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federal register

TUESDAY, NOVEMBER 23, 1976

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The six-month trial period ended August 6. The program is being continued on a voluntary basis (see OFR notice, 41 FR 32914, August 6, 1976). The following agencies have agreed to remain in the program:

Monday	Tuesday	Wednesday	Thursday	Friday
NRC	USDA/ASCS		NRC	USDA/ASCS
DOT/COAST GUARD	USDA/APHIS		DOT/COAST GUARD	USDA/APHIS
DOT/NHTSA	USDA/FNS		DOT/NHTSA	USDA/FNS
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DOT/OHMO	CSC		DOT/OHMO	CSC
DOT/OPSO	LABOR		DOT/OPSO	LABOR
	HEW/FDA			HEW/FDA

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

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

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

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rules and regulations

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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.

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PERSONNEL RECORDS AND FILES; EMPLOYMENT (GENERAL); EXECUTIVE ASSIGNMENT SYSTEM

Editorial Changes

The Civil Service Commission is making the following editorial changes:

PART 293—PERSONNEL RECORDS AND FILES

(1) In the Authority Statement of Part 293, "E.O. 10561" should appear before "3 CFR 1954–1958 Comp., p. 205."

PART 300—EMPLOYMENT (GENERAL)

(2) In Part 300—§ 300.14(a)(2), 4th line, "Board of Appeals" should be "Appeals Review Board."

PART 305—EXECUTIVE ASSIGNMENT SYSTEM

(3) In § 305(a)(4) "Positions of hearing examiner" should read "Positions of Administrative Law Judge."

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

[FR Doc.76-34564 Filed 11-22-76;8:45 am]

PART 591—ALLOWANCES AND DIFFERENTIALS

Cost of Living Allowance and Post Differential—Nonforeign Areas

Supbart B has been renumbered generally and minor language changes made for clarity. The listings of areas and rates of allowances and differentials have been removed from the text and incorporated as Appendix A and Appendix B. Section 591.206 contains an index table to be used in determining the percentage allowance rate based on survey findings and § 591.213, Periodic review, has been changed to conform to a recent amendment to Executive Order 10,000.

Subpart B—Cost of Living Allowance and Post Differential—Nonforeign Areas

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591.201 Definitions.
591.202 Areas covered.
591.203 Agencies and employees covered.
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591.205 Establishment of rates for areas covered.
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Appendix A of Subpart B—Places and rates at which allowances shall be paid.
Appendix B of Subpart B—Places and rates at which differentials shall be paid.

AUTHORITY: 5 U.S.C. 5941; E.O. 10,000.

Subpart B—Cost of Living Allowance and Post Differential—Nonforeign Areas

§ 591.201 Definitions.

In this subpart. (a) "Date of arrival" means the beginning of business on the workday of the employee's arrival at the post, or other designated place. When the employee's arrival is on a nonworkday, "date of arrival" means the beginning of business on the first workday following arrival.

(b) "Date of departure" means the close of business on the workday of the employee's departure from the post or other designated place. When the employee's departure is on a nonworkday, "date of departure" means the close of business on the last workday preceding departure.

(c) "Day or calendar day" means any day of the year. Fractional days are considered whole days.

(d) "Detail" means the temporary assignment or temporary duty of an employee away from his post of regular assignment, including all periods of leave while serving at the post of detail.

(e) "Nonforeign allowance" or "allowance" means a cost of living allowance established by the Civil Service Commission and payable under section 5941 of title 5, United States Code, at a post in a nonforeign area where living costs are substantially higher than in the District of Columbia.

(f) "Nonforeign area" means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, territories and possessions of the United States, and such additional areas located outside the continental United States as the Secretary of State shall designate as being within the scope of Part II of Executive Order 10,000, as amended.

(g) "Nonforeign differential" or "differential" means a post differential established by the Civil Service Commission and payable under section 5941 of title 5, United States Code, at a post in a nonforeign area when conditions of environment differ substantially from conditions of environment in the Continental United States and warrant its payment as a recruitment incentive.

(h) "On assignment" or "on transfer" at a post of duty means officially occupying a position located at the post, geographically and organizationally, and having official headquarters at the post for travel and other administrative purposes.

(i) "Rate of basic pay" means the rate of pay fixed by statute for the position held by an individual, before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

§ 591.202 Areas covered.

The following areas are subject to this subpart:

Alaska (including all the Aleutian Islands east of longitude 167 degrees east of Greenwich)
American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island)
Canton and Enderbury Islands
Commonwealth of Puerto Rico
Guam
Hawaii (including Ocean or Kure Island)
Howland, Baker, and Jarvis Islands
Johnston or Cornwallis Island, and Sand Island
Kingman Reef
Midway Islands
Navassaa Island
Palmyra Island
Virgin Islands of the United States
Wake Island

Any small guano islands, rocks, or keys which, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

Any other islands to which the United States Government reserves claim, such as Christmas Island.

§ 591.203 Agencies and employees covered.

This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an executive department, independent establishment, or wholly-owned Government corporation.

§ 591.204 Exclusion of certain employees.

(a) *Employees covered by other statutes.* This subpart does not apply to employees in the Panama Canal Zone whose rates of basic pay are fixed by statute, or to any other groups of employees for whom allowances and differentials for service outside the continental United States or in Alaska are otherwise specifically authorized by statute.

(b) *Governors of territories.* A department or agency shall not apply an allowance or differential to a governor of a

territory in a nonforeign area, except that on the specific request of the department or agency concerned, the Commission may authorize the payment of a differential to a governor whose pay is fixed under chapter 51 and subchapter III of chapter 53, title 5, United States Code, if he is otherwise eligible to receive a differential and the Commission determines that a payment is warranted under the circumstances.

§ 591.205 Establishment of rates for areas covered.

The Civil Service Commission establishes the allowance and differential rates for each area covered. The department or agency concerned shall submit to the Commission in writing requests for the establishment of rates of allowances or differentials for places for which they have not been established by this subpart.

§ 591.206 Allowance index table.

Cost of living survey findings shall be used to calculate a comparative cost index between Washington, D.C. and each area covered. This index shall determine the amount of allowance, expressed as a percentage of employee's basic pay, to be paid to eligible employees as set forth in the following table:

COMPARATIVE COST INDEX AND ALLOWANCE RATE TABLE

Cost index range:	*Percentage allowance rate*
Less than 105.0	0
105.0 to 106.2	5
106.3 to 108.7	7.5
108.8 to 111.2	10
111.3 to 113.7	12.5
113.8 to 116.2	15
116.3 to 118.7	17.5
118.8 to 121.2	20
121.3 to 123.7	22.5
123.8 and over	25

§ 591.207 Places and rates at which allowances shall be paid.

Allowances are authorized to be paid in consideration of relative living cost differences between an area covered and the Washington, D.C., area and differences in goods and services available, and the manner of living of persons employed in the area concerned in positions comparable to those of United States employees in the area. A listing showing the places and rates at which allowances shall be paid is set out as Appendix A to this subpart and is incorporated in and made part of this section.

§ 591.208 Deductions from allowances.

Deductions from allowances are made where warranted because of Federal housing or special purchasing privileges in accordance with the provisions of section 205(b)(2) of Executive Order 10,000, as amended. The listing in Appendix A to this subpart shows the allowance rates, which includes the appropriate deduction, for each category of affected employees.

§ 591.209 Places and rates at which differentials shall be paid.

Differential rates are based on (a) extraordinarily difficult living conditions, (b) excessive physical hardship, or (c) notably unhealthful conditions. A listing showing the places and rates at which differentials shall be paid is set out as Appendix B to this subpart and is incorporated in and made part of this section.

§ 591.210 Payment of allowances and differentials.

(a) The allowance and differential authorized for each location shall be converted to an hourly rate, based on the employee's basic rate of pay, and shall be paid only for those hours during which the employee receives basic pay.

(b) The total amount of an allowance or a differential, or an allowance and a differential combined, paid under this subpart shall not exceed in any instance 25 percent of the rate of basic pay.

(c) Payment of an allowance or a differential shall begin as of the date of arrival at the post of duty on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or a differential shall cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

(d) Except as provided under the Fair Labor Standards Act, of 1938, as amended, an allowance or a differential shall not be included in the base used in computing overtime pay, night differential, holiday pay, retirement deductions, or any other additional pay, allowance or pay differential. An allowance or differential payment is included in an employee's regular rate of pay for computing overtime pay entitlement under the Fair Labor Standards Act.

(e) Payment of an allowance or a differential is not an equivalent increase in pay within the meaning of section 5335 of title 5, United States Code.

(f) When an employee who is en route to, or returning from, his post of regular assignment is required to perform work in an area where payment of an allowance or differential is authorized, he shall be paid the allowance or differential for his post of regular assignment while he is performing this work.

(g) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of temporary absence from the post on leave, including transit time. Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive days of temporary absence from the post on leave, including transit time. Payment of allowances and differentials under this paragraph is authorized only if the employee returns to a post of regular assignment in a foreign or nonforeign area, unless

(1) The department or agency concerned determines that it is in the public interest not to return the employee to a post of regular assignment, or

(2) The department or agency concerned determines that the employee's failure to return to a post of regular assignment was due to compelling personal reasons, such as the health of the employee or his family, or to circumstances over which the employee has no control.

(h)(1) Payment of an allowance at the rate prescribed for the post of regular assignment shall continue for all periods of detail from the post including transit time, except that when an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the allowance under this subpart will be reduced to a rate which when added to the foreign post differential rate will not result in a total rate of more than 25 percent.

(2) Payment of a differential at the rate prescribed for the post of regular assignment shall continue for the first 42 consecutive calendar days on detail from the post, including transit time, except that when the employee is detailed to a foreign area post for which the Department of State has authorized a differential under section 5925 of title 5, United States Code, but the employee may not be paid the differential because he is detailed from a post of regular assignment which is not in one of the several States or the District of Columbia, the department or agency shall pay him the differential prescribed for his post of regular assignment for the entire period of detail (including the periods of leave granted during the period of detail).

(3) When an employee other than an employee covered by the exception in subsection (h)(2) has aggregated 42 days in a pay status at a differential post, he shall thereafter be paid the differential prescribed for each post of detail, but not for any time in transit.

(4) When an employee detailed to a foreign area post receives a differential authorized by the Department of State under section 5925 of title 5, United States Code, the payment of the differential under this subpart will be reduced to a rate which when added to the foreign post differential rate will not result in a total rate of more than 25 percent.

(i) Except as provided by paragraph (h) of this section, when an employee is temporarily absent from his post of regular assignment on detail (including the periods of leave granted during the period of the detail), payment of the differential for his post of regular assignment is limited to the first 42 consecutive calendar days of the temporary absence, including transit time.

§ 591.211 Coordination of allowances and differentials.

An employee eligible to receive an allowance at a post for which both an allowance and a differential have been established shall receive the full allowance otherwise payable to him under this subpart, plus so much of the differential as will not cause the total amount paid to exceed a rate of 25 percent of his rate of basic pay.

§ 591.212 Eligibility for differential.

A department or agency shall determine employee eligibility to receive a differential as follows:

(a) In order for an employee to be eligible to receive a differential, (1) he shall be a citizen or national of the United States; (2) his residence in the area to which the differential applies, at the time of receipt thereof, shall be fairly attributable to his employment by the United States; and (3) his residence in the area over an appropriate prior period of time must not be fairly attributable to reasons other than employment by the United States or by United States firms, interests, or organizations.

(b) Subject to paragraph (a) of this section, the classes of persons eligible to receive differentials include but are not limited to:

(1) Persons recruited or transferred from outside the area to which the differential concerned is applicable, except that the department or agency concerned shall exclude from those eligible to receive a differential the spouse of an individual who is stationed, employed, or resident in the differential area when the department or agency determines that the spouse is there primarily to be near the individual.

(2) Persons employed in the area to which the differential concerned is applicable but (i) who were originally recruited from outside the area and have been in substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the United States Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or (ii) who were at the time of employment temporarily present in the differential area concerned for purposes of travel or formal study and maintained residents outside the area during the period so present.

(3) Persons who are not normally residents of the area to which the differential concerned is applicable and who are discharged from the military service of the United States in the area to accept employment there with an agency of the Federal Government.

§ 591.213 Periodic review.

The Commission shall review from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart which are prescribed for payment of allowances and differentials. The purpose for the review is to make warranted changes to insure that payments under this subpart shall continue only during the continuance of conditions justifying payment of allowances and differentials and shall not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

APPENDIX A OF SUBPART B. PLACES AND RATES AT WHICH ALLOWANCES SHALL BE PAID

This appendix lists the places where a cost of living allowance has been approved and shows the allowance rate to be paid to employees along with any special eligibility requirements for the allowance payment. The allowance percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage/allowance category	1976 Index	Authorized allowance rate (percent)
State of Hawaii		
Island of Oahu:		
Local retail/private housing	118.1	17.5
Local retail/Federal housing	100.9	0
Commissary/PX/private housing	104.2	0
Commissary/PX/Federal housing	87.4	0
Commissary/PX/military housing	72.5	0
Island of Kauai:		
Local retail/private housing	111.3	12.5
Local retail/Federal housing	108.8	10.0
Commissary/PX/private housing	110.8	10.0
Commissary/PX/Federal housing	103.2	7.5
Commissary/PX/military housing	88.4	0
Island of Molokai:		
Local retail/private housing	105.2	5.0
Local retail/Federal housing	102.3	0
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	88.2	0
Island of Maui and Island of Lanai:		
Local retail/private housing	108.0	7.5
Local retail/Federal housing	100.3	0
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	82.1	0
Island of Hawaii:		
Local retail/private housing	113.4	12.5
Local retail/Federal housing	103.6	0
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	88.0	0
State of Alaska		
City of Anchorage and 50-mile radius:		
Local retail/private housing	123.8	25.0
Local retail/Federal housing	124.3	25.0
Commissary/PX/private housing	116.5	17.5
Commissary/PX/Federal housing	112.0	12.5
Commissary/PX/military housing	84.9	0
City of Fairbanks and 50-mile radius:		
Local retail/private housing	133.6	25.0
Local retail/Federal housing	128.1	25.0
Commissary/PX/private housing	122.6	22.5
Commissary/PX/Federal housing	112.6	12.5
Commissary/PX/military housing	90.4	0
City of Juneau and 50-mile radius:		
Local retail/private housing	127.9	25.0
Local retail/Federal housing	126.2	25.0
Commissary/PX/private housing	128.6	25.0
Commissary/PX/Federal housing	124.8	25.0
Commissary/PX/military housing	95.6	0
All other locations within Alaska:		
All employees	131.8	25.0
Commonwealth of Puerto Rico		
Local retail/private housing	109.5	7.5
Local retail/Federal housing	106.3	7.5
Commissary/PX/private housing	95.6	0
Commissary/PX/Federal housing	95.4	0
Commissary/PX/military housing	73.2	0
Virgin Islands		
St. Croix Island:		
Local retail/private housing	105.9	7.5
Local retail/Federal housing	97.2	0
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	82.6	0
St. Thomas and St. John Islands:		
Local retail/private housing	107.2	7.5
Local retail/Federal housing	98.5	0
Commissary/PX/private housing	None	
Commissary/PX/Federal housing	None	
Local retail/military housing	83.9	0
Island of Guam		
Local retail/private housing	114.1	15.0
Local retail/Federal housing	109.7	10.0
Commissary/PX/private housing	101.2	0
Commissary/PX/Federal housing	96.8	0
Commissary/PX/military housing	73.0	0

DEFINITIONS OF ALLOWANCE CATEGORIES

The following definitions of the various allowance categories identified in the tables in this attachment shall be used in determining employee eligibility for the appropriate allowance rate:

Allowance category	*Definition*
Local Retail/Private Housing	This category includes those Federal employees who purchase goods and services only from private retail establishments and who occupy housing units that are privately owned or rented.
Local Retail/Federal Housing	This category includes those Federal employees who purchase goods and services only from private retail establishments and who occupy housing units that are owned or leased by a Federal agency.
Commissary/PX/Private Housing	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy housing units that are privately owned or leased.

Allowance category	*Definition*
Commissary/PX/Federal Housing	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy housing units that are owned or leased by a Federal agency.
Commissary/PX/Military Housing	This category includes those Federal employees who have unlimited access to military commissary and exchange facilities and who occupy either on-base military housing units or off-base housing for which a housing allowance is paid under the military housing program.

NOTE.—Eligibility for access to military commissary and exchange facilities is determined by the appropriate military department. Identification cards are issued to each individual authorized to use the facilities and this identification would indicate any limitation on purchases. Agencies should adopt whatever methods are appropriate to obtain from employees the information needed to determine the applicable allowance category and the corresponding allowance to be paid.

APPENDIX B OF SUBPART B. PLACES AND RATES AT WHICH DIFFERENTIALS SHALL BE PAID

This appendix lists the places where a post differential has been approved and shows the differential rate to be paid to eligible employees. The differential percentage rate shown is paid as a percentage of an employee's rate of basic pay.

Geographic coverage	Percentage differential rate	Effective date
American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoan group east of longtude 171° west of Greenwich, together with Swains Island)	25	June 8, 197
Canton Island	25	Do.
Christmas Island	25	Do.
Guam	20	Jan. 1, 1975
Johnston or Cornwallis Island, and Sand Island	25	June 8, 1975
Midway Islands	25	Do.
Wake Island	25	Do.

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

[FR Doc.76-34219 Filed 11-22-76;8:45 am]

Title 7—Agriculture

SUBTITLE A—OFFICE OF THE SECRETARY OF AGRICULTURE

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Miscellaneous Amendments

Part 2, Subtitle A, Title 7, Code of Federal Regulations is amended to delegate to the Assistant Secretary for Administration various authority relating to complaint determinations, minority business assistance, public notification, evaluation of minority program participation and contract compliance and to redelegate such authority to the Director, Office of Equal Opportunity as follows:

Suppart C—Delegations of Authority to the Under Secretary, Assistant Secretaries and Director of Agricultural Economics

1. Section 2.25(h) is amended by renumbering current paragraphs (9) and (10) as paragraphs 13 and 14 and adding new paragraphs (9) through 12 as follows:

§ 2.25 Delgations of authority to the Assistant Secretary for Administration.

* * * * *

(h) *Related to equal opportunity.*

* * * * *

(9) Make determinations that investigations performed under § 15.6 and 15.52 of this subtitle establish a proper basis for findings of discrimination and that actions taken to correct such findings are adequate.

(10) Coordinate the Department's program of minority business assistance, 5including procurement contracts, minority bank deposits and grant and loan activities affecting minority businesses.

(11) Coordinate Department-wide program of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(12) Establish standards for agency minority program participation data collection, targeting and evaluation systems.

* * * * *

Subpart J—Delegations of Authority by the Assistant Secretary for Administration

2. Section 2.80(a) is amended by revising paragraphs (2) and (8) and adding new paragraphs (10) through (12) as follows:

§ 2.80 Director, Office of Equal Opportunity.

(a) *Delegations.* * * *

* * * * *

(2) Is designated as the Department's Deputy Contract Compliance Officer with authority to take agency or compliance agency action as authorized under 41 CFR, Part 60, including 41 CFR 60-1.24 and 41 CFR 60-1.26.

* * * * *

(8) Coordinate the Department's program of minority business assistance, including procurement contracts, minority bank deposits and grant and loan activities affecting minority businesses.

* * * * *

(10) Make determinations that investigations performed under § 15.6 and 15.52 of this subtitle establish a proper basis for findings of discrimination and that actions taken to correct such findings are adequate.

(11) Coordinate Department-wide program of public notification regarding the availability of USDA programs on a nondiscriminatory basis.

(12) Establish standards for agency minority program participation data collection, targeting and evaluation systems.

* * * * *

Effective Date: These amendments shall become effective November 23, 1976.

For Subpart C:

JOHN A. KNEBEL,
Secretary of Agriculture.

NOVEMBER 18, 1976.

For Subpart J:

J. PAUL BOLDUC,
Assistant Secretary for Administration.

NOVEMBER 18, 1976.

[FR Doc.76-34551 Filed 11-22-76;8:45 am]

CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amendment No. 82]

PART 401—FEDERAL CROP INSURANCE

Subpart—Regulations for the 1969 and Succeeding Crop Years

CLOSING DATES

Pursuant to the authority contained in the Federal Crop Insurance Act, as amended, § 401.103 of the Federal Crop Insurance Regulations for the 1969 and Succeeding Crop Years (7 CFR Part 401, as amended), is hereby amended effective with the 1977 crop year by revising the Closing Date table at the end of subsection (a) of § 401.103 to read as shown below:

§ 401.103 Application for insurance.

(a) * * *

(CLOSING DATES)

BARLEY

Arizona	Nov. 15
California:	
Modoc and Siskiyou Counties	Apr. 15
All other California counties	Nov. 15
Colorado, South Dakota, Utah, and Wyoming	Mar. 31
Delaware, Maryland, and Pennsylvania	Sept. 30
Idaho:	
Idaho County and all Idaho counties lying north thereof	Oct. 31
All other Idaho counties	Apr. 15
Minnesota:	
Traverse, Stevens, Pope, Stearns, Wright, Hennepin, and Dakota Counties and all Minnesota counties lying south thereof	Mar. 31
All other Minnesota counties	Apr. 15
Oregon:	
Klamath and Malheur counties	Apr. 15
All other Oregon counties	Oct. 31
Washington	Oct. 31
All other States	Apr. 15.

DRY BEANS

Michigan	May 31
All other States	May 15

CORN	
Florida, Georgia, and Louisiana	Mar. 31
Mississippi, North Carolina, North Dakota, and Virginia	Apr. 15
Illinois, Indiana, Michigan, New York, Ohio, and Pennsylvania	Apr. 30
All other States	Apr. 25
COTTON	
Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, and South Carolina	Apr. 10
Arizona and California	Mar. 31
Oklahoma	Apr. 30
Texas:	
Childress, Cottle, King, Stonewall, Fisher, Scurry, Borden, Dawson, and Gaines Counties, and all Texas counties lying north and west thereof	Apr. 30
Aransas, Refugio, Bee, Live Oak, McMulen, La Salle, and Dimmit counties, and all Texas counties lying south thereof	Jan. 31
Calhoun, Goliad, Jackson, and Victoria Counties	Feb. 28
Reeves, Ward, Pecos, and Terrell counties, and all counties lying south and west thereof	Apr. 15
All other Texas counties	Mar. 31
All other States	Apr. 15
FLAX	
All States	Apr. 15
GRAIN SORGHUM	
Nebraska	May 10
Texas:	
Childress, Cottle, King, Stonewall, Fisher, Scurry, Borden, Dawson, and Gaines Counties, and all Texas counties lying north and west thereof	Apr. 30
Calhoun and Victoria Counties	Feb. 28
Aransas, Refugio, Bee, Live Oak, McMulen, La Salle, and Dimmit Counties, and all Texas counties lying south thereof	Jan. 31
All other Texas counties	Mar. 31
All other States	Apr. 30
OATS	
Illinois, Iowa and South Dakota	Mar. 31
Minnesota:	
Traverse, Stevens, Pope, Stearns, Wright, Hennepin, and Dakota Counties, and all Minnesota counties lying south thereof	Mar. 31
All other Minnesota counties	Apr. 15
All other States	Apr. 15
CANNING AND FREEZING PEAS	
Idaho:	
Franklin County	Mar. 31
All other Idaho counties	Mar. 15
Utah	Mar. 31
Wisconsin and Minnesota	Apr. 15
All other States	Mar. 15
DRY PEAS	
All States	Apr. 15
PEANUTS	
All States	Apr. 30
RICE	
All States	Apr. 10
RYE	
All States	Aug. 31
SOYBEANS	
Delaware, Illinois, Indiana, Iowa, Maryland, Michigan, Minnesota, Nebraska, Ohio, and Wisconsin	May 10
North Dakota	Apr. 15
All other States	Apr. 30
SUGAR BEETS	
California	Aug. 31
All other States	Apr. 15
SUGAR CANE	
All States	Aug. 31
SUNFLOWERS	
All States	Apr. 30
TOBACCO	
Types of Tobacco	
11b	May 15
12	Apr. 30
13 in North Carolina	Apr. 10
13 in South Carolina	Apr. 5
14	Mar. 25
21, 22, 23, 31, 35, 36	May 20
11a, 41, 54, 55	May 31
TOMATOES	
WHEAT	
Arizona	Nov. 15
California:	
Modoc and Siskiyou Counties	Oct. 31
All other California counties	Nov. 15
Colorado, Kansas, New Mexico, Oklahoma, Texas, and Wyoming	Aug. 31
Idaho:	
Idaho County and all Idaho counties lying north thereof	Oct. 31
All other Idaho counties	Sept. 15
Kentucky, North Carolina, South Carolina, and Tennessee	Oct. 15
Minnesota:	
Traverse, Stevens, Pope, Stearns, Wright, Hennepin, and Dakota Counties, and all Minnesota counties lying south thereof	Mar. 31
All other Minnesota counties	Apr. 15
Nebraska and Utah	Sept. 15
North Dakota	Apr. 15
Oregon and Washington	Oct. 31
South Dakota:	
Bennett, Dewey, Faulk, Haakon, Hand, Hughes, Hyde, Jones, Lyman, Mellette, Potter, Stanley, Sully, Tripp, and Walworth Counties	Sept. 15
All other South Dakota counties	Mar. 31
All other States	Sept. 30

(Secs. 506, 516, 52 Stat. 73, as amended, 77, as amended; 1506, 1516)

The foregoing amendment is designed to make the closing dates for the filing of applications for crop insurance more consistent with the current farming practices. The date table currently in use in the Federal Crop Insurance Regulations for the 1969 and Succeeding Crop Years is at variance with the current planting times, and inasmuch as the insurance attaches at the time of planting, it is necessary to correct the closing date table to conform with the planting dates of crops covered by the crop insurance program. The foregoing amendment is designed to accomplish this.

Since it will be necessary to start accepting applications for the 1977 crop year soon and notification of the provisions of the proposed amendment must be placed on file as early as possible, the Board of Directors found that it would be impracticable and contrary to the public interest to follow the procedure for notice and public participation prescribed by 5 U.S.C. 553(b) and (c), as directed by the Secretary of Agriculture in a Statement of Policy, executed on July 20, 1971 (36 FR 13804), prior to the adoption of the foregoing amendment. Accordingly, said amendment was adopted by the Board of Directors on November 10, 1976.

Said amendment shall become effective November 23, 1976.

The Federal Crop Insurance Corporation has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107

PETER F. COLE,
Secretary, Federal Crop Insurance Corporation.

Approved on: November 18, 1976.

JOHN A. KNEBEL,
Secretary.

[FR Doc.76-34536 Filed 11-22-76;8:45 am]

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

[Lemon Regulation 66, Amendment 1]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

This regulation increases the quantity of California-Arizona lemons that may be shipped to fresh market during the weekly regulation period Nov. 14-20, 1976. The quantity that may be shipped is increased due to improved market conditions for California-Arizona lemons. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 910.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of lemons available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Lemon Regulation 66 (41 FR 49988). The marketing picture now indicates that there is a greater demand for lemons than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of lemons to fill the current market demand thereby making a greater quantity of lemons available to meet such increased demand, the regulation should be amended, as hereinafter set forth.

(3) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice,

engage in public rulemaking procedure, and postpone the effective date of this amendment until 30 days after publication hereof in the FEDERAL REGISTER (5 U.S.C. 553) because the time intervening between the date when information upon which this amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restriction on the handling of lemons grown in California and Arizona.

(b) *Order, as amended.* Paragraph (b)(1) of § 910.366 (Lemon Regulation 66) (41 FR 49988) is hereby amended to read as follows: "The quantity of lemons grown in California and Arizona which may be handled during the period November 14, 1976, through November 20, 1976, is hereby fixed at 215,000 cartons."

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

Dated: November 17, 1976.

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

[FR Doc.76-34550 Filed 11-22-76;8:45 am]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—LOANS AND GRANTS PRIMARILY FOR REAL ESTATE PURPOSES

[FmHA Instruction 444.5]

PART 1822—RURAL HOUSING LOANS AND GRANTS

Subpart D—Rural Rental Housing Loan Policies, Procedures and Authorizations

ADDITION

Subpart D of Part 1822 of Chapter XVIII, Title 7, Code of Federal Regulations (40 FR 4278; 40 FR 52836; 40 FR 54421; 41 FR 34578) is amended. Section 1822.88(1) and Exhibit J, paragraph VI D are amended to make reference to new Exhibit P, "RRH Loans and the HUD Section 8 Housing Assistance Payments Program (Existing Units)." Exhibit P is added to set forth policies and procedures to be followed by the Farmers Home Administration in carrying out this program for existing Section 515 rural rental housing projects as defined in this Subpart.

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding to such rules. The amendments of § 1822.88(1), paragraph VI D of Exhibit J, and the addition of Exhibit P, however, are being published without notice of proposed rulemaking because such notice would delay providing immediately needed rental housing to low- and moderate-income families, and would be contrary to the public interest.

In accordance with the spirit of that policy, interested parties may submit written comments, suggestions, data or arguments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6319, South Building, Washington, DC 20250, on or before December 23, 1976. Material thus submitted will be evaluated and acted upon in the same manner as if this document were a proposal. However, the amendments and the addition of Exhibit P will remain effective until further amended. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Chief, Directives Management Branch during regular business hours. (8:15 a.m.-4:45 p.m.)

As amended, § 1822.88 (1), paragraph VI D of Exhibit J, and new Exhibit P are set forth below:

§ 1822.88 Special conditions.

* * * * *

(1) *RRH loans made in connection with the HUD Section 8 housing assistance payments program (section 8/515).* RRH loans involving the HUD Section 8 housing assistance payments program will be handled in accordance with Exhibits O and P of this Subpart.

* * * * *

EXHIBIT J

INTEREST CREDITS ON INSURED RRH AND RCH LOANS

* * * * *

VI. *Special conditions:*

* * * * *

D. *Interest Credit for Projects Under the Department of Housing and Urban Development (HUD), Section 8 housing assistance payments program.* When rental units in an RHH project are leased under the Section 8 program, interest credit will be provided in accordance with Exhibit O for new construction and Exhibit P for existing units of this Subpart.

* * * * *

EXHIBIT P

RRH LOANS AND THE HUD SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM (EXISTING UNITS)

I. *General.* This Exhibit contains the policies and procedures that will be followed by the Farmers Home Administration (FmHA) to permit the utilization of existing Section 515 rural rental housing (RRH). Units are leased under the Department of Housing and Urban Development (HUD) Section 8 Housing Assistance Payments Program. (24 CFR Part 882)

II. *Applicability.* All FmHA RRH borrowers are authorized to utilize the procedure outlined in this Exhibit and the HUD Seciton 8 Housing Assistance Payments Program for existing housing as outlined in HUD's regulations 24 CFR Part 882 (Federal Register Vol. 4, Part IV dated October 27, 1976.) To promote the use of the Section 8 Housing Assistance Payments Program with existing projects, the following action should be taken:

A. County Supervisors should inform all rural rental housing borrowers operating in the area of their jurisdiction of the contents of this Exhibit.

B. The HUD Section 8 program could benefit any eligible tenant in an RRH project who is paying more than 25 percent of his income for rent. Therefore, RRH borrowers should advise tenants occupying a unit of a project who are paying more than 25 percent of their adjusted income for housing of the possibility of obtaining Section 8 housing assistance payments. Section 8 assistance for existing housing is administered by local housing agencies authorized by HUD to administer the program in the area. In areas where no housing agency has been established to administer the program, interested citizens and the local government may wish to establish such an agency.

III. *FmHA policies concerning rental rates and payments.*

A. Under the Section 8 Housing Assistance Payments Program, HUD will pay that portion of the tenant's rent including utility allowance in excess of 15-25 percent of the family's income. The contract rent to be established under the HUD Section 8 program will be as follows: (1) for borrowers with a 3 percent direct RRH loan and borrowers operating in accordance with interest credit Plan I, the contract rent will be the market rental rate for the units as determined by the current approved annual budget using a 3 percent amortization factor for principal and interest payments, (2) for borrowers operating without interest credit the contract rent will be the market rental rate for the unit as determined by the current approved annual budget using the amortization factor for the note rate of interest for principal and interest payments, (3) for borrowers operating in accordance with interest credit Plan II, the contract rent will be the basic rental rate as determined by the current approved annual budget using a 1 percent interest amortization factor for principal and interest payments.

B. The method of calculation and transmittal of the scheduled payment to the Finance Office will be in accordance with Exhibit J of this Subpart.

IV. *Responsibilities.*

A. *Family.* A family must obtain a Certificate of Family Participation to obtain Section 8 assistance. A family receiving housing assistance under the Section 8 program will be responsible for fulfilling all of its obligations under the Certificate of Family Participation issued to it by the Public Housing Agency (PHA) and under the lease with the owner.

B. *Owner (FmHA Borrower).* The owner, upon being presented a Certificate of Family Participation, shall contact and enter into a Housing Assistance Payments Contract with the PHA and a lease with the tenant. Owners shall be responsible (and subject to review or audit by the PHA or HUD) for performing all of their obligations under the contract and lease.

C. *FmHA.*

1. FmHA, in accordance with existing regulations, will be responsible for normal loan servicing and supervision, including but not limited to:

a. Obtaining and reviewing all reports from the borrower in accordance with Subpart G of Part 1802 of this Chapter;

b. Review and approval of budgets and rental rates; and

c. Collection of required payments and review of the borrower's establishment and maintenance of required accounts.

2. FmHA will not be responsible for the requirements and conditions of the contract entered into between the PHA and the owner but will cooperate with HUD and the PHA to the extent possible to assure that the borrower carries out his obligations under the contract.

V. *Special conditions.*

A. *Eligibility.*

1. The PHA will determine a family's eligibility before the Certificate of Family Participation is issued. To be eligible for Section 8 assistance, the family's income as determined by HUD may not exceed 80 percent of the median income for the area. The family's eligibility for housing assistance payments under the Section 8 program will

continue until the amount payable by the family equals or is greater than the contract rental rate. However, when 25 percent of the family's income equals or is greater than the contract rental rate chargeable for the unit, the family may benefit under FmHA interest credit programs if 25 percent of its income is greater than the lowest established rental rate for the unit.

2. Form FmHA 444-8, "Tenant Certification," will not be required for tenants who have obtained a Certificate of Family Participation from the PHA.

3. The tenant's adjusted family income must not exceed the maximum income limitations as authorized by FmHA for the project.

B. *Security deposits.* According to 24 CFR 882 of HUD regulations the owner may require a family to pay a security deposit in an amount equal to the amount payable by the family toward one month's gross rent. Under HUD regulations, if a family vacates a unit and the security deposit is insufficient, the owner may claim reimbursement from the PHA in an amount not to exceed one month's contract rent.

C. *Payment for vacated units.* According to 24 CFR 882 of HUD regulations, if a family vacates the unit in violation of the provisions of the lease, the owner may receive housing assistance payments in the amount of 80 percent of the contract rent for a period not exceeding 60 days or the expiration or other termination of the lease.

D. *Limitation of owners participation in the program.* HUD's regulation 24 CFR 882.-110 provides that assistance under Section 8 will not exceed 40 percent of the total number of units in the project; however, this limitation may be exceeded for the purpose of relieving hardship of a particular family or families with the approval of the HUD Regional Administrator.

E. *Special problems.* Any problems on utilizing the HUD Section 8 program for existing RRH projects not covered by this Exhibit should be referred to the National Office by the State Director.

(42 U.S.C. 1480; delegation of authority by the Sec. of Agri., 7 CFR 2.23; delegation of authority by the Asst. Sec. for Rural Development, 7 CFR 2.70.)

Effective date: These amendments and the addition of Exhibit P shall become effective November 23, 1976.

Dated: November 15, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-34535 Filed 11-22-76;8:45 am]

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 309—GENERAL REQUIREMENTS FOR FINANCIAL ASSISTANCE

Revision of Policy Regarding Project Modification

Pursuant to the authority vested in it by section 701 of the Public Works and Economic Development Act of 1965, as amended, the Economic Development Administration (EDA) hereby amends 13 CFR Part 309 for the purpose of revising its policy with regard to project modifications.

Section 309.26(a)(3)(i) is amended to allow the use of excess funds in projects experiencing cost underruns. With this amendment, funds which exceed the maximum grant rate specified in the original offer may remain obligated to a project experiencing a cost underrun if the Assistant Secretary determines that such funds are necessary for the completion of the project. The amount of such funds which may be used is limited to the project's maximum allowable grant *rate at the time of its approval.*

In that the matter contained herein relates to the EDA grant and loan program, the relevant provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of the proposed rulemaking, opportunity for public participation and delay in effective date are inapplicable.

In accordance with the spirit of public policy set forth in 5 U.S.C. 553, interested persons may submit written comments or suggestions regarding this amendment to the Assistant Secretary for Economic Development, U.S. Department of Commerce, Room 7800B, Washington, D.C. 20230 on or before December 23, 1976. Until such time as further changes are made, however, this amendment shall remain in effect, thus permitting the public business to proceed more expeditiously.

Consideration has been given as to whether the matter set forth in this regulation constitutes a major proposal with an inflationary impact within the meaning of OMB Circular No. A-107 and the interpretative guidelines issued by the Department of Commerce. It has been determined that this regulation does not constitute action requiring an inflationary impact statement.

In consideration of the foregoing, 13 CFR 309 is hereby amended by revising § 309.26(a)(3)(i) to read as follows:

§ 309.26 Project modification.

(a) * * *

(3) * * *

(i) If the revised cost is reduced, funds which would make the EDA grant rate exceed the maximum grant rate in the original offer will be deobligated unless the Assistant Secretary determines that increasing the grant rate to the maximum allowable grant rate at the time the project is approved is necessary to complete the project.

* * * * *

(Sec. 701, Pub. L. No. 89-136, 79 Stat. 570 (42 U.S.C. 3121 et seq.); Department of Commerce Organization Order 10-4, 40 FR 56702.)

This amendment becomes effective on November 23, 1976.

The Economic Development Administration has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Dated: November 15, 1976.

J. W. EDEN,
Assistant Secretary
for Economic Development.

[FR Doc.76-34503 Filed 11-22-76;8:45 am]

Title 20—Employees' Benefits

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

[Regulations No. 4 and 5]

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

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Hearings, Appeals, and Judicial Review Under Titles II, and XVIII of the Social Security Act

On March 23, 1976, proposed amendments were published in the FEDERAL REGISTER (41 FR 12035) with notice of proposed rule making to achieve consistency between Parts 404, 405, and 416 of title 20 of the Code of Federal Regulations. The amendments set forth below have no major program significance and will have no pecuniary effect upon the public.

The proposed amendments published on March 23, 1976, were designed to provide consistency between the regulations pertaining to hearing and Appeals Council review under titles II and XVIII of the Social Security Act in Parts 404 and 405 (see § 405.701) of title 20 of the Code of Federal Regulations with the regulations now in effect in Part 416 for the Supplemental Security Income Program under Title XVI of the Act. The public was allowed 30 days from the March 23, 1976, publication date within which to comment on the proposed amendments. We believe that publication provided ample and adequate notice to all interested individuals and organizations, so that promulgation at this time of the amendments set forth below is in keeping with the spirit and intent of the Secretary's regulation development policies announced on July 25, 1976. These proposed amendments as published with Notice of Proposed Rule Making:

a. Specify the information which should be provided with a request for hearing;

b. Remove reference to the individual who may preside at a hearing by position title;

c. Provide for holding a prehearing or posthearing conference on request of a claimant or on the motion of a presiding officer;

d. Provide that the notice of hearing must contain a statement of the specific issues to be determined and the matters on which findings will be made and a decision rendered. They further provide that the parties may file written objections to the issues and the presiding officer will rule on such objections in writing or at the hearing;

e. Provide that generally the issues brought before a presiding officer upon a request for hearing are those which formed the basis of the prior determination, except for those determined in favor of the claimant;

f. Add provisions to permit remand from the presiding officer to a lower adjudicative level for a favorable revised determination where such remand would expedite effectuation of payment to the individual;

g. Provide for consolidated hearings where an individual has more than one claim pending before the Social Security Administration to obviate the need for separate hearings for the same person;

h. Specify the difference between joint hearings and consolidated hearings;

i. Indicate that a fully favorable decision may be rendered without scheduling an oral hearing;

j. Provide that previous findings of fact made under a different title of the Social Security Act or under the Federal Coal Mine Health and Safety Act of 1969, as amended, shall be binding unless there is a reasonable showing that the findings may be incorrect;

k. Provide that a presiding officer will usually make an initial decision, although, where appropriate, the presiding officer may certify the case to the Appeals Council with a recommended decision;

l. Specify the basis under which the Appeals Council grants a request for review or takes review on its own motion of a presiding officer's decision or dismissal; and,

m. Provide that, ordinarily, when additional evidence is required for Appeals Council review, the case will be remanded to a presiding officer for rehearing and receipt of new evidence.

Interested parties were given 30 days in which to submit their views and comments on the proposed regulations. Only one letter of comment was received. Although the comment received was given due consideration, no change was made as a result of the writer's suggestion as hereinafter discussed.

The commenter proposed that where a prehearing or posthearing conference is to be held, the notice thereof should be published in newspaper publications. These conferences are generally not open to the public as they usually concern individual entitlement and evidentiary issues which are personal and cannot be disclosed without the consent of the individuals. However, the feasibility of opening these and other types of adjudicatory hearings to the public is currently being studied within the Department. Since current procedures specify that a written notice be sent to the party (ies), the comment is not adopted. Accordingly, the proposed rules are adopted as set forth below.

(Secs. 205, 221(d), 1102, 1869, and 1871 of the Social Security Act, as amended; 53 Stat. 1368, as amended, 68 Stat. 1081, 49 Stat. 647, as amended, 79 Stat. 330, 79 Stat. 331; 42 U.S.C. 405, 421(d), 1302, 1395ff, and 1395hh.)

Effective date: These amendments shall be effective November 23, 1976.

(Catalog of Federal Domestic Assistance Programs No. 13.800, Health Insurance for the Aged and Disabled, Hospital Insurance; 13.801, Health Insurance for the Aged and Disabled, Supplementary Medical Insurance; 13.802, Social Security, Disability Insurance Benefits; 13.803, Social Security, Retirement Insurance; 13.804, Social Security, Benefits for Persons Aged 72 and Over; 13.805, Social Security, Survivors Insurance.)

Dated: September 10, 1976.

J. B. CARDWELL,
Commissioner of Social Security.

Approved: November 18, 1976.

MARJORIE LYNCH,
Acting Secretary of Health, Education, and Welfare.

Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. Section 404.918a is added to read as follows:

§ 404.918a Request for hearing.

(a) A request for hearing filed in accordance with § 404.918 may be made on Form HA-501, "Request for Hearing," or by other writing requesting a hearing. Such request shall be signed by the party and shall contain:

(1) Name of individual and social security number;

(2) The reason(s) for disagreeing with the reconsidered or revised determination;

(3) A statement of additional evidence which will be submitted and the anticipated date of submittal if it does not accompany the request; and

(4) The name and address of the individual's representative, if any.

(b) Where practicable, documentary evidence which is to be offered at the hearing by the claimant, or a summary thereof, shall be submitted to the presiding officer with the request for hearing or within 10 days after the filing of such request. Every reasonable effort shall be made to insure that all relevant evidence has been received by the presiding officer or will be available at the time and place set for the hearing.

2. Section 404.921 is revised to read as follows:

§ 404.921 Presiding officer.

The hearing provided for in this Subpart J, except as otherwise provided herein, shall be conducted by a duly appointed presiding officer. Such presiding officer shall be designated by the Director of the Bureau of Hearings and Appeals or his delegate. The Director or his delegate may also designate a member of the Appeals Council to conduct a hearing, in which case the provisions of this Subpart J governing the conduct of a hearing shall be applicable thereto.

3. Section 404.922a is added to read as follows:

§ 404.922a Prehearing and posthearing conferences.

The presiding officer, at his discretion, upon his own motion or request of any party to the hearing, may hold prehearing or posthearing conferences for the purpose of facilitating the hearing or the decision of the presiding officer. Notice shall be given to the parties of the time and place of such conference and the purpose therefor, not less than seven days prior to the conference date unless such notice is waived by the parties. The presiding officer may consider matters in addition to those specified in the notice provided the parties consent in writing thereto. A record shall be made of all agreements and actions resulting from any such conference and the presiding officer shall issue an order setting forth all such agreements and actions. Absent objections of the parties, such agreements and action at the conference shall become part of the hearing record and be binding upon all parties, unless, in the discretion of the presiding officer, such would be unreasonable or inequitable.

4. Section 404.923 is revised to read as follows:

§ 404.923 Notice of hearing.

The presiding officer shall fix a time and a place within the United States for the hearing, written notice of which, unless waived by a party, shall be mailed to the parties at their last known addresses or given to them by personal service, not less than 10 days prior to such time. As used in this section and in § 404.934, "the United States" means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. The notice of hearing shall include the time and place of the hearing, and a statement of the specific issues to be determined, and matters on which findings will be made and decision reached. The parties shall be informed of their right to representation. Written notice of the objections of any party to the time and placed fixed for a hearing, or the issues to be decided shall be filed by the objecting party with the presiding officer at the earliest practicable opportunity before the time set for such hearing. Such notice shall state the reasons for the party's objection and, with respect to time and place, his choice as to the time and place within the United States for the hearing. The presiding officer may, for good cause, fix a new time or place for the hearing. The presiding officer shall rule, either in writing or at the hearing, on any objections raised as to the issues on which evidence will be taken and a decision issued.

5. Section 404.924 is revised to read as follows:

§ 404.924 Issues before the presiding officer.

(a) *General.* The presiding officer shall inquire fully into those issues which formed the basis of the reconsidered or revised determination except for those issues on which findings fully favorable to the party were made. However, where facts elicited before or at the hearing raise a question as to such favorable findings, said issues may be set for hearing upon notice.

(b) *Hearing on new issues.* At any time after a request for hearing has been made, as provided in § 404.918, but prior to the mailing of notice of the decision, the presiding officer may, at his discretion, either on the application of a party or his own motion, in addition to the matters brought before him by the request for hearing, give notice that he will also consider any specified new issue (see § 404.905) whether pertinent to the same or a related matter, and whether arising subsequent to the request for hearing, which may affect the rights of such party, even though the Social Security Administration has not made an initial and reconsidered determination with respect to such new issue: *Provided,* that notice of the time and place of the hearing on any new issue, unless waived, shall be given to the parties within the time and manner specified in § 404.923: *And provided further,* That the claim is not one within the jurisdiction of a State agency under a Federal-State agreement pursuant to section 221(b) or section 1633 of the Act. Upon the giving of such

notice, the presiding officer shall, except as otherwise provided, proceed to hearing on such new issue in the same manner as he would on an issue on which an initial and reconsidered determination has been made by the Social Security Administration and a hearing requested with respect thereto by a party entitled to such hearing.

6. Sections 404.924a and 404.924b are added to read as follows:

§ 404.924a Remand prior to hearing.

Where new and material evidence is received or there is a change in law, regulations, or other precedents which could permit findings favorable to the individual, the presiding officer, in his discretion, may remand the case to the appropriate component of the Social Security Administration for a revised determination where such action would expedite payment to the individual. Unless the remand is requested by the individual, the order of remand shall inform the individual that any objection to the remand shall be filed with the presiding officer within 10 days from the date of such order. If the individual does not object within that time period, consent of such individual shall be presumed. If an individual files an objection, the presiding officer shall rule on such objection in writing.

§ 404.924b Consolidated hearing.

(a) *Requests for hearing pending under various laws within the jurisdiction of the Social Security Administration.* Where a request for hearing is made, as provided in § 404.918, and there is a timely request for hearing pending with respect to the same party, under any other law administered by the Social Security Administration or under section 1159(b) of the Social Security Act, the presiding officer may conduct a consolidated hearing on all such pending requests for hearing, if practicable. Such consolidated hearing shall be in accordance with this Subpart J and with provisions of Subpart G of Part 405, Subpart F of Part 410 and Subpart N of Part 416 of this chapter as appropriate to such other claim(s).

(b) *Claims involving same issues.* Where there is pending before any component of the Social Security Administration a claim with respect to the same party which presents one or more of the same issues which are properly before the presiding officer on request for hearing under this Subpart J, the presiding officer shall consider whether a consolidated hearing should be held. The presiding officer may, at his discretion, remove such other claim to himself and conduct a consolidated hearing on the claims which involve the same issues even though the Social Security Administration has not made an initial or a reconsidered determination on such other claim or even though the party has not requested a hearing. In such hearing, the provisions of this Subpart J, Subpart G of Part 405, Subpart F of Part 410, and Subpart N of Part 416 of this chapter shall be applied, as appropriate to such other claim.

(c) *Record, evidence, and decision at consolidated hearings.* When a consolidated hearing is held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or consolidated decision shall be made, as appropriate.

7. Section 404.932 is revised to read as follows:

§ 404.932 Joint hearings.

When two or more hearings, on request for hearing by two or more individuals, are to be held with respect to claims under title II or title XVIII of the Act, and the same or substantially similar evidence is relevant and material to the matters in issue at each such hearing, the presiding officer may, with consent of the parties, fix the same time and place for each hearing and conduct all such hearings jointly. Where joint hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.

§ 404.933 [Reserved]

8. Section 404.933 is revoked and reserved.

9. Section 404.934 is revised to read as follows:

§ 404.934 Right to appear and present evidence.

(a) *General.* Any party to a hearing shall have the right to appear before the presiding officer, personally or by representative, and present evidence and contentions. If all parties are unwilling, unable, or waive their right to appear before the presiding officer, personally or by representative, it shall not be necessary for the presiding officer to conduct an oral hearing as provided in §§ 404.923 to 404.932, inclusive.

(b) *Waiver of right to appear.* A waiver of the right to appear and present evidence and allegations as to facts and law shall be made in writing and filed with the presiding officer. Such waiver may be withdrawn by a party at any time prior to the mailing of notice of the decision in the case. Even though all of the parties have filed a waiver of the right to appear and present evidence and contentions at a hearing before the presiding officer, the presiding officer may, nevertheless, give notice of a time and place and conduct a hearing as provided in §§ 404.923 to 404.932, inclusive, if he believes that the personal appearance and testimony of the party or parties would assist him to ascertain the facts in issue in the case.

(c) *Record as basis for decision.* Where all of the parties have waived their right to appear in person or through a representative and the presiding officer does not schedule an oral hearing, the presiding officer shall render a decision based on the record. Where a party residing outside the United States at a place not readily accessible to the United States does not indicate that he wishes to appear in person or through a representative before a presiding officer, and there are no other parties to the hearing who wish to appear, the presiding officer shall decide the case on the record. In any case where an oral hearing is not scheduled and the decision is to be based on the record, the presiding officer shall make a record of the relevant written evidence, including applications, written statements, certificates, affidavits, reports, and other documents which were considered in connection with the initial determination and reconsideration, and whatever additional relevant and material evidence the party or parties may present in writing for consideration by the presiding officer. Such documents shall be considered as all of the evidence in the case, and the decision, as provided, shall be based thereon.

10. Section 404.934a is added to read as follows:

§ 404.934a Fully favorable decision on the record.

Where evidence of record including evidence, if any, submitted with the request for hearing or received in prehearing preparation supports a decision on the record which is fully favorable to the party or parties, the presiding officer, at his discretion, may issue a decision on such record without an oral hearing. The record for such decision shall be made as set forth in § 404.934(c). The notice of such decision issued on the record shall inform the party or parties of their right to an oral hearing and right to examine the evidence received in the record.

11. Section 404.938a is added to read as follows:

§ 404.938a Collateral estoppel.

(a) *General.* The doctrine of collateral estoppel applies with respect to findings of fact made in a previous determination or decision by the Secretary, which has become final and where no new and material evidence pertinent to such finding is presented. Collateral estoppel differs from res judicata (see § 404.937) in that it applies to findings of fact made with respect to a claim under a different title of the Social Security Act, or under Part B of title IV of the Federal Coal Mine Health and Safety Act which involve the same party(ies), whereas res judicata applies to findings of fact made with respect to a claim under the same title by the same party(ies).

(b) *Applicability of collateral estoppel.* The doctrine of collateral estoppel shall apply with respect to any specific findings of fact made with respect to the same party in a previous initial or reconsidered determination, which became final, or in a previous hearing or Appeals Council decision, which became final, under title XVI or XVIII of the Act or title IV, Part B, of the Federal Coal Mine Health and Safety Act of 1969, as amended, unless there is a reasonable showing that such prior finding of fact may be incorrect. Where the doctrine of collateral estoppel is applicable, such finding of fact in the prior action shall be controlling in the decision under this Subpart J.

12. Section 404.939 is revised to read as follows:

§ 404.939 Presiding officer's decision or certification to Appeals Council.

(a) *Decision.* As soon as practicable after the close of a hearing, the presiding officer shall issue a decision. Such decision shall be based upon the evidence adduced at the hearing or otherwise included in the record (§§ 404.923–404.934). The decision shall be made in writing and contain findings of fact and a statement of reasons in support thereof. A copy of the decision shall be mailed to the parties at their last known addresses. Where appropriate, the presiding officer may certify a case to the Appeals Council after a hearing with a recommended decision.

(b) *Recommended decision in court remand cases.* Where the presiding officer conducts a hearing on a case which has been remanded to the Appeals Council by a court, such case shall be returned to the Appeals Council with a recommended decision (see § 404.950(b)).

13. Section 404.942 is revised to read as follows:

§ 404.942 Case certified to Appeals Council by presiding officer.

(a) *Notice.* When a case has been certified to the Appeals Council by a presiding officer with his recommended decision, the presiding officer shall mail notice of such action with a copy of the recommended decision to the parties at their last known addresses. The parties shall be notified of their right to file with the Appeals Council within 10 days from the date of mailing of the recommended decision, briefs, or other written statements of exceptions or allegations as to applicable fact and law. Upon request of any party made within such 10-day period, a 10-day extension of time for filing such briefs or statements shall be granted and, upon a showing of good cause, such 10-day period may be further extended, as appropriate. Where there is more than one party, copies of such briefs or written statements shall be filed in sufficient number that they may be made available to any party requesting a copy or any other party designated by the Appeals Council. Copies or a statement of the contents of the documents or other written evidence received in evidence in the hearing record, and a copy of the transcript of oral evidence adduced at the hearing, if any, or a condensed statement thereof shall be made available to any party upon request, upon payment of the cost, or if such cost is not readily determinable, the estimated cost thereof, unless for good cause shown, such payment is waived.

(b) *Procedure.* The proceedings before the Appeals Council on certification pursuant to paragraph (a) of this section shall be in accordance with the rules and procedure in § 404.948 and § 404.949. The Appeals Council shall make a decision. Where the Appeals Council determines that additional evidence is required, it may remand the case to the presiding officer for further inquiry into the matters, rehearing, receipt of evidence, and a subsequent initial hearing decision, or a recommended decision to the Appeals Council except where the Appeals Council decides that it can obtain the additional evidence more expeditiously, it will take the appropriate action.

§§ 404.943 and 404.944 [Reserved]

14. Sections 404.943 and 404.944 are revoked and reserved.

15. Section 404.947a is added to read as follows:

§ 404.947a Basis for review of the presiding officer's decision or dismissal by Appeals Council.

(a) The Appeals Council, on its own motion or on request for review, will review a hearing decision or dismissal where:

(1) There appears to be an abuse of discretion by the presiding officer;

(2) There is an error of law;

(3) The presiding officer's action, findings, or conclusions are not supported by substantial evidence; or

(4) There is a broad policy or procedural issue which may affect the general public interest.

(b) Where new and material evidence is submitted with the request for review, the entire record will be evaluated and review will be granted where the Appeals Council finds that the presiding officer's action, findings, or conclusion is contrary to the weight of the evidence currently of record.

16. Section 404.950 is revised to read as follows:

§ 404.950 Decision by Appeals Council or remanding of case.

(a) *Case remanded to presiding officer.* The Appeals Council may remand to the presiding officer for rehearing, receipt of evidence, and decision, any case which it decides to review as provided in § 404.947 and § 404.947a. Where a case is thus remanded, the presiding officer shall initiate such additional proceedings and take such action (under §§ 404.919 through 404.940) as is directed by the Appeals Council in its order of remand. The presiding officer may take any additional action not inconsistent with the order of remand. Upon completion of all action called for by the order of remand and any other action initiated by the presiding officer, the presiding officer shall promptly issue a decision in writing which contains findings of fact and reason in support thereof. A copy of the decision shall be mailed to each party at his last known address.

(b) *Court remanded case.* Where a case has been remanded by a court for further consideration, the Appeals Council may proceed to make the decision or it may, in turn, remand the case to a presiding officer with directions to return the case upon completion of the necessary action to the Appeals Council with a recommended decision for decision by the Appeals Council.

(c) *Decision on review.* The Appeals Council will issue a decision affirming, modifying, or reversing the hearing decision or issue an order to vacate such decision and remand the case to a presiding officer for rehearing and decision. A decision of the Appeals Council shall be based upon the evidence received into the hearing record and such further evidence as the Appeals Council may receive, as provided in §§ 404.942, 404.948, and 404.949. This decision shall be made in writing and contain findings of fact, and a statement of reasons. A copy of the decision shall be mailed to each party at his last known address.

17. Sections 404.918, 404.919, 404.922, 404.925, 404.926, 404.927, 404.929, 404.931, 404.935, 404.936, 404.937, 404.937a, 404.938, 404.940, 404.941, 404.945, 404.946, 404.947, 404.948, 404.949, 404.951, 404.952, 404.954, 404.955, 404.956, 405.722, 405.730, 405.740, 405.741, 405.747, and 405.750 are amended by deleting the words "administrative law judge" wherever they appear and inserting in lieu thereof "presiding officer."

18. Sections 404.917, 404.918, 404.920, 404.928, 404.937, 404.946, and 404.953 are amended by deleting "Administration" wherever it appears and inserting in lieu thereof "Social Security Administration."

§ 404.956 [Amended]

19. In § 404.956(b), the term "hearing examiner" is revised to read "presiding officer."

[FR Doc.76-34568 Filed 11-22-76;8:45 am]

Title 21—Food and Drugs

CHAPTER 1—FOOD AND DRUG ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Subchapter A—General

PART 1—REGULATIONS FOR THE ENFORCEMENT OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT AND THE FAIR PACKAGING AND LABELING ACT

Changes in Service Rates

Correction

In FR Doc. 33879, appearing at page 50420, in the issue of Tuesday, November 16, 1976, on page 50420 delete the words "or before" in column 1, 1st paragraph, next to the last line and in column 2, last paragraph, next to the last line.

SUBCHAPTER A—GENERAL

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 76N-0385]

NEW DRUGS

Reassignment of Responsibility for Urokinase

The Food and Drug Administration (FDA) is reassigning from the Bureau of Drugs to the Bureau of Biologics the responsibility for regulating urokinase products, and reminding all interested persons that the Bureau of Biologics is also responsible for regulating all streptokinase and streptodornase products; effective on November 23, 1976.

The Commissioner of Food and Drugs indicated by notice published in the FEDERAL REGISTER of July 25, 1975 (40 FR 31311), that he was reviewing those products that historically have been

regulated by the Bureau of Drugs and the Bureau of Biologics (and its predecessor organization) to determine if there is a need for some reassignment of responsibility for such products to achieve the maximum administrative efficiency. As a result of this review, reassignment of responsibility for certain products has already taken place between the two bureaus. Radioactive biological products were reassigned to the Bureau of Drugs as a result of regulations published in the FEDERAL REGISTER of July 25, 1975. The Commissioner reassigned to the Bureau of Biologics the responsibility for containers for the collection or processing of blood and blood components by regulations published in the FEDERAL REGISTER of August 13, 1975 (40 FR 33971).

This document, the third document reassigning responsibility for certain human drugs between the two bureaus, transfers responsibility for urokinase products.

Urokinase is an enzyme isolated from human urine or tissue cultures of human kidney. It does not act on fibrinogen or fibrin, but through cleavage of a peptide bond(s), converts the circulating plasma proenzyme, plasminogen, to the proteolytic enzyme, plasmin. One of the physiologic functions of plasmin is digestion of fibrin, leading to lysis (destruction) of blood clots. The conversion of plasminogen to plasmin is also accomplished by various plasma and tissue activators, and indirectly by the bacterial product, streptokinase. The latter is not an enzyme but interacts stoichiometrically with plasminogen or plasmin to yield a complex capable of functioning enzymatically to convert plasminogen to plasmin.

Urokinase is a new drug as defined in section 201(p) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(p)) and is therefore subject to the new drug provisions of the act. Although no new drug applications (NDA's) have been approved for this product, several sponsors have submitted a "Notice of Claimed Investigational Exemption for a New Drug" (IND) to FDA. These IND's have been the responsibility of the Bureau of Drugs.

Streptokinase and streptokinase-streptodornase, products with an action similar to urokinase, on the other hand, have been controlled by the Bureau of Biologics or its predecessor organization for more than 20 years. They are both biological products subject to the licensing provisions of section 351 of the Public Health Service Act (42 U.S.C. 262) because they are considered analogous to a virus as defined in § 600.3(h)(5)(i) (21 CFR 600.3(h)(5)(i)). Both products are produced by cultivating a selected strain of streptococcus, a bacterium that is actually or potentially infectious, in an appropriate culture medium. Unlike streptokinase and streptokinase-streptodornase, urokinase does not fall within the definition of a biological product and is thus not subject to section 351 of the Public Health Service Act.

The Commissioner concludes that because of the similarity of action of urokinase and streptokinase products, both products should be regulated by the same bureau. He concludes that the Bureau of Biologics should have this responsibility in view of their expertise in the field of blood and blood products.

As a result of this decision to transfer responsibility for urokinase products from the Bureau of Drugs to the Bureau of Biologics, all active IND's and any pending NDA's for urokinase have been transferred to the Bureau of Biologics. All future IND's and NDA's for urokinase products and any amendments or supplements to them should be sent to the Bureau of Biologics.

Accordingly, the Commissioner concludes that §§ 312.1 and 314.1(a) (21 CFR 312.1 and 314.1(a)) should be amended to require that IND's and NDA's for urokinase products be submitted to the Buruea of Biologics instead of the Bureau of Drugs. Recognizing that responsibility for other products may be reassigned in the future, the Commissioner is adding new paragraph (j) to § 312.1 to list the products that have been reassigned and the bureau responsible for them. As a result of establishing this new paragraph, the Commissioner finds that it is appropriate to amend paragraph (g) of § 312.1 by deleting reference to the two types of products that have already been reassigned and are currently included in this section. Likewise, paragraph (a) of § 314.1 is also amended to make the future addition of any reassigned products easier.

To provide for this reassignment of responsibility for urokinase products, the Commissioner is also making appropriate revisions to Part 5 (21 CFR Part 5), Delegations of Authority and Organization. In addition to these changes, the Commissioner is amending § 5.39 (21 CFR 5.39) to provide for revised delegations relating to authority to terminate exemptions for IND's pertaining to ingredients packaged together with containers intended for the collection, processing, or storage of blood and blood components and radioactive biological products.

Further redelegation of the authority redelegated hereby is not authorized. Authority redelegated hereby to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him as "acting" or unless not legally permissible.

Although the responsibility for streptokinase and streptokinase-streptodornase products remains unchanged, the Commissioner advises all interested persons that such products are biological products subject to section 351 of the Public Health Service Act and are regulated by the Bureau of Biologics. As indicated previously, such products have been regulated under section 351 of the Public Health Service Act for more than 20 years. Therefore, all IND's and license applications for such products should be sent directly to the Bureau of Biologics. Recently, two IND's for streptokinase products were submitted to the Bureau of Drugs. Those IND's have been transferred to the Bureau of Biologics, and their sponsors should submit any subsequent supplements or amendments to the Bureau of Biologics.

Since the amendments pertain solely to internal administrative designation of responsibility concerning urokinase products, notice, public procedure, and delayed effective date are necessary for their promulgation.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701 (a), 52 Stat. 1052–1053 as amended, 1055 (21 U.S.C. 355, 371(a))) 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) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

1. In § 5.30 by revising paragraphs (a) and (b) to read as follows:

§ 5.30 Delegations regarding approval of new drug applications and supplements thereto for drugs for human use.

(a) The Director, Deputy Director, and Associate Director for New Drug Evaluation of the Bureau of Drugs are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to approval of new-drug applications and supplements thereto which are for drugs for human use and have been submitted pursuant to sec. 505 of the Federal Food, Drug, and Cosmetic Act, except those pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood and blood components for which authority has been delegated in paragraph (b) of this section.

(1) The Directors of the Divisions of: Anti-Infective Drug Products; Cardio-Renal Drug Products; Surgical-Dental Drug Products; Metabolism and Endocrine Drug Products; Neuropharmacological Drug Products; and Oncology and Radiopharmaceutical Drug Products of the Bureau of Drugs are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to approval of supplemental applications to approved new drug applications which are for drugs for human use and have been submitted pursuant to §§ 314.1(c) and 314.8 of this chapter, except those pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood and blood components for which authority has been delegated in paragraph (b) of this section.

(2) The Associate and Deputy Associate Director for Drug Monographs and the Director of the Division of Generic

Drug Monographs of the Bureau of Drugs are authorized to perform all the functions of the Commissioner of Food and Drugs regarding the approval of abbreviated new drug applications and supplements thereto which are for drugs for human use and have been submitted pursuant to §§ 314.1(f) and 314.8 of this chapter, except those pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood and blood components for which authority has been delegated in paragraph (b) of this section.

(b) The Director, Deputy Director, and Associate Director of the Bureau of Biologics are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the approval of new drug applications and supplements thereto which are for drugs for human use pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components and which have been submitted pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act.

2. In § 5.31, by revising read as follows:

§ 5.31 Delegations regarding issuance of notices relating to proposals to refuse approval or to withdraw approval of new drug applications and supplements thereto for drugs for human use.

(a) The Director and Deputy Director of the Bureau of Drugs are authorized to issue notices of an opportunity for a hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto which are for drugs for human use and have been submitted pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act and §§ 314.1 and 314.8 of this chapter, except those pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood and blood components for which authority has been delegated in paragraph (b) of this section, and to issue notices of withdrawal of approval when opportunity for hearing has been waived.

(b) The Director, Deputy Director, and Associate Director of the Bureau of Biologics are authorized to issue notices of opportunity for hearing on proposals to refuse approval or to withdraw approval of new drug applications and abbreviated new drug applications and supplements thereto which are for drugs for human use pertaining to urokinase products and ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components and which have been submitted pursuant to section 505 of the Federal Food, Drug, and Cosmetic Act and §§ 314.1 and 314.8 of this chapter, and to issue notices of withdrawal of approval when opportunity for hearing has been waived.

3. In § 5.39, by revising paragraphs (a) and (b) to read as follows:

§ 5.39 Delegations regarding termination of exemptions for new drugs for investigational use in human beings or in animals.

(a) The Director and Deputy Director of the Bureau of Drugs are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the termination of exemptions for new drugs for investigational use in human beings under § 312.1 and in animals under § 312.9 of this chapter, except those pertaining to biological products (unless the product is also a radioactive drug), urokinase products, and ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components for which authority has been delegated in paragraph (b) of this section. The Associate Director and Deputy Associate Director for New Drug Evaluation and the Directors of the Divisions of: Anti-Infective Drug Products; Cardio-Renal Drug Products; Surgical-Dental Drug Products; Metabolism and Endocrine Drug Products; Neuropharmacological Drug Products; and Oncology and Radiopharmaceutical Drug Products of the Bureau of Drugs are authorized to notify sponsors and invite correction before termination action on such exemptions.

(b) The Director, Deputy Director, and Associate Director of the Bureau of Biologics are authorized to perform all the functions of the Commissioner of Food and Drugs with regard to the termination of exemptions for new drugs for investigational use in human beings under § 312.1 and in animals under § 312.9 of this chapter pertaining to nonradioactive biological products subject to the licensing provisions of section 351 of the Public Health Service Act (42 U.S.C. 262), nonradioactive urokinase products, and ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components.

* * * * *

PART 312—NEW DRUGS FOR INVESTIGATIONAL USE

4. In § 312.1, by revising paragraph (g) and by adding new paragraph (j) to read as follows:

§ 312.1 Conditions for exemption of new drugs for investigational use.

* * * * *

(g) A "Notice of Claimed Investigational Exemption for a New Drug" which pertains to a product subject to the licensing provisions of the Public Health Service Act of July 1, 1944 (58 Stat. 682, as amended (42 U.S.C. 201 et seq.)) shall be submitted initially to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20014. Amendments of or supplements to such notice, and progress reports, consultations, or other communications with regard to the investigation shall be directed to the same office to which the original notice was sent. A sponsor for a "Notice of Claimed Investigational Exemption for a New Drug" submitted to the Bureau of Biologics shall substitute in reading this section "Bureau of Biologics" for "Bureau of Drugs" wherever it appears.

* * * * *

(j) As a result of a reassignment of responsibility for certain human drugs between the Bureau of Drugs and the Bureau of Biologics, a "Notice of Claimed Investigational Exemption for a New Drug" for the following products, or groups of products, shall be submitted to the Food and Drug Administration as follows:

(1) Biological products for human use which are also radioactive drugs are not deemed to be subject to the licensing provisions of the Public Health Service Act in accordance with § 310.4 of this chapter, and a "Notice of Claimed Investigational Exemption for a New Drug" which pertains to radioactive biological products shall be submitted to the Division of Oncology and Radiopharmaceutical Drug Products, Bureau of Drugs, 5600 Fishers Lane, Rockville, MD 20852.

(2) Ingredients packaged together with containers intended for the collection, processing, or storage of blood or blood components shall be submitted to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20014.

(3) Urokinase products shall be submitted to the Director, Bureau of Biologics, at the address given in paragraph (j)(2) of this section.

Part 314—New Drug Applications

5. In § 314.1, by revising paragraph (a) to read as follows:

§ 314.1 Applications.

(a)(1) Applications to be filed under section 505(b) of the act shall be submitted in the form described in paragraph (c) of this section and, if for human use, optionally in the form described in paragraph (d) of this section and assembled as required by paragraph (e) of this section; if the drug is intended for human use and is one for which an abbreviated new drug application has been found by the Food and Drug Administration to be sufficient, the application may be limited to the information described in paragraph (f) of this section unless otherwise specified in such finding. If any part of the application is in a foreign language, an accurate and complete English translation shall be appended to such part. Translations of literature printed in a foreign language shall be accompanied by copies of the original publication. The application must be signed by the applicant or by an authorized attorney, agent, or official. If the applicant or such authorized representative does not reside or have a place of business within the United States, the application must also furnish the name and post office address of, and must be countersigned by, an authorized attorney, agent, or official residing or main-

taining a place of business within the United States.

(2) Applications, including subsequent amendments and supplements for the products listed in paragraph (a) of this section shall be submitted to the Director, Bureau of Biologics, 8800 Rockville Pike, Bethesda, MD 20014 instead of to the address shown in paragraph (c) of this section. In reading this Part 314, applicants of such listed products should substitute "Bureau of Biologics" for "Bureau of Drugs" wherever it appears. The products are as follows:

(i) Ingredients packaged together with containers intended for the collection, processing, or storage of blood and blood components.

(ii) Urokinase products.

* * * * *

Pursuant to the Administrative Procedure Act (5 U.S.C. 553 (b) and (d)), the Commissioner finds that notice, public procedure, and delayed effective date are unnecessary for the promulgation of this order because it does not impose a duty or burden on any person, but merely provides notice of internal administrative designation of responsibility.

Effective date: This regulation is effective on November 23, 1976.

(Secs. 505, 701(a), 52 Stat. 1052-1053 as amended, 1055 (21 U.S.C. 355, 371(a)); sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262))

Dated: November 17, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-34524 Filed 11-22-76;8:45 am]

SUBCHAPTER A—GENERAL

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

Subpart B—Redelegations of Authority From the Commissioner of Food and Drugs

Grants and Service Fellowships

The Food and Drug Administration (FDA) is amending the regulation setting forth its delegation of authority concerning the awarding of service fellowships; effective November 23, 1976.

By memorandum dated May 24, 1976, the Executive Officer, Public Health Service (PHS), delegated to the Commissioner of Food and Drugs the authority to award service fellowships under section 207(g) of the Public Health Service Act (42 U.S.C. 209(g)). The delegation is effective upon approval of a Service Fellowship Program by an authorized PHS official. On July 27, 1976, the Director, Office of Administrative Management, PHS, approved the establishment of the FDA staff Fellowship Program. This amendment revises and corrects the Commissioner's delegation of service fellowship authority.

Further redelegation of the authority delegated by this amendment is not authorized. Authority delegated by this amendment to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him as "acting," or unless it is not legally permissible.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Part 5 is amended by revising § 5.36 and adding new § 5.53 to read as follows:

§ 5.36 Delegations regarding grants.

(a) The Associate and Deputy Associate Commissioner for Science are authorized to approve or disapprove all applications for grants under secs. 301, 307, 311, and 356 of the Public Health Service Act, and to select officials to serve as program managers to exercise scientific oversight and to monitor grantee progress.

(b) The Associate and Deputy Associate Commissioner for Administration and the Director and Deputy Director of the Division of Contracts and Grants Management of the Office of Administration are authorized to execute grant awards upon approval by the Associate or Deputy Associate Commissioner for Science, and to notify grantees of officials who will serve as the Food and Drug Administration program manager for their grant.

§ 5.53 Delegations regarding service fellowships.

The Associate and Assistant Commissioners, the Directors of Bureaus, the Director, National Center for Toxicological Research, and the Executive Director of Regional Operations are authorized to designate persons to receive service fellowships in the Food and Drug Administration Staff Fellowship Program under sec. 207(g) of the Public Health Service Act.

Effective date: This amendment shall be effective on November 23, 1976.

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

Dated: November 17, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-34520 Filed 11-22-76;8:45 am]

[Docket No. 76C-0432]

PART 8—COLOR ADDITIVES

PART 9—COLOR CERTIFICATION

Listing of Ext. D&C Yellow No. 7 for Use in Externally Applied Drugs and Cosmetics

The Food and Drug Administration (FDA) is "permanently" listing Ext. D&C Yellow No. 7 for use in externally applied drugs and cosmetics; effective on December 27, 1976; objections on or before December 23, 1976.

A notice published in the FEDERAL REGISTER of November 20, 1968 (33 FR 17205) stated that a petition (CAP 26) for the "permanent" listing of Ext. D&C Yellow No. 7 as a color additive for use in drugs and cosmetics that are applied externally had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, 1133 15th St. NW., Washington, D.C. 20005); the Pharmaceutical Manufacturers Association (1155 15th St. NW., Washington, D.C. 20005); and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, 900 17th St. NW., Washington, D.C. 20006), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

The Commissioner has evaluated the data in the petition and concludes that Ext. D&C Yellow No. 7 is safe under the conditions set forth below for use in coloring externally applied drugs and cosmetics and that certification is necessary for the protection of the public health. This order "permanently" lists Ext. D&C Yellow No. 7 for use in externally applied drugs and cosmetics under new §§ 8.4178 and 8.7258 (21 CFR 8.4178 and 8.7258). The provisional listing of Ext. D&C Yellow No. 7 for use in externally applied drugs and cosmetics under § 8.501(c) (21 CFR 8.501(c)), which was etxended to December 31, 1976 by regulation published in the FEDERAL REGISTER of September 23, 1976 (41 FR 41856), will be deleted when this order becomes effective on December 27, 1976, unless this order is stayed by the timely filing of objections, in which case the provisional listing will continue until December 31, 1976 unless terminated or extended by regulation.

This order does not list Ext. D&C Yellow No. 7 for use in lakes as requested in the petition. The Commissioner notes that proposed regulations related to the use of color additives in lakes were published in the FEDERAL REGISTER of May 11, 1965 (31 FR 6490). The Commissioner advises that new proposed regulations governing the use of color additives in lakes will be published in the FEDERAL REGISTER in the near future and concludes that the listing of colors for use in lakes can best be implemented by general regulations. Ext. D&C Yellow No. 7 will, therefore, continue to be approved for use in lakes for coloring externally applied drugs and cosmetics under the general provisional listing for "Lakes (Ext. D&C)" under § 8.501(c).

This order establishes specifications for the certification of batches of Ext. D&C Yellow No. 7 that are more restrictive than those currently prescribed under § 9.307 (21 CFR 9.307). Additionally, the identity of the color has been revised to be consistent with current chemical nomenclature. The identity nomenclature and the specification currently prescribed in § 9.307 become obsolete upon the effective date of new §§ 8.4178 and 8.7258. However, it is necessary to maintain § 9.307 to provide for the use of the color additive in lakes. Accordingly,

§ 9.307 is revised to reference the identity nomenclature and specifications prescribed by § 8.4178.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d)) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note))) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Parts 8 and 9 of Chapter I of Title 21 of the Code of Federal Regulations are amended as follows:

1. Part 8 is amended:

§ 8.501 [Amended]

a. In paragraph (c) of § 8.501 Provisional lists of color additives, the entry for Ext. D&C Yellow No. 7 for use in externally applied drugs and cosmetics is deleted.

b. In Subpart E, new § 8.4178 is added to read as follows:

§ 8.4178 Ext. D&C Yellow No. 7.

(a) *Identity.* (1) The color additive Ext. D&C Yellow No. 7 is principally the disodium salt of 8-hydroxy-5,7-dinitro-2-naphthalenesulfonic acid.

(2) Color additive mixtures for drug use made with Ext. D&C Yellow No. 7 may contain only those diluents that are suitable and that are listed in Subpart F of this part as safe for use in color additive mixtures for coloring externally applied drugs.

(b) *Specifications.* Ext. D&C Yellow No. 7 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 15 percent.
Water-insoluble matter, not more than 0.2 percent.
1-Naphthol, not more than 0.2 percent.
2,4-Dinitro-1-naphthol, not more than 0.03 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), not more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color, not less than 85 percent.

(c) *Uses and restrictions.* Ext. D&C Yellow No. 7 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Certification.* All batches of Ext. D&C Yellow No. 7 shall be certified in accordance with regulations in Subpart A of this Part.

3. In Subpart G, new § 8.7258 is added to read as follows:

§ 8.7258 Ext. D&C Yellow No. 7.

(a) *Identity and specifications.* The color additive Ext. D&C Yellow No. 7 shall conform in identity and specifications to the requirements of § 8.4178(a)(1) and (b).

(b) *Uses and restrictions.* Ext. D&C Yellow No. 7 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 8.32.

(d) *Certification.* All batches of Ext. D&C Yellow No. 7 shall be certified in accordance with regulations in Subpart A of this Part.

4. Part 9 is amended by revising § 9.307 to read as follows:

§ 9.307 Ext. D&C Yellow No. 7.

The color additive Ext. D&C Yellow No. 7 shall conform in identity and specifications to the requirements of § 8.4178(a)(1) and (b) of this chapter. Ext. D&C Yellow No. 7 is restricted to use in externally applied drugs and cosmetics.

Any person who will be adversely affected by the foregoing order may at any time on or before December 23, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 8.19 (21 CFR 8.19). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This order shall become effective on December 27, 1976, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376(b), (c), and (d)); Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 USC. 376 note).)

Dated: November 17, 1976.

JOSEPH P. HILE,
Associate,
Commissioner for Compliance.

[FR Doc.76-34518 Filed 11-22-76;8:45 am]

[Docket No. 76C-0425]

PART 8—COLOR ADDITIVES

PART 9—COLOR CERTIFICATION

Listing of D&C Red No. 34 for Use in Externally Applied Drugs and Cosmetics

The Food and Drug Administration (FDA) is "permanently" listing D&C Red No. 34 for use in externally applied drugs and cosmetics; effective on December 27, 1976; objections on or before December 23, 1976.

A notice published in the FEDERAL REGISTER of November 20, 1968 (33 FR 17205) stated that a petition (CAP 38) for the "permanent" listing of D&C Red No. 34 as a color additive for use in drugs and cosmetics that are applied externally had been filed by the Toilet Goods Association, Inc. (now the Cosmetic, Toiletry and Fragrance Association, 1133 15th St. NW., Washington, D.C. 20005); the Pharmaceutical Manufacturers Association (1155 15th St. NW., Washington, D.C. 20005), and the Certified Color Industry Committee (now the Certified Color Manufacturers Association, 900 17th St. NW., Washington, D.C. 20006), c/o Hazelton Laboratories, Inc., P.O. Box 30, Falls Church, Va. 22046. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

The Commissioner has evaluated the data in the petition and concludes that D&C Red No. 34 is safe under the conditions set forth below for use in coloring externally applied drugs and cosmetics and that certification is necessary for the protection of the public health. This order "permanently" lists D&C Red No. 34 for use in externally applied drugs and cosmetics under new §§ 8.4128 and 8.7195 (21 CFR 8.4128 and 8.7195). The provisional listing of D&C Red No. 34 for use in externally applied drugs and cosmetics under § 8.501(b) (21 CFR 8.501(b)), which was extended to December 31, 1976 by regulation published in the FEDERAL REGISTER of September 23, 1976 (41 FR 41856), will be deleted when this order becomes effective on December 27, 1976, unless this order is stayed by the timely filing of objections, in which case the provisional listing will continue until December 31, 1976 unless terminated or extended by regulation.

This order does not list D&C Red No. 34 for use in lakes as requested in the petition. The Commissioner notes that proposed regulations related to the use of color additives in lakes were published in the FEDERAL REGISTER of May 11, 1965 (30 FR 6490). The Commissioner advises that new proposed regulations governing the use of color additives in lakes will be published in the FEDERAL REGISTER in the near future and concludes that the listing of colors for use in lakes can best be implemented by general regulations. D&C Red No. 34 will, therefore, continue to be approved for use in lakes for coloring externally applied drugs and cosmetics under the general provisional listing for "Lakes (D&C)" under § 8.501(b).

This order establishes specifications for the certification of batches of D&C Red

No. 34 that are more restrictive than those currently prescribed under § 9.179 (21 CFR 9.179). Additionally, the identity of the color has been revised to be consistent with current chemical nomenclature. The identity nomenclature and the specifications currently prescribed in § 9.179 become obsolete upon the effective date of new §§ 8.4128 and 8.7195. However, it is necessary to maintain § 9.179 to provide for the use of the color additive in lakes. Accordingly, § 9.179 is revised to reference the identity nomenclature and specifications prescribed by § 8.4128.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Parts 8 and 9 of Chapter I of Title 21 of the Code of Federal Regulations are amended as follows:

1. Part 8 is amended:

§ 8.501 [Amended]

a. In paragraph (b) of § 8.501 Provisional lists of color additives, the entry for D&C Red No. 34 for use in externally applied drugs and cosmetics is deleted.

b. In subpart E, new § 8.4128 is added to read as follows:

§ 8.4128 D&C Red No. 34.

(a) *Identity.* (1) The color additive D&C Red No. 34 is principally the calcium salt of 3-hydroxy-4-[(1-sulfo-2-naphthalenyl)azo]-2-naphthalenecarboxylic acid.

(2) Color additive mixtures for drug use made with D&C Red No. 34 may contain only those diluents that are suitable and that are listed in Subpart F of this Part as safe for use in color additive mixtures for coloring externally applied drugs.

(b) *Specifications.* D&C Red No. 34 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated at sodium salts), not more than 15 percent.
2-Amino-1-naphthalensulfonic acid, calcium salt, not more than 0.2 percent.
3-Hydroxy-2-naphthoic acid, not more than 0.4 percent.
Subsidiary colors, nor more than 4 percent.
Lead (as Pb), not more than 20 parts per million.
Arsenic (as As), nor more than 3 parts per million.
Mercury (as Hg), not more than 1 part per million.
Total color not less than 85 percent.

(c) *Uses and restrictions.* The color additive D&C Red No. 34 may be safely used for coloring externally applied drugs in amounts consistent with good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Certification.* All batches of D&C Red No. 34 shall be certified in accordance with regulations in Subpart A of this Part.

c. In Subpart G, new § 8.7195 is added to read as follows:

§ 8.7195 D&C Red No. 34.

(a) *Identity and specifications.* The color additive D&C Red No. 34 shall conform in identity and specifications to the requirements of § 8.4128(a)(1) and (b).

(b) *Uses and restrictions.* D&C Red No. 34 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 8.32.

(d) *Certification.* All batches of D&C Red No. 34 shall be certified in accordance with regulations in Subpart A of this part.

2. Part 9 is amended by revising § 9.179 to read as follows:

§ 9.179 D&C Red No. 34.

The color additive D&C Red No. 34 shall conform in identity and specifications to the requirements of § 8.4128(a)(1) and (b) of this chapter. D&C Red No. 34 is restricted to use in externally applied drugs and cosmetics.

Any person who will be adversely affected by the foregoing order may at any time on or before December 23, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 8.19 (21 CFR 8.19). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the above office during working hours, Monday through Friday.

Effective date: This order shall become effective December 27, 1976, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706(b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d)); Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note).)

Dated: November 17, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.78-34519 Filed 11-22-76;8:45 am]

[Docket No. 76C-0441]

PART 8—COLOR ADDITIVES

PART 9—COLOR CERTIFICATION

Listing of D&C Brown No. 1 for Use in Externally Applied Cosmetics

The Food and Drug Administration (FDA) is "permanently" listing D&C Brown No. 1 for use in externally applied cosmetics; effective December 27, 1976; objections on or before December 23, 1976.

A notice published in the FEDERAL REGISTER of August 6, 1973 (38 FR 21199) stated that a petition (CAP 8C0087) for the "permanent" listing of D&C Brown No. 1 as a color additive for use in externally applied cosmetics had been filed by the Cosmetic Toiletry and Fragrance Association (1133 15th St. NW., Washington, DC 20005), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

The Commissioner has evaluated the data in the petition and concludes that D&C Brown No. 1 is safe under the conditions set forth below for use in coloring externally applied cosmetics and that certification is necessary for the protection of the public health. This order "permanently" lists D&C Brown No. 1 for use in externally applied cosmetics under new § 8.7061 (21 CFR 8.7061). The provisional listing of D&C Brown No. 1 for use in externally applied cosmetics under § 8.501(b) (21 CFR 8.501(b)), which was extended to December 31, 1976 by regulation published in the FEDERAL REGISTER of September 23, 1976 (41 FR 41856), and the corresponding § 9.230 *D&C Brown No. 1* (21 CFR 9.230), which prescribes specifications for the color additive while provisionally listed, will be deleted when this order becomes effective on December 27, 1976, unless this order is stayed by the timely filing of objections, in which case the provisional listing and § 9.230 will continue in effect until December 31, 1976 unless terminated or extended by regulation.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399–403 (21 U.S.C. 376 (b), (c), and (d))) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86–618, sec. 203, 74 Stat. 404–407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Parts 8 and 9 of Chapter I

of Title 21 of the Code of Federal Regulations are amended as follows:

1. Part 8 is amended:

§ 8.501 [Amended]

a. In paragraph (b) of § 8.501 *Provisional lists of color additives*, the entry for D&C Brown No. 1 for use in externally applied cosmetics is deleted.

b. In Subpart G, new § 8.7061 is added to read as follows:

§ 8.7061 D&C Brown No. 1.

(a) *Identity*. The color additive D&C Brown No. 1 is a mixture of the sodium salts of 4[[5-[(dialkylphenyl)azo]-2,4-dihydroxyphenyl]azo] - benzenesulfonic acid. The alkyl group is principally the methyl group.

(b) *Specifications*. D&C Brown No. 1 shall conform to the following specifications and shall be free from impurities other than those named to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 16 percent.

Water-insoluble matter, not more than 0.2 percent.

Sulfanilic acid, sodium salt, not more than 0.2 percent.

Resorcinol, not more than 0.2 percent.

Xylidines, not more than 0.2 percent.

Disodium salt of 4[(5-[(4-sulfophenyl)-azo]-2,4-dihydroxyphenyl]azo] benzenesulfonic acid, not more than 3 percent.

Monosodium salt of 4[[5-[(2,4-dimethylphenyl)azo]-2,4-dihydroxyphenyl]azo] benzenesulfonic acid, not less than 29 percent and not more than 39 percent.

Monosodium salt of 4[[5-[(2,5-dimethylphenyl)azo]-2,4-dihydroxyphenyl]azo] benzenesulfonic acid, not les than 12 percent and not more than 17 percent.

Monosodium salt of 4[[5-[(2,3-dimethylphenyl)azo]-2,4-dihydroxyphenyl]-azo] benzenesulfonic acid, not less than 6 percent and not more than 13 percent.

Monosodium salt of 4[[5-[(2-ethylphenyl)-azo]-2,4-dihydroxyphenyl]-azo] benzenesulfonic acid not less than 5 percent and not more than 12 percent.

Monosodium salt of 4[[5-[(3,4-dimethylphenyl)azo]-2,4-dihydroxyphenyl]-azo] benzenesulfonic acid, not less than 3 percent and not more than 9 percent.

Monosodium salt of 4[[5-[(2,6,-dimethylphenyl)azo]-2,4-dihydroxyphenyl]azo] benzenesulfonic acid, not less than 3 percent and not more than 8 percent.

Monosodium salt of 4[[5-[(4-ethylphenyl) azo]-2,4-dihydroxyphenyl]-azo] benzenesulfonic acid, not less than 2 percent and not more than 8 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 84 percent.

(c) *Uses and restrictions*. D&C Brown No. 1 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(d) *Labeling*. The label of the color additive shall conform to the requirements of § 8.32.

(e) *Certification*. All batches of D&C Brown No. 1 shall be certified in accordance with regulations in Subpart A of this part.

§ 9.230 [Revoked]

2. Part 9 is amended by revoking § 9.230.

Any person who will be adversely affected by the foregoing order may at any time on or before December 23, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 8.19 (21 CFR 8.19). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This order shall become effective on December 27, 1976, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d)); Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: November 17, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-34522 Filed 11-22-76;8:45 am]

[Docket No. 76C-0433]

PART 8—COLOR ADDITIVES

PART 9—COLOR CERTIFICATION

Listing of Ext. D&C Violet No. 2 for Use in Externally Applied Cosmetics

The Food and Drug Administration (FDA) is "permanently" listing Ext. D&C Violet No. 2 for use in externally applied cosmetics; effective on December 27, 1976; objections on or before December 23, 1976.

A notice published in the FEDERAL REGISTER of September 3, 1971 (36 FR 17669) stated that a petition (CAP 8C0072) for the "permanent" listing of Ext. D&C Violet No. 2 as a color additive for use in externally applied cosmetics had been filed by the Cosmetic, Toiletry and Fragrance Association (1133 15th St. NW., Washington, DC 20005), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, VA 22046. The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

The Commissioner has evaluated the data in the petition and concludes that Ext. D&C Violet No. 2 is safe under the conditions set forth below for use in coloring externally applied cosmetics and that certification is necessary for the protection of the public health. This order "permanently" lists Ext. D&C Violet No. 2 for use in externally applied cosmetics under new § 8.7223 (21 CFR 8.7223). The provisional listing of Ext. D&C Violet No. 2 for use in externally applied cosmetics under § 8.501 (c) (21 CFR 8.501(c)), which was extended to December 31, 1976 by regulation published in the FEDERAL REGISTER of September 23, 1976 (41 FR 41856) and the corresponding regulation, § 9.411 (21 CFR 9.411), in Part 9 that prescribes specifications for the certification of Ext. D&C Violet No. 2 will be deleted when this order becomes effective on December 27, 1976, unless this order is stayed by the timely filing of objections, in which case the provisional listing and § 9.411 will continue in effect until December 31, 1976 unless terminated or extended by regulation.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706(b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d))) and the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Parts 8 and 9 of Chapter I of Title 21 of the Code of Federal Regulations are amended as follows:

1. Part 8 is amended:

§ 8.501 [Amended]

a. In paragraph (c) of § 8.501 *Provisional lists of color additives*, the entry for Ext. D&C Violet No. 2 for use in externally applied cosmetics is deleted.

b. In Subpart E, new § 8.7223 is added to read as follows:

§ 8.7223 Ext. D&C Violet No. 2.

(a) *Identity*. (1) The color additive Ext. D&C Violet No. 2 is principally the monosodium salt of 2-[(9,10-dihydro-4-hydroxy - 9,10 - dioxo - 1 - anthracenyl) amino]-5-methly-benzenesulfonic acid.

(b) *Specifications*. Ext. D&C Violet No. 2 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 18 percent.

Water-insoluble matter, not more than 0.4 percent.

1-Hydroxy-9,10-anthracenedione, not more than 0.2 percent.

1,4-Dihydroxy-9,10-anthracenedione, not more than 0.2 percent.

p-Toluidine, not more than 0.1 percent.

p-Toluidine sulfonic acids, sodium salts, not more than 0.2 percent.

Subsidiary colors, not more than 1 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 80 percent.

(c) *Uses and restrictions.* The color additive Ext. D&C Violet No. 2 may be safely used for coloring externally applied cosmetics in amounts consistent with good manufacturing practice.

(d) *Labeling.* The label of the color additive shall conform to the requirements of § 8.32.

(e) *Certification.* All batches of Ext. D&C Violet No. 2 shall be certified in accordance with regulations in Subpart A of this Part.

§ 9.411 [Revoked]

2. Part 9 is amended by revoking § 9.411.

Any person who will be adversely affected by the foregoing order may at any time on or before December 23, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 8.19 (21 CFR 8.19). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: This order shall become effective on December 27, 1976, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706(b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376(b), (c), and (d)); Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note))

Dated: November 17, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-34523 Filed 11-22-76;8:45 am]

[Docket No. 76C-0442]

PART 8—COLOR ADDITIVES

PART 9—COLOR CERTIFICATION

Listing of D&C Red No. 31 for Use In Externally Applied Drugs and Cosmetics

The Food and Drug Administration (FDA) is "permanently" listing D&C Red No. 31 for use in externally applied drugs and cosmetics; effective on December 27, 1976; objections on or before December 23, 1976.

A notice published in the FEDERAL REGISTER of August 6, 1973 (38 FR 21199) stated that a petition (CAP 5C0032) for the "permanent" listing of D&C Red No. 31 as a color additive for use in externally applied drugs and cosmetics had been filed by the Cosmetic, Toiletry and Fragrance Association (1133 15th St. NW., Washington, D.C. 20005), c/o Hazleton Laboratories, Inc., P.O. Box 30, Falls Church, Va. 22046). The petition was filed pursuant to section 706 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 376).

The Commissioner has evaluated the data in the petition and concludes that D&C Red No. 31 is safe under the conditions set forth below for use in coloring externally applied drugs and cosmetics and that certification is necessary for the protection of the public health. This order "permanently" lists D&C Red No. 31 for use in externally applied drugs and cosmetics under new §§ 8.4125 and 8.7192 (21 CFR 8.4125 and 8.7192). The provisional listing of D&C Red No. 31 for use in externally applied drugs and cosmetics under § 8.501(b) (21 CFR 8.501(b)), which was extended to December 31, 1976 by regulation published in the FEDERAL REGISTER of September 23, 1976 (41 FR 41856), will be deleted when this order becomes effective on December 27, 1976, unless this order is stayed by the timely filing of objections, in which case the provisional listing will continue until December 31, 1976 unless terminated or extended by regulation.

This order does not list D&C Red No. 31 for use in lakes as requested in the petition. The Commissioner notes that proposed regulations related to the use of color additives in lakes were published in the FEDERAL REGISTER of May 11, 1965 (31 FR 6490). The Commissioner advises that new proposed regulations governing the use of color additives in lakes will be published in the FEDERAL REGISTER in the near future and concludes that the listing of colors for use in lakes can best be implemented by general regulations. D&C Red No. 31 will, therefore, continue to be approved for use in lakes for coloring externally applied drugs and cosmetics under the general provisional listing for "Lakes D&C" under § 8.501(b) (21 CFR 8.501(b)).

This order establishes specifications for the certification of batches of D&C Red No. 31 that are more restrictive than those currently prescribed under § 9.176 (21 CFR 9.176). Additionally, the identity of the color has been revised to be consistent with current chemical nomenclature. The identity nomenclature and the specifications currently prescribed in § 9.176 become obsolete upon the effective date of new §§ 8.4125 and 8.7192. However, it is necessary to maintain § 9.176 to provide for the use of the color additive in lakes. Accordingly, § 9.176 is revised to reference the identity nomenclature and specifications prescribed by § 8.4125.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), (d)) and under the transitional provisions of the Color Additive Amendments of 1960 (Title II, Pub. L. 86-618, sec. 203, 74 Stat. 404-407 (21 U.S.C. 376 note)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Parts 8 and 9 of Chapter I of Title 21 of the Code of Federal Regulations are amended as follows:

1. Part 8 is amended:

§ 8.501 [Amended]

a. In paragraph (b) of § 8.501 Provisional lists of color additives, the entry for D&C Red No. 31 for us in externally applied drugs and cosmetics is deleted.

b. In Subpart E, new § 8.4125 is added to read as follows:

§ 8.4125 D&C Red No. 31.

(a) *Identity.* (1) The color additive D&C Red No. 31 is principally the calcium salt of 3-hydroxy - 4-(phenylazo) - 2-naphthalenecarboxylic acid.

(2) Color additive mixtures for drug use made with D&C Red No. 31 may contain only those diluents that are suitable and that are listed in Subpart F of this Part as safe for use in color additive mixtures for coloring externally applied drugs.

(b) *Specifications.* D&C Red No. 31 shall conform to the following specifications and shall be free from impurities, other than those named, to the extent that such other impurities may be avoided by good manufacturing practice:

Sum of volatile matter (at 135° C) and chlorides and sulfates (calculated as sodium salts), not more than 10 percent.

Aniline, not more than 0.2 percent.

3-Hydroxy-2-naphthoic acid, calcium salt, not more than 0.4 percent.

Subsidiary colors, not more than 1 percent.

Lead (as Pb), not more than 20 parts per million.

Arsenic (as As), not more than 3 parts per million.

Mercury (as Hg), not more than 1 part per million.

Total color, not less than 90 percent.

(c) *Uses and restrictions.* D&C Red No. 31 may be safely used in externally applied drugs in amounts consistent with good manufacturing practice.

(d) *Labeling.* The label of the color additive and any mixtures prepared therefrom intended solely or in part for coloring purposes shall conform to the requirements of § 8.32.

(e) *Certification.* All batches of D&C Red No. 31 shall be certified in accordance with regulations in Subpart A of this Part.

c. In Subpart G, new § 8.7192 is added to read as follows:

§ 8.7192 D&C Red No. 31.

(a) *Identity and specifications.* The color additive D&C Red No. 31 shall conform in identity and specifications to the requirements of § 8.4125 (a)(1) and (b).

(b) *Uses and restrictions.* D&C Red No. 31 may be safely used for coloring ex-

ternally applied cosmetics in amounts consistent with good manufacturing practice.

(c) *Labeling.* The label of the color additive shall conform to the requirements of § 8.32.

(d) *Certification.* All batches of D&C Red No. 31 shall be certified in accordance with regulations in Subpart A of this part.

2. Part 9 is amended by revising § 9.176 to read as follows:

§ 9.176 D&C Red No. 31.

The color additive D&C Red No. 31 shall conform in identity and specifications to the requirements of § 8.4125 (a) (1) and (b) of this chapter. D&C Red No. 31 is restricted to use in externally applied drugs and cosmetics.

Any person who will be adversely affected by the foregoing order may at any time on or before December 23, 1976, file with the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order, specify with particularity the provisions of the order deemed objectionable, and state the grounds for the objections. Objections shall be filed in accordance with the requirements of § 8.19 (21 CFR 8.19). If a hearing is requested, the objections shall state the issues for the hearing, shall be supported by grounds factually and legally sufficient to justify the relief sought, and shall include a detailed description and analysis of the factual information intended to be presented in support of the objections in the event that a hearing is held. Five copies of all documents shall be filed and should be identified with the Hearing Clerk docket number found in brackets in the heading of this order. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

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Effective date. This order shall become effective on December 27, 1976, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Sec. 706 (b), (c), and (d), 74 Stat. 399-403 (21 U.S.C. 376 (b), (c), and (d)); Title II, Pub. L. 86-618, sec. 203, 74 Stat. 401-407 (21 U.S.C. 376 note).)

Dated: November 17, 1976.

JOSEPH P. HILE,
Associate Commissioner for Compliance.

[FR Doc.76-34528 Filed 11-22-76;8:45 am]

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 452—MACROLIDE ANTIBIOTIC DRUGS

Erythromycin Ethylsuccinate

The Food and Drug Administration (FDA) is amending the macrolide antibiotic drug regulations to provide for certification of two new tablet forms of erythromycin and ethylsuccinate, to clarify the nomenclature used in the provisions for chewable tablets, and to delete provisions for one strength of erythromycin ethylsuccinate chewable tablets that is no longer marketed; effective November 23, 1976.

The Commissioner of Food and Drugs has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for certification of erythromycin ethylsuccinate plain coated and uncoated tablets.

The Commissioner has concluded that data supplied by the manufacturer concerning the subject antibiotic drug products are adequate to establish their safety and efficacy when used as directed in the labeling and that the regulations should be amended to provide for certification of these drug products. A new § 452.125d (21 CFR 452.125d) is being established for this purpose.

Section 452.125a (21 CFR 452.125a) provides only for erythromycin ethylsuccinate tablets that are intended to be chewed. The Commissioner finds it appropriate to amend § 452.125a by adding "chewable" to the section heading and by revising the paragraph that provides for labeling to clarify that "chewable" is not part of the established name. The policy of FDA is to include the word "chewable" in the heading of sections that provide for chewable tablets but not to include it as part of the established or nonproprietary name of the drug.

In addition, provisions for the 100-milligram chewable tablet are being deleted because the tablet is no longer being marketed.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262))

Part 452 is amended as follows:

1. In § 452.125a, by revising the section heading, amending paragraph (a) (1) by revising the first two sentences therein and by revising paragraph (a) (2) to read as follows:

§ 452.125a Erythromycin ethylsuccinate chewable tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Erythromycin ethylsuccinate chewable tablets are composed of erythromycin ethylsuccinate and suitable and harmless diluents, binders, buffers, colorings, and flavorings. Each tablet contains erythromycin ethylsuccinate equivalent to 200 milligrams of erythromycin. * * *

(2) *Labeling.* In addition to the labeling requirements prescribed by § 432.5 of this chapter, this drug shall be labeled "erythromycin ethylsuccinate tablets".

* * * * *

2. By adding new § 452.125d, to read as follows:

§ 452.125d Erythromycin ethylsuccinate tablets.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Erythromycin ethylsuccinate tablets are composed of erythromycin ethylsuccinate and suitable and harmless diluents, binders, buffers, and colorings. Each tablet contains erythromycin ethylsuccinate equivalent to 400 milligrams of erythromycin. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of erythromycin that it is represented to contain. The loss on drying is not more than 4.0 percent. The tablets shall disintegrate within 40 minutes. The erythromycin ethylsuccinate used conforms to the standards prescribed by § 452.25 (a) (1).

(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter.

(3) *Requests for certification; samples.* In addition to complying with the requirements of § 431.1 of this chapter, each such request shall contain:

(i) Results of tests and assays on:

(*a*) The erythromycin ethylsuccinate used in making the batch for potency, safety, moisture, pH, residue on ignition, identity, and crystallinity.

(*b*) The batch for potency, loss on drying, and disintegration time.

(ii) Samples required:

(*a*) The erythromycin ethylsuccinate used in making the batch: 10 packages, each containing approximately 500 milligrams.

(*b*) The batch: A minimum of 36 tablets.

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of tablets into a high-speed glass blender jar containing 200 milliliters of methyl alcohol. Blend for 2 to 3 minutes. Add 300 milliliters of 0.1*M* potassium phosphate buffer, pH 8.0 (solution 3), and blend again for 2 to 3 minutes. Further dilute an aliquot with solution 3 to the reference concentration of 1.0 microgram of erythromycin base per milliliter (estimated).

(2) *Loss on drying.* Proceed as directed in § 436.200(a) of this chapter.

(3) *Disintegration time*—(i) *If the tablet is uncoated.* Proceed as directed in § 436.212 of this chapter, using the procedure described in paragraph (e) (1) of that section.

(ii) *If the tablet is plain-coated.* Proceed as directed in § 436.212 of this chapter, using the procedure described in paragraph (e) (2) of that section.

Since the conditions prerequisite to providing for certification of the subject antibiotic drug have been complied with, interested persons have been consulted, and there are no significant points of controversy, notice, public procedure, and delayed effective date are unnecessary pursuant to 5 U.S.C. 553 (b) and (d).

Effective date. This final regulation is effective on November 23, 1976.

(Sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357).)

Dated: November 16, 1976.

MARY A. MCENIRY,
Assistant Director for Regulatory Affairs, Bureau of Drugs.

[FR Doc.76-34342 Filed 11-22-76;8:45 am]

Title 24—Housing and Urban Development

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

SUBCHAPTER B—NATIONAL FLOOD INSURANCE PROGRAM

[Docket No. FI 2450]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Status of Participating Communities

The purpose of this notice is to list those communities wherein the sale of flood insurance is authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128).

Insurance policies can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association servicing company for the state (addresses are published at § 1912.5, 24 CFR Part 1912).

The Flood Disaster Protection Act of 1973 (Pub. L. 93-234) requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified for at least one year by the Secretary of Housing and Urban Development. The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction except as authorized by section 202(b) or the Act, as amended, unless the community has entered the program. Accordingly, for communities listed under this Part no such restriction exists, although insurance, if required, must be purchased.

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

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. These dates serve notice only for the purposes of granting relief, and not for the application of sanctions, within the meaning of 5 U.S.C. 551. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Georgia	Fannin	Mineral Bluff, city of	Nov. 15, 1976, emergency	July 2, 1976	130251
Iowa	Iowa	Williamsburg, city of	do		190427
Oklahoma	Pittsburg	Crowder, town of	do	Apr. 2, 1976	400283
Utah	Cache	Newton, town of	do	July 11, 1975	450022
New Jersey	Union	Linden, city of	Nov. 29, 1976, emergency; Nov. 24, 1976, regular	July 16, 1976	340467A
Pennsylvania	Dauphin	Middletown, borough of	Oct. 13, 1972, emergency; Dec. 28, 1976, regular	Feb. 20, 1973	420388A
Do	Clinton	Renovo, borough of	Feb. 9, 1973, emergency; Dec. 28, 1976, regular	Oct. 5, 1973	420334A
*	*	*	*	*	*
Minnesota	Swift	Murdock, city of	Nov. 16, 1976, emergency	Aug. 23, 1974	270473A
Ohio	Summit	Boston Heights, village of	do	July 25, 1975	390749
Oklahoma	Kiowa	Lone Wolf, town of	do	May 3, 1974	400065A
Do	Jackson	Olustee, town of	do	Apr. 9, 1976	400430
*	*	*	*	*	*
Georgia	Fannin	Morganton, town of	Nov. 17, 1976, emergency	June 18, 1976	130449
Maine	Hancock	Sorrento, town of	do	Jan. 24, 1975	230292
Wisconsin	Barron	Almena, village of	do	Sept. 6, 1974 May 14, 1976	550009A
*	*	*	*	*	*
Arkansas	Woodruff	Unincorporated areas	November 18, 1976, emergency	May 28, 1976	050468
Kansas	Rice	Raymond, city of	do	Dec. 27, 1974	200256
Missouri	Taney	Branson, city of	Dec. 10, 1971, emergency; Oct. 26, 1976, regular	July 7, 1974 May 28, 1976	290436B
Pennsylvania	Bucks	Chalfont, borough of	Feb. 25, 1972, emerbency; Dec. 28, 1976, regular	Mar. 16 1973	420184
Do	Montgomery	Cheltenham, township of	Oct. 1, 1974, emergency; Nov. 22, 1976, regular	June 28, 1974 Apr. 11, 1975	420696B

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001-4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969)) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: November 12 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-34354 Filed 11-22-76;8:45 am]

[Docket No. FI 2451]

PART 1914—COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE

Suspension of Community Eligibility

The purpose of this notice is to list communities wherein the sale of flood insurance as authorized under the National Flood Insurance Program (42 U.S.C. 4001-4128) will be suspended because of noncompliance with the program regulations (24 CFR Part 1909 et seq.)

The Flood Disaster Protection Act of 1973 requires the purchase of flood insurance as a condition of receiving any form of Federal or Federally related financial assistance for acquisition or construction purposes in a flood plain area having special hazards within any community identified by the Secretary of Housing and Urban Development.

The requirement applies to all identified special flood hazard areas within the United States, and no such financial assistance can legally be provided for acquisition or construction in these areas unless the community has entered the program and insurance is purchased. Accordingly, for communities listed under this Part such restriction exists as of the effective date of suspension because insurance, which is required, cannot be purchased.

Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022) prohibits flood insurance coverage unless an appropriate public body shall have adopted adequate flood plain management measures with effective enforcement measures. The communities suspended in this notice no longer meet that statutory requirement. Accordingly, the communities are sus-

pended on the effective date in the list below:

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

Section 1914.6 of Part 1914 of Subchapter B of Chapter X of Title 24 of the Code of Federal Regulations is amended by adding in alphabetical sequence new entries to the table. In each entry, a complete chronology of effective dates appears for each listed community. The date that appears in the fourth column of the table is provided in order to designate the effective date of the authorization of the sale of flood insurance in the area under the emergency or the regular flood insurance program. The entry reads as follows:

§ 1914.6 List of eligible communities.

State	County	Location	Effective date of authorization of sale of flood insurance for area	Hazard area identified	Community No.
*	*	*	*	*	*
Indiana	Floyd	New Albany, city of	Oct. 1, 1971, emergency; Dec. 17, 1976, regular; Jan. 1, 1977, suspension.	Feb. 15, 1974 Jan. 30, 1976	180002A
Louisiana	Jefferson	Westwego, city of	Apr. 27, 1973, emergency; Dec. 28, 1976, regular; Jan. 1, 1977, suspension.	July 16, 1976	220094
New Jersey	Morris	Randolph, township of	June 23, 1973, emergency; Dec. 31, 1976, regular; Jan. 1, 1977, suspension.	Feb. 15, 1974	340358
Ohio	Cuyahoga	Mayfield, village of	Dec. 17, 1971, emergency; Dec. 24, 1976, regular; Jan. 1, 1977, suspension.	Nov. 23, 1973 June 18, 1976	390116A
South Carolina	Horry	Surfside Beach, town of	Sept. 10, 1971, emergency; Dec. 17, 1976, regular; Jan. 1, 1977, suspension.	June 14, 1974 June 25, 1976	450111A

(National Flood Insurance Act of 1968 (title XIII of the Housing and Urban Development Act of 1968); effective Jan. 28, 1969 (33 FR 17804, Nov. 28, 1968), as amended, 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator, 34 FR 2680, Feb. 27, 1969) as amended 39 FR 2787, Jan. 24, 1974.)

Issued: November 15, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-34353 Filed 11-22-76;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER N—EFFLUENT GUIDELINES AND STANDARDS

[FRL 648-1]

PART 415—INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY

Specialized Definitions; Interim Final Amendment

Notice is hereby given that amendments to Part 415, Inorganic Chemicals Manufacturing Point Source Category of Effluent Guidelines and Standards, set forth in the interim final form below are promulgated by the Environmental Protection Agency (EPA).

Notice was published in the FEDERAL REGISTER, February 4, 1974 (39 FR 4532) of the promulgation of 40 CFR Part 401 setting forth certain provisions applicable to all further regulations for particular categories of point sources to be issued under 40 CFR Parts 402 through 699. These regulations were promulgated under sections 301, 304(b), 306 and 307 (c) of the Federal Water Pollution Control Act (the Act), 33 U.S.C. 1311, 1314 (b), 1316 and 1317(c) and include general definitions which apply throughout the series of individual regulations.

On March 10, 1976, the United States Court of Appeals for the Fourth Circuit rendered its decision concerning petitions for review of portions of Part 415 (Inorganic Chemicals Phase I) regulations in *E.I. DuPont de Nemours & Company et al.* v. *Train*, No. 74-1261. The Court remanded the following definitions as they pertain to portions of the Inorganic Chemicals Manufacturing Point Source Category: § 401.11(i), definition for "effluent limitation", § 401.11(q), definition for "process waste water" and § 401.11(r), definition for "process waste water pollutants".

The revised specialized definitions and the added definition for "contaminated non-process waste water" clarify the intention of the Agency and meet the requirements of the Court remand. Although the definition for "process waste water pollutants" has not been changed, it is based on the definition for "process waste water" which has been modified. The Agency undertook a substantial review of the record before developing these amendments.

EPA has determined pursuant to 5 U.S.C. 553(b) that the public interest requires that these rules be promulgated and made effective immediately because the definitions are essential to the application of several subparts of these effluent limitation guidelines and standards. They are, however, being promulgated as interim final regulations so the Agency may consider comments prior to promulgation in the final form.

Interested persons are encouraged to submit written comments. Comments should be submitted in triplicate to the Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Distribution officer, WH-552. Comments on all aspects of the regulation are solicited. In the event comments are in the nature of criticisms as to the adequacy of data which are available, or which may be relied upon by the Agency, comments should identify and, if possible, provide any additional data which may be available and should indicate why such data are essential to the amendment or modification of the regulation. In the event comments address the approach taken by the Agency in establishing an effluent limitation or guideline, EPA solicits suggestions as to what alternative approach should be taken and why and how this alternative better satisfies the detailed requirements of sections 301 and 304(b) of the Act.

A copy of all public comments will be available for inspection and copying at the EPA Public Information Reference Unit, Room 2922 (EPA Library), Waterside Mall, 401 M Street, S.W., Washington, D.C. The EPA information regulation, 40 CFR Part 2, provides that a reasonable fee may be charged for copying.

All comments received on or before December 23, 1976, will be considered. Steps previously taken by the Environmental Protection Agency to facilitate public response within this time period are outlined in the advance notice concerning public review procedures published on August 6, 1973 (38 FR 21202). In the event that the final regulation differs substantially from the interim final regulations set forth herein the Agency will consider petitions for reconsideration of any permits issued in accordance with this interim final regulation.

In consideration of the foregoing, 40 CFR Part 415 is hereby amended as set forth below.

Dated: November 12, 1976.

JOHN QUARLES,
Acting Administrator.

The following changes are made in 40 CFR Part 415: (Subparts A through V were promulgated March 12, 1974).

Subpart F—Chlorine and Sodium or Potassium Hydroxide Production Subcategory

1. Section 415.61 is amended by adding paragraphs (e), (f), (g) and (h), to read as follows:

§ 415.61 Specialized definitions.

* * * * *

(e) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(f) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(g) The term "process waste water pollutants" means pollutants present in process waste water.

(h) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection and maintenance: *Provided*, That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contact: *And provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart G—Hydrochloric Acid Production Subcategory

2. Section 415.71 is amended by adding paragraphs (b), (c), (d) and (e), to read as follows:

§ 415.71 Specialized definitions.

* * * * *

(b) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(c) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(d) The term "process waste water pollutants" means pollutants present in process waste water.

(e) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection and maintenance; *Provided*, That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contact. *And provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart H—Hydrofluoric Acid Production Subcategory

3. Section 415.81 is amended by adding paragraphs (b), (c), (d) and (e), to read as follows:

§ 415.81 Specialized definitions.

* * * * *

(b) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(c) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(d) The term "process waste water pollutants" means pollutants present in process waste water.

(e) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection and maintenance: *Provided*, That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contact: *and provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart I—Hydrogen Peroxide Production Subcategory

4. Section 415.91 is amended by adding paragraphs (d), (e), (f) and (g), to read as follows:

§ 415.91 Specialized definitions.

* * * * *

(d) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(e) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(f) The term "process waste water pollutants" means pollutants present in process waste water.

(g) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection and maintenance: *Provided*, That all reasonable measures have been taken to prevent, reduce, eliminate, and control to the maximum extent feasible such contact: *And provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart J—Nitric Acid Production Subcategory

5. Section 415.101 is amended by adding paragraphs (b), (c), (d) and (e), to read as follows:

§ 415.101 Specialized definitions.

* * * * *

(b) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(c) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(d) The term "process waste water pollutants" means pollutants present in process waste water.

(e) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection and maintenance; *Provided,* That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contact: *And provided further,* That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart O—Sodium Carbonate Production Subcategory

6. Section 415.151 is amended by adding paragraphs (c), (d), (e) and (f), to read as follows:

§ 415.151 Specialized definitions.

* * * * *

(c) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(d) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(e) The term "process waste water pollutants" means pollutants present in process waste water.

(f) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection and maintenance: *Provided,* That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contact: *And provided further,* That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart Q—Sodium Dichromate and Sodium Sulfate Production Subcategory

7. Section 415.171 is amended by adding paragraphs (e), (f), (g) and (h), to read as follows:

§ 415.171 Specialized definitions.

* * * * *

(e) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(f) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(g) The term "process waste water pollutants" means pollutants present in process waste water.

(h) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection and maintenance: *Provided,* That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contact: *And provided further,* That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart R—Sodium Metal Production Subcategory

8. Section 415.181 is amended by adding paragraphs (c), (d), (e), and (f), to read as follows:

§ 415.181 Specialized definitions.

* * * * *

(c) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone, or the ocean.

(d) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated nonprocess waste water, as defined below.

(e) The term "process waste water pollutants" means pollutants present in process waste water.

(f) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product, or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection, and maintenance;

provided that all reasonable measures have been taken to prevent, reduce, eliminate, and control to the maximum extent feasible such contract: *And provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart S—Sodium Silicate Production Subcategory

9. Section 415.191 is amended by adding paragraphs (c), (d), (e), and (f), to read as follows:

§ 415.191 Specialized definitions.

* * * * *

(c) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone or the ocean.

(d) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(e) The term "process waste water pollutants" means pollutants present in process waste water.

(f) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product, or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection, and maintenance: *Provided*, That all reasonable measures have been taken to prevent, reduce, eliminate, and control to the maximum extent feasible such contact: *And provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart U—Sulfuric Acid Production Subcategory

10. Section 415.211 is amended by adding paragraph (b), (c), (d), and (e), to read as follows:

§ 415.211 Specialized definitions.

* * * * *

(b) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constitutents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone, or the ocean.

(c) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(d) The term "process waste water pollutants" means pollutants present in process waste water.

(e) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product, or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection, and maintenance: *Provided*, That all reasonable measures have been taken to prevent, reduce, eliminate, and control to the maximum extent feasible such contact: *And provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

Subpart V—Titanium Dioxide Production Subcategory

11. Section 415.221 is amended by adding paragraphs (d), (e), (f), and (g), to read as follows:

§ 415.221 Specialized definitions.

* * * * *

(d) The term "effluent limitation" means any restriction established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents which are discharged from point sources, other than new sources, into navigable waters, the waters of the contiguous zone, or the ocean.

(e) The term "process waste water" means any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, by-product, or waste product. The term "process waste water" does not include contaminated non-process waste water, as defined below.

(f) The term "process waste water pollutants" means pollutants present in process waste water.

(g) The term "contaminated non-process waste water" shall mean any water including precipitation runoff, which during manufacturing or processing, comes into incidental contact with any raw material, intermediate product, finished product, by-product, or waste product by means of (1) precipitation runoff, (2) accidental spills, (3) accidental leaks caused by the failure of process equipment and which are repaired or the discharge of pollutants therefrom contained or terminated within the shortest reasonable time which shall not exceed 24 hours after discovery or when discovery should reasonably have been made, whichever is earliest, and (4) discharges from safety showers and related personal safety equipment, and from equipment washings for the purpose of safe entry, inspection, and maintenance: *Provided*, That all reasonable measures have been taken to prevent, reduce, eliminate and control to the maximum extent feasible such contact: *And provided further*, That all reasonable measures have been taken that will mitigate the effects of such contact once it has occurred.

[FR Doc.76-34620 Filed 11-22-76;8:45 am]

[FRL 648-2]

PART 415—INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY

Revocation of Regulations

On March 12, 1974, effluent limitations guidelines, new source performance standards and new source pretreatment standards were promulgated for twenty-two subcategories of the Inorganic Chemicals Manufacturing point source category, 40 CFR Part 415, Subparts A through V (the "Phase I" regulations). On the same day, pretreatment standards for existing sources were proposed pursuant to section 307(b) of the Act for Subparts A through V.

On March 10, 1976 the United States Court of Appeals for the Fourth Circuit rendered its decision concerning petitions for review of the Phase I regulations in *E.I. DuPont de Nemours & Company et al* v. *Train*, No. 74-1261. The Court remanded for reconsideration the following Phase I effluent limitation guidelines and new source performance standards to the Administrator (as well as certain general definitions pertaining to these subparts) in Subpart F, § 415.63; in Subpart G, §§ 415.72, 415.73, and 415.75; in Subpart H, §§ 415.82, 415.83, and 415.85; in Subpart I, §§ 415.93 and 415.95; in Subpart J, §§ 415.102, 415.103, and 415.105; in Subpart O, §§ 415.152, 415.153, and 415.155; in Subpart Q, § 415.173; in Subpart R, §§ 415.182, 415,183, and 415,185; in Subpart S, §§ 415.192, 415,193, and 415.195; in Subpart U, §§ 415,210, 415.212, 415,213, and 415,215; and in Subpart V, §§ 415.220, 415,222, 415,223, and 415,225. Therefore, the specified definitions are being revised with respect to certain subcategories, and the limitations and

standards for the above parts of the Phase I regulations are being revoked.

The following pretreatment standards for new sources are being revoked because they are based on the remanded standards of performance for new sources: Subpart G, § 415.76; Subpart H, § 415.86; Subpart I, § 415.96; Subpart J, § 415.106; Subpart O, § 415.156; Subpart R, §415.186; Subpart S, § 415.196; Subpart U, § 415.216; and Subpart V, § 415.226.

On May 22, 1975, effluent limitation guidelines representing the degree of reduction attainable by the application of the best practicable control technology currently available were promulgated as interim final rules under sections 301, 304(b), 306, and 307(c) of the Federal Water Pollution Control Act, 33 U.S.C. 1311, 1314(b), 1316(b), and 1317(c); 86 Stat. 816 et seq.; Pub. L. 92-500 (the Act), for 41 subcategories of the Inorganic Chemicals Manufacturing point source category, 40 CFR Part 415, subparts W through X, AA through AZ, and BA through BK (the "Phase II" regulations). Effluent limitation guidelines representing the degree of effluent reduction attainable by the application of the best available technology economically achievable, pretreatment standards for existing sources, standards of performance for new sources, and pretreatment standards for new sources also were proposed for Subparts W through X, AA through AZ, and BA through BK.

On June 24, 1976, a Joint Motion and Stipulation of Settlement was approved by the United States Court of Appeals for the Second Circuit which provides that EPA shall revoke and withdraw the following parts of the Phase II effluent limitation guidelines for reconsideration: in Subpart W, §§ 415.230, 415.231, and 415.232; in Subpart AH, §§ 415.340, 415.341, and 415.342; in Subpart AP, §§ 415.520, 415.521, and 415.522; and in Subpart BF, §§ 415.580, 415.581, and 415.582. Therefore, the above parts of the Phase II regulations are being revoked.

The Agency intends to repromulgate the portions of the regulations revoked today as soon as the inadequacies noted by the Court of Appeals can be remedied. In the interim, the above listed parts of the effluent limitation guidelines, new source performance standards and pretreatment standards for new sources for the Inorganic Chemicals Manufacturing Point Source Category shall be considered to be not implemented for the purposes of section 402(a)(1) of the Act.

The following changes are made in 40 CFR Part 415: (Subparts A through V were promulgated March 12, 1974).

Subpart F—Chlorine and Sodium or Potassium Hydroxide Production Subcategory

§ 415.63 [Reserved]

1. Section 415.63 is revoked, and shall be designated as "[Reserved]".

Subpart G—Hydrochloric Acid Production Subcategory

§ 415.72 [Reserved]

2. Section 415.72 is revoked and shall be designated as "[Reserved]".

§ 415.73 [Reserved]

3. Section 415.73 is revoked, and shall be designated as "[Reserved]".

§ 415.75 [Reserved]

4. Section 415.75 is revoked, and shall be designated as "[Reserved]".

§ 415.76 [Reserved]

5. Section 415.76 is revoked, and shall be designated as "[Reserved]".

Subpart H—Hydrofluoric Acid Production Subcategory

§ 415.82 [Reserved]

6. Section 415.82 is revoked, and shall be designated as "[Reserved]".

§ 415.83 [Reserved]

7. Section 415.83 is revoked, and shall be designated as "[Reserved]".

§ 415.85 [Reserved]

8. Section 415.85 is revoked, and shall be designated as "[Reserved]".

§ 415.86 [Reserved]

9. Section 415.86 is revoked, and shall be designated as "[Reserved]".

Subpart I—Hydrogen Peroxide Production Subcategory

§ 415.93 [Reserved]

10. Section 415.93 is revoked, and shall be designated as "[Reserved]".

§ 415.95 [Reserved]

11. Section 415.95 is revoked, and shall be designated as "[Reserved]".

§ 415.96 [Reserved]

12. Section 415.96 is revoked, and shall be designated as "[Reserved]".

Subpart J—Nitric Acid Production Subcategory

§ 415.102 [Reserved]

13. Section 415.102 is revoked, and shall be designated as "[Reserved]".

§ 415.103 [Reserved]

14. Section 415.103 is revoked, and shall be designated as "[Reserved]".

§ 415.105 [Reserved]

15. Section 415.105 is revoked, and shall be designated as "[Reserved]".

§ 415.106 [Reserved]

16. Section 415.106 is revoked, and shall be designated as "[Reserved]".

Subpart O—Sodium Carbonate Production Subcategory

§ 415.152 [Reserved]

17. Section 415.152 is revoked, and shall be designated as "[Reserved]".

§ 415.153 [Reserved]

18. Section 415.153 is revoked, and shall be designated as "[Reserved]".

§ 415.155 [Reserved]

19. Section 415.155 is revoked, and shall be designated as "[Reserved]".

§ 415.156 [Reserved]

20. Section 415.156 is revoked, and shall be designated as "[Reserved]".

Subpart Q—Sodium Dichromate and Sodium Sulfate Production Subcategory

§ 415.173 [Reserved]

21. Section 415.173 is revoked, and shall be designated as "[Reserved]".

Subpart R—Sodium Metal Production Subcategory

§ 415.182 [Reserved]

22. Section 415.182 is revoked, and shall be designated as "[Reserved]".

§ 415.183 [Reserved]

23. Section 415.183 is revoked, and shall be designated as "[Reserved]".

§ 415.185 [Reserved]

24. Section 415.185 is revoked, and shall be designated as "[Reserved]".

§ 415.186 [Reserved]

25. Section 415.186 is revoked, and shall be designated as "[Reserved]".

Subpart S—Sodium Silicate Production Subcategory

§ 415.192 [Reserved]

26. Section 415.192 is revoked, and shall be designated as "[Reserved]".

§ 415.193 [Reserved]

27. Section 415.193 is revoked, and shall be designated as "[Reserved]".

§ 415.195 [Reserved]

28. Section 415.195 is revoked, and shall be designated as "[Reserved]".

§ 415.196 [Reserved]

29. Section 415.196 is revoked, and shall be designated as "[Reserved]".

Subpart U—Sulfuric Acid Production Subcategory

§ 415.210 [Reserved]

30. Section 415.210 is revoked, and shall be designated as "[Reserved]".

§ 415.212 [Reserved]

31. Section 415.212 is revoked, and shall be designated as "[Reserved]".

§ 415.213 [Reserved]

32. Section 415.213 is revoked, and shall be designated as "[Reserved]".

§ 415.215 [Reserved]

33. Section 415.215 is revoked, and shall be designated as "[Reserved]".

§ 415.216 [Reserved]

34. Section 415.216 is revoked, and shall be designated as "[Reserved]".

Subpart V—Titanium Dioxide Production Subcategory

§ 415.220 [Reserved]

35. Section 415.220 is revoked, and shall be designated as "[Reserved]".

§ 415.222 [Reserved]

36. Section 415.222 is revoked, and shall be designated as "[Reserved]".

§ 415.223 [Reserved]

37. Section 415.223 is revoked, and shall be designated as "[Reserved]".

§ 415.22 [Reserved]

38. Section 415.225 is revoked, and shall be designated as "[Reserved]".

§ 415.226 [Reserved]

39. Section 415.226 is revoked, and shall be designated as "[Reserved]".

The following changes are made in 40 CFR Part 415: (Subparts W through X and Subparts AA through AZ and Subparts BA through BK were promulgated as interim final regulations on May 22, 1975)

Subpart W—Aluminum Fluoride Production Subcategory

§ 415.230 [Reserved]

40. Section 415.230 is revoked, and shall be designated as "[Reserved]".

§ 415.231 [Reserved]

41. Section 415.231 is revoked, and shall be designated as "[Reserved]".

§ 415.232 [Reserved]

42. Section 415.232 is revoked, and shall be designated as "[Reserved]".

Subpart AH—Chrome Pigments Production Subcategory

§ 415.340 [Reserved]

43. Section 415.340 is revoked, and shall be designated as "[Reserved]".

§ 415.341 [Reserved]

44. Section 415.341 is revoked, and shall be designated as "[Reserved]".

§ 415.342 [Reserved]

45. Section 415.342 is revoked, and shall be designated as "[Reserved]".

Subpart AP—Hydrogen Cyanide Production Subcategory

§ 415.520 [Reserved]

46. Section 415.520 is revoked, and shall be designated as "[Reserved]".

§ 415.521 [Reserved]

47. Section 415.521 is revoked, and shall be designated as "[Reserved]".

§ 415.522 [Reserved]

48. Section 415.522 is revoked, and shall be designated as "[Reserved]".

Subpart BF—Sodium Silicofluoride Production Subcategory

§ 415.580 [Reserved]

49. Section 415.580 is revoked, and shall be designated as "[Reserved]".

§ 415.581 [Reserved]

50. Section 415.581 is revoked, and shall be designated as "[Reserved]".

§ 415.582 [Reserved]

51. Section 415.582 is revoked, and shall be designated as "[Reserved]".

Because this action is taken pursuant to an order issued by the United States Court of Appeals for the Fourth Circuit, and pursuant to a Joint Motion and Stipulation of Settlement Approved by the United States Court of Appeals for the Second Circuit, the Agency finds that public participation in this rulemaking is unnecessary. This amendment as set forth shall become effective immediately.

Dated: November 12, 1976.

JOHN QUARLES,
Acting Administrator.

[FR Doc.76-34621 Filed 11-22-76;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5607; ID-6898]

IDAHO

Powersite Restoration No. 728; Partial Revocation of Powersite Reserve No. 565

By virtue of the authority contained in sec. 204 of the Act of October 21, 1976, Pub. L. 94-579, and pursuant to the determination of the Federal Power Commission in DA-611-Idaho, it is ordered as follows:

1. The Executive Order of November 21, 1916, creating Powersite Reserve No. 565, as construed by Powersite Interpretation No. 13, dated April 22, 1922, is hereby revoked so far as it affects the following described lands:

BOISE MERIDIAN

T. 9 S., R. 17 E.,
Sec. 34, lots 12, 13 and 14;
Sec. 35, lots 10, 11, 12, 13 and S½NW¼;
Sec. 36, lots 10, 11, 12, 13 and 14.

The areas described aggregate approximately 400 acres in Jerome County.

2. The described lands in section 36 lying below the 3,300 foot mean sea level are being restored subject to Section 24 of the Federal Power Act of June 10, 1920, supra. Upon promulgation of this order, title to all the lands in section 36 will vest in the State of Idaho. The lands in sections 34 and 35 are privately owned.

JACK O. HORTON,
Assistant Secretary of the Interior.

NOVEMBER 12, 1976.

[FR Doc.76-34517 Filed 11-22-76;8:45 am]

Title 45—Public Welfare

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

PART 103—RESEARCH AND TRAINING EXEMPLARY AND CURRICULUM DEVELOPMENT PROGRAMS IN VOCATIONAL EDUCATION

Vocational Education Curriculum Additional Criteria

On August 24, 1976 there was published in the FEDERAL REGISTER at 41 FR 35722, a Notice of Proposed Rulemaking which set forth additional criteria for applications for grants under Part I of the Vocational Education Act of 1963, as amended, 20 U.S.C. 1302(c). The additional criteria were set forth to revise Appendix C to Part 103 of the regulations, 45 CFR Part 103.

Interested persons were given 30 days after August 24, 1976 to submit comments, suggestions, or objections to the proposed criteria. A letter of comment was received which is discussed below.

Comment. A commenter suggested that section (a) (2) Develop standards for curriculum development in all occupational fields, should be amended by adding "including apprenticeable occupations."

Response. No change is made in the criteria published in the Notice of Proposed Rulemaking in the FEDERAL REGISTER on August 24, 1976. It is felt that the phrase, "develop standards for curriculum development in all occupational fields" includes apprenticeable occupations.

The criteria therefore, are issued as originally published without change, as set forth below.

Effective date. Pursuant to section 431 (d) of the General Education Provisions Act, as amended, (20 U.S.C. 1232(d)) these regulations have been transmitted to the Congress concurrently with the publication in the FEDERAL REGISTER. That section provides that regulations subject thereto shall become effective on the forty-fifth day following the date of such transmission, subject to the provisions therein concerning Congressional action and adjournment.

It is hereby certified that the final regulation has been screened pursuant to Executive Order No. 11821 and does not require an Inflation Impact Evaluation.

(Catalog of Federal Domestic Assistance No. 13.436; Vocational Education Curriculum.)

Dated: October 14, 1976.

WILLIAM F. PIERCE,
Acting Commissioner of Education.

Approved: November 17, 1976.

DAVID MATHEWS,
Secretary of Health, Education, and Welfare.

APPENDIX C

VOCATIONAL EDUCATION CURRICULUM

FISCAL YEAR 1977

The Office of Education contemplates supporting six project grants for six curriculum coordination centers in fiscal year 1977 program. Two of these awards will be open to competition. Four will be non-competing continuations of grants made in fiscal year 1976 to (1) the Illinois Office of Education; (2) the Oklahoma State Department of Vocational and Technical Education; (3) the Washington State Commission for Vocational Education and (4) the New Jersey Department of Education.

The two new awards will be funded with a three year multi-year approval on a non-competing annual basis, beginning January 1, 1977.

The applicants will submit their project goals and activities for the three-year multi-year period. Multi-year approval is intended to offer the project a reasonable degree of stability over time and to facilitate long range planning. Approval of a multi-year project shall not commit the Office of Education to provide financial assistance from appropriations not currently available; and second and third year funding is contingent on satisfactory performance.

(a) *Awarded applicants' obligation.* One of the three-year awards will provide leadership to curriculum coordination in the Southeast area including Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee. The other three-year award will provide leadership for the Western area including American Samoa, Arizona, California, Guam, Hawaii, Nevada and Trust Territory of Pacific Islands.

Each awardee will be the facilitator in enabling the States in their regional consortium to:

(1) Improve their curriculum services and capabilities;

(2) Share information and plans regarding curriculum materials and needs in order to reduce duplication of efforts;

(3) Plan for cooperation in development, testing, evaluation, dissemination, reproduction and implementation of materials; and

(4) Develop and maintain intra-State liaison activities that will stimulate cooperative relationships at State and local levels.

In addition each awardee will become a member of the National Network Council for Curriculum Coordination in vocational and technical education; and as a member each awardee will:

(1) Conduct coordination, dissemination and diffusion activities in order to improve the acceptance of new curriculum products and to assess their impact;

(2) Establish and maintain a system for determining curriculum needs in vocational and technical education based on available manpower projections and the advancement of equity for girls and women in vocational education and for recommending priorities for State and national emphasis;

(3) Share information regarding materials and studies available and under development; and

(4) Provide curriculum services which will encourage the adaptation, demonstration and adoption of effective curricula and curriculum development practices in vocational and technical education in conjunction with business and labor.

The Office of Education will entertain requests for these grants to support:

(1) Communication and coordination activities with the States, the Network, and the U.S. Office of Education.

(2) Travel costs and per diem for the Center personnel to attend two meetings annually of the National Network Council for Curriculum Coordination. One of these meetings will be held in Washington, D.C.

(3) Travel costs and per diem, excluding honoraria, for State representatives to attend meetings sponsored by the center. Each of the six conters will hold a consortium meeting with their State representatives concurrently at a central U.S. location.

(b) Application review criteria. The criteria to be utilized in reviewing applications are listed below. These criteria are consistent with section 100a.26, Rievew of Applications, in the Office of Education's General Provisions for Programs, published in the FEDERAL REGISTER in 38 FR 30654 on November 6, 1973.

Segments or a segment of the application must address each criterion. Each criterion is weighted to show the maximum score that can be given to each specific criterion. Each criterion and the maximum points possible are as follows:

CRITERIA AND SCORE

(a) *Need and problems*—The application should clearly define the need for the project within the specified consortium of States and should indicate responsiveness to problems rather than symptoms. 15

(b) *Objectives*—The objectives should be clearly stated, supportive of defined needs, capable of being attained by the proposed procedures, and capable of being measured. 15

(c) *Plan*—The management plan should show functions to be performed and services to be provided; and the procedures for accomplishing each are delineated. The size and scope of the project is appropriate and is phased to the multi-year duration of the project. The proposed plan of operation should clearly describe (a) how the objectives will be undertaken and accomplished, (b) how and when personnel and resources will be utilized, (c) what, if any, in-service training connected with project services will be provided, (d) what feedback and evaluation procedures will be implemented and (e) how input from State vocational education administrators will be utilized. 20

(d) *Results*—The proposed outcomes should be identified and described in terms of (1) expected potential for their use for similar educational purposes and (2) anticipated impact at National, State and local levels, and (3) relationships to Federal/National curriculum program. Provisions should be made for disseminating the results of the project including techniques or other outputs to the consortium States and the National Network. 20

(e) *Institutional capability*—Application should clearly set forth current curriculum strengths and the capability of the applicant to immediately initiate and maintain liaison functions with consortium States. There should be evidence that adequate facilities and equipment will be provided and that participation of cooperating States has been authorized. Relationships with other dissemination, diffusion and facilitation systems, if any, should be described. 15

(f) *Personnel*—The qualifications and experience of key staff should be appropriate for the requirements of the project; specific responsibilities and time commitments should be identified for each of the key staff; and at least one key staff person should devote a minimum of 50 percent of their time to the total objectives of the project. 10

(g) *Budget*—The estimated cost should be reasonable in relation to anticipated results and the geographic area, scope, and duration of the project. Where possible anticipated costs by objectives are included. The application should also include a clear statement of cost-sharing which is substantiated by line items in the proposed budget. 5

[FR Doc.76-34569 Filed 11-22-76;8:45 am]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1611—ELIGIBILITY

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a)(2) of the Act requires the Corporation to establish maximum income levels for individual eligible for legal assistance, eligibility guidelines which take into account certain enumerated factors, and priorities to insure that persons least able to afford legal assistance are given preference in furnishing such assistance.

On June 11, 1976 (41 FR 23727) a proposed regulation on eligibility was published. Interested persons were given until July 12, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Maximum income levels. The Legal Services Corporation Act provides little guidance for establishing a maximum income standard for persons eligible to receive legal assistance. Section 1002(3) defines an "eligible client" as "any person financially unable to afford legal assistance". Congress recognized that the Corporation would not have resources adequate to provide legal assistance to all who would be eligible according to the statutory definition, and the House Report states that "it is expected that, until a substantial increase in program appropriations is provided, the eligibility level will be approximately commensurate to the poverty line in each community. Regulations promulgated by the Corporation will insure that the poorest of the poor receive a priority in the provision of legal services * * *" p. 8-9. Consistent with the legislative history, Section 1007(a)(2)(C) directs the Corporation to "establish priorities to insure that persons least able to afford legal assistance are given preference in the furnishing of such assistance."

The maximum income level adopted here is equal to 125% of the official poverty line.[1] In designating that level, the Corporation recognizes that a substantial number of people who are unable to afford legal assistance will nonetheless be rendered ineligible, but the Corporation's limited resources prevent adoption of a higher level at this time. After the Corporation reaches its preliminary goal of providing the equivalent of two lawyers for every 10,000 poor persons, as defined by the official measure, additional funds may be sought to permit adoption of an income standard that is more realistic in terms of the income required in order for a person to be able to afford private legal assistance. It is also hoped that the development of knowledge about the fees charged for various legal services by the private Bar will contribute to a more informed determination of how much income is required to afford private assistance.

The "official" poverty measure attempts to define poverty in terms of the minimum income needed for subsistence. Critics of the measure argue that it is too low—that even bare subsistence living requires a higher income than indicated by the official line. The recently published, Congressionally-mandated study, "The Measure of Poverty", describes some flaws in the current measure, but adhering to the Congressional directive,

[1] The definition of "income in § 1611.2 conforms to the one used by the Community Services Administration, that develops the "official" poverty line. A chart showing the maximum income levels adopted by the Corporation is attached hereto.

does not make any specific recommendations for change.

An acknowledged limitation of the current measure is that it does not make any geographic distinctions, except for Hawaii and Alaska. Yet it is generally conceded that the cost of living does vary geographically; and the Act requires the Corporation to take substantial cost of living variations into account. In the absence of data that would enable the Corporation to make these distinctions, we have no choice but to give each recipient the responsibility for doing so. Setting a maximum below 125% of the poverty line would deny some programs the latitude required by local conditions, that Congress intended them to have. See Senate Report, p. 14–15.

A maximum income level below 125% of the poverty line would disqualify the working poor, whose financial resources are only slightly greater than those of families entirely dependent on welfare. (The 125% line is 140% of the maximum AFDC grant for a family of four, 124% of the maximum AFDC standard of need for a family of four,[2] and 132% of the maximum AFDC grant for a family of two.)

As a matter of policy, the Corporation believes it would be a mistake to adopt a standard so low that it excluded all but welfare recipients from receiving legal assistance.

The Corporation rejected a proposal that it set the maximum at 150% of the poverty line to accommodate areas with exceptionally high living costs. Our research indicates that there are very few places in the United States where the cost of living is more than 25% above the national average. A random-sample poll of legal services programs conducted in August 1975 indicated that only a small number of them applied an eligibility standard greater than 125% of the poverty line. Adopting a national standard high enough to cover those few seems unjustifiable. It seems wiser to require them to apply for authority to adopt a higher standard on a program-by-program basis, as the regulation does.

The Corporation also rejected a suggestion that it adopt the Bureau of Labor Standard's "Lower Standard Budget" as the maximum standard. According to "The Measure of Poverty", there are numerous technical limitations in its methodology, and it was not intended to be a poverty standard. In autumn of 1974, the lower BLS budget for a family of four was more than 80% higher than the comparable poverty measure. In view of the Corporation's limited resources, adoption of the BLS standard is inconsistent with the statutory mandate to give priority to those least able to afford legal assistance. Moreover, the BLS standard measures only 40 cities, and it provides no basis for extrapolating geographical variations in the cost of living in other areas. Using the BLS standard in the cities it does study, while relying on the poverty standard elsewhere, would result in gross inequity, extending eligibility in some areas to people whose income were far above the eligibility levels elsewhere.

Satisfaction of the directions of the Act requires coordination between the Corporation and recipients in establishing maximum income levels for individuals eligible to receive legal assistance. The Corporation cannot set an inflexible standard because, as stated above, no poverty definition now in use adequately takes into account either substantial cost-of-living differences or urban-rural differences. The only way of complying with the statutory mandate to consider those factors is by giving recipients the responsibility for doing so.

The Regulation does not permit a recipient automatically to set its income standard at the maximum authorized. Section 1611.3 requires a recipient to take into account cost of living in the locality, the number of clients that can be assisted with the resources available to the recipient, the population at and below alternative income levels in the area served by the recipient, and the availability and cost of legal services provided by the private Bar in the area before it establishes a maximum income standard. The regulation thus formalizes a process that has occurred in many programs in the past. Recognizing that their own resources are limited, most programs have set their financial eligibility level below the poverty line, and they may be expected to continue to do so. It is expected that only a few programs, located in localities with exceptionally high living costs, will adopt the maximum authorized by the regulation. An even smaller number may request specific authorization to set a standard above that level.

In allocating resources among legal services programs the Corporation uses a formula that takes into account, among other factors, the size of the population at and below the official poverty line in the area served by the program, and for the present the Corporation will continue to apply that standard even to programs that set their maximum income levels above the poverty line. Knowing that choice of a higher maximum income level will not increase program resources, few programs are likely to choose an inappropriately high standard.

Authorized exceptions. A person whose income exceeds the maximum income level established by a recipient may not be provided legal assistance unless the person comes within one of three exceptions described in § 1611.4.

The first exception, in § 1611.4(a), is mandated by the Act, that requires a recipient to determine individual eligibility on the basis of factors such as fixed debts, medical expenses, and other factors affecting a client's ability to pay for legal assistance. An individual whose income is above the maximum income level adopted by a recipient may be eligible for legal assistance after allowance is made for such factors.

Section 1611.4(b) allows a recipient to provide legal assistance to a person whose income is above the established maximum if the person is seeking legal assistance to obtain, or prevent the loss of, benefits provided by a "governmental program for the poor", as defined in § 1611.2. These cases traditionally have been a major part of the caseload of legal services programs. The private Bar is rarely willing to undertake them, because they require a high degree of familiarity with complex administrative regulations, and generally do not generate a fee for legal services. Individuals who depend on such programs for subsistence usually have no discretionary income with which to pay for legal services.

Section 1611.4(c) allows a recipient to provide legal assistance to a person whose income exceeds the maximum if the person would be eligible but for the receipt of benefits from a "governmental income maintenance program", as defined in § 1611.2.

Comparison of the poverty line with current AFDC and SSI standards and grant levels shows that the poverty line is considerably higher than the AFDC standard of need in every state, and that in only three states—California, Colorado and Massachusetts—does the maximum SSI payment exceed 125% of the poverty line. Therefore, with the exception of SSI recipients in those three states, any person whose income is derived entirely from those benefit programs would be eligible for legal assistance on the basis of income without regard to the authorized "exception". Indeed, since 125% of the poverty line is equal to 140% of the maximum AFDC grant for a family of four, most families that receive income from both AFDC and employment would still have an income below 125% of the poverty line, particularly after deduction for child care and other work-related expenses. But this would not be invariably true. In a few states, strict adherence to the maximum income level would render otherwise eligible welfare recipients ineligible if they became employed. That result would be inconsistent with federal law that "disregards" a percentage of earned income in order to permit welfare recipients to become employed without thereby sacrificing welfare benefits. In effect, the regulation adopts the federal "income disregard" policy. It also permits legal assistance to a person whose income is derived, in the main, from employment, with some supplementation by governmental benefits.

The Corporation recognizes that § 1611.4(c) may be viewed as inequitable in one respect, because it permits legal asistance to an employed person who also receives welfare benefits, while denying assistance to a person whose identical income is derived entirely from employment. But after much deliberation the Corporation concluded that, on balance, that potential inequity was outweighed by the desirability of following the fed-

[2] The "need standard" is the amount determined by a state to be necessary for subsistence, and is, in all states, greater than the maximum actually granted.

eral policy of providing work incentives to welfare recipients.

An additional advantage of the provision is administrative simplicity, because it permits a recipient to avoid complicated income calculations if an applicant for legal assistance submits proof of receipt of benefits from a governmental income maintenance program. It would still be necessary, however, for a recipient to consider the individual factors listed in § 1611.5.

Determination of eligibility. Section 1611.5(b) lists some of the personal factors that should be considered by a recipient in determining eligibility. The list is not exhaustive. Depending on local circumstances, a recipient may consider other factors that might either expand or narrow eligibility. For example, a recipient in a state like Alaska might consider the cost of transportation from a remote area to the nearest private lawyer as a factor bearing on a client's ability to pay for private assistance. Another recipient might consider the value of a person's non-liquid assets as a factor rendering the person ineligible.

In determining a person's income, past earnings are irrelevant except insofar as they may have resulted in the acquisition of assets, that are required by § 1611.5(b)(2) to be considered. Inquiry should be focused on present income, and on the prospects for its continuation. Thus, if a person is engaged in seasonal work such as farm labor, it should be recognized that the person's salary during peak harvest is not an accurate indication of annual income. This requirement is established by § 1611.5(b)(1).

Federal and local taxes should be considered before determining whether to provide legal assistance to a person whose gross income is above the established maximum. Failure to do so would discriminate against working people, whose income is subject to taxation, while that of individuals on welfare is not. After taxes have been deducted, a working person whose gross income is above the maximum may actually have less discretionary money available for legal services than a welfare recipient.

A person who is aged or disabled may have unusual expenses associated with that condition (such as special housing, utility, transportation, dietary or medical needs), and allowance should be made for them in determining eligibility.

The disqualifying factor described in § 1611.5(c) is required by Section 1007(a)(2)(B)(iv) of the Act.

A group, corporation, or association may be afforded representation if the criteria of § 1611.5(d) are met. The legislative history of the Act makes clear that Congress intended to permit recipients to aid such organizations, as they have in the past.

Manner of determining eligibility. Section 1611.6 requires a recipient to determine eligibility by means of a simple and dignified procedure that is appropriate to a law office and conducive to development of an effective attorney-client relationship. At the same time, all necessary information must be obtained and preserved, in a manner that protects the identity of the client, for audit by the Corporation.

Both the House and the Senate Reports on the Act stated that financial eligibility should be determined in a manner that promotes "trust and confidence between an attorney and client". It would be inconsistent with that directive for a recipient to require an applicant for assistance to swear, under penalty of perjury, to the accuracy of conformation provided. If there is substantial reason to doubt the information, the recipient should make further inquiry of the client.

Section 1611.6(c), prohibiting disclosure of financial eligibility information provided by a client, without express written consent, is consistent with Ethical Opinions rendered by the American Bar Association and the Ethics Committees of local Bar Associations. Because the Corporation frequently has been called upon to confirm its agreement with those Opinions, an explicit statement of Corporation policy was deemed appropriate. Section 1006(b)(3) of the Act requires the Corporation to insure that legal services activities are conducted in a manner consistent with professional and ethical obligations.

Change in circumstances. If a client becomes ineligible because of a change in circumstances, § 1611.7 requires a recipient to discontinue representation if the change is sufficiently likely to continue to enable the client to obtain private counsel, and if discontinuation is not inconsistent with the Code of Professional Responsibility.[3]

Accordingly, Part 1611 is added to read as set forth below.

Sec.
1611.1 Purpose.
1611.2 Definition.
1611.3 Maximum Income Level.
1611.4 Authorized Exceptions.
1611.5 Determination of Eligibility.
1611.6 Manner of Determining Eligibility.
1611.7 Change of Circumstances.
Appendix A.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996(a)(2).

§ 1611.1 Purpose.

This Part is designed to insure that a recipient will determine eligibility according to criteria that give preference to the legal needs of those least able to obtain legal assistance, and afford sufficient latitude for a recipient to consider local circumstances and its own resource limitations. The Part also seeks to insure that eligibility is determined in a manner conducive to development of an effective attorney-client relationship.

§ 1611.2 Definitions.

"Governmental income maintenance program" means Aid for Dependent Children, Supplemental Security Income, Unemployment Compensation, and a state or county general assistance or home relief program.

"Governmental program for the poor" means any federal, state or local program that provides benefits of any kind to persons whose eligibility is determined on the basis of financial need.

"Income" means actual current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit.

"Total cash receipts" include money wages and salaries before any deductions, but do not include food or rent in lieu of wages. They include income from self-employment after deductions for business or farm expenses. they include regular payments from public assistance, social security, unemployment and worker's compensation, strike benefits from union funds, veterans benefits, training stipends, alimony, child support and military family allotments or other regular support from an absent family member or someone not living in the household; public or private employee pensions, and regular insurance or annuity payments; income from dividends, interest, rents, royalties, or from estates and trusts. They do not include money withdrawn from a bank, or received from sale of real or personal property, or from tax refunds, gifts, one-time insurance payments or compensation for injury; nor do they include non-cash benefits.

§ 1611.3 Maximum income level.

(a) Every recipient shall establish a maximum annual income level for persons to be eligible to receive legal assistance under the Act.

(b) Unless specifically authorized by the Corporation, a recipient shall not establish a maximum annual income level that exceeds one hundred and twenty-five percent (125%) of the official poverty threshhold as defined by the Office of Management and Budget.

(c) Before establishing its maximum income level, a recipient shall consider relevant factors including:

(1) Cost-of-living in the locality;

(2) The number of clients who can be served by the resources of the recipient;

(3) The population who would be eligible at and below alternative income levels; and

(4) The availability and cost of legal services provided by the private Bar in the area.

(d) Unless authorized by § 1611.4, no person whose income exceeds the maximum annual income level established by a recipient shall be eligible for legal assistance under the Act.

(e) This Part does not prohibit a recipient from providing legal assistance to a client whose annual income exceeds the maximum income level established here, if the assistance provided the client

[3] Former § 1611.8, dealing with caseload control priorities, has been renumbered Part 1620.

is supported by funds from a source other than the Corporation.

§ 1611.4 Authorized exceptions.

A person whose income exceeds the maximum income level established by a recipient may be provided legal assistance under the Act if;

(a) The person's circumstances require that eligibility should be allowed on the basis of one or more of the factors set forth in § 1611.5(b); or

(b) The person is seeking legal assistance to secure benefits provided by a governmental program for the poor; or

(c) The person would be eligible but for receipt of benefits from a governmental income maintenance program.

§ 1611.5 Determination of eligibility.

(a) The governing body of a recipient shall adopt guidelines, consistent with these regulations, for determining the eligibility of persons seeking legal assistance under the Act. At least once a year, guidelines shall be reviewed and appropriate adjustments made.

(b) In addition to income, a recipient shall consider other relevant factors before determining whether a person is eligible to receive legal assistance. Factors considered shall include:

(1) Current income prospects, taking into account seasonal variations in income;

(2) Liquid net assets;

(3) Fixed debts and obligations, including federal and local taxes, and medical expenses;

(4) Child care, transportation, and other expenses necessary for employment;

(5) Age or physical infirmity of resident family members;

(6) The cost of obtaining private legal representation with respect to the particular matter in which assistance is sought;

(7) The consequences for the individual if legal assistance is denied; and

(8) Other factors related to financial inability to afford legal assistance.

(c) Evidence of a prior administrative or judicial determination that a person's present lack of income results from refusal or unwillingness, without good cause, to seek or accept suitable employment, shall disqualify the person from receiving legal assistance under the Act. This paragraph does not bar provision of legal assistance to an otherwise eligible person who seeks representation in order to challenge the prior determination.

(d) A recipient may provide legal assistance to a group, corporation, or association if it:

(1) Is primarily composed of persons eligible for legal assistance under the Act, or

(2) Has as its primary purpose furtherance of the interests of persons in the community unable to afford legal assistance, and

(3) Provides information showing that it lacks, and has no practical means of obtaining, funds to retain private counsel.

§ 1611.6 Manner of determining eligibility.

(a) A recipient shall adopt a simple form and procedure to obtain information to determine eligibility in a manner that promotes the development of trust between attorney and client. The form and procedure adopted shall be subject to approval by the Corporation, and the information obtained shall be preserved, in a manner that protects the identity of the client, for audit by the Corporation.

(b) If there is substantial reason to doubt the accuracy of the information, a recipient shall make appropriate inquiry to verify it, in a manner consistent with an attorney-client relationship.

(c) Information furnished to a recipient by a client to establish financial eligibility shall not be disclosed to any person who is not employed by the recipient in a manner that permits identification of the client, without the express written consent of the client.

§ 1611.7 Change in circumstances.

If an eligible client becomes ineligible through a change in circumstances, a recipient shall discontinue representation if the change in circumstances is sufficiently likely to continue for the client to afford private legal assistance, and discontinuation is not inconsistent with the attorney's professional responsibilities.

Effective date: December 23, 1976.

APPENDIX A

Table showing maximum income levels equal to 125% of the Office of Management and Budget 1976 revision of the official poverty line threshhold figures.

ALL STATES EXCEPT ALASKA AND HAWAII

Size of family unit:	*Maximum income*
1	$3,500
2	4,625
3	5,750
4	6,874
5	8,000
6	9,125

For family units with more than 6 members, add $1,125 or each additional member in a nonfarm family and $950 for each additional member in a farm family.

ALASKA

Size of family unit:	*Maximum income*
1	$4,400
2	5,800
3	7,200
4	8,600
5	10,000
6	11,400

For family units with more than 6 members, add $1,400 for each additional member in a nonfarm family and $1,188 for each additional member in a farm family.

HAWAII

Size of family unit:	*Maximum income*
1	$4,050
2	5,338
3	6,625
4	7,913
5	9,200
6	10,488

For family units with more than 6 members, add $1,288 for each additional member in a nonfarm family and $1,088 for each additional member in a farm family.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.76-34496 Filed 11-22-76;8:45 am]

PART 1617—CLASS ACTIONS

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996l ("the Act"). Section 1006(d)(5) of the Act, 42 U.S.C. 2996e(d)(5), requires class action litigation undertaken by a recipient to be approved by the project director in accordance with policies established by the governing board. Section 1007(a)(3), 42 U.S.C. 2996f(a)(3), requires the Corporation to insure that legal assistance is rendered in the most economical and effective manner, and Section 1007(a)(1), 42 U.S.C. 2996f(a)(1), requires the Corporation to protect against impairing the integrity of the adversary process.

On September 23, 1976 (41 FR 41722) a proposed regulation on class actions was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Section 1006(d)(5) of the Act requires class action litigation undertaken by a recipient to be approved by the project director in accordance with policies established by the governing board. The legislative history of the section makes it clear that Congress did not intend to discourage use of class actions, but did want to insure that class action litigation would be undertaken according to standards established by persons accountable for the overall performance of the legal services program.

Neither the Act nor relevant American Bar Association Ethics Opinions permits a governing body to review class action litigation on a case-by-case basis. What is contemplated is the establishment by a governing body of broad policies that are consistent with its resource allocation priorities, and with the need to protect the rights of an individual client and similarly situated clients. The class action policy adopted by a governing body should not interfere with an attorney's independent judgment or duty to a client. See Sections 1006(a)(3); 1007(a)(1); ABA Committee on Ethics and Professional Responsibility, Formal Opinion 334.

Because a class action may be a useful way of avoiding duplicative and repetitive actions, the mandate of Section 1007(a)(3) that legal assistance be rendered in "the most economical and effective" manner, as well as the prohibition in Section 1007(a)(1) against impairing the integrity of the adversary process, preclude a recipient from adopting policies

that would prevent class actions in appropriate cases.

Part 1617 is added to read as follows.

Sec.
1617.1 Purpose.
1617.2 Definition.
1617.3 Approval Required.
1617.4 Standards for Approval.

AUTHORITY: Secs. 1006(d)(5), 1007(a)(1), 1007(a)(3), 1008(e) (42 U.S.C. 2996e(d)(5), 2996f(a)(1), 2996(a)(3), 2996g(e)).

§ 1617.1 Purpose.

This Part is intended to promote responsible, efficient, and effective use of Corporation resources. It does not apply to any case or matter in which assistance is not being rendered with funds provided under the Act.

§ 1617.2 Definition.

"Class action" means a class suit, class action appeal, or amicus curiae class action, as defined by statute or the rules of civil procedure of the court in which an action is filed.

§ 1617.3 Approval required.

No class action may be undertaken by a staff attorney without the express approval of the director of the recipient, acting in accordance with policies established by the governing board.

§ 1617.4 Standards for approval.

The governing body of a recipient shall adopt policies to guide the director of the recipient in determining whether to approve class action litigation. The policies adopted:

(a) Shall not prohibit class action litigation when appropriate to provide effective representation to a client or a group of similarly situated clients;

(b) Shall not require case-by-case approval of class action litigation by the governing body;

(c) Shall give appropriate consideration to priorities in resource allocation adopted by the governing body, or required by the Act or Corporation regulations; and

(d) Shall not interfere with the professional responsibilities of an attorney to a client.

Effective date: December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.76-34497 Filed 11-22-76;8:45 am]

PART 1618—ENFORCEMENT PROCEDURES

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"). Sections of the Act, including Sections 1006(b)(1), 1006(b)(5), and 1007(d), 42 U.S.C. 2996e(b)(1), 2996e(b)(5), 2996f(d), provide that the Corporation shall have the authority to enforce, and to monitor and evaluate programs to insure, compliance with the Act and Corporation rules, regulations, and guidelines. Section 1006(b)(2), 42 U.S.C. 2996e(b)(2), requires recipients to insure compliance by their employees with the Act and Corporation rules, regulations, and guidelines.

On September 23, 1976 (41 FR 41723) a proposed regulation on enforcement procedures was published. Interested persons were given until October 26, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Congress conferred upon the Corporation the dual responsibility of insuring compliance by recipients and their employees with the provisions of the Act and Corporation rules, regulations, and guidelines, and of insuring "the protection of the integrity of the adversary process from any impairment in furnishing legal assistance" to eligible clients. (Sections 1006(b)(1) and 1007(a)(1)). The enforcement procedure established by this Part attempts to satisfy both these goals.

The Corporation's authority to enforce the Act is found in Sections 1006(b)(1) and 1007(d). The Act specifically mentions only termination of financial support to recipients as a means of general enforcement, but such a severe remedy probably would be unwarranted in most instances. It was necessary, therefore, to provide other methods of enforcement. Cf. Section 1006(b)(5), that does contemplate other remedies for violations of its provisions. The Congressional intention that the Corporation should have authority to create other remedies is specifically stated in the Conference Report:

> The conferees intend that remedial measures short of termination be utilized prior to termination. S. Conf. Rep. 93-845, 93rd Cong., 2nd sess., 21 (1974).

To allow maximum latitude for informal resolution of violations, this Part does not specify what kind of remedial action, short of suspension or termination, should be taken when the Corporation finds a violation of the Act. It is anticipated that some initial violations may be due to uncertainty about the proper interpretation of the Act. In such instances, it should be sufficient to notify the recipient that its interpretation of the Act is erroneous. In other cases, the Corporation may instruct the recipient to remedy the matter according to its own procedures. It is expected that the Corporation will take formal action to remedy a violation only after other means have failed.

The procedure established by this Part is consistent with the Congressional intention that a recipient should have the initial responsibility for insuring that its employees comply with the Act. Section 1006(b)(2).

PRIMARY JURISDICTION

To insure uniform and consistent interpretation and application of the Act, every alleged violation should be dealt with in the manner prescribed by this Part. Use of this procedure will also protect the integrity of the adversary process by insuring that questions of compliance with the Act will not become ancillary issues in cases undertaken by attorneys employed by recipients. The most common situation in which a question of compliance arises is when an opposing party in a lawsuit challenges a client's eligibility for representation by a legal services attorney. Several courts confronted with that issue have held that it is not a proper one for judicial determination. *Ingram* v. *Justice Court*, 69 Cal. 2d 832, 447 P. 2d 650 (1968); *Budget Finance Plan, Inc.* v. *Staley*, Civil No. GS 19245-65 (D.C. Ct. Gen. Sess., June 9, 1966); *Florida ex rel T.J.M.* v. *Carlton*, No. 75-245 (Fla. Dist. Ct. App., June, 1975) 9 Clearinghouse Rev. 209 (July, 1975); *Brednenner* v. *Brednenner*, (Penn. C.P. Luzerne Co., June 10, 1975) 9 Clearinghouse Rev. 277 (August, 1975).

In both *Carlton* and *Brednenner*, the courts specifically recognized the issue as being one for administrative resolution. In *Carlton*, the Court said:

> No authorization, either state or federal, permits judicial inquiry into a client's eligibility for representation in a Florida Court by an attorney who is a member of the Florida Bar in good standing who has been designated by the client. Where the federal government makes legal services available under congressional authority, eligibility for rendering and receiving such legal services is a matter [to be resolved] by the federal agencies which make such services available. Slip Opinion at 2-3.

The approach taken by these courts is consistent with the one adopted here, which assumes that the Corporation has primary jurisdiction to enforce compliance with the Act. The primary jurisdiction doctrine requires a party to exhaust an available administrative procedure before seeking judicial resolution of a dispute subject to an agency's jurisdiction. The rationale for the doctrine supports its application to questions of compliance with the Legal Services Corporation Act. As explained by Professor Kenneth Davis, the doctrine is based on:

> * * * recognition of the need for orderly and sensible coordination of the work of agencies and of courts. Whether the agency happens to be expert or not, a court should not act upon subject matter that is peculiarly within the agency's specialized field without taking into account what the agency has to offer, for otherwise parties who are subject to the agency's continuous regulation may become the victims of uncoordinated and conflicting requirements. 3 Davis Administrative Law § 1901, at 5 (Footnote omitted).

Where appropriate, the primary jurisdiction doctrine applies even in the absence of a specific statutory provision requiring it, as shown by the decision in *Andrew* v. *Louisville & Nashville R.R. Co.*, 406 U.S. 320 (1972). Commenting on *Andrews*, Professor Davis said:

> * * * perhaps the case stands for the broad proposition that establishment of federal administrative machinery to take care of a class of controversies indicates legisla-

tive intent to require prior resort to that machinery, even though the legislative body said nothing about such prior resort. Davis Administrative Law, 1976 Supplement, § 19.03 at 428.

The legislative history of the Legal Services Corporation Act supports the view that Congress intended the Corporation to have primary jurisdiction to enforce compliance with the Act. The original legal services bill, S.1815, 93rd Cong. 1st Sess. (May 15, 1973) and H.R. 7824, Id., contained a provision that would have given private citizens the right to seek enforcement of the Act in federal court. The provision was deleted, and in the Senate debates it was specifically noted by Senator Nelson that "Any violation of the bill's restrictions [is] to be enforced by the Corporation." 120 Cong. Rec. 12923 (Daily Ed., July 18, 1974).

Support for application of the primary jurisdiction doctrine is found in the provisions of the Act itself. Section 1006(b)(1) gives the Corporation the authority, and Section 1007(d) gives it the obligation to enforce the Act. Moreover, the Act's restrictions are cast in terms that refer to the relation between the Corporation and a recipient: Section 1007(a) requires the Corporation to "insure" that certain restrictions are observed, and Section 1007(b) prohibits certain use of "funds made available by the Corporation." Both provisions support the view that an alleged violation of the Act is, at least in the first instance, a matter to be resolved by the Corporation.

Part 1618 is added to read as follows:

Sec.
1618.1 Purpose.
1618.2 Definition.
1618.3 Complaints.
1618.4 Duties of Recipients.
1618.5 Duties of the Corporation.

AUTHORITY: Sections 1006(b)(1), 1006(b)(2), 1006(b)(5), 1007(d), 1008(e) (42 U.S.C. 2996e(b)(1), 2996e(b)(2); 2996e(b)(5), 2996f(d), 2996g(e)).

§ 1618.1 Purpose.

In order to insure uniform and consistent interpretation and application of the Act, and to prevent a question of whether the Act has been violated from becoming an ancillary issue in any case undertaken by a recipient, this Part establishes a systematic procedure for enforcing compliance with the Act.

§ 1618.2 Definition.

As used in this Part, "Act" means the Legal Services Corporation Act or the rules and regulations issued by the Corporation.

§ 1618.3 Complaints.

A complaint of a violation of the Act by a recipient or an employee may be made to the recipient, the State Advisory Council, or the Corporation.

§ 1618.4 Duties of Recipients.

A recipient shall:

(a) Advise its employees of their responsibilities under the Act; and

(b) Establish procedures, consistent with the notice and hearing requirements of Section 1011 of the Act, for determining whether an employee has violated a prohibition of the Act; and shall establish a policy for determining the appropriate sanction to be imposed for a violation, including:

(1) Administrative reprimand if a violation is found to be minor and unintentional, or otherwise affected by mitigating circumstances;

(2) Suspension and termination of employment; and

(3) Other sanctions appropriate for enforcement of the Act; but

(c) Before suspending or terminating the employment of any person for violating a prohibition of the Act, a recipient shall consult the Corporation to insure that its interpretation of the Act is consistent with Corporation policy.

§ 1618.5 Duties of the Corporation.

(a) Whenever there is reason to believe that a recipient or an employee may have violated the Act, or failed to comply with a term of its Corporation grant or contract, the Corporation shall investigate the matter promptly and attempt to resolve it through informal consultation with the recipient.

(b) Whenever there is substantial reason to believe that a recipient has persistently or intentionally violated the Act, or, after notice, has failed to take appropriate remedial or disciplinary action to insure compliance by its employees with the Act, and attempts at informal resolution have been unsuccessful, the Corporation may proceed to suspend or terminate financial support of the recipient pursuant to the procedures set forth in Part 1612, or may take other action to enforce compliance with the Act.

Effective date: December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.76-34498 Filed 11-22-76;8:45 am]

PART 1620—PRIORITIES IN ALLOCATION OF RESOURCES

The Legal Services Corporation ("the Corporation") was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996-2996*l* ("the Act"), for the purpose of providing financial support for legal assistance in non-criminal proceedings or matters to persons financially unable to afford legal assistance. Section 1007(a)(2) of the Act requires the Corporation to establish, *inter alia*, priorities to insure that persons least able to afford legal assistance are given preference in furnishing such assistance.

On June 11, 1976 (41 FR 23727) a proposed regulation on priorities was published as § 1611.8 of the proposed regulation on eligibility. Interested persons were given until July 12, 1976 to submit comments on the proposed regulation. All comments received were given full consideration. The following issues were among those considered before adoption of the final regulation.

COMMENT

Section 1007(a)(2)(C) of the Act requires the Corporation to "establish priorities to ensure that persons least able to afford legal assistance are given preference in the furnishing of such assistance." In one sense, it may be argued that the mandate of that Section would be fully satisfied by the Corporation's choice of a maximum income level close to the subsistence line, excluding those with higher incomes who also might be deemed "eligible clients" within the meaning of the statutory definition. But regardless of the maximum income level established, no legal services program will have sufficient resources to meet all the legal needs of the financially eligible population in the area it serves. Disciplinary Rule 7-106 of the ABA Code of Professional Responsibility prohibits lawyers from undertaking more cases than they can handle in a professional manner. Recognizing this, every program has found it necessary to control its caseload, but few have done so in a rational way that insures that the most urgent needs of clients are met. As long as the need to control caseload continues, it will be necessary for programs to establish priorities in the provision of legal assistance.

In Formal Opinion 334 (August 10, 1974), the ABA Committee on Ethics and Professional Responsibility said that

> A governing board [of a legal services program] may legitimately exercise control by establishing priorities as to the categories or kinds of cases which the office will undertake * * *. The subject matter priorities must be based on a consideration of the needs of the client community and the resources available to the program.

The procedure established by the proposed regulation follows the direction suggested by the ABA, and also harmonizes the statutory mandate to give preference to those least able to afford legal assistance with the provision immediately following, Section 1007(a)(3), that requires the Corporation to "insure that grants and contracts are made so as to provide the most economical and effective delivery of legal assistance." Section 1620.2 requires a recipient to enlist its clients, employees, and governing body in a focused inquiry designed to determine the community's most urgent legal needs, before establishing priorities. The approach is consistent with the one recommended to the Corporation by the Office of Management and Budget:

> As in the case of medical treatment, the concept of *triage* must be applied—the relative need must be further defined in terms of resource availability and the distinction between emergency and deferrable legal matters. We believe it advisable for guidelines to be established which array the legal resources available and the worth (both social and economic) of the rights at issue. * * * Only when resources are sufficient to meet all "needs" is the luxury of a policy which need not make such a distinction reasonable.

Among other factors that a recipient may deem relevant, the regulation requires that consideration be given to the

resources of the recipient, the size of the financially eligible population in the area served, the availability of another source of free or low-cost legal assistance in a particular category of cases or matters, the urgency of particular legal problems, and the general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served. To the extent that the priorities chosen by a program give preference to the legal problems of the poor *qua* poor, they may promote more economical and effective legal services by directing resources to problems that are likely to be encountered by numerous members of the community, and may be capable of solution by a unified approach.

There are a variety of methods by which a program might choose to implement its priorities. It might determine to give no assistance at all in certain categories of cases, or to give advice and consultation without engaging in litigation, or to limit litigation to the trial level. It might establish different income eligibility standards for different categories of cases. For example, if a recipient determined that divorce representation could be obtained from the private Bar for a low fee, it might limit its representation in divorce cases to only the poorest clients. Another means of enforcing priorities is through educational efforts to inform the client community of the availability of a legal remedy in a particular category of problems. Priorities should not be enforced in a manner that would prevent the recipient from providing legal assistance in an emergency when the interest of justice so required, or providing appropriate legal assistance in response to unexpected or changed circumstances.

Part 1620 is added as follows.

Sec.
1620.1 Purpose.
1620.2 Procedure.

AUTHORITY: Sec. 1007(a)(2); 42 U.S.C. 2996 (a)(2).

§ 1620.1 Purpose.

This Part is designed to insure that a recipient will allocate its resources in an economical and effective manner.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedures adopted shall insure participation by clients and employees of the recipient, and shall provide opportunity for comment by interested members of the public. Priorities shall be reviewed periodically.

(b) The following factors shall be among those considered in establishing priorities:

(1) The resources of the recipient;

(2) The population of eligible clients in the geographic area served by the recipient;

(3) The availability of another source of free or low-cost legal assistance in a particular category of cases or matters;

(4) The urgency of particular legal problems of the clients of the recipient; and

(5) The general effect of the resolution of a particular category of cases or matters on persons least able to afford legal assistance in the community served.

Effective date. December 23, 1976.

THOMAS EHRLICH,
President,
Legal Services Corporation.

[FR Doc.76-34499 Filed 11-22-76;8:45 am]

Title 47—Telecommunication

[FCC 76-1034]

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 0—COMMISSION ORGANIZATION

Order

Adopted: November 9, 1976.

Released: November 17, 1976.

By the Commission:

In the Matter of Amendment of § 0.465 Rules and Regulations.

1. A number of data bases are maintained on the Commission's computer. Copies of these data bases, and extracts therefrom, are available to the public in a variety of forms from the National Technical Information Service, Department of Commerce, and the Commission's duplicating contractor. Computer source programs and associated documentation produced by the Commission is available directly from the Data Automation Division, Office of Executive Director. It is appropriate for information concerning the availability of such data bases and where and how to obtain them to be set out in the Freedom of Information Rules. We are therefore amending those rules to provide this information.

2. Accordingly, it is ordered, effective November 29, 1976, that § 0.465 of the Rules and Regulations is amended as set out in the Appendix hereto. Authority for this amendment is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r), and in 5 U.S.C. 552. Because the amendment is purely informational in nature, compliance with the prior notice and effective date requirements of 5 U.S.C. 553 is unnecessary.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT MULLINS,
Secretary.

Part 0 of Chapter I of Title 47 of the Code of Federal Regulations is revised as follows:

In § 0.465, paragraph (a) is revised and paragraph (d) is added to read as follows:

§ 0.465 Request for copies of materials which are available, for public inspection.

(a) The Commission annually awards a contract to a commercial firm to make copies of Commission records and offer them for sale to the public. The contract is awarded on the basis of the lower cost to the public. The charges are 8.5 cents a page for 8½" x 11" pages and 9 cents a page for 8½" x 14" pages. Currently, the contractor is Downtown Copy Center, 1730 K Street N.W., Washington, D.C. 20006 (Tel: 202-452-1422). Except as provided in paragraphs (b), (c) and (d) of this section and in § 0.467, requests for copies of the reconds listed in §§ 0.453 and 0.455 and those made available for inspection under § 0.461, should be directed to the contractor.

* * * * *

(d) (1) Copies of computer maintained data bases produced by the Commission may be obtained from the National Technical Information Service (NTIS), Department of Commerce, in the form of computer tapes, cards and paper printouts, or as microfiche. Extracts from such data bases requiring a computer run may also be obtained from NTIS. These materials are not available directly from the Commission. Data bases produced by the Commission are listed in "Directory of Computerized Data Files, Software—and Related Technical Reports" (NTIS/SR-75-02), which may be obtained from NTIS. Extracts from this volume pertaining to the Commission are available, without charge, from the Commission's Consumer Assistance Office and the Public Information Officer. The materials describe the data base, state the fee for providing it, and specify ordering information.

(2) Copies of computer generated data stored as paper printouts or on microfiche may also be obtained from the Commission's duplicating contractor (see paragraph (a) of this section).

(3) Copies of computer source programs and assocated documentation produced by the Commission may be obtained from the Data Automation Division, Office of the Executive Director. Requests shall be limited to computer source programs and associated documentation in existence when the request is submitted; requests which require the Commission to produce unique computer programs, data bases, and documentation, which are not part of its inventory at the time of the request, will not be honored. Likewise, periodic updates of these materials, as they occur, will not be furnished.

[FR Doc.76-34572 Filed 11-22-76;8:45 am]

[Docket No. 20895]

PART 73—RADIO BROADCAST SERVICES

Report and Order (Proceeding Terminated)

Adopted: November 15, 1976.
Released: November 16, 1976.

By the Chief, Broadcast Bureau:

In the Matter of Amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations. (Douglas, Wyoming)

1. The Commission herein considers the Notice of Proposed Rule Making, 41 FR 36220, in the above-captioned proceeding which was instituted on the Commission's own motion. The Notice proposed the substitution of Channel 257A for Channel 221A at Douglas, Wyo-

ming, in order to eliminate a short-spacing situation. No oppositions were filed.

2. Douglas (pop. 2,677), seat of Converse County (pop. 5,938)[1], is located approximately 113 kilometers (70 miles) east of Casper, Wyoming. Channel 221A, the only FM assignment in Douglas, is unoccupied, and no application for its use has been filed.

3. Recently the University of Wyoming was granted a construction permit to change the operation of its Station KUWR(FM), Laramie, Wyoming, from Channel 218 to Channel 220 and to increase its power. However, this created an 8 kilometer (5 miles) short-spacing between the proposed site of Station KUWR(FM) and Channel 221A at Douglas, Wyoming.

4. The Commission believes that the substitution of Channel 257A for Channel 221A at Douglas, Wyoming would serve the public interest by removing the short-spacing problem. No existing station would be affected by the substitution.

5. Authority for the adoption of the amendment contained herein appears in sections 4(i), 5(d)(1), 303 and 307(b) of the Communications Act of 1934, as amended, and in section 0.281 of the Commission's Rules and Regulations.

6. In view of the foregoing, *It is ordered*, That effective December 29, 1976, section 73.202(b) of the Commission's Rules, the FM Table of Assignments, is amended regarding the listed community to read as follows:

City	
Douglas, Wyoming	*Channel No.* 257A

7. *It is further ordered*, That this proceeding IS TERMINATED.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082 47 U.S.C. 154, 155, 303.)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.76-34570 Filed 11-22-76;8:45 am]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

Subchapter B—Taking, Possession, Transportation, Sale, Purchase, Barter, Exportation, and Importation of Wildlife

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

CHAPTER II—NATIONAL MARINE FISHERIES SERVICE, NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPARTMENT OF COMMERCE

Subchapter C—Marine Mammals

PART 222—ENDANGERED FISH OR WILDLIFE

Hawaiian Monk Seal Final Regulations

Final Regulations

The Director, National Marine Fisheries Service and the Director, U.S. Fish and Wildlife Service hereby issue a notice of final rulemaking listing the Hawaiian monk seal (*Monachus schauinslandi*) as an endangered species throughout its range, pursuant to section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.) (hereinafter the "Act"). This final rulemaking adds the Hawaiian monk seal to the List of Endangered and Threatened Wildlife found in 50 CFR 17.11 and references such listing in 50 CFR 222.23. This listing is based on a final determination by the Director, National Marine Fisheries Service (hereinafter the "Director" and the "NMFS," respectively), that the Hawaiian monk seal is an endangered species. The Hawaiian monk seal is found throughout the Hawaiian Archipelago, but is known to breed only on the islands of the Leeward Chain, including French Frigate Shoals, Laysan Island, Lisianski Island, Pearl and Hermes Reef, Midway Atoll, and Kure Atoll.

BACKGROUND

Notice of the proposed determination to list this species as an "endangered" species was published on August 11, 1976, at 41 FR 33922-33924.

SUMMARY OF COMMENTS

The several comments received were unanimous in supporting the NMFS/FWS proposal to list the Hawaiian monk seal as an endangered species. The Governor of Hawaii indicated that the State had no objection to the proposal and conveyed their belief that "listing of the Hawaiian monk seal as an endangered species throughout its range in the Northwestern Hawaiian Islands will assure that its management will focus on perpetuating a viable population."

One organization commenting on the proposal is particularly concerned over the future of the Hawaiian Islands National Wildlife Refuge and the dependence of the Hawaiian monk seal on this area. Other commenting individuals urged that critical habitat of the seal be protected, although no new specific habitat information or requests were submitted. No requests for a public hearing were received.

MODIFICATION OF PROPOSED REGULATIONS

Since only support with no substantive changes (except one comment pertaining to harassment by dogs) was received on the proposal, the proposed regulations are being adopted as the final regulations without change. Subsequent to the publication of the proposed regulations, all dogs were removed from Kure Atoll.

Since no new information was submitted on specific habitat and since no requests were made to designate specific habitat, no critical habitat designations for the Hawaiian monk seal are being proposed at this time.

EFFECT OF FINAL REGULATIONS

The general prohibitions of section 9(a) of the Act apply to all endangered species of fish and wildlife. Therefore, with respect to any Hawaiian monk seal (including any part or product thereof), it is unlawful for any person subject to the jurisdiction of the United States to:

(1) Import any such species into, or export any such species from, the United States;

(2) Take any such species within the United States or the territorial sea of the United States;

(3) Take any such species upon the high seas;

(4) Possess, sell, deliver, carry, transport, or ship, by any means whatsoever, any such species taken in violation of (2) and (3) above;

(5) Deliver, receive, carry, transport, or ship in interstate or foreign commerce, by any means whatsoever and in the course of a commercial activity, any such species;

(6) Sell or offer for sale in interstate or foreign commerce any such species; or

(7) Violate any regulation pertaining to such species and promulgated by the Secretary pursuant to authority provided by the Act.

The term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct.

There are certain limited exceptions to these general prohibitions including a grandfather clause for species held in captivity or a controlled environment on December 28, 1973, and not for commercial purposes (section 9(b) of the Act); a one-year limited exemption to minimize undue economic hardship tied to a previous contract commitment (section 10(b) of the Act); and permits for scientific purposes or enhancement of propagation or survival of the species (section 10(a) of the Act).

In addition, NMFS regulations published in Parts 217-222 and Part 225 of Title 50 of the Code of Federal Regulations, set forth rules and procedures which apply to all endangered species under the jurisdiction of the Secretary of Commerce. These regulations provide for general provisions, civil procedures, seizure and forfeiture procedures, importation and exportation at designated ports, general and specific permit provisions, and Federal/State cooperation and financial assistance. These regulations are now applicable, of course, to the Hawaiian monk seal.

INTERAGENCY COOPERATION

This listing also makes available the protection afforded by section 7 of the Act. That section reads as follows:

"Section 7. The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal departments and agencies shall in consultation with and with the assist-

[1] Populations are taken from the 1970 U.S. Census.

ance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of endangered species and threatened species listed pursuant to Section 4 of this Act and by taking such action necessary to insure that actions authorized, funded, or carried out by them do not jeopardize the continued existence of such endangered species and threatened species or result in the destruction or modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical."

While no "critical habitat" has yet been designated by NMFS for the Hawaiian monk seal, the other provisions of section 7 are applicable.

These regulations are effective on December 23, 1976.

This notice of final rulemaking is issued under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: November 15, 1976.

JACK W. GEHRINGER,
Deputy Director, National Marine Fisheries Service.

LYNN A. GREENWALT,
Director, U.S. Fish and Wildlife Service.

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations is amended by adding to § 17.11(i) under the class entitled "Mammals" and immediately before "Seal, Mediterranean Monk" the following:

§ 17.11 Endangered and threatened wildlife.

* * * * *

Species			Range				
Common name	Scientific name	Population	Known distribution	Portion of range where threatened or endangered	Status	When listed	Special rules
*	*	*	*	*	*		*
Seal, Hawaiian monk.	*Monachus schauinslandi.*	NA	Hawaiian Archipelago.	Entire	E	16	NA
*	*	*	*	*	*		*

17—41 FR 51612; November 23, 1976.

PART 222—ENDANGERED FISH OR WILDLIFE

§ 222.23 [Amended]

In addition, § 222.23(a) of Subpart C, Part 222 of Chapter II, Title 50 of the Code of Federal Regulations is amended by adding "Hawaiian monk seal (*Monachus schauinslandi*)" immediately before "Mediterranean monk seal (*Monachus monachus*)" in the second sentence.

[FR Doc.76-34590 Filed 11-22-76;8:45 am]

SUBCHAPTER B—TAKING, POSSESSION, TRANSPORTATION, SALE, PURCHASE, BARTER, EXPORTATION, AND IMPORTATION OF WILDLIFE

PART 20—MIGRATORY BIRD HUNTING

Open Seasons, Bag Limits, and Possession of Certain Migratory Game Birds in the United States; Correction

In FR Doc. 76-27463 appearing at page 43163 in the FEDERAL REGISTER of September 30, 1976, the following correction is made in order to reflect the State of Oregon's intent and to bring Federal and State regulations into agreement:

§ 209.105(f) [Amended]

In section 20.105(f), in the table on page 43174, under Oregon, in Baker and Malheur Counties, the season dates on the same line as "Ducks" are corrected to read "October 9–January 16." The remainder of the table remains unchanged.

Dated: November 18, 1976.

JAMES W. PULLIAM, Jr.,
Acting Director,
U.S. Fish and Wildlife Service.

[FR Doc.76-34552 Filed 11-22-76;8:45 am]

proposed rules

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

NATIONAL CENTER FOR PRODUCTIVITY AND QUALITY OF WORKING LIFE

[1 CFR Part 438]

PRIVACY ACT OF 1974

Proposed Regulations for Implementation

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. Interested parties should submit comments on or before December 20, 1976. Comments should be addressed to the Executive Director, National Center for Productivity and Quality of Working Life, Room 3002, 2000 M Street, N.W., Washington, D.C. 20036.

Signed this 15th day of November 1976, by:

GEORGE H. KUPER,
Executive Director

It is proposed to add the following Part 438 to Chapter IV Title I of the CFR.

PART 438—PRIVACY ACT IMPLEMENTATION

Sec.
438.1 Purpose and scope.
438.2 Definitions.
438.3 Procedures for requests for access to individual records in a record system.
438.4 Times, places, and requirements for the identification of the individual making a request.
438.5 Access of requested information to the individual.
438.6 Request for correction or amendment to the record.
438.7 Agency review of request for correction or amendment of the record.
438.8 Appeal of an initial adverse agency determination on correction or amendment of the record.
438.9 Disclosure of record to a person other than the individual to whom the record pertains.
438.10 Fees.

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

§ 438.1 Purpose and scope.

The purposes of these regulations are to: (a) Establish a procedure by which an individual can determine if the National Center for Productivity and Quality of Working Life (hereinafter known as the Center) 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.

§ 438.2 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 Center, 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 Center 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.

§ 438.3 Procedures for requests for access to individual records in a record system.

An individual shall submit a request to the Administrative Officer of the Center 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 Administrative Officer of the Center which states the individual's desire to review his or her record.

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

An individual making a request to the Administrative Officer of the Center pursuant to § 438.3 of this part shall present the request at the Center offices, 2000 M Street, N.W., Washington, D.C. 20036, on any business day between the hours of 9 a.m. and 5:30 p.m. The individual submitting the request should present himself or herself at the Center's offices with a form of identification which will permit the Center to verify that the individual is the same individual as contained in the record requested.

§ 438.5 Access of requested information to the individual.

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

§ 438.6 Request for correction or amendment to the record.

The individual should submit a request to the Administrative Officer of the Center which states the individual's desire to correct or to amend his or her record. This request is to be made in accord with the provisions of § 438.4 of this Part.

§ 438.7 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 of the Center 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, the reason for the refusal, and the procedures established by the Center for the individual to request a review of that refusal.

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

An individual who disagrees with the refusal of the Administrative Officer of the Center to correct or to amend his or her record may submit a request for a review of such refusal to the Executive Director, National Center for Productivity and Quality of Working Life, 2000 M Street, N.W., Washington, D.C. 20036. The Executive Director will, not later than thirty working days from the date in which the individual requests 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 Center a concise statement setting forth the reasons for his or her disagreement with the refusal of the Center and may seek judicial review of the Executive Director's determination under 5 U.S.C. 552a(g)(1)(A)

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

The Center will not disclose a record to any individual other than to the in-

dividual 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 Center's notices of its systems of records.

§ 438.10 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.76-34511 Filed 11-22-76;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 223]

[EDR-309A; Docket No. 29912; Dated: November 16, 1976]

TARIFFS OF AIR CARRIERS: FREE AND REDUCED-RATE TRANSPORTATION

Supplemental Notice of Proposed Rulemaking

By EDR-309, October 12, 1976, the Board issued a notice of proposed rulemaking in this proceeding requesting comments from interested persons in response to its proposal requiring carriers seeking to provide free or reduced-rate transportation pursuant either to a contract or agreement with a foreign government or to a foreign government law or directive to receive prior approval from the Board. If the Board found the request to be consistent with the public interest, the transportation would be authorized. In response to its proposal, the Board requested that comments be filed by November 17, 1976.

By telegraphic communication received on November 15, 1976, a request has been made to extend the date for filing comments to November 26, 1976.

Since it does not appear that granting the requested nine day extension will unduly prejudice any party to this proceeding and in the interest of receiving the views of all interested persons, the undersigned finds that good cause has been shown for an extension of time for filing comments. It should also be noted that this is the first extension requested in this proceeding.

Accordingly, pursuant to the authority delegated in Section 385.20(d) of the Board's Organization Regulations (14 CFR Part 385), the undersigned hereby extends the time for filing comments to November 26, 1976.

(Sec. 204(a), Federal Aviation Act, as amended, 72 Stat. 743, 49 U.S.C. 1324.)

SIMON J. EILENBERG,
Associate General Counsel, Rules Division.

[FR Doc.76-34579 Filed 11-22-76;8:45 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing-Federal Housing Commissioner

[24 CFR Part 201]

[Docket No. R-76-421]

Construction and Safety Standards

The Department of Housing and Urban Development is considering amending Part 201 of Title 24 of the Code of Federal Regulations, Subpart B, "Mobile Home Loans". The proposed amendments would require that mobile homes financed with loans under this part meet the requirements of the National Mobile Home Construction and Safety Standards of 1974 (Pub. L. 93-383, 42 U.S.C. 5401, et seq.) in effect at the time the mobile home is manufactured. The regulations concerning factory inspection and private testing laboratories would be revoked as these activities are now covered by the above standards.

Interested persons are invited to participate in this proposed rulemaking by submitting written data, views, and arguments with respect to this proposal. Communications should be identified by the above docket number and title, and should be filed with the Rules Docket Clerk, Office of the Secretary, Room 10141, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

All relevant materials received on or before December 22, 1976, will be considered before adoption of a final rule. Copies of comments submitted will be available for public inspection during normal business hours at the above address.

A Finding of Inapplicability pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, has been made with regard to these proposed regulations in accordance with HUD Handbook 1390.1. A copy of the Finding of Inapplicability is available for public inspection at the above address.

The proposed amendments are as follows:

1. Section 201.520(b) Structural design and standards is proposed to read as follows:

§ 201.520 Structural design and standards.

* * * * *

(b) The requirements of paragraph (a) of this section shall be satisfied by a certification by the manufacturer that the mobile home conforms to all applicable Federal construction and safety standards in effect on the date the mobile home was manufactured. The certification shall be in the form of a label or tag affixed to the mobile home as prescribed in section 616 of the National Mobile Home Construction and Safety Standards Act of 1974, Pub. L. 93-383, 42 U.S.C. 5401, 5415.

* * * * *

2. In consideration of the foregoing, § 201.521 Factory inspection and § 201.522 Private testing organizations, are revoked.

§ 201.521 [Revoked]

§ 201.522 [Revoked]

(Sec. 7(d) 79 Stat. 670 (42 U.S.C. 3535(d)); sec. 2, 48 Stat. 1246, 12 U.S.C. 1703, as amended by Pub. L. 93-383.)

It is hereby certified that the economic and inflationary impacts of this regulation have been carefully evaluated in accordance with OMB Circular A-107.

Issued at Washington, D.C., November 15, 1976.

JAMES L. YOUNG,
Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc.76-34549 Filed 11-22-76;8:45 am]

Federal Insurance Administration

[24 CFR Part 1917]

[Docket No. FI-2452]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Borough of Lehighton, Carbon County, Pa.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93-234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90-448), 42 U.S.C. 4001-4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Lehighton, Carbon County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the bulletin board in the Municipal Building, Lehighton.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mayor Wilbur A. Bauchspies, Municipal Building, Lehighton, Pennsylvania 18235. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community. The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Lehigh River.	U.S. Route 209	463
	Bridge St	464
	Iron St. (extended)	466
	ConRail	471
	Northeast corporate limits	476
Mahoning Creek.	Bridge St	491
	9th St	472
	East Penn St	468
	Blakeslee Blvd	466
	ConRail	462

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended;

42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued: November 1, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-34351 Filed 11-22-76;8:45 am]

[24 CFR Part 1917]

[Docket No. FI-2453]

APPEALS FROM FLOOD ELEVATION DETERMINATION AND JUDICIAL REVIEW

Proposed Flood Elevation Determinations for the Borough of Manor, Westmoreland County, Pa.

The Federal Insurance Administrator, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 Pub. L. 90–448), 42 U.S.C. 4001–4128, and 24 CFR Part 1917 (§ 1917.4(a)) hereby gives notice of his proposed determinations of flood elevations for the Borough of Manor, Westmoreland County, Pennsylvania.

Under these Acts, the Administrator, to whom the Secretary has delegated the statutory authority, must develop criteria for flood plain management in identified flood hazard areas. In order to participate in the National Flood Insurance Program, the Borough must adopt flood plain management measures that are consistent with the flood elevations determined by the Secretary.

Proposed flood elevations (100-year flood) are listed below for selected locations. Maps and other information showing the detailed outlines of the flood-prone areas and the proposed flood elevations are available for review at the Borough Building, Race Street, Manor.

Any person having knowledge, information, or wishing to make a comment on these determinations should immediately notify Mr. Paul Lehman, Council Member of Manor, P.O. Box 455, Manor, Pennsylvania 15665. The period for comment will be ninety days following the second publication of this notice in a newspaper of local circulation in the above-named community. The proposed 100-year Flood Elevations are:

Source of flooding	Location	Elevation in feet above mean sea level
Bushy Run.	Harrison City Rd. (Route 993).	920
	Perpendicular to Harrison City Rd at Chestnut Pl.	922
	Rowe's Lane (extended)	937
	North corporate limit	960
Brush Creek.	North ConRail Bridge	923
	South ConRail Bridge	929
	Main St	929
	Shady Ave. (extended)	933
	Penn Manor Rd	936
	Blaine Ave. (extended)	942

(National Flood Insurance Act of 1968 (Title XIII of Housing and Urban Development Act of 1968), effective January 28, 1969 (33 FR 17804, November 28, 1968), as amended; 42 U.S.C. 4001–4128; and Secretary's delegation of authority to Federal Insurance Administrator 34 FR 2680, February 27, 1969, as amended by 39 FR 2787, January 24, 1974.)

Issued November 1, 1976.

J. ROBERT HUNTER,
Federal Insurance Administrator.

[FR Doc.76-34352 Filed 11-22-76;8:45 am]

DEPARTMENT OF DEFENSE

Department of the Air Force

[32 CFR Part 819b]

LICENSING GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE AIR FORCE

Proposed Policies, Administrative Requirements, Procedures, Terms and Conditions

The Department of the Air Force proposes to add a new part to Subchapter C of Title 32, Code of Federal Regulations, Part 819b consisting of §§ 819.b.1 through 819.b.21. This new part prescribes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in Government-owned domestic patents and patent applications vested in the United States of America as represented by the Secretary of the Department of the Air Force. This Part implements DOD Directive 5535.3, November 2, 1973, and is consistent with GSA Licensing of Government-Owned Inventions, 41 CFR 101–4.1.

Interested persons are invited to comment on the proposed rule making on or before December 23, 1976. Written data, views, arguments concerning the proposal must be submitted to Mr. Peterson, Judge Advocate Civil Division, Patent Office, Forrestal Building, Washington, D.C. 20314. Comments and suggestions submitted in writing will be available for public inspection and copying at the above address.

The new part will read as follows:

PART 819b—LICENSING GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF THE AIR FORCE

Subpart A—General

Sec.
819b.1 Purpose.
819b.2 Air Force policy.
819b.3 Execution of licenses.
819b.4 Delegation of authority.
819b.5 Definitions.

Subpart B—Types of Licenses and Conditions for Licensing

819b.6 Inventions available for licensing.
819b.7 Nonexclusive license.
819b.8 Limited exclusive license.
819b.9 Additional licenses.
819b.10 Royalties.
819b.11 Reports.

Subpart C—Procedures

819b.12 Publication requirements.
819b.13 Requests for a nonexclusive or a limited exclusive license.
819b.14 Contents of a nonexclusive license application.
819b.15 Contents of a limited exclusive license application.
819b.16 Published notices.
819b.17 Modification or revocation.
819b.18 License requests received by Air Force field activities.
819b.19 Appeals.

Subpart D—Litigation

819b.20 Government policy.

Subpart E—Transfer of Custody of Government Inventions

819b.21 Procedures.

AUTHORITY: 10 U.S.C. 8012.

Subpart A—General

§ 819b.1 Purpose.

This part prescribes the policies, administrative requirements, procedures, terms, and conditions for licensing of rights in Government-owned domestic patents and patent applications vested in the United States of America as represented by the Secretary of the Department of the Air Force. It implements DOD Directive 5535.3, November 2, 1973 and is consistent with GSA Licensing of Government-Owned Inventions, 41 CFR 101–4.1.

§ 819b.2 Air Force policy.

(a) A major premise of the Presidential Statement of Government Patent Policy, 23 August 1971 (36 FR 16887, August 26, 1971), is that Government-owned inventions normally will best serve the public interest when they are developed to the point of practical application and made available to the public in the shortest possible time. The granting of express nonexclusive or exclusive licenses for the practice of these inventions may assist in the accomplishment of the national objective to achieve a dynamic and efficient economy.

(b) The granting of nonexclusive license generally is preferable since the invention is thereby laid open to all interested parties and serves to promote competition in industry, if the invention is in fact promoted commercially. However, to obtain commercial utilization of the invention, it may be necessary to grant an exclusive license for a limited period of time as an incentive for the investment of risk capital to achieve practical application of an invention.

(c) Whenever the grant of an exclusive license is deemed appropriate, it will be negotiated on terms and conditions most favorable to the public interest. In selecting an exclusive licensee, consideration shall be given to the capabilities of the prospective licensee to further the technical and market development of the invention, his plan to undertake the development, the projected impact on competition, and the benefit to the Government and the public. Consideration will be given also to assisting small business and minority business enterprises, as well as economically depressed, low income, and labor surplus areas, and whether each or any applicant is a U.S. citizen or corporation. Where there is more than one applicant for an exclusive license, that applicant will be selected who is determined to be most capable of satisfying the criteria and achieving the goals set forth in this part.

(d) No license will be granted or implied in any invention under the custody of the Department of the Air Force other than as provided for in this part except under:

(1) Any existing or future treaty or agreement between the United States and any foreign government or intergovernmental organization, or

(2) Licenses under or other rights to inventions made or conceived in the course of or under Department of the Air Force research and development contracts where such licenses or other rights to such inventions are granted to or provided for in the contract and retained by the party contracting with the Department of the Air Force.

(e) No grant of a license under this part will be construed to confer upon any licensee any immunity from the antitrust laws or from a charge of patent misuse, and the acquisition and use of rights pursuant to this part will not be immunized from the operation of State or Federal law by reason of the source of the grant.

§ 819b.3 Execution of licenses.

Nonexclusive and exclusive licenses will be executed on behalf of the Department of the Air Force by the Secretary.

§ 819b.4 Delegation of authority.

The administration of this part is delegated to the Judge Advocate General and, while he is so acting, to any individual who is Acting The Judge Advocate General. The Judge Advocate General may redelegate, without the power of redelegation, to the Chief, Patents Division, Office of the Judge Advocate General, the administration of this part.

§ 819b.5 Definitions.

(a) "Government invention" means an invention covered by a domestic patent or patent application that is vested in the United States and in the custody of the Department of the Air Force, and is designated by the Air Force as appropriate for the grant of an express nonexclusive or exclusive license.

(b) "To the point of practical application" means to manufacture in the case of a composition or product, to practice in the case of a process, or to operate in the case of a machine under such conditions as to establish that the invention is being worked and that its benefits are reasonably accessible to the public.

Subpart B—Types of Licenses and Conditions for Licensing

§ 819b.6 Inventions available for licensing.

Government inventions normally will be made available for the granting of express nonexclusive or limited exclusive licenses to responsible applicants according to the factors and conditions set forth in §§ 819b.7 and 819b.8, subject to the applicable procedures of Subpart C of this part.

§ 819b.7 Nonexclusive license.

(a) *Availability of licenses.* Each Government invention normally will be made available for the granting of nonexclusive revocable licenses, subject to the provisions of any other licenses, including those under § 819b.9.

(b) *Terms of grant.* (1) The duration of the license will be for a period as specified in the license agreement, provided that the licensee complies with all the terms of the license.

(2) The license will require the licensee to bring the invention to the point of practical application within a period specified in the license, or such extended period as may be agreed upon, and to continue to make the benefits ofthe invention reasonably accessible to the public.

(3) The license may be granted for all or less than all fields of use of the invention, and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographical portion thereof.

(4) After termination of a period specified in the license agreement, the Air Force may restrict the license to the fields of use and/or geographic areas in which the licensee has brought the invention to the point of practical application and continues to make the benefits of the invention reasonably accessible to the public.

(5) The license may extend to subsidiaries and affiliates of the licensee but will be nonassignable without approval of the Air Force, except to the successor of that part of the licensee's business to which the invention pertains.

(6) The Government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent. Moreover, the Government assumes no liability whatsoever resulting from the exercise of the license.

§ 819b.8 Limited exclusive license.

(a) *Availability of licenses.* Each Government invention may be made available for the granting of a limited exclusive license provided that:

(1) The invention has been published as available for licensing pursuant to § 819b.12 for a period of at least 6 months;

(2) It has been determined that (i) the invention may be brought to the point of practical application in certain fields of use and/or in certain geographical locations by exclusive licensing, (ii) the desired practical application has not been achieved under any nonexclusive license granted on the invention, and (iii) the desired practical application is not likely to be achieved expeditiously in the public interest under a nonexclusive license or as a result of further Government-funded research or development;

(3) The notice of the prospective licensee has been published pursuant to § 819b.6 for at least 60 days; and

(4) After termination of the period set forth in § 819b.8(a)(3) the Air Force has determined that no applicant for a nonexclusive license has brought or will bring, within a reasonable period, the invention to the point of practical application as specified in the exclusive license, and that to grant the exclusive license would be in the public interest.

(b) *Selection of exclusive licensee.* An exclusive licensee will be selected on bases consistent with the policy set forth in § 819b.2 and in accordance with the procedures set forth in Subpart C of this part.

(c) *Terms of grant.* (1) The license may be granted for all or less than all fields of use of the Government invention and throughout the United States of America, its territories and possessions, the Commonwealth of Puerto Rico, and the District of Columbia, or in any lesser geographic portion thereof.

(2) Subject to the rights reserved to the Government in § 819b.8 (c)(6) and (c)(7) the licensee will be granted the exclusive right to practice the invention in accordance with the terms and conditions specified in the license.

(3) The duration of the license will be negotiated but will be for a period less than the terminal portion of the patent, the period remaining being sufficient to make the invention reasonably available for the grant of a non-exclusive license; and such period of exclusively will not exceed 5 years unless it has been determined on the basis of a written submission supported by a factual showing that a longer period is reasonably necessary to permit the licensee to enter the market and recoup his reasonable costs in so doing.

(4) The license will require the licensee to bring the invention to the point of practical application within a period specified in the license, or within a longer period as approved by the Air Force, and to continue to make the benefits of the invention reasonably accessible to the public.

(5) The license will require the licensee to expend a specified minimum amount of money and/or to take other specified actions, within a specified period of time after the effective date of the license, in an effort to bring the invention to the point of practical application.

(6) The license will be subject to the irrevocable royalty-free right of the Government of the United States to practice and have practiced the invention by or on behalf of the Government of the United States and on behalf of any foreign government or intergovernmental organization pursuant to any existing or future treaty or agreement with the United States.

(7) The license will reserve to the Air Force the right to require the licensee to grant sublicenses to responsible applicants on terms that are reasonable in the circumstances (i) to the extent that the invention is required for public use by Government regulations, or (ii) as may be necessary to fulfill health or safety needs, or (iii) for other public purposes stipulated in the license.

(8) The license may extend to subsidiaries and affiliates of the licensee but will be nonassignable without approval

of the Air Force, except to successors of that part of the licensee's business to which the invention pertains.

(9) An exclusive licensee may grant sublicenses under his license, subject to the approval of the Air Force. Each sublicense granted by an exclusive licensee will make reference to the exclusive license, including the rights retained by the Government under the exclusive license, and a copy of such sublicense will be furnished to the Air Force.

(10) The license may be subject to such other terms as may be in the public interest.

(11) The Government makes no representation or warranty as to the validity of any licensed patent or patent application, or of the scope of any of the claims contained therein, or that the exercise of the license will not result in the infringement of any other patent. Moreover, the Government assumes no liability whatsoever resulting from the exercise of the license.

§ 819b.9 Additional licenses.

Subject to any outstanding licenses, nothing in this Part will preclude the Air Force from granting additional nonexclusive or limited exclusive licenses for Government-owned inventions when the Air Force determines that to do so would provide for an equitable exchange of patent rights. The following exemplify circumstances wherein such licenses may be granted:

(a) In consideration of the settlement of an interference;

(b) In consideration of a release of a claim of infringement; or

(c) In exchange for or as part of the consideration for a license under adversely held patents.

§ 819b.10 Royalties.

(a) Normally, royalties will not be charged under nonexclusive licenses granted to U.S. citizens and U.S. corporations on Government inventions; however, the Air Force may require other considerations.

(b) A limited exclusive license on a Government invention will contain a royalty provision and/or other consideration flowing to the Government.

§ 819b.11 Reports.

A license will require the licensee to submit periodic reports to the Air Force on his efforts to achieve practical application of the invention. The reports will contain information within his knowledge, or which he may acquire under normal business practices, pertaining to the commercial use being made of the invention and other information which the Air Force may determine is pertinent to its licensing activities and is specified in the license.

Subpart C—Procedures

§ 819b.12 Publication requirements.

The Department of the Air Force will cause to be published in the FEDERAL REGISTER, the Official Gazette of the U.S. Patent and Trademark Office, and at least one other publication that the Air Force deems would best serve the public interest, a list of the Government inventions in custody of the Department of the Air Force available for licensing under the conditions specified in Subpart B of this part. The list will be revised periodically to include directly, or by reference to a previously published list, all inventions currently available for licensing. Other publications on inventions available for licensing may be made and may include abstracts of the inventions, when appropriate, as well as information on the design, construction, use, and potential market for the inventions.

§ 819.b.13 Requests for a nonexclusive or a limited exclusive license.

Requests for licenses under a Government invention in the custody of the Department of the Air Force should be addressed to the Chief, Patents Division, HQ USAF/JACP, Washington, D.C. 20314.

§ 819b.14 Contents of a nonexclusive license application.

An application for a nonexclusive license will include:

(a) Identification of the invention for which a license is desired, including the patent application serial number or patent number, title and date, if known, and any other identification of the invention;

(b) Name and address of the person, company, or organization applying for license and whether the applicant is a U.S. citizen or a U.S. corporation;

(c) Name and address of representative of applicant to whom correspondence should be sent;

(d) Nature and type of applicant's business;

(e) Source of information concerning the availability of a license on this invention;

(f) Purpose for which license is desired and a brief description of applicant's plan to achieve that purpose;

(g) A statement of the fields of use for which applicant intends to practice the invention; and

(h) A statement as to the geographic areas in which the applicant would practice the invention.

§ 819b.15 Contents of a limited exclusive license application.

In addition to the information indicated in § 819b.14, an application for a limited exclusive license will include:

(a) Applicant's status, if any, in any one or more of the following categories:

(1) Small business firm,

(2) Minority business enterprise,

(3) Location in a surplus labor area,

(4) Location in a low-income area, and

(5) Location in an economically depressed area;

(b) A statement of applicant's capability to undertake the development and marketing required to achieve the practical application of the invention;

(c) A statement describing the time, expenditure, and other acts which the applicant considers necessary to achieve practical application of the invention and the applicant's offer to invest the facilities and funds to perform such acts if the license is granted;

(d) A statement that contains the applicant's best knowledge of the extent to which the Government invention is being practiced by private industry and the Government; and

(e) Any other facts which the applicant believes are evidence that it is in the public interest for the Air Force to grant a limited exclusive license rather than a nonexclusive license and that such limited exclusive license should be granted to the applicant.

§ 819b.16 Published notices.

(a) A notice that a prospective limited exclusive licensee has been selected will be published by the Air Force in the FEDERAL REGISTER, and a copy of the notice will be sent to the Attorney General. The notice will include:

(1) Identification of the invention;

(2) Identification of the selected licensee;

(3) Duration and scope of the contemplated license;

(4) A statement to the effect that the license will be granted unless;

(i) An application for a nonexclusive license, submitted by a responsible applicant pursuant to § 819b.4, is received by the Air Force within 60 days from the publication of the notice in the FEDERAL REGISTER; and the Air Force determines in acordance with its prescribed procedures, under which procedures the Air Force will record and make available for public inspection all decisions made pursuant thereto and the basis therefor, that the applicant has established that he has already achieved or is likely to bring the invention to the point of practical application within a reasonable period under a nonexclusive license; or

(ii) The Air Force determines that a third party has presented evidence and argument which has established that it would not be in the public interest to grant the exclusive license.

(b) If a limited exclusive license has been granted pursuant to this part, notice thereof will be published in the FEDERAL REGISTER. Such notice will include:

(1) Identification of the invention;

(2) Identification of the licensee; and

(3) Duration and scope of the license.

(c) If a limited exclusive license has been modified or revoked pursuant to § 819b.17, notice thereof will be published in the FEDERAL REGISTER. Such notice will include:

(1) Identification of the invention;

(2) Identification of the licensee; and

(3) Effective date of modification or revocation.

§ 819b.17 Modification of revocation.

(a) Any license granted pursuant to this Part may be modified or revoked by the Air Force if the licensee at any time defaults in making any report required by the license or commits any breach of

any convenant or agreement therein contained.

(b) A license may also be revoked by the Air Force if the licensee willfully makes a false statement of a material fact or willfully omits a material fact in the license application or any report required in the license agreement.

(c) Before modifying or revoking any license granted pursuant to this regulation for any cause, the Air Force will furnish the licensee and any sublicensee of record a written notice of intention to modify or revoke the license; and the licensee and any sublicensee will be allowed 30 days after such notice to remedy any breach of any covenant or agreement as referred to in § 819b.7(a) or to show cause why the license should not be modified or revoked.

§ 819b.18 License requests received by Air Force field activities.

All communications received in any Air Force activity requesting information regarding the licensing of a Government invention will be acknowledged and forwarded without further action directly to HQ USAF/JACP, Washington, D.C. 20314.

§ 819b.19 Appeals.

An applicant for a license, a licensee, or such other third party who has participated under § 819b.6(a)(4)(ii) shall have the right to appeal to the Judge Advocate General, or in his absence, to the Acting Judge Advocate General, any decision concerning the granting, denial, interpretation, or modification, or revocation of a license. Such appeal must be made in writing and within 60 days from the date the decision was mailed.

Subpart D—Litigation

§ 819b.20 Government policy.

The property interest in a patent is the right to exclude. It is not the intent of the Government to transfer the property right in a patent when a license is issued pursuant to this part. Accordingly, the right to sue for infringement will be retained with respect to all licenses so issued by the Government.

Subart E—Transfer of Custody of Government Inventions

§ 819b.21 Procedure.

Under certain circumstances it may be in the best interest of the Air Force to enter into an agreement to transfer its custody of an invention to another Government agency for purposes of administration including the granting of licenses pursuant to this part. Such transfers will be made on a case-by-case basis.

FRANKIE S. ESTEP,
Air Force Federal Register Liaison Officer, Directorate of Administration.

[FR Doc.76-34591 Filed 11-22-76;8:45 am]

SELECTIVE SERVICE SYSTEM

[32 CFR Parts 1611 and 1631]

SELECTIVE SERVICE REGULATIONS

Proposed Amendments

Pursuant to the Military Selective Service Act, as amended (50 App. U.S. Code, sections 451 et seq.), and Executive Order Number 11623 dated October 12, 1971, the Director of Selective Service System hereby gives public notice that consideration is being given to the following proposed amendments to the Selective Service Regulations constituting a portion of Chapter XVI of Title 32 of the Code of Federal Regulations. These Regulations implement the Military Selective Service Act, as amended (50 App. U.S. Code, sections 451 et seq.).

The proposed revision of Part 1611 would eliminate obsolete language and the provisions for voluntary registration of certain persons and the special arrangements for registration of inmates of institutions.

The proposed revision of § 1631.1 would eliminate the requirements that the lottery to establish the random sequence for induction be conducted once each year in Washington, D.C.

All persons who desire to submit views to the Director on the proposals should prepare them in writing and forward them to the Director, Selective Service System, Attn: GC, 600 E Street, Northwest, Washington, D.C. 20435. Comments received on or before December 23, 1976, will be considered.

The proposed amendments follow:

PART 1611—DUTY AND RESPONSIBILITY TO REGISTER

Sec.
1611.1 Persons required to register.
1611.2 Persons not required to register.
1611.3 Time of registration.
1611.4 Place of registration.

AUTHORITY: Military Selective Service Act, as amended (50 App. U.S.C. 451 et seq.).

§ 1611.1 Persons required to register.

Except as otherwise provided by the provisions of § 1611.2 in this part, it shall be the duty of each male citizen of the United States who shall have attained the 18th anniversary of the day of his birth and who shall not have attained the 26th anniversary of the day of his birth to present himself for and submit to registration under the provisions of the Military Selective Service Act.

§ 1611.2 Persons not required to register.

Persons in the following categories are not required to register under the Military Selective Service Act:

(a) Any alien lawfully admitted to the United States as a nonimmigrant under section 101(a)(15) of the Immigration and Nationality Act, as amended (66 Stat. 163; 8 U.S.C. 1101), for so long as he continues to maintain a lawful nonimmigrant status, in the United States; and

(b) Any person described in section 6 of the Military Selective Service Act as not being required to register.

§ 1611.3 Time of registration.

Persons required to register shall present themselves for and submit to registration on a day prescribed by the President.

§ 1611.4 Place of registration.

(a) Persons required to register shall present themselves for and submit to registration at the places indicated:

(1) Citizens of the United States shall present themselves for registration before a duly designated registration official in the area in which they have their permanent home or in which they may happen to be or before a diplomatic or consular officer of the United States who is a citizen of the United States or any other person who may be designated by the Director of Selective Service as registrar; and

(2) Persons residing in the United States other than citizens of the United States shall present themselves for registration before a duly designated registration official.

(b) The Director may authorize the registration of persons without their appearing before the officials specified in paragraph (a) of this section. Procedures authorized under this paragraph shall be uniform throughout the state(s) in which they apply.

2. Section 1631.1 is amended to read as follows:

§ 1631.1 Random selection sequence for induction.

The Director of Selective Service shall establish a random selection sequence for induction. Such random selection sequence will be established by a drawing to be conducted in the place and, on a date the Director shall fix, and shall be applied nationwide. The random selection method shall use 365 days, or, when appropriate, 366 days to represent the birthdays (month and day only) of all registrants who, during the specified calendar year(s) attained their 18th year of age. The drawing commencing with the first day selected and continuing until all 365 days or, when appropriate, 366 days are drawn, shall be accomplished impartially. The random selection sequence thus obtained shall, in accordance with the Selective Service Regulations, determine the order of selection of such registrants. The random sequence number thus determined for any registrant shall apply to him so long as he remains subject to induction for military training and service by random selection. A random sequence number established for a registrant shall be equiv-

alent, for purposes of selection, to the same random sequence established for other registrants in other drawings, including the drawings of December 1, 1969, and July 1, 1970, and the random selection sequences obtained in those drawings shall continue to determine the order of selection of the registrants covered thereby in accordance with the Selective Service Regulations. Selection among registrants who have the same random sequence number shall be based upon the supplemental drawing conducted December 1, 1969, which determined alphabetically a random selection sequence by name.

BYRON V. PEPITONE,
Director.

NOVEMBER 17, 1976.

[FR Doc.76-34512 Filed 11-22-76;8:45 a.m.]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 39]

[FRL-642-3]

LOAN GUARANTEES FOR CONSTRUCTION OF TREATMENT WORKS

Advance Notice of Proposed Rulemaking

The Environmental Protection Agency is issuing this advance notice of proposed rulemaking to advise interested members of the public that regulations are being prepared to implement Pub. L. 94-558. That law, signed by the President on October 19, 1976, amends Title II of the Federal Water Pollution Control Act by adding a new section 213, Loan Guarantees for Construction of Treatment Works.

The new section 213 authorizes the Administrator to guarantee loans made by the Federal Financing Bank to EPA grantees to finance the local share for grants for construction of treatment works under Title II of the Federal Water Pollution Control Act. The guarantee may not be made unless the Administrator certifies that the grantee cannot obtain sufficient credit on reasonable terms as determined by the Secretary of the Treasury to finance its actual needs without the guarantee and unless the Administrator determines that there is a reasonable assurance of repayment.

The proposed regulations are expected to be published as interim rulemaking and as an amendment to Part 39 of Title 40, within three months from the date of this notice. The Agency is working with other affected Federal Agencies, States, Municipalities, and public interest groups in their development. Full public participation will be solicited, including the holding of a public hearing or meeting, to be announced in the FEDERAL REGISTER at a later date.

Parties interested in submitting written comments to be considered in the development of the interim regulations may do so until December 23, 1976. In order to be considered, all comments must be submitted "in triplicate" to the Director, Grants Administration Division (PM-216), Attention: Loan Guarantee Regulations, Environmental Protection Agency, Washington, D.C. 20460. Comments will be retained on file at the Public Information Reference Unit, EPA Headquarters, Room 2922 Waterside Mall, 401 M Street SW., Washington, D.C. and may be inspected between 8 a.m. and 4:30 p.m. at that location.

No applications for assistance under this loan guarantee program will be accepted by the Agency until the regulations, including application requirements, are published.

This advance notice of proposed rulemaking is issued under the authority of sections 213 and 501(a) of Pub. L. 92-500 (86 Stat. 816; 33 U.S.C. 1251) as amended by Pub. L. 93-243 and 94-558.

Dated: November 16, 1976.

JOHN QUARLES,
Administrator.

[FR Doc.76-34623 Filed 11-22-76;8:45 am]

[40 CFR Part 52]

[FRL 648-4]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS FOR AIR POLLUTION CONTROL

Revision to Kings County Rules and Regulations in the State of California

On July 25, 1973, July 22, 1975, and April 21, 1976, the Air Resources Board of the State of California submitted revised Rules and Regulations of the Kings County Air Pollution Control District (APCD) as a revision to the California State Implementation Plan (SIP). The submissions listed above will be addressed in this notice, except when such submissions are deficient in a specific area. In this event, the appropriate portions of the earlier submissions have been evaluated and will be discussed in this notice.

On April 21, 1976, revisions to Rules 412 and 412.1 concerning transfer of gasoline into stationary storage containers and vehicle fuel tanks were submitted by the Air Resources Board. These rules are not being acted upon in this notice because of the many unique questions involved in this area of air pollution control. These rules are to be addressed in a separate FEDERAL REGISTER notice.

Regulation VI, submitted on October 23, 1974, dealing with the Air Pollution Emergency Contingency Plan, is not being acted upon at this time because the Air Resources Board has indicated to EPA that a revision is forthcoming of all local agency regulations addressing the emergency episode requirements. This action by the State is in response to the recent approval by EPA of the State of California Emergency Episode Plan. The State's plan sets forth requirements which the local agencies' plans must meet. A separate FEDERAL REGISTER notice addressing this issue will be published after the submission to EPA of the local agency emergency episode regulations by the State.

Additionally, the significant changes to the Kings County new source review rules (Regulation II), submitted on July 25, 1973 and October 24, 1974, will be acted upon in a separate FEDERAL REGISTER notice.

The changes contained in the July 25, 1973, July 22, 1975, and April 21, 1976 submissions and being acted upon by this package include the following: Addition of requirements for sources to maintain monitoring equipment records and have them available to the APCD; addition of reporting requirements for sources following an upset condition; addition of authority for APCD personnel to arrest without a warrant, addition of an NO_x emission limitation for fuel burning sources over 1775 million BTUs/hour; and other minor changes of a procedural nature.

It is the purpose of this notice to propose approval of all the changes included in the July 25, 1973, July 22, 1975, and April 21, 1976 submissions with the exception of the July 25, 1973 changes to Rule 405, Process Weight per Hour, Rule 111, Equipment Shutdown, Startup, and Breakdown, the existing Rule 111, Shutdown, Startup, and Breakdown, and the rules and regulations specified above that are not being acted upon at this time. The revision to Rule 405, Process Weight Per Hour, deletes the provision that a source operation must meet the requirements of Rule 406, Process Weight Table. The deletion of this provision would render Rule 406 unenforceable. Therefore, it is proposed to disapprove the revision to Rule 405. Because the earlier submission of Rule 405 prohibits violation of Rule 406, the earlier submission should be reaffirmed as a portion of the SIP. Additionally, for Federal enforcement purposes, the Rule 405 submitted on June 30, 1972 and approved as part of the SIP should remain in effect.

Disapproval is proposed for Rule 111, Shutdown, Startup, and Breakdown, (originally approved under 40 CFR Part 52.223 [37 FR 19812]) and revised Rule 111, Equipment Shutdown, Startup, and Breakdown (submitted on July 25, 1973), because adequate measures are not included to prevent abuse of the exemption provisions that might result in continued, repeated, or excessive exemption provisions that might result in continued, repeated, or excessive violations of the emission limits. Therefore, it is proposed to disapprove the existing and revised Rule 111, since all approved emission limiting regulations are rendered potentially unenforceable.

Rule 410, Organic Solvents, has been revised to be consistent with the organic solvent portion of the Federally promulgated regulation now appearing in 40 CFR 52.254. Therefore it is proposed to revise the Federal regulation to rescind Kings County from 40 CFR 52.254(a) through (1).

Pursuant to Section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as a SIP revision and, therefore, invites public comment on the State's submission

and his proposed approval or disapproval.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations.

Kings County Air Pollution Control District, 1197 Berry Lane, Hanford, Calif. 93230.
California Air Resources Board, 1709 11th St., Sacramento, Calif. 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, Calif. 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460.

Interested persons may participate in this rulemaking by submitting written comments to the Regional Administrator, Attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section; EPA, Region IX; 100 California Street, San Francisco, California 94111. Relevant comments received on or before December 23, 1976, will be considered. Comments received will be available for inspection during normal working hours at the Region IX office and the EPA Public Information Reference Unit.

This notice is issued under the authority of section 110 of the Clean Air Act, as amended (42 U.S.C. 1857c-5).

Dated: November 15, 1976.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.76-34624 Filed 11-22-76;8:45 am]

[40 CFR Part 52]

[FRL 648-5]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revision to Madera County Rules and Regulations in the State of California

On July 25, 1973, July 19, 1974 and January 10, 1975, the Air Resources Board of the State of California submitted revised Rules and Regulations of the Madera County Air Pollution Control District (APCD) as a revision to the California State Implementation Plan (SIP). Because the January 10, 1975 submission supersedes the July 25, 1973 and July 19, 1974 submissions, only the latter submission will be addressed in this notice, except if such latter submission is deficient in a specific area. In this event, the appropriate portions of the earlier submission have been evaluated and will be discussed in this notice.

On April 21, 1976 a revision to Regulation IV, Rule 411 controlling the loading of gasoline into tanks was submitted by the Air Resources Board. This revision deletes the exemption which was added by the January 10, 1975 submission for tanks with a capacity of 2,000 gallons or less. Also included in the April 21, 1976 submission were Rules 411.2, concerning transfer of gasoline into stationary storage containers and vehicle fuel tanks. These rules are not being acted upon in this notice because of the many unique questions involved in this area of air pollution control. The rules are to be addressed in a separate FEDERAL REGISTER notice.

Regulation VI, submitted on January 10, 1975, dealing with the Air Pollution Emergency Contingency Plan, is not being acted upon at this time because the Air Resources Board has indicated to EPA that a revision is forthcoming of all local agency regulations addressing the emergency episode requirements. This action by the State is in response to the recent approval by EPA of the State of California Air Pollution Emergency Episode Plan. The State's plan sets forth requirements the local agencies' plans must meet. A separate FEDERAL REGISTER notice addressing this issue will be published after the submission to EPA of the local agency emergency episode regulations by the State.

Additionally, the significant changes to the Madera County new source review rules, (Regulation II), submitted July 25, 1973 and January 1, 1975, will be acted upon in a separate FEDERAL REGISTER notice.

The changes contained in the January 10, 1975 submission and being acted upon by this package include the following: Deletion and revision of certain definitions; exemption of emission data from confidentiality clauses; addition of exemption from the visible emission regulation; addition of an emission limitation for non-photochemically reactive organic solvents; addition of regulations controlling the use of architectural coatings and the disposal and evaporation of solvents; addition of exemptions to the open burning requirements; addition of a specific regulation controlling agricultural burning; other minor changes of a procedural nature including, among other things, deletion of outdated portions of regulations and renumbering of certain regulations.

It is the purpose of this notice to propose approval of all the changes included in the January 10, 1975 and April 21, 1976 submissions with the exception of the changes to Rule 405, Process Weight Per Hour; Rule 407.3, Scavenger Plants; Rule 402(f), Exceptions; the existing Rule 110, Equipment Shutdown, Startup, and Breakdown; and the rules specified above which are not being acted upon at this time. The revision to Rule 405, Process Weight Per Hour, deletes the provision that a source operation must meet the requirements of Rule 406, Process Weight Table. The deletion of this provision would render Rule 406 unenforceable. Therefore, it is proposed to disapprove the revision to Rule 405. Rule 407.3 has been added to specify that a permit may be granted to a scavenger plant even though such source may not be in compliance with the applicable sulfur compound emission limit of 0.2 percent by volume. Since this rule does not require the Air Polution Control Officer to make a determination that such a facility will not interfere with the attainment and maintenance of a National Ambient Air Quality Standard for SO_2, it is proposed to be disapproved.

Because the earlier submissions did not include the change in Rule 405 or the addition of Rule 407.3 as contained in the January 10, 1975 submission, these earlier submissions should be reaffirmed as a portion of the SIP. Additionaly, for Federal enforcement purposes, the Rule 405 submited on June 30, 1972 and approved as part of the State Implementation Plan should remain in effect.

Disapproval is proposed Rule 110, Equipment Shutdown, Startup, and Breakdown (originally approved under 40 CFR Part 52.223 [37 FR 19812]) and Rule 402(f), Exception (submittal on January 10, 1975), because adequate measures are not included to prevent abuse of the exemption provisions that might result in continued, repeated, or excessive violations of the emission limits. Therefore, it is proposed to disapprove Rules 110 and 402(f), since all approved emission limiting regulations are rendered potentially unenforceable.

Since Rule 103, Confidential Information, now allows emissions data to be made available to the public, which is consistent with Part 51.10(e), it is proposed to approve Rule 103, rescind the current disapproval notice in 40 CFR Part 52.224(a), and rescind the substitute regulation in 40 CFR Part 52.224 (b) for Madera County.

Rule 409, Organic Solvents, has been revised to be consistent with the organic solvent portion of the Federally promulgated regulation now appearing in 40 CFR Part 52.254. Furthermore, with the addition of Rules 409.1 and 409.2, which control the use of architectural coatings and the disposal and evaporation of solvents, respectively, the Madera County rules are identical to the Federal regulation. Therefore, it is proposed to approve Rules 409, 409.1, and 409.2, and revise the Federal regulation to rescind Madera County from 40 CFR Part 52.254.

Pursuant to section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the regulations as a SIP revision and, therefore, invites public comment on the State's submission and his proposed approval or disapproval.

Copies of the proposed revision are available for public inspection during normal business hours at the following locations.

Madera County Air Pollution Control District, 135 W. Yosemite Avenue, Madera, Calif. 93637.
California Air Resources Board, 1709 11th Street, Sacramento, Calif. 95814.
Environmental Protection Agency, Region IX, 100 California Street, San Francisco, Calif. 94111.
Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street, SW., Washington, D.C. 20460.

Interested persons may participate in this rulemaking by submitting written comments to the Regional Administrator, Attention: Air and Hazardous Materials Division, Air Programs Branch, Cal-

ifornia SIP Section, EPA, Region IX, 100 California Street, San Francisco, California 94111. Relevant comments received on or before December 23, 1976, will be considered. Comments received will be available for inspection during normal working hours at the Region IX office and the EPA Public Information Reference Unit.

This notice is issued under the authority of section 110 of the Clean Air Act, as amended. (42 U.S.C. 1857c-5).

Date: November 15, 1976.

PAUL DE FALCO, JR.,
Regional Administrator.

[FR Doc76-34625 Filed 11-22-76;8:45 am]

[40 CFR Part 60]

[FRL 648-8]

KRAFT PULP MILLS

Standards of Performance for New Stationary Sources; Extension of Comment Period

On September 24, 1976 (41 FR 42012), the Environmental Protection Agency (EPA) proposed standards of performance for the control of emissions from kraft pulp mills. The notice of proposal requested public comments on the standards by November 22, 1976. Due to a delay in the printing and shipping of the Standards Support and Environmental Impact Statement, sufficient copies of the document have not been available to all interested parties in time to allow their meaningful review and comment by November 22. The public comment period is therefore being extended to allow additional time for all interested parties to participate in this rulemaking. EPA has received a request from the industry to extend the comment period by 45 days through January 7, 1977. An extension of this length does not, however, seem justified because the printing and shipping delay has resulted in only a two-week delay in processing requests for the document. EPA has therefore determined that the comment period will be extended by three weeks and all comments postmarked by December 13, 1976, will be considered. Comments should be submitted (in triplicate) to the Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, Attention: Mr. Don R. Goodwin.

Dated: November 19, 1976.

ROGER STRELAW,
Assistant Administrator for Air and Waste Management.

[FR Doc.76-34661 Filed 11-22-76;8:45 am]

[40 CFR Part 415]

[FRL 648-3]

INORGANIC CHEMICALS MANUFACTURING POINT SOURCE CATEGORY

Withdrawal of Notice of Proposed Rulemaking

In consideration of the matters discussed in the preamble to the Revocation of Effluent Limitation Guidelines, New Source Standards and Pretreatment Standards for New Sources published today elsewhere in this issue:

1. The following proposed pretreatment standards for existing sources published in the FEDERAL REGISTER on March 12, 1974 (39 FR 9338-9636) are hereby withdrawn: Sections 415.74, 415.84, 415.104, 415.154, 415.184, 415.194, 415.214 and 415.224.

2. The following proposed effluent limitation guidelines, pretreatment standards for existing sources, standards of performance for new sources, and pretreatment standards of performance for new sources published in the FEDERAL REGISTER on May 22, 1975 (40 FR 22428-22444) are hereby withdrawn: Sections 415.233, 415.234, 415.235, 415.236, 415.343, 415.344, 415.345, 415.346, 415.423, 415.424, 415.425, 415.426, 415.583, 415.584, 15.585 and 415.586.

Dated: November 12, 1976.

JOHN QUARLES,
Acting Administrator.

[FR Doc.76-34622 Filed 11-22-76;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 502]

[General Order 16; Docket No. 76-61]

RULES OF PRACTICE AND PROCEDURE

Notice of Proposed Rulemaking

The Commission has been continually studying its rules of practice and procedure to determine in what respects they can be improved so as to expedite the conduct of formal proceedings and eliminate ambiguities which unnecessarily cause delay. The Commission has also become concerned that in certain respects the rules may cause undue hardship to persons seeking to file complaints pursuant to section 22 of the Shipping Act, 1916. Accordingly, the Commission proposes to amend the rules in three particular areas. These relate to the authority of presiding administrative law judges to make appropriate rulings whenever answers to complaints are not filed or respondents request permission to file delayed answers, permission to file apparently time-barred complaints, the filing of which has been delayed because of intervening weekends or holidays, and the authority of presiding judges to order a hearing or the submission of additional evidence in proceedings conducted pursuant to Rule 11 (Shortened Procedure), 46 CFR 502.181-187. We now elaborate.

Rule 5(d), 46 CFR 502.64, presently provides that only the Commission may enter an appropriate rule or order in the event that a respondent fails to file an answer to a complaint within the time provided.

The rule further provides that only the Commission or the Chief Judge may permit the filing of an answer beyond the time permitted.

The Commission perceives no good reason why authority to rule upon these matters should be so confined. In practice, presiding administrative law judges have authority to rule upon virtually every type of request including requests for judgment or extensions of time. The requirement that a party must seek an order directly from the Commission or request only the Commission or the Chief Judge permission to file an answer beyond the time permitted interposes an unnecessary obstacle to the expeditious conduct of a proceeding which in virtually every other respect is being conducted by an administrative law judge qualified to make appropriate rulings. As with any other ruling of presiding judges, the Commission's rules permit interim appeal when circumstances warrant and the Commission retains final authority when the proceeding ultimately reaches the Commission. Accordingly, the Commission proposes to give specific authority to any presiding officer to deal with the problems arising out of failure to file or delay in filing answers.

Rule 7(a), 46 CFR 502.101, which establishes a method of computation of time, adopts the common-law method of computation but provides for an exception in the case of complaints seeking reparation filed under the applicable two-year statute of limitation. (See Rule 5(c), 46 CFR 502.63.) The Commission has observed that retention of an exception to the common-law method in the case of complaints has resulted in undue hardship to complainants whose complaints would have to be rejected if filed on a Monday or working day if the last day of the two-year period of limitation falls on the preceding Saturday, Sunday, or legal holiday when the Commission's offices are closed. In order to prevent undue hardship, the Commission has waived the strict requirements of Rule 7(a) as presently constituted and permitted the filing of a complaint on a Monday although the two-year period had expired on the preceding day. See Docket No. 75-31, *CSC International Incorporated v. Waterman Steamship Corporation*, Order on Remand, October 8, 1976. (Commissioner Morse dissenting, October 15, 1976.)

The Commission is of the opinion that the strictness of the present rule ought to be relaxed in all complaint proceedings so that complainants will not be prevented from seeking relief merely because the last day of the period of limitation happens to fall on a day in which the Commission's offices are closed. This does not mean that the Commission would be extending this right to complainants who might be seeking to extend the statutory period on other grounds. There is no basis either in equity or in case law for ignoring the statutory requirement in such cases. The Commission believes, however, that application of the common-law rule to the filing of complaints affected by intervening weekends or holidays at most involves a period of only a few days beyond the literal two-year period and is more equitable and consistent with modern judicial authorities who, in similar circumstances, have relaxed the strict, lit-

eral requirements of statutes of limitation.[1]

Finally, the Commission has observed an ambiguity in its rules concerning the authority of presiding administrative law judges to order parties to furnish additional information or to order a hearing in proceedings conducted under Rule 11 (Shortened Procedure), 46 CFR 502.181–187. Presently Rule 11(a), 46 CFR 502.181, provides that a hearing may be ordered by the presiding officer but only "at the request of any party" or "upon the Commission's motion at any stage of the proceeding." Rule 11 (d), 46 CFR 502.184, provides that the record for decision will be closed upon filing of complainant's reply memorandum "unless otherwise determined by the presiding officer." The Commission perceives no reason why the presiding officer should not have clear authority to order the submission of additional evidence or a hearing if such appear necessary to enable him to issue a just and reasonable decision. The present limitation on his authority, on the other hand, can cause unnecessary delay if the proceeding must ultimately be remanded to him by the Commission so that a hearing may be held or additional evidence taken. Significantly, such authority is specifically given to presiding judges in the very similar small-claims procedures conducted under Rule 20, 46 CFR 502.311–321. Under Rule 20, the presiding judge may order a hearing (46 CFR 502.315) and may also require the submission of additional evidentiary materials (46 CFR 502.314). The Commission proposes to grant similar authority in Rule 11.

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553) and section 43 of the Shipping Act, 1916 (46 U.S.C. 841a), Part 502 of Title 46, Code of Federal Regulations, is proposed to be amended as set forth below.

§ 502.64 [Amended]

1. Section 502.64 is proposed to be amended by deleting the word "Commission" in the final sentence and the words "Commission or Chief Judge" in the proviso clause at the end of the same sentence and substituting the words "presiding officer" in both places.

§ 502.101 [Amended]

2. Section 502.101 is proposed to be amended by deleting the words "except § 502.63 (Rule 5(c))" from the first sentence.

3. (a) Section 502.181 is proposed to be amended by revising the proviso clause appearing at the end of the section to read as follows:

§ 502.181 Selection of cases for shortened procedure; consent required.

* * * *Provided,* That a hearing may be ordered by the presiding officer at the request of any party or in his discretion. (Rule 11(a).)

(b) Section 502.184 is proposed to be amended by revising the last sentence to read as follows:

§ 502.184 Complainant's memorandum in reply.

* * * This will close the record for decision unless the presiding officer determines that the record is insufficient and orders the submission of additional evidentiary materials. (Rule 11(d).)

Interested persons may participate in this rulemaking proceeding by filing with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 20, 1976 an original and fifteen copies of their views or arguments pertaining to the proposed rules.

Since the proposals set forth in this rulemaking proceeding concern procedural matters limited to the conduct of formal proceedings before the Commission, their adoption could in no way be considered to result in major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). Consequently no environmental assessment will be undertaken and no environmental impact statement will be issued in this proceeding.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-34592 filed 11-22-76;8:45 am]

[1] Although earlier judicial opinions were not always consistent on the point, modern judicial authorities have applied the common-law rule of computation to permit slightly belated filings even if statutory periods of limitation appear to have expired and have generally encouraged flexibility and leniency in these matters. See, e.g., *Sherwood Bros.* v. *District of Columbia,* 113 F. 2d 162, 165 (D.C. Cir. 1940); *Union National Bank* v. *Lamb,* 337 U.S. 38 (1949); *Schultz* v. *United States,* 132 F. Supp. 953 (Ct. Cl. 1955); *Brotherhood of Railroad Trainmen* v. *Akron & B.B. R. Co.,* 385 F. 2d 581, 612 (D.C. Cir. 1967), cert. denied 390 U.S. 923 (1968). Cf. also *Street* v. *United States,* 133 U.S. 299 (1890), in which the Court permitted a one-day extension beyond a statutory period of limitation by discounting the last day of the period, a Sunday, as a so-called dies non. Significantly, in the Lamb case, cited above, the Court permitted a filing beyond a statutory period of limitation, relying upon Rule 6(a) of the Federal Rules of Civil Porcedure, 28 U.S.C., which codifies the commonlaw rule of computation. Rule 6(a) is virtually identical to the Commission's rule 7(a) except for the present provision regarding the filing of complaints which we are proposing to delete.

[46 CFR Part 522]

[General Order 24; Docket No. 76-63]

FILING OF AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS; SUPPORTING STATEMENTS AND EVIDENCE

Proposed Rulemaking

Section 15 of the Shipping Act, 1916 (the Act), requires every common carrier by water, or other person subject to the Act, to file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of certain agreements with other such carriers or other persons subject to the Act. The Commission is authorized to approve, disapprove, cancel, or modify those agreements, whether or not previously approved by the Commission.

Often, the filing of those agreements is unaccompanied by the information necessary to a Commission decision regarding the approvability of those agreements. In order to remedy that deficiency, the Commission has found it necessary to repeatedly request further information from the parties to the agreement which would identify and explain the circumstances giving rise to the agreement and the purposes for which it is intended. Often, notwithstanding the repeated requests by the Commission, further information has not been forthcoming.

After the Commission has given notice in the FEDERAL REGISTER that an agreement has been filed with the Commission for approval, the Commission has received comments regarding, protests of, and requests for hearing on the approval of the agreement. Often, those comments, protests, and requests have been uninformed, ill-defined, or irrelevant to the agreement in question. In order to remedy those deficiencies the Commission has found it necessary to repeatedly request the commentator or protestor to provide further information to the Commission regarding the comments or protests filed.

The effect of the deficiencies attending the filing of agreements and protests of those agreements has been delay in the disposition of agreements filed for approval and impairment of the quality of information provided to the Commission regarding the agreements in question. In order to improve the quality and the quantity of information regarding agreements filed for approval by the Commission, and to expedite the consideration of those agreements, the Commission proposes to promulgate the following amendments to 46 CFR Part 522. Therefore, pursuant to section 4 of the Administrative Procedure Act, 5 U.S.C. 553, and sections 15, 21, and 43 of the Shipping Act, 1916, 46 U.S.C. 814, 820, and 841a, take notice that the Commission proposes to amend Part 522 of Title 46, Code of Federal Regulations, as follows:

Delete the title in its entirety and substitute therefor the following:

PART 522—FILING OF AGREEMENTS BY COMMON CARRIERS AND OTHER PERSONS SUBJECT TO THE SHIPPING ACT

§ 522.1 [Amended]

Section 522.1 statement of policy, is amended by adding to the parenthetical reference in the third sentence thereof the following: "and 522.5." and by deleting the last sentence thereof.

§ 522.3 [Amended]

Section 522.3 Filing of agreements and modifications, is amended by (1) substituting the word "shall" for "should" in the first sentence thereof; and, (2) deleting the period at the end of the first sentence thereof, and substituting therefor the following: ", and by the documentation required by § 522.5."

Section 522.5 is amended by deleting the entirety of the section, including the title, and substituting therefor the following:

§ 522.5 Supporting statements and evidence.

(a) All applications for approval of agreements pursuant to section 15 of the Shipping Act, 1916, shall be accompanied by a statement which sets forth the purpose of the agreement and the particular circumstances which necessitate the agreement.

(b) In addition to the requirements of paragraph (a) of this section, any agreement providing for (1) fixing or regulating of transportation rates or fares; (2) controlling, regulating, preventing or destroying competition; (3) pooling or apportioning earnings, losses, or traffic; (4) allotting ports or restricting or otherwise regulating the number and character of sailings between ports; or, (5) limiting or regulating in any way the volume or character of freight or passenger traffic to be carried, shall be accompanied by evidence demonstrating the serious transportation need requiring the agreement, or the important public benefits which the agreement is necessary to secure, or the valid regulatory purpose of the Shipping Act of which the agreement is in furtherance. As used in this paragraph, evidence includes affidavits of fact made by persons having knowledge of the matters contained therein and authenticated documents such as, for example, records kept in the ordinary course of business. Evidence does not include arguments, opinions and conclusions of counsel.

(c) In addition to the requirements of paragraph (a) of this section, any application for the approval of an agreement which appears to be violative of the antitrust laws and which provides for (1) giving or receiving of special privileges or advantages, or (2) any exclusive, preferential, or cooperative working arrangement, shall also comply with the requirements of paragraph (b) of this section.

(d) Any application for approval of agreements pursuant to section 15 which fails to comply with the provisions of this section shall be returned without action and without prejudice to resubmission in compliance with the requirements of this section.

(e)(1) All protests against the approval of agreements filed pursuant to § 522.3 shall be accompanied by (i) a statement which: (A) specifies the position of the protestant in regard to the approvability of the agreement protested, and all constituent parts thereof; (B) identifies, with particularity, the reason or reasons why the agreement protested should not be approved; (C) admits or denies the existence of the need, benefit, or purpose submitted in accordance with paragraphs (b) or (c) of this section by the parties to the agreement protested; (D) alleges facts which support the reasons identified pursuant to (B) of this subdivision; and, (ii) any evidence tending to prove the allegations made pursuant to this paragraph.

(2) Failure to comply with the requirements of this paragraph shall result in the Commission's consideration of the agreement protested without regard to the protest. Such Commission action shall not, however, preclude the protestant from seeking leave to intervene under § 502.72 of Part 502 of this chapter, in any proceeding arising out of such consideration.

(f) Where the supporting statements and evidence submitted under paragraphs (a), (b) (c) and (e) of this section are deemed insufficient or incomplete, the Commission may, in lieu of the actions permitted under paragraphs (d) and (e)(2) of this section, require the submission of additional data or information.

Interested persons may participate in this rulemaking proceeding by filing with the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before January 3, 1977, an original and fifteen copies of their views or arguments pertaining to the proposed rule.

By Order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-34593 Filed 11-22-76;8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF LABOR

Office of Federal Contract Compliance Programs

SUBCOMMITTEE FOR SUPPLY OF MINORITIES AND WOMEN IN EMPLOYMENT IN ACADEME OF THE FEDERAL ADVISORY COMMITTEE FOR HIGHER EDUCATION EQUAL EMPLOYMENT OPPORTUNITY

Meeting

On January 28, 1976, the Secretary of Labor announced in the FEDERAL REGISTER (41 CFR 4081) the establishment of the Federal Advisory Committee for Higher Education Equal Empolyment Opportunity Programs. The first of six meetings of this Advisory Committee was held on February 27, 1976 (41 CFR 5880).

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. I, Supp. II, 1972), notice is hereby given that at the close of the sixth meeting, September 22, 1976, the Chairman of the Advisory Committee formed sub-committees to study and review the Office of Federal Contract Compliance Program's drafted rules and regulations, and that the Sub-Committee for Supply of Minorities and Women in Employment in Academe will meet in Massachusetts Hall at Harvard University in Cambridge, Massachusetts from 9:00 A.M. to 12:00 Noon on December 1, 1976.

The agenda for the December 1, meeting calls for general discussion of methods which could be employed to increase the supply of minorities and women qualified for academic employment.

The meeting will be open to the public. For specific details pertaining to the December 1, meeting contact Dr. David G. Speck, Executive Secretary, Office of Federal Contract Compliance Programs, New U.S. Department of Labor Building, Room C-3325, Washington, D.C. 20210, or telephone (202) 523-9475.

Signed at Washington, D.C. this 18th day of November, 1976.

DR. DAVID SPECK,
Executive Secretary.

[FR Doc.76-34581 Filed 11-22-76; 8:45 am]

FEDERAL ADVISORY COMMITTEE FOR HIGHER EDUCATION EQUAL EMPLOYMENT OPPORTUNITY PROGRAMS

Meeting

On January 28, 1976, the Secretary of Labor announced in the FEDERAL REGISTER (41 CFR 4081) the establishment of the Federal Advisory Committee for Higher Education Equal Employment Opportunity Programs. The first meeting of this Advisory Committee was held on February 27, 1976 (41 CFR 5880).

Pursuant to the Federal Advisory Committee Act (5 U.S.C. App. I, Supp. II, 1972), notice is hereby given that the eighth meeting of the above committee has been scheduled for 10:00 A.M. on December 10, 1976, in Room S-5215 (A-B-C) New U.S. Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

The Agenda for the December 10 meeting calls for the third general discussion of the Office of Federal Contract Compliance Programs' new drafted rules and regulations and their application to Affirmative Action Programs in colleges and universities.

The meeting will be open to the public. Interested persons wishing to file documents or other material with the Committee for its consideration may do so by sending them to the Committee's Executive Secretary:

Dr. David G. Speck, Executive Secretary, Office of Federal Contract Compliance Programs, Federal Advisory Committee for Higher Education Equal Employment Opportunity Programs, New U.S. Department of Labor Building, Room C-3325, Washington, D.C. 20210.

Signed at Washington, D.C. this 16th day of November, 1976.

DR. DAVID G. SPECK,
Executive Secretary.

[FR Doc.76-34582 Filed 11-22-76;8:45 am]

Occupational Safety and Health Administration

[V-76-11]

CATERPILLAR TRACTOR CO.

Application for Variance and Interim Order; Grant of Interim Order

I. *Notice of application.* Notice is hereby given that Caterpillar Tractor Company, 110 NE Adams Street, Peoria, Illinois 61629 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596 29 U.S.C. 655); and 29 CFR 1905.11 for a variance and an interim order pending a decision on the application for a variance from the standards prescribed in 29 CFR 1910.157(a) (5) and (6) concerning the mounting and height of fire extinguishers.

The address of the place of employment that will be affected by the application is as follows:

Caterpillar Tractor Company, 600 West Washington Street, East Peoria, Illinois 61630.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by 29 CFR 1910.157(a) (5) and (6) which specifies the kinds of mountings allowed for fire extinguishers, and sets the allowable height of the top of the first extinguishers at 5 feet for extinguishers under 40 pounds and 3½ feet for those over 40 pounds.

The applicant states that its fire extinguishers are mounted on a retractable board with the bottom of the extinguishers 8 feet from the floor. The board is described to spring downward automatically when a two foot rope attached to the bottom of the board is pulled.

The applicant contends that this method of hanging fire extinguishers provides a way to locate the extinguishers near the aisles and hazardous areas while keeping them safe from being hit and damaged by industrial trucks, and preventing them from being blocked. The fire extinguishers and boards are painted fluorescent red for easy visibility throughout the factory.

A copy of the application will be made available for inspection and copying upon request at the Office of Compliance Programming, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N-3603, Washington, D.C. 20210, and at the following Regional and Area Offices:

U.S. Department of Labor, Occupational Safety and Health Administration, 230 South Dearborn Street, Room 3263, Chicago, Illinois 60604.

U.S. Department of Labor, Occupational Safety and Health Administration, 228 N.E. Jefferson, 3rd Floor, Peoria, Illinois 61603.

All interested persons, including employers and employees, who believe they would be affected by the grant or denial of the application for a variance and interim order are invited to submit written data, views and arguments relating to the pertinent application no later than December 23, 1976. In addition, employers and employees who believe they would be affected by a grant or denial of the variance and interim order

may request a hearing on the application no later than December 23, 1976, in conformity with the requirements of 29 CFR 1905.15. Submission of written comments and requests for a hearing should be made in quadruplicate, and must be addressed to the Office of Compliance Programming at the above address.

II. *Interim Order.* It appears from the application for a variance and interim order that an interim order is necessary to prevent undue hardship pending a decision on the variance application. Therefore, it is ordered, pursuant to authority in section 6(d) of the Occupational Safety and Health Act of 1970 and 29 CFR 1905.11(c) that Caterpillar Tractor Company be, and it is hereby, authorized to mount its fire extinguishers on retractable boards which hang from the superstructure of the facility in lieu of complying with the requirements in § 1910.157(a)(5) and (6). These boards shall meet the following requirements:

(1) The boards shall be located with the bottom no more than 8 feet from the floor, and shall have a two feet nylon pull rope attached to the bottom of such boards by which the board can be lowered to a position approximately 2½ feet from the floor.

(2) The space below and to the sides of such board shall be kept clear so that easy access is provided.

(3) The pull rope shall hang straight down and shall not be looped over anything.

(4) The board shall be counterbalanced in such a manner that the board is easily lowered, but shall not be so delicately balanced that the board will lower accidentally.

(5) All boards shall be maintained in good working order. As soon as possible Caterpillar Tractor Company shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for variance.

Effective date: This interim order shall be effective as of November 23, 1976, and shall remain in effect until a decision is rendered on the application for a variance.

Signed at Washington, D.C., this 17th day of November, 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-34583 Filed 11-22-76;8:45 am]

FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 3(a) of Executive Order 11612 of July 26, 1971 and continued under Executive Order 11807 of September 28, 1974 (39 FR 35559), Occupational Safety and Health Programs for Federal Employees, will meet on December 15, starting at 9:30 a.m., in Room S4215 ABC, New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

I. Proposed suggestions of the Ad Hoc Committee on recommendations of House Report 1/26/76 "Safety in the Federal Workplace"

A. Review and Approval

B. Implementation

II. Reports on:

A. Status of Office of Federal Agency Safety Programs under the reorganization of OSHA.

B. Ad Hoc Committee on 29 CFR Part 1960 review of § 1960.31—Report by Employee of Unsafe or Unhealthful Working Conditions.

III. National Institute for Occupational Safety and Health (NIOSH) policy regarding the provisions of technical assistance to other Federal agencies.

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions, together with 20 copies thereof received by close of business December 13, will be provided to members of the Council and included in the record of the meeting.

The Council will consider oral presentations relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business December 10. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to Mr. Walter J. Mason, Executive Director, FACOSH, First Floor, Department of Labor, OSHA, 2100 M Street, N.W., Washington D.C. 20210, telephone (202) 653-5500.

Signed at Washington, D.C. this 17th day of November 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-34585 Filed 11-22-76;8:45 am]

KENTUCKY

Approval of Standards

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 31, 1973, notice was published in the FEDERAL REGISTER (38 FR 20322) of the approval of the Kentucky plan and the adoption of Subpart Q to Part 1952 containing the decision.

The Kentucky plan provides for the adoption of Federal standards as State standards after public hearing. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to Federal standard changes the State has submitted by letters dated April 12, 1976, and April 20, 1976, from James R. Yocom, Commissioner, Kentucky Department of Labor, to Donald E. MacKenzie, Regional Administrator, and incorporated as a part of the plan, amended State standards comparable to OSHA standards. Recodification of §§ 1910.93 through 1910.93q as a new Subpart Z; §1910.1000 through § 1910.1017, Air Contaminants, dated May 28, 1975; §1910.141(d)(2)(i), Sanitation, dated April 28, 1975; New § 1910.184, Slings, dated June 27, 1975; amended § 1910.94(b)(2), Ventilation, dated June 9, 1975; corrected § 1910.94(d)(4) Table G-14, Ventilation, dated October 18, 1972; and new 29 CFR Part 1928, Agriculture, dated April 25, 1975.

The State simultaneously submitted State-initiated changes to § 1910.151, Medical and First Aid and § 1910.217(b)(7)(xii), Power Presses.

These standards were promulgated by Standards Board meetings on August 28, 1975 and November 20, 1976; filing with the Legislative Research Commission on October 6, 1975 and December 12, 1975; publication in the Kentucky Administrative Register on November 1, 1975 and January 1, 1976; and review by the Administrative Regulation Review Subcommittee on December 10, 1975 and February 4, 1976; pursuant to the Kentucky Occupational Safety and Health Act and Chapter 13, Kentucky Revised Statutes.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards with the following exceptions:

a. Employers with 8 or more employees must have persons adequately trained in first-aid and approved first-aid supplies, § 1910.151.

b. Reversing means of drive motor may be used with the clutch-brake control in the "inch" position, § 1910.217(b)(7)(xii).

The State standards are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, Kentucky Department of Labor, Capital Plaza Towers, 12th Floor, Frankfort, Kentucky 40601; Office of the Regional Administrator, Suite 587, 1375 Peachtree Street, NE., Atlanta, Georgia 30309; and Office of the Associate Assistant Secretary for Regional Programs, Room N3603, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may

prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the Kentucky State Plan as a proposed change and in making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are essentially identical to the Federal standards and are deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

The decision is effective November 23, 1976.

(Sec. 18, Pub. L. 91-596; 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Atlanta, Georgia this 21st day of October, 1976.

DONALD E. MACKENZIE,
Regional Administrator.

[FR Doc.76-34586 Filed 11-22-76;8:45 am]

[V-74-55]

MADISON FOODS, INC.

Grant of Variance

I. *Background.* Madison Foods, Inc., 1200 Industrial Parkway, Madison, Nebraska 68748 made application pursuant to section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance from the safety standards prescribed in 29 CFR 1910.57(c)(2). The standard requires that fire extinguishers for Class A hazards be provided in accordance with Table L-1 which states the numbers and types of extinguishers required for Class A hazard situations and requires a maximum of 75 feet travel distance to an extinguisher. The purpose of the standard is to ensure that appropriate first-line fire fighting equipment is readily available at the worksite. The facility affected by this application is:

Madison Foods, Inc., 1200 Industrial Parkway, Madison, Nebraska 68748.

Notice of the application was published in the FEDERAL REGISTER on November 7, 1974 (39 FR 39512). The notice invited interested persons, including affected employers and employees, to submit written data, views, and arguments regarding the grant or denial of the variance requested. In addition, affected employers and employees were notified of their right to request a hearing on the application for a variance. No written comments or requests for a hearing have been received.

Facts. The applicant operates a pork processing plant in a new fire resistive building. Much of the building is protected by automatic sprinklers, and fire extinguishers are located in many areas of the building. Five rooms—the loin cooler, the freezer, the chill room, the dress floor, and the de-hair floor—are not equipped with extinguishers. These rooms do not contain combustibles or sources of ignition and the possibility of fire is very remote. All other areas of the plant will conform to the requirements of Table L-1 for extinguishers for Class A hazards. In addition, extinguishers for Class B, C and D fires are located in the rooms where hazards of those classes exist. These extinguishers could be reached rapidly from any point in the building, if necessary.

Most of the work performed in the plant is performed in a continuously wet environment with hoses used routinely and frequently to maintain cleanliness. The hoses are all approximately 20 feet in length and throw a stream of water 25 feet. Thus, all areas of the room are covered by the hoses. The loin cooler, the chill room, the dress floor and the de-hair floor are continuously washed down in this manner. If a fire should occur, these hoses, which reach anywhere in the rooms, would be able to extinguish the fire. In addition, the loin cooler is also protected by an automatic sprinkler system. The freezer is protected by an automatic sprinkler system. Hoses are not used in this area, as the water would freeze. However, there are no combustibles or sources of ignition in this room.

The plant water pressure is 90 psi. The pump provides 750 gal/min with 150 gal/min at a hose station. In the event the pump malfunctions, two backup pumps are provided which will raise the pressure to 210 psi. The water source is a 500,000 gallon reservoir pumped by a pump with 1000 gal/min capacity.

III. *Decision.* 29 CFR 1910.157(c)(2) requires that fire extinguishers for Class A hazards be provided in accordance with Table L-1. The table states that the maximum travel distance to Class A fire extinguishers be 75 feet, and provides a schedule for the number and size of extinguishers required for a certain area of floor space.

Extinguishers are not provided in five rooms of the applicant's pork processing plant. Four of these rooms are equipped with hoses and water outlets which provide 150 gal/min at 90 psi. A sketch was submitted by the applicant showing the hose stations and water outlets. These hoses are used regularly to clean these rooms, and would be immediately available to combat a fire in any of these rooms. Since the hoses are all about 20 feet in length and throw a stream of water 25 feet, all areas of the room would be protected in this manner. There are no sources of ignition and virtually no combustibles in these rooms, and the work is performed in a continuously wet environment. In addition, the loin cooler is protected by automatic sprinklers. Although the freezer is not provided with extinguishers or water outlets and hoses, this room is equipped with an automatic sprinkler system. Since this area is used only to blast freeze and hold frozen meat and contains no combustibles, there is a minimal chance of fire in the room.

The plant water pressure is 90 psi, with backup pumps capable of providing water at 210 psi. There is a plentiful supply of water since it is obtained from a 500,000 gallon reservoir. Other areas of the plant are provided with Class B, C, and D fire extinguishers which would be easily obtainable in the remote instance that fires of these types should occur.

For these reasons it is determined that the applicant is providing a place of employment as safe as that which would be obtained by complying with the fire extinguisher requirements of § 1910.157 (c)(2), Table L-1.

IV. *Order.* Pursuant to authority in section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970, and in Secretary of Labor's Order No. 8-76 (41 FR 25059) it is ordered that Madison Foods, Inc. be, and it is hereby, authorized to operate its pork processing plant without fire extinguishers for Class A hazards in the loin cooler, the freezer, the chill room, the dress floor, and the de-hair floor in lieu of complying with 29 CFR 1910.157(c)(2) Table L-1, with the following conditions: (1) All other areas of the plant shall be provided with appropriate types and numbers of fire extinguishers; (2) combustible materials and sources of ignition which are not necessary to the day to day operations in these five rooms may not be present therein; and (3) an adequate water supply shall be available and maintained at all times in order to render necessary fire protection to the affected areas.

As soon as possible Madison Foods, Inc. shall give notice to affected employees of the terms of this order by the same means required to be used to inform them of the application for variance.

Effective date. This order shall become effective on November 23, 1976, and shall remain in effect until modified or revoked in accordance with section 6(d) of the Williams-Steiger Occupational Safety and Health Act of 1970.

Signed at Washington, D.C. this 17th day of November, 1976.

MORTON CORN,
Assistant Secretary of Labor.

[FR Doc.76-34584 Filed 11-22-76;8:45 am]

NORTH CAROLINA STANDARDS

Approval of Standards

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On February 1, 1973, notice was published

in the FEDERAL REGISTER (38 FR 3041) of approval of the North Carolina plan and the adoption of Subpart I to Part 1952 containing the decision.

The North Carolina plan provides for the adoption of Federal standards as State standards by reference. Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to Federal standard changes, the State has submitted by letter dated September 27, 1976, from T. Avery Nye, Jr., Commissioner, North Carolina Department of Labor, to Donald E. MacKenzie, Regional Administrator, and incorporated as a part of the plan, State standards comparable to the new Subpart D of Part 1928, Safety for Agricultural Equipment, dated March 9, 1976; amendments to § 1928.57, Farm Field Equipment, dated March 16, 1976; § 1910.1001, Asbestos, dated March 19, 1976; § 1910.-184, Industrial Slings, dated March 30, 1976; § 1928.57, Farm Field Equipment, dated June 2, 1976; §§ 1910.401–441, Diving Operations, dated June 15, 1976.

These standards were promulgated by filing with the North Carolina Attorney General on March 24, 1976; April 2, 1976; July 15, 1976, respectively, pursuant to the North Carolina Occupational Safety and Health Act of 1973 (Chapter 295, General Statutes).

2. *Decision.* Having reviewed the State submission in comparison with Federal standards it has been determined that the State standards are identical to the Federal standards and are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Commissioner of Labor, North Carolina Department of Labor, 11 West Edenton, Raleigh, North Carolina 27611; Office of Regional Administrator, Suite 587, 1375 Peachtree Street, NE., Atlanta, Georgia 30309; and Office of the Associate Assistant Secretary for Regional Programs, Room N3603, 200 Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c) the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds good cause exists for not publishing the supplement to the North Carolina State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards and are therefore deemed to be at least as effective.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 23, 1976.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Atlanta, Georgia, this 28th day of October, 1976.

DONALD E. MACKENZIE,
Regional Administrator.

[FR Doc.76-34587 Filed 11-22-76;8:45 am]

Office of the Secretary

[TA-W-1, 238]

ALDEN SHOE

Investigation Regarding Certificate of Eligibility to Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 29, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Alden Shoe, Middleboro, Massachusetts (TA-W-1, 238). According, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's orthopedic shoes produced by Alden Shoe 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34447 Filed 11-22-76;8:45 am]

[TA-W-1, 228]

AMERICAN OPTICAL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 12, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of the Optical Products Division of American Optical Corporation, Southbridge, Mass. (TA-W-1, 228). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ophthalmic lenses produced by American Optical Corporation 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. The investigation 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. A group meeting the eligibility requirements of Section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment

Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34448 Filed 11-22-76;8:45 am]

[TA-W-1,235]

ARMCO STEEL CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On October 31, 1976 the Department of Labor received a petition dated October 1, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Zanesville Armco Independent Organization on behalf of the workers and former workers of Zanesville, Ohio plant of Butler-Zanesville Works of Armco Steel Corp., Middletown, Ohio (TA-W-1,235). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with electrical sheet and strip steel (specialty steel) produced by Armco Steel Corporation 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is 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 31st day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34588 Filed 11-22-76;8:45 am]

[TA-W-1,244]

BERNARD SCREEN PRINTING CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 28, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Bernard Screen Printing Corporation, New Hyde Park, New York (TA-W-1,244). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with printed textiles for men's and women's apparel produced by Bernard Screen Printing Corporation 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. The investigation will further related, 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. A group meeting the eligibility requirements of Section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34449 Filed 11-22-76;8:45 am]

[TA-W-1,234]

BETHLEHEM STEEL CORP.

gibility to Apply for Worker Adjustment Investigation Regarding Certification of Eli- Assistance

On November 8, 1976 the Department of Labor received a petition dated October 27, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of the South San Francisco plant of Bethlehem Steel Corporation, Bethlehem, Pa. (TA-W-1,234). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with small steel angles and bars produced by Bethlehem Steel Corporation 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. The investigation will be further related, as appropriate, to the determination of the date on which total or partial separations began or are threatened to begin and the subdivision of the firm involved. A group meeting the eligibility requirements of Section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor,

200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 76-34450 Filed 11-22-76; 8:45 am]

[TA-W-1, 232]

CHESTER PANTS CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 29, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Chester Pants Corporation, Brooklyn, New York (TA-W-1, 232).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of Interantional Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's trousers produced by Chester Pants Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34451 Filed 11-22-76;8:45 am]

[TA-W-1,246]

DAVIS BOX TOE CO., INC.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On November 9, 1976 the Department of Labor received a petition dated October 28, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Davis Box Toe Company, Inc., Beacon, New York (TA-W-1,246). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with box toes and counters for shoes produced by Davis Box Toe Company, Inc. 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34452 Filed 11-22-76;8:45 am]

[TA-W-1, 245]

FASTENER SALES CO.

Investigation Regarding Certificate of Eligibility to Apply for Worker Adjustment Assistance

On November 8, 1976, the Department of Labor received a petition dated October 28, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Fastener Sales Company, Chicago, Illinois (TA-W-1, 245). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with fasteners produced by Fastener Sales Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34453 Filed 11-22-76;8:45 am]

[TA-W-1,240]

H. A. SEINSHEIMER

Investigation Regarding Certification of Eligibility To Apply gfor Worker Adjustment Assistance

On November 8, 1976, the Department of Labor received a petition dated October 19, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers Union on behalf of the workers and former workers of H. A. Seinsheimer, Cincinnati, Ohio (1,240). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with cutting of material for men's tailored clothing produced by H. A. Seinsheimer 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may reques'; 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34454 Filed 11-22-76;8:45 am]

H. A. SEINSHEIMER

Investigation Regarding Certificate of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976, the Department of Labor received a petition dated October 19, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Amalgamated Clothing and Textile Workers Union on behalf of the workers and former workers of New Albany, Indiana plant of H. A. Seinsheimer, Cincinnati, Ohio (TA-W-1,241). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with sewing and pressing for men's tailored clothing produced by H. A. Seinsheimer 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34455 Filed 11-22-76;8:45 am]

[TA-W-1,242]

INTERNATIONAL SHOE CO.

Investigation Regarding Certificate of Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976, the Department of Labor received a petition dated October 18, 1976, which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of International Shoe Company, West Plains, Missouri, a division of Interco, Inc., St. Louis, Missouri (TA-W-1.242). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's shoes produced by International Shoe Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200

Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34456 Filed 11-22-76;8:45 am]

[TA-W-1,243]

INTERNATIONAL SHOE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 29, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the Boot and Shoe Workers Union on behalf of the workers and former workers of International Shoe Company, Flora, Illinois, a division of Interco, Inc., St. Louis, Missouri (TA-W-1,243). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with men's, women's and children's footwear and hy test boots produced by International Shoe Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34457 Filed 11-22-76;8:45 am]

[TA-W-1, 227]

LA SALLE MANUFACTURING, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 18, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of La Salle Manufacturing, Inc., Pittston, Pennsylvania (TA-W-1, 227). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies dresses, pantsuits, blouses, and slacks produced by La Salle Manufacturing, Inc. 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act will be certified as eligible to apply for adjustment asistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34458 Filed 11-22-76;8:45 am]

[TA-W-1,216]

LOCKHEED-CALIFORNIA CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 2, 1976 the Department of Labor received a petition dated October 25, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Association of Machinists and Aerospace Workers on behalf of the workers and former workers of McAlester, Oklahoma plant of Lockheed-California Co., Burbank, Calif., a div. of Lockheed Aircraft Corporation, Burbank, Calif. TA-W-1,216). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with aircrafts produced by Lockheed-California Company 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 2nd day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34459 Filed 11-22-76;8:45 am]

[TA-W-1,248]

LOCKHEED-CALIFORNIA CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 9, 1976 the Department of Labor received a petition dated October 21, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the International Association of Machinists and Aerospace Workers on behalf of the workers and former workers of the Minot, North Dakota plant of Lockheed-California Company, Burbank, California (TA-W-1,248). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with commercial airplanes produced by Lockheed-California Company 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is 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 9th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34589 Filed 11-22-76;8:45 am]

[TA-W-1,231]

LIBERTY TRUCKING CO.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 29, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of the Janesville, Wisconsin plant of Liberty Trucking Company, Chicago, Ill. (TA-W-1,231). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with transportation of General Motors automobile parts provided by Liberty Trucking Company 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34460 Filed 11-22-76;8:45 am]

[TA-W-1,210]

M. JANOWITCH & SONS

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On October 28, 1976 the Department of Labor received a petition dated October 4, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of M. Janowitch & Sons, Mahanoy City, Pennsylvania (TA-W-1,210). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ladies' and misses' dresses and sportswear produced by M. Janowitch & Sons 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 28th day of October 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34461 Filed 11-22-76;8:45 am]

[TA-W-1,230]

PICCIRILLO PANTS

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 12, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Piccirillo Pants, New York, New York (TA-W-1,230). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increasse of imports of articles like or directly competitive with men's trousers produced by Piccirillo Pants 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34462 Filed 11-22-76;8:45 am]

[TA-W-1,233]

PIHER CORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 28, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of the Woburn, Massachusetts plant of Piher Corporation, Barcelona, Spain (TA-W-1,233). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 28 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with carbon film resistors produced by Piher Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C., 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34463 Filed 11-22-76;8:45 am]

[TA-W-1,237]

SOUTH BEND TOY MANUFACTURING CO.

Investigation Regarding Certificate of Eligibility to Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 22, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Furniture Workers of America on behalf of the workers and former workers of South Bend Toy Manufacturing Company, South Bend, Indiana, a division of Milton Bradley Corporation, Springfield, Massachusetts (TA-W-1,237). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221 (a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with baby doll strollers produced by South Bend Toy Manufacturing Company 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment As-

sistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.34464 Filed 11-22-76;8:45 am]

[TA-W-1,208]

TRW, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance; Correction

In FR Doc. 76-34266 appearing at page 51147 in the FEDERAL REGISTER of November 19, 1976, the month in which the document was signed, appearing on page 51147, is corrected in the 3rd column, 10th line, to read "October."

Signed at Washington, D.C., this 19th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34755 Filed 11-22-76;8:45 am]

[TA-W-1,250]

TERRACE FOOTWEAR, INC.

Investigation Regarding Certificate of Eligibility to Apply for Worker Adjustment Assistance

On November 9, 1976 the Department of Labor received a petition dated October 28, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Terrace Footwear, Inc., So. Norwalk, Connecticut (TA-W-1,250). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with women's footwear produced by Terrace Footwear, Inc. 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34465 Filed 11-22-76;8:45 am]

[TA-W-1,236]

TRIANGLE PIPE & TUBE CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 29, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Triangle Pipe & Tube Co., New Brunswick, New Jersey, a division of Triangle Industries Holmdel, New Jersey (TA-W-1,236).

Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with copper tubing produced by Triangle Pipe & Tube Co. 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. The investigation 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. A group meeting the eligibility requirements of Section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34466 Filed 11-22-76;8:45 am]

[TA-W-1,239]

VCA CORP.

Investigation Regarding Certificate of Eligibility to Apply for Worker Adjustment Assistance

On November 8, 1976 the Department of Labor received a petition dated October 30, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of VCA Corporation, Bedford Hts, Ohio a division of Ethyl Corporation, Baton Rouge, La. (TA-W-1,239). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with custom injection molders produced by VCA Corporation 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. The investigation will further related, 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34467 Filed 11-22-76;8:45 am]

[TA-W-1,249]

WORCESTER CONTROLS CORP.

Investigation Regarding Certification of Eligibility to Apply for Worker Adjustment Assistance

On November 9, 1976 the Department of Labor received a petition dated October 10, 1976 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Steelworkers of America on behalf of the workers and former workers of the West Boylson, Mass. plant of Worcester Controls Corp., Londonderry, New Hampshire (TA-W-1,249). Accordingly, the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted an investigation as provided in section 221(a) of the Act and 29 CFR 90.12.

The purpose of the investigation is to determine whether absolute or relative increases of imports of articles like or directly competitive with ball valves and actuators produced by Worcester Controls Corporation 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. The investigation 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. A group meeting the eligibility requirements of section 222 of the Act 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.

Pursuant to 29 CFR 90.13, the petitioner or any other person showing a substantial interest in the subject matter of the investigation 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 December 3, 1976.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 3, 1976.

The petition filed in this case is available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 9th day of November 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.76-34468 Filed 11-22-76;8:45 am]

LEGAL SERVICES CORPORATION

EVERGREEN LEGAL SERVICES

Grant Application

The Legal Services Corporation was established by the Legal Services Corporation Act of 1974, Pub. L. 93-355, 88 Stat. 378, 42 U.S.C. 2996.

Pursuant to Section 1007(f) of the Legal Services Corporation Act, 42 U.S.C. 2996f, the Legal Services Corporation hereby gives notice that it is considering an application submitted by Evergreen Legal Services for a grant in the amount of $13,397 per month for the provision of legal services in Asotin, Ferry, Stevens, Pend Oreille, Benton, Grant, Adams, Franklin and Whitman Counties, in the state of Washington.

A final decision on the application will not be made until after the conclusion of review procedures, pursuant to 45 C.F.R. 1606, scheduled to occur during the month of December, 1976 in the state of Washington.

Interested persons are hereby invited to submit written comments, recommendations, or requests for further information concerning the application to the Regional Office of the Legal Services Corporation at 506 Second Avenue, Room 1621, Seattle, Washington 98104.

THOMAS EHRLICH,
President, Legal Services Corporation.

[FR Doc.76-32438 Filed 11-22-76;8:45 am]

RECIPIENT EMPLOYEES SALARY INSTRUCTIONS

Effective Date

On November 12, 1976, the Legal Services Corporation published in the FEDERAL REGISTER (41 FR 50042) a document which established recipient employees salary instructions. The document becomes effective on January 1, 1977.

CHARLES E. JONES,
Director, Office of Field Services, Legal Services Corporation.

[FR Doc.76-34513 Filed 11-22-76;8:45 am]

NATIONAL SCIENCE FOUNDATION

NATIONAL MAGNET LABORATORY VISITING COMMITTEE

Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: National Magnet Laboratory Visiting Committee.

Date and time: December 13 and 14, 1976—9:00 a.m. to 6:00 p.m. each day.

Place: 170 Albany Street, Cambridge, Massachusetts.

Type of meeting: Open to the Public Dec. 13, and Closed Dec. 14.

Contact person: Dr. W. T. Oosterhuis, Staff Associate for Special Projects, Division of Materials Research, Rm. 404, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-7334.

Purpose of panel: To provide advice and recommendations concerning support for Staffing, Management and Operations of the Francis Bitter National Magnet Laboratory.

AGENDA

MONDAY, DEC. 13, 1976—OPEN MEETING

9:00	Welcome, Dr. Thomas F. Jones, vice president for research, M.I.T.
9:05	Introduction and overview, Prof. Benjamin Lax, director.
9:35	Magnetism and superconductivity, Dr. Simon Foner.
10:00	Magnetostriction studies, Dr. Yaacov Shapira.
10:40	Nuclear magnetic resonance program, Dr. Leo J. Neuringer.
11:00	Processing of magnetic materials in Earth orbit, Dr. David J. Larson, Grumman Aerospace Corp.
11:20	Quantum optics, Dr. Roshan L. Aggarwal.
11:40	Plasma physics, Dr. Daniel R. Cohn.
1:10	General tour of the laboratory.
1:50	Magnet technology, Dr. D. Bruce Montgomery.
2:20	Optical studies of magnetic phase transitions, Prof. David J. Litster, Department of Physics, M.I.T.
3:00-5:30	Individual visits by visiting committee members with NML staff.

Unless otherwise designated, all speakers are research staff members at the Francis Bitter National Magnet Laboratory.

TUESDAY, DECEMBER 14, 1976—CLOSED MEETING

To assess new programs and their impact, to discuss the financial status of the Laboratory, and to make recommendations for the guidance of the NML and the NSF.

Reason for closing: The proposals and projects being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals and projects. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(b), Freedom of Information Act. The rendering of advice by the panel is considered to be a part of the Foundation's deliberatives process and is thus subject to exemption (5) of the Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make determinations by the Director, NSF, on February 11, 1976.

NOVEMBER 18, 1976.

M. REBECCA WINKLER,
Acting Committee Management Officer.

[FR Doc.70-34562 Filed 11-22-76;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

PRIVACY ACT OF 1974

Reports on New Systems

The purpose of this notice is to list reports on new systems filed with the Office of Management and Budget to give members of the public the opportunity to make inquiries about them and to comment on them.

The Privacy Act of 1974 requires that agencies give advance notice to the Congress and the Office of Management and Budget of their intent to establish or modify systems of records subject to the Act (5 U.S.C. 552a(o)). During the period November 1 through November 12, 1976 the Office of Management and Budget received the following reports on new (or revised) systems of records.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

System name:

Privacy Act Requesters.

Report date:

November 1, 1976.

Point of contact:

Mr. Harold Rosenthal, Departmental Privacy Act Officer, Housing and Urban Development, Washington, D.C. 20410.

DEPARTMENT OF TRANSPORTATION

System names:

(1) Improved Motorcyclist Licensing and Testing Demonstration Project Data System.
(2) Employee Travel Advances and Expense.

Report date:

November 1, 1976.

Point of contact:

Mr. Calvin Burkhart, Director, Office of Management Services, Room 5238, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590.

FEDERAL HIGHWAY ADMINISTRATION

System name:

Panel for the Santa Monica Demonstration Project.

Report date:

November 1, 1976.

Point of contact:

Ms. Mary Lynn Tischer, Mr. Ricardo dePaul Dobson, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590.

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

System name:

Payroll records for the Committee for Purchase for the Blind and Other Severely Handicapped.

Report date:

November 3, 1976.

Point of contact:

C. W. Fletcher, Executive Director, Committee for Purchase from the Blind and Other Severely Handicapped, 2009 Fourteenth Street North, Arlington, Virginia 22201.

UNITED STATES COAST GUARD

System name:

Merchant Seamen's Records.

Report date:

November 4, 1976.

Point of contact:

Joseph P. Dawley, G-MVP, U.S. Coast Guard Headquarters, Washington, D.C. 20590.

RAILROAD RETIREMENT BOARD

System name:

Regional Rail Reorganization Act Reimbursement System.

Report date:

November 8, 1976.

Point of contact:

W. V. Radesk, Railroad Retirement Board, 844 N. Rush Street, Chicago, Ill. 60611.

DEPARTMENT OF AGRICULTURE

System names:

Proposed new computer system for the New Orleans Computer Center to operate the following systems of records:
(1) Administrative billings and collections.
(2) Employee Travel and Transportation System.
(3) Imprest Fund Payment System.
(4) Personnel and Payroll System for USDA Employees.
(5) Uniform Allowances.

Report date:

November 8, 1976.

Point of contact:

Douglas S. Wood, Office of the General Counsel, U.S. Department of Agriculture, Washington, D.C. 20250.

VETERANS ADMINISTRATION

System name:

Report for Voluntary Service Records.

Report date:

November 9, 1976.

Point of contact:

Edward L. Arnold, Assistant Administrator for Planning and Evaluation, Veterans Administration, Washington, D.C. 20420.

DEPARTMENT OF JUSTICE

System names:

(1) Freedom of Information and Privacy Appeals Index.
(2) Miscellaneous Attorney Personnel Records System.
(3) Technical Assistance Resource Files.
(4) Registered Users File—National Criminal Justice Reference Service.
(5) Freedom of Information/Privacy Act Records.
(6) Freedom of Information/Privacy Act Records.
(7) Occupational Health Physical Fitness Files.
(8) Antitrust Caseload Evaluation System.
(9) Antitrust Division Case Cards.
(10) Freedom of Information/Privacy Requester/Subject Index File.
(11) Freedom of Information/Privacy Act Records.
(12) Freedom of Information Act Files.
(13) Freedom of Information Act and Privacy Act Records System.

Report date:

November 9, 1976.

Point of contact:

Mr. Harry L. Gastley, Administrative Counsel, Office of Management and Finance, Department of Justice, Washington, D.C. 20240.

UNITED STATES POSTAL SERVICE

System name:

Finance Records—Payroll System.

Report date:

November 11, 1976.

Point of contact:

John E. Finlay, USPS Records Officer, U.S. Postal Service, Washington, D.C. 20260.

PHILLIP D. LARSEN,
Acting Assistant to the Director for Administration.

[FR Doc.76-34504 Filed 11-22-76;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

EMPLOYMENT AND PERSONNEL RECORDKEEPING PRACTICES

Hearings; Correction

In F.R. Doc. 76-33073, appearing at page 49684, in the issue of Wednesday, November 10, 1976, on page 49684, portions of two sentences were deleted from the fourth section, "Disclosure to Third Parties," of the Notice of Hearings appearing in the third columns; that section of the Notice is reprinted below as it should have appeared:

DISCLOSURE TO THIRD PARTIES

To which outside sources are employment and personnel records commonly disclosed—labor unions, creditors, law enforcement agencies, auditors or pro-

gram evaluators, researchers, insurance companies, prospective employers, physicians or hospitals, others not mentioned? To what extent do units within the employing organization, such as auditors, medical staff, security officers, personnel officers, and line supervisors, share personal information about applicants and employees? To what extent is information sharing built into a record-keeping system? Is the applicant or employee informed of what disclosures are being made and to whom they are being made? Is the applicant or employee's consent always required before a disclosure is made? What information on individually identifiable subjects are employers required by statute or regulation to disclose to Federal and State governments? How are subpoenas for information maintained by employers about applicants, employees and former employees responded to by employers?

DAVID F. LINOWES,
Chairman.
CAROLE W. PARSONS,
Executive Director.

[FR Doc.76-34574 Filed 11-22-76;8:45 am]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 9534]

CHESTNUT STREET EXCHANGE FUND ET AL.

Filing of Application for An Order Exempting Proposed Transactions

NOVEMBER 17, 1976.

In the Matter of Chestnut Street Exchange Fund (A California Limited Partnership), 9601 Wilshire Boulevard, Beverly Hills, California 90210; G. Willing Pepper, 128 Springton Lake Road, Media, Pennsylvania 19063 and Robert R. Fortune, 2920 Ritter Lane, Allentown, Pennsylvania 18194.

Notice is hereby given, That Chestnut Street Exchange Fund (A California Limited Partnership) ("Fund"), an open-end, diversified, management investment company registered under the Investment Company Act of 1940 ("Act"), G. Willing Pepper ("Pepper") and Robert R. Fortune ("Fortune"), each a Managing General Partner of the Fund (hereinafter referred to collectively as "Applicants"), filed an application on October 4, 1976, and an amendment thereto on November 5, 1976, for an order of exemption, pursuant to section 17(b) of the Act, from certain provisions of Section 17(a) to permit Pepper and Fortune to exchange securities of certain other issuers owned by them for Units of Partnership Interest ("Shares") in the Fund in accordance with a public offering of such Shares. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Fund filed a Certificate and Agreement of Limited Partnership under the Uniform Limited Partnership Act of California on March 25, 1976 and a Restated Certificate and Agreement of Limited Partnership ("Partnership Agreement") on September 16, 1976. The Fund's registration statement under the Securities Act of 1933 became effective on September 16, 1976. Applicants state that pursuant to the Partnership Agreement, the Fund will be managed solely by the Managing General Partners.

Applicants represent that at the present time, the Fund consists of five individuals who act as Managing General Partners, and The Sandridge Corporation (a Delaware corporation organized solely for the purpose of investing in the Fund) which acts as a non-managing General Partner. Henry M. Watts, Jr., an individual Managing General Partner, is a registered broker or dealer or an affiliated person thereof, and, according to Applicants, is, therefore, an interested person of the Fund under section 2(a)(19)(A)(v) of the Act. Applicants also represent that David R. Wilmerding, also a Managing General Partner, owns securities of the Provident National Corporation, the parent corporation of the Fund's investment manager, Provident National Bank, and is, therefore, an interested person of the Fund.

The Fund and its non-managing General Partner received an order (Investment Company Act Release No. 9516, November 9, 1976) exempting them from sections 2(a)(3), 2(a)(19), 18(f), and 22(e) so that the Fund may operate as a registered investment company while organized as a limited partnership, and from section 17(a) so that Sandridge may contribute securities to the Fund in exchange for shares of the Fund.

The Fund intends to provide an investment medium for persons who have substantial holdings of appreciated equity securities that are acceptable to the Fund and who wish to exchange such holdings for Shares. The Fund has received a ruling from the Internal Revenue Service that, for Federal income tax purposes, the Fund will be treated as a partnership and not as an association taxable as a corporation.

Applicants also state that the exchange will not be consummated unless the value of all securities and cash accepted by the Fund is at least $25,000,000. The basis of the exchange will be one Share for each $25 in market value of securities and cash accepted as of the day preceding the effective date of the exchange, after deducting a subscription fee (except with respect to the proposed exchange with the Fund's non-managing General Partner), which is 4.5 percent for single transactions of less than $250,000 and is reduced, as the size of the transaction increases, to a minimum of 1.85 percent. No subscription fee will be payable unless the exchange is consummated. The minimum deposit accepted by the Fund will be securities and cash having a market value of at least $25,000 (before deduction of subscription fees) at the close of business on the date of deposit, except that under the Partnership Agreement, the Managing General Partners need not comply with thee $25,000 minimum deposit requirement.

The Applicants state that Pepper and Fortune each wish to deposit certain common stocks in exchange for the Fund's Shares. Pepper intends to offer the Fund 1,200 shares of Scott Paper Company, the securities of which are traded on the New York Stock Exchange. These shares of Scott Paper Company had a market value of approximately $24,750 as of the close of business on September 22, 1976. Pepper is the former president of Scott Paper Company but is no longer an officer, director or employee of that company and has not been since 1973. Such securities, according to Applicants, are not subject to any legal restrictions regarding their resale. Fortune intends to offer the Fund 1,000 shares of Xerox Corporation, the securities of which are traded on the New York Stock Exchange. The market value of such securities was approximately $67,250 at the close of business on September 22, 1976. Fortune has no relationship with Xerox Corporation other than as a shareholder. Such securities, according to Applicants, are not restricted.

Section 17(a) of the Act, in part, prohibits an affiliated person[1] of a registered investment company, acting as principal, from selling to or purchasing from such registered company any securities or other property. Section 17(b) of the Act provides that the Commission, upon application, may exempt a proposed transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of the registered investment company and with the general purposes of the Act.

In support of Applicants' request, they state that said securities, offered for exchange by Pepper and Fortune, will be valued and considered for exchange by the Fund on the same basis as securities offered for exchange by all depositors in connection with the public offering, except that the $25,000 minimum deposit requirement does not apply to them. The proposed exchange with Pepper and Fortune is subject to the payment of a subscription fee.

Applicants state that Scott Paper Company and Xerox Corporation are listed under "List of Representative Companies" in the Fund's Prospectus as being securities which the Fund would accept in exchange for its shares.

Applicants represent that, subject to its investment restrictions and overall investment objectives, the Fund does not intend to reject securities of Scott Paper Company and Xerox Corporation deposited by persons other than Messrs.

[1] Section 2(a)(3) of the Act defines "affiliated person" of an investment company as among others, any partner or copartner of such company.

Pepper and Fortune if such securities have the same or less capital appreciation than the securities deposited by Messrs. Pepper and Fortune. Applicants undertake that the Fund will not accept securities, whether of Scott Paper Company, Xerox Corporation or of other issuers, deposited by any of its Managing General Partners, unless the aggregate federal tax cost basis of all such securities so accepted (plus the amount of cash, if any, being invested in the Fund by the Managing General Partners as a group) stated as a percentage of the aggregate market value of all such securities so accepted plus such cash being so invested, is at least equal to the aggregate federal tax cost basis of all securities, whether of Scott Paper Company, Xerox Corporation or other issuers, accepted from depositors other than Managing General Partners plus the aggregate cash being invested in the Fund by depositors other than Managing General Partners, stated as a percentage of the aggregate market value of all securities so accepted from, plus all cash so being invested by, depositors other than Managing General Partners, as a group.

Applicants further state that in determining whether to reject deposits of particular securities, whether deposited by Managing General Partners or Limited Partners, the Fund will consider the $100,000,000 limitation in the transitional rules contained in the Tax Reform Act of 1976, the Fund's investment objectives and restrictions; and whether the securities in question are desirable for the Fund's initial portfolio in light of other securities on deposit, the tax basis of such securities and the amount of securities of a particular issuer deposited.

Applicants submit that the terms of the proposed transactions, including the consideration to be paid and received, are reasonable and fair, and do not involve overreaching. Applicants further represent that the proposed transactions are consistent with the policy of the Fund and the general purposes of the Act and are consistent with the protection of investors.

Notice Is Further Given, That any interested person may, not later than December 13, 1976, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address set forth above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-34505 Filed 11-22-76;8:45 am]

[Release No. 19759]

COLUMBIA GAS SYSTEM, INC. ET AL.

Post-Effective Amendment Regarding Intrasystem Financing

NOVEMBER 16, 1976.

In the matter of The Columbia Gas System, Inc., 20 Montchanin Road, Wilmington, Delaware 19807. (Columbia Gas of West Virginia, Inc.; Columbia Gas of Kentucky, Inc.; Columbia Gas of Virginia, Inc.; Columbia Gas of Ohio, Inc.; Columbia Gas of Pennsylvania, Inc.; Columbia Gas of New York, Inc.; Columbia Gas of Maryland, Inc.; Columbia Hydrocarbon Corporation; Columbia Gas Transmission Corporation; Columbia LNG Corporation; Columbia Gas Development Corporation; Columbia Gas Development of Canada Ltd.; Columbia Coal Gasification Corporation and The Inland Gas Company, Inc.)

Notice Is Hereby Given, That The Columbia Gas System, Inc. ("Columbia"), a registered holding company, and its above-named wholly-owned subsidiary companies, including Columbia Gas of West Virginia, Inc. ("Columbia of West Virginia") and The Inland Gas Company, Inc. ("Inland"), have filed with this Commission a post-effective amendment to the application-declaration in this proceeding pursuant to sections 6 (b), 9(a), 10, and 12(b) of the Public Utility Holding Company Act of 1935 ("Act") and Rule 45 promulgated thereunder regarding the following proposed transactions. All interested persons are referred to the amended application-declaration, which is summarized below, for a complete statement of the proposed transactions.

By order in this proceeding dated April 30, 1976 (HCAR No. 19506), Columbia and its above-named subsidiary companies were authorized to engage in certain intrasystem financing, including open account advances of up to $8,400,000 by Columbia to Columbia of West Virginia. It is not proposed that the amount of said advances to Columbia of West Virginia be increased to an aggregate of up to $18,400,000 under the same terms as the prior authorization. The advances will be repaid on or before May 31, 1977, and will initially bear interest at the prime commercial bank rate in effect from time to time at Morgan Guaranty Trust Company of New York. At the present time, the prime commercial bank rate is 6½ percent. The interest charges will be adjusted, after the storage financing period, to the effective interest cost Columbia achieves on its short-term borrowing. It is stated that the proposed increase is required in order to provide Columbia of West Virginia with sufficient funds to make rate refunds to its customers estimated to approximate $12,000,000 pursuant to an order of the Public Service Commission of West Virginia issued August 9, 1976.

In addition, the post-effective amendment adds Inland to the system companies included in the proceeding and states that Inland proposes to issue and sell to Columbia up to an aggregate of $1,500,000 of installment promissory notes prior to April 1, 1977. It is stated that the proposed financing is necessitated by the required additional production facilities that are now contemplated. Said installment notes are to be unsecured, non-registered, and dated the date of their issue. The principal amounts will be due in twenty (20) equal annual installments on March 31st of each of the years 1978 to 1997, inclusive. Interest on all such notes will accrue from the date of issuance and is to be paid semi-annually on the unpaid principal thereof until fully paid. The interest rate will be the actual cost of money to Columbia with respect to its last sale of debentures and/or preferred stock prior to the issuance of said notes decreased by an amount necessary in order that the interest rate be a multiple of 1/10 of one percent. Columbia sold $75,000,000 principal amount of debentures on May 19, 1976, at a cost of money of 9.327 percent. Therefore, the installment notes to be issued initially will bear an interest rate of 9.3 percent. Installment notes to be issued subsequent to any of Columbia's future financings will carry an interest rate related to the last such sale of securities prior to the issuance of said notes.

The expenses to be paid by Columbia and the two subsidiary companies in connection with the proposed transactions are estimated at $900. It has been requested that authority be granted to file certificates under Rule 24 with respect to the proposed transactions on a quarterly basis.

It is stated that the Public Service Commission of West Virginia has jurisdiction over the sale of securities by Columbia of West Virginia. No other State commission and no Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

Notice is further given, That any interested person may, not later than December 9, 1976, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by the post-effective amendment which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C.

20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as now amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. Persons who request a hearing or advice as to whether a hearing is ordered will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Corporate Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 76-34506 Filed 11-22-76; 8:45 am]

[Release No. 19758]

CONNECTICUT LIGHT AND POWER CO. AND THE HARTFORD ELECTRIC LIGHT CO.

Proposed Issuance of Secured Promissory Notes to State Authority for Construction of Pollution Control Equipment Financed By Sale of Revenue Bonds

NOVEMBER 16, 1976.

In the Matter of The Connecticut Light and Power Co., P.O. Box 2010, Hartford, Connecticut 06101; and The Hartford Electric Light Co., P.O. Box 2370, Hartford, Connecticut 06101 (70-5926).

Notice Is Hereby Given that The Connecticut Light and Power Company ("CL&P") and The Hartford Electric Light Company ("HELCO"), both public utility subsidiary companies of Northeast Utilities ("NU"), a registered holding company, have filed an application-declaration and amendments, thereto, with this Commission pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating sections 6(a) and 6(b) of the Act and Rule 50(a)(2) promulgated thereunder as applicable to the following 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.

CL&P owns and operates oil-fired electric generating plants at Milford, Norwalk, and Montville, Connecticut. HELCO owns and operates a similar plant at Middletown, Connecticut ("Plants"). The Federal Water Pollution Control Act Amendments of 1972 ("FWCPA") require permits for discharges of effluents into navigable waters and call for the elimination of the discharge of pollutants into navigable waters by 1985. CL&P and HELCO have obtained five year FWPCA permits for the Plants which specify deadlines for the design, construction and operation of facilities ("Project") for treatment of specific waste streams to meet the criteria established. CL&P's and HELCO's applications for FWPCA discharge permits with respect to the Plants are filed with the Connecticut Department of Environmental Protection ("DEP"), which administers FWPCA regulations. The estimated cost of the Project is $22,500,000, $15,825,000 and $6,675,000 for facilities to be installed at CL&P's and HELCO's plants, respectively.

To finance construction of the Project, CL&P and HELCO propose to enter into a Loan Agreement ("Agreement") with the Connecticut Development Authority ("Authority"). The Agreement will provide for the issuance by the Authority of the Pollution Control Revenue Bonds ("Authority Bonds") in a principal amount not to exceed $22,500,000 for construction of pollution control equipment. The proceeds of the sale of the Authority Bonds will be applied to the payment of the cost of construction of the Project.

Prior to the issuance of the Authority Bonds, CL&P and HELCO will each execute and deliver to the Authority a separate note ("Note") in the amount of $15,825,000 and $6,675,000, respectively. The Notes will be issued to evidence the obligation of CL&P and HELCO under the Agreement between the Authority, CL&P and HELCO for the repayment of the loan made by the Authority to CL&P and HELCO from the proceeds of the Authority Bonds. The Authority Bonds are to be secured by the assignment to Hartford National Bank and Trust Company, Hartford, Connecticut, ("Trustee") acting pursuant to an indenture of trust dated January 1, 1977, ("Indenture") between the Authority and the Trustee of the CL&P and HELCO Notes and the Agreement, which grants to the Authority a security interest in the Project equipment. The security interest will be subordinate to the lien of the Indenture dated as of May 1, 1921, between CL&P and Bankers Trust Company, Trustee, and, in the case of HELCO, of the First Mortgage Indenture and Deed of Trust, dated as of January 1, 1958, between HELCO and First National Bank of Boston, Trustee. Items of pollution control equipment released from the liens of such mortgage indentures will be automatically released from the lien of the security interest granted hereby.

It is expected that the Authority Bonds will be dated January 1, 1977, and will mature on January 1, 2007. Payment on the Notes will equal the amount payable as interest and principal on the Authority Bonds outstanding under the Indenture. Interest on the Notes will be at the rate and will be payable at times corresponding to the rate of interest on and times of payment of the Authority Bonds. It is presently proposed that interest will be paid semi-annually commencing July 1, 1977, and that mandatory sinking fund installments and/or serial maturities will commence not later than January 1, 1993, so as to retire not less than 25 percent of the Authority Bonds prior to maturity. The Indenture will contain certain redemption provisions which will include the right of CL&P and HELCO to cause the redemption of the Authority Bonds, in whole or in part, at any time after the Authority Bonds have been outstanding for ten years at an initial price of 103 percent declining by .5 percent each year thereafter. In addition, the Indenture will provide for special redemption without premium on account of the occurrence of one or more specified events.

The Agreement will also provide that in the event of a default by CL&P and/or HELCO in its obligations under the Agreement, the Trustee may cause all amounts payable by both CL&P and/or HELCO pursuant to such Agreement to become immediately due and payable. Proceeds from the issuance of the Authority Bonds will be advanced by the Trustee to CL&P and HELCO for expenditures (including capitalized interest) already made on account of the Project. The remainder of the proceeds will be held in separate construction funds to be maintained by the Trustee and will be advanced to CL&P and HELCO in accordance with the Agreement and Indenture, as certified pollution control expenditures are made. The Agreement further provides that the Companies have the option, so long as it is not in default thereunder, to repay the loan, including interest thereon, in whole or in part on any due date for the payment of interest, after the Authority Bonds have been outstanding for ten years. Such payments must be sufficient to redeem or purchase outstanding bonds in the manner and to the extent provided in the Indenture.

It is not possible to ascertain in advance precisely the interest rate which may be obtained in connection with the issuance of the Authority Bonds. However, CL&P and HELCO have been advised that tax-exempt bonds such as these have historically carried an annual interest rate approximately one and one half to two percent lower than comparable taxable long term corporate bonds. The maximum amount of Authority Bonds that are expected to be sold to finance the pollution control facilities and, consequently, the amount of the Notes may be adjusted downward prior to the date of issue.

For the twelve months ended September 30, 1976, interest on CL&P's outstanding first mortgage bonds, as computed under CL&P's mortgage indenture, was covered 2.32 times. After giving pro forma effect to the issuance of the pollution control bonds, CL&P's coverage is 2.26 times. For the twelve months ended September 30, 1976, interest on HELCO's outstanding first mortgage bonds, as computed under HELCO's mortgage indenture, was covered 2.54 times. After

giving pro forma effect to the issuance of the pollution control bonds, HELCO's coverage is 2.49 times.

It is contemplated that the Authority Bonds will be sold by the Authority pursuant to an arrangement with a group of underwriters represented by Morgan Stanley and Co., Incorporated. Each Company will agree to indemnify the Authority and the underwriters against certain civil liabilities.

CL&P and HELCO shall have the right under the Agreement to make substitutions, modifications or improvements to the Project, provided that the value or operation of the Project as pollution control facilities is not materially impaired. The outstanding promissory notes issued by CL&P and HELCO will be recorded as Other Long Term Debt in their financial statements. No associate company or affiliate company of CL&P and HELCO has any material interests, directly or indirectly, in the proposed transactions described therein.

The Public Utilities Control Authority of the State of Connecticut has jurisdiction over the proposed issuance of the Notes by the Companies. No other State or Federal commission, other than this Commission, has jurisdiction over the proposed transactions.

A statement of the fees and expenses to be incurred in connection with the proposed transactions will be supplied by amendment. It is stated that none of such fees, commissions or expenses is to be paid to any associate or affiliate of the Company, except for incidental services to be performed, at cost, by Northeast Utilities Service Company, an associate company.

Notice Is Further Given that any interested person may, not later than December 10, 1976, 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 applicant-declarant at the above stated address, and proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations permitted 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.76-34507 Filed 11-22-76;8:45 am]

[Release No. 34-12977;
File No. SR-PSE-76-20]

PACIFIC STOCK EXCHANGE INC.

Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on June 28, 1976, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Exchange proposes to revise its Rule XI ("Margins") to include positions in put option contracts, and to make certain other clarifying amendments to the Rule. Exchange Rule XI was originally proposed to be amended by a previous Form 19b-4A Filing (SR-PSE-76-8).

So much of Filing SR-PSE-76-8 which included or discussed amendments to Exchange Rule XI hereby is withdrawn so that such amendment can be considered by the Commission separately from the remainder of the proposed put options program.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to revise the Exchange's Rule XI ("Margins") to include positions in put option contracts. In addition, certain other clarifying amendments to the Rule are proposed to be made. Changes are proposed in section 2(c) of Rule XI in the provision titled "Long" and "Short" Provisions in Exchangeable or Convertible Securities and the provision titled Offsetting "Long" and "Short" Positions in the same security to make it clear that these provisions do not apply to options.

The proposed amendment to section 2(d)(2)(E) dealing with margin when both a put and a call are short in an account, strengthens the existing rule by providing that in addition to maintaining margin on the put or the call, whichever is greater, there shall also be maintained the amount of any unrealized loss on the other option, provided that both the put and the call shall be subject to a minimum requirement of $250. The existing rule provides that the margin shall not be less than the combined unrealized loss on both the put and the call.

It is also proposed to amend section 2(d) by adding a new clause (ii) to section 2(d)(2)(F), which will provide for puts equivalent treatment to that provided for calls in existing subparagraph (F).

The present section 2(d)(2)(F) provides that where an account reflects a so-called "spread" position between a short position in a call option and a long position in a call option on the same underlying security, the minimum margin required on such positions shall be the lower of (a) the amount required for an uncovered short position or (b) the amount by which the exercise price of the long call option exceeds the exercise price of the short call option.

The proposed amendment would add a comparable provision applicable to a spread position in put options, providing that when an account is short a put option and is at the same time long a put option covering the same number of units of the same underlying security, and the long put does not expire prior to the expiration of the short put, the minimum margin shall be the lower of (a) the amount required for an uncovered short position or (b) the amount by which the exercise price of the short put exceeds the exercise price of the long put.

It is proposed to add new subparagraph (V) to section 2(d)(2)(F). This subparagraph would permit a member to accept, in lieu of the margin otherwise required in respect of a short position in a put option, a letter of guarantee issued by an approved bank certifying that the bank holds for the account of the writer of the option the full amount of cash necessary to satisfy the writer's obligation on the option, and that the bank will pay this amount to the member against delivery of the underlying security. This provision is intended to facilitate put option writing by those customers who would not be able to maintain cash in a margin account with a broker, but who could deposit cash with a bank under the terms of a letter of guarantee. In this respect, the rule reflects established practice in the over-the-counter put option market. It is also proposed that the existing language contained in section 2(d)(2)(G) dealing with specific deposits or escrow deposits, and dealing with the situation when puts are carried short against a net short position in the underlying security, should be placed in separate subsections under subparagraph (G) and minor clarifying changes are made in these provisions.

The proposed rule change relates to the Exchange's capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, and the rules and regulations thereunder, and to the protection of investors and the public interest.

Comments on the proposed rule change have not been solicited from Exchange members and member organizations, and none have been received.

The proposed rule change will not impose any burden on competition.

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 Ex-

change Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within twenty-one days of the date of this publication.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges and, in particular, the requirements of section 6 and the rules and regulations thereunder.

Further, the Commission finds good cause for approving the proposed rule change to the thirtieth day after the date of publication of notice of filing thereof, inasmuch as approval thereof will engender greater uniformity among the margin rules of national securities exchanges pertaining to transactions in options.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change referenced above be, and it hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

NOVEMBER 15, 1976.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc.76-34508 Filed 11-22-76;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

PERSONNEL SECURITY REVIEW BOARD PANEL

Establishment

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), I hereby certify that the establishment of a Personnel Security Review Board Panel (PSRBP), and each Personnel Security Review Board (PSRB) constituted therefrom as hereinafter identified, is in the public interest in connection with the duties imposed upon the Energy Research and Development Administration by the Energy Reorganization Act of 1974, the Atomic Energy Act of 1954, as amended, and other applicable law. This determination follows consultation with the Office of Management and Budget (OMB) pursuant to section 9(a)(2) of the Federal Advisory Committee Act and OMB Circular No. A-63 (Revised).

1. Name of advisory committee: Personnel Security Review Board Panel.

2. Purpose: To constitute a group from which a Personnel Security Review Board (PSRB), consisting of 3 members (with a Chairman who is an attorney) can be appointed to review and to recommend in writing action on personnel security cases referred to it by the Assistant Administrator for National Security or appealed to by individuals concerned in accordance with 10 CFR Part 710.

3. Effective date, establishment, and duration: The Personnel Security Review Board Panel is established effective 15 days after publication of this notive (Dec. 8, 1976) and after filing of the charter with the standing committees of Congress having legislative jurisdiction over the Energy Research and Development Administration and the Library of Congress.

4. Membership: The membership of the Personnel Security Review Board Panel shall be fairly balanced in terms of points of view represented and the functions to be performed by the committee. There will be no discrimination on the basis of race, color, creed, national origin, religion, or sex.

5. Personnel security Review Board Panel and the PSRB. The Personnel Security Review Board Panel, and each PSRB, will operate in accordance with provisions of the Federal Advisory Committee Act (Pub. L. 92-463), ERDA policy and procedures, OMB Circular No. A-63 (Revised), and other directives and instructions issued in implemention of the Act. The Personnel Security Review Board will be provided with the necessary support to accomplish its purpose.

ROBERT C. SEAMANS, Jr.,
Administrator.

[FR Doc.76-34679 Filed 11-22-76;8:45 am]

SMALL BUSINESS ADMINISTRATION

COLUMBUS DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Columbus District Advisory Council will hold a public meeting at 9:30 a.m., Wednesday, December 15, 1976, at the Imperial House, Arlington, 1335 Dublin Road, Columbus, Ohio 43215, to discuss such matters as may be presented by members, staff of the Small Business Administration, and others present. For further information, write or call Frank D. Ray, U.S. Small Business Administration, 34 North High Street, Columbus, Ohio 43215, (614) 943-7310.

Dated: November 16, 1976.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.76-34609 Filed 11-22-76;8:45 am]

[License No. 04/04-5092]

FORSYTH COUNTY INVESTMENT CORP.

Approval of the Transfer of Control of A Small Business Investment Company

On September 23, 1976, a notice was published in the FEDERAL REGISTER (41 FR 41769) stating that Forsyth County Investment Corporation, Suite 305, Pepper Building, Fourth and Liberty Streets, Winston-Salem, North Carolina 27101, had filed an application with the Small Business Administration (SBA) pursuant to § 107.701 of the rules and regulations governing small business investment companies (13 CFR 107.701 (1976)), for the transfer of control of this company to ten new common stockholders.

Interested parties were given to the close of business October 8, 1976, to submit their written comments to SBA. No comments were received.

Notice is hereby given that, having considered the application and all other data, SBA approved this application for transfer of control effective October 22, 1976.

(Catalog of Federal Domestic Assistance Program No. 59.111, Small Business Investment Companies)

Dated: November 12, 1976.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.76-34610 Filed 11-22-76;8:45 am]

[Proposal No. 05/05-0114]

FRONTENAC CAPITAL CORP.

Application for a License as a Small Business Investment Company

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the SBA regulations (13 CFR 107.102 (1976)) by Frontenac Capital Corporation, 208 South LaSalle Street, Chicago, Illinois 60604 for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed general manager, officers, directors and shareholders are:

Name and address	Title or relationship	Percent of ownership
Frontenac Co., 208 South LaSalle St., Chicago, Ill. 60604.	General manager.	9.43
Martin J. Kelly, 208 South LaSalle St., Chicago, Ill. 60604.	Director, president, treasurer and assistant secretary.	0
George K. Hendrick, Jr., 208 South LaSalle St., Chicago, Ill. 60604.	Director, chairman of the board, secretary, and assistant treasurer.	0
Maurene D. Murphy, 208 South LaSalle St., Chicago, Ill. 60604.	Assistant treasurer.	0
Max A. Hoeler III, 1301 South Harrison St., Fort Wayne, Ind. 46801.	Director	0
Thomas F. Monahan, Sears Tower, Chicago, Ill. 60606.	Director	0
J. Richard Calhoon, P.O. Box 2046, Bloomington, Ill. 61701.	Director	0
Walter A. Stringfellow, Jr., 700 Mount Pleasant St., Winnetka, Ill. 60093.	Director	0
Lincoln National Corp., 1301 South Harrison St., Fort Wayne, Ind. 46801.		37.74
Country Life Insurance Co., 1701 Towanda Ave., Bloomington, Ill. 61701.		18.8
Central Life Assurance Co., P.O. Box 1455, Des Moines, Iowa 50306.		11.32
Modern Woodmen of America, 1701 1st Ave., Rock Island, Ill. 61201.		11.32
Sears Bank and Trust Co., Sears Tower, Chicago, Ill. 60606.		11.32

The Applicant will begin operations with a capitalization of $2,650,000 and will be a source of equity capital and long term loan funds for qualified small business concerns. In addition, the Applicant may render financial advisory services to qualified small business concerns.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including adequate profitability and financial soundness, in accordance with the Act and regulations.

Notice is further given that any person may, not later than December 8, 1976, submit written comments on the proposed SBIC to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, N.W., Washington, D.C. 20416.

A copy of this Notice will be published in a newspaper of general circulation in Chicago, Illinois.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 15, 1976.

PETER F. MCNEISH,
Deputy Associate Administrator for Investment.

[FR Doc.76-34611 Filed 11-22-76;8:45 am]

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

I-40

Grant for Construction in Memphis, Tennessee; Cancellation of Public Hearing

The purpose of this notice is to cancel a public hearing which was scheduled to be held in Memphis, Tennessee, on Tuesday, November 23, 1976. This hearing was to consider whether to approve a request from the Tennessee Department of Transportation (TDOT) for a federal grant for the completion of construction of a 3.7-mile segment of Interstate Highway 40 in Memphis, including 1 mile through Overton Park.

On October 28, 1976, I announced that I would hold such a hearing (41 FR 47987, November 1, 1976), and on November 2, 1976, I provided additional information on the hearing (41 FR 48829, November 5, 1976).

On November 17, 1976, this Department received a telegram and a letter from TDOT stating that TDOT is temporarily withdrawing environmental documentation it has submitted in connection with its grant application. Because of the uncertainty which this action creates regarding the status and nature of TDOT's proposal, it would not be constructive to hold the public hearing as scheduled. Accordingly, the public hearing is cancelled.

Issued in Washington, D.C., November 19, 1976.

JOHN W. BARNUM,
Deputy Secretary, of Transportation.

[FR Doc.76-34781 Filed 11-22-76;8:45 am]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

ART ADVISORY PANEL OF THE COMMISSIONER OF INTERNAL REVENUE

Availability of Report on Closed Meetings

NOVEMBER 12, 1976.

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Pub. L. 92-463), and OMB Circular A-63 of March 27, 1974, a report on the closed meetings, during the period November 12, 1975 to August 18, 1976, of the Art Advisory Panel of the Commissioner of Internal Revenue has been filed with the Secretary and furnished to the Library of Congress. Copies of the report are available for public inspection at the following locations:

The Library of Congress, Rare Book Division, Room 256, Main Building, 10 First Street, S.E., Washington, D.C.

Internal Revenue Service, Freedom of Information Reading Room, Room 1565, 1111 Constitution Ave., N.W., Washington, D.C.

DONALD C. ALEXANDER,
Commissioner.

[FR Doc.76-34612 Filed 11-22-76;8:45 am]

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

SALMONELLA ADVISORY COMMITTEE

Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that a meeting of the Salmonella Advisory Committee will be held on December 9, 1976, beginning at 9 a.m. in Room 3056, South Building, U.S. Department of Agriculture, Washington, D.C.

The objective of the Committee is to reduce the incidence of Salmonella in humans, animals, and poultry, and to advise the Secretary of methods by which this can be accomplished.

Representatives from the Center for Disease Control, Atlanta, Georgia, will meet with the Committee. The group will also be advised as to the current use of chlorine in the food industry.

Reports from the following subcommittees will also be discussed: Feed and Feed Ingredients; Production; Consumer Education; Processing and Distribution; Breeder and Hatchery; and Research.

Space will be reserved for Committee members and scheduled speakers. The public will be admitted on a first come, first serve basis. Comments of interested persons may be filed with the Committee before or after the meeting.

Information pertaining to the meeting may be obtained from Room 2165-South, Department of Agriculture, 14th and Independence Avenue, SW., Washington, D.C. 20250, Area Code (202) 447-3840.

Dated: November 19, 1976.

W. H. DUBBERT,
Executive Secretary.

[FR Doc.76-34685 Filed 11-22-76;8:45 am]

Animal and Plant Health Inspection Service

WITCHWEED ERADICATION PROGRAM

Draft Environmental Impact Statement

• *Purpose:* To give notice of the intent to prepare a draft environmental impact statement on a proposed witchweed eradication program. •

The Animal and Plant Health Inspection Service (APHIS) is proposing a witchweed eradication program under authority of the Organic Act (7 U.S.C. 147a). Witchweed is a serious pest of corn, sorghum, and sugarcane, and it is confined to 28 contiguous counties in North Carolina and South Carolina. APHIS has been involved in ongoing Federal-State witchweed control and trial eradication programs. Eradication techniques have been developed and eradication of this pest is feasible as determined by field tests. Witchweed has been eradicated in 9 counties of the 37 originally infested counties.

Therefore, this gives notice that an environmental impact statement is under preparation pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, by the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service. The first draft is scheduled for completion in January 1977.

To provide opportunity for participation in the development of the draft environmental impact statement, comments are invited from the public, from State and local agencies which administer plant pest control regulatory programs or are authorized to develop and enforce environmental standards, and from Federal Agencies having jurisdiction by law or special expertise with respect to any national program, issue, or environmental impact involved.

Comments concerning matters that should be addressed in the proposed environmental impact statement and requests for additional information should be addressed to the Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, by December 23, 1976.

Done at Washington, D.C., this 17th day of November 1976.

The Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Infla-

tion Impact Statement under Executive Order 11821 and OMB Circular A-107.

JAMES O. LEE, Jr.,
Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc.76-34529 Filed 11-22-76;8:45 am]

Farmers Home Administration

[FmHA Instruction 1980-E]

BUSINESS AND INDUSTRIAL LOANS

Insured Interest Rates

Notice is hereby given by the Farmers Home Administration that the current rate of interest for insured business and industrial loans, established pursuant to 7 CFR 1980.423(b) is as follows:

a. Insured loans to private entrepreneurs will be at the rate of nine and one-fourth percent (9¼%). This rate will remain in effect until a change is published in the FEDERAL REGISTER.

Effective date: This notice shall be effective on November 23, 1976.

Dated: November 16, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator, Farmers Home Administration.

[FR Doc.76-34534 Filed 11-22-76;8:45 am]

[Notice of Designation No. A399]

ILLINOIS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in certain Illinois Counties as a result of various adverse weather conditions shown in the following chart:

ILLINOIS

(50 Counties)

Adams: *Drought* May 15–August 24, 1976.
Bond: *Drought* January 1–August 27, 1976.
Boone: *Drought* June 1–August 30, 1976.
Brown: *Drought* May 6–August 6, 1976.
Bureau: *Drought* April 10–August 23, 1976.
Calhoun: *Drought* May 15–August 25, 1976.
Carroll: *Drought* May 1–August 27, 1976.
Cass: *Drought* June 1–July 25, 1976.
Christian: *Drought* May 15–September 1, 1976.
Clay: *Drought* April 1–August 23, 1976.
Clinton: *Drought* February 15–August 25, 1976.
Crawford: *Drought* April 15–August 26, 1976.
Cumberland: *Drought* April 15–September 2, 1976.
DeKalb: *Drought* April 18–August 24, 1976.
Effingham: *Drought* June 1–August 23, 1976.
Fayette: *Late freeze* and *frost* May 1–5, 1976. *Drought* May 15–August 27, 1976.
Fulton: *Drought* May 1–July 31, 1976. *Tornado* August 11, 1976.
Greene: *Drought* May 15–August 27, 1976.
Hancock: *Late freeze* and *frost* May 1–5, 1976. *Heavy rainfall* May 5–15, 1976. *Drought* May 15–August 26, 1976.
Jasper: *Drought* May 1–August 24, 1976.
Jefferson: *Drought* July–August 27, 1976.
Jersey: *Drought* June 1–July 31, 1976.
Jo Daviess: *Drought* April–August 30, 1976.
Lake: *Drought* July 1–August 26, 1976.
LaSalle: *Drought* June 1–August 27, 1976.
Lee: *Drought* May 30–August 31, 1976.
McDonough: *Drought* May–August 24, 1976. *Windstorm* August 11, 1976.
McHenry: *Drought* May 1–August 31, 1976.
Macoupin: *Drought* June 1–August 31, 1976.
Madison: *Drought* May 1–August 25, 1976.
Marion: *Drought* June 1–August 24, 1976.
Mason: *Drought* May 20–August 10, 1976.
Monroe: *Drought* June 1–July 31, 1976.
Montgomery: *Drought* July 1–August 31, 1976.
Morgan: *Drought* March 10–July 31, 1976.
Ogle: *Drought* May 1–August 25, 1976.
Perry: *Drought* June–August 31, 1976.
Pike: *Drought* May 1–August 26, 1976.
Randolph: *Drought* May 1–July 31, 1976.
St. Clair: *Drought* June 1–July 31, 1976.
Sangamon: *Drought* April 15–July 31, 1976.
Schuyler: *Excessive rain* April 20–May 10, 1976. *Drought* June 1–July 31, 1976.
Scott: *Drought* March 15–July 31, 1976.
Shelby: *Drought* April 15, 1976–August 23, 1976.
Stephenson: *Drought* May–August 27, 1976.
Washington: *Drought* July 4–August 31, 1976.
Whiteside: *Drought* May 15–August 31, 1976.
Winnebago: *Drought* June 1–August 25, 1976.
Kendall: *Drought* June 1–August 25, 1976.
Menard: *Drought* May 10–July 26, 1976.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3 (b) including the recommendation of Governor Dan Walker that such designation be made.

Applications for emergency loans must be received by this Department no later than December 30, 1976, for physical losses and July 29, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated areas makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 12th day of November, 1976.

FRANK B. ELLIOTT,
Administrator, Farmers Home Administration.

[FR Doc.76-34530 Filed 11-22-76;8:45 am]

[Notice of Designation No. A400]

KANSAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Kansas Counties as a result of drought September 1, 1975, through September 1, 1976, in Chase, Cowley, Douglas, Franklin, Jewell, Leavenworth, Lyon, Miami, Morris, Osage, Sumner, and Wyandotte Counties; freezing temperatures May 3, 1976, in Chase, Cowley, Douglas, Franklin, Leavenworth, Lyon, Miami, Osage, and Wyandotte Counties; freezing temperatures January 1 through January 31, 1976, in Jewell County; and high winds, excessive rainfall and hail May 29, 1976, in Leavenworth County.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Robert F. Bennett that such designation be made.

Applications for emergency loans must be received by this Department no later than December 30, 1976, for physical losses and July 29, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 16th day of November, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator, Farmers Home Administration.

[FR Doc.76-34531 Filed 11-22-76;8:45 am]

[Notice of Designation No. A397]

NORTH DAKOTA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Sioux County, North Dakota, as a result of frost May 1 through May 5, 1976, and drought May 1 through September 17, 1976.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94-68, and the provisions of 7 CFR 1832.3(b) including the recommendation of Governor Arthur A. Link that such designation be made.

Applications for emergency loans must be received by this Department no later than December 27, 1976, for physical losses and July 26, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, DC, this 16th day of November 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator, Farmers Home Administration.

[FR Doc.76-34532 Filed 11-22-76;8:45 am]

[Notice of Designation No. A401]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Texas Counties as a result of severe drought October 1, 1975, through August 31, 1976, in Bailey County and severe drought September 1, 1975, through May 22, 1976, and hailstorms April 29, May 22–25, and June 7–9, 1976, in Briscoe County.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended by Pub. L. 94–68, and the provisions of 7 CFR 1832.3(b) including the recommendations of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than December 30, 1976, for physical losses and July 29, 1977, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 16th day of November, 1976.

FRANK W. NAYLOR, Jr.,
Acting Administrator,
Farmers Home Administration.

[FR Doc.76-34533 Filed 11-22-76;8:45 am]

Food and Nutrition Service.

DONATED FOODS TO NUTRITION PROGRAMS FOR THE ELDERLY

Level of Assistance

Notice is hereby given that pursuant to section 707(a) (4) of the Older Americans Act of 1965, as amended (42 U.S.C. 3045f), the level of assistance in food commodities or, where applicable, cash in lieu thereof, to be provided by the Secretary of Agriculture to recipients of grants or contracts under Title VII of the Act will be increased for the period October 1, 1976 through September 30, 1977, to 27.25 cents per meal. The legislation requires the Secretary, in donating foods to nutrition programs for the elderly funded under Title VII, to maintain a minimum level of assistance during that period of not less than 25 cents per meal, adjusted to the nearest one-fourth cent to reflect changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics (BLS) of the Department of Labor. The minimum level of assistance at 27.25 cents per meal includes such an adjustment and reflects an 8.68 percent increase in that series as reported by BLS for the period May 1975 through August 1976.

Effective date. This notice is effective as of October 1, 1976.

Dated: November 17, 1976.

RICHARD L. FELTNER,
Assistant Secretary.

[FR Doc.76-34756 Filed 11-22-76;8:45 am]

Rural Electrification Administration

EAST KENTUCKY POWER COOPERATIVE, INC.

Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a Final Environmental Impact Statement in accordance with section 102 (2) (C) of the National Environmental Policy Act of 1969, in connection with a commitment to guarantee a $379,260,000 loan to East Kentucky Power Cooperative, Inc., P. O. Box 707, Winchester, Kentucky. The loan guarantee is to finance the construction of a 500 MW generating unit at the existing Spurlock Power Station at Maysville, Kentucky, and approximately 71 miles of 345 kV transmission line and related facilities.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue, S.W., Washington, D.C., Room 4310, or at the borrower address above.

Final REA action with respect to this matter (including a release of funds) may be taken after thirty (30) days, but only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 17th day of November, 1976.

DAVID H. ASKEGAARD,
Acting Administrator, Rural Electrification Administration.

[FR Doc.76-34686 Filed 11-22-76;8:45 am]

WESTERN ILLINOIS POWER COOPERATIVE, INC.

Jacksonville, Illinois Proposed Loan Guarantee

Under the authority of Pub. L. 93–32 (87 Stat. 65) and in conformance with applicable agency policies and procedures as set forth in REA Bulletin 20–22 (Guarantee of Loans for Bulk Power Supply Facilities), notice is hereby given that the Administrator of REA will consider providing a guarantee supported by the full faith and credit of the United States of America for a loan in the approximate amount of $95,491,000 to Western Illinois Power Cooperative, Inc. of Jacksonville, Illinois. These loan funds will be used to finance a 5.26 percent share of the 1850 MW Clinton Nuclear Plant which is presently under construction near Clinton, Illinois, by the Illinois Power Company along with 32 miles of related 345 kV transmission facilities.

Legally organized lending agencies capable of making, holding and servicing the loan proposed to be guaranteed may obtain information on the proposed project, including the engineering and economic feasibility studies and the proposed schedule for the advances to the borrower of the guaranteed loan funds from Mr. D. B. Bringman, Manager, Western Illinois Power Cooperative, Inc., P.O. Box 525, Jacksonville, Illinois 62650.

In order to be considered, proposals must be submitted (within 30 days from the date of this notice) to Mr. Bringman. The right is reserved to give such consideration and make such evaluation or other disposition of all proposals received, as Western Illinois Power Cooperative and REA deem appropriate. Prospective lenders are advised that the guaranteed financing for this project is available from the Federal Financing Bank under a standing agreement with the Rural Electrification Administration.

Copies of REA Bulletin 20–22 are available from the Director, Information Services Division, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250.

Dated at Washington, D.C. this 15 day of November, 1976.

DAVID H. ASKEGAARD,
Acting Administrator, Rural Electrification Administration.

[FR Doc.76-34373 Filed 11-22-76;8:45 am]

CIVIL AERONAUTICS BOARD

ASSIGNMENT OF PROCEEDINGS

The following proceedings are hereby assigned to Administrative Law Judge Burton S. Kolko. Future communications should be addressed to Judge Kolko.

Case	*Docket*
Richard Lawrence Garwin v. Eastern Air Lines	28292
Paul R. Kaiser v. Eastern Air Lines	28294
Francis A. Kingsley v. Eastern Air Lines	28597
Mary M. Levy v. Eastern Air Lines	28830
Sidney Wolfe, M.D. v. Eastern Air Lines	29213
Paul R. Kaiser v. Eastern Air Lines	29216
Robert D. Gries for Donald S. Gries, minor v. Eastern Air Lines	29228
Robert D. Gries for Peggy Lucile Gries, minor v. Eastern Air Lines	29229
Gary W. Nooger v. Eastern Air Lines	29247
Grant Phelps Thompson v. Eastern Air Lines	29856

Dated at Washington, D.C., November 17, 1976.

ROSS I. NEWMANN,
Chief Administrative Law Judge.

[FR Doc.76-34578 Filed 11-22-76;8:45 am]

CIVIL SERVICE COMMISSION

DEPARTMENT OF THE INTERIOR

Grant of Authority to Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission authorizes the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Deputy Assistant Secretary—Congressional and Legislative Affairs, Office of the Assistant Secretary—Congressional and Legislative Affairs, Office of the Secretary.

UNITED STATES CIVIL SERVICE COMMISSION,

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc.76-34565 Filed 11-22-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Revocation of Authority to Make Noncareer Executive Assignment

Under authority of § 9.20 of Civil Service Rule IX (5 CFR 9.20), the Civil Service Commission revokes the authority of the Department of the Interior to fill by noncareer executive assignment in the excepted service the position of Assistant to the Secretary, Immediate Office of the Secretary, Office of the Secretary.

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

[FR Doc.76-34566 Filed 11-22-76;8:45 am]

DEPARTMENT OF COMMERCE

Domestic and International Business Administration

COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Computer Systems Technical Advisory Committee will be held on Wednesday, December 15, 1976, at 9:30 a.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, NW., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, the Acting Assistant Secretary for Administration approved the recharter and extension of the Committee for two additional years, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls.

The agenda for the meeting is:

(1) Opening remarks by the Chairman.
(2) Presentation of papers or comments by the public.
(3) Reports on the work programs of the Subcommittees:
(a) Technology Transfer;
(b) Foreign Availability;
(c) Licensing Procedures; and
(d) Hardware.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3100, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: November 18, 1976.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.76-34557 Filed 11-22-76;8:45 am]

LICENSING PROCEDURES SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Notice of Open Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee will be held on Wednesday, December 15, 1976, at 1:00 p.m. in Room 3817, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, the Acting Assistant Secretary for Administration approved the recharter and extension of the Committee for two additional years, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Section 2404(c)(1) and the Federal Advisory Committee Act. The Licensing Procedures Subcommittee of the Computer Systems Technical Advisory Committee was initially established on February 4, 1974. On July 8, 1975, the Director, Office of Export Administration, approved the reestablishment of this Subcommittee, pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Licensing Procedures Subcommittee was formed to review the procedural aspects of export license applications within the Office of Export Administration and recommend areas where improvements can be made.

The agenda for the meeting is:

(1) Opening remarks by the Subcommittee Chairman.
(2) Presentation of papers or comments by the public.
(3) Discussion of future activities of the Subcommittee.

The meeting will be open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Room 3100 Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202-377-4196.

Dated: November 18, 1976.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.76-34559 Filed 11-22-76;8:45 am]

TECHNOLOGY TRANSFER SUBCOMMITTEE OF THE COMPUTER SYSTEMS TECHNICAL ADVISORY COMMITTEE

Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee will be held on Tuesday, December 14, 1976, at 1:00 p.m. in Room 4833, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C.

The Computer Systems Technical Advisory Committee was initially established on January 3, 1973. On December 20, 1974, the Acting Assistant Secretary for Administration approved the recharter and extension of the Committee for two additional years, pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. Section 2404(c)(1) and the Federal Advisory Committee Act. The Technology Transfer Subcommittee of the Computer Systems Technical Advisory Committee was initially established on April 10, 1974. On July 8, 1975, the Director, Office of Export Administration approved the reestablishment of this Subcommittee pursuant to the charter of the Committee.

The Committee advises the Office of Export Administration, Bureau of East-West Trade, with respect to questions involving technical matters, worldwide availability and actual utilization of production and technology, and licensing procedures which may affect the level of export controls applicable to computer systems, including technical data related thereto, and including those whose export is subject to multilateral (COCOM) controls. The Technology Transfer Subcommittee was formed to examine the impact of transferring Automatic Data Processing technology to Communist destinations.

The agenda for the meeting is:

(1) Opening remarks by the Subcommittee Chairman.

(2) Presentation of papers or comments by the public.

(3) Discussion of progress on action items assigned at the last meeting and review of draft report on the transfer of computer software technology.

The meeting is open for public observation and a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

Copies of the minutes of the meeting will be available upon written request addressed to the Freedom of Information Officer, Domestic and International Business Administration, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Domestic and International Business Administration, Room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone: A/C 202/377-4196.

Dated: November 18, 1976.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of East-West Trade, U.S. Department of Commerce.

[FR Doc.76-34558 Filed 11-22-76;8:45 am]

Domestic and International Business Administration

ADVISORY COMMITTEE ON EAST-WEST TRADE

Notice of Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that a meeting of the Advisory Committee on East-West Trade will be held on Wednesday, December 8, 1976, at 9:30 a.m., in Rooms 4832 and 4833, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

The Committee was established to advise the Department, through the Deputy Assistant Secretary for East-West Trade, on ways to facilitate and coordinate the expansion of two-way trade with countries having centrally planned economies, so as to enhance the balance of trade and payments situation.

Agenda items are as follows:

MORNING SESSION, ROOM 4832, 9:30 A.M.-12 NOON

1. Review of miscellaneous items outstanding from previous meetings.
2. Overview of business-related exchanges of personnel between the United States and Eastern Europe.
3. Review of items submitted by Committee members.
4. Review of items submitted by the Public.
5. Feasibility and usefulness of establishment of industry groups in East-West trade.

AFTERNOON SESSION, ROOM 4833, 1:00 P.M.-2:00 P.M.

6. Potential for U.S. Governmental credits in East-West trade financing.
7. Critique of selected Bureau of East-West Trade publications.

The meeting will be open to public observation and a period will be set aside for oral comments or questions by the public which do not exceed ten minutes each.

More extensive questions or comments should be submitted in writing before December 3, 1976. Other public statements regarding committee affairs may be submitted at any time before or after the meeting.

Approximately 20 seats will be available for the public (including 5 seats reserved for media representatives) on a first-come first-served basis.

Copies of minutes will be available 30 days after the meeting upon written request addressed to the Domestic and International Business Administration, Freedom of Information Officer, Freedom of Information Control Desk, Room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

Inquiries should be addressed to Robert Frothingham III, Committee Control Officer, Office of East-West Policy and Planning, Bureau of East-West Trade, Domestic and International Business Administration, U.S. Department of Commerce, Washington, D.C. 20230, telephone (202) 377-2734.

ARTHUR T. DOWNEY,
Deputy Assistant Secretary for East-West Trade.

NOVEMBER 18, 1976.

[FR Doc.76-34687 Filed 11-22-76;8:45 am]

National Oceanic and Atmospheric Administration

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the Gulf of Mexico Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The Gulf Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to Alabama, West Coast of Florida, Louisiana, Mississippi and Texas. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This is the third in a series of organizational meetings of the Council. The meeting will be held Wednesday, Thursday and Friday, December 8, 9, and 10, 1976, in the Greenway II Room of the Stouffer's Greenway Plaza Hotel, 6 Greenway Plaza East, Houston, Texas. The meeting will convene at 1:30 p.m. on December 8, and adjourn at about noon on December 10, 1976. The daily sessions will start at 8:30 a.m., and adjourn at 5:00 p.m., except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA

1. Council Organization and Administration Procedures
2. Budget and Financial Management Plans
3. Fishery Management Plan Development Procedures
4. Preliminary Fishery Management Plans

This meeting is open to the public and there will be seating for a limited number of public members available on a first come, first served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact on or about November 30, 1976:

Paul D. Fulham, Special Assistant to the Regional Director, National Marine Fisheries Service, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

At the discretion of the Council, interested members of the public may be per-

mitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing the Special Assistant to the Regional Director at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: November 19, 1976.

ROBERT W. SCHONING.

[FR Doc.76-34663 Filed 11-22-76;8:45 am]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the South Atlantic Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The South Atlantic Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the East Coast of Florida, Georgia, North Carolina, and South Carolina. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to the fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This is the fourth organizational meeting of the Council. The meeting will be held Monday and Tuesday, December 6 and 7, 1976, in the conference room at the North Carolina Marine Resources Center, Dogue Banks, Morehead City, North Carolina. The meeting will convene at 9:00 a.m. and adjourn at approximately 5:00 p.m. each day, except as otherwise noted. The meeting may be extended or shortened depending on progress on the agenda.

PROPOSED AGENDA:

1. Council Organization and Administration Procedures.
2. Technical Procedures Including Fishery Management Plan Development.

This meeting is open to the public and there will be seating for a limited number of public members available on a first come, first served basis. Members of the public having an interest in specific items for discussion are also advised that agenda changes are at times made prior to the meeting. To receive information on changes, if any, made to the agenda, interested members of the public should contact, on or above November 29, 1976:

Mr. Robert Cummins, Special Assistant to the Regional Director, South Atlantic Fishery Management Council, National Marine Fisheries Service, Duval Building, 9450 Gandy Boulevard, St. Petersburg, Florida 33702.

At the discretion of the Council, interested members of the public may be permitted to speak at times which will allow the orderly conduct of Council business. Interested members of the public who wish to submit written comments should do so by addressing Mr. Robert Cummins at the above address. To receive due consideration and facilitate inclusion of these comments in the record of the meeting, typewritten statements should be received within 10 days after the close of the Council meeting.

Dated: November 18, 1976.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.76-34662 Filed 11-22-76;8:45 am]

PELAGIC FISHERIES

Closing of Herring Season

Notice is hereby given pursuant to § 240.43(a), Title 50 CFR that the Director, National Marine Fisheries Service, has determined that United States vessels fishing in Division 5Y of Subarea 5 in the ICNAF Convention Area of the Northwest Atlantic defined in § 240.1(b)(5), will soon reach the annual catch quota for herring of 6,000 metric tons for the period January 1, 1976, through December 31, 1976, as described in § 240.41(2), published in the FEDERAL REGISTER (41 FR 20885).

I hereby announce that the season for taking herring without restriction as to quantity by persons and vessels subject to the jurisdiction of the United States will terminate in Division 5Y of Subarea 5 at 2400 hours local time, November 26, 1976. The restriction will remain in effect until 0001 hours local time, January 1, 1977.

Issued at Washington, D.C., and dated November 19, 1976.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc.76-34780 Filed 11-22-76;9:45 am]

DEPARTMENT OF DEFENSE

Department of the Navy

PROFESSIONAL EDUCATION ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Commandant of the Marine Corps' Professional Education Advisory Committee will meet on December 10 and 11, 1976, in Breckenridge Hall (Room 120) at the Education Center, Marine Corps Development and Education Command (MCDEC), Quantico, Virginia. Daily sessions of the meeting will commence at 8:30 a.m. and terminate at 5:30 p.m.

The purpose of the meeting is to elicit the advice of the committee concerning appropriate aptitude-classification tests for officer candidates, the establishment of a centralized Education and Training Center at MCDEC, and the applicability of current Marine Corps Orders to the teaching of conceptual skills involved in professional military education at the career and intermediate levels.

Dated: November 18, 1976.

JOHN S. JENKINS,
Captain, JAGC, U.S. Navy, Assistant Judge Advocate General (Civil Law).

[FR Doc.76-34560 Filed 11-22-76;8:45 am]

Office of the Secretary of Defense

NATURAL RESOURCES CONSERVATION ADVISORY COMMITTEE

Notification of Meeting

Pursuant to Pub. L. 92-463 notice is hereby given of the annual meeting of the Secretary of Defense Natural Resources Conservation Advisory Committee in Room 1E801 (Conference Room 1), The Pentagon, Washington, D.C. at 2 p.m. on Friday, December 10, 1976. The meeting will be open to the general public up to the seating capacity of the room. Because of the limited seating capacity and the fact that the Pentagon is not generally open to the public except for guided tours, it will be necessary for those planning to attend to contact Mr. F. B. Roche, Director, Real Property and Natural Resources, Office of the Assistant Secretary of Defense (Installations and Logistics) (telephone (202) 697-7227) prior to December 8, 1976.

Agenda items will include, but not be limited to: status of the Department of Natural Resources Conservation Program, areas of needed improvement, financing of the program, Departmental compliance with Section 7 of the Endangered Species Act of 1973, non-consumptive public use of DoD controlled real property, proposed cooperative agreements with the Department of the Interior on Management of Fish and Wildlife (updated agreement) and Public Outdoor Recreation (new) and future of Natural Resources Conservation Award program.

Dated: November 19, 1976.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

[FR Doc.76-34784 Filed 11-22-76;10:37 am]

COMMISSION ON CIVIL RIGHTS

DELAWARE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Delaware Advisory Committee (SAC) of the Commission will convene at 12:00 noon and end at 2:00 p.m. on December 8, 1976, at the YMCA, 11th and Washington Streets, Wilmington, Delaware.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Mid-Atlantic Regional Office of the Commission, 2120 L Street, NW., Room 510, Washington, D.C. 20037.

The purpose of this meeting is program planning for 1977.

This meeting will be conducted pursuant to the Rules and Regulations of the Commission.

Dated at Washington, D.C., November 10, 1976.

ISAIAH T. CRESWELL, Jr.,
Advisory Committee Management Officer.

[FR Doc.76-34789 Filed 11-22-76;11:25 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL-648-7; OPP-30123]

GLYCO CHEMICALS, INC.

Receipt of Application to Register A Pesticide Product Containing A New Active Ingredient

Glyco Chemicals, Inc., 51 Weaver St., PO Box 700, Greenwich CT 06830, has submitted to the Environmental Protection Agency (EPA) an application to register the pesticide product DANTOIN DMDMH-55 (EPA File Symbol 38906-R), containing 50.5% of the active ingredient 1,3-Dimethylol-5,5-Dimethylhydantoin and 2.5% of the active ingredient Monomethylol-5,5-Dimethylhydantoin which have not been included in any previously registered pesticide products. The application received from Glyco Chemicals, Inc. proposes that the product be classified for general use as a preservative for industry use. PM34

Application was made pursuant to the provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973, 89 Stat. 751, 7 U.S.C. 136(a) *et seq.*) and the regulations thereunder (40 CFR 162). Notice of receipt of this application is made in accordance with the provisions of Section 3(c)(4) of FIFRA [40 CFR 162.2(b)(6)] and does not indicate a decision by the Agency on the application.

Any Federal agency or other interested persons are invited to submit written comments on this application to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Rm. 401, East Tower, 401 M St. SW, Washington DC 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and of others interested in inspecting them. The comments must be received on or before December 23, 1976, and should bear a notation indicating the EPA File Symbol "38906-R". Comments received within the specified time period will be considered before a final decision is made with respect to the pending application. Comments received after the specified time period will be considered only to the extent possible without delaying processing of the application. Specific questions concerning this application should be directed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address or by telephone at 202/426-9490.

Notice of approval or denial of this application to register DANTOIN DMDMH-55 will be announced in the FEDERAL REGISTER. The label furnished by Glyco Chemicals, Inc., as well as all written comments filed pursuant to this notice, will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4:30 p.m. Monday through Friday.

Dated: November 18, 1976.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[FR Doc.76-34627 Filed 11-22-76;8:45 am]

[FRL 647-8]

TOXIC SUBSTANCES POLICY

Meeting

On December 14 and 15, 1976, the Environmental Protection Agency intends to hold a public meeting in Washington, D.C., to discuss policy issues relevant to the implementation of the Toxic Substances Control Act (Pub. L. 94-469). All interested parties are invited to participate by making brief oral presentations or submitting written documents or both.

An agenda will be published on or about December 6, 1976. The agenda will identify matters on which the Agency is particularly interested in having public comments; however, participants will be welcome to comment on all aspects of the implementation of this statute.

The notice to be published on or about December 6, 1976, also will provide details as to the exact time and location of the meeting. Persons who wish to participate are asked to notify, in writing or by phone, Mr. Richard Somoskey, Office of Toxic Substances (WH-557), Environmental Protection Agency, Washington, D.C. 20460. Telephone number 202-755-4880.

Dated: November 17, 1976.

JOHN QUARLES,
Deputy Administrator.

[FR Doc.76-34626 Filed 11-22-76;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 19660; FCC 76-1035]

INTERNATIONAL RECORD CARRIERS

Memorandum Opinion and Order; Effective Date

Adopted: November 9, 1976.

Released: November 18, 1976.

Order. In the Matter of International Record Carriers' Scope of Operations in the Continental United States, including possible revisions to the formula prescribed pursuant to section 222 of the Communications Act, Docket No. 19660,[1] RM-690.

1. On October 19, 1976, the United States Court of Appeals for the Second Circuit issued an Order denying a Motion by RCA Global Communications, Inc. (RCA) for stay pending review of our Report and Order and Notice of Proposed Rulemaking in the above-captioned matter, 57 FCC 2d 190 (1976). By subsequent Order, 58 FCC 2d 266 (1976), we stayed the effectiveness of our Report and Order on our own motion to consider challenges to our repeal of the 1943 formula for distribution of outbound, unrouted international message telegrams and prescription of an interim formula. On September 27, 1976, we released a Memorandum Opinion and Order herein, FCC 76-882, —— FCC 2d ——, denying RCA's petition before us for stay of that Report and Order. Pursuant to paragraph 30 of our September 27 Order, we continued our stay of the Order to allow RCA opportunity to obtain a ruling from the court.

2. In our Report and Order, we found that the 1943 formula is unjust, unreasonable, inequitable and not in the public interest and that the interim formula set forth in the Appendix thereto, 57 FCC 2d at 216-19, is just, reasonable, equitable and in the public interest. We reaffirmed our action in our September 27 Order; and the reviewing Court has declined to issue a stay or to disturb our denial of RCA's petition. Accordingly, we see no reason why our repeal of the 1943 formula and implementation of the interim formula should not become effective at the earliest reasonable time.

3. The Western Union Telegraph Company, charged under our Report and Order with the responsibility of implementing the interim formula, has informed us that it will be ready to proceed with automated procedures for such implementation on November 13, 1976. Accordingly, we will make the interim formula effective on that date. The parties herein are directed to conclude their preparations so that the interim formula may be implemented without further delay.

4. *Accordingly, it is ordered,* That the stay in the above-captioned proceeding, 58 FCC 2d 266 (1976), entered February 26, 1976, is hereby vacated, effective November 13, 1976.

5. *It is further ordered,* That Paragraphs 63 and 65 of our Report and Order and notice of proposed rulemaking, 57 FCC 2d 190 at 215, 216, (1976), are modified to become effective November 13, 1976.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

[FR Doc.76-34571 Filed 11-22-76;8:45 am]

[1] See paragraphs 63 and 65 of Report and Order Modified published at 41 FR 43448, October 1, 1976.

FEDERAL ENERGY ADMINISTRATION

BROOKLYN UNION GAS CO.

Issuance of Order Assigning Base Period Use of Butane for Synthetic Natural Gas Enrichment

The Federal Energy Administration (FEA) hereby gives notice that on October 18, 1976, FEA issued a Decision and Order to Brooklyn Union Gas Company (Brooklyn Union), Brooklyn, New York, assigning a base period supply of butane for use in the periodic elevation of the British thermal unit (Btu) enrichment of synthetic natural Gas (SNG) to be produced at Brooklyn Union's Brooklyn, New York, SNG facility.

FEA issued the October 18, 1976 Decision and Order pursuant to 10 CFR 211.12(e) (3) and 205.30 et seq.

Brooklyn Union's SNG manufacturing facility uses naphtha feedstock in the reforming process. SNG produced in the reforming process is normally equal in Btu heating contetnt to that of the pipeline natural gas with which it is mixed. The butane Btu enrichment material is to be utilized only during those periods of time when the methanation stage of Brooklyn Union's SNG plant would not be in use, which results in production of SNG the Btu content and flame characteristics of which would be inferior to that of the pipeline natural gas with which it is to be mixed. During these periods of methanator downtime, the butane enrichment material is injected into the SNG after the reforming stage, and provides the necessary additional Btu content to upgrade the SNG to meet the quality standards of 990 Btu per cubic feet as mandated by the New York State Public Service Commission and to duplicate the standard flame characteristics of the pipeline natural gas with which it is mixed. In accordance with the October 18 Decision and Order, Brooklyn Union is assigned a base period use of 16,667 barrels of butane for the fourth calendar quarter, and may use during that base period or, to the extent not utilized in that base period, in any of the three following calendar quarters corresponding to base periods, up to a total of 16,667 barrels of butane for Btu enrichment of the SNG output of Brooklyn Union's SNG facility as necessitated by any downtime experienced with the methanation process at Brooklyn's SNG facility. The amount of butane assigned is sufficient to provide Btu enrichment for approximately seven days of methanator downtime. No supplier of butane was assigned by the October 18 Decision and Order, as Brooklyn Union prefers to rely on the purchase of surplus butane to satisfy its requirements under the October 18 Decision and Order. The effective date of the Decision and Order is October 1, 1976.

In issuing the October 18 Decision and Order, FEA determined that the denial of the assignment would impose undue hardship on and result in economic distortions in the operation of Brooklyn Union's SNG facility and further would have a negative impact upon the public health, safety and welfare of Brooklyn Union's customers.

Copies of the October 18 Decision and Order are available for public viewing at the FEA Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue, N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., est., Monday through Friday, except Federal holidays.

In accordance with the provisions of 10 CFR Part 205 any aggrieved party may file an appeal of the October 18 Decision and Order with the Federal Energy Administration. The provisions of 10 CFR Part 205, Subpart H, set forth the procedures and criteria which govern the filing and determination of any such appeal.

For purposes of these regulations, the date of service of notice shall be deemed to be the date of publication of this notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first.

MICHAEL F. BUTLER,
General Counsel.

NOVEMBER 18, 1976.

[FR Doc.76-34613 Filed 11-18-76;4:23 pm]

NATURAL GAS TRANSMISSION AND DISTRIBUTION ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Natural Gas Transmission and Distribution Advisory Committee will hold a meeting on Thursday, December 9, 1976, at 9:30 a.m., in the Auditorium at 2000 M Street, NW., Washington, D.C.

This Committee was established to provide advice and review to the Federal Energy Administration with respect to transmission and distribution and with respect to the implementation of programs that affect gas transmission and distribution activities.

The agenda for the meeting is as follows:

1. Conservation and Solar Energy as a Source of Supplemental Gas Supply
2. National Energy Outlook for 1977—Natural Gas Issues
3. SNG Petroleum Feedstock Allocation—Future Prospects
4. LNG Import Policy—Current Status
5. Natural Gas Curtailments—1976-1977 Winter Season
6. Alaskan Natural Gas Transportation Act
7. Financing of Supplementary Natural Gas Supplies
8. Survey on Oil and Gas Reserves—Status Report
9. Gas Research Institute—Purpose and Objectives

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform the Director, Advisory Committee Management, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Further information concerning this meeting may be obtained from the Advisory Committee Management Office, 202-566-7022.

Minutes of the meeting will be made available for public inspection and copying in the FEA Freedom of Information Office, Room 2107, FEA Headquarters, 12th & Pennsylvania Avenue, NW., Washington, D.C.

Issued at Washington, D.C. on November 18, 1976.

MICHAEL F. BUTLER,
General Counsel.

[FR Doc.76-34614 Filed 11-18-76;4:23 pm]

[Notice No. 76-842]

FEDERAL HOME LOAN BANK BOARD

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

Extension of Charter

NOVEMBER 10, 1976.

Pursuant to the provisions of section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a), the following notice has been adopted by the Federal Home Loan Bank Board for publication in the FEDERAL REGISTER:

Pursuant to the provisions of section 9 of the Federal Advisory Committee Act (5 U.S.C. App. I), and the implementing regulations issued by the Office of Management and Budget, the Federal Home Loan Bank Board, having determined, after consultation with the Director of the Office of Management and Budget, that the continuation of the Federal Savings and Loan Advisory Council is in the public interest in connection with the performance of the duties imposed on it by law, hereby extends the existence of the Federal Savings and Loan Advisory Council for two years to January 5, 1979, and in connection therewith reissues the following charter (which appears as Section 8a of the Federal Home Loan Bank Act, as amended (12 U.S.C. 1428a)) to the said Council:

FEDERAL SAVINGS AND LOAN ADVISORY COUNCIL

Charter

There is hereby created a Federal Savings and Loan Advisory Council, which shall continue to exist as long as the Board biannually determines, as a matter of formal record, after consultation with the Director of the Office of Management and Budget, with timely notice in the FEDERAL REGISTER, to be in the public interest in connection with the performance of duties imposed on the Council by law. The Council shall, in all other respects, be subject to the provi-

sions of the Federal Advisory Committee Act. The Council shall consist of one member for each Federal Home Loan Bank district to be elected annually by the Board of directors of the Federal Home Loan Bank in such district and twelve members to be appointed annually by the Board to represent the public interest. Each such elected member shall be a resident of the district for which he is elected. All members of the Council shall serve without compensation, but shall be entitled to reimbursement from the Board for traveling expenses incurred in attendance at meetings of such Council. The Council shall meet in Washington, District of Columbia, at least twice a year and oftener if requested by the Board. The Council may select its chairman, vice chairman, and secretary, and adopt methods of procedure, and shall have power—

(1) To confer with the Board on general business conditions, and on special conditions affecting the Federal Home Loan Banks and their members and the Federal Savings and Loan Insurance Corporation.

(2) To request information, and to make recommendations, with respect to matters within the jurisdiction of the Board and the Federal Savings and Loan Insurance Corporation.

The Federal Home Loan Bank Board also has directed, in connection with the foregoing, that—

1. The Federal Savings and Loan Advisory Council's estimated budget of $72,000 shall be paid for by the self-supporting Federal Home Loan Bank System, and none of its annual operating costs shall be charged to or paid by the United States;

2. The said Charter of the Federal Advisory Council shall not be amended, altered, or repealed except by Congress or by the Federal Home Loan Bank Board; and

3. The said Charter shall terminate on January 5, 1979, unless reissued prior to that date by the Federal Home Loan Bank Board.

The Savings and Loan Advisory Council.

J. J. FINN,
Executive Secretary.

The Federal Home Loan Bank Board.

RONALD A. SNIDER,
Assistant Secretary.

[FR Doc.76-34563 Filed 11-22-76;8:45 am]

FEDERAL MARITIME COMMISSION

[Agreement No. 9450]

AUSTRALIA/EASTERN U.S.A. SHIPPING CONFERENCE

Agreement Expiration

The Federal Maritime Commission hereby serves notice that the Australia/Eastern U.S.A. Shipping Conference, Agreement No. 9450, as amended, and the Commission's approval of said agreement covering the trade from ports in the Commonwealth of Australia, Cook Island, Fiji Islands, New Caledonia, Territories of Papua and New Guinea, New Hebrides, Norfolk Island, British Samoa, Solomon Islands, Society Islands, Thursday Island, Tonga Islands, Gilbert Islands, and Ellice Islands to Atlantic and Gulf ports of the United States, Puerto Rico and the Virgin Islands automatically expired by operation of law on March 25, 1976, by virtue of the withdrawal of the next to the last conference line on said date. The reduction of the conference membership to fewer than two parties rendered Agreement No. 9450 a non-agreement since Section 15 of the Shipping Act, 1916, only recognizes agreements between two or more persons subject to the Act.

Dated: November 18, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-34596 Filed 11-22-76;8:45 am]

DUMONT SHIPPING CO. INC. AND GEORGE A. STATTEL, INC.

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California, and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 13, 1976. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairness with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

DUMONT SHIPPING CO. INC. AND GEORGE A. STATTEL, INC.

Notice of Agreement Filed By:

Bernard D. Atwood, Esq., Haight, Gardner, Poor & Havens, One State Street Plaza, New York, New York 10004.

Agreement No. FF 76-1 between Dumont Shipping Co. Inc. (DSCI) (FMC No. 887), George A. Stattel, Inc. (GASI) (FMC No. 1006), George A. Stattel and Mildred A. Stattel, provides for the turning over of all the accounts of GASI to DSCI. In servicing the account DSCI may use the name and style of "George A. Stattel Division of Dumont Shipping Co. Inc." A non-compete clause provides that George A. Stattel will not enter into direct or indirect competition with DSCI so long as a Consulting Agreement designated Agreement No. FF 76-1-A between DSCI, GASI and George A. Stattel is in effect. The Consulting Agreement provides that GASI shall act as consultant to DSCI as may be necessary to enable DSCI to service the accounts presently being serviced by GASI. The Consulting Agreement is to remain in effect for a period of seven (7) years unless sooner terminated. While the Consulting Agreement is in effect GASI agrees not to perform any freight forwarding activities or compete with DSCI.

By Order of the Federal Maritime Commission.

Dated: November 18, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-34595 Filed 11-22-76;8:45 am]

LEEWARD AND WINWARD ISLANDS AND GUIANAS CONFERENCE

Agreement Filed

Notice is hereby given that the following agreement has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreement at the Washington office of the Federal Maritime Commission, 1100 L Street, N.W., Room 10126; or may inspect the agreement at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and Old San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before December 13, 1976. Any person desiring a hearing on the proposed agreement shall provide a clear and concise statement of the matters upon which they desire to adduce evidence. An allegation of discrimination or unfairness shall be accompanied by a statement describing the discrimination or unfairnes with particularity. If a violation of the Act or detriment to the commerce of the United States is alleged, the statement shall set forth with particularity the acts and circumstances said to constitute such violation or detriment to commerce.

A copy of any such statement should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

LEEWARD AND WINDWARD ISLANDS AND GUIANAS CONFERENCE

Notice of Agreement Filed by:

Wade S. Hooker, Jr., Esquire, Casey, Lane & Mittendorf, 26 Broadway, New York, New York 10004.

Agreement No. 7540-28, by and among the member lines of the Leeward and Windward Islands and Guianas Conference, amends the basic conference agreement by providing for (1) the division of the present Atlantic rate-making section into two sections, namely, the North Atlantic Section, from Eastport, Maine to and including Cape Hatteras, and the South Atlantic Section, from Cape Hatteras to and including Key West, Florida; and (2) the establishment of Executive Committee, comprised of representatives of all member lines, which shall consider matters affecting the entire trade of the Conference as set forth in the agreement.

By Order of the Federal Maritime Commission.

Dated: November 18, 1976.

FRANCIS C. HURNEY,
Secretary.

[FR Doc.76-34594 Filed 11-22-76;8:45 am]

FEDERAL POWER COMMISSION

[Docket No. RP72-157, (PGA77-1a) (R&D77-1a)]

CONSOLIDATED GAS SUPPLY CORP.

Cancelling Notice

NOVEMBER 17, 1976.

On November 2, 1976 (41 FR 50019, November 12, 1976), and November 9, 1976, (41 FR 50501, November 16, 1976) the Commission issued notices of proposed changes in FPC gas tariff in the above-designated matter.

The notice issued November 9, 1976, is cancelled. Petitions to intervene or protests should be filed by November 24, 1976, in accordance with the notice issued November 2, 1976.

KENNETH F. PLUMB,
Secretary.

[FR Doc.76-34698 Filed 11-19-76;2:35 pm]

SHELL OIL COMPANY, ET AL.

[Docket Nos. CI70-79, et al.]

Applications for Certificates, Abandonment of Service and Petitions To Amend Certificates[1]

NOVEMBER 15, 1976.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to Section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in ments which are on file with the Commission and open to public inspection.

[1] This notice does not provide for consolition for hearing of the several matters covered herein.

Any person desiring to be heard or to make any protest with reference to said applications should on or before December 10, 1976, file with the Federal Power Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.[3]	Pressure base
CI70-79 B 10-12-76	Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Sea Robin Pipeline Co., Lease OCS-G 1199 in South Marsh Island block 27 field, offshore La.	(4)	--------
CI71-607 B 10-5-76	The Louisiana Land and Exploration Co., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160.	Transwestern Pipeline Co., section 34, block 21, U.L., Winkler County, Tex.	(5)	--------
CI77-9 (CS72-171) B 10-4-76	E. R. Hines, Jr., care of Luther M. Thompson, Heidelberg, Woodliff, Franks, 1030 Capitol Towers, Jackson, Miss. 39201.	Southern Natural Gas Co., Kokomo Field, Walthall County, Miss.	(5)	--------
CI77-10 (CS73-93) (CS71-515) (CS71-1103) B 10-4-76	Argonaut Energy Corp., Petro-Search, Inc., and Triton Oil & Gas Corp., P.O. Box 9158, Amarillo, Tex. 79105.	Northern Natural Gas Co., section 173, block 10, H & GN survey, Lipscomb County, Tex.	(4)	--------
CI77-11 (G-18779) B 10-4-76	Texas Oil & Gas Corp., et al., 2700 Fidelity Union Tower, Dallas, Tex. 75201.	Coastal States Gas Producing Co., John Ewing Gas Unit, Hidalgo County, Tex.	(5)	--------
CI77-12 (CI63-1388) B 10-5-76	Mobil Oil Corp., 3 Greenway Plaza East, Suite 800, Houston, Tex. 77046.	Columbia Gas Transmission Corp., Valentine Field, Lafourche Parish, La.	(4)	--------
CI77-13 A 10-5-76	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla. 73125.	Montana-Dakota Utilities Co., Boxear Butte Field, McKenzie County, N. Dak.	[6] 166.5735¢	14.73
CI77-14 A 10-6-76	Perry R. Bass, 2100 1st City National Bank Bldg., Houston, Tex. 77002.	Florida Gas Transmission Co., Northeast Gibson Field area (KK reservoir C, sand unit A, as created effective Sept. 1, 1973), Terrebonne Parish, La.	[7] [8] $1.75	15.025
CI77-15 A 10-8-76	Skelly Oil Co., P.O. Box 1650, Tulsa, Okla.	Transco Gas Supply Co., OCS Lease G-2063, block A-133, Brazos area (south addition), offshore Tex.	[6] [10] $1.426178	14.65
CI77-16 A 10-8-76	Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102.	El Paso Natural Gas Co., State "BB" No. 2 Well, section 16-21S-29E, Eddy County, N. Mex.	155.4348¢	14.73
CI77-17 A 10-8-76	Skelly Oil Co., P.O. Box 1650, Tulsa, Okla.	Transco Gas Supply Co., OCS lease G-2063, block A-70, Brazos area, south addition, offshore, Tex.	[6] [10] $1.426178	14.65
CI77-18 A 10-12-76	Transco Exploration Co.,[11] P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Vermilion block 22, offshore La.	[6] $1.842770	15.025
CI77-19 A 10-12-76	Cities Service Oil Co., P.O. Box 300, Tulsa, Okla. 74102.	Tennessee Gas Pipeline Co., Eugene Island blocks 237 and 238, offshore La.	[6] [9] $1.75	15.025
CI77-20 A 10-12-76	MRT Exploration Co.,[11] 9000 Clayton Rd., St. Louis, Mo. 63124.	Mississippi River Transmission Corp., Southwest New Liberty field, Beckham County, Okla.	$1.529783	14.65
CI77-21 (CS75-362) F 10-12-76	Kerr-McGee Corp. (successor to Palmer Oil Co.), P.O. Box 25861, Oklahoma City, Okla. 73125.	Montana-Dakota Utilities Co., section 22, T3N-R2E, Pavillion area, Fremont County, Wyo.	[6] 164.9591¢	15.025
CI77-22 (G-3113) B 10-12-76	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Skelly Oil Co., Cooper Jal field, Lea County, N. Mex.	(12)	--------
CI77-23 A 10-13-76	Union Oil Co. of Calif., P.O. Box 7600, Los Angeles, Calif. 90051.	El Paso Natural Gas Co., Turkey Track (Morrow) field, Eddy County, N. Mex.	[6] [13] 143.0000¢	14.73

Filing code: A—Initial service.
B—Abandonment.
C—Amendment to add acreage.
D—Amendment to delete acreage.
E—Succession.
F—Partial succession.
See footnotes at end of table.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI77-26 (CS72-681) E 10-13-76	Exxon Corp. (successor to Carl Oil & Gas, Inc.), P.O. Box 2180, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Dilworth field, McMullen County, Tex.	[9] $31.72	14.65
CI77-56 A 10-21-76	Dorchester Exploration, Inc., (operator), et al., 1100 Midland National Bank Tower, Midland, Tex. 79701.	El Paso Natural Gas Co., Winchester-Morrow field, Eddy County, N. Mex.	[14] $1.16287	14.65
CI77-58 (CS73-208) B 10-21-76	H & L Operating Co., Box 7401, Amarillo, Tex. 79109.	Panhandle Eastern Pipeline Co., Morse (Cleveland, south), Hansford County, Tex.—No. 1 Hudson, W/2 Sec. 6, block 5-T, T & NO survey.	(4)	-------

[1] Lease was surrendered effective Apr. 8, 1976.
[2] Lease expired.
[3] Nonproductive.
[4] Depleted.
[5] Well plugged and abandoned.
[6] Subject to upward and downward Btu adjustment.
[7] Subject to Btu adjustment.
[8] Applicant is willing to accept a certificate conditioned upon an initial rate equal to the national rate prescribed in opinion No. 770, as such rate from time to time is modified by the Commission.
[9] Plus 1¢ escalation per quarter.
[10] From Oct. 1, 1976 to Jan. 1, 1977.
[11] Applicant and purchaser are affiliated.
[12] Well reclassified.
[13] Subject to adjustment for 100 pct of taxes.
[14] Subject to upward Btu adjustment.

[FR Doc.76-34435 Filed 11-22-76;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

EMPLOYEES OF BEHAVIORAL RESEARCH INSTITUTE

Research on Mental Health; Authorization of Confidentiality

Pursuant to the authority vested in the Secretary of Health, Education, and Welfare by section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)) all persons who:

1. Are employed by the Behavioral Research Institute and

2. Have, in the course of such employment, access to information which would identify individuals who are the subjects of research on mental health, including drug abuse, pursuant to the Department of Health, Education, and Welfare grant numbered MH 27552-01 pertaining to the study of delinquent behavior referred to as The Dynamics of Delinquent Behavior—A National Survey, are hereby authorized to protect the privacy of the individuals who are the subjects of such research by withholding from all persons not connected with the conduct of such research the names or other identifying characteristics of such individuals.

As provided in section 303(a) of the Public Health Service Act (42 U.S.C. 242a (a)):

Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

This authorization does not authorize employees of the Behavioral Research Institute to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare for the purpose of management or financial audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to Department of Health, Education, and Welfare Grant numbered MH 27552-01. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare Grant numbered MH 27552-01 which would identify individuals who are subjects of the research conducted under the grant.

Dated: November 2, 1976.

BERTRAM S. BROWN, M.D.,
Director, National Institute of Mental Health.

Dated: November 4, 1976.

ROBERT L. DUPONT, M.D.,
Director, National Institute on Drug Abuse.

Dated: November 12, 1976.

JAMES D. ISBISTER,
Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc.76-34509 Filed 11-22-76;8:45 am]

Office of Education

INDOCHINA REFUGEE CHILDREN ASSISTANCE ACT

Intent to Issue Regulations

I. INTRODUCTION.

On September 10, the President signed the Indochina Refugee Children Assistance Act of 1976 (Pub. L. 94-405) as enacted by the Congress. The Act contains three titles. Titles I and II authorize one year programs of Federal financial assistance to States in order to assist local educational agencies to provide public education to Indochinese Refugee Children. Title III provides for a one-year discretionary grant program for operating special adult education programs for Indochina Refugees during Fiscal Year 1977. Eligible participants in these programs include Cambodian, Vietnamese, and Laotion refugees as defined in section 3 of the Indochina Migration and Refugee Assistance Act of 1975, 22 U.S.C. 2601(b)(3), as amended by Pub. L. 94-313.

It is the understanding of the Office of Education that the Congress does not intend to fund Title I of the Act, which provides for reimbursements to SEAs and LEAs for their educational expenditures on behalf of Indochinese Children during Fiscal Year 1976. (H.R. Rept. No. 94-1333 (94th Cong. 2nd Sess.) at 13. Thus, the Office of Education does not plan to issue regulations under Title I.

It is the two-fold purpose of this Notice of Intent to:

1. Alert the public to the statutory provisions of Titles II and III of the Indochina Children Refugee Assistance Act, and;

2. Facilitate public involvement in the rulemaking process at an early stage so as to assist the Office of Education in the development of regulations. This Notice provides a short explanation of the statutory provisions of Titles II and III, and the issues which have been identified and may need to be addressed in the regulation.

Through the publication of this Notice of Intent, interested members of the public have an opportunity to offer their ideas and specific recommendations concerning the regulations on the Indochina Refugee Children Assistance Act, to be developed by the Office of Education.

However, comment is not limited to the issues identified in this Notice. On the contrary, a central purpose of this Notice is to provide the public with an opportunity to raise issues. Any member of the public interested in commenting on other issues needed to be addressed in the regulations is welcome to do so. Commenters are urged to direct their comments to issues concerning the implementation of the statutory amendments through regulations. Recommendations for changes in the statute are not sought at this time.

This Notice of Intent is issued under the authority of the Commissioner and has not been reviewed by the Office of the Secretary of Health, Education, and Welfare. Its purpose is not to reflect policies of the Office of Education or of the Department of Health, Education, and Welfare but rather to obtain early input from the public in the development of regulations.

There have been no funds appropriated for either Titles II or III, and it is not clear at this time whether funds will be sought by the President, or appropriated for these programs, whose authorizations extend only through Fiscal Year 1977. However, since Congress may later enact appropriations for these programs, the Office of Education is required by section 431(g) of the General Education Provisions Act to develop regulations for them. This Notice of Intent is issued as the first step in that regulation process, with the intent of achieving wide and earlier participation of the

public in the rulemaking process. It is not, however, to be understood as a commitment on behalf of either the Congress or the Executive branch to fund these programs.

II. TITLE II—ASSISTANCE TO STATE EDUCATIONAL AGENCIES—JULY 1, 1976–SEPTEMBER 30, 1977—INDOCHINA REFUGEE CHILDREN

It appears that Congress intended that this program (which is applicable for the period from July 1, 1976 to September 30, 1977) be essentially a continuation of the program implemented under Pub. L. 94–23 "the Indochina Migration and Refugee Assistance Act of 1975" and 45 CFR Part 122, published in the FEDERAL REGISTER in 40 FR 47767 (October 10, 1975). Under Pub. L. 94–23, funds were made available to local educational agencies which were providing public educational services to Indochinese refugee children. The local educational agencies were entitled to a prescribed amount per child: $300.00 per child for the first hundred Indochinese refugee children being served or the number of such children comprising one percent of the agency's total enrollment, whichever was less. The more heavily impacted agencies, which served over 100 Indochinese refugee children or a number of such children exceeding one percent of their total enrollment, received $600.00 for each such child in excess of 100 or one percent of the total enrollment, whichever was less. Funds were being made available to local educational agencies for them generally to use for the refugee children's basic or supplementary needs as they saw fit. Grant recipients were not required to obtain Federal approval for proposed educational projects as they are in the various existing Federal programs of categorical aid for elementary and secondary education, and they were not required to make any separate accounting to the Commissioner for the use of Federal money received.

The two obvious important distinctions between the program under Pub. L. 94–23 and the program under Title II of Pub. L. 94–405 are noted as follows:

(a) Congress has mandated that the program under Pub. L. 94–405 be administrated by State educational agencies, whereas the program under Pub. L. 94–23 was administered directly by the Commissioner, the only State educational agency function being technical assistance.

(b) Under the program implemented by Pub. L. 94–23, local educational agencies were permitted, but were not required to count children enrolled in private schools for eligibility and funding purposes, as long as the local educational agency served those children throughout the grant period. However, under section 205(a) of Title II of Pub. L. 94–405, a local educational agency must, as a condition of receiving funds, provide educational services, materials, and equipment for the benefit of children enrolled in the nonpublic schools of the local school district. Section 206(c) of Title II authorizes the Commissioner of Education to waive this requirement and arrange to provide these services if the State is prohibited by law from providing them.

Several of the important issues which have been identified concerning this program are legal issues which must be resolved by the U.S. Department of Health, Education, and Welfare. The outstanding policy issues for public consideration appear to be:

(a) The general question of how to administer the program to ensure the fastest possible distribution of funds to the local educational agencies, taking into account the following factors:

(1) Regulations implementing this program will not be effective until late in the 1976–1977 school year;

(2) Appropriations for this program have not yet been enacted by Congress and, if they are enacted, probably will not be available for obligation at the Federal level until late in the 1976–1977 school year;

(3) Section 202(a) of Pub. L. 94–405 requires the Commissioner to make payments to participating State educational agencies (rather than make payments directly to local educational agencies); and

(4) Sections 205(a)(1)–(4) of Pub. L. 94–405 require the participating State educational agencies to review applications from local educational agencies, and to distribute funds to local educational agencies whose applications it has approved. Some specific questions in this connection are: What should be the deadline for submission of State educational agency applications to the U.S. Office of Education? Should each State educational agency be paid in one lump sum under a single grant award document, or should payments be made to each State educational agency under a series of grant award documents as local educational agency applications are approved?

(b) Given the provisions of sections 203 and 205(a)(5) of Title II, what reports should the Commissioner require of the State educational agencies, and when should these reports be submitted?

III. TITLE III—THE EMERGENCY ADULT EDUCATION PROGRAM FOR INDOCHINA REFUGEES

Under Title III of the Indochina Refugee Children Assistance Act, the Commissioner is authorized to operate a program of grants to State and local educational agencies for the purpose of operating special adult education programs for Indochina refugees. Grants may be used for:

(a) Programs of basic instruction in reading, mathematics, and the development and enhancement of necessary skills;

(b) Administrative costs of such programs of instruction;

(c) Educational support services, such as guidance and counseling; and

(d) Special projects to develop occupational and related skills for Indochinese refugees.

Prior to approval of a grant for an LEA under this program, the Commissioner must receive the assurance of the State that a grant to an LEA will not duplicate existing and available programs of adult education which meet the special needs of Indochina refugees. Further, any application for a grant must include a plan which reasonably assures the Commissioner that adult refugees are located near SEAs or LEAs seeking the grant, and that they would participate in the program.

Comments, advice, and guidance from the public are requested on the following issues:

(a) What types of educational support services are required to meet the needs of adult refugees?

(b) What provisions for pre-service and in-service training of teachers, counselors, and para-professionals are needed to meet the special education needs of the Indochina refugees?

(c) What criteria should be used to determine whether an SEA provides reasonable assurance that a grant of a particular LEA grant proposal would not result in duplication of services already being provided?

(d) Should priority be given in the evaluation of grant applications to the number of cash-assistance Indochina refugees in the area of the LEA or SEA applicant?

(e) Should priority be given to any of the three types of grants under this Act, e.g., programs of instruction and administrative costs, educational support services, or special projects to operate in conjunction with Federal and non-Federal programs and activities to develop occupational and related skills of the Indochina refugees? Or, should priority be given to grant applications which combines either combination of the above mentioned types of programs which may be funded?

(f) How can we assure that geographically isolated adult refugees will be served under this grant program?

(g) Should provisions be included in the grant applications to assure that the expertise of private and other public organizations already employed in educating Indochina adults is utilized by State and LEA recipients of grants? If so, how can the Office of Education ensure that utilization by SEAs or LEAs of these private and other public organizations in providing services to the refugees is carried out on a cost-effective basis?

INVITATION TO COMMENT

Persons or organizations wishing to submit comments or suggestions on the matters raised in this Notice of Intent or any other issues which relate to the development of regulations for Titles II and III of the Indochina Refugee Children Assistance Act of 1976 are invited to send their comments to the appropriate contact listed below:

Dr. James H. Lockhart (Elementary and Secondary), Federal Office Building No. 6, Room 2189, 400 Maryland Avenue, S.W., Washington, D.C. 20202, Phone: 202/245-7832.

Mrs. Myrna Hugi (Adult), Regional Office Building No. 3, Room 5068, 7th & D Streets, S.W., Washington, D.C. 20202, Phone: 202/245-9751.

In order to assure full consideration, commenters are urged to submit their comments on or before December 23, 1976.

(Catalog of Federal Domestic Assistance Nos. 13.596, Assistance to State Educational Agencies for Indochina Refugee Children and 13.400, Adult Education—Grants to States.)

Dated: November 16, 1976.

EDWARD AGUIRRE,
U.S. Commissioner of Education.

[FR Doc.76-34553 Filed 11-22-76;8:45 am]

Food and Drug Administration

ADVISORY COMMITTEE

Meeting

This notice announces the forthcoming meeting of a public advisory committee of the Food and Drug Administration. It also sets out a summary of the procedures governing the committee meeting and the methods by which interested persons may participate in the open public hearing conducted by the committee. The notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)). The following advisory committee meeting is announced:

Committee name	Date, time, and place	Type of meeting and contact person
General and plastic surgery device classification panel.	Dec. 16, 9 a.m., room 529A, South Portal Bldg., 200 Independence Ave. SW., Washington, D.C.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 3 p.m.; closed committee deliberations 3 p.m. to 3:30 p.m.; Mark F. Parrish, Ph.D. (HFK-470), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7438.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertient to the classification of the devices listed below to Mark F. Parrish, Ph.D., Executive Secretary. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify Dr. Parrish by December 9 and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and an indication of the approximate time required to make their comments.

Open committee discussion. The panel will classify the following devices: aerosol drape adhesive; tissue adhesive; adhesive bandage; endoscope accessories: incandescent lamp, transformer, xenon arc light source; endoscopes: battery powered, direct vision, fiberoptic, flexible, line operated power supply, mirror, prism, rigid, colonoscope, esophagoscope, gastroscope, laparoscope, laryngoscope, mediastinoscope, pancreatoscope, peritoneoscope, proctoscope; nonremote and remote illumination devices; intestine bag; lights/illuminators and accessories: lamp (fluorescent, incandescent, ultraviolet, xenon), light (accessories, carriers, ceiling mounted, connectors, endoscopic, fiberoptic, floor standing, headband, instrument); electric and magnetic locator; loupe; polytetrafluoroethylene (porous)/carbon fiber implants material; surgical microscope; continuous blood gas monitor; surgical dusting powder; internal drape retention ring; injectable silicone; specula accessories; illuminated and nonilluminated specula; muscle and nerve stimulators; surgical instrument accessories; suture bolsters; suture retention bridges. Also, the panel's previous classification of epilation devices at the October 28 meeting will be reviewed.

Closed committee deliberations. The panel will review a new drug application, NDA 17-325 (Davis and Geck). This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552(b)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) An open committee discussion, (3) A closed presentation of data, and (4) A closed committee deliberation. Every advisory committee meeting shall have an open public hearing. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. Both the Federal Advisory Committee Act and 5 U.S.C. 52(b) permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed shall, however, be closed for the shortest time possible consistent with the intent of the cited statutes.

Generally, FDA advisory committees will be closed because the subject matter is exempt from public disclosure under 5 U.S.C. 552(b) (4), (5), (6), or (7), although on occasion the other exemptions listed in 5 U.S.C. 552(b) may also apply. Thus, a portion of a meeting may be closed where the matter involves a trade secret; commercial or financial information that is privileged or confidential; personnel, medical, and similar files, disclosure of which could be an unwarranted invasion of personal privacy; and investigatory files compiled for law enforcement purposes. A portion of a meeting may also be closed if the Commissioner determines: (1) That it involves inter-agency or intra-agency memoranda or discussion and deliberations of matters that, if in writing would constitute such memoranda, and which would, therefore, be exempt from public disclosure; and (2) that it is essential to close such portion of a meeting to protect the free exchange of internal views and to avoid undue interference with agency or committee operations.

Examples of matters to be considered at closed portions are those related to the review, discussion, evaluation or ranking of grant applications; the review, discussion, an devaluation of specific drugs or devices; the deliberation and voting relative to the formation of specific regulatory recommendations (general discussion, however, will generally be done during the open committee discussion portion of the meeting); review of trade secrets or confidential data; consideration of matters involving FDA investigatory files; and review of medical records of individuals.

Examples of matters that ordinarily will be considered at open meetings are those related to the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices, consideration of labeling requirements for a class of marketed drugs and devices, review of data and information on specific investigational or marketed drugs and devices that have previously been made public, and presentation of any other data or information that is not exempt from public disclosure.

Dated: November 16, 1976.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.76-34343 Filed 11-22-76;8:45 am]

[Docket No. 76F-0420]

DOW CHEMICAL U.S.A.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 6B3224) has been filed by Dow Chemical U.S.A., Box 1706, Midland, MI 48640 proposing that § 121.2526 "Components of paper and paperboard in contact with aqueous and fatty foods" (21 CFR 121.2526) be amended to provide for the safe use of 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride as a preservative for latex pigment binders as components of paper and paper board intended for use in contact with all food types.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a significant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Room 15B-42 or the office of the Hearing Clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: November 16, 1976.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc.76-34525 Filed 11-22-76;8:45 am]

[Docket No. 76F-0446]

E.I. DUPONT DE NEMOURS AND CO.

Filing of Petition for Food Additive

Pursuant to provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP6B3243) has been filed by E.I. du Pont de Nemours & Co., 1007 Market St., Wilmington, DE 19898, proposing that § 121.2502 Nylon resins (21 CFR 121.-2502) be amended to provide for the safe use of Nylon 66 resins reinforced with calcium silicate for use as articles or components of articles intended for repeated use in contact with nonacidic food.

The environmental impact analysis report and other relevant material have been reviewed, and it has been determined that the proposed use of the additive will not have a signicant environmental impact. Copies of the environmental impact analysis report may be seen in the office of the Assistant Commissioner for Public Affairs, Rm. 15B-42 or the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20852, during working hours, Monday through Friday.

Dated: November 16, 1976.

HOWARD R. ROBERTS,
Acting Director,
Bureau of Foods.

[FR Doc.76-34526 Filed 11-22-76;8:45 am]

Health Services Administration

PROFESSIONAL STANDARDS REVIEW ORGANIZATION

Notice to Physicians Regarding Intention to Enter Into Agreement Designating PSRO for Area XXIII of the State of California

Notice is hereby given, in accordance with Section 1152(f) of the Social Security Act (42 USC 1320c-1(f)) and 42 CFR 101.104, that the Secretary of the Department of Health, Education, and Welfare proposes, subject to satisfactory completion of the contract negotiation process, and completion of required changes in the organizational structure and formal plan, to enter into an agreement with the California PSRO Area XXIII for PSRO Area XXIII of the State of California, which area is designated a Professional Standards Review Organization area in 42 CFR 101.7.

The Secretary has determined that the California PSRO Area XXIII is qualified to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of California, as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percentum of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XXIII of the State of California.

As stipulated in its Articles of Incorporation, the principal officers of the California PSRO Area XXIII are:

NAME AND OFFICE HELD

John M. Wasserman, M.D., Chairman.
David B. Horner, M.D., Vice Chairman.
Reinhold A. Allrich, M.D., Treasurer.
John D. Abbey, M.D., Secretary.

The official address of the corporation is 3711 Lomita Boulevard, Suite 140, Torrance, California 90505.

Any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XXIII of the State of California who objects to the Secretary entering into an agreement with the California PSRO Area XXIII, on the grounds that this organization is not representative of the doctors in such area may, on or before thirty days after the date this Notice appears in the FEDERAL REGISTER, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022. All such objections must include the physician's address, the location(s) of his office(s), his signature, and a certification that such physician is engaged in the active practice of medicine or osteopathy (i.e., direct patient care and related clinical activities, administrative duties in a medical facility, or other health related institutions, and/or medical or osteopathic teaching or research activity).

Pursuant to 42 CFR 101.103, the Secretary has determined that 3124 doctors of medicine and/or osteopathy are engaged in active practice in PSRO Area XXIII of the State of California. In the event that more than 10 percentum of the doctors express objections as described in the preceding chapter, the Secretary will, in accordance with 42 CFR 101.106, conduct a poll of all such doctors of medicine or osteopathy in such area to determine whether the California PSRO Area XXIII is representative of such doctors in the area; Provided that pursuant to Section 108(b) of Public Law 94-182, the provisions of Section 1152(f) (42 USC 1320c-1(f)), relating to notification and polling, as described above, shall not apply where: (1) the membership association or organization representing the largest number of doctors of medicine in such area, or in the State in which such area is located if different, has adopted by resolution or other official procedure a formal policy position of opposition to or noncooperation with the established program of professional standards review; or (2) the organization proposed to be designated by the Secretary under Section 1152 of such Act has been negatively voted upon in accordance with the provisions of subsection (f)(2) thereof.

Dated: November 18, 1976.

LOUIS M. HELLMAN,
Administrator,
Health Services Administration.

[FR Doc.76-34645 Filed 11-22-76;8:45 am]

PROFESSIONAL STANDARDS REVIEW ORGANIZATION

Notice to Physicians Regarding Intention to Enter Into Agreement Designating PSRO for Area XIV of the State of New York

Notice is hereby given, in accordance with Section 1152(f) of the Social Security Act (42 USC 1320c-1(f)) and 42 CFR 101.104, that the Secretary of the Department of Health, Education, and Welfare proposes, subject to satisfactory completion of the contract negotiation process, and completion of required changes in the organizational structure and formal plan, to enter into an agreement with the PSRO of Queens County, Inc. for PSRO Area XIV of the State of New York, which area is designated a Professional Standards Review Organization area in 42 CFR 101.36.

The Secretary has determined that The PSRO of Queens County, Inc. is

qualified to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of New York, as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percentum of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area XIV of the State of New York.

As stipulated in its Articles of Incorporation, the principal officers of The PSRO of Queens County, Inc. are:

NAME AND OFFICE HELD

Franz L. Ebstein, M.D., President of the Interim Board of Directors.

The official address of the corporation is 112-25 Queens Boulevard, Forest Hills, New York 11375.

Any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area XIV of the State of New York who objects to the Secretary entering into an agreement with The PSRO of Queens County, Inc., on the grounds that this organization is not representative of the doctors in such area may, on or before thirty days after the date this Notice appears in the FEDERAL REGISTER, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022. All such objections must include the physician's address, the location(s) of his office(s), his signature, and a certification that such physician is engaged in the active practice of medicine or osteopathy (i.e., direct patient care and related clinical activities, administrative duties in a medical facility, or other health related institutions, and/or medical or osteopathic teaching or research activity).

Pursuant to 42 CFR 101.103, the Secretary has determined that 4,794 doctors of medicine and/or osteopathy are engaged in active practice in PSRO Area XIV of the State of New York. In the event that more than 10 percentum of the doctors express objections as described in the preceding chapter, the Secretary will, in accordance with 42 CFR 101.106, conduct a poll of all such doctors of medicine or osteopathy in such area to determin ewhether The PSRO of Queens County, Inc. is representative of such doctors in the area; Provided that pursuant to Section 108(b) of Public Law 94-182, the provisions of Section 1152(f) (42 USC 1320c-1(f)), relating to notification and polling, as described above, shall not apply where: (1) the membership association or organization representing the largest number of doctors of medicine in such area, or in the State in which such area is located if different, has adopted by resolution or other official procedure a formal policy position of opposition to or noncooperation with the established program of professional standards review; or (2) the organization proposed to be designated by the Secretary under Section 1152 of such Act has been negatively voted upon in accordance with the provisions of subsection (f) (2) thereof.

Dated: November 18, 1976.

LOUIS M. HELLMAN,
Administrator,
Health Services Administration.

[FR Doc.76-34644 Filed 11-22-76;8:45 am]

PROFESSIONAL STANDARDS REVIEW ORGANIZATION

Notice to Physicians Regarding Intention To Enter Into Agreement Designating PSRO for Area II of the State of North Carolina

Notice is hereby given, in accordance with Section 1152(f) of the Social Security Act (42 USC 1320c-1(f)) and 42 CFR 101.104, that the Secretary of the Department of Health, Education, and Welfare proposes, subject to satisfactory completion of the contract negotiation process, and completion of required changes in the organizational structure and formal plan, to enter into an agreement with the Piedmont Medical Foundation, Inc. for PSRO Area II of the State of North Carolina, which area is designated a Professional Standards Review Organization area in 42 CFR 101.37.

The Secretary has determined that the Piedmont Medical Foundation, Inc. is qualified to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of North Carolina, as a nonprofit professional organization whose membership is voluntary and comprises at least 25 per centum of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of the State of North Carolina.

As stipulated in its Articles of Incorporation, the principal officers of the Piedmont Medical Foundation, Inc. are:

NAME AND OFFICE HELD

C. Douglas Maynard, M.D., President.
Thomas H. Byrnes, Jr., M.D., Vice President.
James Yopp, M.D., Secretary.
Thomas Thurston, M.D., Treasurer.

The official address of the corporation is 325 Stratford Oaks, Stratford Road, Winston-Salem, North Carolina 27103.

Any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area II of the State of North Carolina who objects to the Secretary entering into an agreement with the Piedmont Medical Foundation, Inc., on the grounds that this organization is not representative of the doctors in such area may, on or before thirty days after the date this Notice appears in the FEDERAL REGISTER, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1538, FDR Station, New York, New York 10022. All such objections must include the physician's address, the location(s) of his office(s), his signature, and a certification that such physician is engaged in the active practice of medicine or osteopathy (i.e., direct patient care and related clinical activities, administrative duties in a medical facility, or other health related institutions, and/or medical or osteopathic teaching or research activity).

Pursuant to 42 CFR 101.103, the Secretary has determined that 905 doctors of medicine and/or osteopathy are engaged in active practice in PSRO Area II of the State of North Carolina. In the event that more than 10 percentum of the doctors express objections as described in the preceding chapter, the Secretary will, in accordance with 42 CFR 101.106, conduct a poll of all such doctors of medicine or osteopathy in such area to determine whether the Piedmont Medical Foundation, Inc. is representative of such doctors in the area: Provided that pursuant to Section 108(b) of Public Law 94-182, the provisions of Section 1152(f) [42 USC 1320c-1(f)], relating to notification and polling, as described above, shall not apply where: (1) the membership association or organization representing the largest number of doctors of medicine in such area, or in the State in which such area is located if different, has adopted by resolution or other official procedure a formal policy position of opposition to or noncooperation with the established program of professional standards review; or (2) the organization proposed to be designated by the Secretary under Section 1152 of such Act has been negatively voted upon in accordance with the provisions of subsection (f) (2) thereof.

Dated: November 18, 1976.

LOUIS M. HELLMAN,
Administrator,
Health Services Administration.

[FR Doc.76-34643 Filed 11-22-76;8:45 am]

PROFESSIONAL STANDARDS REVIEW ORGANIZATION

Notice to Physicians Regarding Intention to Enter Into Agreement PSRO for Area II of the State of Virginia

Notice is hereby given, in accordance with Section 1152(f) of the Social Security Act (42 USC 1320c-1(f)) and 42 CFR 101.104, that the Secretary of the Department of Health, Education, and Welfare proposes, subject to satisfactory completion of the contract negotiation process, and completion of required changes in the organizational structure and formal plan, to enter into an agreement with the Northern Virginia Foundation for Medical Care for PSRO Area II of the State of Virginia, which area is designated a Professional Standards Review Organization area in 42 CFR 101.52.

The Secretary has determined that the Northern Virginia Foundation for Medical Care is qualified to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B of the Social Security Act. The aforementioned organization is incorporated, according to

the laws of the State of Virginia, as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percentum of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area II of the State of Virginia.

As stipulated in its Articles of Incorporation, the principal officers of the Northern Virginia Foundation for Medical Care are:

NAME AND OFFICE HELD

Harry C. Kuykendall, M.D., President.
Bertran C. Synder, M.D., Vice President.

The official address of the corporation is 4660 Kenmore Avenue, Suite 320, Alexandria, Virginia 22304.

Any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area II of the State of Virginia who objects to the Secretary entering into an agreement with the Northern Virginia Foundation for Medical Care, on the grounds that this organization is not representative of the doctors in such area may, on or before thirty days after the date of this Notice appears in the FEDERAL REGISTER, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022. All such objections must include the physician's address, the location(s) of his office(s), his signature, and a certification that such physician is engaged in the active practice of medicine or osteopathy (i.e., direct patient care and related clinical activities, administrative duties in a medical facility, or other health related institutions, and/or medical or osteopathic teaching or research activity).

Pursuant to 42 CFR 101.103, the Secretary has determined that 1,780 doctors of medicine and/or osteopathy are engaged in active practice in PSRO Area II of the State of Virginia. In the event that more than 10 percentum of the doctors express objections as described in the preceding chapter, the Secretary will, in accordance with 42 CFR 101.106, conduct a poll of all such doctors of medicine or osteopathy in such area to determine whether the Northern Virginia Foundation for Medical Care is representative of such doctors in the area; Provided that pursuant to Section 108(b) of Public Law 94-182, the provisions of Section 1152(f) [41 USC 1320c-1(f)], relating to notification and polling, as described above, shall not apply where: (1) the membership association or organization representing the largest number of doctors of medicine in such area, or in the State in which such area is located if different, has adopted by resolution or other official procedure a formal policy position of opposition to or noncooperation with the established program of professional standards review; or (2) the organization proposed to be designated by the Secretary under Section 1152 of such Act has been negatively voted upon in accordance with the provisions of subsection (f) (2) thereof.

Dated: November 18, 1976.

LOUIS M. HELLMAN,
Administrator,
Health Services Administration.

[FR Doc.76-34642 Filed 11-22-76;8:45 am]

PROFESSIONAL STANDARDS REVIEW ORGANIZATION

Notice to Physicians Regarding Intention to Enter Into Agreement Designating PSRO for Area V of the State of Virginia

Notice is hereby given, in accordance with Section 1152(f) of the Social Security Act (42 USC 1320c-1(f)) and 42 CFR 101.104, that the Secretary of the Department of Health, Education, and Welfare proposes, subject to satisfactory completion of the contract negotiation process, and completion of required changes in the organizational structure and formal plan, to enter into an agreement with the Colonial Virginia Foundation for Medical Care for PSRO Area V of the State of Virginia, which area is designated a Professional Standards Review Organization area in 42 CFR 101.52.

The Secretary has determined that the Colonial Virginia Foundation for Medical Care is qualified to assume the duties and responsibilities of a Professional Standards Review Organization as specified in Title XI, Part B of the Social Security Act. The aforementioned organization is incorporated, according to the laws of the State of Virginia, as a nonprofit professional organization whose membership is voluntary and comprises at least 25 percentum of the licensed doctors of medicine or osteopathy engaged in active practice in PSRO Area V of the State of Virginia.

As stipulated in its Articles of Incorporation, the principal officers of the Colonial Virginia Foundation for Medical Care are:

NAME AND OFFICE HELD

Robert A. Morton, M.D., President.
J.S. Garrison, III, M.D., Vice President.
R. Lawrence Smith, M.D., Treasurer.
T. Eugene Temple, M.D., Secretary.

The official address of the corporation is 5 Koger Executive Center, Suite 220, Norfolk, Virginia 23502.

Any licensed doctor of medicine or osteopathy engaged in active practice in PSRO Area of the State of Virginia who objects to the Secretary entering into an agreement with the Colonial Virginia Foundation for Medical Care, on the grounds that this organization is not representative of the doctors in such area may, on or before thirty days after the date this Notice appears in the FEDERAL REGISTER, mail such objection in writing to the Secretary of the Department of Health, Education, and Welfare, P.O. Box 1588, FDR Station, New York, New York 10022. All such objections must include the physician's address, the location(s) of his office(s), his signature, and a certification that such physician is engaged in the active practice of medicine orosteopathy (i.e., direct patient care and related clinical activities, administrative duties in a medical facility, or other health related institutions, and/or medical or osteopathic teaching or research activity).

Pursuant to 42 CFR 101.103, the Secretary has determined that 1,386 doctors of medicine and/or osteopathy are engaged in active practice in PSRO Area V of the State of Virginia. In the event that more than 10 percentum of the doctors express objections as described in the preceding chapter, the Secretary will, in accordance with 42 CFR 101.106, conduct a poll of all such doctors of medicine or osteopathy in such area to determine whether the Colonial Virginia Foundation for Medical Care is representative of such doctors in the area; Provided that pursuant to Section 108(b) of Public Law 94-182, the provisions of Section 1152(f) (42 USC 1320c-1(f)), relating to notification and polling, as described above, shall not apply where: (1) the membership association or organization representing the largest number of doctors of medicine in such area, or in the State in which such area is located if different, has adopted by resolution or other official procedure a formal policy position of opposition to or noncooperation with the established program of professional standards review; or (2) the organization proposed to be designated by the Secretary under Section 1152 of such Act has been negatively voted upon in accordance with the provisions of subsection (f) (2) thereof.

Dated: November 18, 1876.

LOUIS M. HELLMAN,
Administrator,
Health Services Administration.

[FR Doc.76-34641 Filed 11-22-76;8:45 am]

HEALTH MANPOWER EDUCATION INITIATIVE PROJECTS

Announcement of Application Cycle and Funding Preferences

The Bureau of Health Manpower, Health Resources Administration, announces that applications for grants in fiscal year 1977 for Health Manpower Education Initiative Awards are now being accepted under authority of section 774(a) of the Public Health Service Act, as extended by the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484).

Section 774(a) of the Public Health Service Act (42 U.S.C. 295f-4(a)) authorizes the Secretary of Health, Education, and Welfare to make grants to public and nonprofit private health or educational entities for the purpose of improving the distribution, supply,

quality, utilization, and efficiency of health personnel and the health services delivery system. Under section 774(a) of the Act, grants may be awarded for projects:

1. To encourage the establishment or maintenance of programs to alleviate shortages of health personnel in areas designated by the Secretary through training or retraining such personnel in facilities located in those areas or to otherwise improve the distribution of health personnel by geographic area or by specialty group;

2. To provide training programs leading to more efficient utilization of health personnel;

3. To initiate new types and patterns or improve existing patterns of training, retraining, continuing education, and advanced training of health personnel, including teachers, administrators, specialists, and paraprofessionals (particularly physicians' assistants, dental therapists, and pediatric nurse practitioners);

4. To encourage new or more effective approaches to the organization and delivery of health services (including emergency medical services) through training individuals in the use of the team approach to delivery of health services (including emergency medical services) and otherwise;

5. To assist State, local, or other regional arrangements among schools and related organizations and institutions to carry out any of the above purposes; or

6. To provide (1) the discovery, collections, development or confirmation of information for, (2) the planning, development, demonstration, establishment, or maintenance of, or (3) the alteration or renovation of existing facilities for any of the purposes described above.

Section 57.2606(a) of the implementing regulations (42 CFR Part 57, Subpart AA) provides that the Secretary in awarding grants will take into consideration, among other pertinent factors, the national need which the particular project proposes to serve.

Notice is hereby given that the Secretary has determined there is a priority national need for projects to train health professions, nursing and public health students and students in auxiliary health fields in the use of the interdisciplinary team approach to the delivery of primary health care services and projects to encourage and assist in the development of programs emphasizing the cognitive aspects of human values, medical ethics, and humanistic medicine approaches to the education of students in the health professions including medicine, nursing, and physicians' assistants. Therefore, in fiscal year 1977 funding preference will be given to projects which address such national needs. For purposes of these projects, training in the interdisciplinary team approach to the delivery of primary health care is considered to be an educational program that teaches individuals to function as an integral part of an interprofessional team of health personnel, organized under the leadership of the professional who is accountable for the care of the patient, working toward a more efficient and more effective delivery of such health care. Central to the objectives of such training is the ability of the group to interact in such a way as to achieve a higher level of effectiveness or efficiency than would occur if each worked independently. Therefore, the purpose of the training is the acquisition of knowledge and skills necessary to work in an interactive group with a delineation and understanding of the roles of each and the relationship of the roles to one another in achieving the objectives. Programs emphasizing the cognitive aspects of human values, medical ethics, and humanistic medicine approaches to the education of students in the health professions including medicine, nursing, and physicians' assistants are educational programs designed to acquaint health professionals with the knowledge base and the problem identification/problem solving approach to dilemmas posed by the advances made in the biomedical sciences in recent years.

For Health Manpower Education Initiative Awards made in fiscal year 1977 funding preference will be given to applications which propose one of the following:

(1) Projects to train health professions, nursing and public health students and students in auxiliary health fields in the use of the interdisciplinary team approach to the delivery of primary health care services.

(2) Projects to encourage and assist in the development of programs emphasizing the cognitive aspects of human values, medical ethics, and humanistic medicine approaches to the education of students in the health professions including medicine, nursing, and physicians' assistants.

Although funding preference will be given to projects addressing the national needs, applications for projects to carry out the other purposes of Section 774(a) will be received and considered for funding.

This program is administered by and application materials may be obtained from the Special Programs Staff, Office of Interdisciplinary Programs, Bureau of Health Manpower, Health Resources Administration, 9000 Rockville Pike, Bethesda, Maryland 20014 (Telephone 301-496-6821). The deadline for receipt of applications for grants for fiscal year 1977 funding is January 3, 1977.

Dated: November 16, 1976.

HAROLD MARGULIES,
Acting Administrator,
Health Resources Administration.

[FR Doc.76-34597 Filed 11-22-76;8:45 am]

HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Community Planning and Development

[Docket No. N-76-635]

COMMUNITY DEVELOPMENT BLOCK GRANTS

Closing Date for Submission of Letters of Intent for Areawide Programs

On September 29, 1976, HUD published interim regulations in the FEDERAL REGISTER on how to apply for Community Development Block Grant (CDBG) Areawide discretionary funding (41 FR 43104). A notice also appeared in the FEDERAL REGISTER on September 28, 1976, pertaining to the closing date for submission of letters of intent for grants for Areawide Programs (41 FR 42692). The September 28 Notice stated that letters of intent for CDBG funds in support of the HUD/USDA demonstration grants in nonmetropolitan rural areas must be received by HUD by December 31, 1976. It is the purpose of this notice to modify the submission date for letters of intent and clarify other matters as follows:

1. The letter of intent will designate a single State agency to be responsible for the State's program.

2. One copy of the State's letter of intent must be submitted to the State and areawide A-95 clearinghouses by January 28, 1977. Comments of the A-95 clearinghouses must be included with the State's submission of the letter of intent.

3. Three copies of the letter of intent must be received by the Assistant Secretary for Community Planning and Development by 5 p.m. Washington, D.C. time, by February 28, 1977. The letter of intent should be addressed to: Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development, 451 7th Street, SW., Washington, D.C. 20410. In addition one copy of the letter of intent shall be addressed to the HUD Area Office serving the State.

Dated: November 9, 1976.

WARREN H. BUTLER,
Acting Assistant Secretary for Community Planning and Development.

[FR Doc.76-34538 Filed 11-22-76;8:45 am]

Office of Interstate Land Sales Registration

[Docket No. N-76-667]

CRESCENT LAKE

Hearing

In the matter of: Crescent Lake, Lewis E. Miller and Lewis E. Miller, Sole Proprietor, 76-283-IS, OILSR No. 0-3333-44-236, Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Crescent Lake, Lewis E. Miller and Lewis E. Miller, Sole Proprietor, authorized agent and officers, hereinafter referred to as "Respondent" being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing

issued September 24, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Crescent Lake located in Pike County, Pennsylvania contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 13, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *It Is Hereby Ordered* that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on December 20, 1976 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before November 30, 1976.

6. The Respondent is *Hereby Notified* that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an Order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: October 20, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76-34539 Filed 11-22-76;8:45 am]

[Docket No. N-76-666]

HIGH SKY, HIGH SKY, INC.

Hearing

In the matter of: High Sky, High Sky, Inc., Joseph E. Fraim, President, 76-286-IS, OILSR No. 0-2596-44-165, Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.-160(b).

Notice is hereby given that: 1. High Sky, High Sky, Inc., Joseph E. Fraim, President, authorized agent and officers, hereinafter referred to as "Respondent" being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued September 24, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for High Sky, Inc. located in Columbia County, Pennsylvania, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therin not misleading.

2. The Respondent filed an Answer received October 12, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *It is Hereby Ordered* that a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, D.C., on December 21, 1976 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before November 30, 1976.

6. The Respondent is *Hereby Notified* that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: October 20, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76-34540 Filed 11-22-76;8:45 am]

[Docket No. N-76-669]

KILLEARN ACRES

Hearing

In the matter of: Killearn Acres, J. T. Williams, Jr., President and Killearn Properties, Inc., 76-292-IS, OILSR No. 0-0665-09-151 and (A through D), pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that:

1. Killearn Acres, J. T. Williams, Jr., President and Killearn Properties, Inc., authorized agent and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued September 28, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Killearn Acres located in Leon County, Florida, contain untrue statements of material facts or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 21 and 22, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *It Is Hereby Ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, DC., on December 21, 1976, at 2:00 p.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, DC., 20410 on or before December 1, 1976.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an Order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1710.45(b)(1).

Dated: October 28, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc. 76-34541 Filed 11-22-76;8:45 am]

[Docket No. N-76-664]

POCONO ACRES

Hearing

In the Matter of: Pocono Acres, Wild Acres, Inc. and V. James Rocco, Jr., Secretary-Treasurer, 76-288-IS, OILSR No. 0-3848-44-282, Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that:

1. Pocono Acres, Wild Acres, Inc. and V. James Rocco, Jr., Secretary-Treasurer, authorized agent and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued September 27, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR

1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Pocono Acres located in Delaware Township, Pike County, Pennsylvania, contain untrue statements of material facts or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 15 and 22, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *It Is Hereby Ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, D.C., on December 10, 1976 at 2:00 p.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before November 2, 1976.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an Order Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: October 27, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76-34542 Filed 11-22-76;8:45 am]

[Docket No. N-76-668]

GOLDEN CYCLE LAND CORP.

Hearing

In the matter of: Rio Cucharas Units 1-3, Golden Cycle Land Corporation and W. T. Wells, President, 76-295-IS OILSR No. 0-2115-05-209(A), pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that:

1. Rio Cucharas Units 1-3, Golden Cycle Land Corporation and W.T. Wells, President, authorized agent and officer, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued September 29, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Rio Cucharas, Units 1-3, located in Huerfano County, Colorado, contain untrue statements of material facts or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 15 and 26, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *It Is Hereby Ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, SW., Washington, D.C., on January 25, 1977 at 10:00 a.m.

The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before December 31, 1976.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: October 27, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76-34543 Filed 11-22-76;8:45 am]

[Docket No. N-76-665]

TARA, POTOMAC VIEW ESTATES, INC.

Hearing

In the matter of: Tara Potomac View Estates, Inc. and Robert Blitz, President, 76-277-IS, OILSR No. 0-4348-24-72, pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that:

1. Tara, Potomac View Estates, Inc. and Robert Blitz, President, authorized agent and officers, hereinafter referred to as "Respondent" being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. L. 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued September 21, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b)(1) and 1720.125 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Tara subdivision located in Montgomery County, Maryland, contain untrue statements of material fact or omit to state material facts required to be stated therein or necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received October 5, 1976, in response to the Notice of Proceedings and Opportunity for Hearing.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Notice of Proceedings and Opportunity for Hearing.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(d) and 24 CFR 1720.160(d), *It Is Hereby Ordered*, That a public hearing for the purpose of taking evidence on the questions set forth in the Notice of Proceedings and Opportunity for Hearing will be held before Judge James W. Mast, in Room 7146, Department of HUD, 451 7th Street, S.W., Washington, D.C., on January 7, 1977 at 10:00 a.m.

5. The following time and procedure is applicable to such hearing: All affidavits and a list of all witnesses are requested to be filed with the Hearing Clerk, HUD Building, Room 10150, Washington, D.C., 20410 on or before December 20, 1976.

6. The Respondent is hereby notified that failure to appear at the above scheduled hearing shall be deemed a default and the proceedings shall be determined against Respondent, the allegations of which shall be deemed to be true, and an ORDER Suspending the Statement of Record, herein identified, shall be issued pursuant to 24 CFR 1710.45(b)(1).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR 1720.440.

Dated: October 20, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.76-34544 Filed 11-22-76;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SAC 072929]

CALIFORNIA

Partial Termination of Proposed Withdrawal and Reservation of Land

NOVEMBER 15, 1976.

Notice of Bureau of Reclamation, U.S. Department of the Interior, application SAC 072929, Pub. November 30, 1962, Vol. 27, No. 232, pg. 11821 and 11822, FR Doc. 62-11819 was published for withdrawal and reservation of land for reclamation purposes. The applicant agency has partially withdrawn its application so far as it affects the following described lands.

SAC 072929

MOUNT DIABLO MERIDIAN

T. 31 N., R. 6 W.,
Sec. 10, Lots 17, 18, 23, and 24;
Sec. 14, W½W½ (exclusive of M.S. 4868 and 4973);
Sec. 15, Lots 17 and 18;
Sec. 22, Lots 1, 2, 8, 9, and 23;
Sec. 23, S½.

T. 32 N., R. 6 W.,
Sec. 34, Lot 1 (Exclusive of MS 3527), Lot 2 (Exclusive of MS 3527), Lot 3 (Exclusive of MS 3527 and 3582), Lot 5 (Exclusive of MS 3582), Lots 7, 8, 11, 12 (Exclusive of MS 3527, 3582, and 5343), Lot 13 (Exclusive of MS 3582 and 5343), NE¼NE¼, E½SW¼, and SW¼SE¼.

aggregating approximately 1,242.56 acres.

At 10 a.m. on December 27, 1976, the lands will be relieved of the segregative effect of the above mentioned application.

HARRYETTE R. SOSBEE,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-34600 Filed 11-22-76;8:45 am]

[SAC 054898]

CALIFORNIA

Partial Termination of Proposed Withdrawal and Reservation of Lands

NOVEMBER 15, 1976.

Notice of Bureau of Reclamation, U.S. Department of the Interior, application SAC 954898, Pub. January 7, 1959, pg. 173, FR Doc. 59-114, was published for withdrawal and reservation of land for reclamation purposes. The applicant agency has partially withdrawn it application so far as it affects the following described lands.

SAC 054898

MOUNT DIABLO MERIDIAN

T. 32 N., R. 6W.,
Sec. 6, Lot 7, SE¼SW¼, and S½SE¼;
Sec. 8, SW¼NE¼ and SW¼NE¼SE¼;
Sec. 14, S½ exception that portion lying within boundaries of Mineral Survey No. 5748 (formerly Lots 4, 5, and 6 and NW¼SW¼ and S½S½, now Lots 44-74 and S½S½ and NW¼SW¼);
Sec. 15, S½S½NW¼SW¼, NE¼SE¼, and S½SE¼;
Sec. 18, Lot 1;
Sec. 21, W½SW¼SW¼ (formerly Lot 2, now Lots 3 through 10);
Sec. 23, S½NW¼;
Sec. 27, NW¼SE¼ (formerly Lot 6, now Lots 49-56, 65-72);
Sec. 33, NE¼NW¼ (excepting that portion lying within the boundaries of M.S. 3163) (formerly Lot 1, now Lots 3, 12 through 15, and 24 through 27), W½NE¼NE¼, and NW¼NE¼;
Sec. 34, NW¼NW¼ (formerly Lot 9, now Lots 14-29) and N½SW¼NW¼ (formerly N½ Lot 10, now Lots 30-37).

T. 36 N., R. 6W.,
Sec. 18, Lots 1, 2, 3, and 4;
Sec. 30, Lot 2, Lots 3 and 4 (excepting Northern Trinity Road Company toll road right-of-way, 60 feet in width, which was excepted by the LaMoine Lumber and Trading Company in its deed to the United States dated February 18, 1929, recorded March 2, 1929, in Book 48, Deeds, page 157, Records of Trinity County, California, in connection with Forest Exchange Sacramento 023138, E½SW¼, excepting Northern Trinity Road Company toll road right-of-way 60 feet in width, which was excepted by the LaMoine Lumber and Trading Company in its deed to the United States dated April 15, 1927, recorded April 16, 1927, in Volume 28, page 240, Official Records of Shasta County, California, and Book 46, Deeds, page 400, Records of Trinity County, California, in connection with Forest Exchange Sacramento 017296);
Sec. 31, Lots 1, 2, 3, and 4, and W½NE¼-NW¼ (excepting Northern Trinity Road Company toll road right-of-way, 60 feet in width, which was excepted by the LaMoine Lumber and Trading Company in its deed to the United States dated April 15, 1927, recorded April 16, 1927, in Volume 28, page 240, Official Records of Shasta County, California, and Book 46, Deeds, page 400, Records of Trinity County, California, in connection with Forest Exchange Sacramento 017296.

T. 32 N., R. 7 W.,
Sec. 2, SE¼NW¼ and NW¼SE¼ (now Lot 6);
Sec. 4, Lots 18 and 19;
Sec. 6, All except that portion lying within the boundaries of Mineral Survey No. 5701;
Sec. 8, NE¼ and NE¼NW¼;
Sec. 10, NE¼, SE¼NW¼, NE¼SW¼, and NW¼SE¼.

T. 34 N., R. 7 W.,
Sec. 4, Lots 1 and 2 and S½NE¼.

T. 35 N., R. 7 W.,
Sec. 2, SW¼;
Sec. 12, E½;
Sec. 14, SE¼SE¼SE¼;
Sec. 20, SE¼NE¼ and S½SE¼;
Sec. 24, NW¼NW¼NW¼;
Sec. 26, NW¼NW¼;
Sec. 34, NE¼, S½NW¼, N½N½SE¼, and N½SW¼.

T. 36 N., R. 7 W.,
Sec. 1, NW¼SW¼NE¼ and SW¼SE¼NW¼;
Sec. 4, Lot 1, SE¼NE¼, and E½SE¼;
Sec. 6, S½SE¼NE¼ and E½SE¼;
Sec. 12, E½E½, SE¼SW¼, and SW¼SE¼.

T. 37 N., R. 7 W.,
Sec. 17, Lot 2 and SW¼NE¼;
Sec. 20, Lot 7, that portion of Mineral Survey 2031 lying in the SW¼SW¼ (formerly Lot 43), and SE¼SE¼;
Sec. 28, N½NW¼NW¼, SE¼NW¼NW¼, SW¼NW¼, and NW¼SW¼;
Sec. 34, SW¼, W½W½SE¼, NW¼NE¼SE¼, and E½E½SE¼.

T. 33 N., R. 8 W.,
Sec. 26, SW¼SW¼.

T. 34 N., R. 8 W.,
Sec. 2, Lot 1, SE¼NE¼, and NW¼NW¼SW¼;
Sec. 8, SE¼;
Sec. 16, W½;
Sec. 20, All;
Sec. 21, W½W½NE¼, NW¼, and W½SW¼.

T. 35 N., R. 9 W.,
Sec. 36, W½NE¼.

T. 35 N., R. 8 W.,
Sec. 8, E½E½NE¼SE¼;
Sec. 9, W½NW¼SW¼;
Sec. 16, NW¼NW¼;
Sec. 17, E½SW¼NE¼, E½SW¼, N½SE¼, and SW¼SE¼;
Sec. 20, SW¼;
Sec. 36, N½SW¼NW¼ and W½SW¼SE¼.

T. 34 N., R. 9 W.,
Sec. 4, S½SE¼;
Sec. 9, E½E½SW¼.

aggregating approximately 6,805.03 acres.

At 10 a.m. on December 27, 1976, the lands will be relieved of the segregative effect of the above mentioned application.

HARRYETTE R. SOSBEE,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-34601 Filed 11-22-76;8:45 am]

[SAC 062886]

CALIFORNIA

Partial Termination of Proposed Withdrawal and Reservation of Lands

NOVEMBER 15, 1976.

Notice of Bureau of Reclamation, U.S. Department of the Interior, application SAC 062886, Pub. June 24, 1960, Vol. 25, No. 120, pg. 5848 was published for withdrawal and reservation of land for reclamation purposes. The applicant agency has partially withdrawn its application so far as it affects the following described lands.

SAC 062886

MOUNT DIABLO MERIDIAN

T. 32 N., R. 6W.,
Sec. 4, SW¼NW¼ (formerly Lot 9, now Lots 12 through 27).

T. 36 N., R. 6W.,
Sec. 31, NW¼SE¼NW¼.

T. 34 N., R. 7W.,
Sec. 4, SE¼NW¼.

T. 35 N., R. 7W.,
Sec. 14, S½SW¼SE¼ and SW¼SE¼SE¼;
Sec. 26, W½SW¼NW¼.

T. 34 N., R. 8W.,
Sec. 28, W½NW¼ and NW¼SW¼.

aggregating approximately 260 acres.

At 10 a.m. on December 27, 1976, the lands will be relieved of the segregative effect of the above mentioned application.

HARRYETTE R. SOSBEE,
Acting Chief, Branch of Lands and Mineral Operations.

[FR Doc.76-34602 Filed 11-22-76;8:45 am]

[SAC 065037]

CALIFORNIA

Partial Termination of Proposed Withdrawal and Reservation of Land

NOVEMBER 15, 1976.

Notice of Bureau of Reclamation, U.S. Department of the Interior, application SAC 065037, Pub. April 14, 1961, Vol. 26, No. 71, pg. 3207, FR Doc. 61-3369 was published for withdrawal and reservation of land for reclamation purposes. The applicant agency ahs partially withdrawn its application so far as it affects the following described lands.

SAC 065037

MOUNT DIABLO MERIDIAN

T. 32 N., R. 5 W.,
Sec. 19, Lot 13, unpatented MS No. 3809 comprising the Gold and Dipper Quartz Mines, unpatented MS No. 3847 comprising the Nonsuit Quartz Mine, NE¼SE¼, S½S½ (SW¼SW¼ now Lot 4);
Sec. 20, Lots 11, 12, 16, 19, 20, 21, 22, 23, and 24;
Sec. 30, N½ Lot 1, N½ Lot 5, N½NW¼NE¼, and N½NE¼NW¼.

T. 32 N., R. 6 W.,
Sec. 6, S½S½ Lot 6 (now Lots 36 through 39);
Sec. 12, SE¼SE¼;
Sec. 18, Lots 2 (or SW¼NW¼) and 3 (or NW¼SW¼) (general mining and mineral leasing only).
Sec. 25, NW¼NE¼ and NE¼NW¼;
Sec. 26, SW¼NE¼, W½NW¼ (except portion in MS No. 5282), SE¼NW¼, and N½SW¼;
Sec. 27, NE¼NE¼ (except portion in MS No. 5282) (formerly Lot 1, now Lots 10–14), SE¼NE¼ (except portion in MS No. 5282) (formerly Lot 4, now Lots 23, 24, 41–44), NE¼SE¼ (formerly Lot 5, now Lots 45–48, 57–60, 61–64, 73–76).
T. 32 N., R. 7 W.,
Sec. 3, Lots 3, 7, and 8, and SE¼NW¼;
Sec. 4, Lots 1 and 5.
T. 33 N., R. 7 W.,
Sec. 18, Lots 1, 2, 3, 4, and 15, and W½SE¼SW¼;
Sec. 28, SW¼SW¼ and S½SE¼SW¼;
Sec. 32, NE¼NE¼;
Sec. 34, Lot 1.
T. 33 N., R. 8 W.,
Sec. 2, Lots 1 and 2, SE¼NE¼, E½NE¼SE¼ and SE¼SE¼;
Sec. 12, Lot 1 (now Lot 21), Lot 7 (now Lot 27) (less patented MS No. 4000), Lots 8 (now Lot 19), 9 (now Lot 20), 10 (now Lot 22), 11 (now Lot 24), 12 (now Lot 24), 15, and 16 (now Lot 29), and W½SE¼NE¼ (now W½ Lot 23);
Sec. 13, Lot 3 (now Lot 4) (less patented Mineral Lots 46 and 68), NW¼NE¼ (now Lot 5), S½NE¼ (now Lots 11 and 12) (except portions in MS 2401, 2402, and 5045), and NE¼NW¼ (now Lot 6) (except portion in MS No. 2402);
Sec. 24, NE¼NE¼.
T. 34 N., R. 8 W.,
Sec. 26, W½NW¼NW¼, SW¼NW¼, W½NE¼SW¼, W½SW¼, and SE¼SW¼;
Sec. 27, Lots 1 and 4;
Sec. 35, Lots 5, 6, 9, 10, 11, 12, 13, and 14, S½NW¼NE¼, SW¼NE¼, E½NW¼, E½NW¼NW¼, E½NE¼SW¼, and NW¼SE¼.

Aggregating approximately 2,586.78 acres.

At 10 a.m. on December 27, 1976, the lands will be relieved of the segregative effect of the above mentioned application.

HARRYETTE R. SOSBEE,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-34603 Filed 11-22-76;8:45 am]

CALIFORNIA DESERT CONSERVATION AREA ADVISORY COMMITTEE

Establishment and Invitation for Nominations

Notice is hereby given of intention to establish the California Desert Conservation Area Advisory Committee as required by Section 601(g) of the Federal Land Policy and Management Act of 1976, Pub. L. 94–579. Establishment and operation of the committee must conform to the requirements of the Federal Advisory Committee Act (86 Stat. 770; 5 U.S.C. App. 1) and advisory committee regulations of the Department of the Interior (43 CFR 1784).

The public is invited to comment on the draft charter and to make nominations for members of the committee. To meet the requirement of the Act that the committee be established within 60 days after the approval of the Federal Land Policy and Management Act of 1976, public comments must be received no later than December 23, 1976.

The draft charter proposed by the Bureau of Land Management follows:

DRAFT CHARTER

CALIFORNIA DESERT CONSERVATION AREA ADVISORY COMMITTEE, BUREAU OF LAND MANAGEMENT, DEPARTMENT OF THE INTERIOR

1. *Official Designation:* California Desert Conservation Area Advisory Committee, hereinafter referred to as the Committee.

2. *Committee Objectives and Scope:* Advise the Secretary of the Interior, through the Bureau of Land Management, with respect to preparation and implementation of the comprehensive, long-range plan for the California Desert Conservation Area required by section 601(d) of the Federal Land Policy and Management Act of 1976, Pub. L. 94–579.

3. *Period of Time Necessary for the Committee's Activities:* The Federal Land Policy and Management Act of 1976 directs the Secretary of the Interior to prepare and implement a comprehensive, long-range plan for the management, use, development and protection of the public lands of the California Desert Conservation Area. The Committee will advise the Secretary, through the California State Director of the Bureau of Land Management, on the preparation and implmeentation of the plan. The Act further directs that such plan be completed, and implementation initiated, on or before September 30, 1980. Accordingly, and while subject to the biennial termination and renewal provisions of Section 14 of the Federal Advisory Committee Act (Pub. L. 92–463), it is expected that the Committee will be employed for five years, terminating December 31, 1981.

4. *Official to Whom the Committee Reports:* California State Director, Bureau of Land Management. The Federal Representative at all meetings of the Committee and subcommittees that may be formed will be the California State Director, Bureau of Land Management, or his designee.

5. *Administrative Support:* Administrative support for activities of the Committee will be provided by the California State Office, Bureau of Land Management, U.S. Department of the Interior.

a. Members of the Committee serve without compensation, but are reimbursed for travel and per diem expenses at the rate prevailing for Federal employees.

6. *Duties of the Committee:* The Committee will meet periodically to ascertain facts, make studies, hear public testimony, offer advice, and develop recommendations as requested by the California State Director, BLM, regarding preparation and implementation of the comprehensive plan for the California Desert Conservation Area.

7. *Calls to Meet and Agendas:* Meetings of the Committee and subcommittees, if formed, may be held only at the call of the California Federal Representative or his designee, after public notice, and in the presence of that Federal Representative. Meeting agendas must be approved in advance by the Federal Representative.

8. *Committee Composition:* The Committee will be composed of not fewer than 11 or more than 15 members, each of whom must be eminently qualified through professional education and training, current employment, established reputation, and demonstrated performance to give informed and objective advice concerning the interest or discipline he or she is appointed to represent. To provide a total membership that is balanced in terms of points of view represented and functions to be performed, the Committee will be comprised of at least one but not more than two representatives for each of the following interests or disciplines:

Wildlife Resources	Local Government
Botanical Resources	Mining-Minerals
Cultural-Historical Resources	Energy-Utilities
	Recreation Resources
Earth Sciences	Social Sciences
Environmental Science	State Government

9. *Member Selection and Appointment:* Committee members will be selected and appointed by the Federal Representative after public calls for nominations. Appointments will be on a calendar-year basis. Under the rules of the Department of the Interior, terms of appointment may not exceed 365 days. However, members may be reappointed.

10. *Subcommittees:* To facilitate functioning of the Committee, standing and/or ad hoc subcommittees may be formed by the Chairperson, with the concurrence of the Federal Representative. Standing committees will be formed subject to amendment of this charter or filing of a separate charter. Ad hoc committees will be formed subject to the same requirement, provided the expected life of the particular subcommittee makes it feasible to do so. Subcommittees of the California Desert Conservation Area Advisory Committee must be balanced in terms of point of view and functions to be performed.

11. *Committee Officers:* The Committee shall elect a Chairperson and a Vice Chairperson from among its members at the first meeting of each calendar year. Subcommittee chairpersons and members will be appointed by the Committee Chairperson with the concurrence of the Federal Representative.

12. *Public Participation:* All meetings of the Committee and subcommittees that may be formed will be open to the public. Any organization, association, or individual may attend, and may file a statement or appear before the Committee or a subcommittee regarding an agenda topic. Meeting notices will pro-

vide specific times and places for the public to be heard, except that the Federal Representative may require prior notification by those desiring to be heard.

13. *Committee Records:* Proceedings of each Committee and subcommittee meetings, and copies of all reports, staff papers and data prepared, issued or approved in conjunction with activities of the Committee shall be maintained in the California State Office, Bureau of Land Management, 2800 Cottage Way, Sacramento, California, and shall be open to public inspection and copying during regular office hours.

14. *Estimated Operating Costs:* Activities of the Committee will require an estimated $30,000 and three man-years of Federal employee support annually.

15. *Meeting Frequency:* The Committee is expected to meet at least four times annually. Additional meetings or field examinations may be called in conjunction with special problems or programs.

16. *Authority:* a. The Federal Land Policy and Management Act of 1976, Pub. L. 94-597, sections 309, 310, and 601(d).

b. The Federal Advisory Committee, Act, Pub. L. 92-463, sections 8-11.

Public comment should be directed to the California State Director, Bureau of Land Management, 2800 Cottage Way, Room E-2841, Sacramento, Calif. 95825.

Dated: November 16, 1976.

ED HASTEY,
State Director.

[FR Doc.76-34599 Filed 11-22-76;8:45 am]

[OR 9605]

OREGON

Proposed Withdrawal and Reservation of Lands

NOVEMBER 16, 1976.

The Department of Agriculture, on behalf of the Forest Service, filed application, OR 9605, for the withdrawal of National Forest lands from location and entry under the general mining laws (30 U.S.C., Ch. 2), but not from leasing under the mineral leasing laws, subject to valid existing rights. The lands were to be reserved as the Rock Mesa, Three Sisters Wilderness Area. Notice of this proposed withdrawal and reservation of lands was published as FR Doc. 73-3845 which appeared in the March 1, 1973 issue of the FEDERAL REGISTER at page 5484.

The applicant desires to modify this application to include additional lands. The area will now be known as the Obsidian Flows and Dacite Domes Area, to be withdrawn to preserve the lands for their geologic, scientific and scenic interest.

All persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing no later than December 22, 1976, to the undersigned officer of the Bureau of Land Management, Department of the Interior, (729 N.E. Oregon Street), P.O. Box 2965, Portland, Oregon, 97208.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the lands and their resources. He will also undertake negotiations with the applicant agency with the view of adjusting the application to reduce the area to the minimum essential to meet the applicant's needs, to provide for the maximum concurrent utilization of the lands for purposes other than the applicant's, to eliminate lands needed for purposes more essential than the applicant's, and to reach agreement on the concurrent management of the lands and their resources.

He will also prepare a report for consideration by the Secretary of the Interior who will determine whether or not the lands will be withdrawn as requested by the applicant agency.

The determination by the Secretary on the application will be published in the FEDERAL REGISTER. A separate notice will be sent to each interested party of record.

If circumstances warrant it, a public hearing will be held at a convenient time and place, which will be announced.

The lands involved in the application as amended are now described as follows:

WILLAMETTE MERIDIAN, OREGON

DESCHUTES AND WILLAMETTE NATIONAL FORESTS

Obsidian Flows and Dacite Domes Area

T. 17 S., R. 8 E., W.M., Unsurveyed,
Sec. 22, S½;
Sec. 23, S½;
Sec. 26, all;
Sec. 27, all;
Sec. 28, W½;
Sec. 29, all;
Sec. 30, E½;
Sec. 31, E½;
Sec. 32, all;
Sec. 33, W½;
Sec. 34, all;
Sec. 35, N½.

T. 18 S., R. 8 E., W.M.
Sec. 3, all, except Cascade Lakes Road Zone—Forest Road No. 46, withdrawn by PLO 2751, 8/13/62;
Sec. 10, NE¼, except Cascade Lakes Road Zone—Forest Road No. 46, withdrawn by PLO 2751, 8/13/62.

The areas described aggregate 4,580 acres in Deschutes County, Oregon on the Deschutes National Forest, and 1,620 acres in Lane County, Oregon, on the Willamette National Forest, for a total of approximately 6,200 acres.

FREDERICK S. CRAFTS,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-34514 Filed 11-22-76;8:45 am]

[OR 14347]

OREGON

Opening of Land

NOVEMBER 16, 1976.

By virtue of the authority contained in section 24 of the Act of June 10, 1920 (41 Stat. 1075; 16 U.S.C. 818) as amended, it is ordered as follows:

1. In DA-556-Oregon, the Federal Power Commission determined that the power value of the following described land, withdrawn in Power Site Reserve No. 265 and Power Site Classification No. 382 will not be injured or destroyed by restoration to location, entry or selection under appropriate land laws, subject to the provisions of Section 24 of the Federal Power Act:

WILLAMETTE MERIDIAN

POWER SITE RESERVE 265

T. 40 S., R. 22E.,
Sec. 8, NW¼SW¼;
Sec. 9, N½SE¼, SE¼SE¼;
Sec. 22, SE¼SW¼.

POWER SITE CLASSIFICATION 382

T. 40 S., R. 22 E.,
Sec. 9, SW¼NE¼.

The areas described aggregate 240 acres in Lake County.

2. At 10:00 a.m. on December 22, 1976, the land shall be open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, the requirements of applicable law and the provisions of Section 24 of the Federal Power Act, supra. All valid applications received at or prior to 10:00 a.m. on December 22, 1976, will be considered to be simultaneously filed at that time. Those received after that time will be considered in the order of filing.

3. The land has been open to applications and offers under the mineral leasing laws and to location under the United States mining laws subject to the provisions of the Act of August 11, 1955 (69 Stat. 682; 30 U.S.C. 621).

4. The State of Oregon has not exercised the preference right of application for highway rights-of-way or material sites afforded it by section 24 of the Federal Power Act.

Inquiries concerning this land should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

FREDERICK S. CRAFTS,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-34516 Filed 11-22-76;8:45 am]

[OR 15172]

WASHINGTON

Order Providing For Opening of Public Land

NOVEMBER 16, 1976.

1. In an exchange of lands made under the Act of June 28, 1934, 48 Stat. 1269, 1272, as amended and supplemented, 43 U.S.C. 315g (1970), the following land has been reconveyed to the United States:

WILLAMETTE MERIDIAN

T. 11 N., R. 31 E.,
Sec. 27, E½ and SW¼.

The area described contains 480 acres in Franklin County, Washington.

2. The subject land is located in south central Franklin County approximately 12 miles northeast of the Community of

Pasco, Washington. The area is locally known as the Juniper Forest. Elevation of the land is approximately 650 to 700 feet above sea level. The topography is rolling and undulating and the soil is generally fine loam with areas of coarse gravel. The vegetative cover is sparse and consists mainly of sagebrush and native grasses. The area has a semi-arid climate characterized by light precipitation and a wide range of temperatures. There is no surface water appearing on the land. The land has limited potential for agriculture and outdoor recreation and no potential for timber production. It has been used in the past for livestock grazing purposes. The land will be managed, together with adjoining national resource lands, for multiple use.

3. Subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law, the land described in paragraph 1 hereof is hereby open to operation of the public land laws, including the mining laws (Chapter 2, Title 30 U.S.C.), and the mineral leasing laws. All valid applications received at or prior to 10:00 a.m., December 22, 1976, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

4. Inquiries concerning the lands should be addressed to the Chief, Branch of Lands and Minerals Operations, Bureau of Land Management, P.O. Box 2965, Portland, Oregon, 97208.

FREDERICK S. CRAFTS,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc.76-34515 Filed 11-22-76;8:45 am]

Fish and Wildlife Service

PHILADELPHIA ZOOLOGICAL GARDEN

Receipt of Application for Endangered Species Permit

Notice is hereby given that the following application for a permit is deemed to have been received under section 10 of the Endangered Species Act of 1973 (Pub. L. 93-205).

Applicant: Philadelphia Zoological Garden, 34th Street & Girard Avenue, Philadelphia, Pennsylvania 19104, Ronald T. Reuther, President.

CONSERVATION - RESEARCH - EDUCATION - RECREATION

Philadelphia Zoological Garden

UNDER THE MANAGEMENT OF THE

Zoological Society of Philadelphia

34th STREET AND GIRARD AVENUE 19104

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General Information LV 7-4400

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F. MARDOE RIVERS Development Officer
WALTER C. JENNINGS School-Museum Teacher

DOCENT COUNCIL
Mrs. HeLen Wetherill President

October 21, 1976

U. S. Fish & Wildlife Service
Box 19183
Washington, D.C. 20036

Reference Number = 2-431

Dear Sir:

This letter contains the additional information required by the U.S. Fish and Wildlife Service to process Endangered Species Permit application 2-431.

As discussed via telephone, with Mr. James Sheridan, on October 20, 1976, the male tuatara (Sphenodon punctatus) will be collected from the wild by the Wildlife Service of the New Zealand Department of Internal Affairs.

There are less than twelve tuataras in the United States, and they are presently committed to breeding and research programs at other institutions.

The anticipated breeding program for this species at the Philadelphia Zoo includes the simulation of the climate encountered by these reptiles on their native islets. We have reversed the temperature and photoperiod cycles in our air-conditioned enclosures according to data supplied to us by the New Zealand Government.

The male and female (female currently at Zoo) would be housed separately during the "New Zealand winter," and the communicating door separating their respective enclosures would be opened at the beginning of the "New Zealand spring." It is hoped that courtship and breeding will take place at this time.

The purpose of this importation, therefore, is to propagate this unique and scientifically important species in captivity.

Should the tuatara die, it would be sent to the Peabody Museum at Yale University, where work is being done on the anatomy and physiology of this species.

I hope that this additional information will be helpful in processing this permit.

Sincerely yours,

J. Kevin Bowler

J. Kevin Bowler
Curator of Reptiles

JKB/rgo

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CONSERVATION - RESEARCH - EDUCATION - RECREATION

Philadelphia Zoological Garden

UNDER THE MANAGEMENT OF THE

Zoological Society of Philadelphia

34th STREET AND GIRARD AVENUE 19104

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MRS. WALTER C. JENKINS, School Museum Teacher

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ACCREDITED MEMBER, AMERICAN ASSOCIATION OF ZOOLOGICAL PARKS & AQUARIUMS

September 22, 1976

Mr. Rick Parsons, Chief
Federal Wildlife Permit Office
U.S. Fish and Wildlife Service
Washington, D. C. 20240

Dear Mr. Parsons:

The Philadelphia Zoo received a pair of tuataras (Sphenodon punctatus) from the New Zealand Department of Internal Affairs on 4/18/74. This species is not on public exhibition, and is here at the Philadelphia Zoo for propagational purposes.

Unfortunately, the male tuatara died on 2/9/76, and its death was reported to USDI and the New Zealand Government. This specimen is destined for the Peabody Museum, Yale University for scientific purposes.

The New Zealand authorities have offered to supply the Philadelphia Zoo with a replacement male sometime next year (1977).

Please find enclosed form 3-200, the necessary attachments, and the $50.00 application fee.

The Philadelphia Zoo agrees to contribute to any studbook which may be developed for captive tuataras, and to cooperate with other recognized institutions in the captive propagation of this species.

Sincerely yours,

Ronald T. Reuther
President
Zoological Society of Philadelphia

RTR/mt

OMB NO. 42-R1690

DEPARTMENT OF THE INTERIOR
U.S. FISH AND WILDLIFE SERVICE
FEDERAL FISH AND WILDLIFE
LICENSE/PERMIT APPLICATION

1. APPLICATION FOR (Indicate only one)
☐ IMPORT OR EXPORT LICENSE ☒ PERMIT

2. BRIEF DESCRIPTION OF ACTIVITY FOR WHICH REQUESTED LICENSE OR PERMIT IS NEEDED:
Import 1 male tuatara (Sphenodon punctatus) for breeding in captivity.

3. APPLICANT: (Name, complete address and phone number of individual, business, agency, or institution for which permit is requested)
Philadelphia Zoological Garden
34th St. & Girard Ave.
Phila., Pa. 19104 (215) 243-1100

4. IF "APPLICANT" IS AN INDIVIDUAL, COMPLETE THE FOLLOWING:
☐ MR. ☐ MRS. ☐ MISS ☐ MS.
HEIGHT | WEIGHT
DATE OF BIRTH | COLOR HAIR | COLOR EYES
PHONE NUMBER WHERE EMPLOYED | SOCIAL SECURITY NUMBER
OCCUPATION

5. IF "APPLICANT" IS A BUSINESS, CORPORATION, PUBLIC AGENCY, OR INSTITUTION, COMPLETE THE FOLLOWING:
EXPLAIN TYPE OR KIND OF BUSINESS, AGENCY, OR INSTITUTION
Non-Profit Zoo - for the exhibition and propagation of wildlife.

ANY BUSINESS, AGENCY, OR INSTITUTIONAL AFFILIATION HAVING TO DO WITH THE WILDLIFE TO BE COVERED BY THIS LICENSE/PERMIT

NAME, TITLE, AND PHONE NUMBER OF PRESIDENT, PRINCIPAL OFFICER, DIRECTOR, ETC.
Ronald T. Reuther President (215) 243-1100

IF "APPLICANT" IS A CORPORATION, INDICATE STATE IN WHICH INCORPORATED
Pennsylvania

6. LOCATION WHERE PROPOSED ACTIVITY IS TO BE CONDUCTED
Import from New Zealand to New York City.

7. DO YOU HOLD ANY CURRENTLY VALID FEDERAL FISH AND WILDLIFE LICENSE OR PERMIT? ☒ YES ☐ NO
(If yes, list license or permit number)
ES-446

8. IF REQUIRED BY ANY STATE OR FOREIGN GOVERNMENT, DO YOU HAVE THEIR APPROVAL TO CONDUCT THE ACTIVITY YOU PROPOSE? ☒ YES ☐ NO
(If yes, list jurisdictions and type of documents)
See copies of Attached Correspondence from New Zealand. Dept. of Internal Affairs

9. STATE THE FEE YOU HAVE CHECKED OR MONEY ORDER YOU HAVE ENCLOSED IN THE SUM OF $ 50. FOR THE LICENSE OR PERMIT

10. ESTIMATED DATE OF TRIP March, 1977

11. ESTIMATED DURATION OF TRIP until completion of importation.

IF ATTACHMENTS, THE SPECIFIC INFORMATION REQUIRED FOR THE TYPE OF LICENSE OR PERMIT REQUESTED HAS BEEN FURNISHED IN ATTACHED, IT CONSTITUTES AN ORIGINAL PART OF THIS APPLICATION. LIST SECTIONS OF 50 CFR UNDER WHICH ATTACHMENTS ARE PROVIDED.

CERTIFICATION

I HEREBY CERTIFY THAT I HAVE READ AND AM FAMILIAR WITH THE REGULATIONS CONTAINED IN TITLE 50, PART 13, OF THE CODE OF FEDERAL REGULATIONS AND THE OTHER APPLICABLE PARTS, SUBCHAPTER B OF CHAPTER I OF TITLE 50, AND FURTHER CERTIFY THAT THE INFORMATION SUBMITTED IN THIS APPLICATION FOR A LICENSE/PERMIT IS COMPLETE AND ACCURATE TO THE BEST OF MY KNOWLEDGE AND BELIEF. I UNDERSTAND THAT ANY FALSE STATEMENT HEREIN MAY SUBJECT ME TO THE CRIMINAL PENALTIES OF 18 U.S.C. 1001.

SIGNATURE (REQUIRED) Ronald T. Reuther
DATE 22 Sep 76

3-200

Re: Philadelphia Zoo—Tuatara

DESCRIPTION OF SHIPPING CONTAINER FOR TUATARA

The shipping container will be a reinforced wooden box lined with "cushions" of stuffed burlap.

Ventilation holes will be present. This is the standard shipping box provided by the New Zealand Government. The animal will be shipped by air, and will require no food or water during transit.

DESCRIPTION OF TUATARA ENCLOSURE AT PHILADELPHIA ZOO

a. The tuatara will be maintained in the "Cold Room" in the Reptile House.

b. Two fiberglass enclosures (A & B) are provided for this species in the "Cold Room."

c. Enclosure A=48" in length, 24" in width, and 48" in height.

d. Enclosure B=35" in length, 27" in width, and 48" in height.

e. Enclosures A and B communicate with each other via a small door. This door is normally open, enabling each animal to utilize both cages. The door can be closed to separate the animals when necessary.

f. The temperatures in the "Cold Room" are kept within the ranges recommended by the authorities in New Zealand. The temperatures and photoperiods are adjusted on a seasonal basis and simulate the climatic conditions of the Southern Hemisphere.

g. The substrate used is grounded licorice root, which is much like the substrate found on the tuatara's home islets.

h. The tuataras are fed new born mice and crickets.

i. The tuataras are exposed to one hour of sun lamp treatment per day.

j. Burrow-like retreats are present in both enclosures.

Documents and other information submitted in connection with this application are available for public inspection during normal business hours at the Service's office in Room 512, 1717 H Street, NW., Washington, D.C.

Interested persons may comment on this application by submitting written data, views, or arguments, preferably in triplicate, to the Director (FWS/WPO), U.S. Fish and Wildlife Service, Washington, D.C. 20240. This application has been assigned File Number PRT 2-431-07; please refer to this number when submitting comments. All relevant comments received on or before December 23, 1976, will be considered.

RICHARD M. PARSONS,
Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc.76-34577 Filed 11-22-76;8:45 am]

Office of Hearings and Appeals

[Docket No. M 76-657]

ALABAMA BY-PRODUCTS CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Alabama By-Products Corporation has filed a petition to modify the application of 30 CFR 75.1106-3(c) to its Chetopa Mine, located in Jefferson County, Alabama.

30 CFR 75.1106-3(c) provides:

When not in use, the valves of all liquefied and non-liquefied compressed gas cylinders shall be in the closed position, and all hoses shall be removed from the cylinder.

The substance of Petitioner's statement is as follows:

1. The coal seam being mined is the Mary Lee Seam which ranges in thickness from 4 to 11 feet. The mine currently produces about 1,900 tons per day in a two-production-shift operation utilizing three producing sections. Mining is accomplished by conventional equipment.

2. Petitioner submits that the application of the foregoing regulations, if applied to Petitioner's mine, would result in a diminution of safety as compared to the alternate method which Petitioner has developed. In order to better achieve the purposes sought to be achieved by the act and regulations, and thus to provide a standard which provides a better measure of protection to the miners in said mine, Petitioner proposes an alternate method as set forth hereinafter.

3. In lieu of the current requirement, Petitioner has developed an oxygen and acetylene carriage as shown in the picture marked Exhibit A attached hereto and in the drawing marked Exhibit B attached hereto.[1] Petitioner submits that the oxygen and acetylene carriage will provide the necessary protection as required in 30 CFR 75.1106-3(c) without requiring that the hoses and gauges be removed from the cylinder. Petitioner avers that there is a great deal of danger encountered on removing and reinstalling the hoses and gauges to the cylinders each time the cylinder is to be used in an underground coal mine. For instance, if dust or grease, even in very minute amounts, has gotten on to the connections where the hoses and/or gauges are connected to the cylinder, this dirt, dust or grease may very well lead to a fire or explosion. Petitioner avers that in past years, it knows of several incidents where foreign matter has gotten into the gauges while they were disconnected. Then when the gauges were connected again and pressure turned on, explosions occurred, damaging the equipment and/or causing death or serious bodily harm. The working conditions in underground coal mines are not conducive to keeping these hoses and gauges clean when they have to be taken off and reinstalled.

4. Petitioner submits that the proposed alternate method, that is, the use of the oxygen and acetylene carriage, will: (1) Provide the necessary portection to the cylinders, gauges and hoses from falling objects; (2) allow the hoses and gauges to be left on the cylinders when not in use, thus not requiring reinstallation; and (3) keep the cylinders always in an up-right position.

[1] The exhibits accompanying this petition are available for inspection at the address listed in the last paragraph of this notice.

5. Use of the oxygen and acetylene carriage will provide the necessary protection for the guages and hoses while at the same time allowing the welders more flexibility in that they will not have to remove and reinstall the hoses and gauges each time the cylinders are to be used and they will also have the carriage which they can pull around with them and carry their oxygen and acetylene tanks.

6. It is well recognized that there is a hazard encountered each time hoses and guages are reinstalled. This alternate method (use of the carriage) will allow Petitioner to install the guages one time and use the cylinders until empty without removing the hoses and guages after each use and at the same time, still provide the necessary protection to the cylinders from rock falls, etc.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 23, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

NOVEMBER 16, 1976.

[FR Doc.76-34604 Filed 11-22-76;8:45]

[Docket No. M 76-62]

EASTERN ASSOCIATED COAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301 (c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), Eastern Associated Coal Corporation has filed a petition to modify the application of 30 CFR 75.1700 to its Federal No. 1 Mine, located in Marion County, West Virginia.

30 CFR 75.1700 provides:

Each operator of a coal mine shall take reasonable measures to locate oil and gas wells penetrating coalbeds or any underground area of a coal mine. When located, such operator shall establish and maintain barriers around such oil and gas wells in accordance with State laws and regulations, except that such barriers shall not be less than 300 feet in diameter, unless the Secretary or his authorized representative permits a lesser barrier consistent with the applicable State laws and regulations where such lesser barrier will be adequate to protect against hazards from such wells to the miners in such mine, or unless the Secretary or his authorized representative requires a greater barrier where the depth of the mine, other geologic conditions, or other factors warrant such a greater barrier.

The substance of Petitioner's statement is as follows:

1. Eastern seeks modification of that portion of 30 CFR 75.1700 which provides: "* * * such operator shall establish and maintain barriers around such oil and gas wells * * *."

2. The majority of petroleum wells in this area were drilled, and many abandoned, between 1890 and 1920 when no standards for drilling and plugging existed. Oil and gas sands are now nearly depleted, hence no appreciable volume of gas comes from petroleum reservoirs.

3. In lieu of the provision to establish and maintain barriers around oil and gas wells, it is proposed that the Pittsburgh coal seam be sealed from surrounding strata at the well and be plugged as hereinafter described.

4. To provide no less than the same measure of protection intended by the Act, the Petitioner proposes to do the following:

(a) Plug the well using a proven technique developed through a series of cooperative agreements between the United States Bureau of Mines, the Energy Research and Development Administration, the Mining Enforcement and Safety Administration, and the coal industry. Exhibit A[1] shows the technique which will be used at the well in a manner acceptable to and monitored by the Mining Enforcement and Safety Administration. Plugs will be placed in the wellbore below the base of the Pittsburgh coalbed which will prevent any natural gas from entering the mine after the well is mined through. Before the well is filled to the Pittsburgh coalbed, Eastern may run a directional survey on the well to determine the exact location of the wellbore in the coalbed; but if it does not, and if it does not penetrate the wellbore in mining, Eastern shall continue mining until the well is located. Gamma ray neutron and caliper logs shall be run in the well to determine the exact depth of the coalbed, the most competent formation for setting a mechanical bridge plug if needed, and the wellbore diameter for calculating the cement requirements. An automatic tracer injector unit of sulfur hexafluoride will be placed in the well. The well will be plugged back to the base of the Pittsburgh coalbed using an expandable cement and fly-ash-gel water slurry. A 50 percent fly-ash-cement mix will be used to fill the wellbore from the base of the Pittsburgh coalbed to the surface.

(b) Eastern shall mine through and remove segments of the wells between the mine pavement and roof during its normal mining cycle in accordance with mining projections filed with and approved by the State of West Virginia Department of Mines and the District Manager of the Mining Enforcement and Safety Administration. Eastern, in cooperation with the Mining Enforcement and Safety Administration, shall monitor the mine atmosphere during such mining and for a period of 6 months thereafter for traces of gas.

(c) A Federal Mine Inspector shall be present during the mining through operations. Mining through will be accomplished during a shift to be determined by the District Manager of the Mining Enforcement and Safety Administration, such determination to be made following a joint meeting of representatives of United Mine Workers of America, the Mining Enforcement and Safety Administration, West Virginia Department of Mines and Eastern to discuss the mining through.

(d) Eastern shall instruct all personnel in the affected area to proceed with caution when mining into and through the well-support pillar, and especially diligent efforts shall be made to assure a gas-free atmosphere in the affected area. In addition to the methane testing procedures in Part 75, Title 30, Code of Federal Regulations, a fireboss date-board shall be placed in the area and methane examinations made at least once per shift by a qualified person during development and retreat work using an approved methane detector, recording the date and the time of the examination on the date-board. Eastern will cooperate with the Mining Enforcement and Safety Administration to sample for gas before, during, and after mining through each well.

5. The alternate proposal as above described will at all times provide no less than or a greater measure of safety than intended by the Act, as the alternate proposal will effect:

(a) The elimination of possible gas flow path;

(b) The simplification of the mine ventilation and haulage system; and

(c) The improvement of subsidence control in second mining.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may rqeuest a hearing on the petition or furnish comments on or before December 23, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

NOVEMBER 16, 1976.

[FR Doc.76-34605 Filed 11-22-76;8:45 am]

[Docket No. M 76X653]

KING POWELLTON MINING, INC.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that in accordance with the provisions of section 301(c) of the Federal Coal Mine Health and Safety Act of 1969, 30 U.S.C. 861(c) (1970), King Powellton Mining, Inc., has filed a petition to modify the application of section 314(f) of the Act, 30 CFR 75.1405, to its No. 3 mine, located in Fayette County, West Virginia.

30 CFR 75.1405 provides:

All haulage equipment acquired by an operator of a coal mine on or after March 30, 1971, shall be equipped with automatic couplers which couple by impact and uncouple without the necessity of persons going between the ends of such equipment. All haulage equipment without automatic couplers in use in a mine on March 30, 1970, shall also be so equipped within four years after March 30, 1970.

The substance of Petitioner's statement is as follows:

1. The No. 3 mine uses track haulage only for the transportation of supplies and men. The men are transported in the second mine car back from the tractor. The first car is empty at all times and is never uncoupled from the second car. At no time will men and supplies be transported on the same trip. There would be two miner trips and one supply trip per shift.

2. The haulage cars will be fitted with a lever system so that no personnel would have to come between the tractor and the cars when engaging or disengaging the pin. The pin can be maintained in an up position until there is occasion to use the lever to lower the pin coupling.

3. The coupling-uncoupling levers and link aligners are being designed and a prototype will be prepared and installed on a car for inspection by Mining Enforcement and Safety Administration representatives.

4. All workers who couple and uncouple mine cars will be trained and instructed in the proper use and operation of the uncoupling levers and the proper use of same will be mandatory requirements at this mine.

5. The aforesaid alternative system for coupling and uncoupling mine cars will at all times guarantee to the miners in this mine no less than the same measure of protection sought to be accomplished by automatic couplers.

REQUEST FOR HEARING OR COMMENTS

Persons interested in this petition may request a hearing on the petition or furnish comments on or before December 23, 1976. Such requests or comments must be filed with the Office of Hearings and Appeals, Hearings Division, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

JAMES R. RICHARDS,
Director, Office of Hearings and Appeals.

NOVEMBER 16, 1976.

[FR Doc.76-34606 Filed 11-22-76;8:45 am]

National Park Service

INDEPENDENCE NATIONAL HISTORICAL PARK ADVISORY COMMISSION

Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act

[1] Exhibit A is available for inspection at the address listed in the last paragraph of this notice.

that a meeting of the Independence National Historical Park Advisory Commission will be held at 10:30 a.m. on December 10, 1976, at 313 Walnut Street, Philadlephia, Pennsylvania.

The Commission was established by Pub. L. 80–795 to render advice on such matters relating to the park as may from time to time be referred to them for consideration.

The members of the Commission are as follows:

Mr. Arthur C. Kaufman (Chairman)
Mr. John P. Bracken
Hon. Michael J. Bradley
Hon. James A. Byrne
Mr. Michael J. Byrne
Mrs. Alice Lonsdorf
Mr. Filindo B. Masino
Mr. Frank C. P. McGlinn
Mr. John B. O'Hara
Mr. Howard D. Rosengarten
Mr. Charles R. Tyson

The matters to be considered at this meeting include:

1. Flag poles at Liberty Bell Pavilion; 2. Temporary tent at Judge Lewis Quadrangle, Independence Mall; 3. Director's and Secretary's response to commendation for Park staff; 4. Conservation Service Award, Independence Hall Association; 5. First Bank of the United States Exhibit; 6. Area F parking garage progress; 7. "Apotheosis of Franklin" by N. C. Wyeth; 8. Crosswalk at Independence Hall; 9. Superintendent's report.

The meeting will be open to the public. Any person may file with the Commission an oral or written statement concerning the matters to be discussed. Persons desiring further information concerning this meeting, or who wish to submit statements, may contact Hobart G. Cawood, Superintendent, Independence National Historical Park, Philadelphia, Pennsylvania at 215–597–7120.

Minutes of the meeting shall be available for inspection two weeks after the meeting at the office of the Independence National Historical Park, 313 Walnut Street, Philadelphia, Pennsylvania.

Dated: November 17, 1976.

ROBERT M. LANDAU,
Assistant for Advisory Boards and Commissions, National Park Service.

[FR Doc.76–34561 Filed 11–22–76;8:45 am]

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 National Park Service before Nov. 15, 1976. 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, National Park Service, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by (10 days after publication).

JERRY L. ROGERS,
Acting Chief, Office of Archeology and Historic Preservation.

ALASKA

Kenai-Cook Inlet Division

Kenai vicinity, *Holm, Victor, Cabin,* SW of Kenai on Cohoe Rd. at Kasilof River.

CALIFORNIA

Los Angeles County

Bell, *Bell, James George, House,* 6500 Lucille Ave.
Los Angeles, *Watts Towers of Simon Rodia,* 1765 E. 107th St.
Santa Monica, *Horatio West Court,* 140 Hollister Ave.

Napa County

Calistoga, *Napa Valley Railroad Depot,* Lincoln Ave. and Fair Way.
Napa, *Churchill Manor,* 485 Brown St.

Orange County

Irvine vicinity, *Frances Packing House,* NE of Irvine on Yale Ave.

Riverside County

Riverside, *San Pedro, Los Angeles, & Salt Lake RR. Depot,* 3751 Vine St.

San Bernardino County

Redlands, *Smiley, A.K.,* Public Library, 125 W. Vine St.

Santa Barbara County

Santa Barbara, *Hotel Upham,* 1404 De la Vina St.

DELAWARE

Sussex County

Lewes, *Coleman House,* 422 Kings Hwy.

GEORGIA

Chatham County

Savannah, *Hodgson, W. B., Hall,* 501 Whitaker St.
Savannah, *Massie Common Schoolhouse,* 207 E. Gordon St.
Savannah, *St. John's Church,* Bull and Charlton Sts.

Floyd County

Cedartown vicinity, *Dooley Lithic Site,* N of Cedartown.

Fulton County

Atlanta, *Nicolson, William P., House,* 821 Piedmont Ave.

Hancock County

Sparta vicinity, *Shoulderbone Mounds,* N of Sparta.

Rockdale County

Atlanta vicinity, *Panola Mountain,* SE of Atlanta.

IOWA

Allamakee County

Waukon, *Allamakee County Courthouse,* 107 Allamakee St.

Clayton County

Garnavillo, *First Congregational Church,* Washington St.

Delaware County

Delhi vicinity, *Bay Settlement Church and Monument,* SW of Delhi.

Dubuque County

Dubuque, Rath, *Johann Christian Frederick, House,* 1204 Mt. Loretta Ave.

Howard County

Lime Springs, *Lime Springs Mill,* SR 157.

Iowa County

Williamsburg vicinity, *Pilot Grove,* SW of Williamsburg.

Jackson County

Bellevue vicinity, *Paradise Farm,* W of Bellevue.

Johnson County

Coralville, *Coralville Union Ecclesiastical Church,* 405 2nd Ave.
Kalona vicinity, *St. John's Lutheran Church,* N of Kalona.

O'Brien County

Sheldon, *Carnegie Library,* 321 10th St.

Palo Alto County

Emmetsburg, *Ormsby-Kelly House,* 2403 W. 7th St.

Polk County

Des Moines, *The Lexington,* 1721 Pleasant St.
Des Moines, *Maish House,* 1623 Center St.

Scott County

Davenport, *Ambrose Hall,* 518 W. Locust.

Sioux County

Orange City, *Sioux County Courthouse,* off IA 10.

Webster County

Fort Dodge, *Oleson Park Music Pavilion,* 1400 Oleson Park Ave.

Winneshiek County

Decorah vicinity, *Horn House,* NW of Decorah.

KENTUCKY

Boyle County

Danville vicinity, *Gothic Villas,* 525 Maple Ave., U.S. 127, Hustonville Rd.

Franklin County

Frankfort vicinity, *Trumbo, Andrew, Log House,* E of Frankfort on Glenns Creek Rd.

Jefferson County

Louisville, *Herr-Rudy Family Houses,* off I–264.

Knott County

Hindman vicinity, *Stewart, Dr. Jasper, House,* 5.75 mi. N of Hindman.

Mercer County

Harrodsburg, *Cardwellton,* 103 E. Broadway.
Harrodsburg vicinity, *Taylor, Capt. Samuel, House (Bachelor's Barter),* NE of Harrodsburg on Chatham Pike (HABS).

Scott County

Georgetown, *Cincinnati Southern Depot Historic District,* Maddox St.
Georgetown vicinity, *Blackburn, Julius, House,* W of Georgetown off U.S. 460.

Taylor County

Campbellsville vicinity, *Cowherd, Jonathan Jr., House,* W of Campbellsville off KY 70.

MAINE

Washington County

Cherryfield, *Campbell, Gen. Alexander, House,* Campbell Hill.

MINNESOTA

Douglas County

Alexandria, *Nelson, Knute, House*, 420 12th Ave., SE.

Goodhue County

Red Wing vicinity, *Tower View*, W of Red Wing on U.S. 61.

NEW YORK

Oneida County

Utica, *St. Joseph's Church*, 704–708 Columbia St.

Putnam County

Highland Falls vicinity, *Castle Rock*, E of Highland Falls on NY 9D.

OHIO

Adams County

Seaman vicinity, *Wilson, John T., Homestead*, 3 mi. NE of Seaman on OH 32.

Ashland County

Ashland, *Ashland County Jail*, W. 2nd and Cottage Sts.

Ashland vicinity, *Anderson Schoolhouse*, SW of Ashland on U.S. 42.

Butler County

Hamilton vicinity, *Beckett–Manrod House*, 2019 Stillwell-Beckett Rd.

Hamilton vicinity, *Hueston, Matthew, House*, 1320 Four Mile Creek Rd.

Hamilton vicinity, *Hughes, Phillip, House*, E of Hamilton at jct of OH 4 OH747.

Shandon, *Thomas Select School*, 3637 Millville-Shandon Rd.

Carroll County

Waynesburg vicinity, *St. Mary's of Morges*, 8012 Bachelor Rd. N.W.

Clark County

South Charleston, *South Charleston Historic District*, OH 70.

Darke County

Greenville, *Beir, Anna, House*, 214 E. 4th St.

Greenville, *Waring House*, 304 W. 3rd St.

Defiance County

Defiance, *Riverside Chapel*, Riverside Cemetery, S. Clinton St.

Franklin County

Columbus, *Columbus Savings and Trust Building (Atlat Building)*, 8 E. Long St.

Hamilton County

Cincinnati, *Clifton Avenue Historic District*, irregular pattern along Clifton Ave. from McAlpin Ave. to Millcreek Expwy.

Cincinnati, *Mills Row*, 2201–2209 Park Ave.

Cincinnati vicinity, *Episcopal Church of the Resurrection*, 7346–7348 Kirkwood Lane.

Cincinnati vicinity, *Smith, Sen. John, House*, E of Cincinnati on Elm Rd., S of U.S. 50.

Lawrence County

Chesapeake vicinity, *Maplewood*, W of Chesapeake on Maplewood Lane.

Licking County

Newark, *Chapel Hill Cemetery Buildings*, Cedar St.

Newark, *Sherwood-Davidson and Buckingham Houses*, W. Main and 6th Sts.

Montgomery County

Dayton, *Gottschall, Oscar M., House*, 20 Livingston Ave.

Englewood vicinity, *Martindale, Samuel, House*, NE of Englewood off U.S. 40.

Germantown vicinity, *Koehne-Poast Farm*, W of Germantown off OH 725.

Portage County

Kent, *West Main Street District*, 409–625 W. Main St.

Sandusky County

Fremont, *St. Paul's Episcopal Church*, 200 N. Park Ave.

Summit County

Hudson vicinity, *Brown, John, Farmhouse*, 1842 Hines Hill Rd.

Warren County

Harveysburg, *Harvey, Elizabeth, Free Negro School*, North St.

PENNSYLVANIA

Butler County

Zelienople, *Passavant House*, 243 S. Main St.

Centre County

Bellefonte, *Brockerhoff Hotel*, High and Allegheny Sts.

Bellefonte vicinity, *Logan Furnace Mansion*, 3 mi. S of Bellefonte.

Boalsburg, *Hill House (Col. James Johnston House)*, Tennis St.

Centre Hall vicinity, *Neff, Maj. John, Homestead*, SW of Centre Hall on Brush Valley Rd.

Madisonburg, *Pickle, Simon, Stone House*, jct. of PA 192 and PA 445.

Milesburg, *Iddings-Baldridge House*, Railroad St.

Spring Mills vicinity, *Allison, William, House*, 1 mi. W of Spring Mills on PA 45.

Stormstown, *Elder, Abraham, Stone House/Tavern*, PA 550.

Crawford County

Meadville, *Mosier, Dr. J. R. Office*, Terrace St.

Delaware County

West Chester vicinity, *Thompson Cottage*, SE of West Chester on Thornton Rd.

Franklin County

Chambersburg vicinity, *Gass House*, E of Chambersburg off U.S. 30.

Northumberland County

Milton, *Milton Freight Station*, 90 Broadway.

Schuylkill County

Tamaqua, *Ormrod, George, House*, 218 W. Broad St.

Warren County

Warren, *Warren County Courthouse*, Market St. and 4th Ave.

TENNESSEE

Shelby County

Memphis, *Porter, Dr. D. T., Building*, 10 N. Main St.

TEXAS

Cameron County

Port Isabel vicinity, *Brazos-Santiago Underwater Archeological District*, E of Port Isabel.

Culberson County

Toyah vicinity, *Granado Cave (41 CU 8)*, W of Toyah.

Galveston County

Galveston vicinity, *Galveston Underwater Archeological District*, S of Galveston.

Hopkins County

Sulphur Springs, *Hopkins County Courthouse*, Church and Jefferson Sts.

Hudspeth County

Allamore vicinity, *Red Rock Archeological Complex (41 HZ 18)*, NE of Allamore.

Johnson County

Rio Vista vicinity, *Hart, Meredith, House*, E of Rio Vista on SR 916.

Live Oak County

Calliham vicinity, *Pagan Site (41 LK 85)*, E of Calliham.

McMullen County

Calliham vicinity, *Mustang Branch Site (41 MC 163)*, NW of Calliham.

Sutton County

Sonora, *Sutton County Courthouse*, Public Sq.

VIRGINIA

Montgomery County

Radford vicinity, *Ingles Bottom Archeological Sites*.

WISCONSIN

Kenosha, *McCaffary, John, House*, 5732 13th Court.

Milwaukee County

Milwaukee, *German-English Academy*, 1020 N. Broadway.

Milwaukee, *Schlitz, Joseph, Brewing Company Saloon*, 2414 S. St. Clair St.

Milwaukee, *Turner Hall*, 1034 N. 4th St.

Racine County

Racine, *McClurg Building*, 245 Main St.

Rock County

Beloit vicinity, *How-Beckman Mill*, W of Beloit.

Evansville, *Eager Free Public Library*, 39 W. Main St.

Janesville, *Myers Opera House*, 118 E. Milwaukee St.

Janesville, *Willard, Frances, Schoolhouse*, 4-H Fairgrounds, Craig Ave.

Janesville vicinity, *La Prairie Grange Hall No. 79*, SE of Janesville on Town Hall Rd.

[FR Doc.76-34183 Filed 11-22-76;8:45 am]

Office of the Secretary

[Secretary's Order 2994]

SAN JUAN NATIONAL HISTORIC SITE

Designation

This notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1). The Acting Secretary of the Interior has issued Order No. 2994 dated September 29, 1976, designating the San Juan National Historic Site in Puerto Rico. The Order describing this action is published in its entirety below.

Further information regarding the order may be obtained from Mr. Raymond Coulter, Regional Solicitor, Atlanta Region, U.S. Department of the Interior, 148 Cain Street, N.E., Suite 405, Atlanta, Georgia 30303, telephone 404–526–4447.

ALBERT C. ZAPANTA,
Assistant Secretary of the Interior.

NOVEMBER 16, 1976.

[Order No. 2994]

SUBJECT: DESIGNATING SAN JUAN NATIONAL HISTORIC SITE, PUERTO RICO

SEPTEMBER 29, 1976.

Whereas, the Congress of the United States has declared it to be a national policy

to preserve for the public use historic sites, buildings, and objects of national significance for the inspiration and benefit of the people of the United States; and

Whereas, the ancient fortifications of San Juan, Puerto Rico, particularly the massive masonry works of El Morro and San Cristobal and the ancient city walls, are outstanding monuments of the past, possessing exceptional historical and architectural interest for the nation, and have been declared by the Advisory Board on National Parks, Historic Sites, Buildings, and Monuments to possess exceptional importance as commemorating the history of the United States; and

Whereas, in addition to El Morro, San Cristobal and the ancient city walls certain land, adjacent to El Morro and San Cristobal, described in "Exhibit A," annexed hereto and made a part hereof, has exceptional historical significance; and

Whereas, a cooperative agreement dated September 29, 1976, has been made between the Department of the Interior and the Commonwealth of Puerto Rico, concerning the preservation, development, maintenance and utilization of certain lands in connection with the San Juan National Historic Site;

Now, therefore, I, Kent Frizzell, Acting Secretary of the Interior, under and by virtue of the authority conferred by Section 2 of the Act of August 21, 1935 (49 Stat. 666, 16 U.S.C. 462, as amended) do hereby designate the fortresses of El Morro and San Cristobal, ancient city walls, El Canuelo, on Cabras Island, and all adjacent land described in "Exhibit A," and shown in the diagram marked "Exhibit B" annexed hereto[1] and made a part thereof, to be a National Historic Site, having the name "San Juan National Historic Site."

The administration, protection, and development of this national historic site shall be exercised in accordance with the provision of the above-mentioned cooperative agreement and the Act of August 21, 1935.

Warning is expressly given to all unauthorized persons not to appropriate, injure, destroy, deface, or remove any feature of this historic site.

The Order of the Secretary of the Interior of February 14, 1949, is hereby repealed.

In witness whereof, I have hereunto set my hand and caused the official seal of the Department of the Interior to be affixed at the City of Washington, D.C., the 29th day of September 1976.

KENT FRIZZELL,
Acting Secretary of the Interior.

EXHIBIT A

SAN JUAN NATIONAL HISTORIC SITE, SAN JUAN, PUERTO RICO—PARCEL A

All that certain tract of land situate, lying and being in San Juan Ward, San Juan, Puerto Rico, being more particularly bounded and described as follows:

Beginning at a steel nail embedded on concrete slab located on the westerly side of Mororis Street, said steel nail being known as Point No. 245, as shown on plat of survey made by David Lebron Lopez & Associates, dated July 16, 1975 and said point being the southeast corner of the parcel herein described, thence South 78°24'31" West, 264.338 feet to Point No. 46, a steel nail embedded on inner edge of curb and is the intersection of the inner edges of existing curb lines; thence South 01°19'38" West, 2.000 feet to Point No. 47, a steel nail embedded on inner edge of curb line and is the intersection of inner edges of curb lines; thence South 75°11'49" West, 276.283 feet to Point No. 244, a steel nail embedded on concrete sidewalk and is the intersection of inner edge of existing sidewalks and inner edge of existing curb line; thence along the inner edge of existing sidewalk, North 39°45'16" West, 82.408 feet to Point No. 243, a steel nail embedded on concrete gutter; thence North 46°35'36" West, 33.141 feet to Point No. 238, a steel nail embedded on concrete gutter; thence continuing North 46°35'36" West, 418.823 feet to Point No. 239, a steel nail embedded on concrete street pavement and is the intersection of inner edges of existing sidewalks, one running easterly and the other in a southeast direction; thence South 43°23'12" West, 99.441 feet to Point No. 236; thence continuing South 43°23'12" West, 13.163 feet to Point No. 234; thence South 81°25'23" West, 344.587 feet to Point No. 240, a steel nail embedded on concrete gutter and is the intersection of inner edge of existing sidewalks, one running northerly and the other one running from west to east; thence continuing South 81°25'23" West, 235.524 feet to Point No. 235, a point on a chain link fence; thence continuing South 81°25'23" West approximately 20 feet to point 235' located at the foot of the fortification wall; thence with said wall the following bearings and distances:

North 32°28' West approximately 208.00 feet,
North 35°38' West 41.85 feet,
North 21°10' East 149.34 feet,
North 51°43' West 26.47 feet,
North 09°38' West 49.86 feet,
North 10°08' West 77.31 feet to a point on the outer wall of the moat on the easterly side of the fortress of San Felipe Del Morro; thence, with the said moat outer wall the following bearings and distances:
North 78°37' East 24.00 feet,
South 62°06' East 114.75 feet,
North 77°29' East 15.85 feet,
North 62°35' East 11.45 feet,
North 42°15' East 10.00 feet,
North 19°15' East 239.15 feet,
North 35°40' East 22.00 feet,
North 63°54' East 260.45 feet,
North 15°49' East 15.45 feet, and
North 07°56' East 15.00 feet to a point at the intersection of the outer moat wall with the fortification wall of San Antonio Bastion; thence, with the inner wall of said bastion the following six (6) bearings and distances:
North 89°53' East 44.00 feet,
North 74°02' East 59.04 feet,
South 82°38' East 207.85 feet,
South 07°35' West 7.05 feet,
South 31°35' East 123.26 feet, and
South 15°51' West 90.07 feet to a point at the apex; thence with the said wall South 54°58' East 357.55 feet to a point at the apex of the wall of Santo Rosa Bastion; thence with the inner wall of the said bastion of the following bearings and distances:
South 62°50' East 12.23 feet,
North 65°46' East 13.45 feet,
North 56°13' East 53.33 feet,
South 12°10' East 14.83 feet,
North 71°08' East 22.21 feet,
South 33°33' East 26.17 feet,
South 57°30' East 23.65 feet,
North 42°41' East 12.17 feet,
North 52°09' West 25.72 feet,
North 17°59' East 46.97 feet,
North 79°24' East 117.00 feet,
South 18°44' East 92.07 feet,
South 29°51' West 83.48 feet,
South 78°17' East 21.71 feet, and
South 27°42' West 21.42 feet to a point at the apex of the fortification wall; thence, with the said wall South 63°10' East 179.22 feet to the westerly side of a paved road; thence,
South 29°28' West 39.23 feet,
South 08°45' East 13.11 feet,
South 19°50' East 18.07 feet,
South 46°34' East 17.48 feet,
South 63°17' East 125.43 feet,
South 13°31' East 5.94 feet,
South 61°45' East 31.88 feet; thence South 10°20' East, 140 feet, more or less, along the westerly side of Mororis Street to the point of beginning.

Containing 21.93 acres, more or less.

Let it be noted that in describing the metes and bounds of the ancient fortification walls, the metes and bounds are shown only as coursing along the interior foot of the parapet wall and related structural appendages, such as gun platforms, ramps, magazines, sealed vaults, and other historic or military structures built against the said walls which are in an integral part of the ancient fortification walls.

[FR Doc.76-34607 Filed 11-22-76;8:45 am]

[1] Filed as part of the original document.

DEPARTMENT OF JUSTICE

UNITED STATES v. KETCHIKAN PULP CO.

Proposed Consent Judgment in Action To Enjoin Discharge of Pollutants

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19020, notice is hereby given that on or about November 15, 1976, a proposed Consent Decree and appended Memorandum of Agreement in *United States* v. *Ketchikan Pulp Company* were lodged with the United States District Court for the District of Alaska at Anchorage at the request of the Environmental Protection Agency. The proposed decree and agreement require Ketchikan Pulp to achieve final compliance with the terms of its present wastewater discharge (NPDES) permit issued by the Environmental Protection Agency by no later than December 31, 1980. In addition, the Company is required to pay a penalty of $250 per day for each day between July 1, 1977, and completion of the consent decree's compliance schedule that KPC's discharges exceed the final permit effluent limitations of 75 pounds of biochemical oxygen demanding wastes (BOD) per ton of pulp produced. The decree would be in settlement of the civil action and of the continuing evaluation of the Ketchikan Pulp situation being conducted by EPA under section 507(e) of the Federal Water Pollution Control Act, 33 U.S.C. 1367(e).

The Department of Justice will receive on or before December 23, 1976, written comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and refer to *United States* v. *Ketchikan Pulp Company*, D.J. Ref. 90-5-1-7-518.

The proposed consent decree may be examined at the office of the United States Attorney, Anchorage, Alaska; at the EPA Region X offices, Enforcement Division, 1200 Sixth Avenue, Seattle, Washington 98101; at the EPA Alaska Operations Office, Room 8, Federal Building, 605 Fourth Avenue, Anchorage, Alaska; at the Ketchikan, Alaska, Public Library; at the office of the Clerk of the District Court, District of Alaska, Anchorage, Alaska; and at the Pollution

Control Section, Land and Natural Resources Division, Department of Justice, Room 2625, Department of Justice Building, Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. A copy of the proposed consent judgment may be obtained in person or by mail from the Pollution Control Section. In requesting a copy, please enclose a check in the amount of $1.40 (10 cents per page reproduction charge) payable to the Treasurer of the United States.

PETER R. TAFT,
Assistant Attorney General,
Land and Natural Resources Division.

[FR Doc.76-34608 Filed 11-22-76;8:45 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 195]

ASSIGNMENT OF HEARINGS

NOVEMBER 18, 1976.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 119634 Sub 15, Dick Irvin Inc., now being assigned February 2, 1977 (3 days), at Billings, Mont., in a hearing room to be later designated.

MC 135231 Sub 18, North Star Transport, Inc., now being assigned February 7, 1977 (2 days), at Portland, Oreg., in a hearing room to be later designated.

MC 139495 Sub 130, National Carriers, Inc., now being assigned February 9, 1977 (3 days), at Portland, Oreg., in a hearing room to be later designated.

MC 544 Sub 1, Vancouver-Portland Bus Co., MC 29839 Sub 5, Evergreen Stage Lines, Inc., And MC 29839 Sub 6, Evergreen Stage Lines, Inc. now being assigned February 14, 1977 (1 Week), at Portland, Oreg., in a hearing room to be later designated.

MC 114737 (Sub-No. 7), O & A Tex-Pack Express, Inc., now assigned December 6, 1976 at Santa Fe, New Mexico, has been postponed indefinitely.

MC 123407 (Sub 304), Sawyer Transport, Inc. now being assigned February 1, 1977 (2 days) at Chicago, Illinois in a hearing room to be later designated.

MC 134477 (Sub 112), Schanno Transportation, Inc., MC 111320 (Sub 93), Highway Transport, Inc. and MC 112801 (Sub 186), Transport Service Co. now being assigned February 3, 1977 (2 days) at Chicago, Illinois in a hearing room to be later designated.

FF-C 62, Rail Van, Inc., Freight Handlers, Inc., Foutty Freight, Inc., Trailer Train, Inc., Trans-Rail, Inc., Lee Lydic and Robert Marden—Investigation of Operations now being assigned February 7, 1977 (1 week) at Chicago, Illinois for continued hearing in a hearing room to be later designated.

MC 140330 (Sub 1), R.C. Van Lines, Inc. now being assigned February 2, 1977 for continued hearing at the Offices of the Interstate Commerce Commission in Washington, D.C.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-34617 Filed 11-22-76;8:45 am]

[Notice No. 69]

MOTOR CARRIER TRANSFER PROCEEDINGS

NOVEMBER 23, 1976.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212a(b) in connection with transfer application under section 212a (b) and Transfer Rules, 49 CFR Part 1132:

No. MC-FC-76818. By application filed November 5, 1976, EDWARD C. MALLEY, DBA MALLEY TRUCKING, 2061 Monongahela Avenue, Pittsburgh, Pa. 15218, seeks temporary authority to lease the operating rights of SANITARY TRANSFER, INC., 126 Homestead Street, P.O. Box 8298, Pittsburgh, Pa., 15218, under section 210a(b). The transfer to EDWARD C. MALLEY, DBA MALLEY TRUCKING, of the operating rights of SANITARY TRANSFER, INC., is presently pending.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.76-34615 Filed 11-22-76;8:45 am]

[Notice No. 70]

MOTOR CARRIER BOARD TRANSFER PROCEEDINGS

NOVEMBER 23, 1976.

Synopses of orders entered by the Motor Carrier Board of the Commission pursuant to sections 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act, and rules and regulations prescribed thereunder (49 CFR Part 1132), appear below:

Each application (except as otherwise specifically noted) filed after March 27, 1972, contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application. As provided in the Commission's Special Rules of Practice any interested person may file a petition seeking reconsideration of the following numbered proceedings on or before December 13, 1976. Pursuant to section 17(8) of the Interstate Commerce Act, the filing of such a petition will postpone the effective date of the order in that proceeding pending its disposition. The matters relied upon by petitioners must be specified in their petitions with particularity.

No. MC-FC-76355. By order entered November 17, 1976 the Motor Carrier Board approved the transfer to J. Patrick Smith, Inc., Baltimore, Md. of the operating rights set forth in Certificate No. MC 22173 issued April 12, 1941 and Permit No. 22174 issued February 6, 1942 to Dillon G. Smith, doing business as Smith's Transfer, Baltimore, Md. authorizing the transportation of general commodities with the usual exceptions over a regular route between Baltimore, Md. and Alexandria, Va. and sugar, clothing and material used in the manufacture of clothing over a regular route between Baltimore, Md. and Harrisburg, Pa. Robert F. Skutch, Jr., Esq., 10 Light Street, Baltimore, Md. 21202.

No. MC-FC-76372. By order of November 17, 1976 the Motor Carrier Board approved the transfer to Lively Transfer and Storage, Inc., 1941 East Butler, Flagstaff, Arizona 86001, of a portion of Certificate of Registration No. MC 111863 (Sub-No. 4) issued July 6, 1976 to H. & R. Transfer and Storage Co., Inc., 411 South 1st Street, Phoenix, Arizona, authorizing the transportation of freight and baggage within the vicinity of Flagstaff, Arizona, and coal, lumber, and assorted camp supplies to the Soil Conservation Service Camps located at various points in Coconino County, Arizona.

ROBERT L. OSWALD,
Secretary.

[FR Doc. 76-34616 Filed 11-22-76; 8:45 am]

MOTOR CARRIER BOARD TRANSFER PROCEEDING

Protests against approval of the application under Section 212(b), Interstate Commerce Act, listed below, must be filed with the Commission within 20-days after the date of this publication. Failure seasonably to file a protest, which may include a request for oral hearing, will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicant's representative, or applicants and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

No. MC-FC-76771, filed October 12, 1976. Transferee: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, Ohio

43227. Transferor: Commercial Motor Freight, Inc., 3400 Refugee Road, Columbus, Ohio. 43227. Applicants' representative: Edward G. Bazelon, 39 South La Salle Street, Chicago, Ill. 60603. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates Nos. MC-14252, MC-14252 (Sub-No. 1), MC-14252 (Sub-No. 4), MC-14252 (Sub-No. 6), MC-14252 (Sub-No. 8), MC-14252 (Sub-No. 9), MC-14252 (Sub-No. 10), MC-14252 (Sub-No. 12), MC-14252 (Sub-No. 13), MC-14252 (Sub-No. 17), MC-14252 (Sub-No. 18), MC-14252 (Sub-No. 20), MC-14252 (Sub-No. 21), MC-14252 (Sub-No. 22), MC-14252 (Sub-No. 23), MC-14252 (Sub-No. 24), and MC-14252 (Sub-No. 25), authorizing the transportation of general commodities, with specified exceptions, over specified routes, between specified points in Ohio, Indiana, Kentucky, Pennsylvania, and West Virginia, and those set forth in Certificates No. MC-151, MC-151 (Sub-No. 5), MC-151 (Sub-No. 7), MC-151 (Sub-No. 8), MC-151 (Sub-No. 9), MC-151 (Sub-No. 14), MC-151 (Sub-No. 15), MC-151 (Sub-No. 18), MC-151 (Sub-No. 19), MC-151 (Sub-No. 22), MC-151 (Sub-No. 23), MC-151 (Sub-No. 24), MC-151 (Sub-No. 26), MC-151 (Sub-No. 28), MC-151 (Sub-No. 29), MC-151 (Sub-No. 30), MC-151 (Sub-No. 31), MC-151 (Sub-No. 37), MC-151 (Sub-No. 38), MC-151 (Sub-No. 39), MC-151 (Sub-No. 40), MC-151 (Sub-No. 43), MC-151 (Sub-No. 44), MC-151 (Sub-No. 46), MC-151 (Sub-No. 47), MC-151 (Sub-No. 48), MC-151 (Sub-No. 51), MC-151 (Sub-No. 52), MC-151 (Sub-No. 54), and MC-151 (Sub-No. 56), issued March 22, 1962, January 17, 1950, May 22, 1950, July 8, 1952, June 28, 1957, February 15, 1963, February 11, 1964, September 8, 1964, April 2, 1964, July 30, 1964, September 4, 1964, April 6, 1965, May 18, 1965, September 7, 1966, September 16, 1966, July 8, 1966, July 8, 1966, August 9, 1966, October 24, 1966, August 15, 1967, April 14, 1967, January 30, 1967, February 13, 1970, February 16, 1972, July 12, 1972, April 25, 1974, August 5, 1975, June 13, 1975, October 22, 1975, and September 12, 1975, respectively, to Lovelace Truck Service, Inc., Terre Haute, Ind., and acquired by transferee herein pursuant to No. MC-F-12691, authorizing the transportation of general commodities, and various specified commodities, from, to and between points and places in Illinois, Indiana, Iowa, Kentucky, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b) of the Act.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-34732 Filed 11-22-76;8:45 am]

[Notice No. 155]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

IMPORTANT NOTICE

NOVEMBER 18, 1976.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 720 (Sub-No. 22TA), filed November 9, 1976. Applicant: BIRD TRUCKING COMPANY, INC., P.O. Box 277, Waupun, Wis. 53968. Applicant's representative: Michael J. Wyngaard, 329 W. Wilson St., P.O. Box 8004, Madison, Wis. 53708. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (a) *Frozen foods, foodstuffs, canned goods and materials, equipment and supplies* used or useful in the sale or distribution of frozen foods, foodstuffs and canned goods, from the plant and warehouse facilities utilized by Mass Feeding Corporation, at Darien, Wis., to New York City, N.Y.; and (b) Frozen foods, from Clover, Wis., to New York City, N.Y., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Mass Feeding Corporation, 2241 Pratt Blvd., Elk Grove Village, Ill. 60007. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg., and Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 5470 (Sub-No. 114TA), filed November 10, 1976 Applicant: TAJON, INC., R.D. 5, P.O. Box 146, Mercer, Pa. 16137. Applicant's representative: Richard W. Sanguigni (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Scrap metals*, in bump vehicles, from Ellenville, N.Y., Oswego, N.Y., and Botsford, Conn., to Philadelphia, Pa., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Atlantic Metals Corporation, Orthodox St., at Delaware River, Philadelphia, Pa. 19137. Send protests to John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Bldg., 1000 Liverty Ave., Pittsburgh, Pa. 15222.

No. MC 30837 (Sub-No. 476TA), filed November 9, 1976. Applicant: KENOSH AUTO TRANSPORT CORPORATION, 4200 39th Ave., Kenosha, Wis. 53140. Applicant's representative: Earl D. Merritt, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Marine fenders*, between points in Alabama, California, Connecticut, Delaware, Florida, Georgia, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Oregon, Rhode Island, South Carolina, Texas, Virginia, and Washington, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Seaward International, Inc., 6269 Leesburg Pike, Falls Church, Va. 22044. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg. & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 36556 (Sub-No. 36TA), filed November 11, 1976. Applicant: BLACKMON TRUCKING, INC., P.O. Box 186, 1111 120th Ave., Somers, Wis. 53171. Applicant's representative: Fred H. Figge (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Animal and poultry feeds, animal and poultry feed ingredients, animal and poultry health aids* (except in bulk, in tank vehicles), from the plantsite and warehouse facilities of Murphy Products Company, Inc., at Burlington, Wis., to points in Illinois, Indiana, and Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Support-

ing shipper: Murphy Products Company, Inc., 124 S. Dodge St., Burlington, Wis. 53105. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg. & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 41406 (Sub-No. 55TA), filed November 10, 1976. Applicant: ARTIM TRANSPORTATION SYSTEM, INC., 7105 Kennedy Ave., P.O. Box 2176, Hammond, Ind. 46323. Applicant's representative: Alki E. Scopelitis, 815 Merchants Bank Bldg., Indianapolis, Ind. 46204. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the port of entry on the United States-Canada Boundary at Sault Ste. Marie, Mich., to Milwaukee, Wis., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: The Algoma Steel Corporation, Ltd., Sault Ste. Marie, Ontario, Canada. Send protests to: J. H. Gray, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 345 W. Wayne St., Room 204, Fort Wayne, Ind. 46802.

No. MC 107403 (Sub-No. 989TA), filed November 10, 1976. Applicant: MATLACK, INC., Ten W. Baltimore Ave. Landsdowne, Pa. 19050. Applicant's representative: John Nelson (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lead oxides*, in bulk, in tank vehicles, from Stowe, Pa., to Conyers, Ga., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Hammond Lead Products, Inc., 10 S. Grosstown Road, Pottstown, Pa. Send protests to: Monica A. Blodgett, Transportation Assistant, Interstate Commerce Commission, 600 Arch St., Room 3238, Philadelphia, Pa. 19106.

No. MC 111302 (Sub-No. 96TA), filed November 12, 1976. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, 1500 Amherst Road, Knoxville, Tenn. 37919. Applicant's representative: David A. Petersen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline*, in bulk, in tank vehicles, from Nashville, Tenn., to Bowling Green, Cadiz, Cave City, Central City, Danville, Frankfort, Glasgow, Hodgenville, Hopkinsville, Louisville, Munfordville and Russellville, Ky., for 180 days. Supporting Shippers: Triangle Refineries, Inc., P.O. Box 7174; Consumers Gasoline Stations, Inc., 610 Magazine St., Nashville, Tenn. 37202. Napco, Inc., P.O. Box 462, Brentwood, Tenn. 37027. Send protests to: Joe J. Tate, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 111302 (Sub-No. 97TA), filed November 12, 1976. Applicant: HIGHWAY TRANSPORT, INC., P.O. Box 10470, 1500 Amherst Road, Knoxville, Tenn. 37919. Applicant's representative: David A. Petersen (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gasoline*, in bulk, in tank vehicles, from Chattanooga, Tenn., to Ackworth, Calhoun, Canton, Cartersville, Chickamouga, Cohutta, Dalton, Flintstone, Forest Park, Ft. Oglethorpe, Kennesaw, Lafayette, Lithia Springs, Mableton, Marietta, Ringgold, Rock Springs, Rossville, Smyrna, Snellville, Ga., restricted to product moving to the facilities of Ray Moss Farms, Inc., for 180 days. Supporting Shipper: Ray Moss Farms, Inc., 3411 Vinewood, Chattanooga, Tenn. 37406. Send Protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 113024 (Sub-No. 147TA), filed November 11, 1976. Applicant ARLINGTON J. WILLIAMS, INC., 1398 S. Du Pont Highway, Smyrna, Del. 19977. Applicant's representative: Samuel W. Earnshaw, 833 Washington Bldg., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic fibre*, in bales, from Front Royal, Va., to Dover, Del., for the account of International Playtex, Inc., under a continuing contract with International Playtex, Inc. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: James M. Harrison Director Traffic and Transportation, International Playtex, Inc., P.O. Box 631, Dover, Del. 19901. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Bldg., Baltimore, Md. 21201.

No. MC 115311 (Sub-No. 202TA), filed November 9, 1976. Applicant: J & M TRANSPORTATION CO., INC., P.O. Box 488, Milledgeville, Ga. 31061. Applicant's representative: Kim G. Meyer, 1600 First Federal Bldg., Atlanta, Ga. 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages and relating advertising matter*, from Latrobe Pa., to Atlanta, Augusta, Brunswick, LaGrange, Athens, Marietta, Rome, Dalton and Macon, Ga., for 180 days. Supporting shippers: There are approximately 9 statements of support attached to the application, which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree St., N.W., Room 546, Atlanta, Ga. 30309.

No. MC 115821 (Sub-No. 22TA) filed November 12, 1976. Applicant: FRANK BEELMAN, doing business as BEELMAN TRUCK CO., St. Libory, Ill. 62282. Applicant's representative: Ernest A. Brooks, II 1301 Ambassador Bldg. St. Louis, Mo. 63101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk, in tank vehicles, from the plansite of Illinois Power Company, at East Alton, Ill., to Bettendorf and Waterloo, Iowa, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper: L. Michael Shydlowski, Southern District Mgr., American Admixtures Corporation, 1200 Hanley Industrial Ct., St. Louis, Mo. 63144. Send protests to: Harold C. Jolliff, District Supervisor, Interstate Commerce Commission, P.O. Box 2418, Springfield, Ill. 62705.

No. MC 116519 (Sub-No. 36TA), filed November 12, 1976. Applicant: FREDERICK TRANSPORT LIMITED, R.R. 6, Chatham, Ontario, Canada. Applicant's representative: Jeremy Kahn. Suite 733 Investment Bldg., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer and dry fertilizer materials*, in bulk, in dump vehicles, from Yale and Lapeer, Mich., and Cincinnati, Ojoo, to ports of entry on the International Boundary line between the United States and Canada on the St. Clair and Detriot Rivers, restricted to traffic moving in international commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: United Cooperatives of Ontario, Traffic Analyst, Liese Rilling, 151 City Centre Drive, Mississauga, Ontario, Canada L5A 3A4. Send protests to: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

No. MC 117344 (Sub-No. 258TA), filed November 12, 1976. Applicant: THE MAXWELL CO., 10380 Evendale Drive. P.O. Box 15010, Cincinnati, Ohio 43215. Applicant's representative: John C. Spencer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Synthetic liquid plastics*, in bulk, in tank vehicles, from Cincinnati, Ohio, to Ports of Entry on the United States-Canada Boundary Line, at or near Buffalo, Lewiston and Rosseveltown, N.Y., for 180 days. Supporting Shipper: J. F. Brady, Superintendent—Traffic & Shipping, The Upjohn Company, P.O. Box 685, LaPorte, Tex. 77571. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Bldg., 550 Main St., Cincinnati, Ohio 45202.

No. MC 123255 (Sub-No. 92TA), filed November 12, 1976. Applicant: B & L MOTOR FREIGHT, INC., 140 Everett Ave., Newark, Ohio 40355. Applicant's representative: C. F. Schnee, Jr. (same

address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products and materials, equipment and supplies* used in the manufacture of paper and paper products, between the plantsite and warehouse facilities of the International Paper Company, at or near Russellville, Ark., on the one hand, and, on the other, points in Missouri and Oklahoma and Memphis and Shelbyville, Tenn., and Springhill, La., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: International Paper Company, 220 E. 42nd St., Room 300, New York, N.Y. 10017. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Bldg. & U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio 43215.

No. MC 124078 (Sub-No. 706TA), filed November 11, 1976. Applicant: SCHWERMAN TRUCKING COMPANY, 611 S. 28 St., Milwaukee, Wis. 53246. Applicant's representative: Richard H. Prevette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Magnetite*, in bulk, in tank vehicles, from Bristol, Tenn., to points in Ohio, Pennsylvania, West Virginia and Birmingham, Ala., for 180 days. Supporting shipper: Reiss Viking Corporation, P.O. Box 688, Sheboygan, Wis. 53081. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg. & Courthouse, 517 E. Wisconsin Ave., Room 619, Milwaukee, Wis. 53202.

No. MC 124679 (Sub-No. 70TA), filed November 11, 1976. Applicant: C. R. ENGLAND & SONS, INC., 975 W. 2100 South, Salt Lake City, Utah 84119. Applicant's representative: Daniel E. England, 716 Newhouse Bldg., Salt Lake City, Utah 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat by-products and articles* distributed by meat packinghouses, from Denver, Colo., to points in Maryland, Massachusetts, New Jersey, New York and Pennsylvania, for 180 days. Supporting shippers: United Packing Company, 5000 Clarkson, Denver, Colo. 88216. Litvak Meat Packing Company, E. 59th Ave., and York, Denver, Colo. Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Bldg., 125 S. State St., Salt Lake City, Utah 84138.

No. MC 125254 (Sub-No. 37TA), filed November 11, 1976. Applicant: MORGAN TRUCKING CO., 1201 E. 5th St., P.O. Box 714, Muscatine, Iowa 52761. Applicant's representative: Larry D. Knox, 900 Hubbell Bldg., Des Moines, Iowa 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Insulation*, in bags, from Muscatine, Iowa, to points in Illinois, Wisconsin and Minnesota, for 180 days. Supporting shipper: Diversified Insulation, Inc., 1208 Washington St., Muscatine, Iowa 52761. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Bldg., Des Moines, Iowa 50309.

No. MC 126383 (Sub-No. 3TA), filed November 11, 1976. Applicant: G & W TRANSPORT, INC., 100 S. Adams St., Rockville, Md. 20850. Applicant's representative: Gerald K. Gimmel, Suite 145, 4 Professional Drive, Gaithersburg, Md. 20760. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages, and containers* on return, from Philadelphia and Norristown, Pa., New York, N.Y., and Elizabeth and Newark, N.J., to Montgomery County Liquor Control Board Warehouse, at or near Rockville, Md., under a continuing contract with Montgomery County Liquor Control Board, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Montgomery County Liquor Control Board, 16550 Crabbs Branch Way, Rockville, Md. Send protests to: Interstate Commission, 12th and Constitution Ave., N.W., Room 1314, W. C. Hersman, District Supervisor, Washington, D.C. 20423.

No. MC 127042 (Sub-No. 179TA), filed November 11, 1976. Applicant: HAGEN, INC., 3232 Highway 75 North, P.O. Box 98—Leeds Station, Sioux City, Iowa 51108. Applicant's representative: Robert G. Tessar (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carriers Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk, in tank vehicles), from the plantsite of Swift & Co., at or near Scottsbluff and Gering, Nebr., to points in North Dakota, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wm. H. Rudge, Manager-Transportation Services, Swift Fresh Meats Company, a Division of Swift & Company, 115 W. Jackson Blvd., Chicago, Ill. 60604. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 N. 14th St., Omaha, Nebr. 68102.

No. MC 127743 (Sub-No. 3TA), filed November 8, 1976. Applicant: JAMES H. FOLEY, doing business as J. H. FOLEY TRANS. CO., 20 Longmeadow Road, Arlington, Mass. 02174. Applicant's representative: Frederick T. O'Sullivan, P.O. Box 2184, Peabody, Mass. 01960. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Polyurethane foam and sleeper mattresses* made of polyurethane foam (except commodities in bulk, in tank vehicles, in hopper vehicles), from Wakefield, Mass., to points in Maine, New Hampshire, Vermont, Connecticut, Rhode Island, New York, New Jersey, Pennsylvania, Ohio, Indiana, Illinois, Michigan, Missouri, Kentucky, Maryland, and Delaware, under a continuing contract with Hood Industries, Inc., for 180 days. Supporting shipper: Hood Industries, Inc., 14 Audubon Road, Wakefield, Mass. 01880. Send protests to: Darrell W. Hammons, District Supervisor, Interstate Commerce Commission, 150 Causeway St., Room 501, Boston, Mass. 02114.

No. MC 128573 (Sub-No. 8TA), filed November 11, 1976. Applicant: BARNETT TRUCK LINE, INC., 3404 Wheat St., Kinston, N.C. 28501. Applicant's representative: James B. Barnett (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Agricultural limestone*, from Botetourt County, Va., to points in North Carolina on and east of U.S. Highway 301, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Wilmington Fertilizer Company, P.O. Box 700, Wilmington, N.C. 28401. Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 26896, Raleigh, N.C. 27611.

No. MC 129394 (Sub-No. 5TA), filed November 8, 1976. Applicant: RONALD HACKENBERGER, doing business as RON'S TRUCKING SERVICE, Route 250, North, RFD No. 3, Norwalk, Ohio 44857. Applicant's representative: Richard H. Brandon, 220 W. Bridge St., P.O. Box 97, Dublin, Ohio 43017. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Limestone products*, in bulk, in dump vehicles, from Maple Grove, Ohio, to Weirton, W. Va., and Ashland, Ky., under a continuing contract with The Federal Lime and Stone Company, for 180 days. Supporting shipper: The Federal Lime and Stone Company, Tower East Bldg., Cleveland, Ohio 44122. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43604.

No. MC 129645 (Sub-No. 58TA), filed November 5, 1976. Applicant: BASIL J. SMEESTER AND JOSEPH G. SMEESTER, doing business as SMEESTER BROTHERS TRUCKING, 1330 Jackson St., Iron Mountain, Mich. 49801. Applicant's representative: H. G. Denny (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mining, ore milling or smelting equipment, materials and supplies* used in the installation thereof (except that which because of size or weight requires the use of special equipment or handling and commodities in bulk), be-

tween points in Billings and Butte, Mont.; Hibbing, Minn.; and Iron Mountain, Mich., and their respective Commercial Zones on the one hand, and, on the other, to points in Colorado, Illinois (except points in the Chicago, Ill., Commercial Zone as defined by the Commission), Minnesota, Mississippi, Montana, New Mexico, Ohio, Pennsylvania, Wyoming, and the Upper Peninsula of Michigan for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers: W. B. Thompson Co., 1900 N. Stephenson, Iron Mountain, Mich.; Langer-Thompson, Inc., 3701 Harrison Ave., Butte, Mont. 59701; Langer-Thompson, Inc., 1302 Highway 10 East, Billings, Mont. 59107; Langer Equipment Company, 618 West 41st St., Hibbing, Minn. 55746. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Bldg., Lansing, Mich. 48933.

No. MC 129862 (Sub-No. 13TA), filed November 12, 1976. Applicant: RAJOR, INC., P.O. Box 756, 2 Lewisburg Pike, Franklin, Tenn. 37064. Applicant's representative: William J. Monheim, 15942 Whittier Blvd., P.O. Box 1756, Whittier, Calif. 90609. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Air conditioning and heating units* (except commodities which by reason of size or weight require the use of special equipment), from Madisonville, Ky., to points in Florida, under a continuing contract with York Division of Borg-Warner Corporation, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: York Division of Borg-Warner Corporation, P.O. Box 1592, York, Pa. 17405. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, Tenn. 37203.

No. MC 133095 (Sub-No. 119TA), filed November 9, 1976. Applicant: TEXAS CONTINENTAL EXPRESS, INC., P.O. Box 434, 2603 W. Euless Blvd., Euless, Tex. 76039. Applicant's representative: Rocky Moore, (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Limestone and gypsum pellets*, in containers, from the facilities of American Pelletizing Corporation, at or near Knoxville, Iowa, to points in Colorado, Texas, Kansas, Oklahoma, Arkansas, Louisiana, Missouri, Nebraska, Minnesota, Wisconsin, Illinois, North Dakota and South Dakota; (2) *Limestone and gypsum pellets*, in containers, from the facilities of American Pelletizing Corporation, at or near Irvington, Ky., to points in Mississippi, Tennessee, Alabama, Georgia, Florida, North Carolina, South Carolina, Virginia, Maryland, West Virginia, Ohio, Michigan, Pennsylvania, New Jersey, New York, Connecticut, Massachusetts, Vermont, New Hampshire, Delaware, Rhode Island, Louisiana, Arkansas, and the District of Columbia; and (3) *Materials and supplies* used in the packaging and distribution of aforementioned commodities in (1) and (2) above (except commodities in bulk), from Minneapolis, Minn., and St. Louis, Mo., to the facilities of American Pelletizing Corp., at or near Knoxville, Iowa, and Irvington, Ky., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: American Pelletizing Corporation, 7200 Hickman Road, Des Moines, Iowa. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27 Federal Bldg., 819 Taylor St., Fort Worth, Tex. 76102.

No. MC 134645 (Sub-No. 14TA), filed November 10, 1976. Applicant: LIVESTOCK SERVICE, INC., 1420 Second Ave., South, P.O. Box 944, St. Cloud, Minn. 56301. Applicant's representative: Robert P. Sack, P.O. Box 6010, West St. Paul, Minn. 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fresh meat*, suspended or boxed, from West Fargo, N. Dak., to Billings, Mont.; Seattle and Spokane, Wash.; and points in Los Angeles, Fresno, Santa Cruz, Monterey, and Orange and San Francisco Counties, Calif., for 180 days. Supporting shipper: Flavorland Industries, Inc., 1911 Cunningham Drive, Sioux City, Iowa. Send protests to: Marion L. Cheney, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Bldg., & U.S. Courthouse, 110 S. 4th St., Minneapolis, Minn. 55401.

No. MC 134775 (Sub-No. 8TA), filed November 11, 1976. Applicant: GUNTER BROTHERS, INC., 19060 Frager Road, Kent, Wash. 98031. Applicant's representative: David S. White, 307 Blanchard, Seattle, Wash. 98121. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Passenger aircraft interior parts and furnishings, decorative appearance items*, from Kent, Wash., to St. Louis County, Mo., including but not limited to, Lambert Field, Mo., under a continuing contract with Heath Tecno Corporation, Precision Structures Division, for 180 days. Supporting shipper: Heath Tecno Corporation, Precision Structures Division, 19819 84th Ave., South, Kent, Wash. 98031. Send protests to: L. D. Boone, Transportation Specialist, Bureau of Operations, Interstate Commerce Commission, 858 Federal Bldg., 915 Second Ave., Seattle, Wash. 98174.

No. MC 134922 (Sub-No. 207TA), filed November 11, 1976. Applicant: B. J. McADAMS, INC., Route 6, Box 15, North Little Rock, Ark. 72118. Applicant's representative: Bob McAdams (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rubber articles*, from Gadsden, Ala., to Petaluma, Calif., for 180 days. Supporting shipper: Triple S Tire Center, 412 Madison St., Petaluma, Calif. 94952. Sent protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Bldg., 700 W. Capitol, Little Rock, Ark. 72201.

No. MC 135696 (Sub-No. 3TA3, filed November 8, 1976. Applicant: LAKE PORT TRUCKING AND LEASING, INC., Martin-Williston Road, Genoa, Ohio 43430. Applicant's representative: Arthur R. Cline, 420 Security Bldg., Toledo, Ohio 43604. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beet pulp*, from Findlay and Fremont, Ohio, to Huron and Toledo, Ohio, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Northern Ohio Sugar Company, P.O. Box 5308 TA, Denver, Colo. 80217. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Bldg., 234 Summit St., Toledo, Ohio 43604.

No. MC 138841 (Sub-No. 6TA), filed November 10, 1976. Applicant: BLACK HILLS TRUCKING CO., Box 2130, Rapid City, S. Dak. 57701. Applicant's representative: James W. Olson, 821 Columbus, Rapid City, S. Dak. 57701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat*, from Rapid City, S. Dak., to Watsonville, Los Angeles, San Francisco, San Jose, Oakland, and Sacramento, Calif.; Sublimity, Portland, and Clackamas, Oreg.; and Tacoma, Wash., and Providence, R.I., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Black Hills Packing Co., Box 2130, Rapid City, S. Dak. 57701. Send protests to: J. L. Hammond, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 369, Federal Bldg., Pierre, S. Dak. 57501.

No. MC 140037 (Sub-No. 3TA), filed November 12, 1976. Applicant: SUNFLOWER CARRIERS, INC., P.O. Box 355, York, Nebr. 68467. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, Nebr. 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat by-products and articles distributed by meat packinghouses*, as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Spencer, Iowa, to New York City, N.Y. Restrictions: (1) Restricted to the transportation of kosher beef and (2) restricted to a transportation service to be performed under a continuing contract or contracts with Sunflower Beef Packers, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: George Merritt Otoupal, Traffic Manager, Sunflower Beef Packers, Inc., York, Nebr. 68467. Send protests to: Max H. Johnston, District Supervisor,

285 Federal Bldg., and Courthouse, 100 Centennial Mall North, Lincoln, Nebr. 68508.

No. MC 140743 (Sub-No. 13TA) filed November 10, 1976. Applicant: GORSKI BULK TRANSPORT, INC., 21635 W. Mine Mile Road, St. Clair Shores, Mich. 48080. Applicant's representative: William B. Elmer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wine*, in bulk, in tank vehicles, from points in Fresno, Madera, San Joaquin and Sonoma Counties, Calif., to Allen Park, Mich., for 180 days. Supporting shipper: Heublein Beverage Group, Smirnoff Beverage & Import Company, Transportation Manager, David Tucker, 330 New Park Ave., Hartford, Conn. 06101. Send protests to: James A. Augustyn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 1110 Broderick Tower, 10 Witherell Ave., Detroit, Mich. 48226.

No. MC 141832 (Sub-No. ITA), filed November 10, 1976. Applicant: K.I.T. MOTOR EXPRESS, INCORPORATED, 1228 Highland Ave., Louisville, Ky. 40204. Applicant's representative: Wm. A. Knight (same address as applicant). Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Aluminum, brass, copper, iron or steel articles, paper and other materials and supplies* used in manufacturing electrical transformers, or parts, between points in California, Connecticut, Indiana, Illinois, Iowa, Kentucky, Michigan, Mississippi, Missouri, New Jersey, New York, North Carolina, South Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin, on the one hand, and, on the other, the plantsites of Kuhlman Electric Company, at or near Versailles, Ky., and Salinas, Calif.; and (2) *Transformers, Transformer parts, office or plant equipment, material handling equipment and supplies* (except Classes A and B explosives and passengers); between the plantsites of Kuhlman Electric Company, located at or near Versailles, Ky., and Salinas, Calif., on the one hand, and, on the other, plants, warehouses, storage facilities and customer delivery facilities, at points in the United States, including Alaska but excluding Hawaii, restricted in (1) and (2) above against the transportation of commodities in bulk, and further restricted to transportation services provided under a continuing contract with Kuhlman Electric Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: John M. Dohr, Traffic Coordinator, Kuhlman Electric Co., Division of Kuhlman Corp., 101 Kuhlman Blvd., Versailles, Ky. 40383. Send protests to: Elbert Brown, Jr., District Supervisor, Interstate Commerce Commission, 426 P.O. Bldg., Louisville, Ky. 40202.

No. MC 142028 (Sub-No. 3TA) filed November 8, 1976. Applicant: ELI G. TRAVIS, doing business as TRAVIS TRUCKING COMPANY, R.D. No. 1, Benton, Pa. 17814. Applicant's representative: Chester A. Zyblut, 366 Executive Bldg., 1030 Fifteenth St., N.W., Washington, D.C. 20005. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood and plastic products, toothpick dispensers, sporting goods and accessories*, from Wilton, Maine, to points in New Jersey (except those points located north of U.S. Highway 30 and New Jersey Highway 33), Delaware, Pennsylvania, Maryland, Virginia, the District of Columbia and New York (except New York, N. Y., and Nassau and Suffolk Counties, N.Y.). Restriction: The operations authorized herein are limited to a transportation service to be performed under a continuing contract with Forster Manufacturing Company, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Forster Manufacturing Company, Inc., Depot St., Wilton, Maine 04294. Send protests to: Paul J. Kenworthy, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 314 U.S. Post Office Bldg., Scranton, Pa. 18503.

No. MC 141838 (Sub-No. 1TA) filed November 11, 1976. Applicant: BOBBY L. LAMB, doing business as LAMB TRUCKING COMPANY, Highway 75, Centre Church Road, P.O. Box 1115, Oneonta, Ala. 35121. Applicant's representative: George M. Boles, 903 Frank Nelson Bldg., Birmingham, Ala. 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, in open-top dump vehicles, from Menlo, Ga.; Coalmont, Monteagle and Tracy City, Tenn., to Port Osborne (Jefferson County), Ala.; from Henagar, Ala., to Rome, Ga.; Chattanooga, South Pittsburg, and Richard City, Tenn., and the Kingston Steam Plant, at Watts Bar, Tenn.; from Tuscaloosa, Ala., to Tupelo, Miss.; from Jasper, Tenn., to Chattanooga, Tenn.; from Menlo, Ga., to Rising Fawn, Ga.; from Rising Fawn, Ga., to Chattanooga, Tenn., and Holt, Ala.; from Cloudland, Ga., to Chattanooga, Tenn., Holt, Port Osborne, Birmingham and Jamestown, Ala., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Kenala Coal Company, Inc., 165 W. Valley Ave., Suite 207, Birmingham, Ala. Send protests to Clifford W. White, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, Ala. 35203.

No. MC 142593 (Sub-No. 1TA) filed November 10, 1976. Applicant: WARNER BROS. INC., P.O. Box 395, Sunderland, Mass. 01375. Applicant's representative: David M. Marshall, 135 State St., Suite 200, Springfield, Mass. 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rock salt and calcium chloride*, in bulk, in dump vehicles, from Deerfield and East Deerfield, Mass., to points in New Hampshire and Vermont, under a continuing contract with International Salt Company, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: International Salt Company, Clarks Summit, Pa. 18411. Send protests to: J. D. Perry, Jr., District Supervisor, 436 Dwight St., Room 338, Springfield, Mass. 01103.

No. MC 142623 (Sub-No. 1TA) field November 12, 1976. Applicant: ROBERT L. MACON, 1501 Edgebrook Drive, Garner, N.C. 27529. Applicant's representative: Robert L. Macon (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Structural clay products*, from points in North Carolina and South Carolina, to points in Alabama, Florida, Georgia, North Carolina, Tennessee, Virginia, Maryland, Delaware, New Jersey, Pennsylvania, New York, Connecticut, Massachusetts, South Carolina, Rhode Island and West Virginia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Boren Clay Products Company, P.O. Box 368, Pleasant Garden, N.C. 27313 Send protests to: Archie W. Andrews, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Raleigh, N.C. 27611.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc.76-34618 Filed 11-22-76;8:45 am]

federal register

TUESDAY, NOVEMBER 23, 1976

PART II:

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

FORMAL EVIDENTIARY PUBLIC HEARINGS

Procedures

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 76N-0423]

PART 2—ADMINISTRATIVE PRACTICES AND PROCEDURES

Subpart B—Formal Evidentiary Public Hearings

SUBCHAPTER D—DRUGS FOR HUMAN USE

PART 430—ANTIBIOTIC DRUGS: GENERAL

Procedures for Formal Evidentiary Public Hearings

The Food and Drug Administration (FDA) is establishing procedures for formal evidentiary public hearings under Subpart B of Part 2, published as a proposal in the FEDERAL REGISTER of September 3, 1975 (40 FR 40682). Accordingly, the current regulations under Subpart B of Part 2 (redesignation from Subpart F published in the FEDERAL REGISTER of June 28, 1976 (41 FR 26636)) are revoked and superseded upon the effective date of these regulations. These regulations shall be effective November 23, 1976 except that they shall not apply to any formal evidentiary public hearing for which a notice of hearing has been published in the FEDERAL REGISTER on or before that date. The background of this administrative proceeding is described in the preamble to the order establishing Subpart C—Public Hearing Before a Public Board of Inquiry, published in the FEDERAL REGISTER of June 28, 1976 (41 FR 26636).

The comments received on the proposed Subpart B and the Commissioner's evaluation of each are as follows:

1. One comment stated that the right to a formal evidentiary hearing should not be limited to those circumstances where such a right is conferred by statute. The comment urged that the regulations should recognize that an evidentiary hearing may be required or appropriate in determining "genuine, substantial and controlling" issues of fact in a limited number of rule making proceedings not required by statute to include opportunity for formal procedures. The comment cited *American Airlines, Inc.* v. *Civil Aeronautics Board*, 359 F. 2d 624, 631, 633 (D.C. Cir. 1966), *Pfizer, Inc.* v. *Richardson*, 434 F. 2d 536, 543 (2d Cir. 1970), and the Davis treaties on administrative law as indicating a requirement for a formal evidentiary hearing if specific "adjudicatory" facts are in dispute. The comment urged that FDA establish specific requirements that must be met to justify an adjudicative hearing not required by statute.

Proposed § 2.10(f) (21 CFR 2.10(f)) of Subpart A provides that any proposed or final regulation, at the Commissioner's discretion, may be the subject of a formal evidentiary public hearing. The Commissioner believes that the circumstances in which the more formal procedure would be appropriate in a rule making proceeding cannot be precisely defined, and that the decision whether to utilize that procedure should be made in the context of a specific rule making proceeding rather than in the abstract.

Opportunity for a formal evidentiary public hearing on a rule is legally mandated only when the rule is "required by statute to be made on the record after opportunity for an agency hearing." *United States* v. *Florida East Coast Railway Co.*, 410 U.S. 224, 237–238 (1973). No court has held that the mere existence of issues of specific fact in an informal rule making proceeding pursuant to 5 U.S.C. 553 of the Administrative Procedure Act, i.e., a hearing not required to be held "on the record," requires that a formal evidentiary proceeding must be conducted to resolve them. Although several courts have concluded that procedures beyond opportunity for written comment should be afforded in certain rule making proceedings, these cases hinged on factors peculiar to the proceedings or statutory schemes involved and cannot be generalized to all informal rule making in which FDA engages. The Commissioner will consider any request that an issue of adjudicative fact relating to a specific rule proposed pursuant to proposed § 2.10 be resolved in a formal evidentiary public hearing. The Commissioner will give weight to, among other things, the importance of the issue to his decision on the rule and to the cost of providing a formal proceeding to settle it.

2. Comments opposed § 2.110(c) (21 CFR 2.110(c)) governing the procedures for the issuance, amendment, or repeal of antibiotic drug regulations. The promulgation of that section necessitates revising § 430.20(b)(2) (21 CFR 430.20(b)(2)), which currently provides that an order issuing, amending, or repealing an antibiotic drug regulation may be effective on the date of its publication when such an order is "necessary to deal with an imminent hazard to the public health." Section 2.110(c) permits a regulation to be issued without the requirements of notice and public procedure or delayed effective date "when the regulation imposes safety requirements which the Commissioner concludes are important for the public health." The comment asserted that this revision greatly expands the authority of the Commissioner to promulgate antibiotic drug regulations without public procedure prior to the effective date and deprives interested persons of the right, currently provided by § 430.20(c), to a hearing after the effective date of such regulations. The comment stated that the proposed regulation ignores the procedure required by section 507 (f) and (h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357 (f) and (h)).

The Commissioner advises that the standard in § 2.110(c) is intended to particularize the standard of the Administrative Procedure Act for publishing rules without notice and public procedure when the agency, in particular cases, finds that it would be impracticable, unnecessary, or contrary to the public interest to do so (5 U.S.C. 553(b)(B)). The Commissioner recognizes that section 507(f) of the act does not contain explicit authority for publishing an antibiotic drug regulation with an immediate effective date, and that since the exception in the Administrative Procedure Act does not apply when notice or hearing is required by statute, the exception can be interpreted as not covering matters governed by section 507(f) of the act. The Commissioner notes, however, that this analysis applies to any action to issue, amend, or revoke an antibiotic drug regulation, without regard to whether the action deals with an imminent hazard to the public health or imposes conditions that are important to the public health. Section 430.20(b)(1) now permits, and § 2.110(c) would permit, an antibiotic drug regulation to be issued, amended, or revoked without notice and opportunity for comment in those circumstances where the regulation is technical in nature, interested persons have been consulted, and there are no significant points of controversy. Accepting the comment's contention would require that notice and an opportunity to comment be given in those circumstances as well as in situations involving a public health problem.

The Commissioner does not believe that this is the only legally supportable result, or that it represents sound public policy. He therefore concludes that there should be provision for issuing, amending, or revoking antibiotic drug regulations without notice or a delayed effective date. He further concludes that instead of attempting to particularize the Administrative Procedure Act requirement, he should revise § 2.110(c) to reference § 2.10(e)(1), which incorporates the requirement by terms. This will also make clear that post-publication comments are permissible on any action on an antibiotic drug regulation taken without notice and public procedure.

The Commissioner notes that proposed § 430.20(b)(2) erroneously cross-references § 2.110(b)(2) instead of § 2.110(c), and he is making the appropriate correction.

3. Comments opposed the requirements under § 2.112(a)(5) (21 CFR 2.112(a)(5)) that each objection for which a hearing is requested include a detailed description and analysis of the specific factual information intended to be presented in support of the objection if a hearing is held. The submission is required to include copies of written documents and a summary of the nondocumentary testimony to be presented by any witnesses relied upon. One comment asserted that these requirements cannot be met within the 30 days provided by statute to request a hearing. The comment said that witnesses must be obtained, interviewed, and evaluated before testimony can be summarized in accordance with the proposed regulation. The comment asserted, in addition, that a detailed description and factual analysis of the information to be presented could not be made without a thorough research of the relevant documentary evidence and knowledge of the testimony to be

presented by each witness. The comment pointed to § 2.153(a)(4) (21 CFR 2.153 (a)(4)), which states that the director of a bureau involved in a hearing is required to submit "a narrative statement of his position on the factual issues stated in the notice of hearing and the type of evidence he intends to introduce in the hearing in support of his position." The comment contrasted this requirement with the information required to be submitted by a person requesting a hearing. One comment maintained that an objection should be sufficient to justify a hearing if it states only that a proposed regulation on which FDA bears the burden of proof is unsupported by the evidence.

The requirement that an objection specify the factual information to be advanced in its support is intended to provide a basis for determining prima facie whether the hearing will serve any useful purpose. It is not intended to limit evidence at the hearing to that identified in the objection; nor is it intended to impose on a party the duty of putting his case together in final form as a precondition to justifying his right to present it.

Under this provision, a party submitting an objection must identify and analyze only that quantum of factual information sufficient to allow the Commissioner to determine that a hearing is justified in accordance with the criteria set forth in § 2.113(b) (21 CFR 2.113(b)). If such factual information can be described and analyzed without identifying specific documents and witnesses, then the objection need not include such documents or summarize the testimony of named witnesses. If, however, the objection asserts that a hearing is justified because particular documentary or testimonial evidence demonstrates the existence of a factual issue requiring a hearing pursuant to § 2.113(b), sufficient evidence must be described to demonstrate that the assertion is well-founded.

The Commissioner concludes that it is not unreasonable to expect that this be done within 30 days. Regulations to which objection may be made are preceded by ample notice of both their existence and their general content. That the specific provisions of a regulation are not known until it is formally issued does not negate the utility of such advance knowledge in preparing the necessary support for an objection. The detailed description and analysis of specific factual information that will be presented at a hearing does not require perfect knowledge of all possibly relevant documentary and testimonial evidence, nor its exhaustive presentation in a lengthy memorandum. It requires merely that the objecting party apprise himself in sufficent depth of the available factual information to enable him to demonstrate that there exist factual issues meeting the criteria in § 2.113 (b). The Commissioner anticipates that in most cases where there is such information, the objecting party will have been aware of it long before the issuance of a regulation.

There is no inconsistency between the requirement of § 2.112(a)(5) for the submission by an objecting party of a detailed analysis and description of specific factual information and that of § 2.153 (a)(4) (21 CFR 2.153(a)(4)) for the submission by the director of a bureau of a narrative statement of his position on the factual issues and the type of evidence he intends to introduce. The latter requirement is intended to assist in the specification and narrowing of issues after a hearing has been justified, and is imposed equally on the bureau director and the other participants in the hearing. Once a hearing has been set, it is expected that the factual issues will be elaborated in detail by operation of the procedures set forth in §§ 2.150 through 2.165 (21 CFR 2.150 through 2.165).

Section 2.112(a)(5) is intended to elicit a showing that a hearing is required at all; a detailed description and analysis of the specific factual information supporting a hearing request is required to achieve that purpose. This does not work an injustice on those who object to a regulation. The agency in issuing a regulation has already provided for the record factual support that in its view is sufficient to withstand judicial review, and stands ready to defend the regulation on that basis without further proceeding. If an objecting party believes that there is factual information that demonstrates that the regulation is not adequately supported by the record up to that point, it is appropriate to require that he describe and analyze it.

The Commissioner does not agree that an objection may trigger a hearing by stating only that a regulation on which the agency has the burden of proof is unsupported by the evidence. Even where the agency is the proponent of a rule, the function of a hearing is nevertheless to resolve issues of fact. If the agency is prepared to defend a regulation on the basis of the record compiled prior to its issuance, it would be meaningless ceremony for the agency to hold a hearing for the sole purpose of re-creating that record. The Commissioner concludes that it is consonant with the objectives of the formal evidentiary hearing to require a party who wishes one to justify his request by delineating the factual information to be developed at such a hearing that would influence the ultimate outcome. If an objecting party believes that he can develop such information without himself introducing any documentary or testimonial evidence, he is free under § 2.112(a)(5) to explain how this may be done. However, he must describe and analyze such information in specifics and in detail, and he may not rely solely on conclusory assertions that the agency's facts will be seen in a wholly different light as the result of a formal evidentiary public hearing.

4. Comments criticized § 2.112(c), which permits the Hearing Clerk to note deficiencies in an objection or a request for hearing and to return the objection to the filer, and which requires any deficiency so noted to be corrected within the original 30-day period provided by statute for the filing of objections and requests for hearing. The comments opposed this provision on the ground that it could operate to deprive a party of his right to a hearing because of a technical defect in his request. The comments asserted that denying a hearing because a request is technically deficient without providing the party requesting the hearing an opportunity to correct the deficiency is arbitrary. Two comments suggested that the party filing the request for hearing be granted a period of 10 days after receipt of the notice of defect within which to correct the deficiency, regardless whether that period falls beyond the 30-day period within which a hearing must be requested. Another comment suggested that the regulations should permit supplemental material to be filed at any time prior to the Commissioner's ruling on the objections and requests for hearing.

Although rigid adherence to the requirements of this and other provisions of the regulations is necessary to the orderly functioning of the administrative process, the Commissioner does not intend that important rights be forfeited for minor technical irregularities. So long as it is apparent on the face of the submission that a good faith attempt has been made to meet the requirements for objections and requests for hearings, and any deficiency noted is promptly corrected, the objection or request for hearing will be accepted for filing.

In the event of an omission of critical information from an objection and request for hearing on a regulation that is not corrected within the 30-day time period specified in § 2.110(e), the Commissioner will entertain a request to receive the information upon a showing that its omission was inadvertent and hardship would result if it were not received, and if acceptance of the information would not impede review of the objection and request for hearing. Omission of information from requests for hearing pursuant to section 505 (d) or (e), 512 (d), (e), (m)(3), or (m)(4) of the act 21 U.S.C. 355 (d) or (e), 360b (d), (e), (m)(3) or (m)(4), or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)), involving the issuance, amendment, or revocation of an order, may be corrected in accordance with other applicable provisions of 21 CFR Chapter I (e.g., § 319.200(c)(4) (21 CFR 319.200 (c)(4)). It would be impractical to permit supplementation at any time prior to the Commissioner's ruling on an objection or request for hearing, for the Commissioner would then be required to defer his ruling whenever supplemental material was received. This would seriously disrupt the process of ruling on objections and requests, would frustrate efforts of persons to respond in support of denial of a hearing, and could prolong action indefinitely.

The Commissioner concludes that the mandatory 30-day time period for filing objections and requests for hearing works no undue hardship, and should not

be changed. However, § 2.110(e) has been modified to state that the Commissioner may exercise his discretion in the manner described above.

5. Comments opposed the provisions of § 2.113 setting forth threshold requirements to be met before a formal evidentiary hearing will be granted. The comments asserted that these prerequisites, particularly § 2.113(b) (2) and (4), require, in effect, that a party requesting a hearing prove conclusively in his request that he will prevail if a hearing is granted. They contended that the regulations ascribe to the agency the function of determining the weight and credibility of relevant evidence in advance of the hearing, which, the comments said, was an integral part of the fact-finding process and should not be relegated to a prehearing screening procedure. One comment stated that whether an issue "is capable of being resolved by available and specifically identified reliable evidence" can only be determined at a hearing. Several comments referred to recent court decisions supposedly critical of FDA's failure to hold hearings in particular proceedings.

The requirements in § 2.113(b) are intended to establish whether a formal evidentiary public hearing will advance the administrative process by resolving factual issues that are material to the Commissioner's decision on an order or regulation. Thus, if the state of scientific, medical, or technical knowledge is such that there is no reasonable likelihood that the grounds for an objection can be established, then it is pointless and wasteful of public resources to conduct a formal evidentiary public hearing on the off chance that the requisite information may be found to exist. If an objection is capable of resolution, it should not be difficult for a person to identify and analyze the specific factual information that will lead to that result; if the person is unable to identify such information at the time he submits an objection, it is unrealistic to assume that he will be able to do so at some later stage.

Similarly, it serves no useful purpose to convene a formal evidentiary public hearing to resolve an issue of fact that is immaterial to the Commissioner's decision. If a factual question exist the answer to which would arguably influence that decision, it is reasonable to require that its bearing be made apparent in the objection or request for hearing.

Evaluation of an objection or request for hearing in relation to the requirements of § 2.113(b) does not involve determining the weight and credibility of relevant evidence; it involves determining whether there are factual issues to be resolved at a hearing. The regulation makes clear that establishing the validity of the data and information identified in an objection or request for hearing is the function of the hearing, not of the description and analysis contained in the objection or request. The reference in § 2.113(b) (2) to the need to identify "reliable" evidence is intended to require that there be some showing that evidence to be presented at a hearing does not fall below minimum criteria of acceptability, e.g., it does not involve testimonials from patients in a hearing on the withdrawal of a new drug application; the reference does not imply that the Commissioner is authorized prior to a hearing to weigh evidence or assess the credibility of witnesses. It is therefore incorrect that an objection or hearing request must conclusively prove that the party submitting it will prevail at a hearing; rather, it must show only that there exist factual issues whose resolution is material to the outcome of the proceeding.

The court cases cited in the comments do not relate to the requirements set forth in § 2.113(b). *Hess & Clark, Division of Rhodia, Inc.* v. *FDA*, 495 F. 2d 975 (D.C. Cir. 1974), and *Sterling Drug* v. *Weinberger*, 503 F. 2d 675 (2d Cir. 1974), were cases in which the courts found that notice adequate to justify summary disposition of a hearing request had not been given. Accordingly, the cases held that a hearing was necessary to resolve issues relating to the basis for FDA's decision. Section 2.113(b) presupposes the existence of adequate prior notice of the basis for the action proposed, either as elsewhere specified in Chapter I of Title 21 (e.g., § 314.200 (21 CFR 314.200)), or in the form of the regulation to which objection is made. *Edison Pharmaceutical Co.* v. *FDA*, 513 F. 2d 1063 (D.C. Cir. 1975), was cited in a comment as support for an alleged bias of FDA against holding hearings. A majority of the Court of Appeals, in a statement at 517 F. 2d 164 responding to a petition for rehearing en banc, explained that the type of submission supporting the hearing request denied in that case was inadequate, and that ordinarily FDA's action would have been fully justified. Only the unique circumstances surrounding the prior dealings between the parties involved in that litigation made a hearing advisable. The Commissioner is not biased against holding hearings. However, he is opposed to holding a hearing that can serve no useful purpose.

6. Comments objected to the establishment of threshold requirements to be met by persons requesting a hearing under section 701(e) of the act (21 U.S.C. 371(e)). The comments asserted that section 701(e) of the act provides for an absolute right to a hearing whenever any person adversely affected by an order files objections to it "stating the grounds therefor." One comment stated that there is some judicial precedent to support summary denial of a request for hearing in the case of regulations promulgated under statutes allowing an "opportunity for hearing" or requiring that "reasonable grounds" for a hearing be stated, but none in the case of a statute with language such as that of section 701(e) of the act. The comment stated that it was the intent of Congress that any member of the public should be able, simply by requesting a hearing, to force the agency to state, subject to cross-examination, the basis for its order. Another comment stated that a request for hearing under section 701(e) may be denied only in two situations. The first would be when the objection on its face is a nullity because it asks the agency to take action it plainly has no authority to take. The second situation would be when the objection relates exclusively to the agency's legal authority to take the action proposed, so that the factual basis for the proposed action is irrelevant to the objection.

The Commissioner disagrees that he lacks authority to establish reasonable threshold requirements for a formal evidentiary public hearing on a regulation proposed pursuant to section 701(e) of the act. The proposition that the availability of a statutory hearing procedure to resolve factual issues establishes an absolute right to a formal evidentiary public hearing upon request was advanced and rejected in the 1973 Supreme Court cases. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 620-621 (1973). The Court's decision upholding the agency's authority to go behind a hearing request to determine whether there is a genuine and substantial issue requiring a hearing did not turn on the presence or absence of a term like "opportunity for hearing" or "reasonable grounds." Rather, it was based on the fundamental purpose of an evidentiary hearing to resolve material issues of fact, and recognized that efficient administration of the agency's responsibilities requires that a person who wishes a hearing make a threshold showing that such purpose can be achieved.

This consideration applies equally to hearings on denial or withdrawal of new drug applications and to hearings on regulations proposed pursuant to section 701(e) of the act. The Commissioner disagrees that the language used in section 701(e) of the act, or its legislative history, distinguish it, with respect to his authority to require a threshold showing, from other provisions of the act providing for hearings. Section 701(e)(2) of the act states that a person who will be adversely affected by a regulation must file objections "specifying with particularity the provisions of the order deemed objectionable, [and] stating the grounds therefor." This requirement is made more specific in § 2.112(a)(5) (21 CFR 2.112(a)(5)), which states that an objection must contain a detailed description and analysis of the specific factual information supporting each objection. Section 701(e)(3) of the act states that the Commissioner "shall hold such a public hearing for the purpose of receiving evidence relevant and material to the issues raised by such objections." That purpose cannot be realized if there is no evidence relevant and material to the issues raised, or if the issues that are raised are themselves immaterial to the Commissioner's decision on the regulation to which objection is made.

It is true that authority to test objections against a standard based on the purpose of a formal evidentiary public hearing, and to condition the right to a hearing on meeting that test, is not explicit in section 701(e) of the act. However, neither is it explicit in section 505

(d) and (e) of the act, nor in other statutory hearing provisions that the courts have held may be the subject of threshold requirements (see, e.g., *FPC* v. *Texaco*, 377 U.S. 33, 39 (1964) section 7 of the National Gas Act (15 U.S.C. 717f)). It is clear from the decisions interpreting these provisions that such authority is found not in the specific statutory language used but in the need for a mechanism that assures that holding an evidentiary hearing will serve the purpose for which it is provided rather than waste public resources. To the extent that the words of the statute offer guidance on the point, however, the precise description in section 701(e) (2) and (3) of the act of the obligation of the objecting party to state the grounds for his objection, and of the purpose of the hearing to receive evidence "relevant and material" to the issues raised, establishes the authority for threshold requirements even more certainly than does the more cursory language of section 505 (d) and (e) of the act, which the Supreme Court in *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973). held was sufficient.

The legislative history of section 701 (e) of the act is not to the contrary. Summary descriptions in that history of the manner in which the provision would operate that merely reiterate the unqualified language of the statute do not negate the substantial case law recognizing that the right to an evidentiary hearing is subject to a threshold test that there be something to hear. The addition of a notice-and-comment procedure to section 701(e) of the act was designed to eliminate the need for going through the procedures for a formal hearing to promulgate a regulation, or a part of a regulation, that no one opposes. It was not intended to require a formal evidentiary public hearing on a controversial regulation when no purpose would be served.

That someone objects to a regulation does not establish that there are also relevant and material factual issues to be resolved at an evidentiary hearing. This is confirmed by *Pfizer, Inc.* v. *Richardson*, 434 F. 2d 536 (2d Cir. 1970), in which the court upheld the imposition of threshold requirements for a hearing under section 507(f) of the act, after which the revised version of section 701(e) of the act is patterned. The Commissioner is unpersuaded that minor variations in the language of various hearing provisions (use of "reasonable grounds" in sections 507(f) and 701(e)(1) and "grounds" in section 701(e)(2)) represent a congressional judgment in favor of an unconditional right to a formal evidentiary public hearing under section 701(e)(3) of the act. If they did, it would follow that wholly irrelevant "grounds" would trigger a hearing under the latter provision, which the comment itself recognizes is an untenable result.

The Commissioner does not believe that the purpose of section 701(e) of the act is to require the agency, upon request, to hold a formal evidentiary public hearing solely to set forth its position, subject to cross-examination. Were that the intent of Congress, there would be no requirement that a person specify the grounds supporting an objection. Moreover, by the time objections are filed, the agency will already have set forth the factual basis for a proposed regulation pursuant to section 701(e)(1) of the act. To insist that this process be rendered meaningless simply because there is still opposition to the regulation, and that the record be re-created subject to cross-examination, is contrary to the purpose of that provision to limit the circumstances in which a more formal proceeding is necessary.

The Commissioner recognizes that in appropriate circumstances an objection otherwise meeting the requirements of § 2.112(a)(5) can justify a hearing on specific factual issues on which cross-examination might reasonably be expected to produce a different result. Unsupported assertions that cross-examination by itself will vitiate the factual basis for a proposed regulation, however, are insufficient. It would be highly unusual if the sole source of information controverting that already present in the record consisted of testimony of the individuals responsible for developing it. It would be rarer still if a contrary state of facts would be established, solely as a result of their cross-examination, as being more likely than the one appearing in the record developed in connection with the notice-and-comment phase of the proceeding. A strong showing will therefore be required to justify a hearing on the basis of an objection based solely or primarily on the likely outcome of cross-examination.

The Commissioner agrees with the comment that a request for a formal evidentiary public hearing may be denied where the objection asks for action beyond the agency's authority or relates exclusively to its legal authority, but he disagrees that these exhaust the circumstances under which he may deny a hearing request. As explained above, authority clearly exists to deny an evidentiary hearing for failure to demonstrate, in accordance with reasonable threshold requirements, that it will serve any purpose.

7. One comment opposed the distinction in § 2.113(b)(1), which would limit hearings to issues of "fact" as opposed to "policy or law." The comment stated that the issues in any proceeding would almost inevitably include mixed issues of fact, law, and policy. As an example, the comment questioned when expert opinion constitutes a matter of fact and when it speaks to matters of policy.

The Commissioner does not agree that difficulty in identifying various types of issues justifies abandonnig the effort to do so. Often in rule making proceedings, it is clear from the face of a comment or objection that it expresses solely a disagreement over policy or legal interpretation. Where disputes over factual matters are also included, it is generally possible to isolate those issues. If a particular matter involves "mixed" issues of fact, law, and policy, then a hearing would be necessary to resolve the factual issues, and questions about the scope of those factual issues can be handled in connection with subsequent proceedings.

8. One comment opposed § 2.113(b)(2), which would require that an issue upon which a hearing is requested be "capable of being resolved by available and specifically identified reliable evidence." The comment stated that the requirement that the evidence be "available" appears to be inconsistent with the statement in § 2.112(a)(5) that the submission of certain evidence with an objection and request for hearing does not limit the evidence that may be presented if a hearing is granted.

The comment is correct in stating that to justify a hearing, evidence must be "available" at the time the objection is submitted and ruled upon: A formal evidentiary public hearing will not be granted based on unsupported assertions that the requesting party will make his case in that forum. However, only as much evidence as is necessary to justify a hearing need be available when the request is made; once the request is granted, any additional relevant and probative evidence may be introduced at the hearing.

9. One comment stated that the Supreme Court in *Weinberger* v. *Hynson, Wescott & Dunning, Inc.*, 412 U.S. 609 (1973), ruled that regulations establishing threshold requirements for a hearing must be precisely drawn, and that qualitative standards such as "adequate" and "suitable" do not lend themselves to a clear-cut definition. The comment asserted that the proposed regulations contain terms that are equally qualitative. Section 2.113(b)(2) requires the agency to determine whether evidence proffered is "reliable." Section 2.113(b)(3) and (4) requires the agency to determine whether the evidence is "adequate" to justify the action requested.

The Commissioner advises that rejection of a hearing request is permissible under § 2.113(b)(2) and (3) only if the request fails on its face to provide the required information. For example, if a request identifies evidence that would constitute acceptable support for a factual proposition if established at a hearing, then the factual issue to which it relates will have been shown to be capable of resolution by "reliable" evidence within the meaning of § 2.113(b)(2). The Commissioner will not, in ruling upon a request, attempt to determine whether the evidence identified is credible or sufficient, merely that it is not such that even if it were established it would have to be disregarded. The word "adequate" in § 2.113(b)(3) and (4) is precise in context. Thus, assuming that the data and information identified in the objection are established at a hearing, if they would not require a different decision on a regulation or underlying factual premise, then they are inarguably not "adequate" to justify a hearing the only purpose of which is to consider changing the proposed regulation.

The Commissioner does not, in making this kind of determination intend to eval-

uate the probative value of the evidence identified in the objection in relation to the factual proposition it is offered to support; he intends to accept the factual proposition as established, and then decide whether it justifies the result urged in the objection. While this may involve the exercise of "judgment," it is judgment not about factual issues that are subject to the hearing, but about issues relating to matters of law and policy.

10. Comments objected to § 2.113(b)(5) as it deals with over-the-counter (OTC) drugs. The regulation states that a hearing will be denied with respect to withdrawal of approval of a new drug application (NDA) that is not in compliance with an applicable OTC drug monograph on the ground that the procedure is to petition for an amendment or waiver of the regulation involved. The comments stated that the rule making approach ignores the distinction between the issue determined by the rule making proceeding, i.e., general recognition of safety and effectiveness, and the matters at issue in the proceeding to withdraw approval of an NDA under section 505(e) of the act. The comments asserted that an OTC monograph has no effect in the case of OTC drugs that are the subject of approved NDA's, since the continued marketing of those drugs does not depend on their general recognition as safe and effective, but rather on their approval as new drugs. The comments asserted that under the requirements of section 505(e) of the act pertaining to the withdrawal of an NDA, the required findings pertain to actual evidence of safety and effectiveness and not to general recognition of safety and effectiveness. One comment stated that there should be a right to a formal evidentiary public hearing on the question whether a drug conforms to a monograph.

The Commissioner advises that he does not intend to preclude the right to request and justify a formal evidentiary public hearing pursuant to § 314.200(d) on the proposed withdrawal of approval of an NDA for an OTC drug. The regulation merely makes clear that, with respect to effectiveness, if a drug does not comply with the applicable monograph and the NDA holder, in response to a notice of opportunity for hearing on the proposed withdrawal of the NDA, fails to submit evidence of effectiveness meeting the requirements of § 314.111(a)(5) (21 CFR 314.111(a)(5)), a formal evidentiary public hearing on the proposed withdrawal will not have been justified. This result is not subject to dispute in light of *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, and its companion cases, and is not an innovation of these regulations.

This does not mean that the resolution of particular issues in the OTC drug monograph proceeding will have no effect in a subsequent proceeding on the withdrawal of an NDA for an OTC drug covered by that monograph. The relationship between issues decided in the monograph proceeding and those raised in a proceeding to withdraw an NDA must be determined in context; however, it would therefore be inappropriate to elaborate on the matter in these regulations.

The Commissioner disagrees that the question whether an OTC drug conforms to a particular monograph should be resolved in a formal evidentiary public hearing, although it is within the Commissioner's discretion to grant such a hearing if one is justified by the circumstances of the case. An OTC drug monograph is intended to be sufficiently detailed to make unnecessary a further proceeding to determine whether a drug conforms to it. The Commissioner is prepared to issue an advisory opinion with respect to the conformity of an OTC drug with a specified monograph, and any person dissatisfied with the opinion would be entitled to sue in court for an order declaring that the drug is generally recognized as safe and effective and not misbranded in accordance with the monograph alleged to be applicable.

The Commissioner has concluded that it is unnecessary to give specific examples in § 2.113(b)(5), and has accordingly deleted the discussion concerning OTC drugs.

11. One comment objected to the provision in § 2.113(d) that would permit the Commissioner to serve a proposed order denying the request for a hearing when he concludes that summary decision should be considered. The comment contended that where the kind of evidence proffered is sufficient to raise a genuine factual question, however tenuous, a hearing should be granted. The comment stated that where there is uncertainty whether the evidence raises a genuine factual question, a hearing should be granted since the uncertainty can only be resolved at the hearing itself.

The Commissioner advises that the purpose of serving a proposed order denying a hearing is not to resolve uncertain factual questions but to dispel uncertainty about whether there are genuine factual questions to resolve. Such uncertainty may result from, for example, the manner in which an objection is worded or the failure to raise and discuss an issue that would appear to be justified by the underlying factual information. In such cases, there must be a means for the Commissioner to solicit further response that makes clear what the person's position is. If that response discloses the existence of a genuine factual issue, a hearing will be held. The Commissioner disagrees that uncertainty about whether there is something to be heard can be resolved only at a hearing. The matter should be settled before convening a hearing, and serving a proposed order is an efficient and expeditious means of doing so.

12. One comment stated that time limits should be imposed both upon the Commissioner's determination that a hearing is or is not justified, and upon his preparation of a tentative regulation.

The Commissioner concludes that it would be impractical and not in the public interest to establish fixed time limits on making such determinations or taking action after the conclusion of a hearing. Many significant matters are pending before the agency at a given time, and it is necessary to allocate and reallocate administrative resources in accordance with often rapidly shifting public priorities. Setting time limits such as those suggested for the comparatively small proportion of issues in which a hearing is under active consideration would restrict the Commissioner's ability to respond expeditiously to other matters that might be of equal or greater importance.

13. Two comments questioned the language of § 2.114 (21 CFR 2.114), which provides that, if the Commissioner determines to modify or revoke an order or regulation upon review of an objection or request for hearing, further requests and objections may be submitted only to such modification or revocation, and not to any other portion of the order or regulation. The comments asserted that the regulation is unclear regarding the status of objections and requests for hearing in response to the original order or regulation that are not affected by the modification or revocation. The comments stated that the language should be clarified to state that these objections and requests for hearing remain effective and must be disposed of by the Commissioner prior to the effective date of the final regulation.

The Commissioner advises that the limitation on objections and requests for hearing filed in response to provisions in a regulation or order that are modified or revoked is not intended to affect the status of objections and requests previously filed in relation to provisions that are not modified or revoked. Such objections and requests must be handled and disposed of as provided in § 2.113, and § 2.114 has been modified to make this clear.

14. One comment suggested a revision in § 2.115(a)(1) (21 CFR 2.115(a)(1)), which requires that a notice denying a hearing in whole or in part specify in detail the reasons for the denial. The comment suggested that the notice of denial also include a detailed summary of the evidence believed by FDA to support the regulation or order. The comment stated that such disclosure is required by § 2.153(a)(4) where a hearing is granted, and is also required by statute in some instances, e.g., section 505(e) of the act relating to withdrawal of approval of an NDA. The comment asserted that inclusion of the evidence upon which the order is based would improve the scope of the administrative record where an appeal is taken, and it might also serve to avoid appeals in some cases by disclosing to the party involved not only the deficiencies in his request for hearing but the evidence that would be advanced by the agency if a hearing were granted on appeal.

The Commissioner advises that the evidence supporting a proposed regulation or order will ordinarily have been identified and discussed in detail in prior notices, which are a part of the record of the administrative proceeding relating to the denial. Thus, § 2.115(b)(1)(i)

states that the record of the administrative proceeding relating to denial of a request for hearing on the issuance, amendment, or revocation of a regulation includes all of the documents specified in § 2.10(g). Among those documents are the notice of proposed rule making described in § 2.10(b)(1) and the notice promulgating the final regulation described in § 2.10(c). The notice of proposed rule making must include a preamble summarizing the proposal and the facts and policy underlying it as stated in § 2.10(b)(1)(ii), and references to all data and information on which the Commissioner relies as stated in § 2.10(b)(1)(iii). The notice promulgating a final regulation must include in its preamble the Commissioner's conclusions on all comments received and a thorough and comprehensible articulation of the reasons for the Commissioner's decision on each issue as stated in § 2.10(c)(3). Together, these documents should provide a more than adequate record of the basis for the Commissioner's decision on the regulation.

Similarly, § 2.115(b)(2) states that the record of the administrative proceeding relating to denial of a request for hearing on the issuance, amendment, or revocation of an order includes the notice of opportunity for hearing, all requests for hearing, and the notice denying the request. In accordance with other applicable provisions, e.g., § 314.200, the factual basis for the order that issues upon denial of a hearing request is explained in these documents.

The Commissioner, therefore, concludes that it is unnecessary to require inclusion in the notice denying a request for hearing a detailed summary of the evidence relied upon by the Commissioner to support the regulation or order on which a hearing is requested. The Commissioner notes that the disclosure required of a bureau director by § 2.153(a)(4), where a hearing has been granted, is intended to apprise other participants in the hearing of the direction and content of the bureau's case, and thus advance the course of the hearing. Such disclosure serves an entirely different purpose from the one, contemplated by the comments, of facilitating court review of the final regulation or order, a purpose that is adequately served by existing documents in the record.

15. One comment stated that § 2.115(b), which specifies the content of the record on appeal in cases where a formal evidentiary public hearing is denied or waived, should be revised to include all materials relevant to the proposed rule or order that the agency would be required to disclose under § 2.153 if a hearing were granted on the proposal. The comment stated that this would require the agency to include in the record any contrary evidence known to the agency, which would facilitate review and, in some cases, might avoid appeals.

The Commissioner advises that factual information that both supports and detracts from a regulation or order will already be a part of the record at the time of his ruling on an objection or request for hearing. The Commissioner's action in issuing, amending, or revoking a regulation or order after denying a request for hearing must be supported by the record developed up to that point; the record includes not only information favorable to the action filed by the agency but also information unfavorable to it filed, both in comments and in support of objections, by persons opposing the action. The Commissioner's ruling on a request for hearing addresses whether there is an issue of fact justifying a hearing, and not the evidentiary support for the action proposed. It is thus not an appropriate vehicle for recapitulating the record in extenso.

The Commissioner notes that an objection or request for hearing under § 2.112 is not required to include information unfavorable to the position being advanced. If the Commissioner were required as a part of a ruling denying a request for hearing to disclose and discuss all information in its files contrary to the action being taken, he would expect to impose a similar requirement on persons requesting a hearing with respect to the positions taken by them in support of their request.

16. One comment opposed § 2.115(d)(1), which describes the preconditions for judicial relief pending review of an order denying a hearing, on the ground that the subject matter is beyond the scope of agency regulation. The comment also objected to § 2.115(d)(3), which relates to waiver of the right to judicial review, and to § 2.190 (21 CFR 2.190), which relates to review of the Commissioner's final determination, on the same ground.

The Commissioner advises that these provisions represent his interpretation of what the law requires and express the position FDA will take in any court proceeding relating to such matters. The Commissioner believes that it promotes orderly procedure for the agency's legal position on a matter to be made clear as an integral part of the regulation to which it pertains.

17. Comments referred to § 2.115(d)(3), which states that the period for seeking judicial review of an order denying a hearing on certain issues begins on the publication date of such order regardless whether a hearing has been granted on other issues. The comments suggested that where an appeal is pending regarding a partial denial of a hearing, the hearing not be concluded until judicial review is completed. The comments stated that this would avoid a piecemeal hearing should the appellant prevail and is consistent with the rationale advanced in the preamble, which stated that the procedure would ensure that the partial denial would be promptly reviewed and that, if the reviewing court determined that the denial was improper, the contested issues could be added to the hearing before it is conclued. A comment suggested that in the absence of a provision for automatic stay of a hearing, courts might be reluctant to rule on a partial denial of a request for hearing because it would involve review of an isolated part of a larger controversy.

The Commissioner concludes that § 2.115(d)(3) should be modified to provide that the time for filing a petition for judicial review of a denial of a request for hearing begins on the date of publication in the FEDERAL REGISTER when the denial relates to an objection or issue bearing on a proposal to issue, amend, or revoke a regulation, and it denies a hearing on all objections and issues relating to that proposal, or on all objections and issues relating to a part of the proposal the effectiveness of which the Commissioner has determined should not be deferred pending the outcome of any hearing granted with respect to other parts of the proposal; and when the denial relates to an issue involving a proposal to issue, amend, or revoke an order, and it denies a hearing on all issues relating to a particular new drug application, new animal drug application, or biologics license.

The Commissioner agrees that if it were mandatory to seek review of a denial of a hearing on an objection or issue that related to a provision of a regulation or to a specific product approval with respect to which a hearing had been granted to consider other objections or issues, the filing of a petition for review of such denial would make it appropriate to stay the hearing pending the court's decision. The Commissioner believes that such an approach could unduly delay hearings, however, and concludes therefore that a decision to deny a request for hearing on such objections or issues should be reviewed as part of a petition to review the regulation or order that is issued after the hearing.

Where, however, the Commissioner has denied a request for hearing on all objections and issues relating to a proposed regulation or to a severable part of a proposed regulation that he has determined should be made effective even though he has granted a hearing on other parts of the proposed regulation, or where he has denied a public hearing on all issues relating to a specific drug or biological product, there will usually be no sound reason for delaying the judicial review of such denial pending the outcome of the hearing on other parts of the regulation or other products, or in delaying the hearing pending the outcome of the petition for review. If the review proceeding is concluded before the end of the hearing and it is determined that a hearing was improperly denied as to any objection or issue, the objection or issue can be added to the hearing; if the hearing has concluded, a separate hearing can be granted.

The Commissioner concludes that § 2.115(d)(3), as so revised, will promote the expeditious resolution of controversies relating to proposed regulations and orders while avoiding confusion from "piecemeal" hearings or judicial review proceedings.

18. One comment objected to the provisions of § 2.117 (21 CFR 2.117), which permits an alternative form of public hearing to be held instead of a formal evidentiary public hearing where all the persons who have requested and justified a formal hearing waive their right to

such a hearing. A comment asserted that under the regulation, a person whose petition is the subject of the hearing would be unable to demand a formal evidentiary public hearing if the objecting parties agreed to an alternative form of hearing, such as a Public Board of Inquiry. The comment asserted that this result is contrary to principles of due process, and that it also deprives a petitioner of his right to a hearing under the statute. The comment stated that if the agency had denied the petition in the first instance, the petitioner would have a right to a formal evidentiary public hearing, but that when the agency has initially accepted the petition, his right to a hearing is lost. The comment asserted that this distinction is arbitrary and unreasonable.

The Commissioner advises that no provision of the act confers on a person whose petition he grants the right to have such action considered in a formal evidentiary public hearing. Indeed, the act assumes that the successful applicant or petitioner will be content to have the matter concluded without any hearing at all. For example, under section 409 of the act (21 U.S.C. 348) relating to the establishment of food additive regulations, a person may file objections to and request a hearing on an order issued under section 409(c) of the act if he is adversely affected by such order. A person whose petition is granted by the order is not adversely affected by it, and so is not entitled to object and, request a hearing, although he may participate in it if one is held. Because a successful petitioner is not entitled to invoke a formal evidentiary public hearing, it is not necessary that he be given an opportunity to concur in the decision to utilize an alternative form of hearing and waive the right to a formal evidentiary public hearing.

If the result of the alternative form of hearing causes the Commissioner to issue an order under section 409(f) of the act denying the petition, the petitioner may seek judicial review of the order under section 409(g) of the act. There is no requirement in section 409 (f) or (g) of the act that the petitioner receive a formal evidentiary public hearing on the denial of a petition under section 409(f) of the act preparatory to obtaining such judicial review; the requirement that adversely affected persons be permitted to object and request a formal evidentiary public hearing applies to orders issued pursuant to section 409 (c) or (d) of the act, not to orders issued under section 409(f) of the act.

The Commissioner does not believe that the procedure provided in § 2.117 is unsound or unfair to petitioners. Moreover, the Commissioner will carefully consider the views of a petitioner about the most appropriate forum for resolving factual issues raised by objections to an order granting a petition and establishing a food additive regulation, and may deny a request for an alternative form of hearing if he believes such a proceeding would prejudice the rights of a petitioner.

19. The Commissioner, on his own initiative, is amending § 2.118(b) to delete the clause that precludes the presiding officer from revising the statement of the issues of fact in the notice of hearing to include issues as to which the Commissioner has not granted a hearing. Under § 2.118(b) as amended, the presiding officer may thus both add an issue to and eliminate an issue from a formal evidentiary public hearing if there are sound reasons for doing so. The Commissioner is also amending § 2.118(b) to provide that a determination by the presiding officer to include an issue as to which the Commissioner has not granted a hearing or to eliminate as issue as to which the Commissioner has granted a hearing is subject to interlocutory review by the Commissioner.

20. One comment objected to § 2.120 (b) (21 CFR 2.120(b)), which provides that where one party who is afforded an opportunity for hearing under § 2.111(b) (21 CFR 2.111(b)) requests a hearing and others do not, the Commissioner may issue a final order covering all affected drug products at once, or may issue more than one final order covering different drug products at different times. The comment stated that if a party who requests a hearing prevails, the regulation or order at issue will be revoked or modified as to that party, necessarily requiring modification of previous orders issued as to other parties similarly situated who did not request a hearing. The comment suggested that, to avoid entering orders that might be required to be changed later, the regulation should provide that when one or more parties request a hearing, no final order be entered as to identical, related, or similar products until all outstanding requests for hearing have been disposed of.

The Commissioner concludes that he should retain discretion to issue orders that are immediately effective as to products for which no hearing is requested even though a hearing has been requested for one or more other products identified in the notice of opportunity for hearing. Although a notice of proposed withdrawal of an NDA, an NADA, or a biologics license may cover all products that are identical, related, or similar to the product covered by the application or license, applicable statutory provisions nevertheless require that each product subject to regulation must be evaluated and approved individually. Thus, even if a hearing is requested for one product and the applicant prevails at the hearing, products for which no hearing was requested would not necessarily be entitled to the benefit of that decision, particularly if the successful applicant relied on proprietary data. In addition, all relevant factual issues affecting the legal status of these products would not necessarily have been resolved in the hearing. A notice of opportunity for hearing under § 314.200(e) on the proposed withdrawal of an NDA, for example, encompasses all issues relating to a product's status, and all issues will not be common to all products covered in the notice.

21. Comments suggested that the language of § 2.120(b) be revised to read "* * * more than one final order covering those drug products not subject to a request for hearing prior to products covered by such a request." The comments stated that such language would carry out the apparent intent of the agency, because the language in the proposal would permit the Commissioner to issue an order covering the products of a party who had requested a hearing prior to ruling on that request.

The Commissioner does not believe that the proposed regulation can reasonably be construed as authorizing the issuance of a final order on a drug product in advance of a ruling on the request for hearing for that product, and notes that the comment's revision does not modify the language identified by the comment as permitting that result. The Commissioner concludes that there is no need to revise the language of § 2.120(b).

22. It has been suggested that §§ 2.130 and 2.131 (21 CFR 2.130 and 2.131), relating to appearance and practice in a formal evidentiary public hearing, are unclear as they relate to "parties" and "interested persons," and that they do not maintain a clear distinction between a person who appears in a representative capacity and a person who has an interest in the proceeding. For example, under § 2.131(a) an "interested person" is required to submit a written notice of appearance, but under § 2.131(e), "no person" may participate without having filed such a notice. Moreover, the form for a written notice of appearance requires a statement of the specific interest of the person in the proceeding. If the person is a party, he will already have set forth the nature of his interest in his objections or request for hearing. If the person is appearing in a representative capacity, it is not his interest in the proceeding that should be set forth, but that of the person whom he represents.

The Commissioner concludes that §§ 2.130 and 2.131 should be modified to establish separate procedures for persons appearing in a representative capacity ("appearance") and persons with an interest in a proceeding in which they wish to participate ("participation"). They are also amended to delete the term "interested person"; the word "person" will be used in its place.

Section 2.130 is amended to define the rights and obligations of persons appearing in a representative capacity. Such a person must submit a signed statement of authorization or other documentation verifying his authority to act as a representative. The appearance of a person in a representative capacity may be stricken for violation of the rules of conduct set forth in § 2.156 (21 CFR 2.156), but this will not affect the right of the person whom he is representing to participate in the proceeding by appearing personally or through a different representative.

Section 2.131 is amended to define the rights and obligations of any person who has an interest that he wishes to advance or protect by participation in a proceeding either personally or through a repre-

sentative. Such a person must submit a written notice of participation, including a commitment to participate. If the person is not a party, he must also set forth his specific interest in the proceeding, including the issues of fact on which he desires to be heard. A person may have his participation stricken by the presiding officer for nonparticipation, for failure to comply with his obligations as a participant, or, if he is appearing personally, for violation of the rules of conduct set forth in § 2.156.

23. Comments opposed the provision in § 2.131 (21 CFR 2.131), which requires any person desiring to appear at a formal evidentiary public hearing to commit himself to present documentary evidence or testimony at the hearing. The comments stated that other forms of participation, such as cross-examination or filing briefs, are appropriate. One comment stated that the nature of a person's interest may shift during the proceeding. Such a person presumably may wish to participate merely by seeing to it that nothing adverse to his interest takes place, in which case he will present no evidence and conduct no cross-examination. One comment asserted that § 2.131 violates section 4(b) of the Administrative Procedure Act (5 U.S.C. 553(c)), which requires that in rule making an agency shall give interested persons an opportunity to participate through submission of written data, views, or arguments. The comment asserted that the terms "views" and "arguments" envision forms of participation other than written documentary evidence and testimony.

The Commissioner disagrees that a person should be entitled to participate in a hearing in the manner suggested in the comments. One of the factors that have contributed, and continue to contribute, to the confusing and protracted nature of formal evidentiary public hearings is the presence of persons with ill-defined interest in the issues under consideration, whose participation is sporadic, and whose willingness to follow and comprehend the course of the proceeding is difficult to discern. Merely by filing a notice of appearance, these persons have been able to place themselves on a par with participants genuinely concerned with advancing the course of the hearing in relation to such matters as receiving copies of pleadings and other documents and notification of conferences and arguments, even though their interest may have lapsed or their understanding of the issues is so tenuous as to preclude any useful purpose being served by their continued treatment as participants. Although a participant's appearance can be struck for nonparticipation in accordance with § 2.131(g), this remedy is meaningless if participation is so broadly defined as to encompass a purely passive relationship to the proceeding, as the comments contemplate. The Commissioner believes that it is appropriate to require as a minimum level of participation that a person present documentary evidence or testimony, and that a person so commit himself in his notice of appearance.

Ordinarily, a nonparty participant will not have the right to cross-examine under § 2.153(b)(2). Consequently, he could not justify an appearance solely to conduct cross-examination even if that were permitted by the regulations. The possibility that a participant who is also a party would limit his participation to cross-examination is remote. In the unusual case where a hearing has been justified solely for the purpose of conducting cross-examination, however, a commitment so circumscribed would be sufficient. Such a commitment is not precluded by the language in paragraph B of the notice of appearance set forth in § 2.131(b), and could in any event be received by the presiding officer, who is empowered to waive any provision in this subpart under the conditions specified in § 2.142(m) (21 CFR 2.142(m)).

The Commissioner disagrees that a person should be allowed to acquire full rights of participation in a formal evidentiary public hearing merely to monitor the course of the proceeding with a view to participating should it at some point appear necessary or advantageous to his interests. The Commissioner regards it as improbable that a person will be wholly unable to anticipate at the outset of a proceeding whether his interests will require affirmative participation. In the unlikely event that that is the case, the presiding officer may entertain a motion to file a notice of participation out of time in accordance with § 2.131(f).

In the Commissioner's opinion, the contention that it violates 5 U.S.C. 553(c) to require the submission of documentary evidence or testimony as a condition of participating in a formal evidentiary public hearing is without merit. By its terms, 5 U.S.C. 553(c) is inapplicable to formal evidentiary public hearings. In any event, a right to participate by submitting views and arguments in the proceeding of which the hearing is a part will in all cases have been accorded by operation of other provisions of the Federal Food, Drug, and Cosmetic Act and these regulations, e.g., the provision for opportunity to comment on a regulation proposed pursuant to section 701(e)(1) of the act and § 2.110 of these regulations, and the provision for submitting objections to proposed rules, which does not require that objections specify factual issues requiring a hearing, but permits them to identify reasons why the person submitting the objection disagrees with the regulation.

24. One comment questioned what is meant by a "showing of good cause" in § 2.131(f), permitting a person to file a written notice of appearance after the 30-day time period for filing such notices has expired. The provision requires a showing of good cause as to why such a notice was not filed within such time period.

The Commissioner concludes that it is impractical to predict the circumstances that would constitute good cause for having failed to file a timely notice of appearance in any given case, and that the decision whether good cause has been shown should be left to the presiding officer.

25. The Commissioner is incorporating into these final regulations under § 2.135 (21 CFR 2.135) the procedure established to assist persons in obtaining information about formal evidentiary public hearings. This section, which was published as § 2.49 (21 CFR 2.49) in the FEDERAL REGISTER of August 5, 1976 (41 FR 32738), designates the Associate Commissioner for Compliance as the agency's contact person to answer questions regarding attendance at or participation in formal evidentiary public hearings.

26. One comment proposed a revision in § 2.151 (21 CFR 2.151) concerning waiver of filing and service requirements. The comment stated that there are no commonly accepted definitions of "in forma pauperis" in this context or of "public interest justification" as used in § 2.151(b), and suggested that the provision should be replaced by one permitting the presiding officer in any hearing to waive or modify the filing and service requirements of § 2.150 (21 CFR 2.150) for good cause shown and with due regard to the rights of all participants.

The Commissioner recognizes that the quoted terms are not capable of precise definition. He believes, however, that the circumstances in which a participant is relieved of the costs of participating in an administrative proceeding should be limited to those specified. The alternative requirements suggested by the comment would provide no guidance to either potential participants or the Commissioner; to the extent that it would permit the costs of a proceeding to be shifted to the agency from a person not establishing financial hardship and a public interest in his participation, or that his participation would benefit the general public, the Commissioner concludes that the alternative requirement is inappropriate.

A petition recently received by the Commissioner recommends that § 2.151 be revised to allow agency reimbursement of certain costs incurred in agency proceedings by persons meeting detailed criteria concerning the nature of the interest they represent, their economic stake in the outcome of the proceeding, and their financial resources. The proposed criteria are generally consistent with those now specified in § 2.151. The petition, and the manner in which the Commissioner is handling it, are more fully described in the response to comment 29, below.

27. One comment urged that § 2.151(c) be clarified to state that the petition to participate in forma pauperis will be granted if the showing required under § 2.151(b) has been made.

The Commissioner concludes that no change in § 2.151(c) is warranted. The Commissioner intends to grant meritorious requests, but will do so at his discretion. There is no right to participate in forma pauperis in administrative proceedings conducted pursuant to the laws administered by the Commissioner.

28. One comment stated that where interested persons are filing a petition for waiver of filing and service requirements and fees under § 2.151, these filing and service requirements and fees

should not apply to the filing of the petition to proceed in forma pauperis.

The Commissioner agrees and has modified § 2.151 to so provide.

29. One comment urged an enlargement of the benefits to participants in forma pauperis. The comment stated that expert witnesses' fees, travel costs, attorneys' fees, costs of transcripts, etc., all must be borne by participants, and that consumer groups are least able to bear the expense of such participation. The comment asserted that their participation is important if FDA is to receive a balanced presentation of the issues. The comment urged that not only should filing and service requirements be waived, but that the other more substantial costs should also be borne by FDA on appropriate occasions. The comment enclosed an opinion of the Comptroller General of the United States (B-139703) ruling that the Federal Trade Commission could lawfully use its appropriations to pay the transcript, witness, travel, and other fees for an intervenor or an indigent respondent. Another comment stated that Congress has recently expressed its support of such reimbursement for public interest participants in the Federal Trade Commission Improvements Act (15 U.S.C. 18 (h)).

The recommendation advanced in this comment is set forth in greater detail in a petition recently received by the Commissioner urging that § 2.151 be completely revised. Modified as suggested in the petition, § 2.151 would provide for compensation by the agency of attorneys' fees, expert witnesses' fees, and other reasonable costs of participation in proceedings conducted under Subparts B, C, D, and E of Part 2. To be eligible for such compensation, a person or organization would have to represent an interest the representation of which would contribute to the fair determination of the proceeding, have (or have members with) an insubstantial economic interest in the outcome of the proceeding, and lack sufficient resources to participate in the absence of compensation by the agency.

The Commissioner believes that serious consideration should be given to the recommendation made in the comment, as elaborated in the petition. Expenditure of public funds to compensate for the expense incurred by certain participants in public proceedings before the agency may be justified as necessary to assure full preparation of all interested persons in formal decisionmaking to the end that FDA may more effectively execute its administrative and regulatory responsibilities.

Because of the importance of the proposal, the Commissioner concludes that it should be given more extensive consideration than is practical in the context of his rulings on the comments submitted to the proposed procedural regulations. In the FEDERAL REGISTER of August 25, 1976 (41 FR 35855), the Commissioner issued an advance notice of proposed rule making, in which he set forth, in full, the petition described above, and invited comment on designated areas of interest. After evaluating any public comments received, the Commissioner will determine what further action is appropriate.

The Commissioner will therefore not at this time modify § 2.151 to enlarge the benefits to participants in forma pauperis, as proposed in the comment.

30. A question has arisen concerning the scope of the requirement of § 2.153 (a) (1) and (2) (21 CFR 2.153(a) (1) and (2)) that the director of the bureau responsible for a matter involved in a hearing submit to the Hearing Clerk the "relevant portions of the administrative record" and "[a]ll documents in his files containing factual data and information, whether favorable or unfavorable to his position, which relate to the issues involved in the hearing." The Commissioner advises that the requirement of this section does not extend to documents reflecting the agency's internal deliberative process, e.g., documents expressing the point of view of agency employees who reviewed an NDA, even though such documents are contained in an administrative file relating to a matter that is the subject of the hearing. Nor does the requirement extend to documents that are the work product of attorneys representing the bureau in the hearing, e.g., memoranda of interviews with potential witnesses, or that are subject to the attorney-client privilege, e.g., requests for legal opinions, even though such documents may contain factual data and information.

31. One comment urged a revision in § 2.153(b), which requires a hearing participant to submit within 60 days all documents in his files containing factual data and information, whether favorable or unfavorable to his position. The comment stated that the regulation should contain some reasonable limitation on the need for a participant to generate all data unfavorable to his position. It contended that an advocate should not be required to expend significant resources to uncover all unfavorable data that may exist in his files. The comment stated that when the participant is a large corporation with many divisions, the failure to submit all contrary data that may be in any corporate file within a strict time limit under threat of violation of the False Reporting Act is too harsh. The comment stated that the regulations should be revised to place reasonable limitations on the type and amount of contrary data that are required to be submitted.

The Commissioner advises that § 2.153 (b) requires a participant to submit all factual data and information in his files relevant to the issues without screening it to eliminate that which is unfavorable; it does not require that every file under the participant's control be canvassed to identify data and information that would not be known to the participant in the ordinary course of preparing its participation, and this applies equally to the bureau director's parallel obligatioin under § 2.153(a) (2). It is anticipated that a participant who stands ready to present a case in favor of his position will necessarily have compiled and considered information unfavorable to that position, and will have the documents reflecting such unfavorable information in the file pertinent to the issue in question and capable of retrieval and submission to the Hearing Clerk, Food and Drug Administration, with no greater expenditure of effort than that required to locate and submit favorable information. The Commissioner therefore concludes that it is unnecessary to incorporate a limitation in § 2.153(b) of the type suggested.

32. A comment recommended that there be in § 2.153 or elsewhere a requirement that the details of proposed witnesses' testimony be disclosed by the participants prior to the hearing. The comment noted that the presiding officer is authorized but not required to order such disclosure, and asserted that it is incongruous to require this type of disclosure as part of a submission in support of a request for hearing pursuant to § 2.112 (a) (5) and not to require it as part of the hearing procedure itself.

The Commissioner believes that the presiding officer will ordinarily order the preparation and exchange of summaries of testimony at the prehearing conference and concludes that it is unnecessary to impose this procedure by terms.

There is no incongruity between §§ 2.112(a) (5) and 2.153 with respect to summaries of testimony. Section 2.112(a) (5) requires that a summary of nondocumentary testimony be submitted as part of an objection and request for hearing. This provision does not require the identification of specific witnesses or the summarization of the actual testimony they will give; it requires that if the person submitting the objection and request for hearing expects to introduce testimony and believes that such testimony would raise an issue of fact that the Commissioner should take into consideration in ruling on the request, the nature and expected content of such testimony should be summarized in sufficient detail to permit the Commissioner to make an informed ruling under § 2.113. Once a hearing has been justified, the participants would be expected to contact and interview specific witnesses in preparation for the proceeding. The Commissioner believes that the most appropriate point at which to consider requiring the disclosure of summaries of the testimony of such witnesses is the prehearing conference. To insist that such summaries be prepared and exchanged within 60 days of the date of publication of the notice of hearing in the FEDERAL REGISTER, as the comment suggests, might impose an undue burden on participants that is not involved in the requirement that existing documents or narrative statements of position be submitted as provided in § 2.112(a) (5).

33. It has been suggested that the allowance in § 2.153(b) of 60 days after date of publication of the notice of hearing in the FEDERAL REGISTER for the disclosure of data and information by the participants, combined with the provisions of §§ 2.118(a) (8) and 2.158(a) (21

CFR 2.118(a)(8) and 2.158(a)) that a prehearing conference shall not commence prior to the expiration of that period, may unnecessarily delay formal evidentiary public hearings where the issues are not complex or are few in number.

The Commissioner is therefore modifying these sections to authorize the presiding officer, in his discretion, to establish a shorter period of time for the disclosure of data and information by the participants where no participant will be prejudiced, and to state that the prehearing conference may commence after the expiration of such shorter period.

34. One comment stated that the sanction in § 2.153(d) goes too far. That provision states that a failure to comply with the requirements of § 2.153 on disclosure of data and information constitutes a waiver of the right to participate further in the hearing and, in the case of a party, a waiver of the right to a hearing. The comment stated that this requirement is apparently based on the "untenable" notion that a participant in a hearing must introduce evidence. The comment stated that the appropriate sanction would be forfeiture of the right to introduce evidence at the hearing.

The Commissioner advises that the intent of the regulations is that participation will ordinarily be conditioned on a commitment to introduce evidence. In the unusual case where a hearing has been justified or participation permitted on the basis of a submission or commitment that does not involve the introduction of evidence, the obligations of § 2.153(b) should nevertheless be met to the extent consistent with the commitment required in the notice of appearance set forth in § 2.131(b). For example, the participant would at a minimum be expected to submit a narrative statement of his position on the factual issues stated in the notice of hearing.

35. One comment objected to § 2.154 (21 CFR 2.154) on the ground that it appears designed to prohibit cross-examination. The comment contended that past problems with cross-examination are not related to cross-examination per se, but have been the result of the inability or unwillingness of the presiding officer to control use of cross-examination within the rules of evidence and of the frequent lack of understanding by counsel of the proper role of cross-examination. The comment urged improved education of hearing officers and members of the bar as the solution.

The Commissioner advises that § 2.154 does not prohibit, but rather expressly provides for, cross-examination upon a showing that it is necessary for a full and true disclosure of the evidentiary facts and that the party requesting an opportunity to conduct cross-examination would be prejudiced by denial of the request. This is the criterion set forth in section 7(c) of the Administrative Procedure Act (5 U.S.C. 556(d)). The Commissioner believes that it is appropriate to incorporate the criterion in these regulations for the guidance of persons involved in a formal evidentiary public hearing.

The Commissioner does not disagree with the comment concerning the factors that have contributed to the problems associated with cross-examination, but believes that it is unrealistic to expect that they can be solved without a clear statement in the regulations that cross-examination is to be used sparingly and only when other means of developing the evidence are not sufficient. Although the ultimate determination whether to allow cross-examination is left to the discretion of the presiding officer, the Commissioner concludes that it is nevertheless advisable to set forth specifically in the regulations the considerations that will enter into such determination.

36. Another comment objected to the provisions of § 2.154 that limit the use of oral testimony. The comment stated that the indispensable role of direct oral testimony and cross-examination led to their recognition as "fundamental substantive rights inextricably woven into the fabric of due process." The comment stated that the demeanor of a witness, the candor with which he addresses issues, the reasons underlying his opinion, any bias or lack of objectivity on the issues involved, prior inconsistent statements he may have made, and the accuracy of his observations are all issues that can be probed only through oral direct testimony and cross-examination. The comment stated that only where there is a serious and imminent danger to public health does the public interest compel the abandonment of oral testimony and reasonable cross-examination.

The Commissioner agrees that cross-examination may on occasion be a better mechanism for resolving disputed factual issues than other procedures, and § 2.154 provides ample opportunity for this superiority to be shown and cross-examination allowed. The comment, however, would require that cross-examination be permitted without limitation. It is precisely this view that cross-examination is the all-purpose and indispensable tool for developing a record in support of or against various factual propositions that has given rise to past problems in the conduct of formal evidentiary public hearings. Where the issues in question are scientific, medical, or technical, the Commissioner does not agree that the only or the best way of revealing the truth is through lengthy examination and cross-examination of expert witnesses. Information relevant to such issues is not the product of a past event or uniquely available from eyewitnesses whose perceptions and credibility must be tested on the stand; it is part of the knowledge available to and relied upon by members of the relevant community of experts.

Congress recognized that in rule making proceedings involving technical issues, "the direct or rebuttal evidence may be of such a nature that cross-examination adds nothing substantial to the record and unnecessarily prolongs the hearings," H.R. Rep. No. 1980, 79th Cong., 2d Sess. 37 (1946). The Court of Appeals for the Second Circuit, in discussing the notice-and-comment procedure used in the promulgation of a regulation restricting sale of high dosage vitamin products, observed that "[s]ince the decision did not turn on precise factual issues or on the credibility of witnesses but represented a judgment based upon consideration of relevant medical and scientific data, we doubt that a trial-type adversary hearing would have shed any further light on the question." *National Nutritional Foods Assoc. v. Weinberger*, 512 F. 2d 688, 699 (2d Cir. 1975). The same court earlier commented, in connection with the formal evidentiary public hearing conducted on foods for special dietary uses, that "[a]part from the point which most trial lawyers have learned, through sad experience, that early dreams of confounding experts by cross-examination usually are dreams indeed, the court wonders how much more there would have been for the agency to learn [from the specific cross-examination that was requested and denied]," *National Nutritional Foods Assoc. v. FDA*, 504 F. 2d 761, 797 (2 Cir. 1974).

The reasons cited by the court for remanding the matter for the purpose of allowing cross-examination reveals that it is only in unusual circumstances that cross-examination is necessary to a full and true disclosure of the facts about a scientific or technical subject, i.e., when a particular witness's testimony is central to a key issue, and is based on knowledge that is personal to him and that was not introduced through other testimony or documentation in a manner that permitted it to be explored and analyzed.

37. Comments also objected to the provisions on cross-examination in § 2.154 (c). The comments stated that the provision directing the submission of additional direct testimony in lieu of cross-examination whenever possible is not more efficient than permitting cross-examination. The comments stated that § 2.154(c) (2) and (3) seem to require that cross-examination be limited to issues of fact and to take the position that it is not an appropriate method for testing inferences and conclusions drawn from facts. The comments stated that in many FDA proceedings the most significant issues involve the validity of inferences and conclusions drawn by expert witnesses from raw data, and that cross-examination provides an opportunity to test these hypotheses, to expose a witness to additional facts that may change his conclusions, and to reveal any bias a witness may have. The comments stated that the need for cross-examination is increased by the agency's desire to require the presentation of evidence in written form whenever possible because written testimony is carefully prepared in advance, generally with the assistance of counsel, thus increasing the need for an opportunity to confront witnesses viva voce in order to test and explore the bases of their written testimony.

The Commissioner agrees that in some circumstances it will be more efficient to schedule oral cross-examination of specific witnesses than to order the filing of additional direct testimony, and believes that the criteria set forth in the regulation provide sufficient discretion to the presiding officer to adopt this course when it would advance the proceeding. By requiring oral cross-examination to be considered only upon a special showing, the participants will be encouraged to evaluate thoroughly the written direct testimony with a view to limiting requests for oral cross-examination to those specific witnesses and issues with respect to which it is reasonably certain that cross-examination is necessary to a full and true disclosure of the facts. This should reduce the number of witnesses subjected to cross-examination, and confine the scope of the cross-examination to matters that are central to the proceeding and that are genuinely in dispute.

The regulation would not preclude cross-examination of witnesses with respect to inferences and conclusions from facts where such inferences and conclusions, by reason of the expertise of the witness, constitute independent evidentiary facts. Section 2.154(c)(4) is intended to bar cross-examination with respect to inferences and conclusions properly made by the Commissioner based on the record evidence.

The Commissioner concludes that written direct testimony about scientific, medical, and technical facts can ordinarily be adequately analyzed and tested against the facts known to other participants; it is improbable that misstatements of fact and flaws in reasoning can be so artfully concealed in written direct testimony as to be invulnerable to rebuttal, even if lawyers do assist in its preparation. If it appears that direct rebuttal is infeasible and that cross-examination is necessary to a full and true disclosure of the facts, the presiding officer has discretion to order it.

38. One comment asserted that the restrictions on cross-examination pose practical difficulties. The comment predicted that answers to written cross-examination would doubtless be written by or in collaboration with the lawyer who presented testimony through the witness, could easily be unresponsive to the question put to the witness, and would offer no opportunity to frame questions based on the witness's answer to a previous question, as could be done in a case of an oral cross-examination. The comment also contended that a requirement that cross-examination be written would delay completion of the witness's testimony.

The Commissioner recognizes that written cross-examination cannot function in the same way as oral cross-examination, and advises that it is not intended to. The purpose of written cross-examination is to focus the direct testimony on areas about which there are serious questions and to elicit responses on matters not addressed. Responses will often be written with the assistance of lawyers. The Commissioner does not believe that this will impede the participants and the presiding officer from recognizing evasive answers or other devices for obscuring the issues. Where such responses are given, the witness's testimony will be discounted to that extent, or a request for oral cross-examination can be entertained.

Although written cross-examination does not allow for framing questions in light of the immediately preceding response, the Commissioner notes that this disadvantage must be considered in relation to the countervailing benefit to be expected from providing lawyers with an opportunity to formulate tight and pointed written questions that isolate crucial issues and require the witness to respond in detail to the examiner's view of the facts. Not all lawyers are skilled at oral cross-examination, and it may well be that providing for written cross-examination in combination with oral cross-examination when specially justified will result in more effective exploration of the issues than a procedure that puts a premium on the supposed ability of a lawyer to out-think an expert while questioning him.

The Commissioner agrees that requiring written cross-examination may delay completion of a particular witness's testimony, but believes that this penalty is outweighed by the anticipated savings in time that will result from eliminating repetitive examination of witnesses whose testimony is not central, and confining the examination of other witnesses to matters that are genuinely at issue. The Commissioner also notes that written direct testimony and cross-examination should permit greater flexibility in the management of a hearing, for much of the written material can be prepared by the participants by way of written or telephonic communication, without having to travel to a central location for an unpredictable length of time that is often out of proportion to the value of the task to be accomplished.

39. One comment requested that § 2.154 (b) and (c) be modified to assure parties to an adjudicatory proceeding the right to give oral evidence and to conduct cross-examination without a showing of need or prejudice.

The Commissioner concludes that the procedures for resolving an issue should depend on the nature of the issue and not on the formal designation of the hearing as rule making or adjudication. Where the issues in an adjudicatory hearing involve scientific, medical, or technical information not relating to a unique event and therefore not within the peculiar knowledge of a specific person, there is no more reason to resolve them exclusively through courtroom techniques than there would be in a formal rule making proceeding. Cases supporting this approach are based on the same consideration, i.e., that trial procedures suitable for developing the facts in a tort suit are not necessarily appropriate for exploring the issues in a hearing concerning the evidence of effectiveness for a drug product (see *Cooper Laboratories, Inc.* v. *Commissioner*, 501 F. 2d 772, 792–793 (D.C. Cir. 1974)).

40. One comment stated that the provision of § 2.154(c) listing the factors to be taken into account by the presiding officer when considering the use of oral cross-examination should be revised to permit the officer broader discretion in allowing such testimony.

The Commissioner concludes that it is unnecessary to set forth explicitly additional factors to be considered in determining whether a request for cross-examination should be granted, or that additional factors may be considered at the presiding officer's discretion. The presiding officer must take the listed factors into account, but has the authority to weigh other relevant considerations in connection with a specific request.

41. One comment contended that oral cross-examination should be permitted in all instances where oral direct examination has been allowed. The comment asserted that preventing the use of oral cross-examination in such instances will severely restrict the full and true disclosure of relevant facts. The comment stated that requiring the use of written testimony almost exclusively will burden interested parties with additional attorneys' fees for the added time required to draft the documents.

The Commissioner disagrees that it would restrict a full and true disclosure of the facts to require written cross-examination of witnesses whose testimony is introduced orally, but concludes that where a witness has testified orally it would in most cases be more expeditious to permit oral cross-examination, and has accordingly added a new paragraph (c)(6) to § 2.154 to provide that whether direct testimony has been introduced orally or in writing is a factor that the presiding officer should take into account in considering a request to conduct oral cross-examination.

The Commissioner does not believe that the legal costs of preparing written testimony will necessarily, or indeed frequently, exceed the costs of preparing a witness and presenting oral testimony.

42. Comments objected to the provisions of § 2.154 that draw a distinction between "general issues" and "particular issues" in certain proceedings not involving rule making. The preamble to the proposed regulation had noted that the right provided by the Administrative Procedure Act to submit oral testimony in adjudicatory proceedings should be interpreted in light of the type of issues involved rather than the formal designation of the proceedings. Hence, the regulation limits the right to present oral evidence to "particular issues." One comment agreed that this theory had been applied by the courts, but asserted that generally it has been applied when determining whether any hearing is required. The comments contended that the cases do not support the proposition that once a hearing has been granted, an agency may limit the right to submit evidence by oral testimony. A comment

maintained that issues in an adjudicatory hearing are of specific applicability to particular parties no matter how general they are in substance. The comments also criticized the failure to extend this "functional analysis" to rule making so as to permit the use of oral testimony when "particular issues" appear in proceedings denominated as rule making. Several comments recommended that § 2.154 simply reproduce the criteria in section 7(c) of the Administrative Procedure Act (5 U.S.C. 556(d)) and asserted that the presiding officer could apply those criteria to require written testimony where no participant would be prejudiced by that procedure.

The distinction between general and particular issues has long been recognized by the courts as affecting the type of procedure required to be provided to resolve them, as the cases cited in the preamble illustrate. The Commissioner concludes that it is anachronistic to apply mechanically the terminology found in the Administrative Procedure Act in view of the courts' unwillingness to confine their analysis of the procedural requisites for administrative action to the labels attached to the proceeding involved. The Commissioner believes that the following quotation from *City of Chicago* v. *Federal Power Commission*, 458 F. 2d 731, 739 (D.C. Cir. 1971), cert. denied, 405 U.S. 1074 (1972), accurately states the current view:

> In many cases, it is unnecessary, and even unwise, to classify a given proceeding as either adjudicatory or rulemaking. The line between the two is frequently a thin one and resolution of a given problem will rarely turn wholly on whether the proceeding is placed in one category or the other.

It makes little sense, for example, to use different procedures in hearings on the safety and effectiveness of drugs depending on whether or not they are antibiotics, yet a literal construction of sections 505(e) and 507(f) of the Federal Food, Drug, and Cosmetic Act and section 7(c) of the Administrative Procedure Act would indicate this result.

The Commissioner recognizes that the resolution of general issues in adjudicatory hearings can have specific impact on particular parties. This is equally true of the general issues that are typically involved in rule making, i.e., the manner in which a general issue is resolved will specifically affect particular persons when the regulation is subsequently applied. Moreover, some rule making proceedings involve only one or a few persons. Hence, the Commissioner believes that the nature of the issue to be resolved should be given greater weight in deciding what procedure is appropriate than should the formal designation of the type of proceeding in which it arises.

The Commissioner agrees that the distinction between general and particular issues for purposes of the procedural requirements for testimony at a formal evidentiary public hearing should be made applicable to both rule making and adjudicatory proceedings, and has modified the regulations to so provide. The Commissioner emphasizes that "particular issues" refers to issues that relate to specific past actions or events and that depend upon particular facts concerning a specific person or product, and advises that such issues will not often arise in rule making proceedings.

The Commissioner agrees with the comments that the presiding officer is empowered by section 7(c) of the Administrative Procedure Act to disallow use of oral testimony in adjudicatory proceedings if no prejudice will result. However, section 7(c) is not limited to the presiding officer's authority at the proceeding, and provides ample basis for the criteria in § 2.154. The regulations specifically provide that a participant's right to present oral testimony is qualified only by his inability to demonstrate that he will be prejudiced if he is not allowed to do so, which is the standard that the comments concede would be proper if applied by the presiding officer.

43. One comment objected to the provision of § 2.154(b)(1)(i), which states that there must be a showing "that written direct testimony is insufficient to adduce testimony for a full and true disclosure of relevant evidentiary facts" before a request for oral direct examination in a rule making proceeding will be permitted. The comment asserted that under section 7(c) of the Administrative Procedure Act, an agency may require written evidence only when a party will not be prejudiced thereby. The comment asserted that the additional condition imposed by the regulation contributes an element of uncertainty as to the meaning of the provision and could place an unwarranted burden upon the requesting party.

The Commissioner advises that the requirement for justifying use of oral direct testimony particularizes the statutory standard, and so reduces the uncertainty in determining when a request to introduce direct testimony orally rather than in writing will be granted. Thus, prejudice will be shown if the participant demonstrates that limiting the presentation of testimony to a written submission will not result in a full and true disclosure of relevant evidentiary facts.

44. One comment opposed § 2.154(e), which places the burden of establishing the safety and effectiveness of a product on any party who is requesting approval or contesting withdrawal of such product. The comment stated that an action to withdraw approval of an NDA under section 505 of the act must be supported by clinical experience, tests, or information which were not before the agency when the application was approved. The comment stated that the burden of producing evidence of this type necessarily rests with the agency. The comment asserted that the statute does not contemplate that the holder of an approved NDA be forced to prove anew the safety and efficacy of this product upon the mere issuance by FDA of a notice of proposed withdrawal.

The Commissioner advises that the comment is based on a confusion between the provision in section 505(e) of the act that the agency may act on the basis of new information, and the question of who bears the burden of proof on issues of safety and effectiveness at a formal evidentiary public hearing on the withdrawal of approval of a product for which the act requires evidence of safety and effectiveness as a condition of marketing. The Supreme Court in *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 617 (1973), specifically stated that the agency must withdraw approval of an NDA "if the manufacturer fails to carry the burden of showing there is 'substantial evidence' respecting the efficacy of the drug." That the Commissioner is first required to show that there is new evidence or new information about a drug that leads him to conclude that it can no longer be regarded as safe and effective, and how this may be done, are separate matters not addressed in Subpart B of Part 2.

Section 2.154(d) does not purport to require a manufacturer to prove anew the safety and effectiveness of a drug merely upon issuance of a notice of opportunity for hearing. Any notice of opportunity for hearing must comply with the requirements of § 314.200 relating to the contents of such notices, which must state or refer to the specific grounds the proposed action is based upon in accordance with applicable statutory and regulatory standards establishing the circumstances for the appropriate consideration of withdrawal of marketing approval for a new drug.

45. One comment stated that the distinction in § 2.155 (21 CFR 2.155) between party and nonparty participants is unsound and should be abandoned, at least in proceedings that are classified by statute as "rule making."

The Commissioner advises that the concept that all persons have an unlimited right of participation irrespective of the nature of their interest in the proceeding has contributed to previous problems in formal evidentiary public hearings. Many persons have utilized formal hearings as a forum for expounding their views on unrelated issues through the medium of cross-examination. Although the presiding officer can control this abuse of the hearing process to a limited extent, it is often difficult, in the midst of the hearing itself, for him to discern from a person's representations of the rationale for his examination whether or not it does or eventually will relate to the issues. For this reason, the presiding officer must usually allow a line of examination to continue well past the point when, in retrospect, it is no longer relevant. Even then, rulings have often been disregarded, necessitating further colloquies and rulings. The Commissioner concludes that this time-consuming activity can best be obviated by requiring nonparty participants to demonstrate that their interests cannot be adequately protected without additional rights of participation, such as the right to submit written interrogatories and conduct cross-examination. It is anticipated that a participant who is also a party will ordinarily have a sufficiently well-defined interest in the proceeding that he will confine his participation within reasonable bounds.

46. One comment stated that § 2.155 (d) should require, rather than merely permit, the presiding officer to allow a nonparty participant to exercise the rights of a party when the specific finding is made, i.e., that his rights would otherwise not be adequately protected or that a full and true disclosure of relevant evidentiary facts so requires.

The Commissioner agrees that when the presiding officer finds that additional rights of participation are required to protect the interests of a nonparty participant or for a full and true disclosure of relevant evidentiary facts, he must grant them, and has modified § 2.154(d) to so provide.

47. One comment stated that § 2.155 is apparently irreconcilable with § 2.131(b). In § 2.155, a nonparty participant has the option to attend conferences, submit evidence, file objections, and so forth, but is not required to do so. However, the comment stated that in § 2.131(b), a nonparty participant must have committed himself to present testimony or evidence.

The Commissioner advises that § 2.155 distinguishes between procedures that are and are not available to a nonparty participant and does not create an option inconsistent with the commitment made in the notice of appearance. A nonparty participant cannot be compelled to commit himself to use any of the procedures specified in § 2.155(a), but if he makes no commitment, his appearance will be stricken. Having made a commitment to use particular procedures available under § 2.155(a), a nonparty participant is under an obligation to fulfill it.

48. A question has arisen concerning the manner in which the time and place of the prehearing conference are set under which § 2.157 (21 CFR 2.157), which provides that the prehearing conference commences at the date, time, and place announced by the Commissioner under § 2.118(a)(8). The Commissioner concludes that the presiding officer is authorized by § 2.142(a) to modify the terms of the Commissioner's notice when necessary to assure the orderly progress of the hearing, and that § 2.157 should be amended to state this explicitly.

49. The Commissioner has determined to eliminate the requirement of § 2.158 (a) that the prehearing conference not commence until after the time for disclosure of data and information specified in § 2.153. This will allow the scheduling of a prehearing conference to consider problems that might arise in connection with the disclosure of data and information. Since the prehearing conference may occur at an earlier time than originally provided, § 2.158(a)(2) has been modified to make clear that the obligations of the participants with respect to the prehearing conference may be met at a subsequent session if it is impracticable to meet them at the first session.

50. One comment asserted that § 2.158 (a)(2)(iii) concerning the production at the prehearing conference of prior statements of witnesses, is confusing. The comment asserted that it should be revised to clarify its meaning.

The Commissioner advises that this provision requires the production of relevant prior written statements of a participant's witness that were made before his witness status was assumed so that other participants may evaluate his written or oral testimony given during the hearing. The Commissioner is of the opinion that the terms of § 2.158(a)(2)(iii) are as clear as they can be made.

51. A question was raised whether under § 2.158(b)(1) the presiding officer may limit statements of areas of disagreement to oral statements made for the record at the prehearing conference, rather than requiring or preparing a written statement in each instance.

The Commissioner advises that this is permissible under § 2.158(b)(1)(iv) when a verbatim transcript of the statement is made and approved by the participants. The Commissioner concludes that the introductory sentence of § 2.158(b)(1) should be revised to delete the words "and reduce to writing," which suggest that there must always be a written statement.

52. One comment requested a revision in § 2.158(b)(1)(ii), which provides that the presiding officer may at the prehearing conference require the identification of all witnesses and submission of the testimony of such witnesses. The comment asserted that this section should be revised to impose such requirements only where practicable. The comment asserted that it is not always possible to identify all witnesses at the time of a prehearing conference, or to summarize all testimony to be presented. In addition, the comment asserted that the manner of handling rebuttal testimony is not specified.

The Commissioner advises that the presiding officer is expected to take into account the ability of participants to comply with the orders he issues, and concludes that the concerns expressed in the comment are not justified.

The manner of handling rebuttal testimony will be determined by the presiding officer in accordance with the criteria in § 2.158(b).

53. One comment opposed the provision of § 2.158(b)(3) permitting the presiding officer to group participants with similar interests for the purposes of the hearing to eliminate duplicative or repetitive development of the evidence. The comment asserted that such grouping was a deprivation of the right of a party to be represented by his own counsel and was therefore arbitrary and unauthorized by law. In addition, the comment asserted that as a practical matter there would be few instances in which a presiding officer could reasonably determine that certain participants have like interests.

The Commissioner advises that grouping of participants with like interests for purposes of developing evidence at a formal evidentiary public hearing is fully authorized by law. See *National Nutritional Foods Assoc.* v. *Food and Drug Administration*, 504 F. 2d 761, 795 (2d Cir. 1974). The comment gives no reason why it would be difficult for a presiding officer to determine if participants have like interests, and the Commissioner sees none. If the presiding officer cannot make the necessary determination, he will not group participants.

54. One comment questioned § 2.160 (h) (21 CFR 2.160(h), which requires hearing proceedings to be closed for the taking of oral testimony relating to matters specified in § 2.5(j)(3) (21 CFR 2.5 (j)(3)) of the proposed procedural regulations, e.g., trade secret matters or matters that would constitute an invasion of privacy. The comment stated that this provision makes no mention of written testimony and that it is unclear how such testimony will be handled. In addition, the comment stated that § 2.162(c) (21 CFR 2.162(c)) seems to nullify the effect of the closed hearing procedures prescribed in § 2.160(h) because it provides that any reference to matters specified in proposed § 2.5(j)(3) shall be permitted in briefs and oral arguments when "essential to resolution of the issues involved." The comment stated that there is no provision in § 2.5(j)(3) prohibiting the disclosure of briefs and oral argument, with the result that the regulation cannot be reconciled with the provisions of § 4.82 (21 CFR 4.82), which prohibit the Commissioner from making certain specified records available for public disclosure.

The Commissioner advises that this matter is specifically dealt with in § 2.5(j)(3), which provides that material submitted in a formal evidentiary public hearing that is within the scope of § 2.5(j)(3)(i) will be handled in accordance with § 2.5(j)(3)(ii). Written testimony is one type of material subject to this provision.

The Commissioner believes that it is extremely unlikely that it will be necessary to refer to a matter within § 2.5(j)(3) as part of written or oral argument, but that if such reference is necessary to make the argument comprehensible, it should be permitted. The rarity with which this will occur means that § 2.160 (h) will be given full effect in virtually all cases, and thus is not nullified.

The Commissioner advises that § 2.5 (j)(3) specifically relates to all material submitted at a formal evidentiary public hearing, including briefs. However, it is the intention of § 2.162(c) to permit public reference to matters covered by § 2.5 (j)(3) in the unusual situation where that is necessary to the presentation of a coherent argument because such matters are essential to the resolution of the issues involved in the proceeding. Matters covered by § 2.5(j)(3) will be known only by those entitled to have access to them, and references to them will therefore ordinarily be made only by those in a position to waive any right to nondisclosure applicable to the information referenced.

55. It has been suggested that the offer of proof provided for in § 2.160(d)(2) serves no purpose and wastes time during a hearing. Specifically, because its only purpose is to apprise the Commissioner of what testimony would have been in-

troduced had it not been ruled inadmissible, and not to affect the presiding officer's decision, the "offer of proof" can be made at a later time in the form of exceptions to the presiding officer's decision or in the accompanying brief or memorandum, without the necessity of articulating it during the hearing itself.

The Commissioner agrees with the suggestion and has modified § 2.160(d)(2) accordingly.

56. One comment opposed § 2.160(h) relating to closed hearings. The comment stated that to the extent that there is no disclosure of material facts to other parties who opposed the position of the witness testifying in closed hearing, the decision of FDA would rest upon evidence not made available to the other parties and could therefore not be the result of a fair hearing.

The Commissioner advises that the statutes that define his responsibilities may sometimes require that he make a decision on a matter based in part on information that may not be publicly disclosed. Although the Commissioner expects that this potential will be realized only rarely in the context of a formal hearing, he must nevertheless make provision for it. The Commissioner realizes that this will place a difficult burden on participants who are not given access to the information, but concludes that this burden is unavoidable under the existing statutory scheme. Every effort will be made to overcome the difficulties this presents in the context of the proceeding in which the situation arises.

57. One comment noted that under § 2.160(i), a party may at any time move for an order that the taking of evidence be concluded. The comment stated that there is no requirement that the motion to conclude the taking of evidence be supported by documentation, affidavit, or argument, whereas the opposition to the motion must be so supported. The comment asserted that the party who submits the motion to conclude the taking of evidence should have the burden of showing the basis for his motion. Also, the comment stated that under § 2.165 (21 CFR 2.165) a motion may always be made on any subject being considered at the hearing without the "embellishments" contained in § 2.160(i).

The Commissioner advises that a motion to conclude the taking of evidence would be based on a representation that in the opinion of the moving party all the evidence that is likely to be submitted in the proceeding has been submitted, and thus to require participants to identify any additional evidence they think is relevant to their case. This procedure is necessary to deal with the situation in which all participants and the presiding officer are in a state of uncertainty about whether or not the proceeding is near or at an end by the unwillingness or inability of some participants to organize their case or to consider the possibility that they have in fact exhausted the evidence favorable to their position. It would serve no purpose to require supporting documentation or argument for a motion of this sort: The moving party does not have detailed knowledge of what further evidence other participants might possibly wish to present, but merely believes that they have none; the motion is thus intended to place the burden of justifying the continued expenditure of everyone's time and effort on the participant who believes that further proceedings are necessary. If they are, it should be a simple matter to show it.

The Commissioner concludes that it is appropriate to include a specific procedure for bringing the taking of evidence to a close. The regulations provide for many written procedures under the general supervision of the presiding officer, and there is a correspondingly greater need for a mechanism that focuses the participants' attention on the course of the proceeding when it appears to be reaching the point at which it fairly can and should be formally concluded.

58. A question was raised whether § 2.160(i), authorizing a motion to conclude the taking of evidence, is too restrictive, i.e., whether the presiding officer should be given the option of handling such a motion in a manner different from the three specified. The Commissioner agrees, and is therefore adding to § 2.160(i) a clause permitting the presiding officer to take such action on the motion as is appropriate under the circumstances.

59. One comment stated that the definition of official notice in § 2.161 (21 CFR 2.161) is narrower than it should or needs to be. The comment contended that official notice is broader than judicial notice in areas of agency expertise and contributes to the efficiency and simplicity of the determinations of the agency, which otherwise would have to relitigate already decided facts. The comment cited regulations of the Environmental Protection Agency (40 CFR 164.81(e)), the Nuclear Regulatory Commission (10 CFR 2.743(i)), the Federal Power Commission (18 CFR 1.26(d)), the Department of Labor Occupational Safety and Health Administration (29 CFR 40.22(c) and 1905.26(d)), the Postal Service (39 CFR 3001.31(j)), and the Securities and Exchange Commission (17 CFR 201.14(d)) as permitting official notice of matters within the expert knowledge of the agency.

The Commissioner agrees that the scope of official notice in FDA proceedings should be as broad as that of other administrative and regulatory agencies, and has modified § 2.161 accordingly.

60. One comment suggested that § 2.164(c) (21 CFR 2.164(c)), entitling any person to a copy of the transcript of a formal evidentiary public hearing upon payment of costs to the official reporter, should be revised to require the agency to place the transcript orders for all participants. The comment asserted that quantity purchases reduce the cost of transcripts and that this revision would reduce the costs for all persons seeking transcripts.

The Commissioner advises that participants may obtain copies of transcripts by making a request under the public information provisions in Part 4 (21 CFR Part 4), and that it is unlikely that a quantity purchase from the recording service would result in a lower cost than that assessed for meeting such a request. If the participants wish to make a joint request of the recording service through one of their number, they are of course free to do so.

61. It has been suggested that where the agency does not preside at the reception of the evidence, the presiding officers' decision should always be an initial decision, i.e., a decision that is made publicly available upon filing with the Hearing Clerk and that becomes the decision of the Commissioner unless within a fixed period of time after such filing a participant appeals, or the Commissioner elects to review the decision. Section 2.118(a)(10) provides that the Commissioner will specify in the notice of hearing whether the presiding officer is to issue an initial decision or a recommended decision. A recommended decision is forwarded, with the record of the hearing, to the Commissioner, who issues a tentative order.

The Commissioner agrees that little purpose is served by the recommended decision procedure, which merely requires what the initial decision procedure allows, i.e., a full review of the entire record by the Commissioner and a final decision by him. Accordingly, the Commissioner is deleting the provisions relating to the recommended decision procedure. All formal evidentiary public hearings will result in an initial decision, subject to appeal by a participant or review by the Commissioner on his own initiative.

62. It has been suggested that the requirement of § 2.180(a) (21 CFR 2.180(a)) that the presiding officer prepare and file his decision within 90 days of the filing of briefs and oral argument may be too restrictive where a hearing has been lengthy and complex or there is a conflict with demands imposed by other pending matters. The Commissioner is therefore revising § 2.180(a) to provide that the time for filing an initial decision may be extended by the Commissioner if the presiding officer so requests and states reasons why additional time is needed.

63. One comment recommended revision of § 2.180(c), which states that specific details and documents subject to nondisclosure under § 2.5(j)(3) may be disclosed in initial decisions if "essential to resolution of the issues involved." The comment stated that this section should be revised to make clear that trade secrets or confidential information cannot be disclosed by the Government in violation of 18 U.S.C. 1905 and 21 U.S.C. 331(j) in any instance.

The Commissioner concludes that this provision will rarely be applicable, but that when it is, the necessity for accurately and comprehensibly stating the basis for decision in a formal evidentiary public hearing must prevail over contrary provisions in the law. The Commissioner believes that this is authorized by the requirements for judicial review

of public hearings and by the specific provision in section 301(j) of the act for disclosure of information in judicial proceedings, of which a formal evidentiary public hearing is a precursor.

64. It has been suggested that not all decisions pursuant to a formal evidentiary public hearing are of widespread public interest, and that in such cases there should be provision for publication of a notice in the FEDERAL REGISTER stating what the decision is and how it can be obtained in place of publication of the decision in its entirety.

The Commissioner agrees, and is adding new paragraph (f) to § 2.180 and new paragraph (g) to § 2.182 (redesignated § 2.181) to so provide.

65. The Commissioner has determined that the method provided in § 2.182 (redesignated § 2.181) by which an initial decision may be appealed should be modified to eliminate the notice of appeal and the simultaneous filing of briefs. Instead, any participant who is dissatisfied with the initial decision may appeal it by filing exceptions to the decision with the Hearing Clerk. Other participants may then file replies to the exceptions. The time for filing exceptions and replies will be specified in the initial decision, but shall not exceed 30 days. The time may be extended by the Commissioner.

The Commissioner has 10 days after the expiration of the time for filing exceptions (including any extensions) in which to file a notice with the Hearing Clerk, that he intends to review the initial decision on his own initiative. The Commissioner may invite the participants to file briefs or present oral argument on the matter.

The Commissioner believes that these procedures will result in the more expeditious appeal of initial decisions.

66. The Commissioner concludes that the procedure in § 2.184 (redesignated § 2.182) for certification of the record of an initial decision for purposes of review by the Commissioner is unnecessary, and is therefore deleting it from the final regulations.

Therefore, pursuant to provisions of the Federal Food, Drug, and Cosmetic Act, (Sec. 201 et seq., 52 Stat. 1040; 21 U.S.C. 321 et seq.), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682, as amended; 42 U.S.C. 201 et seq.), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241; 42 U.S.C. 257a), the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253; 21 U.S.C. 821 et seq.), the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600; 21 U.S.C. 679(b)), the Poultry Products Inspection Act (sec. 24(b), 82 Stat. 807; 21 U.S.C. 467f (b)), the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620; 21 U.S.C. 1031 et seq.), the Federal Import Milk Act (44 Stat. 1101; 21 U.S.C. 141 et seq.), the Tea Importation Act (21 U.S.C. 41 et seq.), the Federal Caustic Poison Act (44 Stat. 1406; 15 U.S.C. 401–411 notes), the Fair Packaging and Labeling Act (80 Stat. 1296; 15 U.S.C. 1451 et seq.), and all other statutory authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

1. In Part 2 by revising Subpart B to read as follows:

Subpart B—Formal Evidentiary Public Hearings

Sec.
2.100 Scope of subpart.
2.110 Initiation of a formal evidentiary public hearing involving the issuance, amendment, or revocation of a regulation.

INITIATION OF PROCEEDINGS

2.111 Initiation of a formal evidentiary public hearing involving the issuance, amendment, or revocation of an order.
2.112 Filing objections and requests for a hearing on a regulation or order.
2.113 Ruling on objections and requests for hearing.
2.114 Modification or revocation of regulation or order.
2.115 Denial of formal evidentiary public hearing in whole or in part.
2.116 Judicial review after waiver of hearing on a regulation.
2.117 Request for alternative form of public hearings.
2.118 Notice of hearing; stay of action.
2.119 Effective date of a regulation.
2.120 Effective date of an order.

APPEARANCE AND PARTICIPATION

2.130 Appearance.
2.131 Written notice of participation.
2.135 Advice on public participation in formal evidentiary hearings.

PRESIDING OFFICER

2.140 Presiding officer.
2.141 Commencement of functions.
2.142 Authority of presiding officer.
2.143 Disqualification of presiding officer.
2.144 Unavailability of presiding officer.

HEARING PROCEDURES

2.150 Filing and service of submissions.
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AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91–513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91–513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24 (b), Pub. L. 85–172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91–597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101–1103 as amended (21 U.S.C. 141–149); secs. 1 through 10, Chapter 358, 29 Stat. 604–609 as amended (21 U.S.C. 41–50); sec. et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89–755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart B—Formal Evidentiary Public Hearings

§ 2.100 Scope of subpart.

Subpart B governs the procedures applicable whenever any of the following applies:

(a) A person has a right to an opportunity for a hearing under the provisions of the laws administered by the Commissioner specified in § 2.12(c).

(b) The Commissioner concludes, in his discretion, that it would be in the public interest to hold a formal evidentiary public hearing on any matter, or class of matters, of importance pending before the Food and Drug Administration.

INITIATION OF PROCEEDINGS

§ 2.110 Initiation of a formal evidentiary public hearing involving the issuance, amendment, or revocation of a regulation.

(a) An administrative proceeding in which there is an opportunity for a formal evidentiary public hearing pursuant to sections 409(f), 502(n), 507(f), 512 (n)(5), 701(e), or 706(d) of the act or sections 4 or 5 of the Fair Packaging and Labeling Act involving the issuance, amendment, or revocation of a regulation shall be initiated:

(1) By the Commissioner on his own initiative, e.g., as provided in § 121.72 for food additives, or

(2) By a petition from an interested person:

(i) In the form specified in other applicable sections in this chapter, e.g., the form for a color additive petition in § 8.4 of this chapter or the form for an antibiotic petition in § 431.50 of this chapter, or

(ii) If no form is specified in other applicable sections of this chapter, in the form specified in § 2.7.

(b) Upon receiving a petition submitted pursuant to paragraph (a)(2) of this section, the Commissioner shall:

(1) If it involves any matter subject to section 701(e) of the act or sections 4 or 5 of the Fair Packaging and Labeling Act, and meets the requirements for filing, follow the provisions of § 2.10 (b) through (f).

(2) If it relates to a color additive or food additive, and the petition meets

the requirements for filing in §§ 8.4, 8.5, and 121.51 through 121.53 of this chapter, publish a notice of filing of the petition in the FEDERAL REGISTER within 30 days after the petition is filed in lieu of a notice of proposed rule making.

(c) The Commissioner may issue, amend, or revoke an antibiotic regulation without the requirements of notice and public procedure in § 2.10(b) or delayed effective date in § 2.10(c)(4) on his own initiative or as a result of a petition containing the required evidence of safety and effectiveness in the circumstances set forth in § 2.10(e)(1).

(d) The notice published in the FEDERAL REGISTER promulgating the regulation shall state the time, place, and method for adversely affected persons to submit objections and requests for hearing, and that objections and requests for hearing shall be submitted in accordance with the requirements of this Part.

(e) On or before the 30th day after the date of the publication in the FEDERAL REGISTER of a final regulation, or of a notice withdrawing a proposal initiated by a petition pursuant to § 2.6(a), subject to this section, any person who would be adversely affected if such regulation were placed in effect may submit written objections thereto to the Commissioner and may make a written request for a formal evidentiary public hearing on the stated objections. This 30-day period shall not be extended by the Commissioner, except that additional information supporting any such objection may be received after 30 days upon a showing of inadvertent omission and hardship, and if review of the objection and request for hearing will not thereby be impeded. In the case of any petition or proposal to issue, amend, or repeal a color additive regulation after publication of the final regulation, if referral of such petition or proposal is made to an advisory committee in accordance with section 706(b)(5)(C) of the act, written objections and requests for a hearing may be submitted on or before the 30th day after the date on which the Commissioner publishes his order confirming or modifying his previous order.

§ 2.111 Initiation of a formal evidentiary public hearing involving the issuance, amendment, or revocation of an order.

(a) An administrative proceeding in which there is an opportunity for a formal evidentiary public hearing pursuant to sections 505 (d) or (e), 512 (d), (e), (m)(3), or (m)(4) of the act, or section 351(a) of the Public Health Service Act, involving the issuance, amendment, or revocation of an order shall be initiated:

(1) By the Commissioner on his own initiative, or

(2) By a petition submitted in the form specified in other applicable sections in this chapter, e.g., § 314.1(c) for new drug applications, § 514.1 for new animal drug applications, § 514.2 for applications for animal feeds, or § 601.3 for licenses for biologic products, or

(3) By a petition from an interested person in the form specified in § 2.7.

(b) A notice of opportunity for hearing on any proposal to deny or revoke approval of an order or any part thereof shall be published in the FEDERAL REGISTER together with an explanation of the grounds for the proposed action. The notice of opportunity for hearing shall state the time, place, and method for adversely affected persons to submit requests for hearing, and that requests for hearing shall be submitted in accordance with the requirements of this Part. The applicant for or holder of the approval or license that is the subject of the order in question and all other persons subject to the notice shall have 30 days after issuance of the notice within which to request a hearing on the proposed action pursuant to the provisions of §§ 314.200, 514.200, and 601.7(a) of this chapter. This 30-day period shall not be extended by the Commissioner.

(c) In considering the issuance, amendment, or revocation of an order, the Commissioner may use any applicable optional procedure specified in § 2.7 (g).

§ 2.112 Filing objections and requests for a hearing on a regulation or order.

(a) Objections to agency action and requests for a hearing submitted pursuant to § 2.110(d) shall be submitted to the Hearing Clerk and shall be accepted for filing if they comply with all of the following conditions:

(1) Objections and requests for a hearing shall be submitted on or before the day specified in § 2.110(d).

(2) Each objection to a specific provision of the Commissioner's regulation or proposed order shall be separately numbered.

(3) Each numbered objection shall specify with particularity the provision of the regulation or proposed order to which objection is made.

(4) Each numbered objection on which a hearing is requested shall specifically so state. The failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection.

(5) 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. The failure to include such description and analysis for any particular objection shall constitute a waiver of the right to a hearing on that objection, but such description and analysis shall be used only for the purpose of determining whether a hearing has been justified pursuant to § 2.113 and shall not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon shall be submitted.

(ii) A summary of the nondocumentary testimony to be presented by any witnesses relied upon shall be submitted.

(b) Requests for hearing submitted pursuant to § 2.111(b) shall be submitted to the Hearing Clerk and shall be accepted for filing if they comply with all of the following conditions:

(1) Requests for hearing shall be submitted on or before the 30th day after the date of publication of the notice of opportunity for hearing in the FEDERAL REGISTER.

(2) Requests for hearing shall comply with the requirements specified in §§ 314.200, 514.200, and 601.7(a) of this chapter.

(c) Any objection or request for a public hearing which meets the requirements of this section shall be filed by the Hearing Clerk in the relevant docket file. If an objection or request for a public hearing fails to meet the requirements of this section and the deficiency becomes known to the Hearing Clerk, the Hearing Clerk shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in § 2.110(d) or § 2.111(b).

(d) If an objection to a regulation issued pursuant to a petition submitted pursuant to § 2.110(a)(2) is submitted by a person other than the petitioner and is filed by the Hearing Clerk, the petitioner may submit a written reply thereto to the Hearing Clerk.

§ 2.113 Ruling on objections and requests for hearing.

(a) As promptly as is feasible the Commissioner shall review all objections and requests for hearing filed pursuant to § 2.112 and shall determine:

(1) Whether any of the objections or requests for hearing filed justify modification or revocation of the regulation or order involved pursuant to § 2.114.

(2) If a formal evidentiary public hearing has been requested, whether it has been justified as required by this section.

(3) If a public hearing has been requested before a Public Board of Inquiry pursuant to Subpart C of this Part, or before a public advisory committee pursuant to Subpart D of this Part, or before the Commissioner pursuant to Subpart E of this Part, whether it has been justified.

(b) A request for a formal evidentiary public hearing shall be granted on a matter involving the issuance, amendment, or revocation of a regulation or order if, based upon the data, information, and views contained in his objection and request for hearing, a person has shown that all of the following are true:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue is capable of being resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information identified in the objection and request for hearing, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that, even assuming the truth and accuracy of all of the data and information submitted in support of the objection and request for hearing, they are insufficient to justify the factual determination urged.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative or controlling with respect to the action requested, e.g., when the Commissioner concludes that his action would be the same even if the factual issue were resolved in the way sought, or in the case of a request that a final regulation include a provision not reasonably encompassed within the proposal. A hearing will be granted upon proper objection and request for hearing when a food standard or other regulation is shown to have the effect of excluding or otherwise affecting a product or ingredient, but not when such standard or regulation does not have such an effect.

(5) The action requested is not on its face inconsistent with or in violation of any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in such circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) All of the conditions and requirements specified in other applicable provisions of this chapter, e.g., §§ 2.5, 2.111, 2.112, 314.200, 430.20(b), 514.200, and 601.7(a), and in the notice promulgating the final regulation or the notice of opportunity for hearing are fully met.

(c) In making his determination pursuant to paragraph (a) of this section, the Commissioner may use any of the optional procedures specified in § 2.7(g) and in other applicable provisions of this chapter, e.g., §§ 314.200, 430.20(b), 514.200, and 601.7(a).

(d) Where a person files an objection and request for hearing pursuant to §§ 2.110 through 2.112 relating to a regulation or order, it is uncertain whether a hearing has been justified pursuant to the principles established in paragraph (b) of this section, and the Commissioner concludes that summary decision against the person requesting a hearing should be considered, he may serve upon such person by registered mail a proposed order denying a hearing. Such person shall have 30 days after receipt of such proposed order to demonstrate that the submission justifies a hearing.

§ 2.114 Modification or revocation of regulation or order.

If the Commissioner determines upon review of an objection or request for hearing filed pursuant to §§ 2.110 through 2.112 that the regulation or order involved in the proceeding should properly be modified or revoked, he shall promptly issue a notice of such modification or revocation in the FEDERAL REGISTER. Further objections or requests for hearing may be submitted to such modification or revocation, but not to any other provisions in the regulation or order, pursuant to §§ 2.110 through 2.112. Objections and requests for hearing that are not affected by the modification or revocation shall remain on file and be acted upon in accordance with other applicable provisions of this subpart.

§ 2.115 Denial of formal evidentiary public hearing in whole or in part.

If the Commissioner determines upon review of the objections or requests for hearing filed pursuant to §§ 2.110 through 2.114 that a formal evidentiary public hearing is not justified, in whole or in part, he shall publish a notice of such determination in the FEDERAL REGISTER.

(a) The notice shall state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice shall be combined with the notice of hearing required by § 2.118, and shall specify the objections and requests for hearing which have been granted and denied.

(1) Any determination denying a hearing in whole or in part shall specify in detail the reasons therefor. If such determination rests upon an analysis of the data and information submitted to justify a hearing, the inadequacy of such data and information submitted shall be explained.

(2) The notice shall confirm or modify or stay the effective date of the regulation or order involved.

(b) The record of the administrative proceeding relating to denial of a public hearing in whole or in part on any objection and request for hearing shall consist of all of the following:

(1) If the proceeding involves the issuance, amendment, or revocation of a regulation:

(i) All of the documents specified in § 2.10(g).

(ii) All objections and requests for hearing filed by the Hearing Clerk with respect to such regulation pursuant to §§ 2.110 and 2.112.

(iii) If it involves a color additive regulation which was referred to an advisory committee in accordance with section 706(b)(5)(C) of the act, the complete administrative record of the advisory committee proceedings and its report on the matter.

(iv) The notice denying a formal evidentiary public hearing published in the FEDERAL REGISTER.

(2) If the proceeding involves the issuance, amendment, or revocation of an order:

(i) The notice of opportunity for hearing.

(ii) All requests for hearing filed by the Hearing Clerk with respect to such order pursuant to §§ 2.111 and 2.112 of this chapter.

(iii) The record, consisting of the transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents, resulting from any of the optional procedures specified in § 2.113(c), except that it shall not include the transcript of any closed portion of any public advisory committee meeting.

(iv) The notice denying a formal evidentiary public hearing published in the FEDERAL REGISTER.

(c) The administrative record specified in paragraph (b) of this section shall constitute the exclusive record for the Commissioner's decision on denial of a formal evidentiary public hearing in whole or in part. The record of the administrative proceeding shall be closed as of the date of the Commissioner's decision unless some other date for the closing of the record is specified by the Commissioner. Thereafter any person who requested and was denied a hearing may submit a petition for reconsideration pursuant to § 2.8 and a petition for stay of action pursuant to § 2.9. Any person who wishes to rely upon data, information, or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the final regulation or order pursuant to § 2.6(a).

(d) Any determination denying a request for a formal evidentiary public hearing in whole or in part by any person who has an opportunity for such a hearing under the provisions of the laws administered by the Commissioner specified in § 2.12(c) constitutes final agency action reviewable in the courts, pursuant to the specific statutory provisions governing the matter involved, as of the date of publication in the FEDERAL REGISTER of the denial of the public hearing in whole or in part.

(1) Before requesting an order from a court for a stay of action pending review, any person seeking judicial review shall first submit a petition for a stay of action pursuant to § 2.9.

(2) The Food and Drug Administration will request consolidation in a single court of all petitions for judicial review related to a particular matter pursuant to 28 U.S.C. 2112(a).

(3) The time for filing a petition for judicial review of a determination by the Commissioner denying a public hearing on a particular objection or issue shall begin as of the date of publication in the FEDERAL REGISTER of the Commissioner's determination: (i) in the case of an objection or issue relating to a proposal to issue, amend, or revoke a regulation, when the determination denies a public hearing on all objections and issues relating to a part of the proposal the effectiveness of which the Commissioner has determined should not be deferred pending the outcome of any hearing granted with respect to other parts of the proposal; or (ii) in the case of an issue relating to a proposal to issue, amend, or revoke an order, when the determination denies a public hearing on all issues relating to a particular new drug application, new animal drug application, or biologics license. The failure to file such a petition within the period established in the specific statutory provisions governing the matter involved shall constitute a waiver of the right to judicial review of that objection or issue at any later time, regardless whether a hearing

has been granted on other objections and issues.

§ 2.116 Judicial review after waiver of hearing on a regulation.

(a) Any person who has a right to submit objections and a request for hearing pursuant to § 2.110(d) may instead submit objections and waive the right to request a hearing. Such waiver may consist either of an explicit statement waiving such right, or of a failure to request a hearing as provided in § 2.112(a)(4).

(b) Where any person submits an objection and waives the right to request a hearing, the Commissioner shall rule upon such objection pursuant to §§ 2.113 through 2.115. The Commissioner may, in his discretion, order a hearing on the matter pursuant to any of the provisions of this Part regardless whether a hearing is requested.

(c) If, after the notice published by the Commissioner in the FEDERAL REGISTER ruling upon any such objection, no hearing is granted with respect to the matters covered by such objection, and the Commissioner rules adversely on such objection, the person may petition for judicial review of the Commissioner's ruling on such objection in a United States Court of Appeals pursuant to the applicable provisions in the act.

(1) The record for judicial review shall be the record designated in § 2.115 (b)(1).

(2) The time for filing such a petition for judicial review shall begin as of the date of publication in the FEDERAL REGISTER of the Commissioner's ruling on such objection.

§ 2.117 Request for alternative form of public hearing.

(a) A person who has a right to an opportunity for a hearing under this Subpart B may waive that opportunity and in lieu thereof request one of the following alternative forms of public hearing:

(1) A public hearing before a Public Board of Inquiry pursuant to Subpart C of this Part.

(2) A public hearing before a public advisory committee pursuant to Subpart D of this Part.

(3) A public hearing before the Commissioner pursuant to Subpart E of this Part.

(b) Any such request:

(1) May be on his own initiative or at the suggestion of the Commissioner.

(2) Shall be submitted in writing to the Hearing Clerk pursuant to § 2.7.

(3) Shall be submitted at any time prior to publication of a notice of hearing pursuant to § 2.118 or a denial of hearing pursuant to § 2.115.

(4) Shall be:

(i) In lieu of a request for a hearing under this Subpart B, or

(ii) If submitted after or with a request for a hearing under this Subpart B, in the form of a waiver of the right to an opportunity for such a hearing conditioned upon an alternative form of public hearing. Upon acceptance by the Commissioner, such a waiver becomes binding and can thereafter be withdrawn only by waiving any right to any form of a hearing unless the Commissioner for good cause determines otherwise.

(c) Where more than one person has requested and justified a hearing under this Subpart B, an alternative form of hearing will be used only if all such persons concur and waive their right to an opportunity for a hearing under this Subpart B.

(d) The Commissioner will determine whether an alternative form of public hearing should be used, and if so which alternative will be acceptable to him, after considering the requests submitted and the appropriateness of the alternative forms of public hearing for the issues raised in the objections. Upon acceptance by the Commissioner, such acceptance becomes binding upon him unless the Commissioner for good cause determines otherwise.

(e) The Commissioner shall publish in the FEDERAL REGISTER a notice of hearing announcing an alternative form of public hearing pursuant to this section, setting forth the following information:

(1) A statement of the provisions of the regulation or order which is the subject of the public hearing.

(2) A statement specifying any part of the regulation or order which has been stayed.

(i) Any part of a regulation or order which is subject to an opportunity for a hearing under this Subpart B pursuant to statutory provisions under which the filing of proper objections and a request for hearing automatically stays the regulation or order, and for which a public hearing has been granted, shall be stayed.

(ii) The Commissioner may, in his discretion, stay in whole or in part any regulation or order which is not required by statute to be stayed.

(3) The time, date, and place of the hearing, or a statement that such information shall be contained in a subsequent notice published in the FEDERAL REGISTER.

(4) The names of the parties to the public hearing.

(5) A statement of the issues to be considered at the public hearing. The statement of the issues determines the scope of the public hearing.

(6) If the public hearing will be conducted by a Public Board of Inquiry:

(i) The time within which the parties may submit nominees for the Board pursuant to § 2.202(b).

(ii) The time within which a notice of participation shall be filed by any person who wishes to participate in the proceeding. A notice of participation shall be filed in the form and pursuant to the requirements specified in § 2.131.

(iii) The time within which participants shall submit written data and information pursuant to § 2.205. The notice shall list the contents of the portions of the administrative record of the proceeding as of that time relevant to the issues to be considered at the public hearing before the Board, and shall state that such portions have been placed on public display in the office of the Hearing Clerk and that additional copies of any material already submitted pursuant to § 2.205 need not be included with any later submissions by participants in the proceeding.

(7) If the public hearing will be conducted by a Public Board of Inquiry or a public advisory committee, a statement whether the findings and conclusions resulting from such public hearing shall have the legal status and be handled as a recommended decision or as an initial decision pursuant to § 2.180. If the notice of hearing is silent on this matter, the findings and conclusions shall be an initial decision.

(f) The findings and conclusions resulting from a public hearing before a Public Board of Inquiry or a public advisory committee pursuant to this section shall have the same legal status and be handled as a recommended decision or an initial decision of a presiding officer issued pursuant to § 2.180, as determined by the notice of hearing published pursuant to paragraph (e) of this section. The findings and conclusions resulting from a public hearing before the Commissioner pursuant to this section shall have the same legal status and be handled as a tentative order issued pursuant to § 2.181. Thereafter, the participants in the proceeding may pursue the administrative and court remedies that are available as specified in §§ 2.180 through 2.191.

(g) If a public hearing before a public advisory committee pursuant to Subpart D of this Part or a public hearing before the Commissioner pursuant to Subpart E of this Part is used as an alternative form of hearing pursuant to this section, all submissions relating to the hearing which constitute the administrative record of the hearing shall be made to the Hearing Clerk and the provisions of § 2.5 (j) shall govern the availability of such submissions for public examination and copying.

§ 2.118 Notice of hearing; stay of action.

(a) If the Commissioner determines upon review of the objections and requests for hearing filed pursuant to §§ 2.110 through 2.114 that a formal evidentiary public hearing has been justified on any issue, he shall publish a notice of such determination in the FEDERAL REGISTER, setting forth the following information:

(1) A statement of the provisions of the regulation or order which is the subject of the formal evidentiary public hearing.

(2) A statement specifying any part of the regulation or order that has been stayed.

(i) Any part of a regulation or order which is subject to an opportunity for a hearing under this Subpart E pursuant to statutory provisions under which the filing of proper objections and a request for hearing automatically stays the regulation or order, and for which a hearing has been requested and justified, shall be stayed.

(ii) The Commissioner may, in his discretion, stay in whole or in part any

regulation or order which is not required by statute to be stayed.

(3) The names of the parties to the formal evidentiary public hearing.

(4) A statement of the issues of fact raised by the objections and request for hearing as to which a hearing has been justified.

(5) A statement of any objections or requests for hearing as to which a hearing has not been justified, which shall be subject to the provisions of § 2.115.

(6) The designation of the presiding officer to conduct the hearing or a statement that the presiding officer will be designated in a subsequent notice.

(7) The time within which notices of appearance shall be filed pursuant to § 2.131.

(8) The date, time, and place when the prehearing conference will commence or a statement that such date, time, and place will be announced in a subsequent notice. The prehearing conference shall not commence until after the expiration of the time for filing the notice of participation required by § 2.131(a).

(9) The time within which participants shall submit written data, information, and views pursuant to § 2.153. The notice shall list the contents of the portions of the administrative record of the proceeding as of that time relevant to the issues to be considered at the public hearing and shall state that such portions have been placed on public display in the office of the Hearing Clerk and that additional copies of any material already submitted pursuant to § 2.153 need not be included with any later submissions by participants in the proceeding.

(b) The statement of the issues of fact raised by the objections or request for hearing as to which a hearing has been justified determines the scope of the formal evidentiary public hearing and the matters as to which the development of evidence will be permitted. The statement of the issues of fact may be revised by order of the presiding officer. Any participant may obtain interlocutory review by the Commissioner of a decision by the presiding officer to revise the statement of the issues of fact to include an issue as to which the Commissioner has not granted a hearing or to eliminate an issue as to which the Commissioner has granted a hearing.

(c) A formal evidentiary public hearing shall be deemed to commence as of the date of publication of the notice of hearing in the FEDERAL REGISTER.

§ 2.119 Effective date of a regulation.

(a) If no objections are filed and no hearing is requested on a regulation pursuant to § 2.110(e), the regulation shall be effective on the date specified in the notice promulgating it.

(b) The Commissioner shall publish a notice in the FEDERAL REGISTER stating that fact. Such notice may extend the time for compliance with the regulation.

§ 2.120 Effective date of an order.

(a) If a person who is subject to a notice of opportunity for hearing published in the FEDERAL REGISTER pursuant to § 2.111(b) does not request a hearing, the Commissioner:

(1) Shall issue a final order published in the FEDERAL REGISTER withdrawing approval of an NDA, NADA, or biologics license, in whole or in part, and establishing the effective date of such final order.

(2) If the final order involves an NADA, shall forthwith revoke, in whole or in part, the applicable regulation pursuant to section 512(i) of the act.

(b) If a person who is subject to a notice of opportunity for hearing published in the FEDERAL REGISTER pursuant to § 2.111(b) requests a hearing and others do not, the Commissioner may issue a final order covering all such drug products at once or may issue more than one final order covering different drug products at different times.

APPEARANCE AND PARTICIPATION

§ 2.130 Appearance.

(a) Any person who has filed a written notice of participation pursuant to § 2.131 may appear in person or by or with counsel or other representative in any formal evidentiary public hearing and, subject to § 2.155, may be heard with respect to all matters relevant to the issues under consideration.

(b) Any person appearing in a representative capacity in any such hearing shall submit a signed statement of authorization or other documentation verifying his authority to do so.

(c) If there is a change in the person appearing in a representative capacity, such person shall submit the statement or other documentation required by paragraph (b) of this section.

(d) The presiding officer may strike the appearance of any person for violation of the rules of conduct established in § 2.156.

§ 2.131 Written notice of participation.

(a) Any person desiring to participate in any formal evidentiary public hearing shall, within 30 days after publication of the notice of hearing in the FEDERAL REGISTER pursuant to § 2.118, file with the Hearing Clerk in accordance with § 2.5 a written notice of participation in the form specified in paragraph (b) of this section.

(b) The form of the written notice of participation shall be as follows:

(Date)

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

NOTICE OF PARTICIPATION

Docket No. ------

Pursuant to the provisions of 21 CFR Part 2, Subpart B, governing the procedure in this matter, please enter the participation of:

(Name)

(Street address)

(City and State)

(Telephone number)

Service on behalf of the above will be accepted by:

(Name)

(Street address)

(City and State)

(Telephone number)

The following statements are made as part of this notice of participation.

A. *Specific Interest.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to Participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of 21 CFR 2.153, or, in the case of a hearing before a Public Board of Inquiry, with the requirements of 21 CFR 2.205.)

(Signed)

(c) All notices, pleadings, documents, and other submissions to be served upon a person in the course of the hearing pursuant to § 2.151 shall be mailed to the address shown in the notice of participation or delivered in person to the person specified in the notice of participation.

(d) A written notice of participation may be amended by filing an amendment with the Hearing Clerk and serving it upon all participants in the hearing.

(e) No person may participate in any aspect or at any stage of a formal evidentiary public hearing if he has not filed a written notice of participation or if his notice of participation has been stricken pursuant to paragraph (g) of this section.

(f) The presiding officer may, upon motion, permit a person to file a written notice of participation in the hearing after the 30-day time period for filing such notices has expired, but only upon a showing of good cause as to why such a notice was not filed within such time period.

(g) The presiding officer may strike the participation of any person, after giving him an opportunity to show cause why his participation should not be stricken, for nonparticipation in the hearing or for failure to comply with any requirement of this subpart, e.g., disclosure of information as required by § 2.153 or the prehearing order issued pursuant to § 2.158. Any person whose

participation has been stricken may petition the Commissioner for interlocutory review of such action.

§ 2.135 Advice on public participation in formal evidentiary public hearings.

(a) *Designated agency contact.* All inquiries from the public about scheduling, location, and general procedures should be addressed to the Associate Commissioner for Compliance. The staff of the Associate Commissioner for Compliance will attempt to respond promptly to all inquiries from members of the public, as well as to simple requests for information from participants in formal evidentiary public hearings. Such inquiries or requests should be addressed to the Office of the Associate Commissioner for Compliance (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, or telephone (301) 443-3480.

(b) *Hearing schedule changes.* Requests by hearing participants for changes in the schedule of a hearing or in the dates for filing documents, briefs, or other pleadings related to the hearing should be made in writing directly to the Administrative Law Judge. All such correspondence should be addressed to the Administrative Law Judge (HF-3), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

(c) *Legal advice to individuals.* The Food and Drug Administration does not have the resources to provide individual legal advice to members of the public concerning participation in such proceedings. Furthermore, to do so would compromise the independence of the Commissioner's office and invite charges of improper interference in the hearing process. Accordingly, the Associate Commissioner for Compliance will decline to entertain inquires about the strengths or weaknesses of any party's position at a hearing, litigation strategy, or other similar matters.

(d) *Role of the Office of the Chief Counsel.* Under no circumstances will the Office of the Chief Counsel, Food and Drug Administration, directly provide advice on the subject of any formal evidentiary public hearing to any person who is participating or may participate in the hearing. In every such hearing, certain attorneys in the office are designated to represent the bureau or bureaus whose action is the subject of the hearing. Other members of the office, including ordinarily the Chief Counsel, are designated to advise the Commissioner on any final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the Office of the Chief Counsel also to advise other participants in a hearing, or for any attorney who may be called on to advise the Commissioner to respond to inquiries from other participants in the hearing, for such participants may be urging views contrary to those of the bureau involved or to what may ultimately be the final conclusions of the Commissioner. Accordingly, members of the staff of the Office of the Chief Counsel, other than those attorneys responsible for representing the bureau or bureaus whose action is the subject of the hearing, will decline to respond to inquiries from any participating or potential participant relating to the content or conduct of any formal evidentiary public hearing.

(e) *Communication between participants and attorneys.* Participants in a hearing may communicate with the attorneys who are responsible for representing the bureau or bureaus whose action is the subject of the hearing, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings; are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the Hearing Clerk, Food and Drug Administration.

PRESIDING OFFICER

§ 2.140 Presiding officer.

A presiding officer shall preside over every formal evidentiary public hearing held pursuant to this subpart. The presiding officer shall be the Commissioner, a member of the office of the Commissioner to whom the Commissioner has delegated the responsibility for the matter involved, or an Administrative Law Judge qualified under 5 U.S.C. 3105 and designated by the Commissioner to conduct the hearing in the notice of hearing or in a later notice published pursuant to § 2.118(a)(6) of this chapter.

§ 2.141 Commencement of functions.

The functions of the presiding officer shall commence upon his designation and terminate upon the forwarding of the recommended decision or the filing of the initial decision pursuant to § 2.180.

§ 2.142 Authority of presiding officer.

The presiding officer shall have the authority and duty to conduct a fair and expeditious hearing and to maintain order. He shall have all powers necessary to these ends, including, but not limited to, the power to:

(a) Arrange and issue notice of the date, time, and place of oral hearings and conferences and, upon proper notice, to change the date, time, and place of oral hearings and conferences previously set.

(b) Establish the methods of procedures to be used in the development of evidentiary facts, including the procedures specified in § 2.158(b) and to rule upon the need for oral testimony and cross-examination pursuant to § 2.154 (b).

(c) Prepare, after considering the views of the participants, written statements of areas of factual disagreement among the participants.

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may facilitate the expeditious disposition of the hearing.

(e) Administer oaths and affirmations.

(f) Regulate the course of the hearing and govern the conduct of participants therein.

(g) Examine witnesses and inform witnesses that they must fully respond to all questions or have all of their testimony stricken.

(h) Rule on, admit, exclude, or limit evidence.

(i) Establish the time for filing motions, petitions, briefs, findings, or other submissions.

(j) Rule on motions and other procedural matters pending before him.

(k) Rule on motions for summary decision in accordance with § 2.159.

(l) Order that the hearing be conducted in stages in cases where the number of parties is large or the issues are numerous and complex.

(m) Waive, suspend, or modify any rule in this subpart pursuant to § 2.25 if he determines that no party will be prejudiced, the ends of justice will be thereby served, and such action is in accordance with law.

(n) Strike the participation of any person pursuant to § 2.131(g) or exclude any person from the hearing pursuant to § 2.156 or otherwise take reasonable disciplinary action.

(o) Take any action permitted to the presiding officer as authorized by this Subpart B or in conformance with law for the maintenance of order at the hearing and for the expeditious, fair, and impartial conduct of the proceeding.

§ 2.143 Disqualification of presiding officer.

(a) Any participant in the proceeding may, by motion made to the presiding officer, request that the presiding officer disqualify himself and withdraw from the proceeding. The presiding officer shall rule upon any such motion and shall promptly certify the motion and his ruling thereon to the Commissioner for interluctory review.

(b) A presiding officer shall withdraw from any proceeding in which he deems himself disqualified for any reason.

§ 2.144 Unavailability of presiding officer.

(a) In the event that the presiding officer is unable to act for any reason whatever, the powers and duties to be performed by him in connection with any proceeding shall be assigned by the Commissioner to another presiding officer. Such substitution shall have no effect on any aspect of the hearing, except as the new presiding officer may order pursuant to the provisions of this subpart.

(b) Any motion predicated upon such substitution shall be made within 10 days thereafter.

HEARING PROCEDURES

§ 2.150 Filing and service of submissions.

(a) All submissions, including pleadings, relating to a formal evidentiary

public hearing shall be filed with the Hearing Clerk pursuant to § 2.5.

(b) A copy of each such submission shall be served by the person making the submission upon each other participant in the proceeding, except that submissions of documentary data and information may but are not required to be served upon each participant. Any transmittal letter, pleading, summary, statement of position, certification pursuant to paragraph (d) of this section, or other similar document accompanying a submission of documentary data and information shall be served upon each participant pursuant to this paragraph.

(c) Service pursuant to this section shall be accomplished by mailing it to the address shown in the notice of participation or by personal delivery.

(d) All submissions pursuant to this section shall be accompanied by a signed certification stating the extent to which the submission has been served on each participant, or is exempt from such service, pursuant to paragraph (b) of this section.

(e) No written submission or other portion of the administrative record shall be held in confidence, except as provided in § 2.171.

§ 2.151 Petition to participate in forma pauperis.

(a) Any participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden shall submit to the Commissioner a petition to participate in forma pauperis.

(b) Such petition shall be pursuant to § 2.7, except that the heading shall be "REQUEST TO PARTICIPATE IN FORMA PAUPERIS, DOCKET NO. _____." Pursuant to the guidelines established in § 4.43 (b) and (c) of this chapter, such petition shall demonstrate that either (i) the person is indigent and his participation has a strong public interest justification, or (ii) such participation is in the public interest because it can be considered primarily as benefiting the general public. Filing and service requirements for such a petition shall be those provided for the filing and service of submissions in paragraph (c) of this section, whether or not the petition is subsequently granted.

(c) The Commissioner may, in his discretion, grant or deny such petition. If such petition is granted, the participant may file only one copy of each submission with the Hearing Clerk, and it shall be the responsibility of the Hearing Clerk, at agency expense, to make sufficient additional copies for the administrative record and to serve a copy upon each other participant.

§ 2.152 Advisory opinions.

Prior to or during the pendency of any formal evidentiary public hearing any person may request the Commissioner for an advisory opinion as to the applicability to a specific situation of any regulation or order under consideration in an administrative proceeding. Requests for such opinions shall be made pursuant to § 2.19.

§ 2.153 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published pursuant to § 2.118, the director of the bureau responsible for the matters involved in the hearing shall submit to the Hearing Clerk:

(1) The relevant portions of the administrative record of the proceeding up to that time. Those portions of the administrative record of the proceeding which are not relevant to the issues to be considered at the public hearing shall not be placed on public display and shall not be part of the administrative record of that proceeding.

(2) All documents in his files containing factual data and information, whether favorable or unfavorable to his position, which relate to the issues involved in the hearing.

(3) All other documentary data and information on which he relies.

(4) A narrative statement of his position on the factual issues stated in the notice of hearing and the type of evidence he intends to introduce in the hearing in support of his position.

(5) A signed statement that, to the best of his knowledge and belief, the submission complies with the requirements of this section.

(b) Within 60 days after the notice of hearing is published in the FEDERAL REGISTER pursuant to § 2.118, or, where no participant will be prejudiced, within such shorter or longer period of time as the presiding officer orders, each participant shall submit to the Hearing Clerk all data and information specified in paragraphs (a) (2) through (5) of this section, and any objections with respect to the completeness of the administrative record filed pursuant to paragraph (a) (1) of this section.

(c) The submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known or available when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen at that time.

(d) The failure to comply with the a participant shall constitute a waiver provisions of this section in the case of of the right to participate further in the hearing and in the case of a party shall also constitute a waiver of the right to a hearing.

(e) Any documentary data and information submitted by one participant may be referenced by another. Participants are encouraged to exchange and consolidate lists of documentary evidence prior to reproducing it for submission to the Hearing Clerk in order to reduce duplicative submissions. If a particular document is bulky or is in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, a participant may request the presiding officer for permission to submit a reduced number of copies to the Hearing Clerk.

(f) The presiding officer shall rule on questions relating to this section.

§ 2.154 Purpose; oral and written testimony; burden of proof.

(a) A formal evidentiary public hearing is held for the purpose of receiving evidence relating to an issue of fact determining the validity of a regulation or order subject to such a hearing. The objective of such a hearing is the fair determination of facts in a manner consistent with the right of all interested persons to participate and the public interest in expeditiously concluding controversies over matters affecting the public health and welfare.

(b) To achieve this objective, the evidence at a formal evidentiary public hearing shall be developed to the maximum feasible extent through written submissions, including written direct testimony which may be in narrative or in question-and-answer form, written cross-examination, and such other methods for the testing and proper evaluation of factual propositions as the presiding officers determines are necessary for a full and true disclosure of relevant evidentiary facts.

(1) In a formal evidentiary public hearing, the issues may have general applicability and depend upon general facts that do not concern any particular action of a specific party, e.g., the safety or effectiveness of a class of drug products, the safety of a food or color additive, or a definition and standard of identity for a food, or the issues may have specific applicability to past action and depend upon particular facts concerning only that party, e.g., the applicability of a grandfather clause to a particular brand of a drug or the failure of a particular manufacturer to meet required manufacturing and processing specifications or other general standards.

(i) Where the proceeding involves general issues, all direct testimony shall be submitted in writing, except upon a showing that written direct testimony is insufficient to adduce testimony for a full and true disclosure of relevant evidentiary facts and that the participant will be prejudiced by denial of a request to present oral direct testimony. Where the proceeding involves particular issues, each party shall determine whether, and the extent to which, he wishes to present his direct testimony orally or in writing.

(ii) Oral cross-examination of witnesses shall be permitted only upon a showing that the cross-examination requested is necessary because alternative means of developing relevant evidentiary facts are insufficient to adduce testimony required for a full and true disclosure of relevant evidentiary facts, and that the party requesting opportunity for oral cross-examination will be prejudiced by denial of the request.

(2) All oral and written testimony of witnesses shall be under oath.

(c) In considering whether a request for cross-examination of a particular witness has been justified, the presiding officer shall take into account the following factors:

(1) The extent to which a full and true disclosure with respect to any disputed issue of fact can be achieved through the presentation of additional direct evidence.

(2) The extent to which there are circumstantial guarantees of the trustworthiness of the direct evidence sought to be made the subject of cross-examination.

(3) Whether the particular person's testimony sought to be made the subject of cross-examination is required for the resolution of any disputed issue of fact.

(4) Whether a dispute concerns facts in contrast to the inferences and conclusions to be drawn from the facts.

(5) Whether the direct evidence sought to be made the subject of cross-examination is relevant and material to the issues of fact as to which the hearing has been justified.

(6) Whether the direct evidence of the witness sought to be cross-examined was introduced by oral direct testimony, and granting the request would expedite the hearing.

(d) Except as provided in paragraph (e) of this section, in any formal evidentiary public hearing involving the issuance, amendment, or revocation of a regulation or order, the originator of the proposal or petition or of any significant modification thereof shall be, within the meaning of 5 U.S.C. 556(d), the proponent of the regulation or order, and accordingly shall have the burden of proof. Any participant who proposes the substitution of a new provision for a provision objected to shall have the burden of proof in relation to the new provision so proposed.

(e) At any formal evidentiary public hearing involving the issuance, amendment, or revocation of a regulation or order relating to the safety or effectiveness of a drug, food additive, or color additive, the participant who is contending that the product is safe or effective or both and who is requesting approval or contesting withdrawal of approval shall have the burden of proof in establishing safety or effectiveness or both and thus the right to approval. The burden of proof remains on such participant in an amendment or revocation proceeding.

§ 2.155 Participation of nonparties.

(a) A nonparty participant shall have the right:

(1) To attend all conferences (including the prehearing conference), oral proceedings, and arguments held in connection with or as part of a formal evidentiary public heading.

(2) To submit written testimony and documentary evidence for inclusion in the record.

(3) To file written objections, briefs, and other pleadings.

(4) To present oral argument.

(b) A nonparty participant shall not have the right:

(1) To submit written interrogatories.

(2) To conduct cross-examination.

(c) Any person whose petition is the subject of the hearing shall have the same rights as a party.

(d) The presiding officer shall permit a nonparty participant additional rights when he concludes that the participant's interests would not be adequately protected otherwise or that broader participation is required for a full and true disclosure of relevant evidentiary facts, but the rights of a nonparty participant shall in no event exceed the rights of a party.

§ 2.156 Conduct at oral hearings or conferences.

All participants in a formal evidentiary public hearing shall conduct themselves with dignity and observe judicial standards of practice and ethics. They shall not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. A representative of any party shall use his best efforts to restrain his client from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, continued use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any such hearing, shall constitute grounds for immediate exclusion from the proceeding at the direction of the presiding officer.

§ 2.157 Time and place of prehearing conference.

A prehearing conference shall commence at the date, time, and place announced in the notice of hearing, or in a later notice, published in the FEDERAL REGISTER pursuant to § 2.118(a)(8), or as specified by the presiding officer in a notice published in the FEDERAL REGISTER modifying a prior notice. At that conference the presiding officer shall establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination if leave to conduct oral examination is granted on any issue, insofar as is practicable at that time.

§ 2.158 Prehearing conference procedure.

(a) All participants in a formal evidentiary hearing shall appear at the prehearing conference fully prepared to discuss in detail and resolve all matters specified in paragraph (b) of this agenda as may be issued by the Commissioner or the presiding officer.

(1) All participants shall cooperate fully at all stages of the proceeding to achieve the objective of a fair and expeditious hearing, through advance preparation for the prehearing conference, including communications between the participants, requests for information at the earliest possible time, and the commencement of preparation of testimony. The failure of any participant to appear at the prehearing conference or to raise any matters that could reasonably be anticipated and resolved at the prehearing conference shall not be permitted to delay the progress of the hearing and shall constitute a waiver of the rights of the participant with regard thereto, including all objections to the agreements reached, actions taken, or rulings issued by the presiding officer with regard thereto, and may be grounds for striking his participation pursuant to § 2.131.

(2) Each participant shall bring to the prehearing conference (to the first session or, if that is impracticable, to a subsequent session scheduled by the presiding officer) the following specific information, which shall be filed with the Hearing Clerk pursuant to § 2.151:

(i) Any additional data or information to supplement the submission filed pursuant to § 2.153, which may be filed if approved pursuant to § 2.153(c).

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, together with a full curriculum vitae for each such witness. Additional witnesses may later be identified, with the approval of the presiding officer, upon a showing that the witness was not reasonably available at the time of the prehearing conference or that the relevance of his views could not reasonably have been foreseen at that time.

(iii) All prior written statements, which shall include articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by the persons who have been identified as witnesses if all of the following conditions apply:

(a) The statement is available without making request of the witness or any other person.

(b) The statement relates to the subject matter of the witness's testimony.

(c) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer shall conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement which are to be considered at the formal evidentiary hearing. The presiding officer may:

(i) Require each participant to prepare and file written statements of position on the areas of disagreement described in the notice of hearing.

(ii) Require each participant to summarize the testimony which he proposes to present in support of his position, and to describe and justify any additional documentary evidence not included with the submission pursuant to § 2.153 and expected to be introduced.

(iii) Consider oral or written argument with respect to the areas of disagreement described in the notice of hearing or with respect to objections thereto.

(iv) Hold conferences off the record in an effort to reach agreement as to fac-

tual questions on which disagreement exists, except that all statements as to areas of disagreement shall be reduced to writing or be the subject of a verbatim transcript approved by the participants.

(2) To identify the most appropriate techniques for the development of the evidence on issues in controversy in addition to the submissions pursuant to § 2.153, and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, the oral examination. The methods and procedures which the presiding officer may consider for use in developing the evidence include but are not limited to:

(i) Submission of narrative statements of position on each factual issue in controversy.

(ii) Submission of evidence or identification of previously submitted evidence in support of such statements, such as affidavits, verified statements of fact, data, studies, reports, and any other type of written material.

(iii) Identification of all witnesses and submission of testimony of such witnesses.

(iv) Exchange of written interrogatories directed to particular witnesses for the purpose of developing the evidence on particular disputed facts.

(v) Written requests to any party for the production of additional documentation, data, or other information relevant and material to the facts in issue.

(vi) Submission of written questions to be orally propounded by the presiding officer to a specific witness.

(vii) Isolation of disputed facts as to which oral examination and/or cross-examination is appropriate pursuant to § 2.154(b).

(3) To group participants with substantially like interests for purposes of eliminating duplicative or repetitive development of the evidence, making and arguing motions and objections, including motions for summary decision, filing briefs, and presenting oral argument.

(4) To hear and determine objections to the admission into evidence of data and information submitted pursuant to § 2.153.

(5) To investigate the possibility of obtaining stipulations and admissions of facts.

(6) To consider such other matters and take such other action as may aid in the expeditious disposition of the proceeding.

(c) The presiding officer shall prepare a written prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. Such order shall include a written statement of the areas of factual agreement and disagreement and of the methods and procedures to be used in developing the evidence and the respective duties of the parties in connection therewith. Such order shall control the subsequent course of the hearing unless modified by the presiding officer for good cause shown.

§ 2.159 Summary decisions.

(a) Any participant in a formal evidentiary public hearing may, after commencement of the hearing, submit to the Hearing Clerk pursuant to § 2.150 a motion with or without supporting affidavits for a summary decision in his favor with respect to any issue under consideration. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days by the presiding officer for good cause shown, serve opposing affidavits or countermove for summary decision. The presiding officer may, in his discretion, set the matter for argument and call for the submission of briefs.

(b) The presiding officer shall grant such motion if the objections, requests for hearing, other pleadings, affidavits, and any material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits shall set forth such facts as would be admissible in evidence and shall show affirmatively that the affiant is competent to testify to the matters stated therein. When a motion for summary decision is made and supported as provided in this section, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions. His response, by affidavits or as otherwise provided in this section, must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that he cannot, for sound reasons stated, present by affidavit facts essential to justify his opposition, the presiding officer may deny the motion for summary decision or may order a continuance to permit affidavits or additional evidence to be obtained or may make such order as is just.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and development of evidentiary facts is found necessary, the presiding officer shall make an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified shall be deemed established.

(f) Any participant may obtain interlocutory review by the Commissioner of a summary decision of the presiding officer.

§ 2.160 Receipt of evidence.

(a) A formal evidentiary public hearing consists of the development of evidence and the resolution of factual issues in the manner set forth in the procedures established in this subpart and in the order issued by the presiding officer after the prehearing conference.

(b) All orders issued by the presiding officer, transcripts of oral hearings or arguments, written statements of position, written direct testimony, written interrogatories and the responses thereto, and any other data, studies, reports, documentation, information, and other written material of any kind submitted in the proceeding shall be a part of the administrative record of the hearing, and shall be placed on public display in the office of the Hearing Clerk promptly upon receipt in that office, except as provided in § 2.171.

(c) A written submission to the record shall be admissible as evidence unless a participant objects and the presiding officer excludes it as inadmissible.

(1) The presiding officer shall exclude written evidence as inadmissible only on the following grounds:

(i) The evidence is a document that is not authentic, or

(ii) Exclusion of part or all of the written evidence of a participant is necessary or appropriate to enforce the requirements of this subpart.

(2) The presiding officer shall not exclude any written evidence as inadmissible on the ground that it is irrelevant, immaterial, or repetitive. All such written evidence shall be admitted even if it is of no probative value. Irrelevant or immaterial written evidence shall be regarded as such and shall not be given weight or probative value because of its admission.

(3) Any written evidence excluded by the presiding officer as inadmissible shall remain a part of the administrative record, as an offer of proof, for purposes of judicial review.

(d) Oral testimony, whether on direct or on cross-examination, shall be admissible as evidence unless a participant objects and the presiding officer excludes it as inadmissible.

(1) The presiding officer shall exclude oral evidence as inadmissible only on the following grounds:

(i) The oral evidence is irrelevant, immaterial, or repetitive, or

(ii) Exclusion of part or all of the oral evidence of a participant is necessary or appropriate to enforce the requirements of this subpart.

(2) Whenever oral evidence is excluded by the presiding officer as inadmissible, the participant may take written exception to such ruling in his brief to the Commissioner, without formally taking oral exception at the hearing. Upon review, the Commissioner may reopen the hearing to permit such evidence to be admitted if he determines that its exclusion was erroneous and prejudicial.

(e) All participants shall be responsible for apprising themselves of the contents of the administrative record in timely fashion for purposes of formulating objections to the admissibility of any item into evidence and evaluating the need for the submission of additional evidence.

(f) The presiding officer shall, on his own initiative as the circumstances warrant, or upon the motion of any participant for good cause shown, schedule conferences to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(g) The presiding officer shall conduct such proceedings as are necessary for the taking of oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted to him by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall screen written questions submitted to him to be asked orally of witnesses in order to exclude irrelevant or repetitious questions. The presiding officer shall limit oral cross-examination to prevent irrelevant or repetitious examination.

(h) The presiding officer shall order that the proceedings be closed for the taking of oral testimony relating to matters specified in § 2.5(j)(3). Participation in such closed proceedings shall be limited to the witness, his counsel, and Federal Government Executive Branch employees and special government employees. Such closed proceedings shall be permitted only for such oral testimony as directly relates to matters specified in § 2.5(j)(3) and shall not include other matters.

(i) Any party may at any time move for an order that the taking of evidence be concluded. Such motion shall be granted unless within 10 days of service thereof a participant files an opposition to such motion, supported by an affidavit stating that he wishes to submit, or by specified means adduce, additional evidence on facts relevant to the issues at the hearing, describing the nature of such evidence, and estimating the time necessary to submit or adduce it. In the event that such an opposition is filed, the presiding officer may (1) grant the motion if it appears that the evidence described in the affidavit filed in support of the opposition does not relate to relevant facts or is duplicative or cumulative of evidence already on record at the hearing, (2) deny the motion, (3) grant the motion but postpone its effect to a specified date in order that the participant opposing it may submit or adduce the evidence described in the affidavit, or (4) take such other action as is appropriate under the circumstances. Upon the denial of a motion made under this paragraph, or the granting of a motion with a postponed effective date, no participant may submit additional evidence unless he has filed an opposition to the motion, and any participant who has filed an opposition shall confine the submission of additional evidence to the matters set forth in the affidavit in support of the opposition.

§ 2.161 Official notice.

Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of the Food and Drug Administration as an expert agency.

(b) Where official notice is taken of a material fact not appearing in the evidence of record, any participant, on timely request, shall be afforded an opportunity to show the contrary.

§ 2.162 Briefs and argument.

(a) As soon as possible after the completion of the taking of evidence, the presiding officer shall announce a schedule for the filing of briefs. Briefs shall include a statement of position on each issue as supported by the evidence of record, with specific and complete citations to the evidence, together with citations of points of law relied upon. Briefs shall contain proposed findings of fact and conclusions of law.

(b) The presiding officer may permit the presentation of oral argument at his discretion and in such manner as he believes is both practical and fair.

(c) Briefs and oral argument shall attempt to refrain from disclosing specific details of written and oral testimony and documents relating to matters specified in § 2.5(j)(3), but any reference essential to resolution of the issues involved shall be permitted.

§ 2.163 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 2.118(b), 2.131(g), 2.143(a), 2.159(f), and 2.165(c), where an interlocutory appeal is specifically authorized by this subpart, rulings of the presiding officer may not be appealed to the Commissioner prior to his consideration of the entire administrative record of the hearing.

(b) Any ruling of the presiding officer shall be the subject of an interlocutory appeal to the Commissioner where the presiding officer certifies on the record or in writing that such an interlocutory appeal is necessary to prevent exceptional delay, expense, or prejudice to any participant, or substantial harm to the public interest.

(c) Where an interlocutory appeal is made to the Commissioner, any participant may file a brief with the Commissioner within such period as the Commissioner directs. Oral argument will be heard only at the discretion of the Commissioner.

§ 2.164 Official transcript.

(a) Any oral testimony given at a formal evidentiary public hearing shall be reported verbatim. The presiding officer will make provision for a stenographic record of the testimony and for such copies of the transcript thereof as he requires for his own purpose.

(b) One copy of such transcript shall be placed on public display in the office of the Hearing Clerk upon receipt, where it may be reviewed by any interested person.

(c) Any person desiring a copy of the transcript of the testimony taken at the hearing or of any part thereof shall be entitled to the same, except as provided in § 2.171, upon application to the official reporter and payment of the costs thereof or pursuant to the provisions of Part 4 of this chapter.

§ 2.165 Motions.

(a) Any participant may make a motion, including any request, to the presiding officer with respect to any matter relating to the proceeding. All motions shall be filed pursuant to § 2.150, except those made in the course of an oral hearing before the presiding officer.

(b) Within 10 days after service of any such motion, which may be shortened to 3 days or extended for an additional 10 days by the presiding officer for good cause shown, any participant in the proceeding may file a response to the motion.

(c) The presiding officer shall rule upon such motion and may certify such motion, together with his ruling, to the Commissioner for interlocutory review.

ADMINISTRATIVE RECORD

§ 2.170 Administrative record of a formal evidentiary public hearing.

(a) The record of the administrative proceeding shall consist of the following:

(1) The order or regulation which gave rise to the hearing.

(2) All objections and requests for hearing filed by the Hearing Clerk pursuant to §§ 2.110 through 2.112.

(3) The notice of hearing published pursuant to § 2.118.

(4) All notices of participation filed pursuant to § 2.131.

(5) All FEDERAL REGISTER notices pertinent to the proceeding.

(6) All submissions filed pursuant to § 2.151, e.g., the submissions required by § 2.153, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents.

(7) The transcript, written order, and all other documents relating to the prehearing conference, prepared pursuant to § 2.158.

(8) All documents relating to any motion for summary decision pursuant to § 2.159.

(9) All documents of which official notice is taken pursuant to § 2.161.

(10) All pleadings filed pursuant to § 2.162.

(11) All documents relating to any interlocutory appeal pursuant to § 2.163.

(12) All transcripts prepared pursuant to § 2.164.

(13) Any other documents relating to the hearing and filed with the Hearing Clerk by the presiding officer or any participant.

(b) The record of the administrative proceeding shall be closed:

(1) With respect to the taking of evidence, at the time specified in § 2.160 (g).

(2) With respect to pleadings, at the time specified in § 2.162(a) for the filing of briefs.

(c) The presiding officer may, in his discretion, reopen the record to receive further evidence at any time prior to the filing of a recommended or initial decision.

§ 2.171 Examination of administrative record.

The availability for public examination and copying of each document which is a part of the administrative record of

the hearing shall be governed by the provisions of § 2.5(j). Each document which is available for public examination or copying shall be placed on public display in the office of the Hearing Clerk promptly upon receipt in that office.

§ 2.172 Correction of administrative record.

After the close of the taking of evidence, the presiding officer shall afford witnesses, participants, and their counsel time, not longer than 30 days except in unusual cases, in which to submit written proposed corrections of the transcript of any oral testimony taken at the hearing, pointing out errors that may have been made in transcribing the testimony. The presiding officer shall promptly thereafter order such corrections made as in his judgment are required to make the transcript conform to the testimony.

§ 2.173 Record for administrative decision.

The administrative record of the hearing specified in § 2.170 shall constitute the exclusive record for decision.

INITIAL AND FINAL DECISIONS

§ 2.180 Initial decision.

(a) Within 90 days after the filing of briefs and any oral argument pursuant to § 2.162, the presiding officer shall prepare and file an initial decision based solely upon the administrative record of the hearing. The time for filing an initial decision may be extended by the Commissioner upon request of the presiding officer stating reasons therefor.

(b) The initial decision shall contain:

(1) Findings of fact based upon relevant, material, and reliable evidence of record.

(2) Conclusions of law.

(3) A full articulation of the reasons for the findings and conclusions, including a discussion of the significant factual and legal contentions made by any participant.

(4) Full citations to the administrative record supporting the findings and conclusions.

(5) An appropriate regulation or order supported by substantial evidence of record and based upon the findings of fact and conclusions of law.

(6) An effective date for the regulation or order.

(c) The initial decision shall attempt to refrain from disclosing specific details of written and oral testimony and documents relating to matters specified in § 2.5(j)(3), but any references essential to resolution of the issues invovled shall be permitted.

(d) The initial decision shall be filed with the Hearing Clerk and served upon all participants.

(e) The initial decision shall become the final decision of the Commissioner by operation of law unless a participant in the proceeding files timely exceptions with the Hearing Clerk pursuant to § 2.181(a) or the Commissioner, on his own initiatives, files with the Hearing Clerk a notice of review pursuant to § 2.181(f).

(f) Notice that an initial decision has become the decision of the Commissioner without appeal to or review by the Commissioner shall be published in the FEDERAL REGISTER, or the Commissioner may publish the entire decision if he determines that it is of widespread public interest.

§ 2.181 Appeal from or review of initial decision.

(a) Any participant in a proceeding may appeal an initial decision to the Commissioner by filing exceptions to the initial decision with the Hearing Clerk, and serving such exceptions on the other participants. Exceptions will be filed and served within the period specified in the initial decision. Such period shall not exceed 30 days, unless extended by the Commissioner pursuant to paragraph (d) of this section.

(b) Exceptions to the initial decision shall contain specific statements of alleged error in the findings of fact or conclusions of law in the initial decision, with specific reference to those parts of the record upon which the exceptions are based. If oral argument before the Commissioner is desired, it shall be specifically requested in the exceptions.

(c) Any participant may file with the Hearing Clerk, and serve on the other participants, a reply to the exceptions of a participant. A reply shall be filed and served within the period specified in the initial decision. Such period shall not exceed 30 days after the period (including any extensions) for filing exceptions, unless extended by the Commissioner pursuant to paragraph (d) of this section.

(d) The Commissioner may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) After the filing of exceptions and replies, the Commissioner shall determine whether he wishes to hear oral argument on the matter. If the Commissioner concludes that he should hear oral argument on the matter, the participants shall be informed of the date, time, and place for such oral argument, the amount of time that will be allotted to each participant for such oral argument, and the issues to be addressed.

(f) Prior to 10 days following the expiration of the time for filing exceptions (including any extensions), the Commissioner may file with the Hearing Clerk, and serve on the participants, a notice stating that he will review the initial decision on his own initiative. The Commissioner may invite the participants to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument shall be specified in the notice of review or in a later notice.

§ 2.182 Decision by Commissioner on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commissioner shall have all the powers he would have in making the initial decision. The Commissioner may, on his own initiative or on the motion of any participant, remand the proceeding to the presiding officer with specific directions, e.g., to receive further evidence relating to a particular issue, where he concludes that such action is necessary for a proper decision in the matter.

(b) The scope of the issues on appeal shall be the same as the scope of the issues at the public hearing unless the Commissioner specifies otherwise.

(c) As soon as practicable after the filing of briefs and any oral argument, the Commissioner shall issue in the FEDERAL REGISTER his final decision in the proceeding based solely upon the administrative record of the hearing. Such final decision shall meet the requirements established in § 2.180 (b) and (c).

(d) The Commissioner may adopt the initial decision as the final decision, in whole or in part, if he concludes, after reviewing the administrative record, that it meets all the requirements specified in § 2.180 (b) and (c) and represents a sound, reasonable, and fair decision based upon all relevant factual, legal, and policy considerations.

(e) Notice of the Commissioner's decision shall be published in the FEDERAL REGISTER, or the Commissioner may publish the entire decision if he determines that it is of widespread public interest.

§ 2.183 Reconsideration and stay of action.

Following notice or publication of the final decision, any participant may petition the Commissioner for reconsideration of any part or all of such decision pursuant to § 2.8 or may petition for a stay of such decision pursuant to § 2.9.

JUDICIAL REVIEW

§ 2.190 Review by the courts.

(a) The Commissioner's final decision constitutes final agency action from which any participant may petition for judicial review pursuant to the statutory provisions governing the matter involved. Before requesting an order from a court for a stay of action pending review, any participant seeking court review shall first submit a petition for a stay of action pursuant to § 2.9.

(b) The Food and Drug Administration will request consolidation in a single court of all petitions for judicial review related to a particular matter pursuant to 28 U.S.C. 2112(a).

§ 2.191 Copies of petitions for judicial review.

The Chief Counsel for the Food and Drug Administration has been designated by the Secretary as the officer upon whom copies of petitions for judicial review shall be served. Such officer shall be responsible for filing in the court the record of the proceedings on which the final decision is based. The record of the

proceeding shall be certified by the Commissioner.

2. In Part 430, by revising § 430.20 to read as follows:

§ 430.20 Procedure for the issuance, amendment, or repeal of regulations.

(a) The procedures for the issuance amendment, or repeal of regulations under section 507 of the act shall be governed by Part 2 of this chapter.

(b) (1) The Commissioner, on his own initiative or on the application or request of any interested person, may publish in the FEDERAL REGISTER a notice of proposed rule making and order to issue, amend, or repeal any regulation contemplated by section 507 of the act. Such notice and order may be general (i.e., simply summarizing in a general way the information resulting in the notice and order) or specific (i.e., either referring to specific requirements in the statute and regulations with which there is a lack of compliance, or providing a detailed description and analysis of the specific facts resulting in the notice and order).

(2) An opportunity shall be given for interested persons to submit written comments and to request an informal conference on the proposal, unless such notice and opportunity for comment and informal conference have already been provided in connection with the announcement of the reports of the National Academy of Sciences-National Research Council, Drug Efficacy Study Group, to persons who will be adversely affected, or as provided in §§ 2.10(e) or 2.110(c) (2) of this chapter. The time for requesting an informal conference shall be 30 days unless otherwise specified in the notice of proposed rule making. If an informal conference is requested and granted, those persons participating in the conference shall be provided an additional 30 days for comment, beginning the date of the conference, unless otherwise specified in the proposal.

(3) It is the responsibility of every manufacturer or distributor of an antibiotic drug product to review every proposal published in the FEDERAL REGISTER to determine whether it covers any product he manufactures or distributes.

(4) After considering the written comments, the results of any conference, and the data available, the Commissioner will publish an order in the FEDERAL REGISTER acting on the proposal, with opportunity for any person who will be adversely affected to file objections, to request a hearing, and to show reasonable grounds for the hearing. Any such person who elects to avail himself of the opportunity for a hearing shall file with the Hearing Clerk (i) within 30 days after the date of publication of the order a written notice of participation and request for hearing, and (ii) within 60 days after the date of publication of the order, unless a different period of time is specified in the order, the studies on which he relies to justify a hearing as specified in paragraph (b)(6) of this section. The raw data underlying a study submitted may be incorporated by reference from a prior submission as part of an antibiotic application, or other applications or reports.

(5) No data or analysis submitted after such 60 days will be considered in determining whether a hearing is warranted unless they are derived from well-controlled studies begun prior to the date of the order, the results of which were not in existence during that 60 days. Exceptions may be made on the basis of a showing of inadvertent omission and hardship. All studies in progress, the results of which the person requesting the hearing intends later to submit in support of the request for hearing, shall be listed. A copy of the complete protocol, a list of the participating investigators, and a brief status report of the studies shall be included in the submission made pursuant to paragraph (b) (4) (ii) of this section.

(6) A request for hearing shall be supported by a submission as specified in § 314.200(c) (1) (ii) of this chapter containing the studies (including all underlying raw data) on which the person relies to justify a hearing with respect to his drug product.

(i) If effectiveness is at issue, a request for hearing shall be supported only by adequate and well-controlled clinical studies meeting all of the precise requirements of § 314.111(a) (5) of this chapter and, for combination drug products, § 300.50 of this chapter, or by other studies not meeting those requirements for which a waiver has been previously granted by the Food and Drug Administration pursuant to the provisions of § 314.111(a) (5) of this chapter. All adequate and well-controlled clinical studies on the drug product known to the person requesting the hearing shall be submitted. Any unfavorable analyses, views, or judgments with respect to such studies known to such person shall also be submitted. No other data, information, or studies shall be submitted.

(ii) Such submission shall include a factual analysis of all studies submitted. If effectiveness is at issue, such analysis shall specify how each such study accords, on a point-by-point basis, with each criterion required for an adequate and well-controlled clinical investigation established in § 314.111(a) (5) of this chapter and, if the product is a combination drug product, with each of the requirements for a combination drug established in § 300.50 of this chapter, or shall be accompanied by an appropriate waiver previously granted by the Food and Drug Administration. If a study deals with a drug entity or dosage form, or condition of use, or mode of administration other than the one(s) in question, such fact(s) shall be clearly stated. Any study conducted on the final marketed form of the drug product shall be so designated.

(iii) Such analysis shall be submitted in the following format, except that information relating to safety or effectiveness shall be omitted if the order does not raise any issue with respect to that aspect of the drug; and information on compliance with § 300.50 of this chapter shall be omitted if the drug product is not a combination drug product. Submissions not made in this format or not containing the required analyses will not be considered and will result in denial of hearing, except that minor technical deficiencies may be excused if it is apparent that a good faith attempt has been made to comply with the requirements of this section and any deficiencies noted are immediately corrected upon request.

I. Safety data.

A. Animal safety data.

1. Individual active component(s).

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

2. Combinations of the individual active components.

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

B. Human safety data.

1. Individual active component(s).

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

c. Documented case reports.

d. Pertinent marketing experiences that may influence a determination as to the safety of each individual active component.

2. Combinations of the individual active components.

a. Controlled studies.

b. Partially controlled or uncontrolled studies.

c. Documented case reports.

d. Pertinent marketing experiences that may influence a determination as to the safety of combinations of the individual active components.

II. Effectiveness data.

A. Individual active components: Controlled studies, with an analysis showing clearly how each such study satisfies, on a point-by-point basis, each of the criteria required by § 314.111(a) (5) of this chapter.

B. Combinations of individual active components.

1. Controlled studies with an analysis showing clearly how each such study satisfies, on a point-by-point basis, each of the criteria required by § 314.111(a) (5) of this chapter.

2. An analysis showing clearly how each requirement of § 300.50 of this chapter has been satisfied.

III. A summary of the data and views setting forth the medical rationale and purpose for the drug and its ingredients and the scientific basis for the conclusion that the drug and its ingredients have been proven safe and/or effective for the intended use. If there is an absence of controlled studies in the material submitted, or the requirements of any element of § 300.50 of this chapter or § 314.111(a) (5) of this chapter have not been fully met, such fact(s) shall be clearly stated, and a waiver obtained pursuant to § 314.111(a) (5) of this chapter shall be enclosed.

IV. A statement signed by the person responsible for such submission, that it includes in full (or incorporates by reference as permitted in § 430.20(b) (4)) all studies and information specified in § 430.20(b). (Warning: A willfully false statement is a criminal offense, 18 U.S.C. 1001.)

(7) Upon receipt of any request for hearing, the Director of the Bureau of Drugs shall prepare an analysis of the request and a proposed order ruling upon the matter. The analysis and proposed order, the request for hearing, and any proposed order denying a hearing and response pursuant to paragraph (b)(8)(ii) or (iii) of this section, shall be submitted to the office of the Commissioner for independent review and decision. No representative of the Bureau of Drugs shall participate or advise in the review and decision by the Commissioner. The office of the General Counsel shall observe the same separation of functions.

(8) A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact with respect to the particular drug product(s) which is specified in the request for hearing that requires a hearing.

(i) Where a specific proposal or order (as defined in paragraph (b)(1) of this section) is used, the order published in the FEDERAL REGISTER shall state that, if it conclusively appears from the face of the data, information, and factual analyses in the request for hearing that there is no genuine and substantial issue of fact which precludes the action taken on the proposal, e.g., no adequate and well-controlled clinical investigations meeting each of the precise elements of § 314.111(a)(5) of this chapter and, for a combination drug product, § 300.50 of this chapter, showing effectiveness have been identified, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner will enter summary judgment against the person(s) who requests a hearing, making findings and conclusions, denying a hearing. Any such order entering summary judgment shall set forth the Commissioner's findings and conclusions in detail and shall specify why each study submitted fails to meet the requirements of the statute and regulations or why the request for hearing otherwise does not raise a geninue and substantial issue of fact or shall specify the requirements of this paragraph with respect to format or analyses with which there is a lack of compliance.

(ii) Where a general notice or order (as defined in paragraph (b)(1) of this section) is used and the Director of the Bureau of Drugs concludes that summary judgment against the person(s) requesting a hearing should be considered, he shall serve upon such person(s) by registered mail a proposed order denying a hearing. Such person(s) shall have 60 days after receipt of such proposed order to respond with sufficient data, information and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(iii) Where a general or specific notice or order is used and the person(s) requesting a hearing submits data or information of a type required by the statute and regulations, and the Director of the Bureau of Drugs concludes that summary judgment against such person(s) should be considered, he shall serve upon such person(s) by registered mail a proposed order denying a hearing. Such person(s) shall have 60 days after receipt of such proposed order to respond with sufficient data, information, and analyses to demonstrate that there is a genuine and substantial issue of fact which justifies a hearing.

(iv) If review of the data, information, and analysis submitted warrants the conclusion that the basis for the order is not valid, e.g., that substantial evidence of effectiveness exists, the Commissioner shall deny the hearing, enter summary judgment for the person(s) requesting the hearing, and revoke the order. If a hearing is not requested, the order will become effective as published.

(v) If a hearing is requested and justified, the provisions of Part 2 of this chapter shall apply to such hearing.

(vi) A hearing shall be granted if there exists a genuine and substantial issue of fact or if the Commissioner concludes, in his discretion, that a hearing would otherwise be in the public interest.

(9) The repeal of any regulation constitutes a revocation of all outstanding certificates based upon such regulation. However, the Commissioner may, in his discretion, defer or stay such action pending a ruling on any related request for a hearing or pending any related hearing or other administrative or judicial proceeding.

(c) Whenever any interested person submits an application or request pursuant to provisions of section 507 of the act, or regulations promulgated thereunder, which application or request contemplates the issuance, amendment, or repeal of any regulation, and such person has been informed in writing that such application or request is not approvable, or whenever such person has received no written communication advising whether or not such application is approvable by the 180th day after its submission, such interested person may file a petition proposing the issuance, amendment, or repeal of such regulation under the provisions of section 507(f) of the act and Part 2 of this chapter. The Commissioner shall cause the regulation proposed in such petition to be published in the FEDERAL REGISTER within 60 days of the receipt of an acceptable petition and further proceedings shall be in accord with the provisions of sections 507(f) and 701(f) and (g) of the act and Part 2 of this chapter.

(d) (1) No regulation providing for the certification of any batch of any drug composed wholly or in part of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, intended for use by man shall be promulgated and no existing regulation will be continued in effect unless it is established by substantial evidence that the drug will have such characteristics of identity, strength, quality, and purity necessary to adequately insure safety and efficacy of use. "Substantial evidence" has been defined by Congress to mean "evidence consisting of adequate and well-controlled investigations, including clinical investigations, by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved, on the basis of which it could fairly and responsibly be concluded by such experts that the drug will have the effectiveness is purports and is represented to have under the conditions prescribed, recommended or suggested in the labeling thereof." This definition is made applicable to a number of antibiotic drugs by section 507(h) of the act and it is the test of efficacy that will be applied in promulgating, amending, or repealing regulations for the certification of all antibiotics under section 507(a) of the act as well.

(2) The scientific essentials of an adequate and well-controlled clinical investigation are described in § 314.111(a)(5) of this chapter.

Effective date. These regulations shall be effective November 23, 1976.

Dated: November 16, 1976.

A. M. SCHMIDT,
Commissioner of Food and Drugs.

[FR Doc.76-34521 Filed 11-22-76;8:45 am]

federal register

TUESDAY, NOVEMBER 23, 1976

PART III:

DEPARTMENT OF JUSTICE

DEPARTMENT OF LABOR

CIVIL SERVICE COMMISSION

■

EMPLOYEE SELECTION GUIDELINES

Procedures, Principles, and Standards of Conduct

DEPARTMENT OF JUSTICE

Office of the Deputy Attorney General

FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

Introduction

The Equal Employment Opportunity Coordinating Council, which is composed of the Department of Labor, the Equal Employment Opportunity Commission, the Civil Rights Commission, the Civil Service Commission and the Department of Justice, is charged by law (sec. 715 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-14) to eliminate inconsistency among the operations of the agencies and departments responsible for enforcement of Federal equal employment opportunity law. Pursuant to that mandate, the Coordinating Council began work on proposed uniform guidelines on employee selection procedures early in 1973. A proposed draft of August 23, 1973 was circulated for comment pursuant to the procedures continued in OMB circular A-85. Later drafts also received wide circulation and have been the subject of written and oral comments.

Based upon these comments, the case law, and the American Psychological Association's Standards for Educational and Psychological Tests (1974), the Staff Committee of the Council, working pursuant to decisions made by the Council at its November, 1974, meeting, undertook a redraft of the proposed uniform guidelines.

A draft "Staff Committee Proposal, Sept. 24, 1975, Uniform Guidelines on Employee Selection Procedures" was agreed upon by the designated representatives on the Staff Committee of the four agencies having operational responsibility—the Department of Labor, the Equal Employment Opportunity Commission, the Civil Service Commission and the Department of Justice—for purposes of Council consideration, and for circulation for analysis and comments.

The Equal Employment Opportunity Commission reviewed the Staff Committee Proposal, Sept. 24, 1975, and determined that it did not represent the position of that agency, and for that reason opposed circulating the Staff Committee Proposal for prepublication comment pursuant to the A-85 procedure.

However, a majority of the Council believed that the Staff Committee Proposal, September 24, 1975, should be widely circulated for comment, as a step toward achievement of the goal of Uniform Guidelines on Employee Selection Standards.

The Staff Committee Proposal, Sept. 24, 1975, was accordingly circulated for prepublication comment pursuant to the A-85 procedure. Substantial additional comments were received, and modifications of the proposal were made.

A majority of the Coordinating Council believed that the proposed guidelines, as modified, should be published in the FEDERAL REGISTER for formal comment as a step toward achievement of the goal of uniformity in guidelines on employee selection procedures. Accordingly, the revised proposed uniform guidelines on employee selection procedures were published for comment in the FEDERAL REGISTER on July 14, 1976. 41 Fed. Reg. 29016. Many additional comments were received, and additional modifications in the proposed guidelines have been made.

On October 13, 1976, at a meeting of the Coordinating Council, the Equal Employment Opportunity Commission, determined that the resulting draft continued not to represent the views of that agency and opposed the adoption of the proposed guidelines and any action to recommend adoption of the proposed guidelines.

It has become clear that the Coordinating Council has not been successful in achieving a uniform federal position on the issue of employee selection procedures at this time.

The three undersigned have, however, determined to adopt and endorse the guidelines which were developed under the auspices of the Coordinating Council. We do so in the issuances set forth below. Because unanimity does not appear feasible at this time, the term uniform has been deleted from the title, and the guidelines are now referred to as "Federal Executive Agency Guidelines on Employee Selection Procedures." We have determined to adopt and endorse the Federal agency guidelines for the following reasons:

1. One of the most important functions of federal guidelines in this area is to represent "professionally acceptable methods" for demonstrating whether a selection procedure has validity for a particular job. *Albemarle* v. *Moody*, 422 U.S. 405, 425. The American Psychological Association has described the proposed guidelines as being "essentially consistent with the Standards for Educational and Psychological Tests and with the best available knowledge concerning effective use of selection procedures in employment decisions" and as "concise, realistic and much-needed." We believe that the proposed guidelines better represent professionally accepted standards for determining validity than any existing set of guidelines.

2. While existing federal agency guidelines have been granted "great deference" by the courts, and have been of assistance in litigation, the most recent of them is more than five years old. They therefore are based upon the American Psychological Association's 1966 "Standards" rather than their 1974 "Standards," and do not take into account subsequent developments in the field of industrial psychology. Similarly, they do not take into account the judicial decisions, most of which were rendered after their publication. Accordingly, the federal agency guidelines set forth below are, in our judgment, more consistent with the Supreme Court and the authoritative decisions of the other appellate courts, than any set of existing guidelines.

3. Because federal agency guidelines are applicable to the Federal Government itself as well as to those employers doing business with the Federal Government and others subject to federal law, any apparent anomaly of applying a lesser standard to the federal Government than it demands from others will be removed.

4. The federal agency guidelines provide practical guidance which will enable those users who seek to do so to bring themselves into compliance with Federal law. They are, in our judgment, more practical and realistic and will do more to provide actual equality of opportunity on a widespread basis, than any existing set of guidelines.

5. At present there are at least three sets of federal guidelines: the Regulations of the Civil Service Commission, and instructions which may be applicable to state and local governments as well as to the federal government itself; the regulations of the Secretary of Labor concerning selection procedures (41 CFR Part 60-3); and the guidelines on employee selection procedures of the EEOC (29 C.F.R. Part 1607). The adoption of the federal agency guidelines will therefore be a step toward achievement of a uniform federal position and uniform guidelines.

For the above reasons, we also recommend the adoption of the proposed Federal Executive Agency Guidelines by each Federal agency having responsibility for enforcement of Federal law prohibiting discrimination on the grounds of race, color, religion, sex and national origin. Such adoption will lead to the achievement of a uniform federal position and uniform guidelines in this vital area.

HAROLD R. TYLER, Jr.,
Deputy Attorney General.

MICHAEL H. MOSKOW,
Under Secretary of Labor.

ROBERT E. HAMPTON,
Chairman, Civil Service Commission.

[FR Doc. 76-34476 Filed 11-18-76;9:20 am]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 668-76]

PART 50—STANDARDS OF CONDUCT

Guidelines on Employee Selection Procedures

The guidelines set forth below were developed as a result of the more than three and one half year effort of the Equal Employment Opportunity Coordinating Council to produce a uniform set of guidelines for employee selection procedures. A history of that effort is described in the introduction to the Federal Executive Agency Guidelines on Employee Selection Procedures signed by the Deputy Attorney General, the Under Secretary of Labor and the Chairman of the Civil Service Commission. Drafts of the proposed guidelines were widely circulated as early as August, 1975, and a draft was published for comment in the FEDERAL REGISTER on July 14, 1976 (41 FR 29016) as proposed Uniform Guidelines on Employee Selection Procedures.

For the reasons set forth by the Deputy Attorney General, the Under Secretary of Labor and the Chairman of the Civil Service Commission in that introduction, I am hereby adopting the Federal Executive Agency Guidelines on Employee Selection Procedures, as set forth below, as a statement of policy of this Department.

By virtue of the authority vested in me by 28 U.S.C. 509 and 5 U.S.C. 301, Part 50 of Chapter I of Title 28 of the Code of Federal Regulations is amended by inserting immediately after § 50.13 a new § 50.14, as follows:

§ 50.14 Guidelines on employee selection procedures.

The guidelines set forth below are intended as a statement of policy of the Department of Justice and will be applied by the Department in exercising its responsibilities under Federal law relating to equal employment opportunity.

Dated: November 17, 1976.

EDWARD H. LEVI,
Attorney General.

[FR Doc.76-34477 Filed 11-18-76;9:20 am]

DEPARTMENT OF JUSTICE

Office of Attorney General

GENERAL PRINCIPLES

Guidelines

PART I—GENERAL PRINCIPLES

§ 1 STATEMENT OF PURPOSE

These guidelines are intended to be a set of principles which will assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with equal employment opportunity requirements of Federal law with respect to race, color, religion, sex and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures consistent with Federal law. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles. Nothing in these guidelines is intended or should be interpreted as discouraging the use of procedures which have been properly validated in accordance with these guidelines for the purpose of determining qualifications or selecting on the basis of relative qualifications. Nothing in these guidelines is intended to apply to persons not subject to the requirements of Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines are not intended to apply to any responsibilities an employer, employment agency labor organization may have under the Age Discrimination Act of 1975 not to discriminate on the basis of age, or under section 504 of the Rehabilitation Act of 1973 not to discriminate on the basis of handicap. Nothing contained in these guidelines is intended to interfere with any obligation imposed or right granted by Federal law to users to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 2 SCOPE

a. These guidelines will be applied by the Department of Labor to contractors and subcontractors subject to Executive Order 11246 as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); and by the Civil Service Commission to federal agencies subject to Sec. 717 of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "the Civil Rights Act of 1964") and to its responsibilities toward state and local governments under Section 208 (b) (1) of the Intergovermnental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; and by any other Federal agency which adopts them.

b. These guidelines apply to selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hire, promotion, demotion, membership (for example in a labor organization), referral, retention, licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Selection for training is also considered an employment decision if it leads to any of the decisions listed above.

c. These guidelines do not apply to the use of a bona fide seniority system within the meaning of Title VII of the Civil Rights Act of 1964, as amended, as defined by Federal appellate court decisions, for any employment decision. These guidelines do not call for the validation of such a seniority system used as a basis for such employment decision, and the use of such a seniority system as a basis for such employment decisions is consistent with these guidelines.

d. These guidelines do not apply to the entire range of Federal equal employment opportunity law, but only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract racial, ethnic or sex groups which were previously denied employment opportunities or which are presently under-utilized may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element to any effective affirmative action program; but the subject of recruitment practices is not addressed by these guidelines because that subject concerns procedures other than selection procedures.

§ 3 RELATIONSHIP BETWEEN USE OF SELECTION PROCEDURES AND DISCRIMINATION

a. The use of any selection procedure which has an adverse impact on the members of any racial, ethnic or sex group with respect to any employment decision will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure is validated in accordance with the principles contained in these guidelines or unless use of the procedure is warranted under § 3b.

b. There are circumstances in which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact. (i) When an unstandardized, informal or unscored selection procedure which has an adverse impact is utilized, the user should seek insofar as possible to eliminate the adverse impact, or, if feasible, to modify the procedure to one which is a formal, scored or qualified measure or combination of measures and then to validate the procedure in accord with these guidelines, or otherwise to justify continued use of the procedure in accord with Federal law. (ii) When a standardized, formal or scored selection procedure is used for which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines, the user should either modify the procedure to eliminate the adverse impact or otherwise jusify continued use of the procedure in accord with Federal law.

c. Generally where alternative selection procedures are available which have been shown to be equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should make a reasonable effort to investigate suitable alternative selection procedures which have as little adverse impact as possible, for the purpose of determining the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and a validity study for a job or group of jobs has been made in accord with these guidelines, the use of the selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown a suitable alternative selection procedure with evidence of at least equal validity and less adverse impact, the user should investigate it for the purpose of determining the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if such a combination has been properly validated.

§ 4 INFORMATION ON IMPACT

a. Each user should have available for inspection records or other information which will disclose the impact which its selection procedures have upon employment opportunities of persons by identifiable racial, ethnic or sex groups in order to determine compliance with the provisions of § 3 above. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size. The records called for by this section are to be maintained by sex, and by racial and ethnic groups as follows: blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic and totals. The classifications called for by this section are intended to be consistent with the Employer Information (EEO-1 et seq.) series of reports. The user should adopt safeguards to insure that records of race, color, religion, sex, or national origin are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used for making employment decisions.

b. The information called for by this section should be examined for possible adverse impact. If the records called for by this section indicate that the total selection process for a job has no adverse impact, the individual components of the selection process needed not be evaluated separately for adverse impact. If a total selection process does have adverse impact, the individual components of the selection process should be evaluated for adverse impact.

A selection rate for any racial, ethnic or sex group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact. Smaller differences in selection rate may nevertheless be considered to constitute adverse impact, where they are significant in both statistical and practical terms. Greater differences in selection rate would not necessarily be regarded as constituting adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group.

c. Federal agencies which adopt these guidelines for purposes of the enforcement of the equal employment opportunity laws or which have responsibility for securing compliance with them (hereafter referred to as enforcement agencies) will consider in carrying out their obligations the general posture of the user with respect to equal employment opportunity for the job classification or group of classifications in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the employer has adopted and the progress which the employer has made in carrying out that program and in meeting the goals and timetables. These guidelines recognize that a user is prohibited by Federal law from the making of employment decisions on the basis of race and color and (except for bona fide occupational qualifications) on the basis of sex, religion and national origin; and nothing in this subsection or in the guidelines is intended to encourage or permit the granting of preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group.

§ 5 General Standards for Validity Studies

a. For the purposes of satisfying these guidelines users may rely upon criterion related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in Part II of these guidelines, § 12 infra.

b. These guidelines are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other assessment techniques, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C. 1974) (hereinafter "APA Standards"), and standard text books and journals in the field of personnel selection.

c. For any selection procedure which has an adverse impact each user should maintain and have available such documentation as is described in Part III of these guidelines, § 13 infra.

d. Selection procedures subject to validity studies under § 3a above should be administered and scored under standardized conditions.

e. In general, users should avoid making employment decisions on the basis of measures of knowledges, skills or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

f. Where cut off scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where other factors are used in determining cut off scores, such as the relationship between the number of vacancies and the number of applicants, the degree of adverse impact should be considered.

g. Selection procedures may be used to predict the performance of candidates for a job which is at a higher level than the job for which the person is initially being selected if a majority of the individuals who remain employed will progress to the higher level within a reasonable period of time. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than five years. Examining for a higher level job would not be appropriate (1) if the majority of those remaining employed do not progress to the higher level job, (2) if there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period, or (3) if knowledges, skills or abilities required for advancement would be expected to develop principally from the training or experience on the job.

h. Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) the user can cite substantial evidence of validity in accord with these guidelines and (2) the user has in progress, when technically feasible, studies which are designed to produce the additional data required within a reasonable time.

If the additional studies do not produce the data required to demonstrate validity, the user is not relieved of or protected against any obligations arising under federal law.

i. Whenever a validity study has been made in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in § 3c above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

§ 6 Cooperative Validity Studies and Use of Other Validity Studies

a. It is the intent of the agencies issuing these guidelines to encourage and facilitate cooperative development and validation efforts by employers, labor organizations and employment agencies to achieve selection procedures which are consistent with these guidelines.

b. Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when: (1) the weight of the evidence from studies meeting the standards of § 12b below shows that the selection procedure is valid; (2) the studies pertrain to a job which has substantially the same major job duties as shown by appropriate job analyses and (3) the studies include a study of test fairness for those racial, ethnic and sex subgroups which constitute significant factors in the borrowing user's relevant labor market for the job or jobs in question. If the studies relied upon satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon.

If it is technically feasible for a borrowing user to conduct an internal validity study, and there are variables in the other studies which are likely to affect validity or fairness significantly, the user may rely upon such studies only on an interim basis in accord with § 5h, and will be expected to conduct an internal validity study in accord with § 12b below. Otherwise the borrowing user may rely upon such acceptable studies for operational use without an internal study.

c. Selection procedures shown by one user to be content valid in accord with § 12c will be considered acceptable for use by another user for a performance domain if the borrowing user's job analysis shows that the same performance domain is present in the borrowing user's job. The selection procedure may be used operationally if the conditions of § 12c(3) and § 12c(6) are satisfied by the borrowing user.

d. The conditions under which findings of construct validity may be generalized are described in § 12d(4).

e. If validity evidence from a multiunit or cooperative study satisfies the requirements of subparagraphs b, c or d above, evidence of validity specific to each unit or user usually will not be required unless there are variables in the units not studied which are likely to affect validity significantly.

§ 7 No Assumption of Validity

a. Under no circumstances will the general reputation of a selection procedure, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other non-empirical or anecdotal accounts of selection practices or selection outcomes.

b. Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis and careful development of a selection procedure enhances the probability that the selection procedure is valid for the job.

§ 8 Employment Agencies and Employment Services

a. An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards for determining adverse impact and, if adverse impact is demonstrated, show validity as set forth in these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

b. Where an employment agency or service is requested to administer a selection program which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should obtain evidence of the absence of adverse impact, or of validity, as described in these guidelines, before it administers the selection program and makes referrals pursuant to the results. The employment agency must furnish on request such evidence of validity. An employment agency or service will be expected to refuse to make referrals based on the selection procedure where the employer or labor organization does not supply satisfactory evidence of validity or lack of adverse impact.

§ 9 Disparate Treatment

The principle of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon members of a racial, sex or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a racial, sex, or ethnic group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against and were available in the relevant job market during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under the less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required for the safety or efficiency of the operation. Nothing in this section is intended to prohibit a user who has not previously followed merit standards from adopting merit standards; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are validated in accord with these guidelines.

§ 10 Retesting

Users should provide a reasonable opportunity for retesting and reconsideration. The user may however take reasonable steps to preserve the security of its procedures. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting.

§ 11 Affirmative Action

The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of selection procedures (consistent with Federal law—see § 4c) which assist in the achievement of affirmative action objectives.

PART II—TECHNICAL STANDARDS

§ 12 Technical Standards for Validity Studies

The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures.

a. Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in § 12b(3) below with respect to criterion related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

B. Criterion-Related Validity

(1) Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in Part IV) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study; and no not require such a study on a sample of less than thirty (30) persons.

(2) There should be a review of job information to determine measures of work behaviors or performance that are relevant to the job in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered both in selection of the measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques should be carefully developed. All criteria need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Criteria may consist of measures other than work proficiency including, but not limited to length of service, regularity of attendance, training time or properly measured success in job relevant training. Measures of training success based upon pencil and paper tests will be closely reviewed for job relevance. Whatever criteria are used should represent important or critical work behaviors or work outcomes. Job behaviors including but not limited to production rate, error rate, tardiness, absenteeism and turnover, may be used as criteria without a full job analysis if the user can show the importance of the criterion to the particular employment context. A standardized rating of overall work performance may be utilized where a study of the job shows that it is an appropriate criterion.

(4) The sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or jobs

in question, and should insofar as feasible include the racial, ethnic and sex groups normally available in the relevant job market. Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the .05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

Users should evaluate each selection procedure to assure that it is appropriate for operational use. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance or numbr of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: the degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity; and the need of an employer, required by law or regulation to follow merit principles, to have an objective system of selection.

(6) Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance, when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard; cross-validation is another.

(7) *Fairness of the selection procedure.* i. When members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

ii. Where a selection procedure results in an adverse impact on a racial, ethnic or sex group identified in accordance with the classifications set forth in § 4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so.

The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure is a fair predictor for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue and may be combined with data from the present study; however, where the severity of adverse impact on a group is significantly greater than in the other studies referred to, a user may not rely on such other studies.

iii. Users conducting a study of fairness should review the APA Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

iv. If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument operationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

v. In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see § 14(j), below) an investigation of fairness requires the following:

(1) A sufficient number of persons in each group for findings of statistical significance. These guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; and do not require a user to conduct a study of fairness on a sample of less than thirty (30) persons for each group involved in the study.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

vi. If a study of fairness should otherwise be performed, but is not technically feasible, the use of a selection procedure which has otherwise met the validity standards of these guidelines will be considered in accord with these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

c. *Content validity.* (1) There should be a definition of a performance domain or the performance domains with respect to the job in question. Performance domains may be defined through job analysis, analysis of the work behaviors or activities, or by the pooled judgments of persons having knowledge of the job. Performance domains should be defined on the basis of competent information about job tasks and responsibilities. Performance domains include critical or important work behaviors, work products, work activities, job duties, or the knowledges, skills or abilities shown to be necessary for performance of the duties, behaviors, activities or the production of work. Where a performance domain has been defined as a knowledge, skill or ability, that knowledge, skill or ability must be used in job behavior. A selection procedure based on inferences about psychological processes cannot be supported by content validity alone. Thus content validity by itself is not an appropriate validation strategy for intelligence, aptitude, personality or interest tests. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills or abilities which an employee will be expected to learn on the job.

(2) If a higher score on a content valid selection procedure can be expected to result in better job performance the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely by content validity is used to rank job candidates, the performance domain should include those aspects of performance which differentiate among levels of job performance.

(3) A selection procedure which is a representative sample of a performance domain of the job as defined in accordance with subsection (1) above, is a content valid procedure for that domain. Where the domain or domains measured are critical to the job, or constitute a substantial proportion of the job, the selection procedure will be considered to be content valid for the job. The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible to do so, appropriate statistical estimates should be made of the reliability of the selection procedures.

(4) A demonstration of the relationship between the content of the selection procedure and the performance domain of the job is critical to content validity. Content validity may be shown if the knowledges, skills or abilities demonstrated in and measured by the selection procedure are substantially the same as the knowledges, skills or abilities shown to be necessary for job performance. The closer the content of the selection procedure is to actual work samples, behaviors or activities, the stronger is the basis for showing content validity. The need for careful documentation of the relationship between the performance domain of the selection procedure and that of the job increases as the content of the selection procedure less resembles that of the job performance domain.

(5) A requirement for specific prior training or for work experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the performance domain of the job for which the training or experience is to be required.

(6) If a selection procedure is supported solely on the basis of content validity, it may be used operationally if it represents a critical performance domain or a substantial proportion of the performance domains of the job.

d. *Construct validity.* Construct validity is a more complex strategy than either criterion-related or content validity. Accordingly, users choosing to validate a selection procedure by use of this strategy should be careful to follow professionally accepted standards, such as those contained in the APA standards and the standard text books and journals.

(1) There should be a job analysis. This job analysis should result in a determination of the constructs that underlie successful performance of the important or critical duties of the job.

(2) A selection procedure should be selected or developed which measures the construct(s) identified in accord with subparagraph (1) above.

(3) A selection procedure may be used operationally if the standards of subparagraphs (1) and (2) are met and there is sufficient empirical research evidence showing that the procedure is validity related to performance of critical job duties. Normally, sufficient empirical research evidence would take the form of one or more criterion related validity studies meeting the requirements of § 12b. See also second sentence of § 12.

(4) Where a selection procedure satisfies the standards of subsections (1), (2) and (3) above, it may be used operationally for other jobs which are shown by an appropriate job analysis to include the same construct(s) as an essential element in job performance.

PART III—DOCUMENTATION OF VALIDITY EVIDENCE

§ 13a. For each selection procedure having an adverse impact (as set forth in § 4) the user should maintain and have available the data on which the adverse impact determination was made and one of the following types of documentation evidence:

(1) Documentation evidence showing criterion related validity of the selection procedure (see § 13b. infra).

(2) Documentation evidence showing content validity of the selection procedure (see § 13c. infra).

(3) Documentation evidence showing construct validity of the selection procedure (see § 13d. infra).

(4) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see § 13e. infra).

(5) Documentation evidence showing what steps were taken to reduce or eliminate adverse impact, why validation is not feasible or not appropriate and why continued use of the procedure is consistent with Federal law.

This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity are acceptable if they are complete in regard to the following documentation requirements, or if they satisfied requirements of guidelines which were in effect when the study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

In the event that evidence of validity is reviewed by an enforcement agency, the reports completed after the effective date of these guidelines are expected to use one of the formats set forth below.

Evidence denoted by use of the word "(Essential)" is considered critical and reports not containing such information will be considered incomplete. Evidence not so denoted is desirable, but its absence will not be a basis for considering a report incomplete.

b. *Criterion-related validity.* Reports of criterion-related validity of selection procedures are to contain the following information:

(1) *User(s), and location(s) and date(s) of study.* Dates of administration of selection procedures and collection of criterion data and, where appropriate, the time between collection of data on selection procedures and criterion measures should be shown (Essential). If the study was conducted at several locations, the address of each location, including city and state, should be shown.

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cut-off scores, if any, should be provided.

(3) *Review of job information or job analysis.* Where a review of job information results in criteria which are measures other than work proficiency (see 12b(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required, the report should include either: (a) the important duties performed on the job and the basis on which such duties were determined to be important, such as the proportion of time spent on the respective duties, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors; or (b) the knowledge, skills, abilities and/or other worker characteristics and bases on which they were determined to be important for job performance (Essential). Published descriptions from industry sources or volume I of the Dictionary of Occupational Titles Third Edition, United States Government Printing Office, 1965, are satisfactory if they adequately and completely describe the job. If appropriate, a brief supplement to the published description should be provided.

If two or more jobs are grouped for a validity study, a justification for this grouping, as well as a description of each of the jobs, should be provided (Essential).

(4) *Job titles and codes.* It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(5) *Criteria.* A full description of all criteria on which data were collected, including a rationale for selection of the final criteria, and means by which they were observed, recorded, evaluated and quantified, should be provided (Essen-

tial). If rating techniques are used as criterion measures the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence (Essential).

(6) *Sample.* A description of how the research sample was selected should be included (Essential). The racial, ethnic and sex composition of the sample should be described, including the size of each subgroup (Essential). Racial and ethnic classifications should be those set forth in § 4a above. A description of how the research sample compares with the racial, ethnic and sex composition of the relevant labor market is also desirable. Where data are available, the racial, ethnic and sex composition of current applicants should also be described. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Selection procedure.* Any measure, combination of measures, or procedures used as a basis for employment decisions should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Reports of reliability estimates and how they were established are desirable. A rationale for choosing the selection procedures investigated in the study should be included.

(8) *Techniques and results.* Methods used in analyzing data should be described (Essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for all relevant racial, ethnic and sex subgroups (Essential). Statistical results should be organized and presented in tabular or graphical form, by racial, ethnic and/or sex subgroups (Essential). All selection procedure-criterion relationships investigated should be reported, including their magnitudes and directions (Essential). Statements regarding the statistical significance of results should be made (Essential).

Any statistical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion, or both, should be described; and uncorrected correlation coefficients should also be shown (Essential). Where the statistical technique used categorizes continuous data, such as bi-serial correlation and the phi coefficient, the categories and the bases on which they were determined should be described (Essential). Studies of test fairness should be included where called for by the requirements of § 12b(7) (Essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (Essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (Essential). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (Essential).

(9) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (Essential).

(10) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(11) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving hte validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(12) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

c. *Content validity.* Reports of content validity of selection procedures are to contain the following information:

(1) *Definition of performance domain.* A full description should be provided for the basis on which a performance domain is defined (Essential). A complete and comprehensive definition of the performance domain should also be provided (Essential). The domain should be defined on the basis of competent information about job tasks and responsibilities (Essential). Where the performance domain is defined in terms of knowledges, skills, or abilities, there should be an operational definition of each knowledge, skill or ability and a complete description of its relationship to job duties, behaviors, activities, or work products (Essential).

(2) *Job title and code.* It is desirable to provide the user's job title(s) and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(3) *Selection procedures.* Selection procedures including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure for which content validity is asserted should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Where the performance domain is defined in terms of knowledges, skills or abilities, evidence that the selection procedure measures those knowledges, skills and abilities should be provided (Essential).

(4) *Techniques and results.* The method by which the correspondence between the content of the selection procedure and the job performance domain(s) was established and the relative emphasis given to various aspects of the content of the selection procedure as derived from the performance domain(s) should be described (Essential). If any steps were taken to reduce adverse racial, ethnic, or sex impact in the centent of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. The adequacy of the sample coverage of the performance domain should be described as precisely as possible. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) should be reported for all selection procedures as appropriate. Such reports should be made for all relevant racial, ethnic, and sex subgroups, at least on a statistically reliable sample basis.

(5) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and the application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential).

(6) *Cut-off scores.* The rationale for minimum scores, if used, should be provided (Essential). If the selection procedure is used to rank individuals above minimum levels, or if preference is given to individuals who score significantly above the minimum levels, a rationale for this procedure should be provided (Essential).

(7) *Contact person.* It is desirable for the employer to set forth the name, mailing address and telephone number of the individual who may be contacted for further information about the validation study.

d. *Construct validity.* Reports of construct validity of selection procedures are to contain the following information:

(1) *Construct definition.* A clear definition of the construct should be provided, explained in terms of empirically observable behavior, including levels of

construct performance relevant to the job(s) for which the selection procedure is to be used (essential).

(2) *Job analysis.* The job analysis should show how the construct underlying successful job performance of important or critical duties were determined (essential). The job analysis should provide evidence of the linkage between the construct and the important duties of the job and how this linkage was determined (essential).

(3) *Job titles and codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles, Volume I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(4) *Selection procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (essential). The evidence demonstrating that the selection procedure is in fact a proper measure of the construct should be included (essential). Reports of reliability estimates and how they were established are desirable.

(5) *Anchoring.* The empirical evidence showing that performance on the selection procedure is validly related to performance of critical job duties should be included (essential).

(6) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (essential). If weights are assigned to different parts of the selection procedure, these weights (and the validity of the weighted composite) should be reported (essential).

(7) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (essential).

(8) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(9) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

e. *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this § 13 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies.* (i) *Job Information.*—A description of the important duties of the user's job and the basis on which the duties were determined to be important should be provided (Essential). A full description of the basis for determining that these important job duties are sufficiently similar to the duties of the job in the original study (or studies) to warrant use of the selection procedure in the new situation should be provided (Essential).

(ii) *Relevance of criteria.*—A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (Essential).

(iii) *Other variables.*—The similarity of important applicant pool/sample characteristics reported in the original studies to those of the user should be described (Essential). A description of the comparison betwen the race and sex composition of the user's relevant labor market and the sample in the original validity studies should be provided (Essential).

(iv) *Use of the selection procedure.*—A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (Essential).

(v) *Bibliography.*—A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (Essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (Essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (Essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (Essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (Essential).

(2) *Evidence from content validity studies.* (i) *Similarity of Performance Domains.*—A full description should be provided of the similarity between the performance domain in the user's job and the performance domain measured by a selection procedure developed and shown to be content valid by another user (ESSENTIAL). The basis for determining this similarity should be explicitly described (ESSENTIAL).

(3) *Evidence from construct validity studies.* (i) *Uniformity of Construct.*—A full description should be provided of the basis for determining that the construct identified as underlying successful job performance by the user's job analysis is the same as the construct measued by the selection procedure (ESSENTIAL).

PART IV—DEFINITIONS

§ 14 The following definitions shall apply throughout these guidelines:

(a) Ability: The present observable competence to perform a function.

(b) Adverse Impact: Defined in § 4 of these guidelines.

(c) Employer: Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including state or local governments and any Federal agency subject to the provisions of Sec. 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

(d) Employment agency: Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

(e) Labor organization: Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(e) Enforcement agency: Any agency of the executive branch of the Federal Government which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

(f) Labor organization: Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(g) Racial, sex or ethnic group: Any group of persons identifiable on the grounds of race, color, religion, sex or national origin.

(h) Selection procedure: Any measure, combination of measures, or procedure, other than a bona fide seniority system, used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs or probationary periods and physical, educational and work experience requirements through informal or casual interviews and unscored application forms.

(i) Selection rate: The proportion of applicants or candidates who are hired, promoted or otherwise selected.

(j) Technical feasibility: The existence of conditions permitting the conduct of meaningful criterion related validity studies. These conditions include: (a) an adequate sample of persons available for the study to achieve findings of statistical significance; (b) having or being able to obtain a sufficient range of scores

on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (c) having or being able to devise unbiased, reliable and relevant measuers of job performance or other criteria of employee adequacy. See § 12b(1). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See § 12b(7).

(k) Unfairness of selection procedure (differential prediction): A condition in which members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See § 12b(7)

(l) User: Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a state employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the state employment agency will not be deemed to be a user.

EDWARD H. LEVI,
Attorney General.

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Title 41—Public Contracts and Property Management

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

PART 60-3—GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

On July 14, 1976, notice was published in the FEDERAL REGISTER (41 FR 29016) proposing to revise Chapter 60 of Title 41 of the Code of Federal Regulations by substituting a new Part 60-3, relating to employee selection procedures. Interested persons were given 45 days in which to submit written comments, suggestions, or objections regarding the proposed revision. The guidelines which are being promulgated today were developed under the auspices of the Equal Employment Coordinating Council with full participation by the Department of Labor. The history of the development of these guidelines in the Coordinating Council and reasons for their adoption are set forth in the foregoing memorandum signed by the members of the Coordinating Council who represent the Department of Justice, Civil Service Commission and Department of Labor.

Accordingly, based on the determinations set forth in the memorandum, and having considered all comments and material submitted, Part 60-3 hereby is revised to read as set forth below.

Effective Date: This revision of Part 60-3 becomes effective on December 23, 1976.

Dated: November 11, 1976.

W. J. USERY, Jr.,
Secretary of Labor.
JOHN C. READ,
Assistant Secretary for Employment Standards Administration.
LAWRENCE Z. LORBER,
Deputy Assistant Secretary, Director, Office of Federal Contract Compliance Programs.

Subpart A—General Principles

Sec.
60-3.1 Statement of purpose.
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Subpart B—Technical Standards

60-3.12 Technical standards for validity studies.

Subpart C—Documentation

60-3.13 Documentation of validity evidence.

Subpart D—Definitions

60-3.14 Definitions.

AUTHORITY: The provisions of this Part 60-3 issued under secs. 201, 202, 203(a), 205, 206(a), 301, 303(b), and 403(b) of Executive Order 11246, as amended, 30 FR 12319; 32 FR 14303; § 60-1.2 of Part 60-1 of 41 CFR Chapter 60, and Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14).

Subpart A—General Principles

§ 60-3.1 Statement of purpose.

These guidelines are intended to be a set of principles which will assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with equal employment opportunity requirements of Federal law with respect to race, color, religion, sex and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures consistent with Federal law. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles. Nothing in these guidelines is intended or should be interpreted as discouraging the use of procedures which have been properly validated in accordance with these guidelines for the purpose of determining qualifications or selecting on the basis of relative qualifications. Nothing in these guidelines is intended to apply to persons not subject to the requirements of Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines are not intended to apply to any responsibilities an employer, employment agency or labor organization may have under the Age Discrimination Act of 1975 not to discriminate on the basis of age, or under section 503 of the Rehabilitation Act of 1973 not to discriminate on the basis of handicap. Nothing contained in these guidelines is intended to interfere with any obligation imposed or right granted by Federal law to users to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 60-3.2 Scope.

(a) These guidelines will be applied by the Department of Labor to contractors and subcontractors subject to Executive Order 11246 as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); and by the Civil Service Commission to Federal agencies subject to Sec. 717 of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "the Civil Rights Act of 1964") and to its responsibilities toward state and local governments under Section 208(b)(1) of the Intergovernmental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; and by any other Federal agency which adopts them. The Department of Justice and the Civil Service Commission have codified these guidelines in 28 CFR Part 50 and Appendices to Federal Personnel Manual Supplements 271-1, 271-2, 335-1, and 990-1 (Book 3), Part 900, subpart F, respectively.

(b) These guidelines apply to selection procedures which are used as a basis for any employment decisions. Employment decisions include but are not limited to hire, promotion, demotion, membership (for example in a labor organization), referral, retention, licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Selection for training is also considered an employment decision if it leads to any of the decisions listed above.

(c) These guidelines do not apply to the use of a bona fide seniority system within the meaning of Title VII of the Civil Rights Act of 1964, as amended, as defined by Federal appellate court decisions, for any employment decision. These guidelines do not call for the validation of such a seniority system used as a basis for such employment decisions, and the use of such a seniority system as a basis for such employment decisions is consistent with these guidelines.

(d) These guidelines do not apply to the entire range of Federal equal employment opportunity law, but only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract racial, ethnic or sex groups which were previously denied employment opportunities or which are presently underutilized may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element to any effective affirmative action program; but the subject of recruitment practices is not addressed by these guidelines because that subject concerns procedures other than selection procedures.

§ 60-3.3 Relationship between use of selection procedures and discrimination.

(a) The use of any selection procedure which has an adverse impact on the members of any racial, ethnic or sex group with respect to any employment decision will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure is validated in accordance with the principles contained in these guidelines or unless use of the procedure is warranted under § 60-3.3b.

(b) There are circumstances in which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact. (1) When an unstandardized, informal or unscored selection procedure which has an adverse impact is utilized, the user should seek insofar as possible to eliminate the adverse impact, or, if feasible, to modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then to validate the procedure in accord with these guidelines, or otherwise to justify continued

use of the procedure in accord with Federal law. (ii) When a standardized, formal or scored selection procedure is used for which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines, the user should either modify the procedure to eliminate the adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

(c) Generally, where alternative selection procedures are available which have been shown to be equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should make a reasonable effort to investigate suitable alternative selection precedures which have as little adverse impact as possible, for the purpose of determining the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and a validity study for a job or group of jobs has been made in accord with these guidelines, the use of the selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown a suitable alternative selection procedure with evidence of at least equal validity and less adverse impact, the user should investigate it for the purpose of determining the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if such a combination has been properly validated.

§ 60–3.4 Information on impact.

(a) Each user should have available for inspection records or other information which will disclose the impact which its selection procedures have upon employment opportunities of persons by identifiable racial, ethnic or sex groups in order to determine compliance with the provisions of § 60–3.3 above. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size. The records called for by this section are to be maintained by sex, and by racial and ethnic groups as follows: blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic and totals. The classifications called for by this section are intended to be consistent with the Employer Information (EEO–1 et seq.) series of reports. The user should adopt safeguards to insure that records of race, color, religion, sex, or national origin are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used for making employment decisions.

(b) The information called for by this section should be examined for possible adverse impact. If the records called for by this section indicate that the total selection process for a job has no adverse impact, the individual components of the selection process need not be evaluated separately for adverse impact. If a total selection process does have adverse impact, the individual components of the selection process should be evaluated for adverse impact.

A selection rate for any racial, ethnic or sex group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact. Smaller differences in selection rate may nevertheless be considered to constitute adverse impact, where they are significant in both statistical and practical terms. Greater differences in selection rate would not necessarily be regarded as constituting adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group.

(c) Federal agencies which adopt these guidelines for purposes of the enforcement of the equal employment opportunity laws or which have responsibility for securing compliance with them (hereafter referred to as enforcement agencies) will consider in carrying out their obligations the general posture of the user with respect to equal employment opportunity for the job classification or group of clasifications in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the employer has adopted and the progress which the employer has made in carrying out that program and in meeting the goals and timetables. These guidelines recognize that a user is prohibited by Federal law from the making of employment decisions on the basis of race and color and (except for bona fide occupational qualifications) on the basis of sex, religion and national origin; and nothing in this subsection or in these guidelines is intended to encourage or permit the granting of preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group.

§ 60–3.5 General standards for validity studies.

(a) For the purposes of satisfying these guidelines users may rely upon criterion-related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in Part II of these guidelines, § 60–3.12 infra.

(b) These guidelines are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other assessment techniques, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C. 1974) (hereinafter "APA Standards"), and standard text books and journals in the field of personnel selection.

(c) For any selection procedure which has an adverse impact each user should maintain and have available such documentation as is described in Subpart C of these guidelines, § 60–3.13 infra.

(d) Selection procedures subject to validity studies under § 60–3.3(a) above should be administered and scored under standardize conditions.

(e) In general, users should avoid making employment decisions on the basis of measures of knowledges, skills or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

(f) Where cut-off scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where other factors are used in determining cut-off scores, such as the relationship between the number of vacancies and the number of applicants, the degree of adverse impact should be considered.

(g) Selection procedures may be used to predict the performance of candidates for a job which is at a higher level than the job for which the person is initially being selected if a majority of the individuals who remain employed will progress to the higher level within a reasonable period of time. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than five years. Examining for a higher level job would not be appropriate (1) if the majority of those remaining employed do not progress to the higher level job, (2) if there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period, or (3) if knowledges, skills or abilities required for advancement would be expected to develop principally from the training or experience on the job.

(h) Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) the user can cite substantial evidence of validity in accord with these guidelines and (2) the user has in progress, when technically feasible, studies which are designed to produce the additional data required within a reasonable time.

If the additional studies do not produce the data required to demonstrate validity, the user is not relieved of or protected

against any obligations arising under Federal law.

(i) Whenever a validity study has been made in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in § 60-3.3(c) above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

§ 60-3.6 Cooperative validity studies and use of other validity studies.

(a) It is the intent of the agencies issuing these guidelines to encourage and facilitate cooperative development and validation efforts by employers, labor organizations and employment agencies to achieve selection procedures which are consistent with these guidelines.

(b) Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when: (1) the weight of the evidence from studies meeting the standards of § 60-3.12(b) below shows that the selection procedure is valid; (2) the studies pertain to a job which has substantially the same major job duties as shown by appropriate job analyses and (3) the studies include a study of test fairness for those racial, ethnic and sex subgroups which constitute significant factors in the borrowing user's relevant labor market for the job or jobs in question. If the studies relied upon satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere show test fairness, and it is not technically becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon.

If it is technically feasible for a borrowing user to conduct an internal validity study, and there are variables in the other studies which are likely to affect validity or fairness significant, the user may rely upon such studies only on an interim basis in accord with § 60-3.5(h), and will be expected to conduct an internal validity study in accord with § 60-3.12(b) below. Otherwise the borrowing user may rely upon such acceptable studies for operational use without an internal study.

(c) Selection procedures shown by one user to be content valid in accord with § 60-3.12(c) will be considered acceptable for use by another user for a performance domain if the borrowing user's job analysis shows that the same performance domain is present in the borrowing user's job. The selection procedure may be used operationally if the conditions of § 60-3.12(c)(3) and § 60-3.12(c)(6) are satisfied by the borrowing user.

(d) The conditions under which findings of construct validity may be generalized are described in § 60-3.12(d)(4).

(e) If validity evidence from a multiunit or cooperative study satisfies the requirements of subparagraphs b, c or d above, evidence of validity specific to each unit or user usually will not be required unless there are variables in the units not studied which are likely to affect validity significantly.

§ 60-3.7 No assumption of validity.

(a) Under no circumstances will the general reputation of a selection procedure, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other non-empirical or anecdotal accounts of selection practices or selection outcomes.

(b) Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis and careful development of a selection procedure enhances the probability that the selection procedure is valid for the job.

§ 60-3.8 Employment agencies and employment services.

(a) An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards for determining adverse impact and, if adverse impact is demonstrated, show validity as set forth in these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

(b) Where an employment agency or service is requested to administer a selection program which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should obtain evidence of the absence of adverse impact, or of validity, as described in these guidelines, before it administers the selection program and makes referrals pursuant to the results. The employment agency must furnish on request such evidence of validity. An employment agency or service will be expected to refuse to make referrals based on the selection procedure where the employer or labor organization does not supply satisfactory evidence of validity or lack of adverse impact.

§ 60-3.9 Disparate treatment.

The principle of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon members of a racial, sex or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a racial, sex, or ethnic group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against and were available in the relevant job market during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under the less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required for the safety or efficiency of the operation. Nothing in this section is intended to prohibit a user who has not previously followed merit standards from adopting merit standards; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are validated in accord with these guidelines.

§ 60-3.10 Retesting.

Users should provide a reasonable opportunity for retesting and reconsideration. The user may however take reasonable steps to preserve the security of its procedures. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting.

§ 60-3.11 Affirmative action.

The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of selection procedures (consistent with Federal law—see § 60-3.4(c)) which assist in the achievement of affirmative action objectives.

Subpart B—Technical Standards

§ 60-3.12 Technical standards for validity studies.

The following minimum standards, as applicable, should be met in conducting

a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures.

(a) Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in § 60-3.12 (b)(3) below with respect to criterion-related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

(b) *Criterion-related validity.* (1) Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in Subpart D) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study; and do not require such a study on a sample of less than thirty (30) persons.

(2) There should be a review of job information to determine measures of work behaviors or performance that are relevant to the job in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered both in selection of the measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques should be carefully developed. All criteria need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Criteria may consist of measures other than work proficiency including, but not limited to length of service, regularity of attendance, training time or properly measured success in job relevant training. Measures of training success based upon pencil and paper tests will be closely reviewed for job relevance. Whatever criteria are used should represent important or critical work behaviors or work outcomes. Job behaviors including but not limited to production rate, error rate, tardiness, absenteeism and turnover, may be used as criteria without a full job analysis if the user can show the importance of the criterion to the particular employment context. A standardized rating of overall work performance may be utilized where a study of the job shows that it is an appropriate criterion.

(4) The sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or jobs in question, and should insofar as feasible include the racial, ethnic and sex groups normally available in the relevant job market. Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the 0.05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

Users should evaluate each selection procedure to assure that it is appropriate for operational use. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance or number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: the degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity; and the need of an employer, required by law or regulation to follow merit principles, to have an objective system of selection.

(6) Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance, when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard; cross-validation is another.

(7) *Fairness of the selection procedure.* (i) When members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

(ii) Where a selection procedure results in an adverse impact on a racial, ethnic or sex group identified in accordance with the classifications set forth in § 60-3.4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so.

The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure is a fair predictor for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue and may be combined with data from the present study; however, where the severity of adverse impact on a group is significantly greater than in the other studies referred to, a user may not rely on such other studies.

(iii) Users conducting a study of fairness should review the APA Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

(iv) If unfairness is demonstrated through a showing that members of a

particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument operationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

(v) In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see § 60-3.14(j), below) an investigation of fairness requires the following:

(1) A sufficient number of persons in each group for findings of statistical significance. These guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; and do not require a user to conduct a study of fairness on a sample of less than thirty (30) persons for each group involved in the study.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

(vi) If a study of fairness should otherwise be performed, but is not technically feasible, the use of a selection procedure which has otherwise met the validity standards of these guidelines will be considered in accord with these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

(c) *Content validity.* (1) There should be a definition of a performance domain or the perfromance domains with respect to the job in question. Performance domains may be defined through job analysis, analysis of the work behaviors or activities, or by the pooled judgments of persons having knowledge of the job. Performance domains should be defined on the basis of competent information about job tasks and responsibilities. Performance domains include critical or important work behaviors, work products, work activities, job duties, or the knowledges, skills or abilities shown to be necessary for performance of the duties behaviors activities or the production of work. Where a performance domain has been defined as a knowledge, skill or ability, that knowledge, skill or ability must be used in job behavior. A selection procedure based on inferences about psychological processes cannot be supported by content validity alone. Thus content validity by itself is not an appropriate validation strategy for intelligence, aptitude, personality or interest tests. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills or abilities which an employee will be expected to learn on the job.

(2) If a higher score on a content valid selection procedure can be expected to result in better job performance the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely by content validity is used to rank job candidates, the performance domain should clude those aspects of performance which differentiate among levels of job performance.

(3) A selection procedure which is a representative sample of a performance domain of the job as defined in accordance with subsection (1) above, is a content valid procedure for that domain. Where the domain or domains measured are critical to the job, or constitute a substantial proportion of the job, the selection procedure will be considered to be content valid for the job. The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible to do so, appropriate statistical estimates should be made of the reliability of the selection procedures.

(4) A demonstration of the relationship between the content of the selection procedure and the performance domain of the job is critical to content validity. Content validity may be shown if the knowledges, skills or abilities demonstrated in and measured by the selection procedure are substantially the same as the knowledges, skills or abilities shown to be necessary for job performance. The closer the content of the selection procedure is to actual work samples, behaviors or activities, the stronger is the basis for showing content validity. The need for careful documentation of the relationship between the performance domain of the selection procedure and that of the job increases as the content of the selection procedure less resembles that of the job performance domain.

(5) A requirement for specific prior training or for work experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the performance domain of the job for which the training or experience is to be required.

(6) If a selection procedure is supported solely on the basis of content validity, it may be used operationally if it represents a critical performance domain or a substantial proportion of the performance domains of the job.

(d) *Construct Validity.* Construct validity is a more complex strategy than either criterion-related or content validity. Accordingly, users choosing to validate a selection procedure by use of this strategy should be careful to follow professionally accepted standards, such as those contained in the APA Standards and the standard text books and journals.

(1) There should be a job analysis. This job analysis should result in a determination of the constructs that underlie successful performance of the important or critical duties of the job.

(2) A selection procedure should be selected or developed which measures the construct(s) identified in accord with subparagraph (1) above.

(3) A selection procedure may be used operationally if the standards of subparagraphs (1) and (2) are met and there is sufficient empirical research evidence showing that the procedure is validly related to performance of critical job duties. Normally, sufficient empirical research evidence would take the form of one or more criterion-related validity studies meeting the requirements of § 60-3.12(b). See also second sentence of § 60-3.12.

(4) Where a selection procedure satisfies the standards of subsections (1), (2) and (3) above, it may be used operationally for other jobs which are shown by an appropriate job analysis to include the same construct(s) as an essential element in job performance.

Subpart C—Documentation of Validity Evidence

§ 60-3.13 Documentation.

(a) For each selection procedure having an adverse impact (as set forth in § 60-3.4) the user should maintain and have available the data on which the adverse impact determination was made and one of the following types of documentation evidence:

(1) Documentation evidence showing criterion-related validity of the selection procedure (see § 60-3.13(b) infra).

(2) Documentation evidence showing content validity of the selection procedure (see § 60-3.13(c) infra).

(3) Documentation evidence showing construct validity of the selection procedure (see § 60-3.13(d) infra).

(4) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see § 60-3.13(e) infra).

(5) Documentation evidence showing what steps were taken to reduce or eliminate adverse impact, why validation is not feasible or not appropriate and why continued use of the procedure is consistent with Federal law.

This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity are acceptable if they are complete in regard to the following documentation requirements, or if they satisfied requirements of guidelines which were in effect when the study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

In the event that evidence of validity is reviewed by an enforcement agency, the reports completed after the effective date of these guidelines are expected to use one of the formats set forth below. Evidence denoted by use of the word "(Essential)" is considered critical and reports not containing such information will be considered incomplete. Evidence not so denoted is desirable, but its absence will not be a basis for considering a report incomplete.

(b) *Criterion-related validity.* Reports of criterion-related validity of selection procedures are to contain the following information:

(1) *User(s), and location(s) and date(s) of study.* Dates of administration of selection procedures and collection of criterion data and, where appropriate, the time between collection of data on selection procedures and criterion measures should be shown (ESENTIAL). If the study was conducted at several locations, the address of each location, including city and state, should be shown.

(2) *Problem and setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cut-off scores, if any, should be provided.

(3) *Review of job information or job analysis.* Where a review of job information results in criteria which are measures other than work proficiency (see § 60–3.12(b)(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required, the report should include either: (a) the important duties performed on the job and the basis on which such duties were determined to be important, such as the proportion of time spent on the respective duties, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors; or (b) the knowledges, skills, abilities and/or other worker characteristics and bases on which they were determined to be important for job performance (Essential). Published descriptions from industry sources or Volume I of the Dictionary of Occupational Titles, Third Edition, United States Government Printing Office, 1965, are satisfactory if they adequately and completely describe the job. If appropriate, a brief supplement to the published description should be provided.

If two or more jobs are grouped for a validity study, a justification for this grouping, as well as a description of each of the jobs, should be provided (Essential).

(4) *Job titles and codes.* It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from United States Employment Service Dictionary of Occupational Titles, Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(5) *Criteria.* A full description of all criteria on which data were collected, including a rationale for selection of the final criteria, and means by which they were observed, recorded, evaluated and quantified should be provided (Essential). If rating techniques are used as criterion measures the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence (Essential).

(6) *Sample.* A description of how the research sample was selected should be included (Essential). The racial, ethnic and sex composition of the sample should be described, including the size of each subgroup (Essential). Racial and ethnic classifications should be those set forth in § 60–3.4a above. A description of how the research sample compares with the racial, ethnic and sex composition of the relevant labor market is also desirable. Where data are available, the racial, ethnic and sex composition of current applicants should also be described. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Selection procedure.* Any measure, combination of measures, or procedures used as a basis for employment decisions should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Reports of reliability estimates and how they were established are desirable. A rationale for choosing the selection procedures investigated in the study should be included.

(8) *Techniques and results.* Methods used in analyzing data should be described (Essential). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for all relevant racial, ethnic and sex subgroups (Essential). Statistical results should be organized and presented in tabular or graphical form, by racial, ethnic and/or sex subgroups (Essential). All selection procedure-criterion relationships investigated should be reported, including their magnitudes and directions (Essential). Statements regarding the statistical significance of results should be made (Essential).

Any statistical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion, or both, should be described; and uncorrected correlation coefficients should also be shown (Essential). Where the statistical technique used categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the bases on which they were determined should be described (Essential). Studies of test fairness should be included where called for by the requirements of § 60–3.12(b)(7) (Essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (Essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (Essential). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (Essential).

(9) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (Essential).

(10) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(11) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(12) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

(c) *Content validity.* Reports of content validity of selection procedures are to contain the following information:

(1) *Definition of performance domain.* A full description should be provided for the basis on which a performance domain is defined (Essential). A complete and comprehensive definition of the performance domain should also be provided (Essential). The domain should be defined on the basis of competent information about job tasks and responsibilities (Essential). Where the performance domain is defined in terms of knowledges, skills, or abilities, there should be an operational definition of each knowledge, skill or ability and a complete description of its relationship to job duties, behaviors, activities, or work products (Essential).

(2) *Job title and code.* It is desirable to provide the user's job title(s) and the corresponding job title(s) and code(s)

from the United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(3) *Selection procedures.* Selection procedures including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure for which content validity is asserted should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Where the performance domain is defined in terms of knowledges, skills or abilities, evidence that the selection procedure measures those knowledges, skills or abilities should be provided (Essential).

(4) *Techniques and results.* The method by which the correspondence between the content of the selection procedure and the job performance domain(s) was established and the relative emphasis given to various aspects of the content of the selection procedure as derived from the performance domain(s) should be described (Essential). If any steps were taken to reduce adverse racial, ethnic, or sex impact in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. The adequacy of the sample coverage of the performance domain should be described as precisely as possible. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) should be reported for all selection procedures as appropriate. Such reports should be made for all relevant racial, ethnic, and sex subgroups, at least on a statistically reliable sample basis.

(5) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and the application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential).

(6) *Cut-off scores.* The rationale for minimum scores, if used, should be provided (Essential). If the selection procedure is used to rank individuals above minimum levels, or if preference is given to individuals who score significantly above the minimum levels, a rationale for this procedure should be provided (Essential).

(7) *Contact person.* It is desirable for the employer to set forth the name, mailing address and telephone number of the individual who may be contacted for further information about the validation study.

(d) *Construct validity.* Reports of construct validity of selection procedures are to contain the following information:

(1) *Construct definition.* A clear definition of the construct should be provided, explained in terms of empirically observable behavior, including levels of construct performance relevant to the job(s) for which the selection procedure is to be used (Essential).

(2) *Job analysis.* The job analysis should show how the constructs underlying successful job performance of important or critical duties were determined (Essential). The job analysis should provide evidence of the linkage between the construct and the important duties of the job and how this linkage was determined (Essential).

(3) *Job titles and codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles, Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(4) *Selection procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (Essential). The evidence demonstrating that the selection procedure is in fact a proper measure of the construct should be included (Essential). Reports of reliability estimates and how they were established are desirable.

(5) *Anchoring.* The empirical evidence showing that performance on the selection procedure is validly related to performance of critical job duties should be included (Essential).

(6) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights (and the validity of the weighted composite) should be reported (Essential).

(7) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(8) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(9) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

(e) *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this § 60-3.13 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies.* (i) *Job information.* A description of the important duties of the user's job and the basis on which the duties were determined to be important should be provided (Essential). A full description of the basis for determining that these important job duties are sufficiently similar to the duties of the job in the original study (or studies) to warrant use of the selection procedure in the new situation should be provided (Essential).

(ii) *Relevance of criteria.* A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (Essential).

(iii) *Other variables.* The similarity of important applicant pool/sample characteristics reported in the original studies to those of the user should be described (Essential). A description of the comparison between the race and sex composition of the user's relevant labor market and the sample in the original validity studies should be provided (Essential).

(iv) *Use of the selection procedure.* A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (Essential).

(v) *Bibliography.* A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (Essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (Essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (Essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (Essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (Essential).

(2) *Evidence from content validity studies.* (i) *Similarity of performance domains.* A full description should be provided of the similarity between the

performance domain in the user's job and the performance domain measured by a selection procedure developed and shown to be content valid by another user (Essential). The basis for determining this similarity should be explicity described (Essential).

(3) *Evidence from construct validity studies.* (i) *Uniformity of construct.* A full description should be provided of the basis for determining that the construct identified as underlying successful job performance by the user's job analysis is the same as the construct measured by the selection procedure (Essential).

Subpart D—Definitions

§ 60–3.14 Definitions.

The following definitions shall apply throughout these guidelines:

(a) *Ability.* The present observable competence to perform a function.

(b) *Averse impact.* Defined in § 60–3.4 of these guidelines.

(c) *Employer.* Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including state or local governments and any Federal agency subject to the provisions of Sec. 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

(d) *Employment agency.* Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

(e) *Labor organization.* Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(f) *Enforcement agency.* Any agency of the executive branch of the Federal Government which adopts these guidelines for purpose of the enforcement of the equal employment opportunity laws or which has responsiblty for securing compliance with them.

(g) *Labor organization.* Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(h) *Racial, sex or ethnic group.* Any group of persons identifiable on the grounds of race, color, religion, sex, or national origin.

(i) *Selection procedure.* Any measure, combination of measures, or procedure, other than a bonafide seniorty system, used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditonal paper and pencil tests, performance tests, training programs or probationary periods and physical, educational and work experience requirements through informal or casual interviews and unscored application forms.

(j) *Selection Rate.* The proportion of applicants or candidates who are hired, promoted or otherwise selected.

(k) *Technical feasiblity.* The existence of conditions permitting the conduct of meaningful criterion-related validity studies. These conditions include: (a) an adequate sample of persons available for the study to achieve findings of statistical significance; (b) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (c) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See § 60–3.12(b)(1). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See § 60–3.12(b)(7).

(l) *Unfairness of selection procedure (differential prediction).* A condition in which members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See § 60–3.12(b)(7)

(m) *User.* Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a state employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the state employment agency will not be deemed to be a user.

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CIVIL SERVICE COMMISSION

EMPLOYEES SELECTION PROCEDURE GUIDELINES

Appendices to Federal Personnel Manual Supplements

On July 14, 1976, notice of proposed Federal Personnel Manual Supplement appendices was published in the FEDERAL REGISTER (41 FR 29016) that under the authority of Sections 3301, 3302, and 7301 of Title 5 and Section 4763(b) of Title 42, United States Code, Executive Order 10577, 3 CFR, 1954–58 Comp., p. 218, and Executive Order 11748, 3 CFR, 1969 Comp., p. 133, and Section 715 of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e–14), the Civil Service Commission proposed to issue an identical appendix to each of four Federal Personnel Manual Supplements, 271–1, 271–2, 335–1, and 990–1 (Book 3), Part 900, Subpart F to provide guidance and further the principles of these Supplements, so that examining, testing standards, and employment practices are not affected by discrimination on the basis of race, color, religion, sex, and national origin.

While not required to do so, the Commission published those proposed appendices in advance of their effective date in the interest of obtaining views from as many sources as possible.

Comments, objections, and suggestions having been received and thoroughly considered, the Civil Service Commission, by this Notice, herewith incorporates, with minor changes, the following Federal Executive Agency Guidelines on Employee Selection Procedures into the Federal Personnel Manual Supplement system as appendices to Supplements 271–1, 271–2, 335–1, and 990–1 (Book 3), Part 900, Subpart F. Such action establishes the Guidelines as an acceptable interpretation of the Supplements. The appendices apply prospectively.

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

FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

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PART I—GENERAL PRINCIPLES

§ 1 STATEMENT OF PURPOSE

a. These guidelines are intended to be a set of principles which will assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with equal employment opportunity requirements of Federal law with respect to race, color, religion, sex and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures consistent with Federal law. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles. Nothing in these guidelines is intended or should be interpreted as discouraging the use of procedures which have been properly validated in accordance with these guidelines for the purpose of determining qualifications or selecting on the basis of relative qualifications. Nothing in these guidelines is intended to apply to persons not subject to the requirements of Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines are not intended to apply to any responsibilities an employer, employment agency or labor organization may have under the Age Discrimination Act of 1975 not to discriminate on the basis of age, or under section 504 of the Rehabilitation Act of 1973 not to discriminate on the basis of handicap. Nothing contained in these guidelines is intended to interfere with any obligation imposed or right granted by Federal law to users to extend a publicly announced preference in employment to Indians living on or near a Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 2 SCOPE

a. These guidelines will be applied by the Department of Labor to contractors and subcontractors subject to Executive Order 11246 as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); and by the Civil Service Commission to federal agencies subject to Sec. 717 of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "the Civil Rights Act of 1964") and to its responsibilities toward state and local governments under Section 208(b)(1) of the Intergovernmental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; and by any other Federal agency which adopts them.

b. These guidelines apply to selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hire, promotion, demotion, membership (for example in a labor organization), referral, retention, licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Selection for training is also considered an employment decision if it leads to any of the decisions listed above.

c. These guidelines do not apply to the use of a bona fide seniority system within the meaning of Title VII of the Civil Rights Act of 1964, as amended, as defined by Federal appellate court decisions, for any employment decision. These guidelines do not call for the validation of such a seniority system used as a basis for such employment decisions, and the use of such a seniority system as a basis for such employment decisions is consistent with these guidelines.

d. These guidelines do not apply to the entire range of Federal equal employment opportunity law, but only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract racial, ethnic or sex groups which were previously denied employment opportunities or which are presently underutilized may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element to any effective affirmative action program; but the subject of recruitment practices is not addressed by these guidelines because that subject concerns procedures other than selection procedures.

§ 3 RELATIONSHIP BETWEEN USE OF SELECTION PROCEDURES AND DISCRIMINATION

a. The use of any selection procedure which has an adverse impact on the members of any racial, ethnic or sex group with respect to any employment decision will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure is validated in accordance with the principles contained in these guidelines or unless use of the procedure is warranted under § 3b.

b. There are circumstances in which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact. (1) When an unstandardized, informal or unscored selection procedure which has an adverse impact is utilized, the user should seek insofar as possible to eliminate the adverse impact, or, if feasible, to modify the procedure to one which is a formal, scored or quantified measure of combination of measures and then to validate the procedure in accord with these guidelines, or otherwise to justify continued use of the procedure in accord with Fed-

eral law. (ii) When a standardized formal or scored selection procedure is used for which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines, the user should either modify the procedure to eliminate the adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

c. Generally where alternative selection procedures are available which have been shown to be equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should make a reasonable effort to investigate suitable alternative selection procedures which have as little adverse impact as possible, for the purpose of determining the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and a validity study for a job or group of jobs has been made in accord with these guidelines, the use of the selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown a suitable alternative selection procedure with evidence of at least equal validity and less adverse impact, the user should investigate it for the purpose of determining the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if such a combination has been properly validated.

§ 4 INFORMATION ON IMPACT

a. Each user should have available for inspection records or other information which will disclose the impact which its selection procedures have upon employment opportunities of persons by identifiable racial, ethnic or sex groups in order to determine compliance with the provisions of § 3 above. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size. The records called for by this section are to be maintained by sex, and by racial and ethnic groups as follows: Blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic and totals. The classifications called for by this section are intended to be consistent with the Employer Information (EEO-1 et seq.) series of reports. The user should adopt safeguards to insure that records of race, color, religion, sex, or national origin are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used for making employment decisions.

b. The information called for by this section should be examined for possible adverse impact. If the records called for by this section indicate that the total selection process for a job has no adverse impact, the individual components of the selection process need not be evaluated separately for adverse impact. If a total selection process does have adverse impact, the individual components of the selection process should be evaluated for adverse impact.

A selection rate for any racial, ethnic or sex group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact. Smaller differences in selection rate may nevertheless be considered to constitute adverse impact, where they are significant in both statistical and practical terms. Greater differences in selection rate would not necessarily be regarded as constituting adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be atypical of the normal pool of applicants from that group.

c. Federal agencies which adopt these guidelines for purpose of the enforcement of the equal employment opportunity laws or which have responsibility for securing compliance with them (hereafter referred to as enforcement agencies) will consider in carrying out their obligations the general posture of the user with respect to equal employment opportunity for the job classification or group of classifications in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the employer has adopted and the progress which the employer has made in carrying out that program and in meeting the goals and timetables. These guidelines recognize that a user is prohibited by Federal law from the making of employment decisions on the basis of race and color and (except for bona fide occupational qualifications) on the basis of sex, religion and national origin; and nothing in this subsection or in these guidelines is intended to encourage or permit the granting of preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group.

§ 5 GENERAL STANDARDS FOR VALIDITY STUDIES

a. For the purposes of satisfying these guidelines users may rely upon criterion related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in Part II of these guidelines, § 12 infra.

b. These guidelines are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other assessment techniques, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C. 1974) (hereinafter "APA Standards"), and standard text books and journals in the field of personnel selection.

c. For any selection procedure which has an adverse impact each user should maintain and have available such documentation as is described in Part III of these guidelines, § 13 infra.

d. Selection procedures subject to validity studies under § 3a above should be administered and scored under standardized conditions.

e. In general, users should avoid making employment decisions on the basis of measures of knowledges, skills, or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

f. Where cut off scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where other factors are used in determining cut off scores, such as the relationship between the number of vacancies and the number of applicants, the degree of adverse impact should be considered.

g. Selection procedures may be used to predict the performance of candidates for a job which is at a higher level than the job for which the person is initially being selected if a majority of the individuals who remain employed will progress to the higher level within a reasonable period of time. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than five years. Examining for a higher level job would not be appropriate (1) if the majority of those remaining employed do not progress to the higher level job, (2) if there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period, or (3) if knowledges, skills or abilities required for advancement would be expected to develop principally from the training or experience on the job.

h. Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) the user can cite substantial evidence of validity in accord with these guidelines and (2) the user has in progress, when technically feasible, studies which are designed to produce the additional data required within a reasonable time.

If the additional studies do not produce the data required to demonstrate validity, the user is not relieved of or pro-

tected against any obligations arising under federal law.

i. Whenever a validity study has been made in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in § 3c above. There are no absolutes in the areas of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

§ 6 COOPERATIVE VALIDITY STUDIES AND USE OF OTHER VALIDITY STUDIES

a. It is the intent of the agencies issuing these guidelines to encourage and facilitate cooperative development and validation efforts by employers, labor organizations and employment agencies to achieve selection procedures which are consistent with these guidelines.

b. Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when: (1) the weight of the evidence from studies meeting the standards of § 12b below shows that the selection procedure is valid; (2) the studies pertain to a job which has substantially the same major job duties as shown by appropriate job analyses and (3) the studies included a study of test fairness for those racial, ethnic and sex subgroups which constitute significant factors in the borrowing user's relevant labor market for the job or jobs in question. If the studies relied upon satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon.

If it is technically feasible for a borrowing user to conduct an internal validity study, and there are variables in the other studies which are likely to affect validity or fairness significantly, the user may rely upon such studies only on an interim basis in accord with § 5h, and will be expected to conduct an internal validity study in accord with § 12b below. Otherwise the borrowing user may rely upon such acceptable studies for operational use without an internal study.

c. Selection procedures shown by one user to be content valid in accord with § 12c will be considered acceptable for use by another user for a performance domain if the borrowing user's job analysis shows that the same performance domain is present in the borrowing user's job. The selection procedure may be used operationally if the conditions of § 12c (3) and § 12c(6) are satisfied by the borrowing user.

d. The conditions under which findings of construct validity may be generalized are described in § 12d(4).

e. If validity evidence from a multi-unit or cooperative study satisfies the requirements of subparagraphs b, c or d above, evidence of validity specific to each unit or user usually will not be required unless there are variables in the units not studied which are likely to affect validity significantly.

§ 7 NO ASSUMPTION OF VALIDITY

a. Under no circumstances will the general reputation of a selection procedure, its author or its publisher, or casual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other non-empirical or anecdotal accounts of selection practices or selection outcomes.

b. Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis and careful development of a selection procedure enhances the probability that the selection procedure is valid for the job.

§ 8 EMPLOYMENT AGENCIES AND EMPLOYMENT SERVICES

a. An employment agency, including private employment agencies and State employment agencies which agrees to a request by an employer or labor organization to devise and utilize a selection procedure should follow the standards for determining adverse impact and, if adverse impact is demonstrated, show validity as set forth in these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

b. Where an employment agency or service is requested to administer a selection program which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should obtain evidence of the absence of adverse impact, or of validity, as described in these guidelines, before it administers the selection program and makes referrals pursuant to the results. The employment agency must furnish on request such evidence of validity. An employment agency or service will be expected to refuse to make referrals based on the selection procedure where the employer or labor organization does not supply satisfactory evidence of validity or lack of adverse impact.

§ 9 DISPARATE TREATMENT

The principle of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon members of a racial, sex or ethnic group where other employees, applicants, or members have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against and were available in the relevant job market during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under the less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required for the safety or efficiency of the operation. Nothing in this section is intended to prohibit a user who has not previously followed merit standards from adopting merit standards; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are validated in accord with these guidelines.

§ 10 RETESTING

Users should provide a reasonable opportunity for retesting and reconsideration. The user may however take reasonable steps to preserve the security of its procedures. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting.

§ 11 AFFIRMATIVE ACTION

The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of selection procedures (consistent with Federal law—see § 4c) which assist in the achievement of affirmative action objectives.

PART II

TECHNICAL STANDARDS

§ 12 TECHNICAL STANDARDS FOR VALIDITY STUDIES

The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures.

a. Any validity study should be based upon a review of information about the

job for which the selection procedure is to be used. The review should include a job analysis except as provided in § 12b (3) below with respect to criterion related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

b. *Criterion-related validity.* (1) Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in Part IV) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study; and do not require such a study on a sample of less than thirty (30) persons.

(2) There should be a review of job information to determine measures of work behaviors or performance that are relevant to the job in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed from the review of job information. The possibility of bias should be considered both in selection of the measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques should be carefully developed. All criteria need to be examined for freedom from factors which would unfairly alter scores of members of any group. The revelance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Criteria may consist of measures other than work proficiency including, but not limited to length of service, regularity of attendance, training time or properly measured success in job relevant training. Measures of training success based upon pencil and paper tests will be closely reviewed for job relevance. Whatever criteria are used should represent important or critical work behaviors or work outcomes. Job behaviors including but not limited to production rate, error rate, tardiness, absenteeism and turnover, may be used as criteria without a full job analysis if the user can show the importance of the criterion to the particular employment context. A standardized rating of overall work performance may be utilized where a study of the job shows that it is an appropriate criterion.

(4) The sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or jobs in question, and should insofar as feasible include the racial, ethnic and sex groups normally available in the relevant job market. Where samples are combined or compared, attention should be given to see that such sample are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the .05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significent relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

Users should evaluate each selection procedure to assure that it is appropriate for operational use. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance or number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: the degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity; and the need of an employer, required by law or regulation to follow merit principles, to have an objective system of selection.

(6) Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance, when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard; cross-validation is another.

(7) *Fairness of the Selection Procedure.* i. When members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

ii. Where a selection procedure results in an adverse impact on a racial, ethnic or sex group identified in accordance with the classifications set forth in § 4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so.

The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure is a fair predictor for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue and may be combined with data from the present study; however, where the severity of adverse impact on a group is significantly greater than in the other studies referred to, a user may not rely on such other studies.

iii. Users conducting a study of fairness should review the APA Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures in severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

iv. If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these

guidelines, or may continue to use the selection instrument operationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

v. In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see § 14(j), below) an investigation of fairness requires the following:

(1) a sufficient number of persons in each group for findings of statistical significance. These guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; and do not require a user to conduct a study of fairness on a sample of less than thirty (30) persons for each group involved in the study.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors like to affect validity differences; or such factors should be included in the design of the study and their effects identified.

vi. If a study of fairness should otherwide be performed, but is not technically feasible, the use of a selection procedure which has otherwise met the validity standards of these guidelines will be considered in accord with these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

c. *Content Validity.* (1) There should be a definition of a performance domain or the performance domains with respect to the job in question. Performance domains may be defined through job analysis, analysis of the work behaviors or activities, or by the pooled judgments of persons having knowledge of the job. Performance domains should be defined on the basis of competent information about job tasks and responsibilities. Performance domains include critical or important work behaviors, work products, work activities, job duties, or the knowledges, skills or abilities shown to be necessary for performance of the duties, behaviors, activities or the production of work. Where a performance domain has been defined as a knowledge, skill or ability, that knowledge, skill or ability must be used in job behavior. A selection procedure based on inferences about psychological processes cannot be supported by content validity alone. Thus content validity by itself is not an appropriate validation strategy for intelligence, aptitude, personality or interest tests. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills or abilities which an employee will be expected to learn on the job.

(2) If a higher score on a content valid selection procedure can be expected to result in better job performance the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely by content validity is used to rank job candidates, the performance domain should include those aspects of performance which differentiate among levels of job performance.

(3) A selection procedure which is a representative sample of a performance domain of the job as defined in accordance with subsection (1) above, is a content valid procedure for that domain. Where the domain or domains measured are critical to the job, or constitute a substantial proportion of the job, the selection procedure will be considered to be content valid for the job. The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible to do so, appropriate statistical estimates should be made of the reliability of the selection procedures.

(4) A demonstration of the relationship between the content of the selection procedure and the performance domain of the job is critical to content validity. Content validity may be shown if the knowledges, skills or abilities demonstrated in and measured by the selection procedure are substantially the same as the knowledges, skills or abilities shown to be necessary for job performance. The closer the content of the selection procedure is to actual work samples, behaviors or activities, the stronger is the basis for showing content validity. The need for careful documentation of the relationship between the performance domain of the selection procedure and that of the job increases as the content of the selection procedure less resembles that of the job performance domain.

(5) A requirement for specific prior training or for work experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the performance domain of the job for which the training or experience is to be required.

(6) If a selection procedure is supported solely on the basis of content validity, it may be used operationally if it represents a critical performance domain or a substantial proportion of the performance domains of the job.

d. *Construct Validity.* Construct validity is a more complex strategy than either criterion-related or content validity. Accordingly, users choosing to validate a selection procedure by use of this strategy should be careful to follow professionally accepted standards, such as those contained in the APA Standards and the standard text books and journals.

(1) There should be a job analysis. This job analysis should result in a determination of the constructs that underlie successful performance of the important or critical duties of the job.

(2) A selection procedure should be selected or developed which measures the construct(s) identified in accord with subparagraph (1) above.

(3) A selection procedure may be used operationally if the standards of subparagraphs (1) and (2) are met and there is sufficient empirical research evidence showing that the procedure is validity related to performance of critical job duties. Normally, sufficient empirical research evidence would take the form of one or more criterion related validity studies meeting the requirements of § 12b. See also second sentence of § 12.

(4) Where a selection procedure satisfies the standards of subsections (1), (2), and (3) above, it may be used operationally for other jobs which are shown by an appropriate job analysis to include the same construct(s) as an essential element in job performance.

PART III

DOCUMENTATION OF VALIDITY EVIDENCE

§ 13a. For each selection procedure having an adverse impact (as set forth in § 4) the user should maintain and have available the data on which the adverse impact determination was made and one of the following types of documentation evidence:

(1) Documentation evidence showing criterion related validity of the selection procedure (see § 13b. infra).

(2) Documentation evidence showing content validity of the selection procedure (see § 13c. infra).

(3) Documentation evidence showing construct validity of the selection procedure (see § 13d. infra).

(4) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see § 13e. infra).

(5) Documentation evidence showing what steps were taken to reduce or eliminate adverse impact, why validation is not feasible or not appropriate and why continued use of the procedure is consistent with Federal law.

This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity are acceptable if they are complete in regard to the following documentation requirements, or if they satisfied requirements of guidelines which were in effect when the study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

In the event that evidence of validity is reviewed by an enforcement agency, the reports completed after the effective date of these guidelines are expected to use one of the formats set forth below.

Evidence denoted by use of the word "(Essential)" is considered critical and reports not containing such information will be considered incomplete. Evidence not so denoted is desirable, but its ab-

sence will not be a basis for considering a report incomplete.

b. *Criterion-related validity.* Reports of criterion-related validity of selection procedures are to contain the following information:

(1) *User(s), and Location(s) and Date(s) of Study.* Dates of administration of selection procedures and collection of criterion data and, where appropriate, the time between collection of data on selection procedures and criterion measures should be shown (Essential). If the study was conducted at several locations, the address of each location, including city and state, should be shown.

(2) *Problem and Setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cut-off scores, if any, should be provided.

(3) *Review of Job Information or Job Analysis.* Where a review of job information results in criteria which are measures other than work proficiency (see 12b(3)), the basis for the selection of these criteria should be reported (Essential). Where a job analysis is required, the report should include either: (a) the important duties performed on the job and the basis on which such duties were determined to be important, such as the proportion of time spent on the respective duties, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors; or (b) the knowledges, skills, abilities and/or other worker characteristics and bases on which they were determined to be important for job performance (Essential). Published descriptions from industry sources or Volume I of the Dictionary of Occupational Titles Third Edition, United States Government Printing Office, 1965, are satisfactory if they adequately and completely describe the job. If appropriate, a brief supplement to the published description should be provided.

If two or more jobs are grouped for a validity study, a justification for this grouping, as well as a description of each of the jobs, should be provided (Essential).

(4) *Job Titles and Codes.* It is desirable to provide the user's job title(s) for the job(s) from United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(5) *Criteria.* A full description of all criteria on which data were collected, including a rationale for selection of the final criteria, and means by which they were observed, recorded, evaluated and quantified, should be provided (Essential). If rating techniques are used as criterion measures the appraisal form(s) and instructions to the rateer(s) should be included as part of the validation evidence (Essential).

(6) *Sample.* A description of how the research sample was selected should be included (Essential). The racial, ethnic and sex composition of the sample should be described, including the size of each subgroup (Essential). Racial and ethnic classifications should be those set forth in § 4a above. A description of how the research sample compares with the racial, ethnic and sex composition of the relevant labor market is also desirable. Where data are available, the racial, ethnic and sex composition of current applicants should also be described. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Selection Procedure.* Any measure, combination of measures, or procedures used as a basis for employment decisions should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Reports of reliability estimates and how they were established are desirable. A rationale for choosing the selection procedures investigated in the study should be included.

(8) *Techniques and Results.* Methods used in analyzing data should be described (Essential).

Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for all relevant racial, ethnic and sex subgroups (Essential). Statistical results should be organized and presented in tabular or graphical form, by racial, ethnic and/or sex subgroups (Essential). All selection procedure-criterion relationships investigated should be reported, including their magnitudes and directions (Essential). Statements regarding the statistical significance of results should be made (Essential).

Any statistical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion, or both, should be described; and uncorrected correlation coefficients should also be shown (Essential). Where the statistical technique used categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the bases on which they were determined should be described (Essential). Studies of test fairness should be included where called for by the requirements of Section 12b (7) (Essential). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (Essential). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be attached (Essential). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (Essential).

(9) *Uses and Applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (Essential).

(10) *Cut-off Scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(11) *Source Data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things of education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(12) *Contact Person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

c. *Content Validity.* Report of content validity of selection procedures are to contain the following information:

(1) *Definition of Performance Domain.* A full description should be provided for the basis on which a performance domain is defined (Essential). A complete and comprehensive definition of the performance domain should also be provided (Essential). The domain should be defined on the basis of competent information about job tasks and responsibilities (Essential). Where the performance domain is defined in terms of knowledges, skills, or abilities, there should be an operational definition of each knowledge, skill or ability and a complete description of its relationship to job duties, behaviors, activities, or work products (Essential).

(2) *Job Title and Code.* It is desirable to provide the user's job title(s) and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(3) *Selection Procedures.* Selection procedures including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure for which content validity is asserted should

be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be described by title, form, and publisher (Essential). Where the performance domain is defined in terms of knowledges, skills or abilities, evidence that the selection procedure measures those knowledges, skills or abilities should be provided (Essential).

(4) *Techniques and Results.* The method by which the correspondence between the content of the selection procedure and the job performance domain(s) was established and the relative emphasis given to various aspects of the content of the selection procedure as derived from the performance domain(s) should be described (Essential). If any steps were taken to reduce adverse racial, ethnic, or sex impact in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. The adequacy of the sample coverage of the performance domain should be described as precisely as possible. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) should be reported for all selection procedures as appropriate. Such reports should be made for all relevant racial, ethnic, and sex subgroups, at least on a statistically reliable sample basis.

(5) *Uses and Applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and the application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential).

(6) *Cut-off Scores.* The rationale for minimum scores, if used, should be provided (Essential). If the selection procedure is used to rank individuals above minimum levels, or if preference is given to individuals who score significantly above the minimum levels, a rationale for this procedure should be provided (Essential).

(7) *Contact person.* It is desirable for the employer to set forth the name, mailing address and telephone number of the individual who may be contacted for further information about the validation study.

d. *Construct Validity.* Reports of construct validity of selection procedures are to contain the following information:

(1) *Construct Definition.* A clear definition of the construct should be provided, explained in terms of empirically observable behavior, including levels of construct performance relevant to the job(s) for which the selection procedure is to be used (Essential).

(2) *Job Analysis.* The job analysis should show how the constructs underlying successful job performance of important or critical duties were determined (Essential). The job analysis should provide evidence of the linkage between the construct and the important duties of the job and how this linkage was determined (Essential).

(3) *Job Titles and Codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service Dictionary of Occupational Titles, Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(4) *Selection Procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (Essential). If commercially available selection procedures are used, they should be identified by title, form and publisher (Essential). The evidence demonstrating that the selection procedure is in fact a proper measure of the construct should be included (Essential). Reports of reliability estimates and how they were established are desirable.

(5) *Anchoring.* The empirical evidence showing that performance on the selection procedure is validly related to performance of critical job duties should be included (Essential).

(6) *Uses and Applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (Essential). If weights are assigned to different parts of the selection procedure, these weights (and the validity of the weighted composite) should be reported (Essential).

(7) *Cut-off Scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (Essential).

(8) *Source Data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(9) *Contact Person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

e. *Evidence of Validity from other Studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this § 13 above. In addition, the following evidence should be supplied:

(1) *Evidence from Criterion-related Validity Studies.*—(i) *Job Information.* A description of the important duties of the user's job and the basis on which the duties were determined to be important should be provided (Essential). A full description of the basis for determining that these important job duties are sufficiently similar to the duties of the job in the original study (or studies) to warrant use of the selection procedure in the new situation should be provided (Essential).

(ii) *Relevance of Criteria.* A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (Essential).

(iii) *Other Variables.* The similarity of important applicant pool/sample characteristics reported in the original studies to those of the user should be described (Essential). A description of the comparison between the race and sex composition of the user's relevant labor market and the sample in the original validity studies should be provided (Essential).

(iv) *Use of the Selection Procedure.* A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (Essential).

(v) *Bibliography.* A bibliography of reports of validity of the selection procedure for the job or jobs in question should be provided (Essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (Essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (Essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (Essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (Essential).

(2) *Evidence from Content Validity Studies.*—(i) *Similarity of Performance Domains.* A full description should be provided of the similarity between the performance domain in the user's job and the performance domain measured by a selection procedure developed and shown to be content valid by another user (Essential). The basis for determining this similarity should be explicitly described (Essential).

(3) *Evidence from Construct Validity Studies.*—(i) *Uniformity of Construct.*

A full description should be provided of the basis for determining that the construct identified as underlying successful job performance by the user's job analysis is the same as the construct measured by the selection procedure (Essential).

PART IV—DEFINITIONS

§ 14. The following definitions shall apply throughout these guidelines:

(a) *Ability*. The present observable competence to perform a function.

(b) *Adverse Impact*. Defined in § 4 of these guidelines.

(c) *Employer*. Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including state or local government and any Federal agency subject to the provisions of Sec. 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

(d) *Employment agency*. Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

(e) *Labor organization*. Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(e) *Enforcement agency*. Any agency of the executive branch of the Federal Government which adopts these guidelines for purpose of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance with them.

(f) *Labor organization*. Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(g) *Racial, sex or ethnic group*. Any group of persons identifiable on the grounds of race, color, religion, sex or national origin.

(h) *Selection procedure*. Any measure, combination of measures, or procedure, other than a bona fide seniority system, used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs or probationary periods and physical, educational and work experience requirements through informal or casual interviews and unscored application forms.

(i) *Selection Rate*. The proportion of applicants or candidates who are hired, promoted or otherwise selected.

(j) *Technical feasibility*. The existence of conditions permitting the conduct of meaningful criterion related validity studies. These conditions include: (a) an adequate sample of persons available for the study to achieve findings of statistical significance; (b) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (c) having or being able to devise unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See § 12b(1). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See § 12b(7).

(k) *Unfairness of Selection Procedure (differential prediction)*. A condition in which members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See § 12b (7)

(l) *User*. Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a state employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the state employment agency will not be deemed to be a user.

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

[FR Doc.76-34480 Filed 11-18-76;9:20am]

federal register

TUESDAY, NOVEMBER 23, 1976

PART IV

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

■

NONDISCRIMINATION IN FEDERALLY-ASSISTED PROGRAMS

Crime Control and Juvenile Delinquency

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

[28 CFR Part 42]

EQUAL EMPLOYMENT OPPORTUNITY POLICIES AND PROCEDURES

Nondiscrimination in Federally-Assisted Crime Control and Juvenile Delinquency Programs

INTRODUCTION

The Crime Conrol Act of 1976 (Pub. L. 94-503, 90 Stat. 2407, was signed into law on October 15, 1976. The Act significantly revised the civil rights provisions of the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. § 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, and Pub. L. 93-415) (Crime Control Act) and required LEAA to promulgate, within 120 days from the date of enactment, regulations establishing reasonable time limits for the investigation of civil rights complaints and the conduct of civil rights compliance reviews.

The regulations herein proposed implement sections 518(c) and 521(d) of the Crime Control Act. They also implement section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974, 42 U.S.C. 5601, et seq., as amended (Pub. L. 93-415, 88 Stat. 1109, as amended by Pub. L. 94-503, 90 Stat. 2425), and make major amendments to the existing LEAA nondiscrimination regulations, 28 CFR 42.201, et seq., Subpart D, in numerous other areas as well.

LEAA invites comment on all aspects of the proposed regulations. This introduction highlights several key proposals on which comments is specifically invited. A section-by-section commentary is also appended to the regulations.

In order that there will be a full opportunity to consider the opinions of interested persons, written comments, suggestions, and data or arguments may be submitted to the Administrator, Law Enforcement Assistance Administration, U.S. Department of Justice, Washington, D.C. 20531, Attention: Thomas J. Madden, General Counsel, on or before January 7, 1977. LEAA will consider these comments and publish final rules no later than February 14, 1977. Public hearings will be held in Washington at LEAA offices if requested on or before December 15, 1976. Requests for hearings should be sent to Thomas J. Madden at the above address.

Comment is specifically invited on the following issues:

Complaint investigation and compliance review timetables. LEAA requests comment, generally, on the timetables for complaint investigations and compliance reviews set forth in §§ 42.205 and 42.206, respectively, and on the scope of compliance reviews to be conducted under § 42.206.

LEAA specifically solicits comment on the timetables proposed from Federal, State, and local human rights or administrative agencies charged with implementing similar statutes. Copies of agency procedures would be especially helpful to the Administration in determining the feasibility of the proposed timetables.

In addition, comment from these agencies and other interested parties is specifically invited on § 42.205(c)(7), which would permit adjustment of the time limits where complaints are referred to other Federal agencies or the Civil Rights Division of the Department of Justice for investigation. In these circumstances, LEAA might, despite its best efforts, be unable to meet the timetables, due to the procedures of the other agency. LEAA's experience suggests that cooperative agreements with other agencies can be helpful in securing the compliance of LEAA recipients and that reasonable accommodation to the practices of the other agencies is a key factor in the success of the agreement. LEAA will, as a routine part of any such agreement, establish procedures to periodically monitor the other agency's progress in resolving the complaint.

Creed and religion. These regulations are intended to implement both section 518(c)(1) of the Crime Control Act of 1976, which prohibits discrimination on the basis of "religion," and section 262(b) of the Juvenile Justice Act, which prohibits discrimination on the basis of "creed." LEAA proposes to equate the meaning of these terms, and implement them in employment cases in a manner consistent with the Equal Employment Opportunity Commission Guideline on Discrimination Because of Religion, 29 CFR 1605.1. See § 42.202(i) and the Commentary on § 42.203(c).

Height guideline. The regulations would supersede the LEAA Minimum Height Guideline, 38 FR 6115 (March 9, 1973), by conforming it to recent case law. The Guideline previously found a minimum height requirement which disproportionately excluded women or persons of certain national origins to be a violation of Subpart D of the LEAA Nondiscrimination Regulations, 28 CFR 42.201, et seq., unless the employer could convincingly demonstrate the height standard was an "operational necessity." This subpart would find a discriminatory height requirement that had a similar impact unlawful if the employer could not demonstrate the requirement was validated in accordance with the Department of Justice Guidelines on Employee Selection Guidelines, 28 CFR Part 50. See § 42.203(d).

Under this amendment, therefore, LEAA would apply the same standards to minimum height requirements that it does to other employment practices having an adverse impact on an affected class. See *Mieth* v. *Dothard*, ____ F. Supp. ____, Civ. Act. No. 75-433-N (M.D. Ala., June 28, 1976); *LULAC* v. *Santa Ana*, ____ F. Supp. ____, No. CV 74-767-F (C. D. Cal., March 12, 1976); and *Officers for Justice* v. *Civil Service Commission*, 395 F. Supp. 378, 380 (N.D. Cal. 1975) on this issue.

Compliance with preliminary injunction. Section 518(c)(2(A)(i) of the Crime Control Act requires LEAA to initiate the fund termination process upon receipt of notice of a finding by a Federal or State court to the effect that there has been a pattern or practice of discrimination in violation of section 518(c)(1). See § 42.210(a)(1) of this subpart. If suspended, payment of funds may resume if the recipient "complies fully with the final order or judgment" of the court. See § 42.213(a)(2) of this subpart and section 518(c)(2)(D)(ii) of the Act.

LEAA asks comment on the situation where a court issues a preliminary injunction on the basis of a finding of discrimination in violation of section 518(c)(1), and the receipient is in full compliance with the injunction. Is the preliminary injunction a "final order" of the court? Is a "final order" only the last order of a proceeding, or any order fixing the rights or responsibilities of a party with respect to a certain issue or period of time?

Service population. In § 42.206(b)(1) of this subpart, LEAA proposes to consider the extent of the disparity between the percentage of minorities in the "service population" of the recipient and the percentage of minorities in the recipient's workforce as a factor in selecting a recipient for a compliance review. Section 42.302(f) of Subpart E of the LEAA Nondiscrimination Regulations, 28 CFR 42.301, et seq., defines "service population" as follows:

(1) For adult and juvenile correctional institutions, facilities and programs (including probation and parole programs), the 'service population' shall be the inmate or client population served by the institution, facility, or program during the preceding fiscal year.

(2) For all other recipient agencies (e.g., police and courts), the 'service population' shall be the State population for state agencies, the county population for county agencies, and the municipal population for municipal agencies.

The definition of a correctional facility's service population has been a particular source of concern to a number of recipients. The inmate population was originally selected as the appropriate service population for correctional institutions in response to the concern voiced by a number of observers that inmates could be better served by staffs more representative of their racial and ethnic makeup. Critics of the definition argue that it is an unrealistic goal, given (1) the fact that correctional employees are recruited from the general population, and not the inmate population, (2) the wide disparity in some jurisdictions between the percentage of minorities in the general population and their presence in the inmate population, and (3) the frequent location of the institutions in areas lacking a significant minority population.

In addition, part (2) of the definition has been criticized as being too narrow at times, and, at other times, too broad. Should a municipal police department which serves a city with a large minority population but recruits from a largely white metropolitan area as well be measured by the service area or the recruiting area? Conversely, should a suburban police department with a largely white service population be

measured by only that population when it neighbors a heavy minority population in an adjacent city?

Comment is invited on five other issues that are not specifically addressed by Subpart D:

Referral of litigation to the Attorney General. Under Section 518(c)(2)(E), the sanction of fund suspension or termination would still be available after referral of a matter to the Attorney General for litigation. In light of this new provision, LEAA seeks comment on whether, and in what circumstances, a referral for litigation, before a determination has been made under § 42.210(a)(2), would be appropriate. A case may be better suited to litigation than the administrative process for any of a number of reasons, such as the presence of unique issues, the lack of significant funding, or the interest of the Civil Rights Division in a particular matter.

Under section 518(c)(2)(E) of the Crime Control Act, the Administration would have to suspend payments to the program or activity in question 45 days after the Attorney General filed suit against the recipient, unless the court granted preliminary relief to the contrary in the interim. Further, under section 518(c)(3) of the Act, the court is expressly given the power to order the suspension, termination, or repayment of such funds made available under the Crime Control Act as it deems appropriate, or to place the funds in escrow pending the outcome of the litigation.

Pending litigation by a private party. In light of the requirement in section 518(c)(2)(A)(i) of the Crime Control Act that a letter to the chief executive initiating the fund termination process must follow within 10 days of a finding by a Federal or State court or administrative agency of a pattern or practice of discrimination in violation of section 518(c)(1), LEAA invites comment on whether it may defer investigation of a complaint alleging discrimination that is currently in litigation before a court.

By deferring investigation while the issue was being litigated, LEAA could more judiciously allocate its investigative resources, but still retain the authority to take enforcement action if discrimination was found in a funded program or activity, since the enforcement process would begin upon a finding of discrimination by the court hearing the issue.

Civil rights compliance activities by LEAA State planning agencies. LEAA had previously proposed, at 40 FR 56454 (December 3, 1975), a program under which State planning agencies (SPA's) could participate in the LEAA civil rights compliance process. The program was also included in the LEAA State Planning Agency Grants Guideline Manual, M 4100.1E (January 16, 1976).

LEAA is deferring inclusion of the proposal in this regulation pending a further expression of interest by the SPA's in this program. If interest warrants, the program will be included in the final regulations. Sections 42.208 and 42.209 are reserved for this purpose. SPA's and other interested parties are asked to comment specifically on the advisability of adopting this program, and to suggest alternative procedures, if any, under which the SPA's might participate in the compliance process.

Master plan. In January, 1976, LEAA published and distributed its "Master Plan for Civil Rights Compliance and Statement of Priorities." The Administration invites all interested parties to offer their comments on what impact, if any, the amendments to section 518(c) should have on this plan.

Subpart E. LEAA has appended Subpart E of the LEAA Equal Employment Opportunity Guidelines, 28 CFR 42.301, et seq., to the proposed regulations. The Administration first invites comment on whether the information and data analysis requirements of § 42.304 might be modified in any way to simplify compliance with Subpart E, and still provide an accurate synthesis of a recipient's equal employment opportunity posture.

In addition, LEAA seeks comment on whether the enforcement procedure provided in section 518(c)(2) should be used in the event of noncompliance with Subpart E. The language of the noncompliance provision of the Crime Control Act of 1973 directed LEAA to treat noncompliance with Subpart E, i.e., a substantial failure to provide the required information, in the same manner as noncompliance with the more substantive nondiscrimination provisions.

New section 518(c)(1) eliminates this requirement. LEAA, therefore, is not required to send the statutory notice to the Governor, offer a preliminary hearing, or suspend funding for a failure to comply with Subpart E.

The Administration proposes to address violations of Subpart E under the more direct hearing procedures set forth in section 509 of the Act and the LEAA Administrative Review Procedure, 28 CFR 18.1, et seq., just as it would treat noncompliance with any other regulation. The relative speed and flexibility of this procedure, as well as the uncomplicated nature of the issues involved appear to make the section 509 procedure more appropriate than the procedure established in these regulations.

The references in § 42.304(g)(1) of Subpart E to the EEOC Guidelines on Employee Selection Procedures, and the definition of "service population" in § 42.302(f) may be modified after a review of comments received on those issues in the context of Subpart D. See §§ 42.203(c) (and Commentary) and 42.206(b)(1) (and the discussion in the Introduction above).

LEAA will publish a revised Subpart E for comment in the near future. The comments received in response to this preliminary solicitation will be addressed in that proposal.

Finally, this subpart does not implement Title VI of the Civil Rights Act of 1964. That title is enforced by Subpart C of the Department of Justice Nondiscrimination Regulations, 28 CFR 42.101, et seq. Nothing in this subpart supersedes the provisions of Subpart C.

PART 42—NONDISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY; POLICIES AND PROCEDURES

Subpart D—Nondiscrimination in Federally-Assisted Programs—Implementation of Section 518(c) of the Crime Control Act of 1976 and Section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974

Sec.
42.201 Purpose and application.
42.202 Definitions.
42.203 Discrimination prohibited.
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42.208 [Reserved.]
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Subpart D—Nondiscrimination in Federally-Assisted Programs—Implementation of Section 518(c) of the Crime Control Act of 1976 and Section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974

AUTHORITY: Subpart D: Secs. 501, 518(c), and 521(d) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 U.S.C. § 3701, et seq., as amended (Pub. L. 90-351, as amended by Pub. L. 93-83, Pub. L. 93-415, and Pub. L. 94-503 (October 15, 1976)) and Sec. 262 of the Juvenile Justice and Delinquency Prevention Act of 1974 (Pub. L. 93-415, 88 Stat. 1103).

§ 42.201 Purpose and application.

(a) The purpose of this subpart is to implement the provisions of section 518(c) of the Crime Control Act of 1976, Pub. L. 94-503, 90 Stat. 2407, and section 262(b) of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109, to the end that no person in any State shall on the ground of race, color, national origin, sex, or religion be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied employment in connection with any program or activity funded in whole or in part with funds made available by LEAA under either Act.

(b) The regulations in this subpart apply to the employment practices of, and delivery of services by, States or units of general local government administering, conducting, or participating in any program or activity receiving Federal financial assistance extended under Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended (Crime Control Act), or the Juvenile Justice and Delinquency Prevention Act of 1974 (Juvenile Justice Act).

§ 42.202 Definitions.

(a) "Law enforcement," "State," and "unit of general local government" shall have the meanings set forth in section 601 of the Crime Control Act.

(b) "Crime Control Act" means Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended.

(c) "Employment practices" means all terms and conditions of employment including but not limited to all practices relating to the screening, recruitment, referral, selection, training, appointment, promotion, demotion, and assignment of personnel, and includes advertising, hiring, assignments, classification, discipline, layoff and termination, upgrading, transfer, leave practices, rates of pay, fringe benefits, or other forms of pay or credit for services rendered and use of facilities.

(d) "Investigation" includes both fact-finding efforts and attempts to secure the voluntary resolution of complaints.

(e) "Juvenile Justice Act" means Titles I and II of the Juvenile Justice and Delinquency Prevention Act of 1974, Pub. L. 93-415, 88 Stat. 1109.

(f) "Noncompliance" means the failure of a recipient to comply with section 518(c)(1) of the Crime Control Act, section 262(b) of the Juvenile Justice Act, or this subpart.

(g) "Program or activity' 'means the operations of the agency or organizational unit of government receiving or substantially benefiting from the financial assistance awarded, e.g., a police department or department of corrections.

(h) "Recipient" means any State or local unit of government or agency thereof, and any private entity, institution, or organization, to which Federal financial assistance is extended through such government or agency but such term does not include any ultimate beneficiary of such assistance.

(i) "Religion" or "creed" includes all aspects of religious observance and practice as well as belief.

(j) "State planning agency" or "SPA" means the criminal justice State planning agency created to implement the Crime Control Act and, where authorized by State law, the Juvenile Justice Act within each State.

(k) "Compliance review" means a review of a recipient's selected employment practices or delivery of services for compliance with the provisions of Section 518(c)(1) of the Crime Control Act, Section 262(b) of the Juvenile Justice Act, and this subpart.

§ 42.203 Discrimination prohibited.

(a) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or denied employment in connection with any program or activity funded in whole or in part with funds made available under the Crime Control Act or the Juvenile Justice Act.

(b) A recipient may not, directly or through contractual or other arrangements, on the grounds set forth in paragraph (a) of this section:

(1) Deny an individual any disposition, service, financial aid, or benefit provided under the program;

(2) Provide any disposition, service, financial aid, or benefit to an individual which is different, or is provided in a different manner, from that provided to others under the program;

(3) Subject an individual to segregation or separate treatment in any matter related to his receipt of any disposition, service, financial aid, or benefit under the program;

(4) Restrict an individual in any way in the enjoyment of advantage or privilege enjoyed by others receiving any disposition, service, or financial aid or benefit under the program;

(5) Treat an individual differently from others in determining whether he satisfies any admission, enrollment, quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any disposition, service, financial aid, function, or benefit provided under the program;

(6) Deny an individual an opportunity to participate in the program through the provision of services or otherwise or afford him an opportunity to do so which is different from that afforded others under the program;

(7) Deny a person the opportunity to participate as a member of a planning or advisory body which is an integral part of the program;

(8) Subject any individual to discrimination in its employment practices in connection with any specific program or activity funded in whole or in part with funds made available under the Crime Control Act or the Juvenile Justice Act; and

(9) Use any selection device in a manner which is inconsistent with the Department of Justice Guidelines on Employee Selection Procedures, 28 CFR Part 50.

(c) In matters involving employment discrimination, section 518(c)(1) of the Crime Control Act and section 262(b) of the Juvenile Justice Act shall be interpreted by the Administration as analogues of Title VII of the Civil Rights Act of 1964, Pub. L. 88-352, 79 Stat. 253, as amended by the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103.

(d) The use of a minimum height requirement, which disqualifies disproportionately women and persons of certain national origins, such as persons of Hispanic or Asian descent, is a violation of this subpart, unless the recipient is able to demonstrate convincingly, through use of supportive factual data, that the requirement has been validated as set forth in the Department of Justice Guidelines on Employee Selection Guidelines, 28 CFR Part 50.

(e) A recipient, in determining the type of disposition, services, financial aid, benefits, or facilities which will be provided under any such program, or the class of individuals to whom, or the situations in which, such will be provided under any such program, may not directly or through contractual or other arrangements, utilize criteria or methods of administration which have the effect of subjecting individuals to discrimination under section 518(c)(1) of the Crime Control Act or section 262(b) of the Juvenile Justice Act, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program as respects individuals of a particular race, color, sex, national origin, or religion.

(f) In determining the site or location of facilities, a recipient or applicant may not make selections with the purpose or effect of excluding individuals from, denying them the benefits of, subjecting them to discrimination under, or denying them employment in connection with any program to which this subpart applies; or with the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Crime Control Act, the Juvenile Justice Act, or this subpart.

(g) For the purposes of this section the disposition, services, financial aid, or benefits provided under a program receiving Federal financial assistance shall be deemed to include any portion of any program or function or activity conducted by any recipient of Federal financial assistance which program, function, or activity is directly or indirectly improved, enhanced, enlarged, or benefited by such Federal financial assistance or which makes use of any facility, equipment, or property provided with the aid of Federal financial assistance.

(h) The enumeration of specific forms of prohibited discrimination in paragraphs (b) through (g) of this section does not limit the generality of the prohibition in paragraph (a) of this section.

(i)(1) In administering a program regarding which the recipient has previously discriminated against persons on the ground of race, color, religion, national origin, or sex, the recipient must take affirmative action to overcome the effects of prior discrimination.

(2) Even in the absence of such prior discrimination, a recipient in administering a program may take affirmative action to overcome the effects of conditions which resulted in limiting participation by persons of a particular race, color, religion, national origin, or sex.

(j) Nothing contained in this subpart shall be construed as requiring any recipient to adopt a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance. The use of goals and timetables is not use of a quota prohibited by this section.

§ 42.204 Assurances required.

(a) Every application for Federal financial assistance to carry out a program to which this subpart applies shall, as a condition of approval of such application and the extension of any Federal financial assistance pursuant to such application, contain or be accompanied by an assurance that the applicant will comply with all applicable nondiscrimination requirements and will obtain such assurances from its subgrantees, contractors, or subcontractors to which this subpart applies, as a condition of the extension of Federal financial assistance to them.

(b) Every application for Federal financial assistance from a State or local unit of government or agency thereof shall contain an assurance that in the event a Federal or State court or Federal

or State administrative agency makes a finding of discrimination on the ground of race, color, religion, national origin, or sex against the recipient State or local government unit or agency thereof, the recipient will forward a copy of the finding to the cognizant State planning agency and to LEAA.

§ 42.205 Complaint investigation.

(a) The Administration shall investigate complaints that allege a violation of:

(1) Section 518(c)(1) of the Crime Control Act;

(2) Section 262(b) of the Juvenile Justice Act; or

(3) This subpart.

The Administration shall also investigate complaints alleging discrimination by State and local governments in violation of Title VI of the Civil Rights Act of 1964 in accordance with this section.

(b) No complaint will be investigated if it is received more than 180 days after the date of the alleged discrimination, unless the time for filing is extended by the Administrator.

(c) The Administration shall conduct investigations of complaints as follows:

(1) Within 15 days of receipt of the complaint, the Administration shall ascertain whether it has jurisdiction under paragraph (a) of this section to investigate the complaint and will notify the complainant of its finding of jurisdiction and that an investigation will be commenced within 15 days. If jurisdiction is found, the Administration shall notify the recipient that a complaint has been filed against it.

(2) The Administration shall initiate its investigation within 30 days of the receipt of a complaint.

(3) If on-site investigative activities are not required, the Administration shall within 150 days of the receipt of the complaint make recommendations for voluntary resolution to the recipient, if necessary. A copy of these recommendations shall be sent to the chief executive of the appropriate unit of government.

(4) If on-site investigative activities are required, the Administration shall within 180 days of the receipt of the complaint complete the investigation, and make recommendations for voluntary resolution to the recipient, if necessary. A copy of these recommendations shall be sent to the chief executive of the appropriate unit of government.

(5) Within 60 days after the recommendations have been received, the recipient, or the State or local unit of government may provide a documentary submission regarding the recommendations and their applicability to the specific program or activity funded.

(6) Within 45 days after the expiration of the 60-day period for the submission of data, the Administration shall make a determination of compliance or noncompliance with section 518(c)(1) of the Crime Control Act, section 262(b) of the Juvenile Justice Act, or this subpart.

(7) The time limits listed in subparagraphs (c)(1) through (c)(6) shall be appropriately adjusted where complaints are referred for administrative action to another Federal agency or another branch of the Department of Justice.

§ 42.206 Compliance reviews.

(a) The Administration shall periodically conduct compliance reviews of selected recipients of LEAA assistance.

(b) The Administration shall select recipients for compliance review on the basis of:

(1) The relative disparity between the percentage of minorities in the service population of the recipient and the percentage of minorities employed by the recipient;

(2) The utilization of women in the workforce of the recipient;

(3) The equitable representation of women and minorities among the population receiving project benefits;

(4) The number of discrimination complaints filed against a recipient with LEAA or other Federal agencies;

(5) The scope of the problems revealed by an investigation commenced on the basis of a complaint filed with the Administration against a recipient; and

(6) The amount of assistance provided to the recipient.

(c) Within 15 days after selection of a recipient for review, the Administration shall inform the recipient that it has been selected and will initiate the review.

(d) If on-site investigative activities are not required, the Administration shall within 150 days of the initiation of the review make recommendations for voluntary resolution to the recipient, if necessary. A copy of these recommendations shall be sent to the chief executive of the appropriate unit of government.

(e) If on-site investigative activities are required, the Administration shall within 180 days of the initiation of the review complete the investigation and make recommendations for voluntary resolution to the recipient, if necessary. A copy of these recommendations shall be sent to the chief executive of the appropriate unit of government.

(f) Within 60 days after recommendations have been received, the recipient, or the State or local unit of government, may provide a documentary submission regarding the recommendations and their applicability to the specific program or activity funded.

(g) Within 45 days after the expiration of the 60-day period for the submission of data, the Administration shall make a determination of compliance or noncompliance with section 518(c) of the Crime Control Act, section 262(b) of the Juvenile Justice Act, or this subpart.

§ 42.207 Compliance information.

The provisions of § 42.106 of Subpart C of the Department of Justice Nondiscrimination Regulations, addressing the maintenance, availability, and submission of compliance information are hereby incorporated in this subpart.

§ 42.208 [Reserved]

§ 42.209 [Reserved]

§ 42.210 Notice of noncompliance.

(a) Whenever the Administration has:

(1) Received notice of a finding, after notice and opportunity for a hearing by:

(i) A Federal court (other than in an action brought by the Attorney General under section 518(c)(3) of the Crime Control Act);

(ii) A State court; or

(iii) A Federal or State administrative agency (other than the Administration under subparagraph (a)(2) of this section);

to the effect that there has been a pattern or practice of discrimination in violation of section 518(c)(1) of the Crime Control Act; or

(2) Made a determination after an investigation by the Administration pursuant to § 42.205 or § 42.206 of this subpart that a State government or unit of general local government is not in compliance with this subpart, section 518 (c)(1) of the Crime Control Act, or section 262(b) of the Juvenile Justice Act;

the Administration shall, within 10 days after such occurrence, notify the chief executive of the affected State and, if the action involves a unit of general local government, the chief executive of such unit of general local government, that such program or activity has been so found or determined not to be in compliance with this subpart or section 518 (c)(1) of the Crime Control Act or section 262(b) of the Juvenile Justice Act and shall request each chief executive notified under this section with respect to such violation to secure compliance.

(b) For the purposes of this section, notice means:

(1) Publication in—

(i) Employment Pratcices Decisions, Commerce Clearinghouse, Inc.;

(ii) Fair Employment Practices, Bureau of National Affairs, Inc.;

(iii) The United States Law Week, Bureau of National Affairs, Inc.;

(iv) Federal Supplement, Federal Reporter, or Supreme Court Reporter, West Publishing Company; or

(v) National Reporter System, West Publishing Company; or

(2) Receipt by the Administration of a reliable copy of a finding from any source.

(c) When the Administration receives a finding which has been made more than 120 days prior to receipt, the Administration will not be considered to be in receipt of notice of such finding until it is determined that the finding is currently applicable.

(1) In determining the current applicability of the finding, the Administration will contact the clerk of the court and the office of the deciding judge (or the appropriate agency official) to determine whether any subsequent orders have been entered.

(2) If the information is unavailable through the clerk or the office of the judge (or the appropriate agency official), the Administration will contact the attorneys of record for both the plaintiff and defendent to determine whether any

subsequent orders have been entered, or if the recipient is in compliance.

(3) If, within 10 days of receipt of notice, it is not determined through the procedures set forth in subparagraphs (c)(1) and (2), that the recipient is in full compliance with a final order of the court (or agency) within the meaning of § 42.213(b) or (e), the Administration will notify the governor of the recipient's noncompliance as provided in § 42.-210(a).

(d) For purposes of subparagraph (a)(1)(iii) of this section a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of Chapter 5, Title 5, United States Code (the Administrative Procedures Act).

(e) The procedures of a Federal or State administrative agency shall be deemed to be consistent with the Administrative Procedure Act (APA) if:

(1) The agency gives all interested parties opportunity for—

(i) The submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit; and

(ii) Hearing and decision on notice, to the extent that the parties are unable to determine a controversy by consent;

(2) A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts; and

(3) The record shows the ruling on each finding, conclusion, or exception presented. All decisions, including initial recommended, and tentative decisions, shall be a part of the record and shall include a statement of—

(i) Findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law, or discretion presented on the record; and

(ii) The appropriate rule, order, sanction, relief, or denial thereof.

(f) If within 10 days of receipt of notice the Administration cannot determine whether the finding was rendered pursuant to procedures consistent with the APA, it shall presume the APA procedures were applied, and send notification under Section 42.210(a) to the appropriate chief executive(s).

(g) Each notification under Section 42.210(a) shall advise the appropriate chief executive of:

(1) The specific program or activity determined to be in noncompliance;

(2) The general legal and factual basis for its determination;

(3) The Administration's request to secure compliance;

(4) The action to be taken and the provisions of law under which the proposed action is to be taken should the chief executive fail to secure compliance; and

(5) The right of the recipient to request a preliminary hearing, pursuant to § 42.214, if the determination is of noncompliance with section 518(c)(1), and a full hearing, pursuant to § 42.215.

§ 42.211 Compliance secured.

(a) In the event a chief executive secures compliance after notice pursuant to § 42.210, the terms and conditions with which the affected State government or unit of general local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of general local government), and by the Administrator.

(b) On or prior to the effective date of the agreement, the Administration shall send a copy of the agreement to each complainant, if any, with respect to such violation.

(c) The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of general local government) shall file semi-annual reports with the Administration detailing the steps taken to comply with the agreement.

(d) Within 15 days of receipt of such reports, the Administration shall send a copy to each complainant, if any.

§ 42.212 Compliance not secured.

(a) If, at the conclusion of 90 days after notification of noncompliance with section 518(c)(1)—

(1) Compliance has not been secured by the chief executive of that State or the chief executive of that unit of general local government; and

(2) An administrative law judge has not made a determination under § 42.214 that it is likely the State government or unit of local government will prevail on the merits;

the Administration shall notify the Attorney General that compliance has not been secured and suspend further payment of any funds under the Crime Control Act to the specific program or activity in which the noncompliance has been found.

(b) If a hearing is requested pursuant to § 42.215, suspension of funds made available under the Crime Control Act shall be effective for a period of not more than 30 days after the conclusion of the hearing, or in the absence of a hearing under § 42.215, funds shall be suspended for not more than 120 days, unless there has been an express finding by the Administrator after notice and opportunity for such a hearing, that the recipient is not in compliance with this subpart or section 518(c)(1) of the Crime Control Act.

(c) Subsections (a) and (b) do not apply to funds made available under the Juvenile Justice Act. If compliance is not secured within 90 days after notification of noncompliance with section 262(b), the Administrator may suspend approval of new applications for assistance to the program or activity determined to be in noncompliance for a period of up to 90 days pending a hearing under § 42.-215.

§ 42.213 Resumption of suspended funds.

(a) Payment of suspended funds made available under the Crime Control Act shall resume only if—

(1) Such State government or unit of general local government enters into a compliance agreement signed by the Administrator in accordance with § 42.211;

(2) Such State government or unit of general local government:

(i) Complies fully with the final order or judgment of a Federal or State court, if that order or judgment covers all matters raised by the Administrator in the notice pursuant to § 42.210, or

(ii) Is found to be in compliance with section 518(c)(1) of the Crime Control Act by such court;

(3) After a hearing, the Administrator pursuant to § 42.215 finds that noncompliance has not been demonstrated; or

(4) An administrative law judge has determined, under § 42.214, that it is likely that the State government or unit of local government will prevail in the merits.

(b) Full compliance with a court order, for the purposes of paragraph (a)(2) of this section, includes the securing of an agreement to comply over a period of time, particularly in complex cases or where compliance would require an extended period of time for implementation.

§ 42.214 Preliminary hearing.

(a) Prior to the suspension of funds under § 42.212(a), but within the 90-day period after notification under § 42.210, the State government or unit of local government may request an expedited preliminary hearing by an administrative law judge (ALJ) in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under § 42.215, prevail on the merits on the issue of the alleged noncompliance.

(b) The preliminary hearing shall be initiated within 30 days of request. The ALJ shall make his finding within 15 days after the conclusion of the preliminary hearing.

§ 42.215 Full hearing.

(a) At any time after notification under § 42.210, but before the conclusion of the 120-day suspension period referred to in § 42.212, a State government or unit of general local government may request a full hearing to consider the findings or determination of noncompliance made under § 42.210. The Administration shall initiate the hearing within 60 days of request.

(b) Within 30 days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the 120-day period referred to in § 42.212, the Administrator shall make a finding of compliance or noncompliance.

(1) If the Administrator makes a finding of noncompliance, the Administrator shall:

(i) Notify the Attorney General in order that the Attorney General may

institute a civil action under section 518 (c) (3) of the Crime Control Act;

(ii) Terminate the payment of funds under the Crime Control Act and/or the Juvenile Justice Act; and

(iii) If appropriate, seek repayment of funds.

(2) No order of the Administrator terminating, or refusing to grant or continue, assistance to a recipient for noncompliance with section 262(b) of the Juvenile Justice Act shall be effective until the expiration of 30 days after the Administration has filed with the committee of the House and the committee of the Senate having legislative jurisdiction over the program or activity involved a full written report of the circumstances and the grounds for such action.

(3) If the Administrator makes a finding of compliance, payment of the suspended funds and reconsideration of applications shall resume.

§ 42.216 Judicial review.

Any State government or unit of general local government aggrieved by a final determination of the Administration under § 42.215 may appeal such determination as provided in section 511 of the Crime Control Act, in the case of funds made available under that Act, or in accordance with the procedures set forth in section 603 of the Civil Rights Act of 1964, as amended, in the case of funds made available under the Juvenile Justice Act.

§ 42.217 Other actions authorized under the Crime Control Act.

(a) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under the Crime Control Act and the conduct allegedly violates the provisions of this subpart or section 518(c) (1) of the Crime Control Act and neither party within 45 days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may otherwise be available by law, the Administrator shall suspend further payment of any funds under the Crime Control Act to that specific program or activity alleged by the Attorney General to be in violation of the provisions of section 518(c) (1) of the Crime Control Act until such time as the court orders resumption of payment.

(b) (1) Whenever a State government or unit of local government or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by section 518(c) (1) of the Crime Control Act, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction.

(2) Administrative remedies shall be deemed to be exhausted upon the expiration of 60 days after the date the administrative complaint was filed with the Administration, or any other administrative enforcement agency, unless within such period there has been a determination by the Administration or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(3) The Attorney General, or a specifically designated assistant for or in the name of the United States may intervene upon timely application in any civil action brought to enforce compliance with section 518(c) (1) if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

COMMENTARY

Section 42.202(d). "Investigation" is defined to include "attempts to secure the voluntary resolution of complaints" in light of the statutory language in section 518(c) (2) (A) (ii) that an investigation includes an opportunity for the recipient to make a documentary submission regarding the allegation of discrimination and its relationship to the funded program or activity. The opportunity to make a documentary submission is specifically provided in §§ 42.205 (e) (5) and 42.206(f) of this subpart.

Section 42.202(g). Section 518(c) of the Crime Control Act limits suspension and termination of assistance in the event of noncompliance to the "specific program or activity" in which the noncompliance is found.

House Report No. 94–1155 (94th Congress, 2d Session), at p. 26, explained this provision as follows:

> Suspension may be limited to the specific program or activity found to have discriminated, rather than all of the recipients' LEAA funds.
>
> For example, if discriminatory employment practices in a city's police department were cited in the notification, LEAA may only suspend that part of the city's payments which fund the police department. LEAA may not suspend the city's LEAA funds which are used in the city courts, prisons, or juvenile justice agencies.

This passage makes it clear that LEAA need not demonstrate a nexus between the particular project funded and the discriminatory activity. See *Lau* v. *Nichols*, 414 U.S. 563, 566 (1974).

Section 42.202(h). The enforcement provisions of section 518(c) (2) apply only to State and local units of government. Private recipients which receive funds under the Crime Control Act directly from LEAA are subject to the enforcement procedures provided in Section 509 of the Act. Where a private recipient which indirectly receives LEAA financial assistance, e.g., a subgrantee of a State, is engaged in prohibited discrimination, LEAA may invoke the section 518(c) (2) procedure against the recipient government for failure to enforce the assurances of non-compliance given it by the private recipient.

Sections 42.203(b) and 42.203(e–i). These provisions are derived from 28 CFR 42.104(b) of Subpart C of the Department of Justice Nondiscrimination Regulations. Where appropriate, "sex" and "religion" have been added as prohibited grounds of discrimination, and "denial of employment" as another activity within the scope of sections 518 (c) (1) and 262(b).

Section 42.203(b) (9). On November 17, 1976, the Department of Justice adopted as official policy the selection guidelines proposed by the Equal Employment Opportunity Coordinating Council (EEOCC) in 41 FR 29016 (July 14, 1976), with modification. Since LEAA is a component of the Department, these guidelines are now applicable to the selection procedures of LEAA recipients. The guidelines are appended to this regulation.

Section 42.203(c). In the Conference Report on the Crime Control Act, the managers stated that "In the area of employment cases brought under this section (518(c) (1)), it is intended by the conferees that the standards of Title VII of the Civil Rights Act of 1964 apply." H. Rept. No. 94–1723 (94th Cong., 2d Sess.) at p. 32.

This section makes the LEAA standards of employment discrimination consistent with those used by the Civil Rights Division of the Department of Justice. It further clarifies that the burden shifts to the employer to validate its selection procedures once LEAA has demonstrated that those procedures disproportionately exclude an affected class. The constitutional requirement as established in *Washington* v. *Davis*, —— U.S. ——, 96 S.Ct. 2040 (1976), that the employer's discriminatory purpose must also be demonstrated before the burden shifts, is not applicable to employment cases brought under section 518(c) (1).

LEAA will give substantial weight to the Equal Employment Opportunity Commission Guidelines on Discrimination Because of Sex, 29 CFR, 1604.1, et seq., Discrimination Because of Religion, 29 CFR 1605.1, and Discrimination Because of National Origin, 29 CFR, 1606.1.

Section 42.203(j). Section 518(b) of the Crime Control Act reads:

> Notwithstanding any other provision of law nothing contained in this title shall be construed to authorize the Administration (1) to require, or condition the availability or amount of a grant upon, the adoption by an applicant or grantee under this title of a percentage ratio, quota system, or other program to achieve racial balance or to eliminate racial imbalance in any law enforcement agency, or (2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this title to adopt such a ratio, system, or other program.

In commenting on the Crime Control Act of 1976, Senator Roman Hruska explained the difference between quotas and goals and timetables as follows:

Section 518(b) of the act prohibits the setting of quotas. This provision was unchanged, and this provision will still bind the Administration. LEAA does have an affirmative obligation under this law to seek to eliminate discriminatory practices, voluntarily, if possible, prior to resorting to fund termination. LEAA can request that a recipient eliminate the effect of past discrimination by requiring the recipient to commit itself to goals and timetables. The formulation of goals is not a quota prohibited by section 518(b) of the act. A goal is a numerical objective fixed realistically in terms of the number of vacancies expected and the number of qualified applicants available. Factors such as lower attrition rate than expected, bona fide fiscal restraints, or a lack of qualified applicants would be acceptable reasons for not meeting a goal that has been established and no sanctions would accrue under the program. Cong. Rec. S. 17320 (September 30, 1976, daily ed.).

Section 42.204. All grantees and subgrantees must make the assurances found in paragraph (a). Only State and local units of government and agencies thereof must make the assurance found in paragraph (b), since, as explained in the commentary on § 42.202(h), the enforcement provisions of section 518(c)(2) apply only to governmental recipients.

Section 42.205(a). Where information available to the Administration clearly and convincingly demonstrates that the complaint is frivolous or otherwise without merit, the complaint will not be investigated, and the complainant will be so advised.

Subpart C of the Department of Justice Nondiscrimination Regulations establishes broad standards for the investigation of complaints alleging violations of Title VI. The more specific procedures of this section are consistent with the requirements of Subpart C. See 28 CFR 42.107.

Section 42.205(c)(1). Jurisdiction exists if the complaint alleges discrimination on a ground prohibited by section 518(c)(1) or section 262(b), and the respondent named in the complaint is a current recipient of LEAA assistance.

Sections 42.205(c)(3) and (4) and 42.206(e). LEAA proposes to notify the appropriate chief executive(s) of its recommendations during the voluntary resolution phase of both the complaint investigation and compliance review process. LEAA expects that the early involvement of the chief executive will often expedite the resolution of issues.

Section 42.206(a). LEAA recognizes the practical imposibility of reviewing the compliance of each of its more than 39,000 recipients. The regulations seek to expedite the review process by reducing its length and narrowing its focus. Compliance reviews may, in some instances, be limited to specific employment practices, or other functions of a recipient, that appear to have the greatest adverse impact on an affected class.

LEAA will also continue its practice of making pre-award desk audits of all discretionary grants awarded by LEAA which amount to $500,000 or more. If the audit reveals a significant potential for discrimination in employment or services, the recipient will be scheduled for a compliance review.

Section 42.206(b). The factors listed will be considered cumulatively by LEAA in selecting recipients for reviews. On the basis of these and other factors that may be relevant to a particular recipient, LEAA will seek to review first those criminal justice agencies which appear to have the most serious equal employment problems, or the greatest disparity in the delivery of services to the white and non-white, or male and female communities they serve.

Section 42.207. Section 42.106 of Subpart C requires, among other things, that a recipient must keep such records, and submit such reports as the granting agency may determine to be necessary in order to evaluate the recipient's compliance. Each recipient must also permit access by responsible officials during normal business hours to such records as may be pertinent to an evaluation of compliance.

Section 42.210(a)(2). Section 262(b) of the Juvenile Justice Act requires the non-discrimination provision of the Act to be enforced "in accordance with Section 603 (sic: 602)" of Title VI of the Civil Rights Act of 1964. That section provides a different enforcement procedure than section 518(c)(2) of the Crime Control Act. Where possible, the regulations have made the two procedures consistent. Where they cannot be harmonized, the regulations explain the separate requirements. See, e.g., §§ 42.212(c) and 42.215(b)(2).

The enforcement procedure for noncompliance with section 262(b) will be initiated by a determination of noncompliance by the Administration (after an investigation) and a letter to the appropriate chief executive(s). See § 42.210(a)(2). A finding by a Federal or State court or Federal or State administrative agency will not trigger the notification letter. The contents of the notification letter are set forth in § 42.210(f).

Compliance will be secured in the same manner as compliance with section 518(c)(1). See § 42.211.

Pending a full hearing on the issue of non-compliance, LEAA cannot suspend active funding to a recipient of Juvenile Justice Act funds. LEAA may only suspend approval of new applications for assistance to the program or activity determined to be in non-compliance, for up to 90 days pending the hearing. See § 42.212(c). Because active funding is not suspended, the opportunity to request a preliminary hearing is not provided to Juvenile Justice Act recipients.

After a full hearing, if requested, the Administrator will make a final determination of compliance or non-compliance. If a determination of non-compliance is made, no funding can be terminated until the expiration of 30 days after the Administration files a full written report of the circumstances and grounds for the determination with the appropriate Congressional committees. See § 42.215(b)(2).

The final determination may be appealed, as provided in section 603 of Title VI (See § 42.216).

Section 42.210(b). Upon receipt of the publications listed, LEAA will review the case reports for findings that may be violations of section 518(c)(1). In the case of the West Publishing Company reporters, LEAA will consult the topic "Civil Rights" in the Key Number Digests contained in the advance sheets.

Section 42.210(e). This subsection sets forth the minimum procedural safeguards that LEAA would require of an administrative hearing to assure that the process was consistent with the Administrative Procedure Act. The sufficiency of other procedures that may vary in form but insure due process and the same opportunity for a fair hearing of both parties' evidence will be determined by LEAA on a case-by-case basis.

The Administration will compile a list of State agencies whose procedures have been found consistent with the Administrative Procedure Act, and a list of State agencies whose procedures have been found inconsistent. When a finding of an agency not on either list is received, the Administration will attempt to reliably determine the procedures used to render the finding.

Section 42.211(a). Although the signature of the appropriate chief executives are ultimately required on the compliance agreement, these regulations do not preclude them from delegating the responsibility for securing compliance during the 90-day period following notification, to State or local administrative or human rights agencies under their respective authority.

Section 42.213(b). An example of a case where compliance would require an extended period of time for implementation would be a court order setting a goal of five years for an employer to raise the percentage of minorities in its workforce to parity with the percentage of minorities in the relevant geographical labor force.

Section 42.215. The full hearing will be conducted in accordance with the LEAA Administrative Review Procedures, 28 CFR 18.1, et seq.

Section 42.217(b)(2). The exhaustion of administrative remedies at the end of 60 days (unless the Administration has made a determination) does not limit LEAA's authority to investigate a complaint after the expiration of that period. LEAA will continue to investigate the complaint after the end of the 60 day period, if necessary, in accordance with the provisions of § 42.205.

The provision for attorney's fees in section 518(c)(4)(B) of the Crime Control Act is not recited in the regulations because it does not affect the authority or actions of the Administration.

JAMES M. H. GREGG,
Acting Administrator, Law Enforcement Assistance Administration.

APPENDIX 1

FEDERAL EXECUTIVE AGENCY GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

INTRODUCTION

The Equal Employment Opportunity Coordinating Council, which is composed of the Department of Labor, the Equal Employment Opportunity Commission, the Civil Rights Commission, the Civil Service Commission and the Department of Justice, is charged by law (Sec. 715 of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-14) to eliminate inconsistency among the operations of the agencies and departments responsible for enforcement of Federal equal employment opportunity law. Pursuant to that mandate, the Coordinating Council began work on proposed uniform guidelines on employee selection procedures early in 1973. A proposed draft of August 23, 1973 was circulated for comment pursuant to the procedures contained in OMB circular A-85. Later drafts also received wide circulation and have been the subject of written and oral comments.

Based upon these comments, the case law, and the American Psychological Association's Standards for Educational and Psychological Tests (1974), the Staff Committee of the Council, working pursuant to decisions made by the Council at its November, 1974, meeting, undertook a redraft of the proposed uniform guidelines.

A draft "Staff Committee Proposal, Sept. 24, 1975, Uniform Guidelines on Employee Selection Procedures" was agreed upon by the designated representatives on the Staff Committee of the four agencies having operational responsibility—the Department of Labor, the Equal Employment Opportunity Commission, the Civil Service Commission and the Department of Justice—for purposes of Council consideration, and for circularization for analysis and comments.

The Equal Employment Opportunity Commission reviewed the Staff Committee Proposal, Sept. 24, 1975, and determined that it did not represent the position of that agency, and for that reason opposed circulating the Staff Committee Proposal for prepublication comment pursuant to the A-85 procedure.

However, a majority of the Council believed that the Staff Committee Proposal, September 24, 1975, should be widely circulated for comment, as a step toward achievement of the goal of Uniform Guidelines on Employee Selection Standards.

The Staff Committee Proposal, Sept. 24, 1975, was accordingly circulated for prepublication comment pursuant to the A-85 procedure. Substantial additional comments were received, and modifications of the proposal were made.

A majority of the Coordinating Council believed that the proposed guidelines, as modified, should be published in the Federal Register for formal comment as a step toward achievement of the goal of uniformity in guidelines on employee selection procedures. Accordingly, the revised proposed uniform guidelines on employee selection procedures were published for comment in the Federal Register on July 14, 1976. 41 Fed. Reg. 29016. Many additional comments were received, and additional modifications in the proposed guidelines have been made.

On October 13, 1976, at a meeting of the Coordinating Council, the Equal Employment Opportunity Commission, determined that the resulting draft continued not to represent the views of that agency and opposed the adoption of the proposed guidelines and any action to recommend adoption of the proposed guidelines.

It has become clear that the Coordinating Council has not been successful in achieving a uniform federal position on the issue of employee selection procedures at this time.

The three undersigned have, however, determined to adopt and endorse the guidelines which were developed under the auspices of the Coordinating Council. We do so in the issuances set forth below. Because unanimity does not appear feasible at this time, the term uniform has been deleted from the title, and the guidelines are now referred to as "Federal Executive Agency Guidelines on Employee Selection Procedures." We have determined to adopt and endorse the Federal agency guidelines for the following reasons:

1. One of the most important functions of federal guidelines in this area is to represent "professionally acceptable methods" for demonstrating whether a selection procedure has validity for a particular job. *Albemarle* v. *Moody*, 422 U.S. 405, 425. The American Psychological Association has described the proposed guidelines as being "essentially consistent with the Standards for Educational and Psychological Tests and with the best available knowledge concerning effective use of selection procedures in employment decisions" and as "concise, realistic and much-needed." We believe that the proposed guidelines better represent professionally accepted standards for determining validity than any existing set of guidelines.

2. While existing federal agency guidelines have been granted "great deference" by the courts, and have been of assistance in litigation, the most recent of them is more than five years old. They therefore are based upon the American Psychological Association's 1966 "Standards" rather than their 1974 "Standards, and do not take into account subsequent developments in the field of industrial psychology. Similarly, they do not take into account the judicial decisions, most of which were rendered after their publication. Accordingly, the federal agency guidelines set forth below are, in our judgment, more consistent with the Supreme Court and the authoritative decisions of the other appellate courts, than any set of existing guidelines.

3. Because federal agency guidelines are applicable to the Federal Government itself as well as to those employers doing business with the Federal Government and others subject to federal law, any apparent anomaly of applying a lesser standard to the federal Government than it demands from others will be removed.

4. The federal agency guidelines provide practical guidance which will enable those users who seek to do so to bring themselves into compliance with Federal law. They are, in our judgment, more practical and realistic and will do more to provide actual equality of opportunity on a widespread basis, than any existing set of guidelines.

5. At present there are at least three sets of federal guidelines: the Regulations of the Civil Service Commission, and instructions which may be applicable to state and local governments as well as to the federal government itself; the regulations of the Secretary of Labor concerning selection procedures (41 C.F.R. Part 60-3); and the guidelines on employee selection procedures of the EEOC (29 C.F.R. Part 1607). The adoption of the federal agency guidelines will therefore be a step toward achievement of a uniform federal position and uniform guidelines.

For the above reasons, we also recommend the adoption of the proposed Federal Executive Agency Guidelines by each Federal agency having responsibility for enforcement of Federal law prohibiting discrimination on the grounds of race, color, religion, sex and national origin. Such adoption will lead to the achievement of a uniform federal position and uniform guidelines in this vital area.

HAROLD R. TYLER, Jr.
Deputy Attorney General.
MICHAEL H. MOSKOW,
Under Secretary of Labor.
ROBERT E. HAMPTON,
Chairman, Civil Service Commission.

DEPARTMENT OF JUSTICE GUIDELINES ON EMPLOYEE SELECTION PROCEDURES

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PART I—GENERAL PRINCIPLES

§ 1 *Statement of purpose.* These guidelines are intended to be a set of principles which will assist employers, labor organizations, employment agencies, and licensing and certification boards in complying with equal employment opportunity requirements of Federal law with respect to race, color, religion, sex and national origin. They are designed to provide a framework for determining the proper use of tests and other selection procedures consistent with Federal law. These guidelines do not require a user to conduct validity studies of selection procedures where no adverse impact results. However, all users are encouraged to use selection procedures which are valid, especially users operating under merit principles. Nothing in these guidelines is intended or should be interpreted as discouraging the use of procedures which have been properly validated in accordance with these guidelines for the purpose of determining qualifications or selecting on the basis of relative qualifications. Nothing in these guidelines is intended to apply to persons not subject to the requirements of Title VII, Executive Order 11246, or other equal employment opportunity requirements of Federal law. These guidelines are not intended to apply to any responsibilities an employer, employment agency or labor organization may have under the Age Discrimination Act of 1975 not to discriminate on the basis of age, or under section 504 of the Rehabilitation Act of 1973 not to discriminate on the basis of handicap. Nothing contained in these guidelines is intended to interfere with any obligation imposed or right granted by Federal law to users to extend a publicly announced preference in employment to Indians living on or near an Indian reservation in connection with employment opportunities on or near an Indian reservation.

§ 2 *Scope.* a. These guidelines will be applied by the Department of Labor to contractors and subcontractors subject to Ex-

ecutive Order 11246 as amended by Executive Order 11375 (hereinafter "Executive Order 11246"); and by the Civil Service Commission to federal agencies subject to Sec. 717 of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 (hereinafter "the Civil Rights Act of 1964") and to its responsibilities toward state and local governments under Section 208(b)(1) of the Intergovernmental Personnel Act; by the Department of Justice in exercising its responsibilities under Federal law; and by any other Federal agency which adopts them.

b. These guidelines apply to selection procedures which are used as a basis for any employment decision. Employment decisions include but are not limited to hire, promotion, demotion, membership (for example in a labor organization), referral, retention, licensing and certification, to the extent that licensing and certification may be covered by Federal equal employment opportunity law. Selection for training is also considered an employment decision if it leads to any of the decisions listed above.

c. These guidelines do not apply to the use of a bona fide seniority system within the meaning of Title VII of the Civil Rights Act of 1964, as amended, as defined by Federal appellate court decisions, for any employment decision. These guidelines do not call for the validation of such a seniority system used as a basis for such employment decisions, and the use of such a seniority system as a basis for such employment decisions is consistent with these guidelines.

d. These guidelines do not apply to the entire range of Federal equal employment opportunity law, but only to selection procedures which are used as a basis for making employment decisions. For example, the use of recruiting procedures designed to attract racial, ethnic or sex groups which were previously denied employment opportunities or which are presently under-utilized may be necessary to bring an employer into compliance with Federal law, and is frequently an essential element to any effective affirmative action program; but the subject of recruitment practices is not addressed by these guidelines because that subject concerns procedures other than selection procedures.

§ 3 *Relationship between Use of Selection Procedures and Discrimination.* a. The use of any selection procedure which has an adverse impact on the members of any racial, ethnic or sex group with respect to any employment decision will be considered to be discriminatory and inconsistent with these guidelines, unless the procedure is validated in accordance with the principles contained in these guidelines or unless use of the procedure is warranted under § 3b.

b. There are circumstances in which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines. In such circumstances, the user should utilize selection procedures which are as job related as possible and which will minimize or eliminate adverse impact. (i) When an unstandardized, informal or unscored selection procedure which has an adverse impact is utilized, the user should seek insofar as possible to eliminate the adverse impact, or, if feasible, to modify the procedure to one which is a formal, scored or quantified measure or combination of measures and then to validate the procedure in accord with these guidelines, or otherwise to justify continued use of the procedure in accord with Federal law. (ii) When a standardized, formal or scored selection procedure is used for which it is not feasible or not appropriate to utilize the validation techniques contemplated by these guidelines, the user should either modify the procedure to eliminate the adverse impact or otherwise justify continued use of the procedure in accord with Federal law.

c. Generally where alternative selection procedures are available which have been shown to be equally valid for a given purpose, the user should use the procedure which has been demonstrated to have the lesser adverse impact. Accordingly, whenever a validity study is called for by these guidelines, the user should make a reasonable effort to investigate suitable alternative selection procedures which have as little adverse impact as possible, for the pupose of determining the appropriateness of using or validating them in accord with these guidelines. If a user has made a reasonable effort to become aware of such alternative procedures and a validity study for a job or group of jobs has been made in accord with these guidelines, the use of the selection procedure may continue until such time as it should reasonably be reviewed for currency. Whenever the user is shown a suitable alternative selection procedure with evidence of at least equal validity and less adverse impact, the user should investigate it for the purpose of determining the appropriateness of using or validating it in accord with these guidelines. This subsection is not intended to preclude the combination of procedures into a significantly more valid procedure, if such a combination has been properly validated.

§ 4 *Information on Impact.* a. Each user should have available for inspection records or other information which will disclose the impact which its selection procedures have upon employment opportunities of persons by identifiable racial, ethnic or sex groups in order to determine compliance with the provisions of § 3 above. Where there are large numbers of applicants and procedures are administered frequently, such information may be retained on a sample basis, provided that the sample is appropriate in terms of the applicant population and adequate in size. The records called for by this section are to be maintained by sex, and by racial and ethnic groups as follows: blacks (Negroes), American Indians (including Alaskan Natives), Asians (including Pacific Islanders), Hispanic (including persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish origin or culture regardless of race), whites (Caucasians) other than Hispanic and totals. The classifications called for by this section are intended to be consistent with the Employer Information (EEO-1 et seq.) series of reports. The user should adopt safeguards to insure that records of race, color, religion, sex, or national origin are used for appropriate purposes such as determining adverse impact, or (where required) for developing and monitoring affirmative action programs, and that such records are not used for making employment decisions.

b. The information called for by this section should be examined for possible adverse impact. If the records called for by this section indicate that the total selection process for a job has no adverse impact, the individual components of the selection process need not be evaluated separately for adverse impact. If a total selection process does have adverse impact, the individual components of the selection process should be evaluated for adverse impact.

A selection rate for any racial, ethnic or sex group which is less than four-fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded as evidence of adverse impact. Smaller differences in selection rate may nevertheless be considered to constitute adverse impact, where they are significant in both statistical and practical terms. Greater differences in selection rate would not necessarily be regarded as constituting adverse impact where the differences are based on small numbers and are not statistically significant, or where special recruiting or other programs cause the pool of minority or female candidates to be a typical of the normal pool of applicants from that group.

c. Federal agencies which adopt these guidelines for purpose of the enforcement of the equal employment opportunity laws or which have responsibility for securing compliance with them (hereafter referred to as enforcement agencies) will consider in carrying out their obligations the general posture of the user with respect to equal employment opportunity for the job classification or group of classifications in question. Where a user has adopted an affirmative action program, the Federal enforcement agencies will consider the provisions of that program, including the goals and timetables which the employer has adopted and the progress which the employer has made in carrying out that program and in meeting the goals and timetables. These guidelines recognize that a user is prohibited by Federal law from the making of employment decisions on the basis of race and color and (except for bona fide occupational qualifications) on the basis of sex, religion and national origin; and nothing in this subsection or in these guidelines is intended to encourage or permit the granting of preferential treatment to any individual or to any group because of the race, color, religion, sex or national origin of such individual or group.

§ 5 *General Standards for Validity Studies.* a. For the purposes of satisfying these guidelines users may rely upon criterion related validity studies, content validity studies or construct validity studies, in accordance with the standards set forth in Part II of these guidelines, § 12 infra.

b. These guidelines are intended to be consistent with generally accepted professional standards for evaluating standardized tests and other assessment techniques, such as those described in the Standards for Educational and Psychological Tests prepared by a joint committee of the American Psychological Association, the American Educational Research Association, and the National Council on Measurement in Education (American Psychological Association, Washington, D.C. 1974) (hereinafter "APA Standards"), and standard text books and journals in the field of personnel selection.

c. For any selection procedure which has an adverse impact each user should maintain and have available such documentation as is described in Part III of these guidelines, § 13 infra.

d. Selection procedures subject to validity studies under § 3a above should be administered and scored under standardized conditions.

e. In general, users should avoid making employment decisions on the basis of measures of knowledges, skills or abilities which are normally learned in a brief orientation period, and which have an adverse impact.

f. Where cut off scores are used, they should normally be set so as to be reasonable and consistent with normal expectations of acceptable proficiency within the work force. Where other factors are used in determining cut off scores, such as the relationship between the number of vacancies and the number of applicants, the degree of adverse impact should be considered.

g. Selection procedures may be used to predict the performance of candidates for a job which is at a higher level than the job for which the person is initially being select-

ed if a majority of the individuals who remain employed will progress to the higher level within a reasonable period of time. A "reasonable period of time" will vary for different jobs and employment situations but will seldom be more than five years. Examining for a higher level job would not be appropriate (1) if the majority of those remaining employed do not progress to the higher level job, (2) if there is a reason to doubt that the higher level job will continue to require essentially similar skills during the progression period, or (3) if knowledges, skills or abilities required for advancement would be expected to develop principally from the training or experience on the job.

h. Users may continue the use of a selection procedure which is not at the moment fully supported by the required evidence of validity, provided: (1) the user can cite substantial evidence of validity in accord with these guidelines and (2) the user has in progress, when technically feasible, studies which are designed to produce the additional data required within a reasonable time.

If the additional studies do not produce the data required to demonstrate validity, the user is not relieved of or protected against any obligations arising under federal law.

i. Whenever a validity study has been made in accord with these guidelines for the use of a particular selection procedure for a job or group of jobs, additional studies need not be performed until such time as the validity study is subject to review as provided in § 3c above. There are no absolutes in the area of determining the currency of a validity study. All circumstances concerning the study, including the validation strategy used, and changes in the relevant labor market and the job should be considered in the determination of when a validity study is outdated.

§ 6 *Cooperative Validity Studies and Use of Other Validity Studies.* a. It is the intent of the agencies issuing these guidelines to encourage and facilitate cooperative development and validation efforts by employers, labor organizations and employment agencies to achieve selection procedures which are consistent with these guidelines.

b. Criterion-related validity studies conducted by one test user, or described in test manuals and the professional literature, will be considered acceptable for use by another user when: (1) the weight of the evidence from studies meeting the standards of § 12b below shows that the selection procedure is valid; (2) the studies pertain to a job which has substantially the same major job duties as shown by appropriate job analyses and (3) the studies include a study of test fairness for those racial, ethnic and sex subgroups which constitute significant factors in the borrowing user's relevant labor market for the job or jobs in question. If the studies relied upon satisfy (1) and (2) above but do not contain an investigation of test fairness, and it is not technically feasible for the borrowing user to conduct an internal study of test fairness, the borrowing user may utilize the study until studies conducted elsewhere show test unfairness, or until such time as it becomes technically feasible to conduct an internal study of test fairness and the results of that study can be acted upon.

If it is technically feasible for a borrowing user to conduct an internal validity study, and there are variables in the other studies which are likely to affect validity or fairness significantly, the user may rely upon such studies only on an interim basis in accord with § 5h, and will be expected to conduct an internal validity study in accord with § 12b below. Otherwise the borrowing user may rely upon such acceptable studies for operational use without an internal study.

c. Selection procedures shown by one user to be content valid in accord with § 12c will be considered acceptable for use by another user for a performance domain if the borrowing user's job analysis shows that the same performance domain is present in the borrowing user's job. The selection procedure may be used operationally if the conditions of § 12c(3) and § 12c(6) are satisfied by the borrowing user.

d. The conditions under which findings of construct validity may be generalized are described in § 12d(4).

e. If validity evidence from a multiunit or cooperative study satisfies the requirements of subparagraphs b, c or d above, evidence of validity specific to each unit or user usually will not be required unless there are variables in the units not studied which are likely to affect validity significantly.

§ 7 *No Assumption of Validity.* a. Under no circumstances will the general reputation of a selection procedure, its author or its publisher, or causual reports of its validity be accepted in lieu of evidence of validity. Specifically ruled out are: assumptions of validity based on a procedure's name or descriptive labels; all forms of promotional literature; data bearing on the frequency of a procedure's usage; testimonial statements and credentials of sellers, users, or consultants; and other non-empirical or anecdotal accounts of selection practices or selection outcomes.

b. Professional supervision of selection activities is encouraged but is not a substitute for documented evidence of validity. The enforcement agencies will take into account the fact that a thorough job analysis and careful development of a selection procedure enhances the probability that the selection procedure is valid for the job.

§ 8 *Employment agencies and employment services.* a. An employment agency, including private employment agencies and State employment agencies, which agrees to a request by an employer or labor oragnization to devise and utilize a selection procedure should follow the standards for determining adverse impact and, if adverse impact is demonstrated, show validity as set forth in these guidelines. An employment agency is not relieved of its obligation herein because the user did not request such validation or has requested the use of some lesser standard of validation than is provided in these guidelines. The use of an employment agency does not relieve an employer or labor organization of its responsibilities under Federal law to provide equal employment opportunity or its obligations as a user under these guidelines.

b. Where an emeloyment agency or service is requested to administer a selection program which has been devised elsewhere and to make referrals pursuant to the results, the employment agency or service should obtain evidence of the absence of adverse impact, or of validity, as described in these guidelines, before it administers the selection program and makes referrals pursuant to the results. The employment agency must furnish on request such evidence of validity. An employment agency or service will be expected to refuse to make referrals based on the selection procedure where the employer or labor organization does not supply satisfactory evidence of validity or lack of adverse impact.

§ 9 *Disparate treatment.* The principle of disparate or unequal treatment must be distinguished from the concepts of validation. A selection procedure—even though validated against job performance in accordance with the guidelines in this part—cannot be imposed upon members of a racial, sex or ethnic group where other employees, applicants, or members have not been subjected to that standard. Disparate treatment occurs where members of a racial, sex, or ethnic group have been denied the same employment, promotion, transfer or membership opportunities as have been made available to other employees or applicants. Those employees or applicants who have been denied equal treatment, because of prior discriminatory practices or policies, must at least be afforded the same opportunities as had existed for other employees or applicants during the period of discrimination. Thus, the persons who were in the class of persons discriminated against and were available in the relevant job market during the period the user followed the discriminatory practices should be allowed the opportunity to qualify under the less stringent selection procedures previously followed, unless the user demonstrates that the increased standards are required for the safety or efficiency of the operation. Nothing in this section is intended to prohibit a user who has not previously followed merit standards from adopting merit standards; nor does it preclude a user who has previously used invalid or unvalidated selection procedures from developing and using procedures which are validated in accord with these guidelines.

§ 10 *Retesting.* Users should provide a reasonable opportunity for retesting and reconsideration. The user may however take reasonable steps to preserve the security of its procedures. Where examinations are administered periodically with public notice, such reasonable opportunity exists, unless persons who have previously been tested are precluded from retesting.

§ 11 *Affirmative Action.* The use of selection procedures which have been validated pursuant to these guidelines does not relieve users of any obligations they may have to undertake affirmative action to assure equal employment opportunity. Nothing in these guidelines is intended to preclude the use of selection procedures (consistent with Federal law—see § 4c) which assist in the achievement of affirmative action objectives.

PART II—TECHNICAL STANDARDS

§ 12 *Technical Standards for Validity Studies.* The following minimum standards, as applicable, should be met in conducting a validity study. Nothing in these guidelines is intended to preclude the development and use of other professionally acceptable techniques with respect to validation of selection procedures.

a. Any validity study should be based upon a review of information about the job for which the selection procedure is to be used. The review should include a job analysis except as provided in § 12b(3) below with respect to criterion related validity. Any method of job analysis may be used if it provides the information required for the specific validation strategy used.

b. *Criterion-Related Validity.* (1) Users choosing to validate a selection procedure by a criterion-related validity strategy should determine whether it is technically feasible (as defined in Part IV) to conduct such a study in the particular employment context. The determination of the number of persons necessary to permit the conduct of a meaningful criterion-related study should be made by the user on the basis of all relevant information concerning the selection procedure, the potential sample and the employment situation. These guidelines do not require a user to hire or promote persons for the purpose of making it possible to conduct a criterion-related study; and do not require such a study on a sample of less than thirty (30) persons.

(2) There should be a review of job information to determine measures of work behaviors or performance that are relevant to the job in question. These measures or criteria are relevant to the extent that they represent critical or important job duties, work behaviors or work outcomes as developed

from the review of job information. The possibility of bias should be considered both in selection of the measures and their application. In view of the possibility of bias in subjective evaluations, supervisory rating techniques should be carefully developed. All criteria need to be examined for freedom from factors which would unfairly alter scores of members of any group. The relevance of criteria and their freedom from bias are of particular concern when there are significant differences in measures of job performance for different groups.

(3) Proper safeguards should be taken to insure that scores on selection procedures do not enter into any judgments of employee adequacy that are to be used as criterion measures. Criteria may consist of measures other than work proficiency including, but not limited to length of service, regularity of attendance, training time or properly measured success in job relevant training. Measures of training success based upon pencil and paper tests will be closely reviewed for job relevance. Whatever criteria are used should represent important or critical work behaviors or work outcomes. Job behaviors including but not limited to production rate, error rate, tardiness, absenteeism and turnover, may be used as criteria without a full job analysis if the user can show the importance of the criterion to the particular employment context. A standardized rating of overall work performance may be utilized where a study of the job shows that it is an appropriate criterion.

(4) The sample subjects should insofar as feasible be representative of the candidates normally available in the relevant labor market for the job or jobs in question, and should insofar as feasible include the racial, ethnic and sex groups normally available in the relevant job market. Where samples are combined or compared, attention should be given to see that such samples are comparable in terms of the actual job they perform, the length of time on the job where time on the job is likely to affect performance and other relevant factors likely to affect validity differences; or that these factors are included in the design of the study and their effects identified.

(5) The degree of relationship between selection procedure scores and criterion measures should be examined and computed, using professionally acceptable statistical procedures. Generally, a selection procedure is considered related to the criterion, for the purposes of these guidelines, when the relationship between performance on the procedure and performance on the criterion measure is statistically significant at the .05 level of significance, which means that it is sufficiently high as to have a probability of no more than one (1) in twenty (20) to have occurred by chance. Absence of a statistically significant relationship between a selection procedure and job performance should not necessarily discourage other investigations of the validity of that selection procedure.

Users should evaluate each selection procedure to assure that it is appropriate for operational use. Generally, if other factors remain the same, the greater the magnitude of the relationship (e.g., correlation coefficient) between performance on a selection procedure and one or more criteria of performance on the job, and the greater the importance or number of aspects of job performance covered by the criteria, the more likely it is that the procedure will be appropriate for use. Reliance upon a selection procedure which is significantly related to a criterion measure, but which is based upon a study involving a large number of subjects and has a low correlation coefficient will be subject to close review if it has a large adverse impact. Sole reliance upon a single selection instrument which is related to only one of many job duties or aspects of job performance will also be subject to close review. The appropriateness of a selection procedure is best evaluated in each particular situation and there are no minimum correlation coefficients applicable to all employment situations. In determining whether a selection procedure is appropriate for operational use the following considerations should also be taken into account: the degree of adverse impact of the procedure, the availability of other selection procedures of greater or substantially equal validity; and the need of an employer, required by law or regulation to follow merit principles, to have an objective system of selection.

(6) Users should avoid reliance upon techniques which tend to overestimate validity findings as a result of capitalization on chance unless an appropriate safeguard is taken. Reliance upon a few selection procedures or criteria of successful job performance, when many selection procedures or criteria of performance have been studied, or the use of optimal statistical weights for selection procedures computed in one sample, are techniques which tend to inflate validity estimates as a result of chance. Use of a large sample is one safeguard; cross-validation is another.

(7) *Fairness of the selection procedure.* i. When members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance, use of the selection procedure may unfairly deny opportunities to members of the group that obtains the lower scores.

ii. Where a selection procedure results in an adverse impact on a racial, ethnic or sex group identified in accordance with the classifications set forth in § 4 above and that group is a significant factor in the relevant labor market, the user generally should investigate the possible existence of unfairness for that group if it is technically feasible to do so.

The greater the severity of the adverse impact on a group, the greater the need to investigate the possible existence of unfairness. Where the weight of evidence from other studies shows that the selection procedure is a fair predictor for the group in question and for the same or similar jobs, such evidence may be relied on in connection with the selection procedure at issue and may be combined with data from the present study; however, where the severity of adverse impact on a group is significantly greater than in the other studies referred to, a user may not rely on such other studies.

iii. Users conducting a study of fairness should review the APA Standards regarding investigation of possible bias in testing. An investigation of fairness of a selection procedure depends on both evidence of validity and the manner in which the selection procedure is to be used in a particular employment context. Fairness of a selection procedure cannot necessarily be specified in advance without investigating these factors. Investigation of fairness of a selection procedure in samples where the range of scores on selection procedures or criterion measures is severely restricted for any subgroup sample (as compared to other subgroup samples) may produce misleading evidence of unfairness. That factor should accordingly be taken into account in conducting such studies and before reliance is placed on the results.

iv. If unfairness is demonstrated through a showing that members of a particular group perform better or poorer on the job than their scores on the selection procedure would indicate through comparison with how members of other groups perform, the user may either revise or replace the selection instrument in accordance with these guidelines, or may continue to use the selection instrument operationally with appropriate revisions in its use to assure compatibility between the probability of successful job performance and the probability of being selected.

v. In addition to the general conditions needed for technical feasibility for the conduct of a criterion-related study (see § 14(j), below) an investigation of fairness requires the following:

(1) A sufficient number of persons in each group for findings of statistical significance. These guidelines do not require a user to hire or promote persons on the basis of group classifications for the purpose of making it possible to conduct a study of fairness; and do not require a user to conduct a study of fairness on a sample of less than thirty (30) persons for each group involved in the study.

(2) The samples for each group should be comparable in terms of the actual job they perform, length of time on the job where time on the job is likely to affect performance, and other relevant factors likely to affect validity differences; or such factors should be included in the design of the study and their effects identified.

vi. If a study of fairness should otherwise be performed, but is not technically feasible, the use of a selection procedure which has otherwise met the validity standards of these guidelines will be considered in accord with these guidelines, unless the technical infeasibility resulted from discriminatory employment practices which are demonstrated by facts other than past failure to conform with requirements for validation of selection procedures. However, when it becomes technically feasible for the user to perform a study of fairness and such a study is otherwise called for, the user should conduct the study of fairness.

c. *Content validity.* (1) There should be a definition of a performance domain or the performance domains with respect to the job in question. Performance domains may be defined through job analysis, analysis of the work behaviors or activities, or by the pooled judgments of persons having knowledge of the job. Performance domains should be defined on the basis of competent information about job tasks and responsibilities. Performance domains include critical or important work behaviors, work products, work activities, job duties, or the knowledges, skills or abilities shown to be necessary for performance of the duties, behaviors, activities or the production of work. Where a performance domain has been defined as a knowledge, skill or ability, that knowledge skill or ability must be used in job behavior. A selection procedure based on inferences about psychological processes cannot be supported by content validity alone. Thus content validity by itself is not an appropriate validation strategy for intelligence, aptitude, personality or interest tests. Content validity is also not an appropriate strategy when the selection procedure involves knowledges, skills or abilities which an employee will be expected to learn on the job.

(2) If a higher score on a content valid selection procedure can be expected to result in better job performance the results may be used to rank persons who score above minimum levels. Where a selection procedure supported solely by content validity is used to rank job candidates, the performance domain should include those aspects of performance which differentiate among levels of job performance.

(3) A selection procedure which is a representative sample of a performance domain of the job as defined in accordance with sub-

section (1) above, is a content valid procedure for that domain. Where the domain or domains measured are critical to the job, or constitute a substantial proportion of the job, the selection procedure will be considered to be content valid for the job. The reliability of selection procedures justified on the basis of content validity should be a matter of concern to the user. Whenever it is feasible to do so, appropriate statistical estimates should be made of the reliability of the selection procedures.

(4) A demonstration of the relationship between the content of the selection procedure and the performance domain of the job is critical to content validity. Content validity may be shown if the knowledges, skills or abilities demonstrated in and measured by the selection procedure are substantially the same as the knowledges, skills or abilities shown to be necessary for job performance. The closer the content of the selection procedure is to actual work samples, behaviors or activities, the stronger is the basis for showing content validity. The need for careful documentation of the relationship between the performance domain of the selection procedure and that of the job increases as the content of the selection procedure less resembles that of the job performance domain.

(5) A requirement for specific prior training or for work experience based on content validity, including a specification of level or amount of training or experience, should be justified on the basis of the relationship between the content of the training or experience and the performance domain of the job for which the training or experience is to be required.

(6) If a selection procedure is supported solely on the basis of content validity, it may be used operationally if it represents a critical performance domain or a substantial proportion of the performance domains of the job.

d. *Construct validity.* Construct validity is a more complex strategy than either criterion-related or content validity. Accordingly, users choosing to validate a selection procedure by use of this strategy should be careful to follow professionally accepted standards, such as those contained in the APA Standards and the standard text books and journals.

(1) There should be a job analysis. This job analysis should result in a determination of the constructs that underlie successful performance of the important or critical duties of the job.

(2) A selection procedure should be selected or developed which measures the construct(s) identified in accord with subparagraph (1) above.

(3) A selection procedure may be used operationally if the standards of subparagraphs (1) and (2) are met and there is sufficient empirical research evidence showing that the procedure is validly related to performance of critical job duties. Normally, sufficient empirical research evidence would take the form of one or more criterion related validity studies meeting the requirements of § 12b. See also second sentence of § 12.

(4) Where a selection procedure satisfies the standards of subsections (1), (2) and (3) above, it may be used operationally for other jobs which are shown by an appropriate job analysis to include the same construct(s) as an essential element in job performance.

PART III.—DOCUMENTATION OF VALIDITY EVIDENCE

§ 13a. For each selection procedure having an adverse impact (as set forth in § 4) the user should maintain and have available the data on which the adverse impact determination was made and one of the following types of documentation evidence:

(1) Documentation evidence showing criterion related validity of the selection procedure (see § 13b. infra).

(2) Documentation evidence showing content validity of the selection procedure (see § 13c. infra).

(3) Documentation evidence showing construct validity of the selection procedure (see § 13d. infra).

(4) Documentation evidence from other studies showing validity of the selection procedure in the user's facility (see § 13e. infra).

(5) Documentation evidence showing what steps were taken to reduce or eliminate adverse impact, why validation is not feasible or not appropriate and why continued use of the procedure is consistent with Federal law.

This evidence should be compiled in a reasonably complete and organized manner to permit direct evaluation of the validity of the selection procedure. Previously written employer or consultant reports of validity are aceptable if they are complete in regard to the following documentation requirements, or if they satisfied requirements of guidelines which were in effect when the study was completed. If they are not complete, the required additional documentation should be appended. If necessary information is not available the report of the validity study may still be used as documentation, but its adequacy will be evaluated in terms of compliance with the requirements of these guidelines.

In the event that evidence of validity is reviewed by an enforcement agency, the reports completed after the effective date of these guidelines are expetced to use one of the formats set forth below. Evidence denoted by use of the word "(ESSENTIAL)" is considered critical and reports not containing such information will be considered incomplete. Evidence not so denoted is desirable, but its absence will not be a basis for considering a report incomplete.

b. *Criterion-related validity.* Reports of criterion-related validity of selection procedures are to contain the following information:

(1) *User(s), and Location(s) and Date(s) of Study.* Dates of administration of selection procedures and collection of criterion data and, where appropriate, the time between collection of data on selection procedures and criterion measures should be shown (ESSENTIAL). If the study was conducted at several locations, the address of each location, including city and state, should be shown.

(2) *Problem and Setting.* An explicit definition of the purpose(s) of the study and the circumstances in which the study was conducted should be provided. A description of existing selection procedures and cut-off scores, if any, should be provided.

(3) *Review of Job Information or Job Analysis.* Where a review of job information results in criteria which are measures other than work proficiency (see 12b(3)), the basis for the selection of these criteria should be reported (ESSENTIAL). Where a job analysis is required, the report should include either: (a) the important duties performed on the job and the basis on which such duties were determined to be important, such as the proportion of time spent on the respective duties, their level of difficulty, their frequency of performance, the consequences of error, or other appropriate factors; or (b) the knowledges, skills, abilities and/or other worker characteristics and bases on which they were determined to be important for job performance (ESSENTIAL). Published descriptions from industry sources or Volume I of the *Dictionary of Occupational Titles* Third Edition, United States Government Printing Office, 1965, are satisfactory if they adequately and completely describe the job. If appropriate, a brief supplement to the published description should be provided.

If two or more jobs are grouped for a validity study, a justification for this grouping, as well as a description of each of the jobs, should be provided (ESSENTIAL).

(4) *Job Titles and Codes.* It is desirable to provide the user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from United States Employment Service *Dictionary of Occupational Titles* Volumes I & II. Where standard titles and codes do not exist, a notation to that effect should be made.

(5) *Criteria.* A full description of all criteria on which data were collected, including a rationale for selection of the final criteria, and means by which they were observed, recorded, evaluated and quantified, should be provided (ESSENTIAL). If rating techniques are used as criterion measures the appraisal form(s) and instructions to the rater(s) should be included as part of the validation evidence (ESSENTIAL).

6) *Sample.* A description of how the research sample was selected should be included (ESSENTIAL). The racial, ethnic and sex composition of the sample should be described, including the size of each subgroup (ESSENTIAL). Racial and ethnic classifications should be those set forth in § 4a above. A description of how the research sample compares with the racial, ethnic and sex composition of the relevant labor market is also desirable. Where data are available, the racial, ethnic and sex composition of current applicants should also be desirable. Descriptions of educational levels, length of service, and age are also desirable.

(7) *Selection Procedure.* Any measure, combination of measures, or procedures used as a basis for employment decisions should be completely and explicitly described or attached (ESSENTIAL). If commercially available selection procedures are used, they should be described by title, form, and publisher (ESSENTIAL). Reports of reliability estimates and how they were established are desirable. A rationale for choosing the selection procedures investigated in the study should be included.

(8) *Techniques and Results.* Methods used in analyzing data should be described (ESSENTIAL). Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations and ranges) for all selection procedures and all criteria should be reported for all relevant racial, ethnic and sex subgroups (ESSENTIAL). Statistical results should be organized and presented in tabular or graphical form, by racial, ethnic and/or sex subgroups (ESSENTIAL). All selection procedure-criterion relationships investigated should be reported, including their magnitudes and directions (ESSENTIAL). Statements regarding the statistical significance of results should be made (ESSENTIAL).

Any statistical adjustments, such as for less than perfect reliability or for restriction of score range in the selection procedure or criterion, or both, should be described; and uncorrected correlation coefficients should also be shown (ESSENTIAL). Where the statistical technique used categorizes continuous data, such as biserial correlation and the phi coefficient, the categories and the bases on which they were determined should be described (ESSENTIAL). Studies of test fairness should be included where called for by the requirements of § 12b(7) (ESSENTIAL). These studies should include the rationale by which a selection procedure was determined to be fair to the group(s) in question. Where test fairness has been demonstrated on the basis of other studies, a bibliography of the relevant studies should be included (ESSENTIAL). If the bibliography includes unpublished studies, copies of these studies, or adequate abstracts or summaries, should be at-

tached (ESSENTIAL). Where revisions have been made in a selection procedure to assure compatibility between successful job performance and the probability of being selected, the studies underlying such revisions should be included (ESSENTIAL).

(9) *Uses and Applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (ESSENTIAL). If weights are assigned to different parts of the selection procedure, these weights and the validity of the weighted composite should be reported (ESSENTIAL).

(10) *Cut-off Scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (ESSENTIAL).

(11) *Source Data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(12) *Contact Person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

c. *Content Validity.* Reports of content validity of selection procedures are to contain the following information:

(1) *Definition of Performance Domain.* A full description should be provided for the basis on which a performance domain is defined (ESSENTIAL). A complete and comprehensive definition of the performance domain should also be provided (ESSENTIAL). The domain should be defined on the basis of competent information about job tasks and responsibilities (ESSENTIAL). Where the performance domain is defined in terms of knowledges, skills, or abilities, there should be an operational definition of each knowledge, skill or ability and a complete description of its relationship to job duties, behaviors, activities, or work products (ESSENTIAL).

(2) *Job Title and Code.* It is desirable to provide the user's job title(s) and the corresponding job title(s) and code(s) from the United States Employment Service *Dictionary of Occupational Titles* Volumes I & II. Where standard titles and codes do not exist, a notation to that effect should be made.

(3) *Selection Procedures.* Selection procedures including those constructed by or for the user, specific training requirements, composites of selection procedures, and any other procedure for which content validity is asserted should be completely and explicitly described or attached (ESSENTIAL). If commercially available selection procedures are used, they should be described by title, form, and publisher (ESSENTIAL). Where the performance domain is defined in terms of knowledges, skills or abilities, evidence that the selection procedure measures those knowledges, skills or abilities should be provided (ESSENTIAL).

(4) *Techniques and Results.* The method by which the correspondence between the content of the selection procedure and the job performance domain(s) was established and the relative emphasis given to various aspects of the content of the selection procedure as derived from the performance domain(s) should be described (ESSENTIAL). If any steps were taken to reduce adverse racial, ethnic, or sex impact in the content of the procedure or in its administration, these steps should be described. Establishment of time limits, if any, and how these limits are related to the speed with which duties must be performed on the job, should be explained. The adequacy of the sample coverage of the performance domain should be described as precisely as possible. Measures of central tendency (e.g., means) and measures of dispersion (e.g., standard deviations) should be reported for all selection procedures as appropriate. Such reports should be made for all relevant racial, ethnic, and sex subgroups, at least on a statistically reliable sample basis.

(5) *Uses and Applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and the application of the procedure (e.g., selection, transfer, promotion) should be provided (ESSENTIAL).

(6) *Cut-off Scores* The rationale for minimum scores, if used, should be provided (ESSENTIAL). If the selection procedure is used to rank individuals above minimum levels, or if preference is given to individuals who score significantly above the minimum levels, a rationale for this procedure should be provided (ESSENTIAL).

(7) *Contact person.* It is desirable for the employer to set forth the name, mailing address and telephone number of the individual who may be contacted for further information about the validation study.

(d) *Construct Validity.* Reports of construct validity of selection procedures are to contain the following information:

(1) *Construct Definition.* A clear definition of the construct should be provided, explained in terms of empirically observable behavior, including levels of construct performance relevant to the job(s) for which the selection procedure is to be used (ESSENTIAL).

(2) *Job Analysis.* The job analysis should show how the constructs underlying successful job performance of important or critical duties were determined (ESSENTIAL). The job analysis should provide evidence of the linkage between the construct and the important duties of the job and how this linkage was determined (ESSENTIAL).

(3) *Job Titles and Codes.* It is desirable to provide the selection procedure user's job title(s) for the job(s) in question and the corresponding job title(s) and code(s) from the United States Employment Service *Dictionary of Occupational Titles,* Volumes I and II. Where standard titles and codes do not exist, a notation to that effect should be made.

(4) *Selection Procedure.* The selection procedure used as a measure of the construct should be completely and explicitly described or attached (ESSENTIAL). If commercially available selection procedures are used, they should be identified by title, form and publisher (ESSENTIAL). The evidence demonstrating that the selection procedure is in fact a proper measure of the construct should be included (ESSENTIAL). Reports of reliability estimates and how they were established are desirable.

(5) *Anchoring.* The empirical evidence showing that performance on the selection procedure is validly related to performance of critical job duties should be included (ESSENTIAL).

(6) *Uses and applications.* A description of the way in which each selection procedure is to be used (e.g., as a screening device with a cut-off score or combined with other procedures in a battery) and application of the procedure (e.g., selection, transfer, promotion) should be provided (essential). If weights are assigned to different parts of the selection procedure, these weights (and the validity of the weighted composite) should be reported (essential).

(7) *Cut-off scores.* Where cut-off scores are to be used, both the cut-off scores and the way in which they were determined should be described (essential).

(8) *Source data.* Each user should maintain records showing all pertinent information about individual sample members in studies involving the validation of selection procedures. These records (exclusive of names and social security number) should be made available upon request of a compliance agency. These data should include selection procedure scores, criterion scores, age, sex, minority group status, and experience on the specific job minority group status, and experience on the specific job on which the validation study was conducted and may also include such things as education, training, and prior job experience. If the user chooses to include, along with a report on validation, a worksheet showing the pertinent information about the individual sample members, specific identifying information such as name and social security number should not be shown. Inclusion of the worksheet with the validity report is encouraged in order to avoid delays.

(9) *Contact person.* It is desirable for the user to set forth the name, mailing address, and telephone number of the individual who may be contacted for further information about the validity study.

e. *Evidence of validity from other studies.* When validity of a selection procedure is supported by studies not done by the user, the evidence from the original study or studies should be compiled in a manner similar to that required in the appropriate section of this § 13 above. In addition, the following evidence should be supplied:

(1) *Evidence from criterion-related validity studies*—(i) *Job information.* A description of the important duties of the user's job and the basis on which the duties were determined to be important should be provided (essential). A full description of the basis for determining that these important job duties are sufficiently similar to the duties of the job in the original study (or studies) to warrant use of the selection procedure in the new situation should be provided (essential).

(ii) *Relevance of criteria.* A full description of the basis on which the criteria used in the original studies are determined to be relevant for the user should be provided (essential).

(iii) *Other variables.* The similarity of important applicant pool/sample characteristics reported in the original studies to those of the user should be described (essential). A description of the comparison between the race and sex composition of the user's relevant labor market and the sample in the original validity studies should be provided (essential).

(iv) *Use of the selection procedure.* A full description should be provided showing that the use to be made of the selection procedure is consistent with the findings of the original validity studies (essential).

(v) *Bibliography.* A bibliography of reports of validity of the selection procedure for the job or jobs in question should be pro-

vided (essential). Where any of the studies included an investigation of test fairness, the results of this investigation should be provided (essential). Copies of reports published in journals that are not commonly available should be described in detail or attached (essential). Where a user is relying upon unpublished studies, a reasonable effort should be made to obtain these studies. If these unpublished studies are the sole source of validity evidence they should be described in detail or attached (essential). If these studies are not available, the name and address of the source, an adequate abstract or summary of the validity study and data, and a contact person in the source organization should be provided (essential).

(2) *Evidence from content validity studies*—(i) *Similarity of Performance Domains.* A full description should be provided of the similarity between the performance domain in the user's job and the performance domain measured by a selection procedure developed and shown to be content valid by another user (essential). The basis for determining this similarity should be explicitly described (essential).

(3) *Evidence from Construct Validity Studies*—(i) *Uniformity of construct.* A full description should be provided of the basis for determining that the construct identified as underlying successful job performance by the user's job analysis is the same as the construct measured by the selection procedure (essential).

PART IV.—DEFINITIONS

§ 14 The following definitions shall apply throughout these guidelines: (a) Ability: The present observable competence to perform a function.

(b) Adverse Impact: Defined in § 4 of these guidelines.

(c) Employer: Any employer subject to the provisions of the Civil Rights Act of 1964, as amended, including state or local governments and any Federal agency subject to the provisions of Sec. 717 of the Civil Rights Act of 1964, as amended, and any Federal contractor or subcontractor or federally assisted construction contractor or subcontractor covered by Executive Order 11246, as amended.

(d) Employment agency: Any employment agency subject to the provisions of the Civil Rights Act of 1964, as amended.

(e) Labor organization: Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(e) Enforcement agency: Any agency of the executive branch of the Federal Government which adopts these guidelines for purposes of the enforcement of the equal employment opportunity laws or which has responsibility for securing compliance and them.

(f) Labor organization: Any labor organization subject to the provisions of the Civil Rights Act of 1964, as amended, and any committee controlling apprenticeship or other training.

(g) Racial, sex or ethnic group: Any group of persons identifiable on the grounds of race, color, religion, sex or national origin.

(h) Selection procedure: Any measure, combination of measures, or procedure, other than a bona fide seniority system, used as a basis for any employment decision. Selection procedures include the full range of assessment techniques from traditional paper and pencil tests, performance tests, training programs or probationary periods and physical, education and work experience requirements through informal or casual interviews and unscored application forms.

(i) Selection Rate—The proportion of applicants or candidates who are hired, promoted or otherwise selected.

(j) Technical feasibility: The existence of conditions permitting the conduct of meaningful criterion related validity studies. These conditions include: (a) an adequate sample of persons available for the study to achieve findings of statistical significance; (b) having or being able to obtain a sufficient range of scores on the selection procedure and job performance measures to produce validity results which can be expected to be representative of the results if the ranges normally expected were utilized; and (c) having or being able to device unbiased, reliable and relevant measures of job performance or other criteria of employee adequacy. See § 12b(1). With respect to investigation of possible unfairness, the same considerations are applicable to each group for which the study is made. See § 12b(7).

(k) Unfairness of Selection Procedure (differential prediction): A condition in which members of one racial, ethnic, or sex group characteristically obtain lower scores on a selection procedure than members of another group, and the differences are not reflected in differences in measures of job performance. See § 12b(7)

(l) User: Any employer, labor organization, employment agency, or licensing or certification board, to the extent it may be covered by Federal equal employment opportunity law which uses a selection procedure as a basis for any employment decision. Whenever an employer, labor organization, or employment agency is required by law to restrict recruitment for any occupation to those applicants who have met licensing or certification requirements, the licensing or certifying authority to the extent it may be covered by Federal equal employment opportunity law will be considered the user with respect to those licensing or certification requirements. Whenever a state employment agency or service does no more than administer or monitor a procedure as permitted by Department of Labor regulations, and does so without making referrals or taking any other action on the basis of the results, the state employment agency will not be deemed to be a user.

Subpart E—Equal Employment Opportunity Guidelines

AUTHORITY: Sec. 501 of the Omnibus Crime Control and Safe Streets Act of 1968, Pub. L. 90-351, 82 Stat. 197, as amended.

SOURCE: 38 FR 23516, Aug. 31, 1973, unless otherwise noted.

§ 42.301 *Purpose.*

(a) The experience of the Law Enforcement Assistance Administration in implementing its responsibilities under the Omnibus Crime Control and Safe Streets Act of 1968, as amended, (Pub. L. 90-351, 82 Stat. 197; Pub. L. 91-644, 84 Stat. 1881) has demonstrated that the full and equal participation of women and minority individuals in employment opportunities in the criminal justice system is a necessary component to the Safe Streets Act's program to reduce crime and delinquency in the United States.

(b) Pursuant to the authority of the Safe Streets Act and the equal employment opportunity regulations of the LEAA relating to LEAA assisted programs and activities (28 CFR 42.201, et seq., Subpart D), the following Equal Employment Opportunity Guidelines are established.

§ 42.302 *Application.*

(a) As used in these guidelines "Recipient" means any state, political subdivision of any state, combination of such states or subdivisions, or any department, agency or instrumentality of any of the foregoing receiving Federal financial assistance from LEAA, directly or through another recipient, or with respect to whom an assurance of civil rights compliance given as a condition of the earlier receipt of assistance is still in effect.

(b) The obligation of a recipient to formulate, implement, and maintain an equal employment opportunity program, in accordance with this Subpart, extends to state and local police agencies, correctional agencies, criminal court systems, probation and parole agencies, and similar agencies responsible for the reduction and control of crime and delinquency.

(c) Assignments of compliance responsibility for Title VI of the Civil Rights Act of 1964 have been made by the Department of Justice to the Department of Health, Education, and Welfare, covering educational institutions and general hospital or medical facilities. Similarly, the Department of Labor, in pursuance of its authority under Executive Orders 11246 and 11375, has assigned responsibility for monitoring equal employment opportunity under government contracts with medical and educational institutions, and non-profit organizations, to the Department of Health, Education, and Welfare. Accordingly, monitoring responsibility in compliance matters in agencies of the kind mentioned in this paragraph rests with the Department of Health, Education, and Welfare, and agencies of this kind are exempt from the provisions of this subpart, and are not responsible for the development of equal employment opportunity programs in accordance herewith.

(d) Each recipient of LEAA assistance within the criminal justice system which has 50 or more employees and which has received grants or subgrants of $25,000 or more pursuant to and since the enactment of the Safe Streets Act of 1968, as amended, and which has a service population with a minority representation of 3 percent or more, is required to formulate, implement and maintain an Equal Employment Opportunity Program relating to employment practices affecting minority persons and women within 120 days after either the promulgation of these amended guidelines, or the initial application for assistance is approved, whichever is sooner. Where a recipient has received grants or subgrants of $25,000 or more, and has a service population with a minority representation of less than 3 percent, such recipient is required to formulate, implement, and maintain an equal employment opportunity program relating to employment practices affecting women. For a definition of "employment practices" within the meaning of this paragraph, see § 42.202(b).

(e) "Minority persons" shall include persons who are Negro, Oriental, American-Indian, or Spanish-surnamed Americans. "Spanish-surnamed Americans" means those of Latin American, Cuban, Mexican, Puerto Rican or Spanish origin. In Alaska, Eskimos and Aleuts should be included as "American Indians."

(f) For the purpose of these guidelines, the relevant "service population" shall be determined as follows:

(1) For adult and juvenile correctional institutions, facilities and programs (including probation and parole programs), the "service population" shall be the inmate or client population served by the institution, facility, or program during the preceding fiscal year.

(2) For all other recipient agencies (e.g., police and courts), the "service population" shall be the State population for state agencies, the county population for county agen-

cies, and the municipal population for municipal agencies.

(g) "Fiscal year" means the twelve calendar months beginning July 1, and ending June 30, of the following calendar year. A fiscal year is designated by the calendar year in which it ends.

§ 42.303 Evaluation of employment opportunities.

(a) A necessary prerequisite to the development and implementation of a satisfactory Equal Employment Opportunity Program is the identification and analysis of any problem areas inherent in the utilization or participation of minorities and women in all of the recipient's employment phases (e.g., recruitment, selection, and promotion) and the evaluation of employment opportunities for minorities and women.

(b) In many cases an effective Equal Employment Opportunity Program may only be accomplished where the program is coordinated by the recipient agency with the cognizant Civil Service Commission or similar agency responsible by law, in whole or in part, for the recruitment and selection of entrance candidates and selection of candidates for promotion.

(c) In making the evaluation of employment opportunities, the recipient shall conduct such analysis separately for minorities and women. However, all racial and ethnic data collected to perform an evaluation pursuant to the requirements of this section should be cross classified by sex to ascertain the extent to which minority women or minority men may be underutilized. The evaluation should include but not necessarily be limited to, the following factors:

(1) An analysis of present representation of women and minority persons in all job categories;

(2) An analysis of all recruitment and employment selection procedures for the preceding fiscal year, including such things as position descriptions, application forms, recruitment methods and sources, interview procedure, test administration and test validity, educational prerequisites, referral procedures and final selection methods, to insure that equal employment opportunity is being afforded in all job categories;

(3) An analysis of seniority practices and provisions, upgrading and promotion procedures, transfer procedures (lateral or vertical), and formal and informal training programs during the preceding fiscal year, in order to insure that equal employment opportunity is being afforded;

(4) A reasonable assessment to determine whether minority employment is inhibited by external factors such as the lack of access to suitable housing in the geographical area served by a certain facility or the lack of suitable transportation (public or private) to the workplace.

§ 42.304 Written Equal Employment Opportunity Program.

Each recipient's Equal Employment Opportunity Program shall be in writing and shall include:

(a) A job classification table or chart which clearly indicates for each job classification or assignment the number of employees within each respective job category classified by race, sex and national origin (include for example Spanish-surnamed, Oriental and American Indian). Also, principal duties and rates of pay should be clearly indicated for each job classification. Where auxiliary duties are assigned or more than one rate of pay applies because of length of time in the job or other factors, a special notation should be made. Where the recipient operates more than one shift or assigns employees within each shift to varying locations, as in law enforcement agencies, the number by race, sex and national origin on each shift and in each location should be identified. When relevant, the recipient should indicate the racial/ethnic mix of the geographic area of assignments by the inclusion of minority population and percentage statistics.

(b) The number of disciplinary actions taken against employees by race, sex, and national origin within the preceding fiscal year, the number and types of sanctions imposed (suspension indefinitely, suspension for a term, loss of pay, written reprimand, oral reprimand, other) against individuals by race, sex, and national origin.

(c) The number of individuals by race, sex and national origin (if available) applying for employment within the preceding fiscal year and the number by race, sex and national origin (if available) of those applicants who were offered employment and those who were actually hired. If such data is unavailable, the recipient should institute a system for the collection of such data.

(d) The number of employees in each job category by race, sex, and national origin who made application for promotion or transfer within the preceding fiscal year and the number in each job category by race, sex, and national origin who were promoted or transferred.

(e) The number of employees by race, sex, and national origin who were terminated within the preceding fiscal year, identifying by race, sex, and national origin which were voluntary and involuntary terminations.

(f) Available community and area labor characteristics within the relevant geographical area including total population, workforce and existing unemployment by race, sex and national origin. Such data may be obtained from the Bureau of Labor Statistics, Washington, D.C., state and local employment services, or other reliable sources. Recipient should identify the sources of the data used.

(g) A detailed narrative statement setting forth the recipient's existing employment policies and practices as defined in § 42.202 (b). Thus, for example, where testing is used in the employment selection process, it is not sufficient for the recipient to simply note the fact. The recipient should identify the test, describe the procedures followed in in administering and scoring the test, state what weight is given to test scores, how a cutoff score is established and whether the test has been validated to predict or measure job performance and, if so, a detailed description of the validation study. Similarly detailed responses are requried with respect to other employment policies, procedures, and practices used by the applicant.

(1) The statement should include the recipient's detailed analysis of existing employment policies, procedures, and practices as they relate to employment of minorities and women, (see § 42.303) and, where improvements are necessary, the statement should set forth in detail the specific steps the recipient will take for the achievement of full and equal employment opportunity. For example, The Equal Employment Opportunity Commission, in carrying out its responsibilities in ensuring compliance with Title VII has published Guidelines on Employee Selection Procedures (29 CFR Part 1607) which, among other things, proscribes the use of employee selection practices, procedures and devices (such as tests, minimum educational levels, oral interviews and the like) which have not been shown by the user thereof to be related to job performance and where the use of such an unvalidated selection device tends to disqualify a disproportionate number of minority individuals or women for employment. The EEOC Guidelines set out appropriate procedures to assist in establishing and maintaining equal employment opportunities. Recipients of LEAA assistance using selection procedures which are not in conformity with the EEOC Guidelines shall set forth the specific areas of nonconformity, the reasons which may explain any such nonconformity, and if necessary, the steps the recipient agency will take to correct any existing deficiency.

(2) The recipient should also set forth a program for recruitment of minority persons based on an informed judgment of what is necessary to attract minority applications including, but not necessarily limited to, dissemination of posters, use of advertising media patronized by minorities, minority group contacts and community relations programs. As appropriate, recipients may wish to refer to recruitment techniques suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.24(e).

(h) Plan for dissemination of the applicant's Equal Employment Opportunity Program to all personnel, applicants and the general public. As appropriate, recipients may wish to refer to the recommendations for dissemination of policy suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.21.

(i) Designation of specified personnel to implement and maintain adherence to the Equal Employment Opportunity Program and a description of their specific responsibilities suggested in Revised Order No. 4 of the Office of Federal Contract Compliance, U.S. Department of Labor, found at 41 CFR 60-2.22.

§ 42.305 *Recordkeeping and certification.*

The Equal Employment Opportunity Program and all records used in its preparation shall be kept on file and retained by each recipient covered by these guidelines for subsequent audit or review by responsible personnel of the cognizant state planning agency or the LEAA. Prior to the authorization to fund new or continuing programs under the Omnibus Crime Control and Safe Streets Act of 1968, the recipient shall file a certificate with the cognizant state planning agency or LEAA regional office stating that the equal employment opportunity program is on file with the recipient. This form of the certification shall be as follows:

I, _____ (person filing the application) certify that the _____ (criminal justice agency) has formulated an equal employment opportunity program in accordance with 28 CFR 42.301, et seq., Subpart E, and that it is on file in the Office of_____ (name), _____ (address), _____ (title), for review or audit by officials of the cognizant state planning agency or the Law Enforcement Assistance Administration as required by relevant laws and regulations.

The criminal justice agency created by the Governor to implement the Safe Streets Act within each state shall certify that it requires, as a condition of the receipt of block grant funds, that recipients from it have executed an Equal Employment Opportunity Program in accordance with this subpart, or that, in conformity with the terms and conditions of this regulation no equal employment opportunity programs are required to be filed by that jurisdiction.

§ 42.306 *Guidelines.*

(a) Recipient agencies are expected to conduct a continuing program of self-evaluation to ascertain whether any of their recruitment, employee selection or promotional policies (or lack thereof) directly or indirectly have the effect of denying equal employ-

ment opportunities to minority individuals and women.

(b) Post award compliance reviews of recipient agencies will be scheduled by LEAA, giving priority to any recipient agencies which have a significant disparity between the percentage of minority persons in the service population and the percentage of minority employees in the agency. Equal employment program modification may be suggested by LEAA whenever identifiable referral or selection procedures and policies suggest to LEAA the appropriates of improved selection procedures and policies. Accordingly, any recipient agencies falling within this category are encouraged to develop recruitment, hiring or promotional guidelines under their equal employment opportunity program which will correct, in a timely manner, any identifiable employment impediments which may have contributed to the existing disparities.

(c) A significant disparity between minority representation in the service population and the mniority representation in the agency workforce may be deemed to exist if the percentage of a minority group in the employment of the agency is not at least seventy (70) percent of the percentage of that minority in the service population.

§ 42.307 *Obligations of recipients.*

The obligation of those recipients subject to these Guidelines for the maintenance of an Equal Employment Opportunity Program shall continue for the period during which the LEAA assistance is extended to a recipient or for the period during which a comprehensive law enforcement plan filed pursuant to the Safe Streets Act is in effect within the State, whichever is longer, unless the assurances of compliance, filed by a recipient in accordance with § 42.204(a)(2), specify a different period.

§ 42.308 *Noncompliance.*

Failure to implement and maintain an Equal Employment Opportunity Program as required by these Guidelines shall subject recipients of LEAA assistance to the sanctions prescribed by the Safe Streets Act and the equal employment opportunity regulations of the Department of Justice. (See 42 U.S.C. 3757 and § 42.206).

[FR Doc.76-34575 Filed 11-22-76;8:45 am]

federal register

TUESDAY, NOVEMBER 23, 1976

PART V:

FEDERAL ELECTION COMMISSION

■

ADVISORY OPINION REQUESTS

FEDERAL ELECTION COMMISSION

[Notice 1976-63, AOR 1976-101 and AOR 1976-102]

ADVISORY OPINION REQUESTS

Pursuant to 2 U.S.C. § 437f(c) and the procedures reflected in Part 112 of the Commission's Notice of Proposed Rulemaking, published on May 26, 1976 (41 FR 21590), advisory opinion requests 1976-101 and 1976-102 have been made public at the Commission. Copies of AOR 1976-101 and AOR 1976-102 were made available on November 16, 1976. These copies of advisory opinion requests were made available for public inspection and purchase at the Federal Election Commission, Public Records Division, at 1325 K Street, NW., Washington, D.C. 20463.

Interested persons may submit written comments on any advisory opinion request within ten days after the date the request was made public at the Commission. These comments should be directed to the Office of the General Counsel, Advisory Opinion Section, at the Commission. Persons requiring additional time in which to respond to any advisory opinion requests will normally be granted such time upon written request to the Commission. All timely comments received by the Commission will be considered before the Commission issues an advisory opinion. Comments on pending requests should refer to the specific AOR number of the requests and statutory references should be to the United States Code citations rather than to the Public Law citations.

A descriptive listing of each of the requests recently made public as well as the identification of the requesting party follows hereafter:

AOR 1976-101: How funds raised to retire both primary and general election debts must be allocated.—Requested by Virginia T. Heise, Controller, Moynihan for Senate Committee, New York, New York.

AOR 1976-102: Whether a limited partnership may establish and administer a fund which will solicit partners and employees for contributions and in turn forward contributions to various candidates.—Requested by James C. Kellog, IV, of Gifford, Woody, Carter and Hays for Spear, Leeds and Kellog Good Government Fund Committee, New York, New York.

Dated: November 17, 1976.

VERNON W. THOMSON,
Chairman for the Federal Election Commission.

[FR Doc.76-34576 Filed 11-22-76;8:45 am]

federal register

TUESDAY, NOVEMBER 23, 1976

PART VI:

NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES

■

PRIVACY ACT OF 1974

Systems of Records

NATIONAL COMMISSION ON SUPPLIES AND SHORTAGES

PRIVACY ACT OF 1974

Systems of Records

On April 5, 1976, there was published in the Federal Register proposed Notices of Record Systems pursuant to the provisions of the Privacy Act of 1974, Public Law 93-579, 5 U.S.C. 552a. The Commission hereby publishes the Notices in final form.

Signed this 8th day of November 1976.

George C. Eads,
Executive Director.

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NCSS—1

System name: Financial Records—NCSS

System location: General Services Administration Central Office, 18th & F, NW., Washington, D.C. 20405; copies held by the Commission. (GSA holds records for the Commission under Memorandum of Understanding and Agreement.)

Categories of individuals covered by the system: Commission Members and Employees; Members of Advisory Committee to the Commission.

Categories of records in the system: Official Travel Authorizations; Government Transportation Requests; Travel Vouchers; Claims for Reimbursement for Expenditures on Official Business; Vendor Register and Vendor Payment Tape.

Authority for maintenance of the system: Public Law 93-426, September 30, 1974.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Payment of travel claims; records are also released to GAO for audits, to the IRS for investigations, to the CSC concerning pay, benefits, retirement deductions and other information necessary for the Commission to carry out its Government-wide personnel management functions; and to private attorneys pursuant to a power of attorney. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and tape.

Retrievability: By name, manual and automated.

Safeguards: Stored in guarded building in locked files; released only to authorized personnel.

Retention and disposal: In accordance with the GSA Records Maintenance and Disposition System; Commission copies destroyed at termination of Commission, March 31, 1977.

System manager(s) and address: Administrative Officer, National Commission on Supplies and Shortages, 1750 K Street, NW., Room 800, Washington, D.C. 20006.

Notification procedure: Same as above.

Record access procedures: Same as above.

Record source categories: Individuals on whom records are maintained.

NCSS—2

System name: Payroll Records—NCSS

System location: General Services Administration Region 3, 7th & D, SW., Washington, D.C. 20407; copies held by the Commission. (GSA holds records for the Commission under Memorandum of Understanding and Agreement.)

Categories of individuals covered by the system: Commission Members and Employees; Members of Advisory Committee to the Commission.

Categories of records in the system: Varied payroll records including time and attendance cards, payment vouchers, comprehensive listings of employees, health benefits and Government life insurance records, requests for deductions, tax forms, W-2 forms, leave data, retirement records, notification of personnel actions.

Authority for maintenance of the system: Public Law 93-426, September 30, 1974.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Preparation of salary checks and maintenance of leave records; records are also released to GAO for audits, to the IRS for investigations, to the CSC concerning pay, benefits, retirement deductions and other information necessary for the Commission to carry out its Government-wide personnel management functions; and to private attorneys pursuant to a power of attorney. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual. 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 Supplies and Shortages, 1750 K Street, NW., Room 800, Washington, D.C. 20006. 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, National Commission on Supplies and Shortages. In the absence of a withholding agreement, the Social Security Number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the Social Security Number, in accordance with Section 7 of the Privacy Act, Public Law 93-579.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and tape.

Retrievability: Social Security Number.

Safeguards: Stored in guarded building in locked files; released only to authorized personnel.

Retention and disposal: In accordance with the GSA Records Maintenance and Disposition Systems; Commission copies destroyed at termination of Commission, March 31, 1977.

System manager(s) and address: Administrative Officer, National Commission on Supplies and Shortages, 1750 K Street, NW., Room 800, Washington, D.C. 20006.

Notification procedure: Same as above.

Record access procedures: Same as above.

Record source categories: Individuals on whom records are maintained.

NCSS—3

System name: Personnel Files—NCSS

System location: General Services Administration Central Office, 18th & F, NW., Washington, D.C. 20405; copies held by the Commission. (GSA holds records for the Commission under Memorandum of Understanding and Agreement.)

Categories of individuals covered by the system: Commission Members and Employees; Members of Advisory Committee to the Commission.

Categories of records in the system: Standard Forms 171 (Personal Qualifications Statements) or Resumes of Educational Background and Experience; Appointment Affidavits; Tax Forms; Personnel Action Requests; Notifications of Personnel Actions; Government Life Insurance and Health Benefits Applications, Declinations or Waivers; Miscellaneous Requests for Payroll Deductions.

Authority for maintenance of the system: Public Law 93-426, September 30, 1974.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Official personnel actions; records are also released to GAO for audits, to the IRS for

investigations, to the CSC concerning pay, benefits, retirement deductions and other information necessary for the Commission to carry out its Government-wide personnel management functions; and to private attorneys pursuant to a power of attorney. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and tape.

Retrievability: By name, manual and automated.

Safeguards: Stored in guarded building in locked files; released only to authorized personnel.

Retention and disposal: In accordance with the GSA Records Maintenance and Disposition System; Commission copies destroyed at termination of Commission, March 31, 1977.

System manager(s) and address: Administrative Officer, National Commission on Supplies and Shortages, 1750 K Street, NW., Room 800, Washington, D.C. 20006.

Notification procedure: Same as above.

Record access procedures: Same as above.

Record source categories: Individuals on whom records are maintained.

NCSS—4

System name: Personnel Security Files—NCSS

System location: General Services Administration Central Office, 18th & F, NW., Washington, D.C. 20405; copies held by the Commission. (GSA holds records for the Commission under Memorandum of Understanding and Agreement.)

Categories of individuals covered by the system: Commission Employees.

Categories of records in the system: Background information for security clearances.

Authority for maintenance of the system: Public Law 93-426, September 30, 1974.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: Issuance of security clearances; 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 to the extent that the material is relevant and necessary to the requesting agency. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Paper and tape.

Retrievability: By name, manual and automated.

Safeguards: Stored in guarded building in locked files; released only to authorized personnel.

Retention and disposal: In accordance with the GSA Records Maintenance and Disposition System; Commission copies destroyed at termination of Commission, March 31, 1977.

System manager(s) and address: Administrative Officer, National Commission on Supplies and Shortages, 1750 K Street, NW., Room 800, Washington, D.C. 20006.

Notification procedure: Same as above.

Record access procedures: Same as above.

Record source categories: Individuals on whom records are maintained.

APPENDIX—National Commission on Supplies and Shortages

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 investigation or prosecution of 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 of 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.76-33978 Filed 11-15-76;9:58 am]

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