing housing for low- and moderate-income families located in a manner which provides housing choices for areas outside of minority and low-income concentrations;

(ii) dispersal, by race, in occupancy of its existing assisted housing;

(iii) Meeting its large family housing assistance needs in relation to that proportion of need;

(iv) Carrying out housing assistance goals from previous HAP(s).

(v) Enforcement of a Fair Housing Ordinance; or approval by HUD of the applicant's New Horizons Fair Housing Assistance Project, or participation in a HUD approved New Horizons Fair Housing Assistance Project.

(2) *Local equal employment and entrepreneurial efforts (50 points)*. (i) Twenty-five points will be awarded to any applicant that demonstrates that the percentage of its contracts based on dollar value, awarded within the past two years to minority owned, controlled, or managed businesses, or the percentage of funds deposited in minority owned, controlled or managed banks, is greater than the percentage of minorities residing within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(ii) Twenty-five points will be awarded to any applicant that

demonstrates that its percentage of minority employees is greater than the percentage of minorities within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(h) *Housing Opportunity Plan (50 points)*. Fifty points will be awarded to any jurisdiction participating in a HUD-approved area-wide Housing Opportunity Plan.

(i) *Hold-Harmless Provisions (25 points)*. Twenty-five points will be awarded to a community which is currently carrying out a comprehensive community development program and which is subject to the phase-out provisions of Section 106(h) of the Housing and Community Development Act of 1974, as amended.

(j) *Final ranking*. The points received by each applicant on the nine rating factors will be totaled and the preapplications ranked according to the final point totals. Invitations for full applications will be made based on this final ranking to the extent funds are available. However, if an Area Office made a procedural error in the previous year's competition, that, when corrected, would have resulted in awarding sufficient points to warrant an invitation to an applicant, that applicant may be invited automatically to submit a full application for current year funding. HUD may invite additional applications on a stand-by basis in the event one of the applications from the higher ranked applicants is not approved, or additional funds become available.

§ 570.425 Preapplications for Comprehensive Grants.

(a) *Submission requirements*. Preapplications shall be submitted on HUD forms to the appropriate Area Office and shall consist of the following:

(1) Standard Form 424, as prescribed by OMB Circular A-102;

(2) A program narrative statement which consists of the following:

(i) A brief description of the applicant's community development problems/needs to be served by the proposed program; and identification of the criteria for selection to be addressed by the program;

(ii) A description of the program to be carried out with assistance under this Subpart and an estimate of the cost of the proposed activities;

(iii) Information that demonstrates the impact the proposed program will have on the design criteria being addressed;

(iv) An analysis of the amount of funds that will be used to benefit low- and moderate-income persons. The analysis shall indicate the total number

of persons to be served, the number of persons that meet the definition of low and moderate income, how such low- and moderate-income persons are served, and the nature of the benefit; and

(v) Other information appropriate to respond to the other criteria for selection set forth in § 570.424.

(3) A certificate assuring compliance with all the citizen participation requirements of § 570.431(c) and (d)(1).

(4) A map of the applicant's jurisdiction which clearly identifies:

(i) Census tracts and/or enumeration districts;

(ii) Location of the proposed activities;

(iii) Concentrations of minority groups.

(5) If the applicant has received prior assistance under this part, a status report regarding performance with prior grants pursuant to § 570.423(c), or the Grantee Performance Report in lieu of the status report.

(b) *Submission of additional data*. Only data submitted by the deadline for submission of preapplications will be considered in the selection process, unless specifically requested by HUD in writing. All other data received after the deadline will be returned to the applicant.

§ 570.426 Applications for Comprehensive Grants.

(a) *Application requirements*. The application requirements contained in Sections 570.303, 570.304, 570.305, 570.306 (excluding paragraph (a)(4)(1)), and 570.307 of Subpart D of this Part, shall apply to applicants for Comprehensive Grants.

(b) *Coordination with applications for CDBG Entitlement Grants*. Where possible, HUD will use information submitted with a hold-harmless entitlement application, such as a Housing Assistance Plan which was prepared for a grant in the same fiscal year in which the Small Cities grant is being sought. Communities that anticipate applying for a Small Cities Comprehensive grant in addition to their hold-harmless entitlement, are encouraged to develop an overall strategy and comprehensive program that anticipates some additional funding, but which would lend itself to be segmented if the Small Cities request is not funded. Additional steps which could be taken to save time and effort would be to:

(1) Include the possibility of additional funding in the planning phase in such a manner that citizen participation requirements would have been met if and when a preapplication

for a Small Cities Comprehensive grant is submitted;

(2) Submit such proposals through the A-95 clearinghouse process with the annual hold-harmless entitlement application to eliminate the necessity of resubmitting such information if and when an application for a Small Cities Comprehensive Grant is submitted.

(c) *Title VI compliance.* All applicants, except those currently receiving a hold-harmless grant, will be required to submit, on a form prescribed by HUD, evidence of compliance with title VI of the Civil Rights Act of 1964. The purpose of the evidence is to enable HUD to determine whether the benefits to be provided will be on a non-discriminatory basis and will achieve the purposes of the program for all persons, regardless of race, color, or national origin.

(d) *Establishment of application submission dates.* Area Offices may establish individual dates for submission of each annual application of a multiyear commitment, but in no event may such a date be less than 45 days prior to the end of the fiscal year from which funds are requested.

§ 570.427 Single purpose program general requirements.

(a) *General.* The Single Purpose Program will provide funds for one or more projects consisting of an activity or a set of activities designed to meet a specific community development need. Funds will be made available to address serious problems with housing needs or economic conditions which principally affect persons of low- and moderate-income or public facilities which affect the public health and safety.

(b) *Projects.* Applicants may seek funds within a single preapplication for more than one project, as long as the total grant request is within any grant ceilings and individual grant amounts that have been established. Each project will be rated separately with respect to § 570.428 (e), (f), and (h)(1). Grants requested, either by themselves or in combination with other stated funding sources, must be sufficient to complete the program.

(c) *Performance Requirements.* Communities which are currently carrying out or have carried out a metropolitan or nonmetropolitan discretionary grant program must satisfy the performance criteria described in Section 570.423(c) before they may apply for another grant. Performance determinations will be made as of the date the preapplication is submitted to the Area Office.

§ 570.428 Selection system for single purpose grants.

Preapplications will be rated and scored against each of the following eight factors. All points for each factor will be rounded to the nearest whole number. The maximum score possible is 875 points.

	Points
(a) Need—absolute number of poverty persons.....	100
(b) Need—percent of poverty persons.....	50
(c) Need—absolute number of substandard housing units.....	30
(d) Need—percent of substandard housing units.....	30
(e) Program factor:	
Impact of the proposed program.....	300
(f) Benefit to low- and moderate-income persons.....	300
(g) Performance:	
Housing.....	100
Local equal opportunity efforts.....	50
(h) Other:	
Housing opportunity plan.....	50
Enhances position as a regional center.....	25
Implements State growth plan.....	25
Other Federal programs.....	25

Preapplications from counties in behalf of themselves, States in behalf of themselves or in behalf of counties, or joint preapplications in which a county is participating, will be scored separately with respect to the needs factors of § 570.428(a)–(d).

(a) *Need—absolute number of poverty persons (100 points).* All applicants will be ranked in terms of the absolute number of poverty persons below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's absolute number of poverty persons by the greatest number of poverty persons of any applicant and multiplying the result by 100.

(b) *Need—percent of poverty persons (50 points).* All applicants will be ranked in terms of the percentage of their population below the poverty level according to the latest data from the Bureau of the Census. Individual scores will be obtained by dividing each applicant's percentage of poverty persons by the highest percentage of poverty persons of any applicant and multiplying the results by 50.

(c) *Need—absolute housing need (30 points).* All applicants will be ranked in terms of their absolute housing need, as identified in the latest data available from the Bureau of the Census. Need will be measured by the number of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's absolute number of housing units which lack plumbing or are overcrowded by the highest amount of such housing units of any applicant and multiplying the results by 30.

(d) *Need—percent of housing need (20 points).* All applicants will be ranked in terms of their percent of housing need,

as identified in the latest data available from the Bureau of the Census. Within nonmetropolitan areas, need will be measured by the percent of units which lack plumbing or are overcrowded. Individual scores will be obtained by dividing each applicant's percentage of housing need by the highest percentage of housing need of any applicant and multiplying the results by 20.

(e) *Program factor—impact of the proposed program (200 points).* All applicants will be rated based on the impact the proposed project will have on the need identified. The intent of this factor is to select among the projects which are proposed to address a similar problem area, those projects which will have the most significant impact. In assessing impact, consideration will be given to the amount of funds requested by the applicant, the results to be achieved, the extent and nature of benefit to low- and moderate-income persons, any additional actions that may be required, previous actions taken by the applicant, environmental concerns, site selection standards where appropriate, and the nature of the activity.

(1) *Problem areas.* The problem areas cited in the preapplication for which funds are being requested must be in one of the following three categories:

(i) Housing.

(ii) Deficiencies in public facilities which affect the public health and safety.

(iii) Economic conditions.

The applicant must explain how the project being proposed impacts on the problem area selected, and the needs of low- and moderate-income persons. Specific measurable terms should be used in this explanation.

(2) *Rating method.* All projects addressing the same problem area will be compared in terms of impact on the identified problem area, as follows:

The project would have insignificant impact.....	0
The project would have minimal impact.....	50
The project would have moderate impact.....	100
The project would have substantial impact.....	200

(f) *Benefit to low- and moderate-income persons (200 points).* This factor will measure the benefit to low- and moderate-income persons. All applicants will be ranked in terms of the percent of funds benefitting low- and

moderate-income persons. Cost of planning, management and administration will not be included in this computation. The appropriate median income amounts for low- and moderate-income will be supplied by HUD, and where appropriate HUD may modify the geographic area used in the definition of low- and moderate-income persons as defined in § 570.3 (o) and (p). Individual scores will be obtained by dividing each applicant's percentage by the highest percentage achieved by any applicant addressing the same problem area, and multiplying the results by 200.

(g) *Performance in housing and equal opportunity (150 points).*—(1) *Housing efforts (100 points).* Twenty points for each of the following criterion will be awarded to each applicant that demonstrates outstanding performance in:

(i) Providing housing for low- and moderate-income families located in a manner which provides housing choices outside of areas of minority and low-income concentrations;

(ii) Dispersal, by race, in occupancy of its existing assisted housing;

(iii) Meeting its large family housing assistance needs in relation to that proportion of need;

(iv) Carrying out housing assistance goals from previous HAP(s);

(v) Enforcement of a Fair Housing Ordinance; or approval by HUD of the applicant's New Horizons Fair Housing Assistance Project, or participation in a HUD approved New Horizons Fair Housing Assistance Project.

(2) *Local equal employment and entrepreneurial efforts (50 points).* (1) Twenty-five points will be awarded to any applicant that can demonstrate that the percentage of its contracts, based on dollar value, awarded within the past two years to minority owned, controlled, or managed businesses, or the percentage of funds deposited in minority owned, controlled or managed banks, is greater than the percentage of minorities residing within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(ii) Twenty-five points will be awarded to any applicant that can demonstrate that its percentage of minority employees is greater than the percentage of minorities within the county for nonmetropolitan applicants, or within the SMSA for metropolitan applicants.

(h) *Other (125 points).* (1) Twenty-five points will be awarded for each of the following criteria effectively addressed by a proposed program which:

(A) Enhances the community's position as a regional center, economic development center, or growth center;

(B) Is consistent with and implements a State growth or resource coordination plan;

(C) Deals with the impact of other Federal programs or policies on the community and/or supports another Federal program being undertaken in the community.

(2) Fifty points will be awarded if the applicant is a participating jurisdiction in a HUD-approved Housing Opportunity Plan (50 points). (i) *Final ranking.* The points received by each applicant on the eight rating factors will be totaled, and the preapplications ranked according to the final point totals. Invitations for full applications will be made based on this final ranking to the extent funds are available.

However, if an Area Office made a procedural error in the previous year's competition, that, when corrected, would have resulted in awarding sufficient points to warrant an invitation to an applicant, that applicant will be invited automatically to submit a full application for current year funding. HUD may invite additional applications on a standby basis in the event one of the applications from the higher-ranked applicant is not approved or additional funds become available.

§ 570.429 Preapplications for Single Purpose Grants.

(a) *Submission requirements.* Preapplications shall be submitted on HUD forms to the appropriate HUD Area Office and shall consist of the following:

(1) Standard Form 424, as prescribed by OMB Circular A-102.

(2) A program narrative statement which consists of the following:

(i) A brief description of the applicant's community development problems/needs to be served by the proposed activity(ies) and an identification of which of the three possible problem areas (housing, public facilities which affect the health or safety, or economic conditions) that the project(s) will address;

(ii) A description of the activity(ies) to be carried out with assistance under this Subpart and an estimate of the cost;

(iii) A statement describing the impact the activity will have on the identified problem;

(iv) A statement on the percent of funds requested that will benefit low- and moderate-income persons. The statement should indicate the total number of persons to be served and the

number of such persons that meet the definition of low and moderate income.

(v) Other information appropriate to respond to the criteria for selection set forth in § 570.428, particularly information on the Performance and Other Factors.

(vi) A certificate assuring compliance with the appropriate citizen participation requirements of § 570.431.

(3) *Maps.* A map of the applicant's jurisdiction which identifies by census tract or enumeration district:

(i) the location of the proposed activities; and

(ii) the concentrations of minorities.

(4) If an applicant has received prior assistance under this part, a status report regarding performance with prior grants pursuant to § 570.423(c), or the Grantee Performance Report in lieu of the status report.

(b) Only that data received by the deadline established for preapplications will be considered in the selection process unless additional data are specifically requested, in writing, by HUD. Unrequested material received after the deadline will be returned to the applicant.

§ 570.430 Applications for Single Purpose Grants

(a) *Needs assessment and strategy.* An applicant with a population of 25,000 or more, or which is located in an urbanized area of a Standard Metropolitan Statistical Area, must submit a summary of a three year community development plan which identifies its community development and housing needs, describes a comprehensive strategy for meeting those needs, and specifies both short- and long-term objectives to be met by the strategy. Such strategies should be developed in accordance with areawide development planning and national growth policies, and should (1) describe a program that will eliminate or prevent slums, blight or deterioration where such conditions exist; (2) provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate and in a manner to ensure full participation by and benefit or improve conditions for low- and moderate-income persons residing in or expected to reside in the community; and (3) foster neighborhood development in order to induce higher income persons to remain in or return to the community.

(b) *Community Development Program.* All applicants, regardless of population, must, after consideration of appropriate

environmental factors, describe the project that will be undertaken which includes:

- (1) The activity or activities to be undertaken to meet the community development needs and objectives;
- (2) The estimated cost of each activity; and
- (3) Identification of other resources that will be used to address the needs and objectives.

(c) *Housing assistance plan.* All applicants, regardless of population, are required to submit a Housing Assistance Plan. Applicants located within a county which is receiving a community development block grant may submit that county's Housing Assistance Plan in lieu of preparing a separate Plan, if it elects to assume its fair share of the housing assistance established as a goal by the county and it can demonstrate in the application that the county's survey of housing conditions and assessment of housing assistance needs have incorporated information for the applicant. An agreement between the county and the applicant must be executed which identifies the applicant's fair share of the housing assistance goals and obligates the applicant to assume responsibility for its fair share.

(1) *Housing needs and goals.* (i) The applicant shall describe the condition of the housing stock in the community by tenure (renter or owner). Estimates shall be made of the vacancy rates for non-seasonal, available units in standard condition, using the best estimate at the time the application is prepared, but in no case including units to be vacant at a future date.

(ii) The applicant shall assess the housing assistance needs of lower-income households currently residing in the community by tenure and by household type (elderly and handicapped, family and non-elderly individuals, and large family), including any identifiable segment of the total group of lower income households in the community. Housing assistance needs of lower-income households expected to reside shall be assessed in accordance with § 570.304(b)(2)(ii).

(iii) The applicant shall propose a realistic goal to address the identified needs of lower-income households. The goal should specify the number of dwelling units or persons to be assisted by housing type (new, rehabilitated and existing units), by tenure, and by household type. The goal should address relative proportions of need insofar as practicable while providing for the development of feasible projects. The applicant shall describe the actions it

plans to take to further fair housing for minorities and women pursuant to its assurance under § 570.307(k)(2).

(2) *HUD review of HAP.* Where substantial housing needs are identified pursuant to paragraph (c)(1) of this section, HUD may determine that a Housing Assistance Plan with only minimal goals is plainly inappropriate to meeting the applicant's needs. Housing types (new, rehabilitated or existing dwelling units) proposed to meet housing assistance needs should be established in relation to a community's housing market and should be realistic in terms of estimating the number and types of units which can be absorbed by the market within a reasonable period of time and provide for a balanced housing market. Any units proposed to be included in the HAP as goals for rehabilitation must meet, at a minimum, the Section 8 Existing Housing Quality Standards pursuant to 24 CFR 882.109, upon completion. Weatherization and other similar activities will not satisfy rehabilitation housing assistance goals.

(d) *Map requirements.* Maps must be submitted which include the following information identified by census tract (or enumeration district, or geographic quadrant of the community where tracts or enumeration districts are either not available or include a substantial area, such as an entire community;

- (1) Concentrations of low- and moderate-income persons;
- (2) Concentrations of minority residents;
- (3) Locations of community development activities to be undertaken;
- (4) Service areas of the proposed activities, if applicable;
- (5) The median income of the census tracts in which the proposed activities are to be undertaken;
- (6) Concentrations of substandard housing; and
- (7) General locations for proposed new or rehabilitated housing assistance.

(e) *Cost analysis.* The total cost of each activity must be identified as well as the amount of Single Purpose grant that will be used for each activity. If the proposed activity is dependent on other funds for completion, the source of funds and the status of the commitment must also be indicated.

(f) *Title VI compliance.* All applicants, except those currently receiving a hold-harmless grant, are required to submit, in a form to be provided by HUD, evidence of compliance with Title VI of the Civil Rights Act of 1964. The purpose of the evidence is to enable HUD to determine whether the benefits to be provided will be on a non-discriminatory basis and will achieve

the purposes of the program for all persons, regardless of race, color, or national origin.

(g) *Certifications.* The certificates required by § 570.307 of Subpart D shall be submitted by all single purpose applicants except that in lieu of § 570.307(d) the applicant shall certify that it:

- (1) Has prepared and followed a written citizen participation plan that meets the requirements of 24 CFR 570.431(c);
- (2) Has provided citizens with an opportunity to participate in the determination of priorities in community development and housing needs;
- (3) Has provided adequate notices of public hearings as required by the written plan;
- (4) Has held hearings on the proposed application before adoption of a resolution or similar action by the local governing body authorizing the filing of the application;
- (5) Will provide for citizen participation when considering amendments to the Community Development Program and the Housing Assistance Plan; and
- (6) Will provide for citizen participation in the planning, implementation and assessment of the Community Development Program including the development of the Grantee Performance Report and the submission of views to the HUD Area Office.

§ 570.431. Citizen participation requirements for single purpose grants.

(a) *General.* Each applicant for a Single Purpose Grant shall provide citizens with an adequate opportunity to participate in the planning, implementation and assessment of the program. To achieve these goals, each applicant must prepare and follow a written citizen participation plan that meets the requirements set forth in this section. Nothing in these requirements, however, shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of the Community Development Program.

(b) *Scope of citizen participation.* Citizen participation shall include involvement in:

- (1) The determination of priorities, the development of the community development and housing strategy and the Housing Assistance Plan;
- (2) Subsequent amendments to the Community Development Program and the Housing Assistance Plan; and
- (3) The process of planning, implementing and assessing the

Community Development Program and performance.

(c) *Citizen participation plan.* Each applicant for a Single Purpose Grant must prepare and follow a written citizen participation plan that describes the method by which the following criteria will be met:

(1) The views and proposals of citizens, particularly low- and moderate-income persons, members of minority groups, and residents of blighted areas and neighborhoods where activities are proposed or ongoing, shall be solicited and responded to in a timely manner.

(2) Adequate notices of public hearings shall be provided in a timely manner so as to make them accessible and understandable to all citizens, including non-English speaking persons. The plan shall specify the number of days prior to hearings that notices will be made available.

(3) Hearings to obtain citizen views and to respond to citizen proposals will be scheduled at times and locations which permit broad participation, particularly by low- and moderate-income persons and residents of blighted neighborhoods and project areas.

(4) Citizens shall be involved in the development of both the preapplication and application.

(5) Full public access to program information and affirmative efforts to get adequate information to citizens shall be provided, particularly for persons of low- and moderate-income and residents of blighted neighborhoods and project areas.

(6) Citizens shall be involved in amendments, budget revisions and changes to the Community Development Program and the Housing Assistance Plan.

(7) Citizens shall be involved in planning, implementing and assessing the Community Development Program and performance.

(8) Low- and moderate-income persons and minorities will be ensured substantial representation in an advisory committee, if one has been created.

(9) Bilingual opportunities will be provided at public hearings, when necessary.

The plan must be written and available prior to undertaking any of the above.

(d) *Requirements for citizen participation in each stage of the application process:*

(1) *Preapplication stage.* (i) Prior to the preparation of the preapplication, the applicant shall, in accordance with

the written plan, make available the following information:

(A) The total amount of Single Purpose funds to be applied for by the applicant for community development;

(B) The range of activities that may be undertaken with these funds, the kind of activities previously funded in the community (if applicable) and the progress made with respect to these activities;

(C) The fact that more preapplications will be submitted to HUD than can be funded;

(D) The processes to be followed in soliciting and responding to the views and proposals of citizens in a timely manner; and

(E) A summary of other important program requirements.

(ii) Prior to the required public hearings, the applicant shall provide for adequate public notices of the hearings in accordance with paragraph (c)(2) of this section.

(iii) Prior to the actual preparation of the preapplication, hearings shall be held to obtain the views and proposals of citizens with regard to the determination of priorities and community development and housing needs.

(iv) A certificate of assurance shall be submitted with the preapplication assuring that all appropriate requirements have been met.

(2) *Application stage.* Prior to the submission of the full application, the applicant shall, in accordance with the written plan:

(i) Assure that citizen participation has taken place with regard to the determination of priorities and community development and housing needs;

(ii) Provide adequate notices of public hearings in accordance with paragraph (c)(2) of this section; and

(iii) Hold hearings on the proposed application before adoption of a resolution or similar action by the local governing body authorizing the filing of the application.

(3) *Post approval stage.* Following the approval of its application, the grantee shall, in accordance with the written plan:

(i) Assure citizen participation when considering subsequent amendments to the Community Development Program and the Housing Assistance Plan; and

(ii) Provide for citizen participation in the planning, implementation and assessment of the Community Development Program including the development of the Grantee Performance Report and the submission of views to the Area Office.

§ 570.432 Single Purpose Grants for imminent threat to public health or safety.

(a) *Criteria.* The following criteria for an imminent threat to public health or safety shall apply:

(1) Notwithstanding the provisions of § 570.428, the Area Manager may, at any time, invite a full application for funds available under this Subpart in response to a request for assistance to alleviate an imminent threat to public health or safety that requires immediate resolution by waiving the requirements for preapplications. The urgency and the immediacy of the threat shall be verified by HUD with an appropriate authority other than the applicant prior to submission of the full application, and the Area Manager will review the claim to determine if, in fact, an imminent threat to public health or safety does exist. For example, an applicant with documented cases of disease resulting from a contaminated drinking water supply would have an imminent threat to public health, while an applicant ordered to improve the quality of its drinking water supply over the next two years would not have an imminent threat within the definition of this paragraph. These funds are to be used to deal with those threats which represent a unique and unusual circumstance, not for the type of threat that occurs with frequency in a number of communities within a state.

(2) The applicant does not have sufficient local resources and other Federal or state resources are unavailable to alleviate the imminent threat.

(b) *HUD action.* (1) Each Area Office Manager is authorized to reserve up to 15 percent of the funds allocated pursuant to Subpart B and assigned to the Area Offices for Small Cities Grants in metropolitan and nonmetropolitan areas for use in funding full applications to alleviate imminent threats to the public health or safety. Funds reserved shall be considered a part of the percentage of funds available for Single Purpose Grants. The 15 percent limit may be applied separately to the metropolitan and nonmetropolitan balances. Full applications shall be submitted in accordance with § 570.430.

(2) The only funds to be reserved for imminent threats to the public health and safety are those set aside by the Area Manager. After these funds have been depleted, no further applications relating to imminent threat shall be considered during that fiscal year.

(c) *Waiver of A-95 requirements.* The requirements for A-95 review and comment pursuant to § 570.435(c) may be waived in the case of an imminent

threat. HUD shall notify the appropriate state and areawide A-95 clearinghouses that it is inviting a full application for an imminent threat from an applicant.

(d) *Letter to proceed.* HUD may issue the applicant a letter to proceed to incur costs to alleviate the imminent threat provided all environmental reviews are completed pursuant to 24 CFR Part 58.

§ 570.433 HUD review and actions on full applications for Single Purpose and Comprehensive Grants.

(a) *Full applications.* Only applications from communities that have been invited to submit a full application will be accepted for review, and then only if: (1) It has been received before the deadline that has been established; (2) the application requirements are complete; (3) the funds requested do not exceed the amount of the invitation by HUD, unless a higher amount is acceptable to HUD; (4) the activities are essentially the same as those for which a full application was invited; and (5) the application is submitted to the clearinghouse prior to or concurrently with submission to HUD. The applicant shall indicate in its full application the date it was submitted to the clearinghouse.

(b) *HUD action on full applications.*—
(1) *Review and notification.* While HUD is not required to review discretionary applications within 75 days, it will try to do so. Applications will be reviewed to ensure that any other resources that may be required are, in fact, available; and that any conditions that were established at the time of invitation have been satisfied. Following the review, HUD will promptly notify the applicant of the actions taken with regard to its application.

(2) *Conditional approval.* The Secretary may make a conditional approval in which case the grant will be approved, but the use of funds will be restricted. Conditional approvals may be made pursuant to § 570.311(f) or to insure that (i) actual provision of other resources required to complete the proposed activities will be available within a reasonable period of time; (ii) the project can be completed within estimated costs; (iii) or until site and neighborhood standards approval has been obtained for proposed housing projects, if applicable.

(3) *Disapproval of a full application.* The Secretary may disapprove a full application for the reasons set forth in § 570.311(c). In addition, full applications may be disapproved for any of the following reasons;

(i) The conditions established at the time of invitation have not been fully met;

(ii) Other resources necessary for the completion of the proposed activity are no longer available or will not be available within a reasonable period of time;

(iii) The activities cannot be completed within the estimated costs or resources available to the applicant;

(iv) There is new evidence of a lack of capacity of a recipient to carry out the proposed activities;

(v) The applicant has received other funds for the activities and assistance under this Subpart is no longer required.

(4) *Letter to proceed.* HUD will issue a letter authorizing an applicant to incur costs for the planning and preparation of an application for funds available under this Subpart, including citizen participation and environmental studies. Reimbursement for such costs will be dependent upon HUD approval of the application. Only those costs associated with the actual cost of preparation of the application may be assisted. In no instances may a planning or preparation fee be reimbursed when it is based upon a percentage of the assistance received under this subpart and such fees shall comply with the requirements set forth in § 570.200. Costs incurred by an applicant prior to notification of a funding approval or issuance of a letter to proceed by HUD are not eligible for assistance under this part.

§ 570.434 Program amendments for Single Purpose and Comprehensive Grants.

(a) HUD will consider amendments if they are necessitated by actions beyond the control of the applicant. Recipients shall request prior HUD approval for all program amendments involving new activities or significant alteration of existing activities that will change the scope, location, objectives or scale of the approved activities or beneficiaries. Approval will be subject to the following:

(1) New or significantly altered activities will be rated in accordance with the criteria for selection applicable at the time the original preapplication was rated. The rating of the new program or activity proposed by the amendment must be equal to or greater than the lowest rating received by a funded activity or program during that cycle of preapplication ratings.

(2) Consideration shall be given to whether any new activity proposed can be completed promptly.

(b) *Housing Assistance Plan Amendments.*

(1) *Comprehensive Grant.* Recipients shall request prior HUD approval in accordance with § 570.312(b).

(2) *Single Purpose Grant.* Recipients shall request prior HUD approval when any of the following conditions exist:

(i) The recipient proposes an increase or decrease of any goal by housing type or household type;

(ii) The recipient proposes a revision of general locations for assisted housing.

(c) *A-95 and citizen participation requirements.* Whenever an amendment requires HUD approval, the requirements of this Subpart for A-95 review and citizen participation must be met, and the recipient shall provide all appropriate State and areawide A-95 clearinghouses with thirty days in which to review and comment on the proposed amendment prior to its submission to HUD.

§ 570.435 Modified OMB Circular No. A-95 procedures for the Small Cities Program.

(a) *General.* (1) Applicants for grants (both Single Purpose and Comprehensive) under the Small Cities Program must comply with all of the procedures set forth in Part I of OMB Circular No. A-95 except as modified below. These procedures also require that program amendments which must receive HUD approval shall be submitted for a thirty day review and comment period prior to submission to HUD pursuant to 24 CFR 52.101(g).

(2) All applicants are urged to contact their A-95 clearinghouses for forms and instructions which the clearinghouses have developed to facilitate their reviews.

(3) Clearinghouses will be of assistance to the applicant and to HUD if their reviews address the appropriate performance factors (§ 570.423(c)), the criteria for selection for the Comprehensive Program (§ 570.424), and the criteria for selection for the Single Purpose Program (§ 570.428), as well as the "subject matter of comments and recommendations" in item 5, Part I, Attachment A of OMB Circular No. A-95, with emphasis on consistency with State, areawide and local plans and compliance with environmental and civil rights laws.

(b) *A-95 procedures for preapplications.* Preapplications for either Comprehensive Grants or for Single Purpose Grants shall be submitted to the appropriate State and areawide A-95 clearinghouses prior to or concurrent with the submission of the preapplication to HUD to serve as the notification of intent to apply for a Federal grant. The clearinghouses shall have thirty days from receipt of the

preapplication in which to conduct their review and provide a response to the applicant with a copy to HUD. The clearinghouse must clearly identify the applicant and the activity or program to which the comments are addressed. HUD shall not make a final rating on a preapplication until all clearinghouse comments are considered, or if no clearinghouse comments are received by HUD, thirty days after the deadline for submission of preapplications. Applicants are urged to provide preapplications to the clearinghouses prior to submission to HUD whenever possible.

(c) *A-95 procedures for full applications.* (1) Applications shall be submitted to the appropriate State and areawide A-95 clearinghouses prior to or concurrently with submission to HUD. The clearinghouses shall have forty-five days from receipt of the application to review the application and give the comments to HUD and the applicant.

(2) HUD will not take any final action on the application until comments have been received or until forty-five days after the application was sent to the clearinghouse. The applicant will be provided an opportunity to respond to clearinghouse comments before HUD takes final action on an application.

(3) If the A-95 comments contain any findings of inconsistency with State, areawide or local plans, or noncompliance with civil rights laws, the applicant must explain why it should proceed with the project.

* * * * *

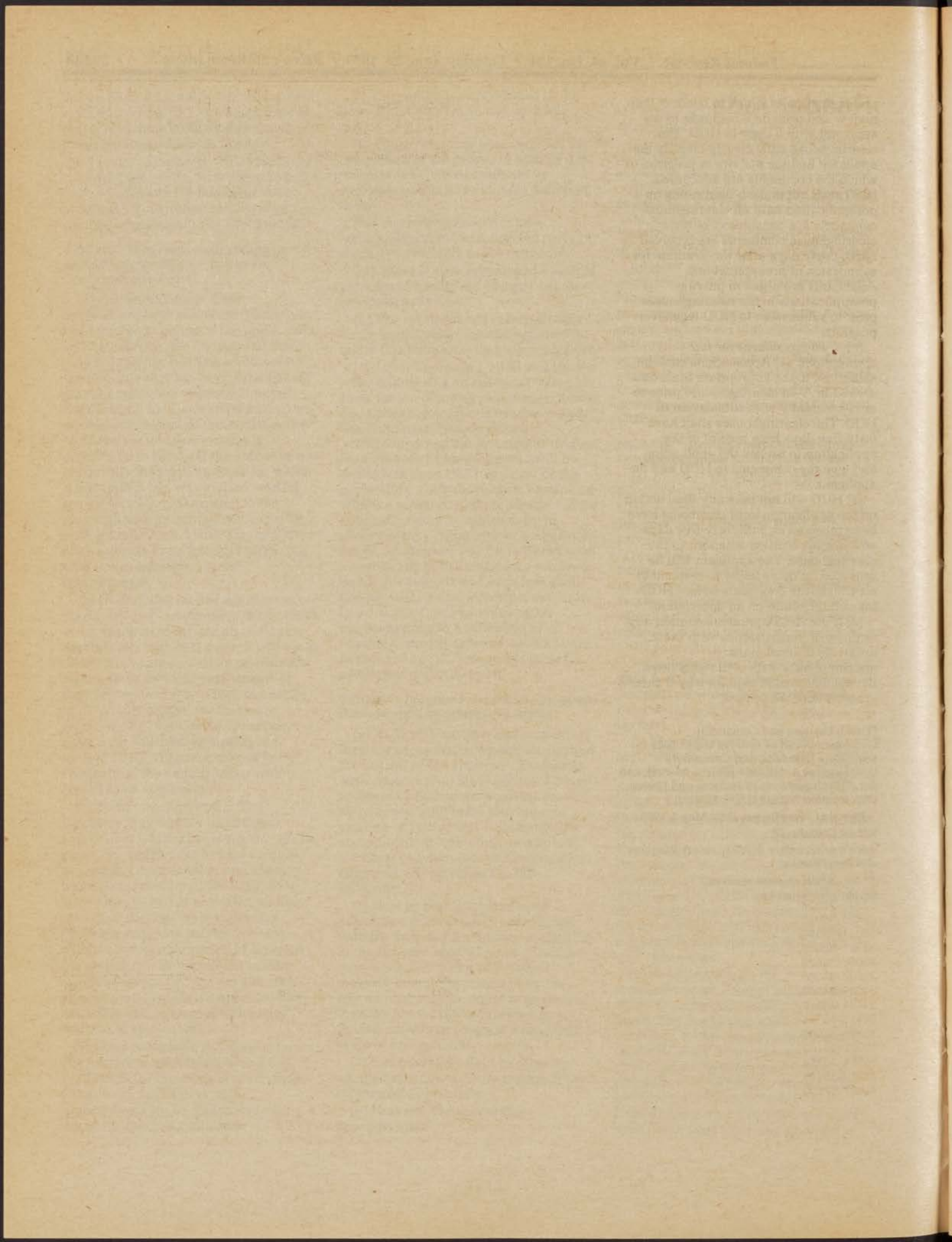
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Robert C. Embry, Jr.,
Assistant Secretary for Community Planning and Development.

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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
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
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DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	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 June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.

REMINDERS

Rules Going Into Effect Today

There were no items eligible for inclusion in the list of rules going into effect today.

List of Public Laws

Last Listing June 21, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202-375-3030).

H.R. 3577 / Pub. L. 96-26 To amend section 8 of the National Advisory Committee on Oceans and Atmosphere Act of 1977 to authorize appropriations to carry out the provisions of such Act for fiscal year 1980, and for other purposes. (June 21, 1979; 93 Stat. 74) Price \$.75.

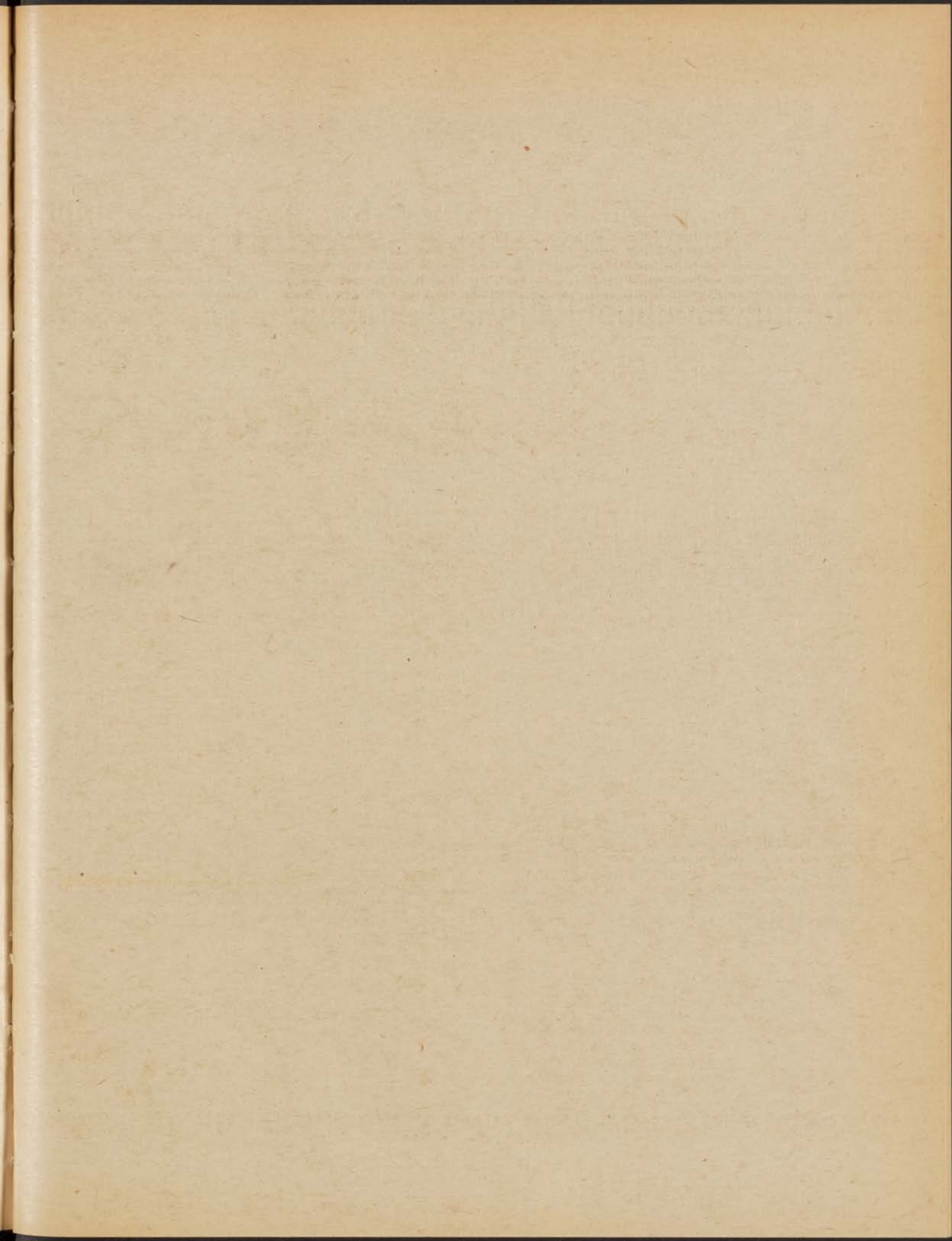
H.R. 3879 / Pub. L. 96-27 To authorize additional appropriations for the Temporary Commission on Financial Oversight of the District of Columbia, and for other purposes. (June 21, 1979; 93 Stat. 75) Price \$.75.

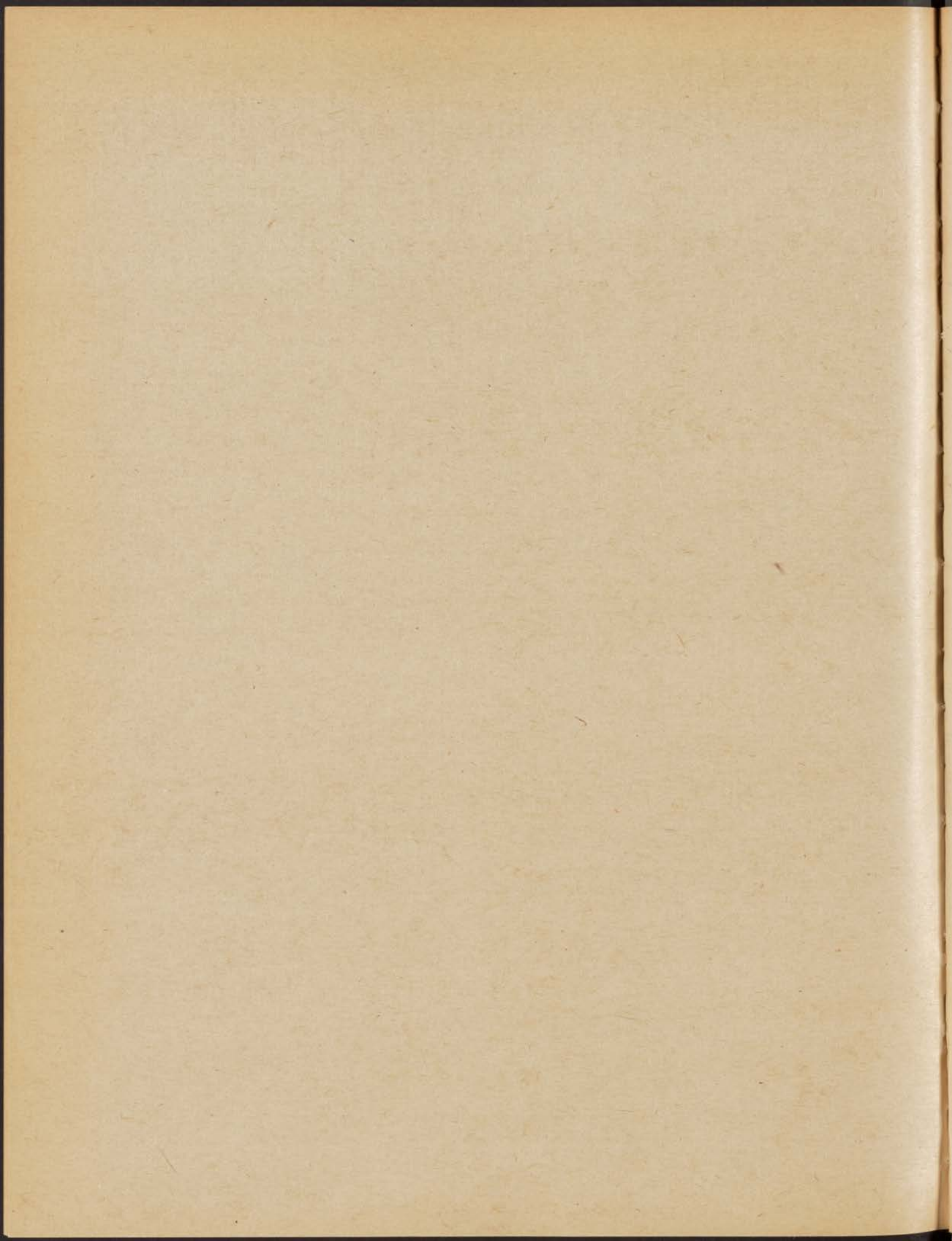
S. 869 / Pub. L. 96-28 To amend section 207 of title 18, United States Code. (June 22, 1979; 93 Stat. 76) Price \$.75.

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