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federal register

TUESDAY, FEBRUARY 15, 1977

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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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Title 3—The President

PROCLAMATION 4481

National Poison Prevention Week, 1977

By the President of the United States of America

A Proclamation

As parents and teachers, we encourage our children to be curious and inquisitive. But a child's curiosity can sometimes bring tragedy. Most American homes contain potential poisons—polishes, cleansers, medicines, solvents, and pesticides. When children can find these substances, they naturally experiment with them.

Over the past sixteen years, the number of children under the age of five who have died from accidental poisoning has declined by 68 per cent. New and safer packages for dangerous products are a major reason for this decline. But our children's inclination to explore the unknown may still lead them into dangers that no safety measures can control.

To encourage the American people to remember the dangers of accidental poisoning and to take appropriate preventive measures, the Congress, by joint resolution of September 26, 1961, (36 U.S.C. 165), has requested the President to issue annually a proclamation designating the third week in March as National Poison Prevention Week.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, do hereby designate the week beginning March 20, 1977, as National Poison Prevention Week. I urge all Americans and all agencies and organizations concerned with the prevention of accidental poisonings and the welfare of our Nation's youngsters to join in activities designed to encourage the safe storage, use and handling of poisonous household substances.

IN WITNESS WHEREOF, I have hereunto set my hand this eleventh day of February, in the year of our Lord nineteen hundred seventy-seven, and of the Independence of the United States of America the two hundred and first.

Jimmy Carter

[FR Doc.77-4839 Filed 2-11-77;1:36 pm]

Executive Order 11971 • February 11, 1977

Establishing the Committee on Selection of the Director of the Federal Bureau of Investigation

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), it is hereby ordered as follows:

SECTION 1. *Establishment of the Committee.* There is hereby established the Committee on Selection of the Director of the Federal Bureau of Investigation, hereinafter referred to as the Committee. The Committee shall consist of a Chairman and eight other members to be appointed by the President.

SEC. 2. *Functions.* The Committee shall conduct inquiries to identify persons who may be qualified to serve as the Director of the Federal Bureau of Investigation, hereinafter referred to as the Director, and shall conduct investigations of those persons to determine their qualifications.

SEC. 3. *Report; Duration.*

(a) The Committee shall submit to the President and to the Attorney General, within ninety days from the date of this Order, a report listing the names of the five persons whom the Committee considers best qualified to serve as the Director and setting forth such other information as the President or the Attorney General may require.

(b) The Committee shall terminate thirty days after submission of its report, unless its duration is extended by the President. So long as the Committee remains in existence, it shall conduct such additional inquiries and submit such additional reports as may be requested by the President or the Attorney General.

SEC. 4. *Ineligibility of Committee Members.* No member of the Committee shall be eligible to be considered as a possible nominee for the position of Director.

SEC. 5. *Cooperation by Executive Agencies.* The Committee is authorized to request, through its Chairman, from any Executive department or agency such information or assistance as the Committee deems necessary to carry out its functions under this Order. Each department or agency shall, to the extent permitted by law, furnish such information or assistance to the Committee. The Committee also is authorized to request from any State agency such information and assistance as the Committee deems necessary, and to obtain such information and assistance to the extent permitted by State law.

SEC. 6. *Travel Expenses; Administrative Support; Financing.*

(a) Members of the Committee shall serve without compensation. While engaged in the work of the Committee, members may receive travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703).

(b) The Attorney General shall furnish to the Committee necessary staff, supplies, facilities and other administrative services.

(c) All necessary expenses incurred in connection with the work of the Committee, to the extent permitted by law, shall be paid from funds available to the Attorney General.

SEC. 7. *Federal Advisory Committee Act Functions.* Notwithstanding the provisions of any other Executive order, the functions of the President under the Federal Advisory Committee Act (5 U.S.C. App. I), except that of reporting annually to the Congress, which are applicable to the Committee, shall be performed by the Attorney General in accordance with guidelines and procedures established by the Office of Management and Budget.

Jimmy Carter

THE WHITE HOUSE,
February 11, 1977.

[FR Doc.77-4840 Filed 2-11-77;1:36 pm]

rules and regulations

Title 7—Agriculture

CHAPTER I—AGRICULTURAL MARKETING SERVICE (STANDARDS, INSPECTIONS, MARKETING PRACTICES), DEPARTMENT OF AGRICULTURE

PART 180—PLANT VARIETY PROTECTION ACT REGULATIONS AND RULES OF PRACTICE

Miscellaneous Amendments

Statement of considerations. Title 7 of the *Code of Federal Regulations*, Part 180 (7 CFR, Part 180) is issued pursuant to the Plant Variety Protection Act (7 USC 2321, et seq.). Section 180.2(c) of the regulations and rules of practice (7 CFR 180.2(c)) provides that the proceedings of the Plant Variety Protection Board shall be conducted in accordance with an Executive Order that is superseded, Administrative Regulations that are not specified, and an Instruction which has been superseded.

Section 180.7(a) of the regulations and rules of practice under the Plant Variety Protection Act (7 CFR 180.5(c)) provides that the one-year period allowed applicants to file for protection after having filed an application in a foreign country on the same variety may be extended by the Commissioner to a total of 4 years because of official grow-out tests required by such foreign country. Information received from foreign applicants indicates that up to 5 years are required to complete grow-out tests to grant protection on perennial forage varieties.

Section 180.20 of the regulations and rules of practice under the Plant Variety Protection Act (7 CFR 180.20) provides that if an applicant fails to advance actively his application within 6 months after the date when the last request for action was mailed to him by the Office, or within such longer time as may be fixed by the Commissioner, the application shall be deemed abandoned. Section 180.22 of the regulations and rules of practice under the Plant Variety Protection Act (7 CFR 180.22) provides that an application abandoned for failure on the part of an applicant to advance actively his application may be revived under certain circumstances, but no time limit for reviving such an application is specified. An application voluntarily abandoned, if revived, must be revived within 3 month under the provisions of § 180.23(b). These sections are inconsistent in that under § 180.22 an applicant who fails to act on his application has no time limit imposed for reviving his application after abandonment; whereas, under § 180.23(b) an applicant who voluntarily abandons his application must revive it within a time limit of 3 months.

Sections 180.11, 180.20, 180.100, 180.101, 180.103, 180.175 and 180.178 of the regulations and rules of practice of the Plant Variety Protection Act (7 CFR 180.11, 180.20, 180.100, 180.101, 180.103, 180.175 and 180.178) refer to the collection of $250 each for (1) filing an application, and (2) search or examination, and refunds thereof. The separate collection of the filing fee and the search fee delays the search or examination.

Section 52(3) (7 U.S.C. 2422) of the Plant Variety Protection Act provides that a viable sample of basic seed will be deposited by the applicant in accordance with regulations to be established. Section 180.101(b) of the regulations and rules of practice (7 CFR 180.101(b)) provides that the applicant shall submit a reasonable quantity of the viable basic seed as determined by the Commissioner. It has been the practice to request such samples at the time a notice of allowance is mailed. This has resulted in delays in the issuance of certificates and does not permit examination of the seed sample before a notice of allowance is issued.

Pursuant to the administrative procedure provisions of 5 U.S.C. 553, there was published in the FEDERAL REGISTER (76–36591) on December 19, 1976, a notice of proposed rulemaking with respect to proposed amendments of the regulations and rules of practice (7 CFR 180) mentioned in the statement of considerations.

Interested persons were given an opportunity to submit written comments regarding the proposal.

Over 1,500 copies of the proposal were distributed to interested trade and Government persons, groups and organizations, and a press release was sent to leading trade magazines.

Written comments were received from one trade organization and two members of the Plant Variety Protection Board. All favored adoption of the proposals.

It is concluded that the amendments proposed on December 14, 1976, are in the public interest and accordingly these sections are hereby amended as follows:

1. Section 180.2(c) is revised as follows:

§ 180.2 Plant Variety Protection Board.

* * * * *

(c) The proceedings of the Board shall be conducted in accordance with the Federal Advisory Committee Act (P.L. 92–463), OMB Circular A–63, and Administrative Regulations of the U.S. Department of Agriculture (7 CFR Part 25) and such additional operating procedures as are adopted by members of the Board.

2. New § 180.6 (c) and (d) be added as follows:

§ 180.6 Application for certificate.

* * * * *

(c) The fees for (1) filing application, and (2) search or examination, shall be submitted with the application in accordance with sections 180.175–180.178.

(d) The applicant shall submit with the application at least 2,500 seeds of the viable basic seed required to reproduce the variety.

3. The proviso in § 180.7(a) is amended as follows:

§ 180.7 Statement of applicant.

(a) * * * *Provided, however,* That the total period allowed does not exceed 5 years.

* * * * *

4. Section 180.11(b) is revised as follows:

§ 180.11 Application accepted and filed when received.

* * * * *

(b) If any part of an application is so incomplete or so defective that it cannot be handled as a completed application for examination, as determined by the Commissioner, the applicant will be notified. The application will be held a maximum of 6 months for completion. Applications not completed at the end of the prescribed period will be considered abandoned. The application fee in such cases will not be refunded.

5. Section 180.20(a) is amended by adding to the paragraph a sentence:

§ 180.20 Abandonment for failure to respond within time limit.

(a) * * * The application fee in such cases will not be refunded.

6. The first sentence of § 180.22 is revised to read as follows:

§ 180.22 Revival of application abandoned for failure to reply.

An application abandoned for failure on the part of the applicant to advance actively his application to its completion, in accordance with the regulations in this part, may be revived as a pending application within 3 months of such abandonment upon a finding by the Commissioner that the failure was inadvertent or unavoidable and without fraudulent intent. * * *

§ 180.100 [Amended]

7. In § 180.100, paragraph (a) is deleted.

§ 180.101 [Amended]

8. In § 180.101, paragraph (b) is deleted.

§ 180.103 [Amended]

9. The first sentence of § 180.103 is amended by deleting "and sample of viable basic seed received by the Office."

§ 180.178 [Amended]

10. Section 180.178 is amended by inserting after the first sentence "except for the examination or search fee, which shall be refunded if an application is voluntarily abandoned pursuant to § 180.23(a) before a search or examination has begun."

These amendments shall become effective on March 17, 1977.

Dated: February 10, 1977.

WILLIAM T. MANLEY,
Deputy Administrator,
Program Operations.

[FR Doc.77-4672 Filed 2-14-77;8:45 am]

CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 5]

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

Tobacco Allotment and Marketing Quota Regulations, 1972–73 and Subsequent Marketing Years

This amendment provides the penalty rates applicable to excess tobacco marketed in the 1976–77 marketing year and eliminates the restrictions formerly placed on releasing and transferring allotments on federally-owned land. Other minor revisions and deletions are made which do not materially affect the 1976–77 crops of fire-cured, dark air-cured, Virginia sun-cured, cigar-binder (types 51 and 52), and cigar-filler and binder (types 42, 43, 44, 53, 54, and 55) tobaccos.

The following changes and additions to 7 CFR Part 724 are made:

1. Section 724.52 is amended to conform to Part 793 of this chapter.

2. Sections 724.57, 724.69, 724.70, 724.71, 724.72 and 724.81 are revised to eliminate references to federally-owned land.

3. Section 724.69 is amended to clarify the limit on transfers of cigar-filler (types 42, 43, and 44) tobacco.

4. Section 724.73 is amended to eliminate the reference to Part 731.

5. Section 724.88 is amended by adding the penalty rate for excess tobacco for the 1976–77 marketing year.

6. Other editorial changes are made as appropriate.

Since farmers are now marketing their tobacco, it is essential that these regulations be made effective at the earliest possible date. Accordingly, it is determined that compliance with the notice and public participation procedure in 5 U.S.C. 553 is impracticable and contrary to the public interest. This document is being made effective without compliance with such procedure. 7 CFR Part 724 is amended as follows:

1. Section 724.52 is amended to read as follows:

§ 724.52 Extent of determinations, computations, and rule for rounding fractions.

(a) *General.* All prescribed rounding herein shall be in accordance with the provisions of Part 793 of this chapter.

(b) *Allotments.* Farm acreage allotments shall be determined in hundredths of acres.

(c) *Percent excess.* The percentage of excess tobacco available for marketing from a farm, hereinafter referred to as the "percent excess," shall be determined in tenths of a percent.

(d) *Converted rate of penalty.* The amount of penalty per pound upon marketings of tobacco subject to penalty, hereinafter referred to as the "converted rate of penalty," shall be determined in tenths of a cent.

(e) *Amount of penalty.* The amount of penalty on any lot of tobacco marketed shall be determined in dollars and cents.

(f) *Percentage reduction for violation.* A percentage of reduction in an allotment due to a violation shall be determined in tenths of a percent.

§ 724.57 [Amended]

2. Section 724.57 is amended by deleting paragraph (b)(1)(ii) and by renumbering paragraph (b)(1)(iii) as paragraph (b)(1)(ii).

3. Section 724.69 is amended by revoking paragraph (t) and revising paragraph (f) to read as follows:

§ 724.69 Lease and transfer of tobacco acreage allotment—cigar-binder (types 51 and 52) and cigar-filler and binder (types 42, 43, 44, and 53) tobacco.

* * * * *

(f) *Limit on acreage transferred.* For the 1972 and subsequent crops of Cigar-filler and Binder (types 42, 43, 44, and 53), or Cigar-binder (types 51 and 52) tobacco, the total acreage allotted to any farm after the transfer by lease of tobacco acreage allotment to the farm (the sum of its own allotment and acreage leased and transferred to it after any adjustment in normal yield) shall not exceed 50 percent of the acreage of cropland in the farm, except that Cigar-filler (types 42, 43, and 44) transfers, shall be limited to a total of 10 acres.

* * * * *

§ 724.70 [Amended]

4. Section 724.70 is amended by revoking paragraph (x).

5. Section 724.71 is amended by revising paragraph (d) to read as follows:

§ 724.71 Transfer of tobacco farm acreage allotment for farms affected by a natural disaster.

* * * * *

(d) *County committee approval.* The county committee shall approve the transfer if it finds that:

(1) All or part of the farm allotment for the transferring farm could not be timely planted or replanted because of the natural disaster.

(2) One or more of the producers of tobacco on the transferring farm will be a bona fide producer engaged in the production of tobacco on the receiving farm and will share in the proceeds of the tobacco.

* * * * *

§ 724.72 [Amended]

6. Section 724.72 is amended by deleting paragraph (a)(2)(i) and by renumbering paragraphs (a)(2)(ii), (iii), and (iv) as (a)(2)(i), (ii), and (iii), respectively.

§ 724.73 [Amended]

7. Section 724.73 is amended by adding the words "and publicize" after the word "establish" in the first sentence and deleting the last sentence in the section.

§ 724.81 [Amended]

8. Section 724.81 is amended by deleting the semicolon after paragraph (e)(3)(ii) and inserting a period and by deleting paragraph (e)(3)(iii).

9. Section 724.88 is amended by adding a new paragraph (h) to read as follows:

§ 724.88 Rate of penalty.

* * * * *

(h)(1) *The 1975–76 average market price.* The average market price for the kinds of tobacco listed below as determined by the Crop Reporting Board, Statistical Reporting Service, U.S. Department of Agriculture for the 1975–76 marketing year was:

Average market price

Kind of tobacco:	*Cents per pound*
Fire-cured (type 21)	93.0
Fire-cured (types 22, 23, 24)	104.7
Dark air-cured	89.8
Virginia sun-cured	85.6
Cigar-filler and binder (types 42, 43, 53, 54, and 55)	73.1
Cigar-binder (types 51 and 52)	92.7

(2) *1976–77 rate of penalty per pound.* The penalty rate per pound for the kinds of tobacco listed below upon marketings of excess tobacco subject to marketing quotas during the 1976–77 marketing year shall be:

Rate of penalty

Kinds of tobacco:	*Cents per pound*
Fire-cured (type 21)	70
Fire-cured (types 22, 23, 24)	79
Dark air-cured	67
Virginia sun-cured	64
Cigar-filler and binder (types 42, 43, 44, 53, 54, and 55)	55
Cigar-binder (types 51 and 52)	(1)

[1] Quotas terminated for 1976 crop.

(Secs. 301, 313, 314, 316, 318, 363, 372–375, 377, 378, 52 Stat. 38, as amended, 47 as amended, 48 as amended, 75 Stat. 469 as amended, 81 Stat. 120, as amended, 52 Stat. 63 as amended, 65 as amended, 66 as amended, 70 Stat. 206, as amended, 72 Stat. 995, as amended; (7 U.S.C.

1301, 1313, 1314, 1314b, 1314d, 1363, 1372–1375, 1377, 1378).)

Effective date: February 15, 1977.

Signed at Washington, D.C., on February 7, 1977.

VICTOR A. SENECHAL,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.77-4673 Filed 2-14-77;8:45 am]

[Amdt. 4]

PART 725—FLUE-CURED TOBACCO

Subpart—Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations, 1973–74 and Subsequent Marketing Years

EMERGENCY TOBACCO MARKETING QUOTA TRANSFERS IN GEORGIA AND SOUTH CAROLINA.

This amendment implements the provisions of Pub. L. 94–445 to permit the transfer by lease of flue-cured tobacco marketing quotas in Georgia and South Carolina. The amendment also contains another minor revision which does not materially affect the 1976–77 crop of flue-cured tobacco.

The following changes and additions to 7 CFR Part 725 are made:

1. Section 725.102 is amended to remove the requirement that prior approval be obtained from the Director, Program Operations Division, before a dealer or buyer may be exempt from the requirement of keeping regular records and making reports on MQ–79. Other conditions for exemption remain unchanged.

2. Section 725.116 is added to permit across county lines lease and transfer of flue-cured tobacco marketing quotas from farms in Georgia and South Carolina which have suffered losses due to a natural disaster.

Since farmers are now marketing their tobacco, it is essential that these regulations be made effective at the earliest possible date; therefore, it is hereby determined and found that compliance with the notice, public rulemaking procedure, and effective date requirements contained in 5 U.S.C. 553 is unnecessary and contrary to the public interest. Accordingly, this document is being made effective February 15, 1977.

7 CFR Part 725 is amended as follows:

1. The table of contents is amended by adding a new section as follows:

Sec.

* * * * *

725.116 1976 crop emergency transfers by lease.

2. Section 725.102 is amended by changing paragraph (a) to read as follows:

§ 725.102 Dealers exempt from regular records and reports on MQ–79; and season report for dealers.

(a) Any dealer or buyer who acquires tobacco in the form in which tobacco ordinarily is sold by farmers and resells 5 percent or less of any such tobacco shall not be subject to the requirements of § 725.100 except for the requirements which relate to the reporting of nonauction purchases from producers and the requirements of paragraph (d) of § 725.100. A dealer or buyer whose resales in the form ordinarily sold by farmers exceed 5 percent of its purchases as a direct result of order buying for another dealer for a service fee may report under paragraph (b) of this section in lieu of § 725.100 (except for requirements which relate to nonauction purchases from producers and requirements of paragraph (d) of § 725.100).

* * * * *

3. Section 725.116 is added to read as follows:

§ 725.116 1976 crop emergency transfers by lease.

(a) *Authority.* Pub. L. 94–445 authorizes the Secretary to permit the transfer by lease of flue-cured tobacco marketing quotas across county lines in 1976 in Georgia and South Carolina when a determination is made that: (1) As the result of a natural disaster one of the counties in South Carolina or Georgia has suffered a loss of 10 percent or more in the number of acres of tobacco planted or expected production from the planted acreage and (2) such transfer will not impair the effective operation of the tobacco marketing quota or price support program. A determination has been made that Ware County, Georgia, and Colleton County, South Carolina, meet the conditions in subparagraph (1) of this paragraph and that transfers of marketing quotas will not impair the effective operation of the tobacco marketing quota or price support program. Accordingly, transfers by lease of flue-cured tobacco marketing quotas may be made as provided in this section.

(b) *Eligible counties.* All counties in Georgia and South Carolina.

(c) *Eligible farms.* The county committee shall approve transfers by lease that meet the conditions in § 725.72 and the conditions in this section: *Provided,* That when the provisions of § 725.72 conflict with the provisions of this section, the provisions of this section shall apply. Transfers may be approved between any flue-cured tobacco farms in Georgia and South Carolina respectively when all of the following conditions are met:

(1) The county committee for the lessor farm determines that such farm as a result of a natural disaster has suffered a loss of 10 percent or more in the number of acres of tobacco planted or in the expected production from the planted acres.

(2) The county committee for the lessee farm determines that the tobacco marketed or available for marketing from such farm in the current marketing year exceeds the current effective farm marketing quota for such farm and the pounds to be transferred do not exceed the results obtained by subtracting the effective farm marketing quota prior to the transfer from the sum of the pounds of tobacco marketed in the current marketing year plus the estimated pounds of unmarketed tobacco on hand.

(3) A copy of the lease is filed, according to instructions issued by the Deputy Administrator, Programs, with the county committee of the county in which the lessee farm is located.

(90 Stat. 1489; (7 U.S.C. 1314b).)

Effective date: February 15, 1977.

Signed at Washington, D.C., on February 7, 1977.

VICTOR A. SENECHAL,
Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc.77-4674 Filed 2-14-77;8:45 am]

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

[Navel Orange Reg. 399, Amdt. 1]

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

Limitation of Handling

This regulation increases the quantity of California-Arizona Navel oranges that may be shipped to fresh market during the weekly regulation period February 4–10, 1977. The quantity that may be shipped is increased due to improved market conditions for Navel oranges. The regulation and this amendment are issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, and Marketing Order No. 907.

(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 907, as amended (7 CFR Part 907), regulating the handling of Navel oranges grown in Arizona and designated part of California, 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 Navel Orange 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 Navel oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) The need for an increase in the quantity of oranges available for handling during the current week results from changes that have taken place in the marketing situation since the issuance of Navel Orange Regulation 399 (42 FR 6579). The marketing picture now indicates that there is a greater demand for Navel oranges than existed when the regulation was made effective. Therefore, in order to provide an opportunity for handlers to handle a sufficient volume of Navel oranges to fill the current market demand thereby making a greater quantity of Navel oranges 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 thereof 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 Navel oranges grown in Arizona and designated part of California.

(b) *Order, as amended.* The provisions in paragraph (b)(1)(i) and (ii) of § 907.699 (Navel Orange Regulation 399 (42 FR 6579) are hereby amended to read as follows:

§ 907.699 Navel Orange Regulation 399.

* * * * *

(b) * * *

(1) * * *

(i) District 1: 1,271,000 cartons;

(ii) District 2: 279,000 cartons.

* * * * *

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

Dated: February 9, 1977.

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

[FR Doc.77-4675 Filed 2-14-77;8:45 am]

PART 987—DOMESTIC DATES PRODUCED OR PACKED IN RIVERSIDE COUNTY, CALIFORNIA

Establishment of Free and Restricted Percentages and Withholding Factors for the 1976–77 Crop Year

Notice was published in the January 12, 1977, issue of the FEDERAL REGISTER (42 FR 2503) regarding a proposal to establish free and restricted percentages and withholding factors of 100 percent, 0 percent, and 0 percent, respectively, for Deglet Noor, Zahidi, Halawy, and Khadrawy dates. The 1976–77 crop year began October 1, 1976. The proposal was pursuant to the marketing agreement as amended and Order No. 987, as amended (7 CFR Part 987). The amended marketing agreement and order regulate the handling of domestic dates produced or packed in Riverside County, California, and are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674).

The notice afforded interested persons an opportunity to submit written data, views, or arguments with respect to the proposal. None were received.

The free percentages, restricted percentages, and withholding factors are pursuant to §§ 987.44 and 987.45. These percentages and factors are based on the California Date Administrative Committee's estimates for the current crop year of supply and trade demand adjusted for handler carryover and other available information. Trade demand means the aggregate quantity of whole or pitted dates which the trade will acquire from all handlers during the crop year for distribution in the continental United States, Canada, and such other countries as the Committee finds will acquire dates at prices reasonably comparable with prices received in the continental United States.

In determining the percentages for each of the four varieties, the Committee considered the following data, estimates and information for the crop year beginning October 1, 1976:

[In thousands of pounds]

	Deglet Noor	Zahidi	Halawy	Khadrawy
1. Production of marketable dates (1976–77 crop)	20,132	1,851	163	348
2. Plus: Noncertified handler carryover as of Sept. 30, 1976, of marketable dates	6,332	136	5	33
3. Total marketable supply	26,464	1,987	168	381
4. Trade demand for free whole and pitted dates	15,450	1,380	138	250
5. Plus: Desirable handler carryover as of Sept. 30, 1977, to assure date supplies for early demand	6,000	350	49	50
6. Less: Certified handler carryover as of Sept. 30, 1976, of free dates	2,000	20	0	0
7. Adjusted trade demand	19,450	1,710	187	300

It is estimated that the amounts in excess of adjusted trade demands for these four varieties will be utilized in products and/or export markets.

After consideration of all relevant matter presented, including that in the notice, the information and recommendation submitted by the Committee, and other available information, it is found that to establish free percentages, restricted percentages, and withholding factors as hereinafter set forth will tend to effectuate the declared policy of the act.

It is further found that good cause exists for not postponing the effective time of this action until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that: (1) This action does not impose any restrictions upon handlers and gives them flexibility in meeting market needs; (2) the relevant provisions of said marketing agreement and this part require that free and restricted percentages and withholding factors established for a particular crop year shall be applicable during the entire crop year to all marketable dates; and (3) the current crop year began October 1, 1976, and the percentages and withholding factors hereinafter established will apply to all such dates beginning with that date.

The free percentages, restricted percentages, and withholding factors for the 1976–77 crop year are as follows:

§ 987.224 Free and restricted percentages and withholding factors.

The various free percentages, restricted percentages, and withholding factors applicable to marketable dates of each variety shall be, for the crop year beginning October 1, 1976, and ending September 30, 1977, as follows:

(a) Deglect Noor variety dates; Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent;

(b) Zahidi variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent;

(c) Halawy variety dates; Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent;

(d) Khadrawy variety dates: Free percentage, 100 percent; restricted percentage, 0 percent; and withholding factor, 0 percent.

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

Dated: February 9, 1977.

CHARLES R. BRADER,
Deputy Director, Fruit and Vegetable Division.

[FR Doc.77-4533 Filed 2-14-77;8:45 am]

Title 16—Commercial Practices

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

PART 1014—POLICIES AND PROCEDURES IMPLEMENTING THE PRIVACY ACT OF 1974; AMENDMENT

Exempt System of Records

In the FEDERAL REGISTER of November 18, 1975 (40 FR 53380), the Consumer Product Safety Commission published its Policies and Procedures Implementing the Privacy Act of 1974 (the "rules"). Section 1014.12(a)(1) of the rules describes the Commission's system of records entitled Accident Reports (In-Depth Investigations) as including reports on "a sample of product related injuries reported to the Commission by selected hospital emergency rooms". However, since publication of the rules, this record system has been expanded to include reports on product related injuries received through other means, such as the Commission's Consumer Hot-Line telephone service, written consumer complaints and press reports. Therefore, the Commission hereby amends its Policies and Procedures Implementing the Privacy Act of 1974 to update the description of sources of reports on product related injuries which are the subject of Accident Reports (In-Depth Investigations).

Since this amendment makes a minor change to a portion of the Commission's rules which describes a system of records and the change does not significantly alter the character or purpose of the system of records described therein, the Commission has determined that the notice and public procedure provisions of 5 U.S.C. 553 are impracticable

and unnecessary. Accordingly, good cause exists to dispense with the notice and public procedure on this amendment and further to make this amendment effective immediately.

Accordingly, § 1014.12(a)(1) of Title 16, Chapter II, Subchapter A is revised to read as follows:

§ 1014.12 Specific exemptions.

(a) Injury information. (1) The Bureau of Epidemiology maintains a file of Accident Reports (In-Depth Investigations) which are conducted on a sample of product related injuries reported to the Commission by selected hospital emergency rooms, by consumers through the Commission's "Hot-Line" telephone service and through written consumer complaints and by other means such as newspaper reports. The purpose of this record system is to compile accident statistics for analyzing the incidence and severity of product related injuries.

* * * * *

Effective date: February 15, 1977.

Dated: February 4, 1977.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-4691 Filed 2-14-77;8:45 am]

Title 18—Conservation of Power and Water Resources

CHAPTER I—FEDERAL POWER COMMISSION

[Docket No. RM75-27; Order 561]

UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES AND NATURAL GAS COMPANIES

Order Adopting Amendments

FEBRUARY 2, 1977.

In the matter of amendments to Uniform System of Accounts for public utilities and licensees and for natural gas companies (Classes A, B, C and D) to provide for the determination of rate for computing the allowance for funds used during construction and revisions of certain schedule pages of FPC reports; order adopting amendment to Uniform System of Accounts for public utilities and licensees and for natural gas companies.

On May 20, 1975, the Commission issued a notice of proposed rulemaking in Docket No. RM75-27 (40 FR 23322, May 29, 1975). This rulemaking proposed to establish a uniform formulary method for determining the maximum rates to be used in computing the Allowance for Funds Used During Construction (AFUDC) and to provide accounting and reporting requirements for AFUDC which accord with the elements entering into the determination of AFUDC rates. The stated objective of the proposed rule was to establish a method which would give recognition to the interrelationship between capital utilized for rate case purposes and the capital components of AFUDC in a manner that would permit a utility to achieve a rate of return on its total utility operations, including its construction program, at approximately the rate which would be allowed in a rate case.

Comments were invited from interested parties on or before July 7, 1975. Due to requests, this date was extended to September 5, 1975. In response to the proposed rulemaking, the Commission received comments from seventy-nine respondents (Attachment A). In general, the reaction to the proposed rulemaking was favorable as to its overall objective, but many respondents questioned the ability of the proposal to meet such objective and made suggestions for improvement.

Many respondents objected to the weight given short-term debt in the proposed rule and suggested a number of alternatives. These respondents argued that short-term debt is not necessarily the first source of construction funds, as would be indicated by application of the proposed formula, and should be ignored or given less weight. We are not convinced, however, that we should modify the proposed formula with respect to short-term debt. It is generally impossible to specifically trace the source of funds used for various corporate purposes and it was not the purpose of our proposed rule to do so. Instead, we proposed a rule that would give a utility an opportunity to be compensated for the total cost of capital devoted to utility operations, including its construction program. In order to accomplish this, it is necessary to look to how the cost of capital is handled in a rate proceeding so that a method for determining AFUDC can be devised that will not result in double counting of the same capital cost or will not omit important categories of capital cost. Typically, short-term debt has not been included in rate of return computations for cost of service purposes on the grounds that such debt is temporary and is used essentially for construction purposes; however, the cost of such debt represents a valid and necessary expenditure for conducting utility operations which ultimately must be recovered through rates. By adopting the approach of permitting the capitalization of short-term debt cost through AFUDC, we provide such a mechanism. It should be understood that this method is for the purpose of establishing a rate for AFUDC and not for establishing a method for allocating short-term interest cost for the purpose of a rate proceeding.

Many respondents also questioned the use of embedded cost rates for long-term debt and preferred stock in the proposed AFUDC formula and suggested incremental cost rates be used instead. For essentially the same reasons that we believe the proposed handling of short-term debt should not be modified, we are rejecting this suggestion. If incremental cost rates were utilized for these categories of capital cost in the AFUDC formula, there would be a double counting for the same costs. Embedded cost rates are normally used for rate of return purposes and such cost rates include the cost of new as well as old issues of long-term debt and preferred stock. Therefore, the composite return on rate base collected through rates provides for the proportionate recovery of new or incremental capital costs in the ratio of rate base to the size of the capital structure used for rate of return purposes. If we assume for the sake of argument that the sum of a utility's permanent capital structure plus short-term borrowing is equal to the sum of its rate base plus construction work in progress balances, it is obvious that the use of incremental cost for AFUDC purposes and embedded cost for rate of return purposes would result in double counting of the same costs. Although the above illustration somewhat oversimplifies the issue, we believe that the principle is adequately demonstrated.

The other basic component for AFUDC relates to common equity funds. Comments by respondents on this subject primarily related to how the reasonable cost rate for common equity funds should be determined. Unlike debt costs or the cost of preferred stock, which can be objectively determined by analysis of actual contractual obligations and expenditures, the cost of common equity is not ordinarily related to contractual requirements. In the proposed rule we indicated that the cost rate to be used for common equity would be the rate granted common equity in the last rate proceeding before the body having primary rate jurisdiction or, if such rate is not available, the average rate actually earned during the preceding three years should be used. We recognize, based on the comments received, that this approach may require some modification in situations where rate-making bodies use other than an "original cost" rate base or where utilities are subject to multiple rate jurisdiction. However, in developing a general rule relating to AFUDC, we find any possible inequities of this nature can best be handled on an individual company basis.

Having considered the broad issues of the various components of the AFUDC, it is now necessary to focus on the many constructive and helpful comments and suggestions received relating to other facets of the proposed rulemaking.

Many comments were received regarding the desirability of segregating AFUDC into two components, borrowed funds and other funds, and the relocation of the allowance for borrowed funds to the Interest Charges Section of the income statement. The main objection to this proposed requirement was that it would have the effect of reducing interest coverages and thereby restrict the issuances of additional debt by some companies. We recognized that this may be a particularly uninviting aspect of the proposed rule for some utilities since "Other Income" will be reduced upon application of the proposed rule and such income is frequently, in whole or part, used for interest coverage tests.[1] However, we believe this change to be necessary in order to better inform read-

[1] We also recognize that interest coverages for some utilities may be increased if in their coverage computations they use net interest charges since this amount will be reduced upon application of the proposed rule.

ers of the financial statements of utilities as to the nature and level of the capitalized allowance for borrowed funds. Since there is little conceptual difference between capitalization of the cost of borrowed funds used for construction purposes and other costs of construction such as labor and materials, we believe that the readers of financial statements will be better informed if such construction interest is shown as an allocation of costs by a reduction in the Interest Charges Section of the income statement rather than as an income item.

A number of respondents criticized the proposal to determine the current year's AFUDC rates by the use of average actual book balances and cost rates of the prior year principally because short-term debt cost rates and balances are very volatile and the use of averages for a previous year does not give a proper indication of the cost of short-term debt for prospective computations of AFUDC. We agree that this is a valid point and believe that modifications of the proposed rule in this area are necessary.

We are modifying the proposed rule to provide that the balances of long-term debt, preferred stock, and common equity for use in the formula for the current year will be the balances in such accounts at the end of the prior year; the cost rates for long-term debt and preferred stock will be the effective weighted average cost of such capital. The average short-term debt balances and related cost and the average construction work in progress balance will be estimated for the current year. We shall require, however, that public utilities and natural gas companies monitor their actual experience and adjust to actual at year-end if a significant deviation from the estimate should occur. For this purpose we shall consider a significant deviation to exist if the gross AFUDC rate exceeds by more than one-quarter of a percentage point (25 basis points) the rate that is derived from the formula by use of actual thirteen monthly balances of construction work in progress and the actual weighted average cost and balances for short-term debt outstanding during the year.

Many respondents requested clarification as to whether premiums, discounts and expenses related to long-term debt, and compensating balances and commitment fees related to short-term debt, were to be considered when determining the cost rate for such funds. With respect to long-term debt, the cost of such capital should be the yield to maturity determined in the same manner as set forth in § 35.13(b)(4)(iii), Statement G—Rate of Return, of the Commission's Regulations Under the Federal Power Act and § 154.63(f), Statement F(3)—Debt Capital, of the Commission's Regulations Under the Natural Gas Act which gives appropriate recognition to premiums, discounts and expenses related to long-term debt. In regard to short-term debt, several respondents have pointed out that compensating balances and commitment fees have cost implications with respect to bank loans and as support for commercial paper and urged that recognition be given for such costs. We agree that in some instances, such items could properly be considered in determining the effective cost rate for short-term debt for use in the formula. However, primarily because of measurement problems, we do not believe that specific recognition should be given in the general rule. Instead, where an individual company has a written agreement and can support the fact that compensating balances and commitment fees are necessary in order to obtain favorable short-term financing and are not considered in its rate proceedings, we will permit an adjustment to the nominal short-term interest rates to reflect this additional cost. We believe that this approach is necessary because of the diversity of rate treatment for these items; the commingling and lack of identification of bank balances kept for normal operating purposes and those used for compensating bank balance purposes; and the frequent lack of formal agreements for required levels of compensating bank balances.

Some respondents commented that the value of non-investor sources of funds such as accumulated deferred income taxes and contributions in aid of construction should be recognized in the formula. We are not adopting this suggestion since normally the entire balances in the accumulated deferred income taxes accounts are used to reduce rate base for cost of service purposes.[2] To include such balances in determining the AFUDC rate would result in double counting of the same dollars. The same reasons apply for contributions in aid of construction, since under our Uniform System of Accounts such contributions are credited directly to construction costs.

A number of respondents commented that previously capitalized AFUDC should be included in the cost base to which the AFUDC rate applies since AFUDC is a cost of construction similar to labor, materials and other elements of construction. Thus, it is asserted that the compound method must be recognized if AFUDC is to properly compensate the utility for use of funds while devoted to construction. We agree that compounding of AFUDC is proper in theory and necessary as a matter of sound cost determination; however, we believe that a monthly compounding of AFUDC as suggested by some respondents may result in excessive amounts capitalized since cash outlays for interest and dividends are not normally made on a monthly basis. We shall therefore permit compounding but no more frequently than semi-annually.

A number of respondents also indicated that any rules issued with respect to AFUDC should apply to Nuclear Fuel in Process of Refinement, Conversion, Enrichment and Fabrication (Account 120.1) in the same manner as Construction Work in Progress. We agree with these comments and will so provide.

Certain other constructive suggestions received from respondents have been included in the accounting instructions for the purpose of adding clarity to the accounting text.

We have also deleted that portion of the proposed plant instructions pertaining to computations of income taxes. We believe that these proposed instructions are not now necessary in view of our Orders No. 530, 530-A and 530-B in Docket Nos. R-424, Accounting for Premiums, Discount and Expense of Issue, Gains and Losses on Refunding and Reacquisition of Long-Term Debt, and Interperiod Allocation of Income Taxes and R-446, Amendments to the Uniform System of Accounts for Classes A, B and C Public Utilities and Licensees and Natural Gas Companies: Deferred Income Taxes. As stated in Order 530-A:

The accounting for deferred income taxes prescribed in Order No. 530 was structured to accommodate utilities under the rate jurisdiction of the various state regulatory bodies that may or may not authorize deferred tax accounting for rate purposes (See General Instruction 18). If a net of tax allowance for funds rate is prescribed by a regulatory body in setting the rate levels of utilities, we consider that such treatment is consistent with the intent of Order No. 530 and it is not necessary for utilities to set aside deferred income taxes related to the interest component of the allowance for funds rate. In light of this, we do not believe that it is necessary to make provision in the Uniform System Accounts to cover this matter.

The Commission finds: (1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission through the submission, in writing, of data, views, comments and suggestions in the manner described above, are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

(2) The amendments to Parts 101 and 104 of the Commission's Uniform System of Accounts for Public Utilities and Licensees and to FPC Forms No. 1, No. 1-F, and No. 5 required by §§ 141.1, 141.2, and 141.25 in Chapter I, Title 18 of the Code of Federal Regulations, herein prescribed, are necessary and appropriate for the administration of the Federal Power Act.

(3) The amendments to Parts 201 and 204 of the Commission's Uniform System of Accounts for Natural Gas Companies, and to FPC Forms No. 2, No. 2-A, and No. 11 required by §§ 260.1, 260.2, and 260.3 in Chapter I, Title 18 of the Code of Federal Regulations, herein prescribed, are necessary and appropriate for the administration of the Natural Gas Act.

(4) Since the amendments prescribed herein, which were not included in the notice of the proceeding, are consistent

[2] There is one category of accumulated deferred taxes which is not used to reduce rate base. Under our ratemaking practices the balances of Account 281, Accumulated deferred income taxes-Accelerated amortization, are included in the capitalization used for rate of return purposes at zero cost. The balances in these accounts, however, are relatively small and the effect on the AFUDC rate if taken into consideration would be negligible.

with the prime purpose of the Proposed Rulemaking, further notice thereof is unnecessary.

(5) Good cause exists for making the amendments to the Uniform System of Accounts for Public Utilities and Licensees and Natural Gas Companies ordered herein effective on January 1, 1977, and the amendments to FPC Forms No. 1, No. 1-F, No. 2, No. 2-F, No. 5, and No. 11 ordered herein, effective for the reporting year 1977.

The Commission, acting pursuant to the provisions of the Federal Power Act, as amended, particularly sections 3, 4, 301, 304, 308, 309, and 311 (41 Stat. 1063, 1065; 49 Stat. 838, 839, 854, 855, 858, 859; 16 U.S.C. 796, 797, 825, 825c, 825g, 825h, 825j) and of the Natural Gas Act, as amended, particularly sections 8, 10, and 16 (52 Stat. 825, 826, 830; 15 U.S.C. 717g, 717i, 717o), orders:

PART 101—UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES (CLASS A AND CLASS B)

(A) Effective January 1, 1977, the Commission's Uniform System of Accounts for Class A and Class B Public Utilities and Licensees in Part 101, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraph I of Instruction 17. Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition. As amended, this portion of General Instruction 17 reads:

General Instructions

* * * * *

17. *Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.*

* * * * *

I. Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of account 432, Allowance for Borrowed Funds Used During Construction—Credit.

* * * * *

(2) Subparagraph "(17) Allowance for Funds Used During Construction" of Electric Plant Instruction "3. *Components of Construction Cost.*" is amended by revising the first sentence of the paragraph and by adding two new paragraphs (a) and (b) immediately following the first paragraph. As amended, subparagraph (17) reads:

Electric Plant Instructions

* * * * *

3. *Components of Construction Cost*

* * * * *

(17) "Allowance for funds used during construction" includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, not to exceed, without prior approval of the Commission, allowances computed in accordance with the formula prescribed in paragraph (a) below. No allowance for funds used during construction charges shall be included in these accounts upon expenditures for construction projects which have been abandoned.

(a) The formula and elements for the computation of the allowance for funds used during construction shall be:

$$A_i = s\left(\frac{S}{W}\right) + d\left(\frac{D}{D+P+C}\right)\left(1-\frac{S}{W}\right)$$

$$A_e = \left[1-\frac{S}{W}\right]\left[p\left(\frac{P}{D+P+C}\right) + c\left(\frac{C}{D+P+C}\right)\right]$$

A_i=Gross allowance for borrowed funds used during construction rate.
A_e=Allowance for other funds used during construction rate.
S=Average short-term debt.
s=Short-term debt interest rate.
D=Long-term debt.
d=Long-term debt interest rate.
P=Preferred stock.
p=Preferred stock cost rate.
C=Common equity.
c=Common equity cost rate.
W=Average balance in construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment and fabrication.

(b) The rates shall be determined annually. The balances for long-term debt, preferred stock and common equity shall be the actual book balances as of the end of the prior year. The cost rates for long-term debt and preferred stock shall be the weighted average cost determined in the manner indicated in § 35.13 of the Comission's Regulations Under the Federal Power Act. The cost rate for common equity shall be the rate granted common equity in the last rate proceeding before the ratemaking body having primary rate jurisdictions. If such cost rate is not available, the average rate actually earned during the preceding three years shall be used. The short-term debt balances and related cost and the average balance for construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment, and fabrication shall be estimated for the current year with appropriate adjustments as actual data becomes available.

NOTE.—* * *.

(3) The Chart of Income Accounts is amended by revising the title of account "419.1, Allowance for Funds Used During Construction," to read "419.1, Allowance for Other Funds Used During Construction;" by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit, immediately following account "431, Other Interest Expense" and revising the sub-total caption "Total Interest Charges" to read "Net Interest Charges." As amended, the Chart of Income Accounts reads:

Income Accounts (Chart of Accounts)

* * * * *

2. OTHER INCOME AND DEDUCTIONS

A. OTHER INCOME

* * * * *

419.1 Allowance for other funds used during construction.

* * * * *

3. INTEREST CHARGES

* * * * *

432 Allowance for borrowed funds used during construction—Credit.

Net interest charges

* * * * *

(4) The text of the Income Accounts is amended by revising the title and text of account "419.1, Allowance for Funds Used During Construction," and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit, immediately following account "431, Other Interest Expense." As amended, these portions of the text of the Income Accounts reads:

INCOME ACCOUNTS

* * * * *

2. OTHER INCOME AND DEDUCTIONS

* * * * *

419.1 Allowance for other funds used during construction.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Electric Plant Instruction 3(17).

* * * * *

3. INTEREST CHARGES

* * * * *

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Electric Plant Instruction 3(17).

* * * * *

PART 104—UNIFORM SYSTEM OF ACCOUNTS FOR PUBLIC UTILITIES AND LICENSEES (CLASS C AND CLASS D)

(B) Effective January 1, 1977, the Commission's Uniform System of Accounts for Class C and Class D Public Utilities and Licensees in Part 104, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraph "I" of Instruction "15. *Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.*" As amended, this portion of General Instruction 15 reads:

General Instructions

* * * * *

15. *Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.*

* * * * *

I. Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of account 432, Allowance for Borrowed Funds Used During Construction—Credit.

* * * * *

(2) Electric Plant Instruction "2. *Components of Construction Cost.*" is amended by revising the first paragraph and lettering it "A." and by adding two new paragraphs B. and C. immediately following the first paragraph. As amended, Instruction 2 reads:

Electric Plant Instructions

* * * * *

2. *Components of Construction Cost.*

A. The cost of construction of property chargeable to the electric plant accounts shall include, where applicable, the cost of labor; materials and supplies; transportation; work done by others for the utility; injuries and damages incurred in construction work; privileges and permits; special machine service; allowance for funds used during construction, not to exceed without prior approval of the Commission amounts computed in accordance with the formula prescribed in paragraph B below; and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includable in construction costs.

B. The formula and elements for the computation of the allowance for funds used during construction shall be:

$$A_i = s\left(\frac{S}{W}\right) + d\left(\frac{D}{D+P+C}\right)\left(1-\frac{S}{W}\right)$$

$$A_e = \left[1-\frac{S}{W}\right]\left[p\left(\frac{P}{D+P+C}\right) + c\left(\frac{C}{D+P+C}\right)\right]$$

A_i=Gross allowance for borrowed funds used during construction rate.
A_e=Allowance for other funds used during construction rate.
S =Average short-term debt.
s =Short-term interest rate.
D =Long-term debt.
d =Long-term debt interest rate.
P =Preferred stock.
p =Preferred stock cost rate.
C =Common equity.
c =Common equity cost rate.
W=Average balance in construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment and fabrication.

C. The rates shall be determined annually. The balances for long-term debt, preferred stock and common equity shall be the actual book balances as of the end of the prior year. The cost rates for long-term debt and preferred stock shall be the weighted average cost determined in the manner indicated in § 35.13 of the Commission's Regulations under the Federal Power Act. The cost rate for common equity shall be the rate granted common equity in the last rate proceeding before the ratemaking body having primary rate jurisdiction. If such cost rate is not available, the average rate actually earned during the preceding three years shall be used. The short-term debt balances and related cost and the average balance for construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment, and fabrication shall be estimated for the current year with appropriate adjustments as actual data becomes available.

(3) The Chart of Income Accounts is amended by revising the title of account "419.1, Allowance for Funds Used During Construction," to read "419.1, Allowance for Other Funds Used During Construction" and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit immediately following account "431, Other Interest Expense" and revising the subtotal caption "Total Interest Charges" to read "Net Interest Charges." As amended, the Chart of Income Accounts reads:

Income Accounts (Charts of Accounts)

* * * * *

2. OTHER INCOME AND DEDUCTIONS

A. OTHER INCOME

* * * * *

419.1 Allowance for other funds used during construction.

* * * * *

3. INTEREST CHARGES

* * * * *

432 Allowance for borrowed funds used during construction—Credit.
Net interest charges.

* * * * *

(4) The text of the Income Accounts is amended by revising the title and text of account "419.1, Allowance for Funds Used During Construction," and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit immediately following account "431, Other Interest Expense." As amended, these portions of the text of the Income Accounts reads:

Income Accounts

* * * * *

2. OTHER INCOME AND DEDUCTIONS

* * * * *

419.1 Allowance for other funds used during construction.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Electric Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

* * * * *

3. INTEREST CHARGES

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Electric Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

* * * * *

PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS A AND CLASS B)

(C) Effective January 1, 1977, the Commission's Uniform System of Accounts for Class A and Class B Natural Gas Companies in Part 201, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraph "I" of Instruction "17. *Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.*" As amended, this portion of General Instruction 17 reads:

General Instructions

* * * * *

17. *Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.*

* * * * *

I. Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of account 432, Allowance for Borrowed Funds Used During Construction—Credit.

* * * * *

(2) Subparagraph "(17) Allowance for Funds Used During Construction" of Gas Plant Instruction "3. *Components of Construction Cost.*" is amended by revising the present paragraph, and immediately following the present paragraph, adding two new paragraphs (a) and (b). As amended, subparagraph (17) reads:

Gas Plant Instructions

* * * * *

3. *Components of Construction Cost.*

* * * * *

(17) "Allowance for funds used during construction" includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, not to exceed without prior approval of the Commission allowances computed in accordance with the formula prescribed in paragraph (a) below, except when such other funds are funds used for construction purposes used for exploration and development

or leases acquired after October 7, 1969, no allowance on such other funds shall be included in these accounts.

(a) The formula and elements for the computation of the allowance for funds used during construction shall be:

$$A_i = s\left(\frac{S}{W}\right) + d\left(\frac{D}{D+P+C}\right)\left(1-\frac{S}{W}\right)$$

$$A_e = \left[1-\frac{S}{W}\right]\left[p\left(\frac{P}{D+P+C}\right) + c\left(\frac{C}{D+P+C}\right)\right]$$

A_i=Gross allowance for borrowed funds used during construction rate.
A_e=Allowance for other funds used during construction rate.
S=Average short-term debt.
s=Short-term debt interest rate.
D=Long-term debt.
d=Long-term debt interest rate.
P=Preferred stock.
p=Preferred stock cost rate.
C=Common equity.
c=Common equity cost rate.
W=Average balance in construction work in progress.

(b) The rates shall be determined annually. The balances for long-term debt, preferred stock and common equity shall be the actual book balances as of the end of the prior year. The cost rates for long-term debt and preferred stock shall be the weighted average cost determined in the manner indicated in § 154.63 of the Commission's Regulations Under the Natural Gas Act. The cost rate for common equity shall be the rate granted common equity in the last rate proceeding before the ratemaking body having primary rate jurisdiction. If such cost rate is not available, the average rate actually earned during the preceding three years shall be used. The short-term debt balances and related cost and the average balance for construction work in progress shall be estimated for the current year with appropriate adjustments as actual data becomes available.

NOTE.—* * *

(3) The Chart of Income Accounts is amended by revising the title of account "419.1, Allowance for Funds Used During Construction" to read "419.1, Allowance for Other Funds Used During Construction" and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit, immediately following account "431, Other Interest Expense" and revising the subtotal caption "Total Interest Charges" to read "Net Interest Charges." As amended, the Chart of Income Accounts reads:

Income Accounts (Chart Of Accounts)

* * * * *

2. OTHER INCOME AND DEDUCTIONS

A. OTHER INCOME

* * * * *

419.1 Allowance for other funds used during construction.

3. INTEREST CHARGES

* * * * *

432 Allowance for borrowed funds used during construction—Credit.

Net interest charges.

* * * * *

(4) The text of the Income Accounts is amended by revising the title and text of account "419.1, Allowance for Funds Used During Construction," and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit, immediately following account "431, Other Interest Expense." As amended, these portions of the text of the Income Accounts read:

Income Accounts

* * * * *

2. OTHER INCOME AND DEDUCTIONS

* * * * *

419.1 Allowance for other funds used during construction.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 3(17).

* * * * *

3. INTEREST CHARGES

* * * * *

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 3(17).

* * * * *

PART 204—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS C AND CLASS D)

(D) Effective January 1, 1977, the Commission's Uniform System of Accounts for Class C and Class D Natural Gas Companies in Part 204, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The General Instructions are amended by revising paragraph "I" of Instruction "15. *Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.*" As amended, this portion of General Instruction 15 reads:

General Instructions

* * * * *

15. *Long-Term Debt: Premium, Discount and Expense, and Gain or Loss on Reacquisition.*

* * * * *

I. Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of account 432, Allowance for Borrowed Funds Used During Construction—Credit.

* * * * *

(2) Amend Gas Plant Instruction "2. *Components of Construction Cost.*" by

revising the first paragraph and lettering it "A." and by adding two new paragraphs B. and C. immediately following the first paragraph. As amended, Instruction 2 reads:

Gas Plant Instructions

* * * * *

2. *Components of Construction Cost.*

A. The cost of construction of property chargeable to the gas plant accounts shall include, where applicable, fees for construction certificate applications paid after grant of certificate, the cost of labor, materials and supplies, transportation, work done by others for the utility, injuries and damages incurred in construction, privileges and permits, special machine service, allowance for funds used during construction, not to exceed without prior approval of the Commission amounts computed in accordance with the formula prescribed in paragraph B below, training costs and such portion of general engineering, administrative salaries and expenses, insurance, taxes, and other analogous items as may be properly includible in construction costs. (See Operating Expense Instruction 3.) When the utility employs its own funds in exploration and development on leases acquired after October 7, 1969, no allowance for funds used during construction on such funds shall be included in these accounts.

B. The formula and elements for the computation of the allowance for funds used during construction shall be:

$$A_i = s\left(\frac{S}{W}\right) + d\left(\frac{D}{D+P+C}\right)\left(1-\frac{S}{W}\right)$$

$$A_e = \left[1-\frac{S}{W}\right]\left[p\left(\frac{P}{D+P+C}\right) + c\left(\frac{C}{D+P+C}\right)\right]$$

A_i=Gross allowance for borrowed funds used during construction rate.
A_e=Allowance for other funds used during construction rate.
S=Average short-term debt.
s=Short-term debt interest rate.
D=Long-term debt.
d=Long-term debt interest rate.
P=Preferred stock.
p=Preferred stock cost rate.
C=Common equity.
c=Common equity cost rate.
W=Average balance in construction work in progress.

C. The rates shall be determined annually. The balances for long-term debt, preferred stock and common equity shall be the actual book balances as of the end of the prior year. The cost rates for long-term debt and preferred stock shall be the weighted average cost determined in the manner indicated in § 154.63 of the Commission's Regulations Under the Natural Gas Act. The cost rate for common equity shall be the rate granted common equity in the last rate proceeding before the ratemaking body having primary rate jurisdiction. If such cost rate is not available, the average rate actually earned during the preceding three years shall be used. The short-term debt balances and related cost and the average balance for construction work in progress shall be estimated for the current year with appropriate adjustments as actual data becomes available.

(3) The Chart of Income Accounts is amended by revising the title of account "419.1, Allowance for Funds Used During Construction," to read "419.1, Allowance for Other Funds Used During Construction" and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit, immediately following account "431, Other Interest Expense" and revising the subtotal caption "Total Interest Charges" to read "Net Interest Charges." As amended, the Chart of Income Accounts reads:

Income Accounts (Chart of Accounts)

* * * * *

2. OTHER INCOME AND DEDUCTIONS

A. OTHER INCOME

* * * * *

419.1 Allowance for other funds used during construction.

* * * * *

3. INTEREST CHARGES

* * * * *

432 Allowance for borrowed funds used during construction—Credit.

Net interest charges

* * * * *

(4) The text of the Income Accounts is amended by revising the title and text of account "419.1, Allowance for Funds Used During Construction," and by adding a new account 432, Allowance for Borrowed Funds Used During Construction—Credit, immediately following account "431, Other Interest Expense." As amended, these portions of the text of the Income Accounts read:

Income Accounts

* * * * *

2. OTHER INCOME AND DEDUCTIONS

* * * * *

419.1 Allowance for other funds used during construction.

This account shall include concurrent credits for allowance for other funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

* * * * *

3. INTEREST CHARGES

* * * * *

432 Allowance for borrowed funds used during construction—Credit.

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in Gas Plant Instruction 2. No allowance for funds used during construction shall be capitalized on plant which is completed and ready for service.

* * * * *

PART 141—STATEMENT AND REPORTS (SCHEDULES)

PART 260—STATEMENT AND REPORTS (SCHEDULES)

(E) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 1, Annual Report for Electric Utilities, Licensees and Others (Class A and Class B), prescribed by § 141.1, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachments B and C. hereto.

(F) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 2, Annual Report for Natural Gas Companies (Class A and Class B), prescribed by § 260.1, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachments B and D hereto.

(G) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 1–F, Annual Report for Public Utilities and Licensees (Class C and Class D), prescribed by § 141.2, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachment E hereto.

(H) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 2–A, Annual Report for Natural Gas Companies (Class C and Class D), prescribed by § 260.2, Chapter I, Title 18 of the Code of Federal Regulations are amended, all as set out in Attachment C hereto.

(I) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 5, Monthly Statement of Electric Operating Revenue and Income, prescribed by § 141.25, Chapter I, Title 18 of the Code of Federal Regulations is amended, all as set out in Attachment F hereto.

(J) Effective for the reporting year 1977, certain schedule pages of FPC Form No. 11, Natural Gas Pipeline Company Monthly Statement, prescribed by § 260.3, Chapter I, Title 18 of the Code of Federal Regulations is amended, all as set out in Attachment G hereto.

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

By the Commission.

KENNETH F. PLUMB,[3]
Secretary.

ATTACHMENT A.—RESPONDENTS RM75–27

RESPONDENT

Accounting Firms

Arthur Anderson & Co.[1]
Orrin T. Colby, Jr.[1]
Coopers & Lybrand[1]
Haskins & Sells
Price Waterhouse & Co.[1]

[3] Attachments B through G filed as part of the original document.

Associations

American Gas Association (AGA)
Edison Electric Institute (EEI)[1]
Interstate Natural Gas Association of America (INGA)

Electric Utility Companies

Alabama Power Company[1]
American Electric Power Service Corporation
  Appalachian Power Co.
  Indiana and Michigan Electric Co.
  Kentucky Power Company
  Kingsport Power Co.
  Michigan Power Company
  Ohio Power Company
  Wheeling Electric Co.
Arkansas Power & Light Company[1]
Carolina Power & Light Company
Cincinnati Gas & Electric Company
  Lawrenceburg Gas Company, The
  Union Light, Heat and Power Company, The
  West Harrison Gas & Electric Company, The
Cleveland Electric Illuminating Company, The[1]
Columbus and Southern Ohio Electric Company
Commonwealth Edison
Consolidated Edison Company of New York, Inc.
Consumers Power Company
Dayton Power and Light Company, The[1]
Detroit Edison Company, The[1]
Duke Power Company
Florida Power & Light Company
Florida Power Corporation[1]
General Public Utilities Corporation
  Jersey Central Power & Light Company
  Metropolitan Edison Company
  Pennsylvania Electric Company
Georgia Power Company
Gulf Power Company[1]
Gulf States Utilities Company[1]
Idaho Power Company[1]
Illinois Power Company[1]
Iowa-Illinois Gas and Electric Company[1]
Iowa Power and Light Company[1]
Iowa Public Service Company
Kansas City Power & Light Company
Kansas Gas and Electric Company
Long Island Lighting Company[1]
Middle South Services, Inc.[1]
  Arkansas-Missouri Power Company
  Arkansas Power & Light Company
  Louisiana Power & Light Company
  Mississippi Power & Light Company
  New Orleans Public Service, Inc.
Minnesota Power & Light Company
New England Electric System[1]
  Granite State Electric Company
  Massachusetts Electric Company
  Narragansett Electric Company, The
  New England Power Company
Niagara Mohawk Power Corporation[1]
Northeast Utilities[1]
  Connecticut Light & Power Co., The
  Hartford Electric Light Co., The
  Holyoke Power & Electric Company
  Holyoke Water Power Co.
  Western Massachusetts Electric Co.
Northern States Power Company[1]
Ohio Edison Company
  Pennsylvania Power Company
Otter Tail Power Company[1]
Pacific Gas and Electric Company[1]
Pennsylvania Power & Light Company[1]
Philadelphia Electric Company
Portland General Electric Company[1]
Public Service Company of Indiana, Inc.[1]
Public Service Company of New Mexico
Public Service Company of Oklahoma
Public Service Electric and Gas Company
Puget Sound Power & Light Company
Rochester Gas and Electric Corporation
San Diego Gas & Electric Company[1]
Southern California Edison Company
South Carolina Electric & Gas Company[1]
Tampa Electric Company
Toledo Edison Company, The[1]
Tucson Gas & Electric Company
Union Electric Company
Utah Power & Light Company[1]
Washington Water Power Company, The
West Texas Utilities Company[1]
Wisconsin Power & Light Company[1]

Natural Gas Companies

Columbia Gas Transmission Corporation
Consolidated Gas Supply Corporation
  Consolidated System LNG Company
El Paso Natural Gas Company
Natural Gas Pipeline of America
Northern National Gas Company[1]
Panhandle Eastern Pipe Line Company
  Trunkline Gas Company
Texas Eastern Transmission Corporation

State Regulatory Commissions

Florida Public Service Commission[1]
Public Service Commission of the State of New York

Rural Electric Cooperative Associations

National Rural Electric Cooperative Association
Public Systems[1]
Southern Engineering Company

Others

First National City Bank
Dan L. Neidlinger
Stone & Webster Management Consultants, Inc.

[1] Not filed within the time prescribed.

[FR Doc.77-4269 Filed 2-14-77;8:45 am]

SUBCHAPTER H—REGULATIONS UNDER THE EMERGENCY NATURAL GAS ACT OF 1977

PART 295—EMERGENCY REGULATIONS

Order No. 4

(1) Response to the opportunities made available by section 6 of the Act has been encouraging. Voluntary transactions and self-help measures have aided in easing gas supply problems somewhat.

Pipeline or distribution companies in imminent peril of curtailing high priority loads are encouraged to undertake every possible purchase of available natural gas and arrange for its transportation through voluntary transactions. Distribution companies in difficulty are urged to work with their suppliers in making the necessary search or arrangements. To the extent that such transactions may be effected through existing Federal Power Commission programs and regulations, no additional reporting requirements will be imposed by the Administrator.

(2) Section 12 of the ENGA requires weekly reporting of "prices and volumes of natural gas delivered, transported or contracted for" under that Act. Therefore, within 72 hours of the commencement of deliveries in any transaction under the Act, the purchaser or recipient of gas shall advise the Administrator in writing:

(a) The section of the Act or Administrator's orders or regulations under which the transaction is made;

(b) The estimated volumes to be delivered on a daily basis and in the aggregate;

(c) The price (on an Mcf basis) and the basis on which such price is derived;

(d) The name, business address and telephone number of the seller or sellers;

(e) How the gas is being transported and the compensation paid for transportation;

(f) Whether the gas involved has been sold under FPC emergency procedures within 60 days of the report;

(g) Other relevant terms and conditions of the transaction.

If the deliveries began before this order, this information shall be filed by February 16, 1977, or within 72 hours of receipt of actual notice of this order.

(3) On the second Wednesday following commencement of deliveries, and on each Wednesday thereafter, the recipient shall report the actual prices and volumes for all deliveries.

(4) Any person selling gas pursuant to Paragraph 2 or 3 of Order No. 2, issued February 3, 1977, shall within 15 days of the commencement of deliveries, and on the first of each month thereafter, file with the Administrator a statement setting forth either:

(a) The details of its conversion to alternate fuel which made available the gas sold under the order. Such statement shall contain a computation of the amounts and prices of the alternate fuel used or purchased, and any other information relevant to the derivation of the price being charged for the gas from the cost of alternate fuel; or

(b) A statement setting forth its overall replacement costs for gas and the method of derivation of the price charged for the sale of gas under the order from such replacement costs.

RICHARD L. DUNHAM,
Administrator.

FEBRUARY 11, 1977.

[FR Doc.77-4995 Filed 2-14-77;10:55 am]

Title 19—Customs Duties

CHAPTER I—UNITED STATES CUSTOMS SERVICE

[T.D. 77-65]

PART 159—LIQUIDATION OF DUTIES

Countervailing Duties—Spirits From Great Britain

On May 25, 1914, the Treasury Department in T.D. 34466, imposed countervailing duties on certain classes of spirits imported directly or indirectly from the United Kingdom of Great Britain and Ireland, under paragraph E of section 4 of the Tariff Act of October 3, 1913. The additional duties, equivalent to the export bounties, were 3 pence per gallon on "plain British spirits" and "spirits in the nature of spirits of wine," and 5 pence per gallon on "British compounded spirits."

This decision was then modified, and appropriate instructions were issued for clarification several times. For example, on December 11, 1914, in T.D. 34982, the collection of countervailing duties on rum was discontinued since no allowance whatever was payable on the exportation of rum from Great Britain.

On June 20, 1935, in T.D. 47753, it was stated that:

> Section 303 of the Tariff Act of 1930 carries forward the principle of its antecedents in tariff legislation, section 4 of the Tariff Act of 1913 and section 303 of the Tariff Act of 1922, and in view of the fact that the export bounties set forth in T.D. 34466 * * * have been paid continuously since the date of T.D. 34466, the Bureau [of Customs] regards the Treasury decisions as being in full force and effect and as being applicable to the spirits imported directly or indirectly from the United Kingdom of Great Britain and Northern Ireland and from the Irish Free State, notwithstanding that the bounties are paid by different units of the British Commonwealth of Nations.

On September 7, 1950, in T.D. 52555, it was stated that upon receipt of information, the 3 pence per gallon export bounty on spirits exported from the United Kingdom of Great Britain and Northern Ireland was repealed, and T.D.'s 34466 and 47753 were modified "so as not to require the assessment of countervailing duties on imported 'plain British spirits' and 'spirits in the nature of spirits of wine.'" Then, in T.D. 55812, which was published in the FEDERAL REGISTER of January 24, 1963 (28 FR 635), liqueurs described as "British Spirits Sweetened in Bond," and exported to the United States by Long John Distilleries, Ltd., of Glascow, Scotland, were exempted.

The Treasury Department has been informed that by British Revenue Act of 1968, the British Government has terminated all remaining export allowances on spirits. That Act provided, however, that export allowances would continue on shipments under contract made prior to November 19, 1967. After due investigation, it is hereby determined that bounties or grants within the meaning of section 303 of the Tariff Act of 1930, as amended (19 U.S.C. 1303), are no longer being paid or bestowed upon the exportation of spirits from Great Britain.

Accordingly, countervailing duties will not be collected on spirits imported from Great Britain directly or indirectly which are or will be entered, or withdrawn from warehouse, for consumption on or after February 15, 1977. Neither will such duties be collected on any entries of such spirits which have not been liquidated or the liquidation of which has not become final by such date.

§ 159.47 [Amended]

The table in § 159.47(f) of the Customs Regulations (19 CFR 159.47(f)) is amended by deleting, after the word "Great Britain" in the column headed "Country," the word "spirits" in the column headed "Commodity"; by deleting T.D.'s 34466, 34752, 34982, 35089, 35510, 35668, 47826-7, 52555 and 55812 from the column headed "Treasury Decision"; and, by deleting all referenced actions following the above-stated T.D.'s in the column headed "Action".

(R.S. 251, secs. 303, as amended, 624; 46 Stat. 687, 759, 88 Stat. 2049; 19 U.S.C. 66, 1303, as amended, 1624.)

Approved: February 8, 1977.

VERNON D. ACREE,
Commissioner of Customs.

JOHN H. HARPER,
Acting Assistant Secretary.

[FR Doc.77-4653 Filed 2-14-77;8:45 am]

Title 29—Labor

CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Vermont; Amended Approval of State Poster

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) for review of changes and progress in the development and implementation of State plans which have been approved under section 18 (c) of the Act and Part 1902 of this chapter. On October 16, 1973, a notice was published in the FEDERAL REGISTER (38 FR 28658) of the approval of the Vermont plan and of the adoption of Subpart U of Part 1952 describing the plan. On March 31, 1976, the State of Vermont submitted a developmental change supplement to the plan containing a prototype of the Vermont State poster (see Subpart B of 29 CFR Part 1953).

On October 19, 1976, a notice was published in the FEDERAL REGISTER (41 FR 46066) of the approval of the prototype of the Vermont State poster. That notice, however, failed to report that the State, by letter dated June 26, 1974, submitted its existing State poster with a correction sticker containing information on complaints against State administration of its program (CASPA) and had distributed the sticker to employers in Vermont. Such sticker when attached to the existing Vermont poster would enable such poster to meet all requirements of § 1952.10. Therefore, in order to correct any misconception as to the existing Vermont poster and to approve that poster, this amended approval is necessary. The October 19, 1976, notice also failed to codify the approval of the Vermont poster as a completed developmental step.

2. *Description of the posters.* The posters are a prototype of the Vermont State poster and the existing State poster with a CASPA correction sticker which is to be posted at all covered workplaces in the State. The protoype demonstrates the proper dimensions for the poster, the correct point size for the print in the heading and in the body of the poster, and the required provisions under 29 CFR 1952.10. Both the existing poster and the prototype contain, among other things, provisions for notifying employees of their obligations and protections under the Vermont Act, including their right to request workplace inspections and their right to remain anonymous as a result, their right to participate in inspections, their protection against discharge or discrimination under both Federal and State laws for the exercise of their rights under the Federal and State laws, and their right to file complaints with the Occupational Safety and Health Administration concerning the administration of the State program.

3. *Location of the plan and its posters for inspection and copying.* A copy of the posters, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Associate Assistant Secretary for Regional Programs, Occupational Safety and Health Administration, Room N3608, 200 Constitution Avenue, NW., Washington, D.C. 20210; Technical Data Center (OSHA), Room N3620, 200 Constitution Avenue, NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1804, John F. Kennedy Building, Boston, Massachusetts 02203; Department of Labor and Industry, State Office Building, Montpelier, Vermont 05602.

4. *Public participation.* Under § 1953.2 of this chapter, the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that the existing Vermont State poster and the prototype incorporates all of the provisions required under 29 CFR 1952.10 (a)(5) and 1903.2(a)(3) (39 FR 39306, November 5, 1974). Accordingly it is believed that further public comment is unnecessary.

5. *Decision.* After careful consideration, the Vermont State posters outlined above are approved under Part 1953, on condition that the revised State poster

is printed exactly as shown on the prototype, which printing, wih appropriate distribution, should occur not later than October 19, 1977, at which time substitution for the existing State poster may be made. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In addition 29 CFR 1952.274 is hereby amended to reflect completion of a developmental step.

Section 1952.274 is amended to read as follows:

§ 1952.274 Completed developmental steps.

* * * * *

(e) In accordance with the requirements of § 1952.10 the Vermont Safety and Health Poster for private and public employees as amended by the attachment informing the public of its right to complain about State program administration, was approved by the Assistant Secretary on February 9th, 1977.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 9th day of February 1977.

B. M. CONCKLIN,
Acting Assistant Secretary of Labor.

[FR Doc.77-4743 Filed 2-14-77;8:45 am]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

SUBCHAPTER M—MISCELLANEOUS

PART 251—DOD AMMUNITION AND EXPLOSIVES SAFETY STANDARDS

Quantity Distance Standards

On October 26, 1976, there was published in the FEDERAL REGISTER (41 FR 46867) a notice of proposed regulations regarding Quantity-Distance Standards for Underground Storage of ammunition and explosives, in accordance with Title 10, United States Code, Section 172. Interested parties were given the opportunity to submit, no later than November 30, 1976, any comments regarding the proposed regulations.

No unfavorable comments were received, and the proposed regulations are herewith adopted without change as set forth below.

Effective date: February 22, 1977.

MAURICE W. ROCHE,
Director, Correspondence and Directives OASD (Comptroller).

FEBRUARY 9, 1977.

The newly adopted standards constitute new §§ 251.9, 251.10, 251.11, and 251.12 to this part, and read as set forth below:

Sec.
251.9 Scope.
251.10 Storage limitations.
251.11 Protection provided.
251.12 Quantity-distance determinations.

AUTHORITY: Title 10, United States Code, section 172.

§ 251.9 Scope.

(a) This section details quantity-distance standards for the storage of all types of ammunition and explosives in natural caverns or in excavated chambers below the natural ground surface.

(b) The provisions of this section do not apply to storage in earth-covered magazines built above grade; standards for which apepar in "DoD Ammunition & Explosives Safety Standards" DoD 5154.4S.

§ 251.10 Storage limitations.

Ammunition and explosives of different kinds may be mixed in underground storage only to the extent permitted by the compatibility rules stated in DoD 5154.4S. In addition, ammunition containing incendiary or smoke-producing fillers, flammable liquids or gels, or toxic agents, when stored underground, must be in single-chamber sites.

§ 251.11 Protection provided.

(a) *Chamber spacing.* (1) Minimum separation distances between chambers will provide a high degree of protection against propagation of explosions by the mechanism of spalling of rock and subsequent impact on the contents of the chamber adjacent to one in which the initial explosion occurs. This ensures that the effects on structures and persons exposed at large distances will be limited to those from the contents of one chamber. If such minimum separation is not provided, the explosive quantities involved must be added together for purposes of determining effects at distant exposures.

(2) If it is desired to limit the damage to stocks of ammunition in adjacent chambers by rock spall, separations larger than required to prevent explosion communication should be used. The recommended distances for this purpose depend upon rock type as well as explosive quantity.

(b) *Exterior distances.* Separation distances from stored ammunition and explosives to inhabited buildings and public traffic routes are intended to limit property damage and injury to persons caused by ground shock, air blast, or debris. The distances depend upon depth of overburden, type of soil or rock, and stored explosive quantity per unit chamber volume (loading density). The required inhabited building distance for a given quantity and storage condition is that corresponding to the dominant (farthest-reaching) effect. It is therefore the largest of the distances determined to be necessary for protection against the individual effects considered in turn. The required public traffic route distance will generally be sixty percent of the inhabited building distance so obtained.

§ 251.12 Quantity-distance determinations.

(a) *Explosive quantity*—(1) *Determination of distance.* Distances will be determined on the basis of the total quantity of explosives, propellants, pyrotechnics, and incendiary materials in the individual chambers, unless the total quantity is subdivided so as to prevent immediate communication of an incident from one subdivision to another.

(2) *Types of storage sites*—(i) *Cavern storage site.* A natural cavern or former mining excavation adapted for the storage of ammunition and explosives.

(ii) *Chamber storage site.* An excavated chamber or a series of excavated chambers especially suited to the storage of ammunition and explosives. A cavern may be subdivided or otherwise structurally modified for use as a chamber storage site.

(iii) *Connected-chamber storage site.* A chamber storage site consisting of two or more chambers connected by ducts or passageways. Such chambers may be at the ends of branch tunnels off a main passageway.

(iv) *Single-chamber storage site.* An excavated chamber with its own access to the natural ground surface, not connected to any other storage chamber.

(3) *Evaluation of explosive yield.* All of the propellants and explosive materials in ammunition of Hazard Divisions 1.1 or 1.3 (see Chapter 5, DoD 5154.4S) subject to involvement in a single incident will be assumed to contribute to the explosion yield as would an equal weight of TNT. Any significant differences in energy release per unit mass of the compositions involved from that of TNT must be taken into account. A connected chamber storage site or cavern storage site containing Hazard Division 1.1 or 1.3 (see Chapter 5, DoD 5154.4S), or both, will be treated as a single-chamber site, unless explosion communication is prevented by adequate subdivision or chamber separation.

(b) *Distance measurement.* (1) The chamber interval is the shortest distance between the natural walls of two adjacent chambers. The interval between chambers formed by subdivision of a cavern is the thickness of competent barrier constructed between them.

(2) The thickness of overburden or earth cover over a chamber is the shortest distance from the natural chamber ceiling to the natural ground surface.

(3) Distances to inhabited buildings and public traffic routes will be measured as follows:

(i) A distance determined by blast or debris issuing from a tunnel entrance at the ground surface will be measured from the tunnel entrance to the nearest wall or point of the location to be protected, using the exended centerline of the main passageway as a reference line for directional effects.

(ii) A distance determined by ground shock will be measured as the length of the straight line joining the nearest natural wall of a chamber containing ammunition to the nearest wall or point of the location to be protected.

(iii) A distance determined by blast from an uncontained explosion, or by surface ejecta, will be measured from the point on the natural ground surface nearest the natural chamber ceiling to the nearest wall or point of the location to be protected.

(c) *Chamber interval.* (1) The separation distance D_{cp} between chambers required to ensure prevention of explosion communication by impact of spalled rock will be calculated from $D_{cp}=1.5W^{1/3}$ where D_{cp} is in feet and W is the net weight in pounds of all the propellants and explosives in ammunition of Hazard Divisions 1.1 or 1.3 in one chamber, adjusted for any significant differences in energy release from that of TNT as required by § 251.12(a) above. The chamber separation distance will not, however, be less than 15 feet. Chamber entrances at the ground surface, or entrances to branch tunnels off the same side of a main passageway, must be separated by a distance not less than the chamber interval as determined above. Entrances to branch tunnels off opposite sides of a main passageway must be separated by at least twice the width of the main passageway.

(2) The chamber separation D_{cd} required to prevent damage to stored ammunition will be calculated from the following formulas:

a. $D_{cd}=3.5W^{1/3}$ (sandstone),
b. $D_{cd}=4.3W^{1/3}$ (limestone),
c. $D_{cd}=5.0W^{1/3}$ (granite),

where D_{cd} is in feet and W is in pounds of propellants and explosives in ammunition of Hazard Divisions 1.1 and 1.3 (see Chapter 5, DoD 5154.4S).

(3) The separation distances D_{cp} to ensure prevention of explosion communication and D_{cd} to prevent damage to stored ammunition have been computed and are listed in Table B–1.

(4) Chambers separated by at least the distances required in § 251.12(c)(1) above may be used to the limit of their physical capacity to store ammunition of Hazard Divisions 1.2 and 1.4 (see Chapter 5, DoD 5154.4S) except for specific Hazard Division 1.2 items having special stacking and restrictions (see paragraph 5–4B of DoD 5154.4S). If stored in the same chamber with ammunition of Hazard Divisions 1.1 or 1.3 (see Chapter 5, DoD 5154.4S), however, the propellant and explosive content of ammunition of Hazard Divisions 1.2 and 1.4 (see Chapter 5, DoD 5154.4S), must be added to that of the other divisions to obtain the net explosive quantity for distance determinations.

(d) *Inhabited building distance.* The inhabited building distance will be taken as the largest of the distances required for protection against ground shock, air blast, or debris, determined by computations carried out as described in the following paragraphs. For the convenience of the user, each of the functions to be evaluated is tabulated; straight-line interpolation is permitted in all tables.

(1) For protection of residential buildings against significant structural damage by ground shock, the maximum particle velocity induced in the ground at the building site must not exceed the following values:

2.4 inches per second in sand, gravel, or moist clay (sound speed 3000 to 5000 feet per second),
4.5 inches per second in soft rock (sound speed 6000 to 10,000 feet per second), and
9.0 inches per second in hard rock (sound speed 15,000 to 20,000 feet per second).

Unless data specific to the site being evaluated are available regarding ground shock attenuation in the earth materials between the potential explosion source and the exposed site, the required inhabited building distance D_{ig} will be calculated from the appropriate one of the following expressions:

a. $D_{ig}=2.1f_gW^{4/9}$ (sand, gravel),
b. $D_{ig}=11.1f_gW^{4/9}$ (soft rock), or
c. $D_{ig}=12.5f_gW^{4/9}$ (hard rock),

where D_{ig} is in feet and W is the explosive quantity in pounds determined in accordance with § 251.12(a). The dimensionless multiplier f_g is a decoupling factor, given as a function of loading density by the formula $f_g=(4/15)w^{0.5}$ where w is the explosive quantity W in pounds divided by the chamber volume in cubic feet.

Values of D_{ig}/f_g are listed in Table B–2. To obtain an inhabited building distance D_{ig}, a numerical value read from the appropriate column of Table B–2 must be multiplied by the value of f_g read from Table B–7, Column 2.

(2) Distances required for protection of inhabited areas against the effects of air blast and surface debris depend on the depth of overburden, or earth cover, over the storage chamber. The minimum depth C_c required to ensure containment of an explosion (except for venting of gases through tunnels), and to ensure that no significant disruption of surface material occurs, will be calculated from $C_c=3.5W^{1/3}$ where W is the explosive quantity in pounds. For depths of overburden less than this, the effects of both air blast and the projection of debris must be considered. In particular, if the actual cover depth C is less than C_v, given by $C_v=0.5W^{1/3}$ blast at large distances may not be suppressed appreciably below that from an explosion on the surface. In that case, inhabited building and public traffic route distances for above-ground storage, specified elsewhere in this publication, must be utilized, including any applicable minimum distances required for protection against fragments from ammunition of Hazard Divisions 1.1, 1.2, or 1.3 (see Chapter 5, DoD 5154.4S). Values of C_v and C_c are listed in Table B–3.

(3) If the depth of overburden C equals or exceeds C_v calculated from the formula above, the effects of blast issuing from entrances at the ground surface must be considered. In general, these effects will be functions of direction relative to the axis of the passageway where it emerges at the ground surface. In the absence of data and analysis on far-field blast propagation specific to the site being evaluated, five sectors will be defined as shown in Figure B–1. In each sector the distance required for protection of inhabited areas against blast will be taken as proportional to the cube root of a reduced net explosive quantity W_r, defined by $W_r=W/nk$ where $n=1$ or 2, and $k=1$ or 3, as follows:

$n=1$, if the storage site has not more than one entrance at the ground surface;
$n=2$, if the site has two or more entrances, and if the blast waves issuing from those entrances are not expected to mutually reinforce owing to their proximity;
$k=3$, if the ammunition is stored in a chamber on a branch passageway of cross-sectional area not more than half that of the main passageway to which it is connected, and of length not less than one-third the chamber interval D_{cp} calculated in § 251.12(c)(1) above; $k=1$, otherwise.

(4) Whether mutual reinforcement of blast issuing from two or more entrances occurs will be determined by carrying out the subsequent analysis on the tentative assumption that $n=1$. If none of the sectors from one entrance overlaps any of those from another, the interaction may be ignored and the distances determined by repeating the analysis with $n=2$.

(5) With the foregoing definitions, the distances D_{i1}, D_{i2}, * * * D_{i5} required for protection of inhabited areas against blast in the sectors defined in Figure B–1 will be calculated as follows:

$D_{i1}=19W_r^{1/3}$, in the sector between 180 and 120 degrees
$D_{i2}=33W_r^{1/3}$, in the sector between 120 and 90 degrees
$D_{i3}=50W_r^{1/3}$, in the sector between 90 and 60 degrees
$D_{i4}=68W_r^{1/3}$, in the sector between 60 and 30 degrees
$D_{i5}=76W_r^{1/3}$, in the sector between 30 and 0 degrees

where θ is the horizontal angle measured from the centerline of the main passageway extended outward from the entrance, and where W_r is the net explosive weight in

pounds reduced by the factors m and k which depend upon the geometry of the storage site as specified above. Values of D_{ts}, which stands for the distances D_{ts1}, D_{ts2}, * * * D_{tsn} computed from the formulas above, are listed in Table B-4.

(6) If the depth of overburden C is less than C_o calculated from the first of the formulas given in § 251.12(d)(2), the effects of debris projected from the ground surface above the explosion site must be evaluated. The distance D_{td} required for the protection of inhabited areas against such debris will be calculated from $D_{td}=f_d f_c W^{0.4}$ where W is the explosive quantity in pounds, f_c is a function of the scaled depth of overburden $C/W^{1/3}$, and f_d is a function of the chamber loading density w. The function of earth cover, f_c, depends on the type of rock in the vicinity of the storage chamber. It is given graphically in Figure B-2 for hard rock (e.g., granite, limestone) and for soft rock (e.g., sandstone). The factor f_d is given by the formula $f_d=(3/5)w^{0.13}$ where the loading density w is expressed in pounds of explosive per cubic foot of chamber volume.

(7) Values of D_{td}/f_d are listed in Table B-5 for hard rock and in Table B-6 for soft rock, for values of scaled overburden thickness $C/W^{1/3}$ given at the heads of the columns. These values of scaled cover correspond to the circled points on the curves in Figure B-2, and are such that straight-line interpolation between columns of the tables is a satisfactory procedure for intermediate values of scaled cover.

(8) To obtain a distance D_{td}, the scaled depth of overburden $C/W^{1/3}$ must be calculated, where C is the depth of overburden in feet measured as the shortest distance from the natural chamber ceiling to the natural ground surface above, and W is the explosive quantity in pounds. The appropriate column in either Table B-5 or B-6 can be entered based upon the numerical value determined for the scaled depth of overburden $(C/W^{1/3})$ or by using interpolation between columns. The value obtained from Table B-5 or B-6 must be multiplied by the value of f_d read from Table B-7, column 3 in order to obtain the distance D_{td} required for protection of inhabited areas against debris damage.

(9) The distance D_{td} determined by the foregoing procedure will be applied in all directions from the point on the natural ground surface nearest to the chamber, except that in the sector 15 degrees to either side of the centerline of the main passageway, the distance will not be less than 2,000 feet measured from the entrance.

(10) The distance to any public right-of-way will be taken as sixty per cent of the inhabited building distance determined above.

TABLE B-1.—*Chamber separation*

Weight, pounds		D_{cp}, feet		D_{cd}, feet	
Over	Not over	$1.5W^{1/3}$	$3.5W^{1/3}$	$4.3W^{1/3}$	$5.0W^{1/3}$
0	1,000	15.0	35	43	50
1,000	1,200	16.0	37	46	54
1,200	1,400	17.0	39	48	56
1,400	1,600	17.5	41	50	58
1,600	1,800	18.0	43	52	60
1,800	2,000	19.0	44	54	62
2,000	2,500	20.5	48	58	68
2,500	3,000	21.5	50	62	72
3,000	3,500	23.0	54	66	76

TABLE B-1.—*Chamber separation*

Weight, pounds		D_{cp}, feet		D_{cd}, feet	
Over	Not over	$1.5W^{1/3}$	$3.5W^{1/3}$	$4.3W^{1/3}$	$5.0W^{1/3}$
3,500	4,000	24.0	56	68	80
4,000	4,500	25.0	58	70	82
4,500	5,000	26.0	60	74	86
5,000	6,000	27.0	64	78	90
6,000	7,000	29.0	66	82	96
7,000	8,000	30.0	70	86	100
8,000	9,000	31.0	72	90	105
9,000	10,000	32.0	76	92	110
10,000	12,000	34.0	80	96	115
12,000	14,000	36.0	84	105	120
14,000	16,000	38.0	88	110	125
16,000	18,000	39.0	92	115	130
18,000	20,000	41.0	96	115	135
20,000	25,000	44.0	100	125	145
25,000	30,000	47.0	110	135	155
30,000	35,000	49.0	115	140	165
35,000	40,000	52.0	120	145	170
40,000	45,000	54.0	125	155	180
45,000	50,000	56.0	130	160	185
50,000	60,000	58.0	135	170	195
60,000	70,000	62.0	145	175	205
70,000	80,000	64.0	150	185	215
80,000	90,000	68.0	155	195	225
90,000	100,000	70.0	160	200	230
100,000	120,000	74.0	175	210	245
120,000	140,000	78.0	180	225	260
140,000	160,000	82.0	190	235	270
160,000	180,000	84.0	200	245	280
180,000	200,000	88.0	205	250	290
200,000	250,000	94.0	220	270	310
250,000	300,000	100.0	235	290	330
300,000	350,000	105.0	245	300	350
350,000	400,000	110.0	260	320	370
400,000	450,000	115.0	270	330	380
450,000	500,000	120.0	280	340	400
500,000	600,000	125.0	300	360	420
600,000	700,000	135.0	310	380	440
700,000	800,000	140.0	320	400	460
800,000	900,000	145.0	340	420	480

TABLE B-2.—*Distances to protect against ground shock*

Weight, pounds		D_{ts}/f_s		
Over	Not over	$2.1W^{1/3}$	$11.1W^{1/3}$	$12.5W^{1/3}$
0	1,000	45	240	270
1,000	1,200	49	260	290
1,200	1,400	52	280	310
1,400	1,600	55	290	330
1,600	1,800	58	310	350
1,800	2,000	62	330	370
2,000	2,500	68	360	400
2,500	3,000	74	390	440
3,000	3,500	78	420	470
3,500	4,000	84	440	500
4,000	4,500	88	470	520
4,500	5,000	92	490	550
5,000	6,000	100	540	600
6,000	7,000	105	560	640
7,000	8,000	115	600	650
8,000	9,000	120	640	720
9,000	10,000	125	660	740
10,000	12,000	135	720	820
12,000	14,000	145	780	850
14,000	16,000	155	820	920
16,000	18,000	165	860	960
18,000	20,000	170	900	1,000
20,000	25,000	190	1,000	1,150

TABLE B-2.—*Distances to protect against ground shock*

Weight, pounds		D_{ts}/f_s		
Over	Not over	$2.1W^{1/3}$	$11.1W^{1/3}$	$12.5W^{1/3}$
25,000	30,000	205	1,100	1,200
30,000	35,000	220	1,150	1,300
35,000	40,000	235	1,250	1,400
40,000	45,000	245	1,300	1,450
45,000	50,000	260	1,350	1,550
50,000	60,000	280	1,500	1,650
60,000	70,000	300	1,600	1,800
70,000	80,000	320	1,700	1,900
80,000	90,000	330	1,750	2,000
90,000	100,000	350	1,850	2,100
100,000	120,000	380	2,000	2,250
120,000	140,000	410	2,150	2,400
140,000	160,000	430	2,300	2,600
160,000	180,000	450	2,400	2,700
180,000	200,000	480	2,500	2,800
200,000	250,000	520	2,800	3,100
250,000	300,000	580	3,000	3,400
300,000	350,000	620	3,200	3,600
350,000	400,000	640	3,400	3,900
400,000	450,000	680	3,600	4,100
450,000	500,000	720	3,800	4,300
500,000	600,000	780	4,100	4,600
600,000	700,000	840	4,400	5,000
700,000	800,000	880	4,700	5,200
800,000	900,000	940	4,900	5,600

TABLE B-3—*Depth of overburden*

Weight, pounds		C_v, feet	C_s, feet
Over	Not over	$0.5W^{1/3}$	$3.5W^{1/3}$
0	1,000	5.0	35
1,000	1,200	5.4	37
1,200	1,400	5.6	39
1,400	1,600	5.8	41
1,600	1,800	6.0	43
1,800	2,000	6.2	44
2,000	2,500	6.8	48
2,500	3,000	7.2	50
3,000	3,500	7.6	54
3,500	4,000	8.0	56
4,000	4,500	8.2	58
4,500	5,000	8.6	60
5,000	6,000	9.0	64
6,000	7,000	9.6	66
7,000	8,000	10.0	70
8,000	9,000	10.5	72
9,000	10,000	11.0	76
10,000	12,000	11.5	80
12,000	14,000	12.0	84
14,000	16,000	12.5	88
16,000	18,000	13.0	92
18,000	20,000	13.5	96
20,000	25,000	14.5	100
25,000	30,000	15.5	110
30,000	35,000	16.5	115
35,000	40,000	17.0	120
40,000	45,000	18.0	125
45,000	50,000	18.5	130
50,000	60,000	19.5	135
60,000	70,000	20.5	145
70,000	80,000	21.5	150
80,000	90,000	22.5	155
90,000	100,000	23.0	160
100,000	120,000	24.5	175
120,000	140,000	26.0	180
140,000	160,000	27.0	190
160,000	180,000	28.0	200
180,000	200,000	29.0	205
200,000	250,000	31.0	220
250,000	300,000	33.0	235
300,000	350,000	35.0	245
350,000	400,000	37.0	260
400,000	450,000	38.0	270
450,000	500,000	40.0	280
500,000	600,000	42.0	300
600,000	700,000	44.0	310
700,000	800,000	46.0	320
800,000	900,000	48.0	340

TABLE B-4.—*Distances to protect against air blast*

W_r=W/nk, pounds		D_{lb}, feet				
Over	Not over	120–180 $19W_r^{1/3}$	90–120 $33W_r^{1/3}$	60–90 $50W_r^{1/3}$	30–60 $68W_r^{1/3}$	0–30 deg $76W_r^{1/3}$
0	1,000	190	330	500	680	760
1,000	1,200	200	350	540	720	800
1,200	1,400	215	370	560	760	860
1,400	1,600	220	390	580	800	880
1,600	1,800	230	400	600	820	920
1,800	2,000	240	420	620	860	960
2,000	2,500	260	450	680	920	1,050
2,500	3,000	270	480	720	980	1,100
3,000	3,500	290	500	760	1,050	1,150
3,500	4,000	300	520	800	1,100	1,200
4,000	4,500	310	540	820	1,100	1,250
4,500	5,000	320	560	860	1,150	1,300
5,000	6,000	350	600	900	1,250	1,400
6,000	7,000	360	640	960	1,300	1,450
7,000	8,000	380	660	1,000	1,350	1,500
8,000	9,000	400	680	1,050	1,400	1,600
9,000	10,000	410	720	1,100	1,450	1,650
10,000	12,000	430	760	1,150	1,550	1,750
12,000	14,000	460	800	1,200	1,650	1,850
14,000	16,000	480	840	1,250	1,700	1,900
16,000	18,000	500	860	1,300	1,800	2,000
18,000	20,000	520	900	1,350	1,850	2,050
20,000	25,000	560	960	1,450	2,000	2,200
25,000	30,000	600	1,050	1,550	2,100	2,350
30,000	35,000	620	1,100	1,650	2,200	2,500
35,000	40,000	640	1,150	1,700	2,350	2,600
40,000	45,000	680	1,150	1,800	2,400	2,700
45,000	50,000	700	1,200	1,850	2,500	2,800
50,000	60,000	740	1,300	1,950	2,700	3,000
60,000	70,000	780	1,350	2,050	3,800	3,100
70,000	80,000	820	1,400	2,150	2,900	3,300
80,000	90,000	860	1,500	2,250	3,000	3,400
90,000	100,000	880	1,550	2,300	3,200	3,500
100,000	120,000	940	1,650	2,450	3,400	3,700
120,000	140,000	980	1,700	2,600	3,500	3,900
140,000	160,000	1,050	1,800	2,700	3,700	4,100
160,000	180,000	1,050	1,850	2,800	3,800	4,300
180,000	200,000	1,100	1,950	2,900	4,000	4,400
200,000	250,000	1,200	2,100	3,100	4,300	4,800
250,000	300,000	1,250	2,200	3,300	4,600	5,000
300,000	350,000	1,350	2,350	3,500	4,800	5,400
350,000	400,000	1,400	2,450	3,700	5,000	5,600
400,000	450,000	1,450	2,500	3,800	5,200	5,800
450,000	500,000	1,500	2,600	4,000	5,400	6,000
500,000	600,000	1,600	2,800	4,200	5,800	6,400
600,000	700,000	1,700	2,900	4,400	6,000	6,800
700,000	800,000	1,750	3,100	4,600	6,400	7,000
800,000	900,000	1,850	3,200	4,800	6,600	7,400

TABLE B-5.—*Distances to protect Against hard rock debris*

Weight, pounds		D_{id}/f_d, feet (hard rock), for $C/W^{1/3}$=							
Over	Not over	0.30	0.50	0.70	0.90	.110	1.60	2.60	2.60 $ft/lb^{1/3}$
0	1,000	160	180	200	205	195	145	92	54
1,000	1,200	170	195	215	220	210	155	98	58
1,200	1,400	185	210	230	235	225	165	105	62
1,400	1,600	195	220	240	250	240	175	110	66
1,600	1,800	205	230	250	260	250	180	115	70
1,800	2,000	210	240	260	270	260	190	120	72
2,000	2,500	230	260	290	300	290	210	135	80
2,500	3,000	250	290	310	320	310	225	145	86
3,000	3,500	270	300	330	340	330	240	155	90
3,500	4,000	280	320	350	360	350	250	160	96
4,000	4,500	300	340	370	380	360	260	170	100
4,500	5,000	310	350	380	400	380	280	175	105
5,000	6,000	330	380	410	430	410	300	190	115
6,000	7,000	350	400	440	460	440	320	205	120
7,000	8,000	370	430	470	480	460	330	215	125
8,000	9,000	390	450	490	500	480	350	225	135
9,000	10,000	410	470	520	520	500	370	235	140
10,000	12,000	440	500	560	560	540	400	250	150
12,000	14,000	470	450	580	600	580	420	270	160
14,000	16,000	500	560	620	640	620	440	290	170
16,000	18,000	520	600	640	680	640	470	300	180
18,000	20,000	540	620	680	700	680	490	310	185
20,000	25,000	600	680	740	760	740	540	340	205
25,000	30,000	640	740	800	820	800	580	370	220
30,000	35,000	680	780	860	880	840	620	390	235
35,000	40,000	720	820	900	940	900	640	420	245
40,000	45,000	760	860	940	980	940	680	440	260
45,000	50,000	800	900	980	1,000	980	700	460	270
50,000	60,000	860	980	1,050	1,100	1,050	760	490	290
60,000	70,000	920	1,050	1,150	1,150	1,100	820	520	310
70,000	80,000	960	1,100	1,200	1,250	1,200	860	560	330
80,000	90,000	1,000	1,150	1,250	1,300	1,250	900	580	340
90,000	100,000	1,050	1,200	1,300	1,350	1,300	940	600	360
100,000	120,000	1,150	1,300	1,400	1,450	1,400	1,000	660	390
120,000	140,000	1,200	1,400	1,500	1,550	1,500	1,100	700	410
140,000	160,000	1,300	1,450	1,600	1,650	1,600	1,150	740	440
160,000	180,000	1,350	1,550	1,650	1,750	1,650	1,200	780	460
180,000	200,000	1,400	1,600	1,750	1,800	1,750	1,250	800	480
200,000	250,000	1,550	1,750	1,900	2,000	1,900	1,350	880	520
250,000	300,000	1,650	1,900	2,050	2,150	2,050	1,500	960	560
300,000	350,000	1,750	2,000	2,200	2,250	2,200	1,600	1,000	600
350,000	400,000	1,850	2,100	2,300	2,400	2,300	1,650	1,050	640
400,000	450,000	1,950	2,200	2,450	2,500	2,400	1,750	1,100	660
450,000	500,000	2,050	2,300	2,500	2,600	2,500	1,800	1,150	700
500,000	600,000	2,200	2,500	2,700	2,800	2,700	1,950	1,250	740
600,000	700,000	2,350	2,700	2,900	3,000	2,900	2,100	1,350	800
700,000	800,000	2,450	2,800	3,100	3,200	3,100	2,200	1,400	840
800,000	900,000	2,600	3,000	3,200	3,300	3,200	2,300	1,500	880

TABLE B-6.—*Distances to protect against soft rock debris*

Weight, pounds		D_{ds}/f_s, foot (soft rock), for $C/W^{1/3}$=							
Over	Not over	0.20	0.60	0.75	0.90	1.00	1.50	1.75	2.00 ft/lb$^{1/3}$
0	1,000	155	200	205	200	185	92	64	48
1,000	1,200	165	215	220	215	200	98	70	52
1,200	1,400	175	230	235	230	215	105	74	54
1,400	1,600	185	245	250	245	225	110	78	58
1,600	1,800	195	260	260	260	240	115	82	60
1,800	2,000	205	270	270	270	250	120	86	64
2,000	2,500	225	290	300	290	270	135	94	70
2,500	3,000	240	310	320	310	290	145	100	74
3,000	3,500	260	330	340	330	310	155	110	80
3,500	4,000	270	350	360	350	330	160	115	84
4,000	4,500	290	370	380	370	350	170	120	88
4,500	5,000	300	390	400	390	360	175	125	92
5,000	6,000	320	420	430	420	390	190	135	100
6,000	7,000	340	450	460	450	410	205	145	105
7,000	8,000	360	470	480	470	440	215	150	110
8,000	9,000	380	490	500	490	460	225	160	115
9,000	10,000	400	520	520	520	480	235	165	120
10,000	12,000	430	560	560	560	520	250	180	130
12,000	14,000	460	600	600	600	560	270	190	140
14,000	16,000	480	620	640	620	580	290	200	150
16,000	18,000	500	660	680	660	620	300	210	155
18,000	20,000	520	680	700	680	640	310	220	160
20,000	25,000	580	740	760	740	700	340	240	180
25,000	30,000	620	800	820	800	760	370	260	190
30,000	35,000	660	860	880	860	800	390	280	205
35,000	40,000	700	900	940	900	840	420	290	215
40,000	45,000	740	960	980	960	880	440	310	225
45,000	50,000	760	1,000	1,000	1,000	920	460	320	235
50,000	60,000	820	1,050	1,100	1,050	1,000	490	350	250
60,000	70,000	880	1,150	1,150	1,150	1,050	520	370	270
70,000	80,000	940	1,200	1,250	1,200	1,150	560	390	290
80,000	90,000	980	1,250	1,300	1,250	1,200	580	410	300
90,000	100,000	1,000	1,300	1,350	1,300	1,250	600	430	310
100,000	120,000	1,100	1,450	1,450	1,450	1,350	660	460	340
120,000	140,000	1,150	1,500	1,550	1,500	1,400	700	490	360
140,000	160,000	1,250	1,600	1,650	1,600	1,500	740	520	380
160,000	180,000	1,300	1,700	1,750	1,700	1,550	780	540	400
180,000	200,000	1,350	1,750	1,800	1,750	1,650	800	560	420
200,000	250,000	1,500	1,950	2,000	1,950	1,800	880	620	460
250,000	300,000	1,600	2,100	2,150	2,100	1,950	960	660	490
300,000	350,000	1,700	2,200	2,250	2,200	2,050	1,000	720	520
350,000	400,000	1,800	2,350	2,400	2,350	2,200	1,050	760	560
400,000	450,000	1,900	2,450	2,500	2,450	2,300	1,100	780	580
450,000	500,000	2,000	2,600	2,600	2,600	2,400	1,150	820	600
500,000	600,000	2,150	2,800	2,800	2,800	2,600	1,250	880	660
600,000	700,000	2,250	2,900	3,000	2,900	2,700	1,350	940	700
700,000	800,000	2,400	3,100	3,200	3,100	2,900	1,400	1,000	740
800,000	900,000	2,500	3,300	3,300	3,300	3,000	1,500	1,050	780

TABLE B-7.—*Functions of loading density*

w, pcf	f_s	f_d
	$0.257w^{-.33}$	$0.600w^{-.33}$
1.0	0.27	0.60
1.2	.28	.62
1.4	.29	.64
1.6	.31	.65
1.8	.32	.67
2.0	.33	.68
2.5	.35	.71
3.0	.37	.73
3.5	.39	.75
4.0	.40	.77
4.5	.42	.79
5.0	.43	.80
6.0	.46	.83
7.0	.48	.85
8.0	.50	.87
9.0	.52	.89
10.0	.53	.91
12.0	.56	.94
14.0	.59	.96
16.0	.61	.99
18.0	.63	1.01
20.0	.66	1.03
25.0	.70	1.07
30.0	.74	1.11
35.0	.77	1.14
40.0	.81	1.17
45.0	.84	1.19
50.0	.86	1.21
60.0	.91	1.25
70.0	.95	1.29
80.0	.99	1.32
90.0	1.03	1.35
100.0	1.06	1.37

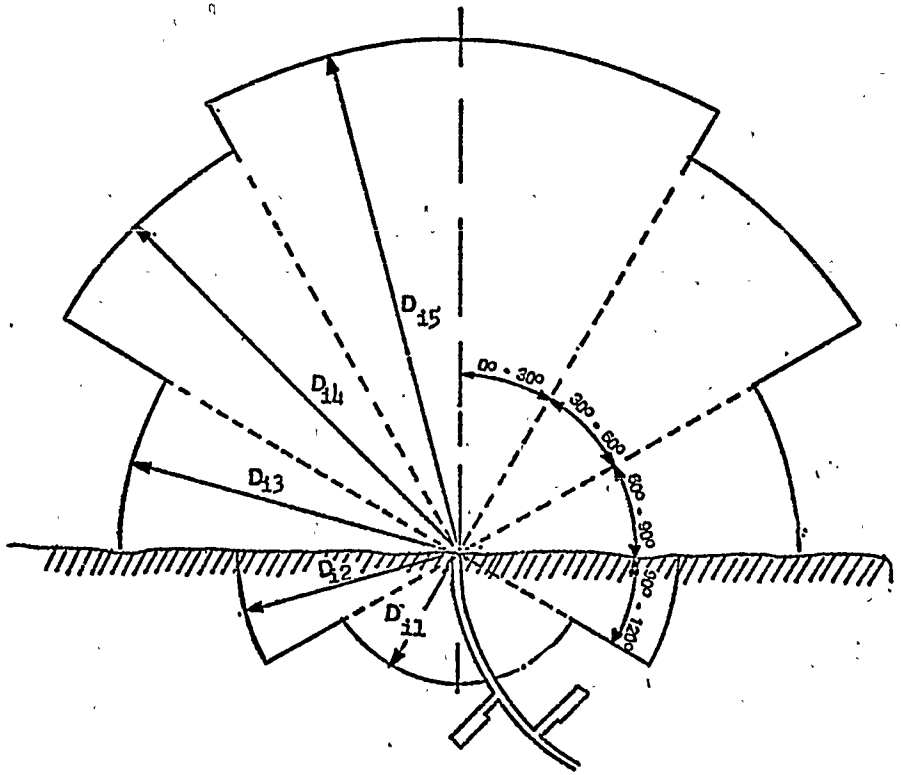

Figure B-1--Blast Protection Sectors For Inhabited Areas

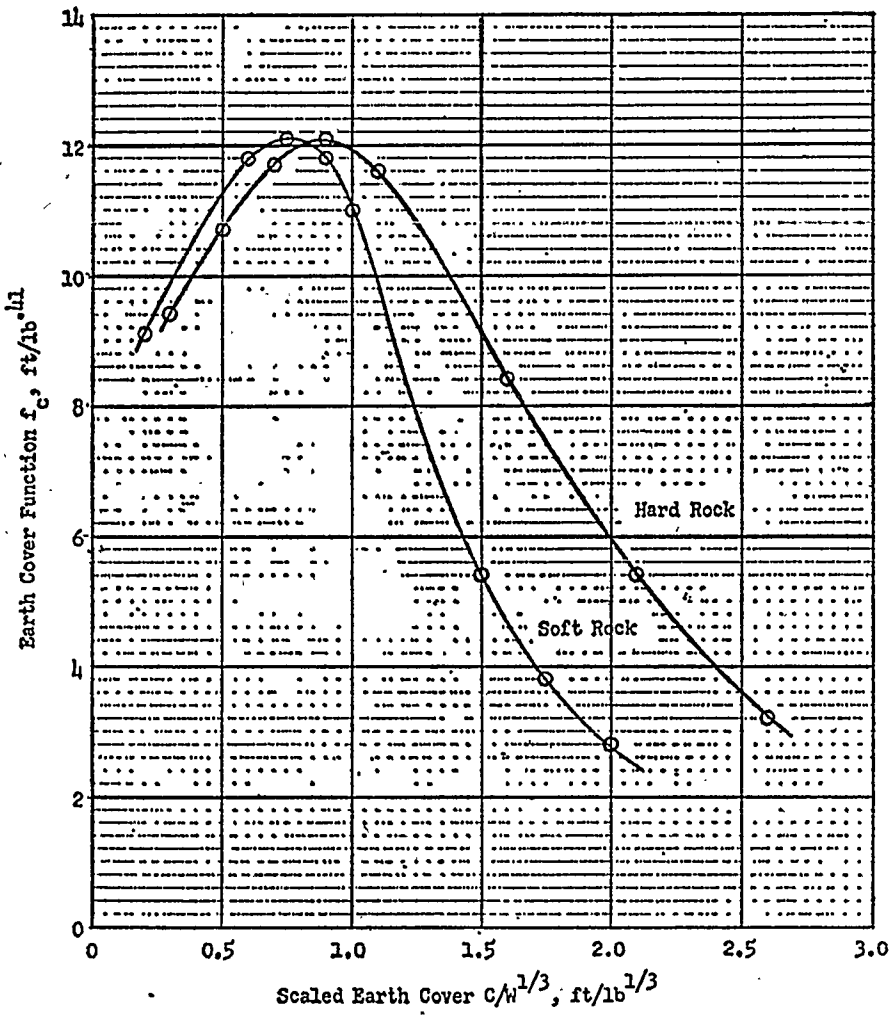

Figure B-2--Debris Dispersal Functions

[FR Doc.77-4679 Filed 2-14-77;8:45 am]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of State

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This amendment excepts from competitive service under Schedule C one position of Secretary to the Assistant Secretary for Congressional Relations because of the confidential nature of the position.

EFFECTIVE DATE: February 15, 1977.

FOR FURTHER INFORMATION CONTACT:

Dean D. Larrick, 202–632–4533.

Accordingly, 5 CFR 213.3304(c)(2) is added as follows:

§ 213.3304 Department of State.

* * * * * *

(c) *Office of the Assistant Secretary for Congressional Relations.* * * *

(2) One Secretary to the Assistant Secretary.

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

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

[FR Doc.77–4684 Filed 2–14–77;8:45 am]

PART 213—EXCEPTED SERVICE

Consumer Product Safety Commission

NOTE: The following document was published on February 14, 1977 (page 9013). In order to comply with the Day-of-the-Week publication requirements, the document is being reprinted below without change.

AGENCY: Civil Service Commission.

ACTION: Final Rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C two positions of Special Assistant to a Commissioner because they are confidential in nature.

EFFECTIVE DATE: February 14, 1977.

FOR FURTHER INFORMATION CONTACT:

Dean Larrick, 202–632–4533.

Accordingly, 5 CFR 213.3360(e) is added to read as follows:

§ 213.3360 Consumer Product Safety Commission.

* * * * * *

(e) Two Special Assistants to a Commissioner.

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

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

[FR Doc.77–4683 Filed 2–11–77;8:45 am]

Title 33—Navigation and Navigable Waters

CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 204—DANGER ZONE REGULATIONS

Pacific Ocean, California

On Decmeber 15, 1976 there was published in the FEDERAL REGISTER (Vol. 41, No. 242, page 54777) a notice of proposed rulemaking concerning 33 CFR 204.202 which established a danger zone in the Pacific Ocean between Point Sal and Point Conception, California. We proposed to amend only paragraph (b)(8) to extend the period of use for a three year period. Interested parties were given the opportunity to submit comments or objections on on before January 10, 1977.

No comments have been received and, accordingly, the period of use is extended for a three year period and is set forth below without change, effective on February 15, 1977.

(40 Stat. 266; (33 U.S.C. 3).)

Dated: January 25, 1977.

Approved:

VICTOR V. VEYSEY,
Assistant Secretary of the Army (Civil Works).

Section 204.202 is amended by revising paragraph (b)(8) as follows:

§ 204.202 Pacific Ocean, Space and Missile Test Center (SAMTEC), Vandenberg AFB, Calif.; danger zone.

* * * * * *

(b) *The regulations.* * * *

(8) These regulations shall be in effect for a period of three years from the effective date of this amendment unless terminated by the Secretary of the Army at an earlier date.

[FR Doc.77–4730 Filed 2–14–77;8:45 am]

PART 276—WATER RESOURCES POLICIES AND AUTHORITIES: APPLICATION OF SECTION 134a OF PUBLIC LAW 94–587

Certification of Local Flood Control Improvements

Section 134a of the Water Resources Development Act, Pub. L. 94–587, 90 Stat 2928, authorizes establishment of a procedure for Corps of Engineers certification, at the request of local interests, of locally proposed flood control improvements to be constructed by non-Federal interests. To be eligible for certification, the proposed local improvement must be found compatible with a specific, potential Federal project actively under study by the Corps of Engineers. Local interests may proceed to construct certified improvements at non-Federal expense with the understanding that such certified work can be expected to be included in the scope of the Federal project, if later authorized. Creditable local work would be considered in analyzing the costs and benefits of the Federal project and assessing the local participation in project costs.

The legislation specifies that this authority shall cease to be in effect after December 31, 1977. Congress also directed that implementing procedures be instituted 90 days after enactment of the legislation. In view of these time constraints, notice of proposed rulemaking and public procedure is impractical. Accordingly, the procedures in this directive became effective January 20, 1977 and will be cancelled December 31, 1977.

Dated: January 20, 1977.

MARVIN W. REES,
Colonel, Corps of Engineers, Executive Director of Civil Works.

33 CFR Chapter II is amended by adding a new Part 276, reading as follows:

Sec.

276.1 Purpose.
276.2 Applicability.
276.3 [Reserved]
276.4 Legislative provisions.
276.5 Legislative history.
276.6 General policy.
276.7 Procedures.
276.8 Cessation.

AUTHORITY: Sec. 134a, Pub. L. 94–587, 90 Stat. 2928.

§ 276.1 Purpose.

This establishes policy guidelines and procedures for Corps of Engineers application of the provisions of section 134a of Pub. L. 94–587.

§ 276.2 Applicability.

Policies and procedures contained herein apply to all elements and field operating agencies of the Corps of Engineers having Civil Works responsibilities.

§ 276.3 [Reserved]

§ 276.4 Legislative provisions.

Section 134a authorizes and directs institution of a procedure for certification, at the request of local interests, that particular improvements for flood control to be locally constructed can reasonably be expected to be compatible with a specific, potential Federal project under study. Local interests may proceed to construct such certified compatible improvements at local expense with the understanding that such improvements can be expected to be included in the scope of the Federal project, if later authorized, both for the purposes of analyzing the costs and benefits of the project and assessing the local participation in the costs of such project. This legislative authority ceases to be in effect after December 31, 1977.

§ 276.5 Legislative history.

Discussion of this legislation is contained in the reports by the Senate Committee on Public Works and the House Committee on Public Works and Transportation which accompanied S. 3823, the Water Resources Development Act of 1976 (Pub. L. 94–587). These reports make clear that Congress intended to encourage local communities to assume responsibility and accelerate local cooperation in reducing urban flooding dangers without committing the United States to any future Federal expenditure. The Senate Committee report noted that some communities might be reluctant to undertake compatible local flood control measures for fear that the

local work would jeopardize the potentially favorable cost-benefit ratio of a prospective Federal project. The Act authorizes establishing a procedure for certification of certain local improvements undertaken for the purpose of flood control. Cost assignable to that part of the local improvement that would constitute an integral part of a prospective Federal plan would be eligible to be recommended for credit toward required local cooperation. The Senate Committee report specifically stated that:

* * * This flexibility should in no way be interpreted as a Federal assurance of late approval of any project. While it is in no way a Federal commitment, this provision assures the city that the work it undertakes, once certified, will not be removed from the cost-benefit analysis. And it assures the city that such local work will be credited toward the local costs of cooperation, should the project be later authorized. This will not, however, qualify the community for any cash refunds. If the local costs on such certified work exceed the local share, when later computed, the local government must assume that extra cost. * * *

§ 276.6 General policy.

(a) This provision will be applied only at locations where a congressionally authorized study is underway or where the study report has been forwarded for Executive Branch review or for consideration by Congress. If a study is underway, the District Engineer must have held the final public meeting and filed a draft EIS with CEQ prior to certification. Certification will be in response to a specific request from a State, city, municipality or public agency that is the prospective local sponsoring agency for the contemplated Federal plan under study.

(b) Work eligible for certification shall be limited to that part of the local improvement directly related to a flood control purpose.

(c) Only local work commenced after certification shall be eligible for certification except for local engineering work noted below in § 276.6(e). The work proposed for certification must meet the following requirements: The work will be separately useful even if the Federal Government does not authorize and construct the contemplated project; the work to be accomplished by the non-Federal entity will not create a potential hazard; certification of the proposal will be in the general public interest.

(d) Costs assigned to that part of the local improvement that would constitute an integral part of the prospective recommended Federal plan can be included for credit toward required local cooperation. The amount creditable shall equal the expenditures made by the non-Federal entity for work that would have been accomplished at Federal expense if the entire project were carried out by the Corps of Engineers. However, credit will not exceed the amount the District Engineer considers a reasonable estimate of the reduction in Federal expenditures resulting from the local work. Costs of subsequent maintenance will not be credited. In the event that the local construction work is financed by a Federal non-reimbursable grant or Federal funds from other Federal sources, the amount creditable against future local cooperation requirements shall be reduced by a commensurate amount. However, there will be no corresponding reduction in the benefits credited for the local improvement.

(e) Local interests are responsible for developing all necessary engineering plans and specifications for the work they propose to undertake. However, those non-Federal engineering costs and overhead costs directly attributable to the creditable part of local work may be included in the amount credited.

§ 276.7 Procedures.

(a) Non-Federal entities desiring certification credit under the provisions of section 134a of Pub. L. 94-587 should confer with the District Engineer and submit a written application to him. The application will include full description of planned work, plans, sketches, and similar engineering data and information sufficient to permit analysis of the local proposal.

(b) The District Engineer shall review the engineering adequacy of the local proposal and its relation to the possible selected Federal Plan and determine what part of the proposed local improvement would be eligible for certification. Prior to certification, the District Engineer will obtain the concurrence—through the Division Engineer and the Chief of Engineers—of the Assistant Secretary of the Army (Civil Works) by forwarding a copy of the draft survey report and providing information on:

(1) Coordination with local interests including results of public meetings and circulation of the draft EIS.

(2) Basis for concluding the local plan is appropriate in relation to the prospective Federal plan.

(3) Total estimated cost of creditable work.

(4) The urgency for proceeding with the local plan.

(c) The District Engineer shall reply by letter stating to the local applicant what local work and costs can reasonably be expected to be creditable under the provisions of section 134a. This letter shall be the certification contemplated under section 134a. The certification shall include the following conditions:

(1) Issuance of certification shall not be interpreted as a Federal assurance regarding later approval of any project nor shall it commit the United States to any type of reimbursement if a Federal project is not undertaken.

(2) Issuance of the certification does not eliminate the need for compliance with other Federal, State, and local requirements, including any requirements for permits, Environmental Impact Statements, etc.

(3) If the improvement proposed by the non-Federal entity includes work that will not become a part of the Federal project, the means of determining the part eligible for reimbursement shall be fully defined.

(4) Certification shall expire 3 years after the date of certification if the non-Federal entity has not commenced the work contemplated by the certification.

(d) The non-Federal entity will notify the District Engineer when work commences. The District Engineer will conduct periodic and final inspections. Upon completion of local work, local interests shall provide the District Engineer details of the work accomplished and the actual costs directly associated therewith. The District Engineer shall audit claimed costs to acertain and confirm those costs properly creditable and shall inform the non-Federal entity of the audit results.

(e) During further Corps studies, the local work actually accomplished that would constitute a legitimate part of the overall recommended Federal project may be incorporated within any plan later recommended for authorization. It shall be permissible to include the accepted costs of such certified local improvement and the flood control benefits properly attributable thereto in the benefit-cost computations for the recommended plan.

(f) If the Corps report recommends Federal authorization of a plan that incorporates credit for local work certified under section 134a, the report shall include a specific recommendation to cover this credit and shall provide full identification and description of the local work for which such credit is recommended.

(g) The District Engineer shall submit a copy of his certification letter and notification of creditable costs of completed work to the Assistant Secretary of the Army (Civil Works) through the Division Engineer and the Chief of Engineers.

(h) All justification sheets supporting new start recommendations for Advance Engineering and Design or Construction projects will include information on certification activities in the paragraph on local cooperation. The information should include but not be limited to date of certification, work completion, description and cost of credited work.

§ 276.8 Cessation.

The legislation specifies that this authority shall cease to be in effect after December 31, 1977. No requests for certification will be processed after that date. To be eligible for credit, proposals for local work must have been certified by the District Engineer no later than December 31, 1977. There is no requirement that the local improvement be initiated or accomplished by that date.

[FR Doc.77-4812 Filed 2-14-77;8:45 am]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 686-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Massachusetts Revision

On May 31, 1972 (37 FR 10842), pursuant to section 110 of the Clean Air Act

and 40 CFR Part 51, the Administrator approved with exceptions the Massachusetts Implementation Plan for the attainment of national ambient air quality standards.

On November 17, 1976, there was published in the FEDERAL REGISTER (41 FR 50700) a proposal for a revision to the Massachusetts State Implementation Plan (SIP), submitted pursuant to Chapter 494, Commonwealth of Massachusetts' "An Act Relative to Periodic Review of Ambient Air Quality Standards," which requires the Massachusetts Department of Environmental Quality Engineering (the Massachusetts Department) to review applicable portions of the SIP to determine if any of the regulations are more stringent than necessary to attain and maintain National Ambient Air Quality Standards (NAAQS). This revision would allow large fuel burning sources in state Air Quality Control Region (AQCR) to burn a higher sulfur content fuel oil, except in the Cities of Fitchburg and Worcester. (The Central Massachusetts Intrastate AQCR is the same geographic area as the Central Massachusetts Air Pollution Control District). Current regulations permit the burning of residual fuel oil having a sulfur content not in excess of 0.55 pounds per million Btu heat release potential (approximately equivalent to 1 percent surfur content by weight). The revision would permit residual fuel oil burning sources having an energy input capacity of one hundred million (100×10^6) Btu per hour or more to burn residual fuel oil with a sulfur content not in excess of 1.21 pounds per million Btu heat release potential (approximately equivalent to 2.2 percent surfur content by weight) until July 1, 1978. All other sources, and those in the Cities of Worcester and Fitchburg, would remain constrained to 1 percent sulfur content fuel oil. A source must receive a permit from the Massachusetts Department prior to implementing use of higher sulfur content fuel, which would establish a monitoring and testing program and other enforceable conditions.

The Regional Administrator listed in the proposed rulemaking notice twelve sources which appeared to be approvable. In addition, further technical information was requested regarding Borden, Inc., Chemical Division, Leominster, Massachusetts (Borden), which appeared to have the potential to cause violations of the SO_2 primary NAAQS.

During the comment period, comments were received from the Connecticut Department of Environmental Protection (Connecticut DEP), the Federal Energy Administration (FEA), and Borden.

The Connecticut DEP urged disapproval of the revision on the grounds that particulate emissions would be increased in an AQCR where there are already violations of the total suspended particulate (TSP) annual and 24-hour primary standards. However, these violations, which include numerous 24-hour readings well above the primary standard, were recorded in Worcester, Massachusetts. In the rest of the AQCR affected by this revision, no exceedences or near exceedences of the TSP secondary standard were observed. Since sources in Worcester are excluded from the revision, and since EPA has determined that any increase in particulate emissions from the burning of higher sulfur fuel in the rest of the AQCR will not have a significant impact on the existing TSP violations in Worcester, the TSP problem in this AQCR should not be exacerbated by this revision.

FEA supported the proposed change as being economically beneficial to industry and consumers.

Borden submitted comments contending that the model used by the Massachusetts Department, an EPA approved computer program known as PTMTP, is overly conservative. They also indicated that their stack height is greater than that used in the Massachusetts Department's modeling calculations. In addition, they requested to be included in the revision to burn higher sulfur content fuel, since the Massachusetts Department will be reviewing a source's application before granting any permits and will be able to impose conditions of approval.

EPA concurs with the Massachusetts Department's position that the model gives reasonable estimates of worst case pollutant concentrations. Both the Massachusetts Department and EPA are willing to review real data to support any claim that the model is overly conservative, however, the information submitted by Borden did not contain this data nor contain any substantive information to demonstrate that the model should not be used. Further, the Massachusetts Department determined that the model prediction of standards violations is not appreciably affected by using the actual stack height as reported by Borden.

However, if the Massachusetts Department submits new information which demonstrates that Borden could burn a specified higher sulfur content fuel and not violate the NAAQS, the Regional Administrator will publish a Notice of Proposed Rulemaking in the FEDERAL REGISTER to solicit comments before a final determination is made. Therefore, at this time, Borden is being excluded from the revision to burn higher sulfur fuel because calculations show violations of the NAAQS. EPA cannot delegate its review authority over SIP revisions to the States.

Also during the comment period, the Massachusetts Department determined that their modeling of SO_2 secondary standard violations should be further evaluated. Secondary standard violations had been predicted for two sources, the Felters Company, Millbury, and Whitten Machine Works, Whitinsville, which appeared to be otherwise approvable. These two sources therefore cannot be approved at this time. Upon completion of the Massachusetts Department's review, if it can be shown that SO_2 secondary standard violations will not occur, a final rulemaking notice will be published in the FEDERAL REGISTER to approve these two sources.

After consideration of these comments, the Administrator has determined that the proposed revision meets the requirements of the Clean Air Act and 40 CFR Part 51. Accordingly, this revision is approved and promulgated as a revision to the Massachusetts Implementation Plan.

The Agency finds that good cause exists for making these actions effective on February 15, 1977 for the following reasons:

1. The implementation plan revision is already in effect under state law, and EPA approval imposes no additional regulatory burdens;

2. Immediate effectiveness of the actions enables the sources involved to proceed with certainty in conducting their affairs.

(Sec. 110(a) of the Clean Air Act, as amended, 42 U.S.C. § 1857c-5(a).)

Dated: February 9, 1977.

JOHN QUARLES,
Acting Administrator.

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

Subpart W—Massachusetts

§ 52.1120 [Amended]

1. In § 52.1120, paragraph (c) is hereby amended by inserting the phrase "Regulation 5.1, Sulfur Content of Fuels and Control Thereof, for the Central Massachusetts Air Pollution Control District submitted on June 25, 1976 by the Secretary of Environmental Affairs.", in proper chronological order.

2. Section 52.1126 is hereby amended by adding a new paragraph (c) as follows:

§ 52.1126 Control Strategy: Sulfur Oxides.

* * * * *

(c) Massachusetts Regulation 5.1, which allows a relaxation of sulfur in fuel limitations for the Central Massachusetts Air Pollution Control District except in the Cities of Worcester and Fitchburg, submitted on June 25, 1976, is approved except as to the following sources which remain subject to the previously approved requirements of Regulation 5.1 which stipulate that sources are permitted to burn residual fuel oil having a sulfur content not in excess of 0.55 pounds per million Btu heat release potential (approximately equivalent to 1 percent sulfur content):

Borden, Incorporated, Chemical Division, Leominster, Massachusetts.
The Felters Company, Millbury, Massachusetts.
Whitten Machine Works, Whitinsville, Massachusetts.

[FR Doc.77-4791 Filed 2-14-77;8:45 am]

[FRL 687-5; OPP-260024]

SUBCHAPTER E—PESTICIDE PROGRAMS

PART 180—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

Update and Editorial Amendments

As announced on October 27, 1976 (41 FR 47076), the Environmental Protection Agency (EPA) is reformatting the pesticide tolerance regulations contained in 40 CFR 180. The current narrative paragraphs are being put into alphabetized columnar listings for the purpose of providing orderly development of and/or amendments to the regulations, furnishing ample room for expansion in the years ahead, and providing the public and affected parties with regulations that are easier to read. In addition to editorial revisions, certain sections are being amended by substituting acceptable common names for antiquated and unacceptable pesticide chemical names where appropriate, and the regulations are being updated and corrected where necessary.

Sections 180.117, 180.124, 180.131, and 180.141 are being amended at this time. All of these sections have been reformatted. In § 180.124, the chemical name for glyodin is being revised in the body of the regulation to reflect the most universally acceptable name (i.e., formerly 2-heptadecyl glyoxalidine acetate or 2-heptadecyl glyoxalidine (base), now 2-heptadecyl-2-imidazoline acetate or 2-heptadecyl-2-imidazoline (base)). In § 180.141, rather than list citrus citron, grapefruit, kumquats, lemons, limes, oranges, and tangerines separately, the single commodity group which these items make up is used, (i.e., citrus fruits). [See 40 CFR 180.34 (e) (6) and (f).]

Since these changes are nonsubstantive in nature and merely reflect the corrected and updated record, notice and public rulemaking procedures pursuant to the Administrative Procedure Act [5 U.S.C. 553(b) (B)] are not prerequisite to the promulgation of these regulations. Therefore, effective February 15, 1977, 40 CFR 180.117, 180.124, 180.131, and 180.141 are amended by revising the sections in their entirety to read as set forth below.

Dated: February 8, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

40 CFR 180.117, 180.124, 180.131, and 180.141 are revised in their entirety as follows.

* * * * *

§ 180.117 S-Ethyl dipropylthiocarbamate; tolerances for residues.

Tolerances are established for negligible residues (N) of the herbicide S-ethyl dipropylthiocarbamate in or on the following raw agricultural commodities:

Commodity:	Parts per million
Almonds, hulls	0.1 (N)
Asparagus	0.1 (N)
Beans, castor	0.1 (N)
Cotton, forage	0.1 (N)
Cottonseed	0.1 (N)
Flaxseed	0.1 (N)
Fruits, citrus	0.1 (N)
Fruits, small	0.1 (N)
Grain crops	0.1 (N)
Grasses, forage	0.1 (N)
Legumes, forage	0.1 (N)
Nuts	0.1 (N)
Pineapples	0.1 (N)
Safflower, seed	0.1 (N)
Strawberries	0.1 (N)
Sunflower, seed	0.1 (N)
Vegetables, fruiting	0.1 (N)
Vegetables, leafy	0.1 (N)
Vegetables, root crop	0.1 (N)
Vegetables, seed and pod	0.1 (N)

* * * * *

§ 180.124 Glyodin; tolerances for residues.

Tolerances are established for residues of the fungicide glyodin (2-heptadecyl-2-imidazoline acetate or 2-heptadecyl-2-imidazoline (base)) in or on the following raw agricultural commodities:

Commodity:	Parts per million
Apples	5
Cherries	5
Peaches	5
Pears	5

* * * * *

§ 180.131 Endrin; tolerances for residues.

Tolerances are established for residues of the insecticide endrin (hexachloro-epoxyoctahydro-endo, endo-dimethanonaphthalene) in or on the following raw agricultural commodities:

Commodity:	Parts per million
Beets, sugar	0
Beets, sugar, tops	0
Broccoli	0
Brussels sprouts	0
Cabbage	0
Cauliflower	0
Cottonseed	0
Cucumbers	0
Eggplant	0
Peppers	0
Potatoes	0
Squash, summer	0
Tomatoes	0

* * * * *

§ 180.141 Biphenyl; tolerances for residues.

Tolerances are established for residues of the fungicide biphenyl (also known as diphenyl) from postharvest use on the following raw agricultural commodities:

Commodity:	Parts per million
Fruits, citrus (and hybrids thereof)	110

[FR Doc.77-4640 Filed 2-14-77;8:45 am]

Title 43—Public Lands: Interior

CHAPTER II—BUREAU OF LAND MANAGEMENT

APPENDIX—PUBLIC LAND ORDERS

[Public Land Order 5613]

[UT-18619]

UTAH

Withdrawal for Reclamation Project

By virtue of the authority contained in section 204 of the Act of October 21, 1976, 90 Stat. 2743, 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described public lands, which are under the jurisdiction of the Secretary of the Interior, are hereby withdrawn from settlement, sale, location, or entry, under all of the general land laws, including the mining laws, 30 U.S.C., Ch. 2, but not from leasing under the mineral leasing laws, and reserved for the Tyzack Dam and Reservoir, Jensen Unit, Central Utah Project:

SALT LAKE MERIDIAN

T. 3 S., R. 22 E.,
Sec. 15, N½NE¼NE¼, SW¼NE¼NE¼, NW¼NE¼, N½NW¼SE¼NE¼.

The areas described aggregate 75 acres in Uintah County.

2. The withdrawal effected by this order shall remain in effect until such time as in the discretion of the Secretary of the Interior it is determined that the lands are no longer required for the use for which they have been reserved.

CECIL D. ANDRUS,
Secretary of the Interior.

FEBRUARY 7, 1977.

[FR Doc.77-4658 Filed 2-14-77;8:45 am]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 77-91]

PART 73—RADIO BROADCAST SERVICES

PART 74—EXPERIMENTAL, AUXILIARY, AND SPECIAL BROADCAST, AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

Reference Use of Automatic Alarm Systems for Antenna Tower Obstruction Lighting

Adopted: February 2, 1977.

Released: February 14, 1977.

1. On its own motion, the Commission is amending the rules for the Radio Broadcast Services and the Experimental, Auxiliary, Special Broadcast, and Other Program Distributional Services. The rules being amended concern the requirements for logging the results of daily observations of the condition of the tower lighting equipment on antenna towers which are required by the terms of the station authorization to be marked and lighted.

2. The several rule sections in Parts 73 and 74 that specify the requirements for entries in station records indicate that an entry must be made daily concerning an observation of the condition of the obstruction lights on the antenna tower(s). However, Part 17 of the Commission's Rules concerning the marking and lighting of antenna structures provides and alternative to actually making a daily observation of the operation of the tower lights. Section 17.47(a)(2) permits as an alternative to the actual observation of the lights the use of an automatic alarm system designed to detect any failure in the obstruction lighting and provide an indication of such failure to the licensee.

3. Since the present rules for Broadcast and Broadcast Auxiliary Services do not appear to give the licensee the option of using automatic failure alarms in lieu of making daily observations, we are by this *Order* making editorial amendments to clearly indicate that broadcast station licensees have the option of using such devices without conflict with the record keeping requirements of Parts 73 and 74 of the Rules.

4. We conclude that the adoption of the amendments shown in the Appendix would serve the public interest. Prior notice of rule making and public procedure thereon are unnecessary pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553 (b) (3) (B), inasmuch as these amendments impose no additional burdens and raise no issue upon which comments would serve any useful purpose.

5. Therefore, *it is ordered,* That pursuant to Sections 4 and 303 of the Communications Act of 1934, as amended, Parts 73 and 74 of the Commission's Rules and Regulations are amended as set forth below, effective February 17, 1977.

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

FEDERAL COMMUNICATIONS COMMISSION,[1]
VINCENT J. MULLINS,
Secretary.

1. In § 73.113, paragraph (a) (1) (ii) is revised to read as follows:

§ 73.113 Operating log.

(a) * * *

(1) * * *

(ii) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

* * * * *

2. In § 73.283, paragraph (a) (5) is revised to read as follows:

§ 73.283 Operating log.

(a) * * *

(5) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See Section 17.47(a) for daily lighting observation or automatic alarm system requirements.

* * * * *

3. In § 73.583, paragraph (a) (5) is revised to read as follows.

[1] Commissioner Lee absent.

§ 73.583 Operating log.

(a) * * *

(5) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

* * * * *

4. In § 73.671, paragraph (a) (5) is revised to read as follows:

§ 73.671 Operating log.

(a) * * *

(5) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

* * * * *

5. In § 73.781, paragraph (c) is revised and new paragraph (d) is added to read as follows:

§ 73.781 Logs.

* * * * *

(c) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(d) The entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

6. In § 74.181, paragraph (b) is revised, new paragraph (c) is added, and existing paragraph (c) as amended is redesignated as paragraph (d) to read as follows:

§ 74.181 Logs.

* * * * *

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) Station logs and records shall be retained for a period of two years.

7. In § 74.281, paragraph (b) is revised, new paragraph (c) is added, and existing paragraph (c) as amended is redesignated as paragraph (d) to read as follows:

§ 74.281 Logs.

* * * * *

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) Station logs and records shall be retained for a period of two years.

8. In § 74.381, paragraph (b) is revised, new paragraph (c) is added, and existing paragraph (c) as amended is redesignated as paragraph (d) to read as follows:

§ 74.381 Logs.

* * * * *

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) Station logs and records shall be retained for a period of two years.

§ 74.481 Logs and records.

(a) * * *

(1) If the instrument of authorization requires painting and lighting of an antenna structure:

(i) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(ii) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

* * * * *

10. In § 74.581, paragraph (b) is revised, new paragraph (c) is added, and existing paragraph (c) as amended is redesignated as paragraph (d) to read as follows:

§ 74.581 Logs.

* * * * *

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) Station logs and records shall be retained for a period of two years.

11. In § 74.681, paragraph (b) is revised, new paragraph (c) is added, and existing paragraph (c) as amended is redesignated as paragraph (d) to read as follows:

§ 74.681 Logs.

* * * * *

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See Section 17.47(a) for daily tower lighting obesrvation or automatic alarm systems requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) Station logs and records shall be retained for a period of two years.

12. In § 74.781, paragraph (b) is revised, new paragraph (c) is added, and existing paragraphs (c), and (d) as amended, are redesignated as paragraphs (d) and (e) to read as follows:

§ 74.781 Station records.

* * * * *

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) The station records shall be maintained for inspection at a residence, office, public building, place of business, or other suitable place, in one of the communities of license of the translator, except that the station records of a translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.765(b) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(e) Station logs and records shall be retained for a period of two years.

13. In § 74.981, paragraph (a)(5) is revised and new paragraph (a)(6) is added, to read as follows:

§ 74.981 Logs.

(a) * * *

(5) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(6) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

* * * * *

14. In § 74.1281, paragraph (b) is revised, new paragraph (c) is added, and existing paragraphs (c) and (d) as amended are redesignated as paragraphs (d) and (e) to read as follows:

§ 74.1281 Station records.

* * * * *

(b) Entries required by § 17.49 (a), (b), and (c) of this chapter concerning the time the tower lights are turned on and off each day if manually controlled, the time the daily check of proper operation of the tower lights was made if automatic alarm system is not provided, and any observed failure of the lighting system. See § 17.47(a) for daily tower lighting observation or automatic alarm system requirements.

(c) Entries required by § 17.49(d) of this chapter concerning quarterly inspections of the condition of the tower lights and associated control equipment; when adjustments, replacement or repairs are made to insure compliance with the lighting requirements; and when towers are cleaned or repainted as required by § 17.50 of this chapter.

(d) The station records shall be maintained for inspection at a residence, office, public building, place of business, or other suitable place, in one of the communities of license of the translator or booster, except that the station records of a booster or translator licensed to the licensee of the primary station may be kept at the same place where the primary station records are kept. The name of the person keeping station records, together with the address of the place where the records are kept, shall be posted in accordance with § 74.1265(b) of the rules. The station records shall be made available upon request to any authorized representative of the Commission.

(e) Station logs and records shall be retained for a period of two years.

[FR Doc.77-4688 Filed 2-14-77;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 10—GENERAL PROVISIONS

Address Changes

Subpart C of Part 10, Title 50 of the Code of Federal Regulations, is amended to show address changes in the United States Fish and Wildlife Service (hereinafter "the Service"). The first change includes a new address for mail concerning permits; a new office has been created in the Service under which this responsibility falls. The other changes show address changes for the law enforcement districts within the Division of Law Enforcement in the Service. The State of Mississippi has been reassigned to the

jurisdiction of the New Orleans, Louisiana, district office; the New York district office has a new mailing address; and the District of Columbia is added to those areas which come under the jurisdiction of the Baltimore district office in Glen Burnie, Maryland (inadvertently omitted from the last printed address list published in the FEDERAL REGISTER.

Since it merely changes addresses listed in this part, the amendment's effect is to change agency procedure and therefore the "notice" requirements of 5 U.S.C. 553(b) are not applicable; in addition, it is not a substantive rule requiring a delayed effective date pursuant to 5 U.S.C. 553(d).

This amendment, issued under authority of 5 U.S.C. § 301 is therefore effective February 15, 1977.

Dated: February 3, 1977.

LYNN A. GREENWALT,
Director,
Fish and Wildlife Service.

Part 10 of Title 50 of the Code of Federal Regulations is amended by revising §§ 10.21 and 10.22 of Subpart C to read as follows:

§ 10.21 Director.

(a) Mail forwarded to the Director for law enforcement purposes should be addressed:

Chief, Division of Law Enforcement, U.S. Fish and Wildlife Service, P.O. Box 19183, Washington, D.C. 20036.

(b) Mail forwarded to the Director with reference to permits should be addressed:

Director (FWS/WPO), Fish and Wildlife Service, U.S. Department of the Interior, Washington, D.C. 20240.

§ 10.22 Law enforcement districts.

Service law enforcement districts and their areas of jurisdiction follow. Mail should be addressed: "Special Agent in Charge, U.S. Fish and Wildlife Service, (appropriate address below)"

Area of jurisdiction	*Address of district office*
Alaska	813 D St., Anchorage, Alaska 99501 (907-278-2031).
Idaho, Hawaii, Oregon, and Washington	P.O. Box 3737, Portland, Oreg. 97208 (503-234-3361, ext. 4087).
California and Nevada	Room E1924, 2800 Cottage Way, Sacramento, Calif. 95825 (916-484-4748).
Colorado, Montana, Utah, and Wyoming	P.O. Box 25486, Denver Federal Center, Denver, Colo. 80225 (303-234-4612).
Iowa, Kansas, Missouri, Nebraska, North Dakota and South Dakota.	P.O. Box 1038, Independence, Mo. 64051 (816-374-6273).
Arizona, New Mexico, Oklahoma, and Texas	P.O. Box 329, Albuquerque, N. Mex. 87103 (505-766-2091).
Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.	P.O. Box 45, Federal Bldg., Fort Snelling, Twin Cities, Minn. 55111 (612-725-3530).
Arkansas, Mississippi, and Louisiana	Room 100, 546 Carondelet St., New Orleans, La. 70130 (504-589-2692).
Alabama, Florida, Georgia, and Puerto Rico	P.O. Box 95467, Atlanta, Ga. 30347 (404-526-4761).
Kentucky, North Carolina, South Carolina, and Tennessee.	P.O. Box 290, Nashville, Tenn. 37202 (615-749-5532).
District of Columbia, Delaware, Maryland, Pennsylvania, Virginia, and West Virginia.	96 Aquahart Rd., Glen Burnie, Md. 21061 (301-761-8033).
New Jersey and New York	Century Bank Bldg., 2nd Floor, 700 Rockaway Turnpike, Lawrence, N.Y. 11559 (212-995-8613).
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.	P.O. Box 34, Boston, Mass. 02101 (617-223-2987).

[FR Doc.77-4557 Filed 2-14-77;8:45 am]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

PART 268—REGULATIONS GOVERNING PROPOSED TRANSACTIONS SUBMITTED TO SECRETARY OF TRANSPORTATION UNDER SECTION 5(3) OF THE INTERSTATE COMMERCE ACT

Extension of Period for Filing Petitions of Reconsideration and Public Meeting

Regulations establishing a new part 278 of title 49, Code of Federal Regulations, governing proposed transactions submitted to the Secretary of Transportation under section 5(3) of the Interstate Commerce Act, were published in the FEDERAL REGISTER on Wednesday, January 26, 1977 (42 FR 4982). Pursuant to Federal Railroad Administration ("FRA") Rule of Practice, 49 CFR 211.29 (41 FR 5481 (1976)), any person who desires to petition the Federal Railroad Administrator ("Administrator") for reconsideration of any rule issued by the FRA, must submit such petition, except for good cause shown, not later than 20 days after the publication of the rule in the FEDERAL REGISTER. The 20 day period for the part 268 regulations terminates on February 15, 1977.

The American Association of Railroads ("AAR") has petitioned the Administrator for a 30 day extension of the period during which petitions for reconsideration of these regulations may be submitted, stating that the additional time is required in order to solicit and coordinate views from all of its members. The Administrator has determined that the AAR has demonstrated good cause for extending the 20 day period. Therefore, the period for petition is extended 30 days beyond February 15, 1977, and any person desiring to submit a petition for reconsideration of the part 268 regulations must do so not later than March 17, 1977.

The AAR has also requested that a public meeting be held to discuss the part 268 regulations. In response to this request, the FRA will sponsor a meeting that is open to the public concerning the part 268 regulations. This meeting is scheduled for 10 a.m. Thursday, February 24 in room 3442 of the Nassif Building, 400 Seventh Street, S.W., Washington, D.C. 20590.

Dated: February 14, 1977.

BRUCE M. FLOHR,
Deputy Administrator,
Federal Railroad Administration.

[FR Doc.77-4978 Filed 2-14-77;10:29 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.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[9 CFR Parts 317, 318, and 319]

MILK ALBUMINATE

Use in Certain Sausage Products; Proposed Rulemaking

• *Purpose:* The purpose of this document is to propose regulations for the use of milk albuminate in certain sausage products. •

Notice is hereby given in accordance with the administrative procedure provisions in 5 U.S.C. 553, that the Animal and Plant Health Inspection Service of this Department is considering amending Parts 317, 318, and 319 of the meat inspection regulations (9 CFR Parts 317, 318, and 319), under the Federal Meat Inspection Act, as amended (21 U.S.C. 601 et seq., pursuant to a petition by the First Spice Mixing Company, Inc., Long Island City, New York, to permit the use of a specific, dairy-based albuminate in certain sausage products.

Statement of Considerations. The proposed amendment is in response to a request by the above-named petitioner that milk albuminate be considered for use in certain sausages on the same basis as the presently approved binders listed in section 319.140 of this subchapter. Such albuminates would be permitted in an amount not exceeding 3.5 percent of the finished product weight when used individually or collectively with other binders already approved for such products.

Use of this substance in certain sausage products would require that its presence in such products be declared in accordance with § 317.8(b)(16) of this subchapter as "Milk Albuminate Added." This labeling policy would coincide with that currently required when other binders are added to sausages.

The Department is concerned that regulation amendments providing for the use of such additional ingredients may result in reductions in the quality and quantity of protein contained in meat products. The specifications attainable in the manufacturing of milk albuminates, according to the petitioner, would not adversely affect the nutritional properties of the sausages in which it would be present as an ingredient.

The specifications are:

Lactose Hydrate, 38–52 percent.
Total Protein, 25–35 percent.
Lactose hydrate to total protein ratio of 3:2.

For the purpose of obtaining informed comments, the public is advised that product complying with the above characteristics has the following additional characteristics:

Albumin protein	Percent	14–24
Casein protein	do	7–20
Minerals	do	7–22
Moisture	do	3–5
Fat	do	0–.2
pH	do	6.8–8.3

Milk albuminates which do not meet the above-stated lactose and protein specifications would not be accepted for use in sausage products. This requirement appears to be necessary for purposes of control and detection of milk albuminates that contain excessive lactose and because the desired textural effect imparted to products by the binder material is unlikely to be achieved unless the binder material conforms to such specifications. The Department has been advised that reliable chemical testing procedures have been developed which can be utilized to determine that products are being prepared in conformity with the above specifications.

According to the specifications presented by the petitioner, the amount of protein in the albuminate bears a predefined ratio to the amount of lactose present. Therefore, the amount of protein would be calculated and determined from analysis for lactose.

The consumer benefit from the current regulations, which permit the use of certain binders, is the development of products with greater textural differences could be produced, thereby providing a wider range of products from which selections for purchase can be made. Departmental taste panel tests have indicated that sausages containing milk albuminate cannot be statistically differentiated from similar products prepared with previously approved binders at the same level of use; hence, it appears that the consumer benefit would be preserved and extended through the use of milk albuminates in sausage products.

The proponent requests that milk albuminates, meeting the specifications set forth herein, be permitted in certain sausages on the same basis as other binders. To accommodate such a request, the Federal meat inspection regulations would be amended as set forth below.

§ 317.8 [Amended]

1. Section 317.8(b)(16) (9 CFR 317.8(b)(16)) would be amended by inserting "milk albuminate" immediately following the words "nonfat dry milk" (in the early portion of the subparagraph), and the phrase "Milk Albuminate Added" would be inserted immediately after the phrase "Nonfat Dry Milk Added" (occurring in latter portion of the paragraph).

2. The chart in § 318.7(c)(4) (9 CFR 318.7(c)(4)) would be amended by inserting the information set forth below in the class of substance "Binders" and immediately following "Isolated Soy Protein."

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

Class of substance	Substance	Purpose	Products	Amount
•	•	•	•	•
	Milk albuminate complying with § 318.7(d)(3).	do	Sausage, as provided for in pt. 319 of this subchapter.	3.5 pct based on weight of finished product.
			Imitation sausage; nonspecific loaves; soups, stews:	Sufficient for purpose.
•	•	•	•	•

* * * * *

3. Section 318.7 (9 CFR 318.7) would be amended by adding a new paragraph (d)(3) to read as follows:

(d) * * *

* * * * *

(3) Milk albuminate intended for use in meat products, as provided for in § 318.7(c)(4) of this subchapter, shall contain from 38 to 52 percent of lactose hydrate, and from 25 to 35 percent of protein (albumin and casein) and a ratio of lactose hydrate to total protein of 3:2; and shall have the percentage of protein prominently shown on the container label in close proximity to the product name when it enters the official establishment. Such labeling shall be maintained during storage and until the product is used in meat food products.

§ 319.140 [Amended]

4. Section 319.140 (9 CFR 319.140) would be amended by inserting "milk albuminate," immediately following the reference to "nonfat dry milk."

§ 319.180 [Amended]

5. Section 319.180(e) (9 CFR 319.180(e)) and § 319.181 (9 CFR 319.181) would be amended by adding "milk albuminate" immediately after "nonfat dry milk."

The Meat and Poultry Inspection Advisory Committee will be consulted, as prescribed in section 7 of the Act, prior to any final decision. The Federal Food, Drug, and Cosmetic Administrators will also be consulted during this period.

Any person wishing to submit written data, views, or arguments concerning the proposed amendments may do so by filing them, in duplicate, with the Hearing Clerk, U.S. Department of Agriculture, Washington, D.C. 20250, or if the material is deemed to be confidential, with the Product Labels, Packaging, and Standards Staff, Scientific and Technical Services, Meat and Poultry Inspection Program, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, by May 16, 1977.

Any person desiring opportunity for oral presentation of views should address such request to the Staff identified in the preceding paragraph, so that arrangements may be made for such views to be presented prior to the date specified in the preceding paragraph. A record will be made of all views orally presented.

All written submissions and records of oral views made pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business, unless the person makes the submission to the Staff identified in the preceding paragraph and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be kept confidential; otherwise, notice will be given of denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be kept confidential (7 CFR 1.27(c)).

Comments on the proposal should bear a reference to the date and page number of this issue of the FEDERAL REGISTER.

The Animal and Plant Health Inspection Service has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A-107.

Done at Washington, D.C., on February 8, 1977.

F. J. MULHERN,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc.77-4622 Filed 2-14-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

[13 CFR Parts 118, 122]

HANDICAPPED ASSISTANCE LOANS AND BUSINESS LOANS

Increase of Borrower's Ceiling

Notice is hereby given that pursuant to the authority contained in section 5 of the Small Business Act, 15 U.S.C. 631 et seq., it is proposed to amend, as set forth below, § 118.31(a)(1) of Part 118 and §§ 122.5 of Part 122, Chapter I, Title 13 of the Code of Federal Regulations.

Prior to the final adoption of such amendments, consideration will be given to any comments. Such comments should be submitted in writing, in triplicate, to the Associate Administrator for Finance and Investment, Small Business Administration, Washington, D.C. 20416, on or before March 17, 1977.

Information. Section 111 of Pub. L. 94-305, approved June 4, 1976, amended section 7(a) of the Small Business Act by increasing the borrower's ceiling on SBA's share of guaranteed business loans from $350,000 to $500,000.

It retained the existing $350,000 ceiling on loans to a borrower made directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis. The conference report explained that—

> In raising the maximum amount of regular business loans from $350,000 to $500,000, the Conferees are recognizing the impact of inflation upon loans since the original figure was adopted. However, it is the primary purpose of SBA loan programs to supply financing to small businesses which could not otherwise obtain financing. The Conferees intend that SBA shall continue to primarily make loans below $100,000 and that although statutory provisions should be made for those few situations where an applicant needs up to $500,000, loans of that size should be regarded as an exceptional situation and not a general practice. (House Rept. No. 94-1115, 94th Cong., 2d Sess., May 10, 1976, at 14)

In accordance with the Administrative Procedure Act (5 U.S.C. 552), the purpose of the present proposal is to establish a procedure to announce general standards for "exceptional situations" where SBA's aggregate share of guaranteed loans to a borrower may exceed $350,000. It provides that an exceptional situation shall be deemed to exist where SBA determines that funds required by a particular applicant will be used to carry out a National, Agency, or Regional program objective (§ 122.5(b)). SBA will from time to time publish in the FEDERAL REGISTER the standards established for such exceptional situations. If the proposed procedure is adopted as the final rule, SBA will not recognize any such program objective until it is first published in the FEDERAL REGISTER.

The proposal would also prescribe a $150,000 administrative ceiling on SBA's share of immediate participation or direct loans to a borrower (§ 122.5(b)). This ceiling could, in exceptional situations, be exceeded and SBA's exposure extended up to the $350,000 statutory maximum (Id.). The provisions with regard to guidelines governing exceptional situations would also apply to immediate participation and direct loans.

Section 7(h) of the Small Business Act authorizes SBA to make handicapped assistance loans not exceeding $350,000. Section 118. 31(a)(1) of the SBA Regulations prescribes administrative ceilings of $100,000 and $150,000, respectively, for direct loans and SBA's share of immediate participation loans extended for that purpose. The present proposal applies to such loans the same "exceptional situation" criteria governing section 7(a) guaranteed business loans, as determinative of the special circumstances where a handicapped assistance loan may exceed the otherwise applicable administrative ceiling and extend up to the $350,000 statutory limit § 118.31(a)(2)).

Dated: February 9, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

PART 118—HANDICAPPED ASSISTANCE LOANS

Section 118.31(a) would be amended by adding thereto new subparagraphs (2) and (3), so that it would read as follows:

§ 118.31 Terms and conditions.

(a) HAL loans shall not be made, participated in, or guaranteed if the total amount of the Government's share of such assistance to a single borrower at any one time exceeds a total outstanding of $350,000. The loan limit applies collectively to all HAL-2 loans to business entities owned or controlled by affiliated ownership and for all HAL-1 loans to the specific applicant nonprofit organization.

(1) The administrative ceiling on a direct loan is $100,000, and $150,000 as the SBA share of an immediate participation loan. Acceptance of such applications is subject to availability of funds.

(2) The respective administrative ceiling on direct loans and on SBA's share of immediate participation loans may, in exceptional situations, extend up to the statutory $350,000 maximum authorized by section 7(h) of the Small Business Act where SBA determines that the particular loan furthers a National, Agency, or Regional program objective.

(3) SBA may from time to time hereafter publish in the FEDERAL REGISTER, on the basis of developing experience, standards or examples illustrating National Agency, and Regional objectives. SBA will not recognize any such objective unless it has first been so published.

* * * * *

(Catalog of Domestic Assistance Programs, No. 59.021, Handicapped Assistance Loans.)

PART 122—BUSINESS LOANS

Section 122.5 would be amended by redesignating its present text as paragraph (a) and adding thereto new paragraphs (b), (c) and (d), so that it would read as follows:

§ 122.5 Introduction.

(a) *General.* SBA's exposure of financial assistance to a borrower, including all affiliates, may not exceed $500,000: *Provided,* That no such loan made or effected either directly or in cooperation with banks or other lending institutions through agreements to participate on an immediate basis shall exceed $350,000. In assistance to Group Corporations, SBA's exposure may not exceed $250,000 for each small business concern which formed and capitalized the Group Corporation.

(b) *Ceiling on loans to a single borrower.* The administrative ceiling (1) on loans to a single borrower made directly or on an immediate participation basis is $150,000, and (2) on SBA's share of guaranteed loans to any borrower is $350,000. However, in circumstances determined by SBA to constitute an exceptional situation, (3) direct loans and SBA's share of immediate participation loans to a borrower may extend to $350,000, and (4) SBA's share of guaranteed loans to a single borrower may extend to $500,000.

(c) *Exceptional situations.* (1) An exceptional situation will be deemed to exist where SBA determines that the particular loan furthers a National, Agency, or Regional program objective.

(2) *Publication in Federal Register.* SBA may from time to time hereafter publish in the FEDERAL REGISTER, on the basis of developing experience, standards or examples illustrating National, Agency, and Regional objectives. SBA will not recognize any such objective until it has first been so published.

(Catalog of Domestic Assistance Programs, No. 59.012, Small Business Loans.)

[FR Doc.77-4652 Filed 2-14-77;8:45 am]

[13 CFR Part 121]

SMALL BUSINESS SIZE STANDARDS

Proposed Definition of Term "Primarily Engaged" as Used in Definition of Small Business for Sales of Government Property

The definition of a small business to be applied in determining whether a particular bidder on a sale of Government property qualifies as small, depends on the industry in which the bidder, including its affiliates, is "primarily engaged." The term "primarily engaged" is not defined in § 121.3-9, Definition of small business for sales of Government property. However, such term is defined in § 121.3-10, Definition of small business for SBA loans, and such definition has, to date, been utilized in determining whether particular concerns qualify as small under § 121.3-9.

It has been suggested that a definition of the term "primarily engaged" should be included in § 121.3-9 and, accordingly, it is hereby proposed to revise § 121.3-9, Definition of small business for sales of Government property, by adding new paragraph (c) to read as follows:

§ 121.3-9 Definiiton of small business for sales of Government property.

* * * * *

(c) In determining, for the purpose of §§ 121.3-9(a), and 121.3-9(b), the industry into which a bidder (including its affiliates) is primarily engaged, consideration shall be given to these criteria, among others: Distribution among such industries of receipts, employment, and costs of doing business.

Interested parties may file with the Small Business Administration, on or before March 17, 1977, written statements of facts, opinions, or arguments concerning the proposal.

All correspondence shall be addressed to:

William L. Pellington, Director, Size Standards Division, Small Business Administration, 1441 L Street, N.W., Washington, D.C. 20416.

(Catalog of Federal Domestic Assistance Program No. 59.009, Procurement Assistance to Small Business.)

Dated: February 4, 1977.

MITCHELL P. KOBELINSKI,
Administrator.

[FR Doc. 77-4739 Filed 2-14-77;8:45 am]

CIVIL AERONAUTICS BOARD

[14 CFR Part 313]

[PDR-42A, Docket 30247, Dated: February 9, 1977]

IMPLEMENTATION OF THE ENERGY POLICY AND CONSERVATION ACT

Supplemental Notice of Proposed Rulemaking

By PDR-42, December 22, 1976, (41 FR 56669, Dec. 29, 1976) the Board issued a Notice of Proposed Rulemaking in this proceeding requesting comments from interested persons in response to its proposal to adopt a new Part 313 of the Procedural Regulations, implementing the Energy Policy and Conservation Act. February 14, 1977, was the filing date.

By letter, dated January 28, 1977, the Federal Energy Administration (FEA) requests an extension of the filing date to allow an additional 30 days for comments. It states that it intends to prepare a statement addressing all aspects of the proposed proceeding. The completion of this statement, FEA states, requires that FEA have sufficient time to review and evaluate the Board's third report to Congress in response to section 382(a)(3) of EPCA. The proposed rulemaking stated that this report was to be filed on December 22, 1976; however, the report was submitted on February 4, 1977.

No previous extension of time has been granted in this proceeding, and it does not appear that the grant of the requested 30-day extension would prejudice any party to this proceeding. 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.

Accordingly, pursuant to authority delegated in § 85.20(d) of the Board's Organization Regulations (14 CFR 385.20(d)), the undersigned hereby extends the time for filing comments to March 16, 1977.

(Secs. 204(a), 403 and 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 757, 766; 49 U.S.C. 1324, 1372, 1377.)

SIMON J. EILENBERG,
Associate General Counsel,
Rules Division.

[FR Doc.77-4781 Filed 2-14-77;8:45 am]

[14 CFR Part 399]

[PSDR-45B, Docket 30123, Dated February 9, 1977]

STATEMENTS OF GENERAL POLICY

Supplemental Notice of Proposed Rulemaking

By Notice of Proposed Rulemaking PSDR-45, 41 FR 52698, December 1, 1976, the Civil Aeronautics Board gave notice that it was proposing to amend Part 399 of the regulations so as to delineate standards for determining priorities of hearing with respect to competing applications for operating authority. The Board requested that interested parties file comments on or before January 17, 1977. The due date for filing comments was later extended to February 16, 1977, 42 FR 31800, January 17, 1977.

By letter dated February 4, 1977, counsel for the local service carriers requested a further extension of the due date for filing comments. The reason for the request is that the separate statement of Board Members Minetti and West on route hearing priorities was not received until February 2, 1977. Accordingly, counsel for the local service carriers requests that the due date for filing comments be extended until February 28, 1977.

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.

Accordingly, pursuant to authority delegated in § 385.20(d) of the Board's Organization Regulation (14 CFR 385.20(d)), the undersigned hereby extends the time for filing comments to February 28, 1977.

(Sec. 101, 204, 401, and 1002 of the Federal Aviation Act of 1958, as amended; 72 Stat. 737 (as amended), 743, 754 (as amended), 788; 49 U.S.C. 1301, 1324, 1371, and 1482.)

SIMON J. EILENBERG,
Associate General Counsel,
Rules Division.

[FR Doc.77-4780 Filed 2-14-77;8:46 am]

FEDERAL TRADE COMMISSION

[16 CFR Part 438]

ADVERTISING, DISCLOSURE, COOLING-OFF AND REFUND REQUIREMENTS CONCERNING PROPRIETARY VOCATIONAL AND HOME STUDY SCHOOLS

Proposed Trade Regulation Rule: Availability of Public Record; Recommencement of Comment Period

On February 8, 1977, the Commission published in the FEDERAL REGISTER (42 FR 7965) notice that the public record has

been closed to the public to permit its being microfilmed. The record is now available for public inspection and use at the Public Reference Branch, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Comment will be accepted on both the report of the presiding officer (see 41 FR 47267 (October 28, 1976)) and the staff report (42 FR 1483 (January 7, 1977)) for a period of 60 days ending on April 18, 1977. Comments should be identified as "Comment on Presiding Officer and Staff Reports—Vocational School TRR," and addressed to the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580, and submitted, when feasible and not burdensome, in five copies.

By direction of the Commission, dated February 3, 1977.

JOHN F. DUGAN,
Acting Secretary.

[FR Doc.77-4639 Filed 2-14-77;8:45 am]

FEDERAL POWER COMMISSION

[18 CFR Parts 154, 201, 260]

[Docket No. R-466]

ACCOUNTING AND RATE TREATMENT OF ADVANCES TO SUPPLIERS FOR GAS OUTSIDE THE LOWER FORTY-EIGHT STATES

Order Terminating Proceeding

FEBRUARY 7, 1977.

On December 29, 1972, the Commission issued a Notice of Proposed Rulemaking in Docket No. R-466 (38 FR 1055, January 8, 1973) proposing to amend its Regulations under the Natural Gas Act so as to adopt one of two alternative methods of rate and accounting treatment for advances made to producers outside the lower forty-eight states by pipelines for gas to be delivered at a future date. For the reasons discussed below, we shall terminate the proposed rulemaking in Docket No. R-466.

In the Notice we stated our intention to set guidelines for the proper treatment of advances made to producers operating in the North American Continent but outside the lower forty-eight states when the gas produced as a result of such advances would be accessible by pipeline to the lower forty-eight states. We also stated that such guidelines would apply to advances made pursuant to contracts entered into on or after the date of issuance of an order resulting from the Notice of Proposed Rulemaking and that advances in this area made pursuant to contracts entered into prior to the issuance of such order would be treated on a case-by-case basis.

Therefore, we requested comments from all interested parties as to which of the following alternative methods of accounting and rate treatment for such advances would be appropriate.

Alternative 1. That such advances for gas be recorded in a new account 166.1, Advances for Gas Outside Lower Forty-Eight States, and the unrecovered portion of the advances be allowed in rate base as part of working capital. Under this proposal, the accounting and rate base treatment of such advances shall be the same for these advances as for advances subject to the provisions of Order No. 465, made to producers within the lower 48 states, except as noted herein.

Alternative 2. That such advances for gas be recorded in a new account 166.1, Advances for Gas Outside Lower Forty-Eight States, and carrying charges be capitalized until recovery of the advances commences. As found reasonable in a rate proceeding, the unrecovered advance and related carrying charges shall be allowed in rate base as part of working capital and the carrying charge component of recovered advances would be allowed as a cost of gas purchased.

If the advance fails to produce any gas, only the capitalized carrying charges would be assessed against the pipeline's customers. The capitalized charges would not be included in rate base, but shall be amortized as a cost-of-service item over a period of five years, or such other time as the Commission may find reasonable.

If the advance produces gas, but none flows to the pipeline's customers, the pipeline will not be permitted to include the advance or the carrying charges in rate base or to amortize either item as a cost-of-service item. However, if some gas flows to the pipeline's customers, but not enough to cover the advance payments, a pro rata share of the advance payment and of the capitalized carrying charges may be included in rate base and treatment the same as fully successful advances.

A total of 26 parties [1] responded to the notice including 9 independent producers, 9 interstate pipelines, 3 distributors, 3 Associations and 2 State Commissions.

Most of the respondents supported the concept of Alternative 1 (rate base method) over Alternative 2 (carrying charges method), arguing that the best way to encourage exploration and development of gas reserves outside the lower 48 states is to allow the pipeline a return on its investment prior to the time the gas actually flows. They also cited the high risks and other difficult circumstances inherent in Alternate 2 as further support for the rate base method. Two respondents opposed the continuation of the advances program citing the many problems to be solved before gas flows to pipelines in the lower 48 states. One of these respondents argued that elimination of the advances program and substitution of a program of allowing working interests to pipelines is the proper method for developing the gas reserves in this area.

During the period since the issuance of the Notice of Proposed Rulemaking in this proceeding, the Commission has had several opportunities, on a case-by-case basis, to deal with the issue of rate base treatment for Canadian advance payments. During that period the Commission has concluded that rate base treatment for Canadian advance payments is not in the public interest because there is no assurance that gas or any other benefits will ever be forthcoming to consumers of natural gas within the United States.[2] Accordingly, the Commission shall not, by way of this rulemaking order, prescribe rules for general inclusion of Canadian advance payments in rate base.

The portion of this rulemaking covering Alaskan advance payments was, in effect, severed from this docket in Docket No. RM74-4, wherein the Commission in Order No. 499 [3] permitted rate base treatment for Alaskan advances, subject to conditions. However, in the Commission's December 31, 1975 order in Docket Nos. R-411 and RM74-4 [4], the Commission vacated that portion of Order No. 499 and ordered refunds. Thus, no further discussion of that issue is required in this order.[5]

With respect to advances to producers in areas in the North American Continent (other than Alaska, Canada and the lower 48 states), the Commission has determined that rate base treatment for such advances would not be in the public interest.

Our decision to terminate the instant rulemaking proceeding is also consistent with the Commission's action terminat-

[1] See Attachment A.

[2] Texas Eastern Transmission Corporation, Opinion No. 672, 50 FPC 1419 (1973), modified on rehearing, Opinion No. 672-A, 51 FPC 258 (1974), reconsideration denied, 51 FPC 967 (1974); affirmed sub nom. Texas Eastern Transmission Corporation v. F.P.C., 517 F. 2d 1299 (CADC 1975), Columbia Gulf Transmission Co., et al., Opinion No. 734, —— FPC —— issued June 12, 1975, in Docket No. RP73-85, et al.; Natural Gas Pipe Line of America, Opinion No. 762, —— FPC ——, issued May 21, 1976, in Docket No. RP74-96, reconsideration denied, Opinion No. 762-A, —— FPC ——, issued December 6, 1976; Pacific Gas Transmission Company, —— FPC ——, issued March 5, 1975, in Docket No. RP75-63; Tennessee Gas Pipeline Company, a Division of Tenneco, Inc., Opinion No. 769, —— FPC ——, issued July 9, 1976, in Docket No. RP73-113. The Commission also denied rate base treatment for Canadian advance payments in Michigan Wisconsin Pipe Line Company Opinion No. 685, 51 FPC 391 (1974), reh. denied, 51 FPC 1133 (1974) but this case was remanded to the Commission in Michigan Wisconsin Pipe Line Company v. F.P.C., 520 F. 2d 84 (CADC 1975) and the Commission was directed to make further findings and determination in support of Opinion No. 685.

[3] Reh. denied, —— FPC ——, issued February 27, 1976.

[4] —— FPC —— (1975), reh. denied, —— FPC ——, issued February 27, 1976, reh. granted for further consideration, —— FPC ——, issued April 23, 1976.

[5] On December 31, 1975, the Commission also issued an order in Docket No. RP76-49 which required all pipelines which had made Alaskan advances pursuant to pre-Order 499 contracts to show cause why these Alaskan advances should not be treated similarly to Order No. 499 Alaskan advances. No further action has been taken in that proceeding.

ing the advance payment program in the lower 48 states (as well as in Alaska).[6]

The Commission finds: Good cause exists to terminate the proceedings in Docket No. R–466.

The Commission orders: (A) The proceedings in Docket No. R–466 are hereby terminated.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

ATTACHMENT A.—LIST OF RESPONDENTS

ASSOCIATIONS

Associated Gas Distributors
The Independent Natural Gas Association of America
The Independent Petroleum Association of America

DISTRIBUTORS

Northern Illinois Gas Company
Southern California Edison Company
Southern California Gas Company

INDEPENDENT PRODUCERS

Amoco Production Company
Atlantic Richfield Company
Exxon Corporation
Mobil Oil Corporation
Oceanic Exploration Company
Phillips Petroleum Company
Shell Oil Company
Standard Oil Company of California
Sun Oil Company

INTERSTATE PIPELINES

Colorado Interstate Gas Company
Columbia Gas Transmission Corporation
El Paso Natural Gas Company
Michigan Wisconsin Pipe Line Company
Natural Gas Pipeline Company of America
Northern Natural Gas Company
Tennesee Gas Pipeline Company
Transcontinental Gas Pipe Line Corporation
Trunkline Gas Company and Panhandle Eastern Pipe Line Company

STATE COMMISSIONS, ET AL.

The People of the State of California and the Public Utilities Commission of the State of California
Public Service Commission for the State of New York

[FR Doc.77–4722 Filed 2–14–77;8:45 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 808]

[Docket No. 76P–0344]

MEDICAL DEVICES

Proposed Action on State of California Application for Exemption From Preemption of Requirements

The Food and Drug Administration (FDA) proposes to grant the application of the State of California Department of Health for exemption from Federal preemption for certain California State laws and regulations pertaining to medical devices.

The proposal would amend Title 21 of the Code of Federal Regulations by adding new § 808.55 to set forth FDA action on the State of California application for exemption from Federal preemption. The Commissioner of Food and Drugs is proposing that the amendment become effective immediately upon publication of a final regulation. Comments on this proposal may be submitted on or before April 18, 1977.

The Medical Device Amendments of 1976 (Pub. L. 94–295), amending the Federal Food, Drug, and Cosmetic Act (hereinafter referred to as "the act"), became law on May 28, 1976. Section 521 (a) of the act (21 U.S.C. 360k(a)) prohibits any State or political subdivision thereof from establishing or continuing in effect with respect to a device intended for human use any requirement which is different from, or in addition to, any requirement under the act applicable to a device and which relates to the safety or effectiveness of the device or to any other matter included in a requirement applicable to the device under the act. Section 521(b) of the act sets forth specific conditions under which the Commissioner may permit a State or local government to establish, or continue in effect, device requirements that would otherwise be preempted.

SUMMARY OF STATUTORY REQUIREMENTS

The Commissioner believes that Congress intended that all requirements of State and political subdivisions thereof that deal specifically with the inherent safety or effectiveness of particular medical devices and that are different from or in addition to FDA requirements applicable specifically to such devices would be preempted upon enactment of the Medical Device Amendments of 1976 on May 28, 1976. This conclusion is based on the general congressional concern that numerous differing requirements applicable to a medical device imposed by jurisdictions other than the Federal government could unduly burden interstate commerce (House Report No. 94–853, p. 45). The Commissioner believes that Congress intended section 521(a) of the act to preempt only those different or additional State-and local requirements that relate to matters already governed by specific, established Federal requirements applicable to a specific device. To conclude Congress intended to preempt immediately many vital State and local regulations relating to devices and to require that there be no regulation of these items by any jurisdiction—Federal, State, or local—until such time as Federal requirement were established under the act. The Commissioner notes that it will require many months, and for some devices several years, to implement fully the Federal requirements under the act. The Commissioner does not believe that Congress intended such a hiatus in the protection of the public health and safety.

The Commissioner also notes that State and local medical device requirements that are substantially identical to Federal requirements have not been preempted by the amendments. Furthermore, there are many State and local health related laws and regulations that bear upon or relate to the safe and effective use of devices but which are not, in the Commissioner's judgment, preempted by new section 521(a) of the act.

Section 521(b) of the act authorizes the Commissioner to exempt from the preemption provisions of section 521(a) State and local medical device requirements that meet either of two conditions: (1) Are more stringent than existing Federal requirements applicable to a device or class of devices; or (2) are necessitated by compelling local conditions and compliance with which would not cause a device to be in violation of any Federal requirement under the act.

Congress recognized that under certain circumstances State and local medical device requirements constitute a useful and important supplement to Federal requirements and resources. The House Committee on Interstate and Foreign Commerce indicated its awareness of the adoption of the Sherman Food, Drug, and Cosmetic Law by the State of California and further indicated that this legislation was an example of a State or local government requirement that should be authorized to be continued, if an application were submitted that met the requirements of the act (House Report No. 94–853, p. 45).

Section 521(b) of the act sets forth general procedures to be followed in processing applications from State or local governments seeking exemptions from preemption. The Commissioner is required to publish his action on the State or local government application in the FEDERAL REGISTER as a proposed regulation, to provide an opportunity for interested persons to request an oral hearing and, as required by the Administrative Procedure Act, 5 U.S.C. 553, to provide a comment period. The notice of opportunity for an oral hearing is published elsewhere in this issue of the FEDERAL REGISTER.

Since FDA has determined that a 60-day comment period is reasonable for the submission of comments on proposed regulations generally, the Commissioner believes it is appropriate to provide a 60-day comment period for this proposal on the State of California application for exemption from preemption.

The Commissioner is aware of the need to provide guidance to State and local governments on preparing and submitting applications for exemption from Federal preemption under section 521 (b) of the act. Therefore, the Commissioner will propose in the near future procedural regulations which are to be followed by State and local governments in submitting applications for exemption under section 521(b) of the act.

CALIFORNIA APPLICATION FOR EXEMPTION FROM PREEMPTION

On July 20, 1976, the California Department of Health submitted an application for exemption of California medi-

[6] See December 31, 1975, and February 28, 1976 orders in Docket Nos. R–411 and RM74–4. See also: Opinion No. 770–A. —— FPC ——, issued November 5, 1976, in Docket No. RM75–14 (mimeo, pp. 149–153).

cal device requirements from preemption by the Medical Device Amendments of 1976. After a preliminary review of the contents of the application, FDA requested the California Department of Health to submit additional information concerning its initial application for exemption. On September 2, 1976, the California Department of Health submitted copies of the specific State laws and regulations pertaining to medical devices for which exemption from Federal preemption was sought. The contents of the July 20, 1976 application and the September 2, 1976 submission have been placed on file for public review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has reviewed the contents of these two submissions and, for the reasons set forth below, proposes the following actions on California medical device requirements:

1. *California Sherman Food, Drug, and Cosmetic Law.* This law is applicable to all medical devices manufactured and sold within the State of California. The statutory provisions include requirements concerning adulteration, misbranding, advertising, licensing and registration, and premarket clearance for medical devices.

The Commissioner finds that most provisions of the California Sherman Food, Drug, and Cosmetic Law are substantially identical to Federal requirements and are therefore not preempted by section 521(a) of the act.

The Commissioner finds that several of the requirements under the California law are in addition to, or different from, current Federal requirements. In all cases, these additional or different requirements are more stringent than the current Federal requirements (e.g., the State requirement for premarket approval of new devices that were on the market on the enactment date of the Medical Device Amendments of 1976 and thus subject to a transitional period before the Federal premarket approval requirement can be enforced). The Commissioner is proposing to exempt all such requirements in the Sherman Food, Drug, and Cosmetic Law from Federal preemption because he believes that these requirements should be permitted to continue in effect, at least until the Federal law is implemented, to enable the State of California to continue important public health programs and to enable FDA to benefit from any additional information concerning regulated devices.

The Commissioner notes that there are certain other provisions of the California law that are different from current Federal requirements, but that are not regarded as requirements with respect to a device within the meaning of section 521 of the act and thus are not regarded by the Commissioner as preempted under section 521(a) of the act. Examples are enforcement provisions such as requirements that State inspection be permitted of factory records concerning all devices, registration and licensing requirements for manufacturers and others, and prohibition of manufacture of devices in unlicensed establishments and of manufacture of adulterated or misbranded devices.

2. *Health and Safety Code, Chapter 2, Powers and Duties.* Portions of these regulations deal with the powers and duties of State health officials. These regulations deal primarily with delegations of authority and responsibility for enforcing State health laws that can affect medical devices.

The Commissioner finds that delegations of authority and responsibility for enforcing State health laws are matters relevant to administrative enforcement of local law and are not requirements with respect to devices within the meaning of section 521 of the act. Therefore, the Health and Safety Code general powers are not preempted by section 521(a) of the act.

3. *California Administrative Code, Article 2—Drugs and Devices Regulations under Title 17.* These regulations set forth State policies and requirements for medical device labeling, license fees, misbranding, products for diagnosis of cancer, exemption for prescription devices, exemptions for investigational new devices, and applications for preclearance. Some of Title 17 regulations submitted for review are substantially identical to Federal requirements while others are in addition to, and more stringent than, current Federal requirements.

The Commissioner finds that California's regulations under Title 17 are substantially identical to, or more stringent than, present Federal requirements and are therefore either not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act. The Commissioner believes that the additional, more stringent provisions of Article 2, Title 17, should be permitted to continue, at least until the Federal law is implemented, to enable the State of California to continue important public health programs and to enable FDA to benefit from any additional information concerning regulated devices.

4. *Laws governing diagnosis and treatment of cancer and two implementing regulations under Title 17.* California laws which have as their purpose the effective diagnosis, care, treatment or cure of persons suffering from cancer are as follows:

a. Section 2378.5, Division 1, Chapter 5, Article 13 of the Business and Professions Code deals with the regulation of professional conduct and is not preempted by section 521(a) of the act because it does not impose requirements applicable to devices within the meaning of section 521 of the act.

The Commissioner finds that other provisions of the Medical Device Amendments of 1976, namely section 520(e) of the act authorizing adoption of restrictions on sale, distribution, or use of devices, recognize and continue the authority of State and local governments to license practitioners to administer or use devices. Section 520(e) of the act also gives FDA new explicit authority to prescribe other conditions to restrict device sale, distribution, or use, and section 520(g) of the act enables FDA to regulate investigational use of devices. FDA regulations issued under these authorities may on occasion supersede State laws on the subjects covered, under both the act itself and the United States Constitution, notwithsanding that State professional licensing requirements are not among the laws preempted by section 521 of the act. Procedural regulations governing the submission and content of applications under section 521(b) of the act will provide additional guidance on this subject.

b. Sections 1700 through 1721, Division 2, Chapter 7 of the Health and Safety Code provide for disseminating full and accurate information to the citizens of California about the facilities and methods that are available for the diagnosis, treatment, and cure of cancer; testing and investigating the value of alleged cancer remedies, devices, drugs, or compounds; informing the public of the findings about these products; and public protection from misrepresentation in such matters.

The aspects of the law that pertain to devices used in the diagnosis, treatment, and cure of cancer patients are substantially identical to, or more stringent than, present Federal requirements applicable to such devices in regard to misbranding, advertising, safety, and effectiveness.

The Commissioner finds that sections 1700 through 1721, Division 2, Chapter 7 of the Health and Safety Code are consistent with Federal requirements and therefore either are not preempted by section 521(a) of the act or are proposed to be exempted from preemption under section 521(b) of the act to enable important public health programs to continue.

c. Under California Administrative Code, Title 17, Chapter 5, Subchapter 2, Article 2, the State has by regulation under sections 10400.2 and 10400.6 found that the Bolen Test and the Anthrone Test, respectively, are of no value for the diagnosis of cancer. Accordingly, the State has recommended that the public refrain from using the Bolen Test or tests applying similar principles thereto. The State also has prohibited use of the Anthrone Test for the diagnosis of cancer.

The Commissioner has not promulgated Federal requirements applicable to any specific products that might be affected by these two California regulations. Accordingly, these provisions were not preempted by section 521(a) and no further action is required by FDA.

5. Draft regulations on intrauterine contraceptives (IUD), sections 10418, et al., dated August 6, 1976 in many respects parallel an FDA proposal on IUD labeling

requirements published in the FEDERAL REGISTER on July 1, 1975 (40 FR 27796). The California draft regulations would establish requirements for IUD labeling, advertising, experience data reporting, patient informed consent, and enforcement remedies.

The Commissioner finds that these draft regulations do not have the force and effect of law in California, are therefore not a "requirement" within the meaning of, and are not preempted by, section 521(a) of the act. The Commissioner recommends that California review the final Federal regulation on IUD labeling requirements that will be published in the FEDERAL REGISTER in the near future before publishing its draft regulations in final form and before applying for an exemption from Federal preemption.

6. Chapter 754 (under sections 2541.3 and 2541.6 of the Business and Professions Code, section 26685 of the Health and Safety Code, and section 14110.5 of the Welfare and Institutions Code), Quality Standards for Prescription Ophthalmic Devices, adopts standards Z80.1 and Z80.2 of the American National Standards Institute relating to prescription ophthalmic devices, including, but not limited to, eyeglass lenses, frames, and contact lenses.

Section 2541.3 of the Business and Professions Code establishes the requirement that all distributors, dispensers, manufacturers, laboratories, optometrists, ophthalmologists, and others dispensing prescription ophthalmic devices must furnish such devices that must meet the standards adopted under this legislation. This section further provides for disciplinary action by the appropriate licensing board against any optometrist, ophthalmologist, or dispensing optician who violates the requirements of the standards.

Section 2541.6 of the Business and Professions Code prohibits the use of State funds to purchase prescription ophthalmic devices that do not meet the standards promulgated under § 2541.3.

Section 26685 of the Health and Safety Code establishes authority for the licensing of manufacturers, wholesalers, or importers of prescription ophthalmic devices.

Section 14110.5 of the Welfare and Institutions Code prohibits payment for any prescription ophthalmic device under Medi-Cal (the State Medicaid program) that does not meet the standards promulgated under section 2541.3 of the Business and Professions Code.

With respect to section 2541.3 of the Business and Professions Code, the Commissioner finds that the requirement that prescription ophthalmic devices dispensed in California meet standards Z80.1 and Z80.2 is more stringent than current Federal requirements applicable to eyeglass lenses. The Food and Drug Administration has not recognized the present Z80.1 and Z80.2 standards for regulatory purposes except that in § 801.410(d) (21 CFR 801.410 (d)) FDA has adopted from the Z80.1 standard the drop ball test for determining impact resistance of eyeglass lenses. In addition, under § 801.410(c), FDA has provided for an exception from the requirement of using impact-resistant eyeglass lenses in those cases where the physician or optometrist finds that such lenses will not fulfill the visual requirements of the particular patient; in such cases, the physician or optometrist directs in writing the use of other lenses and gives the patient written notification. No such exception is provided in the Z80.1 standard. In promulgating the requirements of § 801.410, including the exception in paragraph (c), FDA responded to comments it had received to the effect that the visual requirements of certain patients could not be met if FDA required, without exception, that all lenses be impact resistant. Therefore, the exception in § 801.410(c) was provided to enable practitioners to treat the visual requirements of all patients.

The Commissioner finds that because the adoption of the Z80.1 and Z80.2 standards under section 2541.3 of the California Business and Professional Code represents an additional State requirement that is more stringent than present Federal requirements applicable to eyeglass lenses, section 2541.3 is preempted by section 521(a) of the act, and is eligible for exemption from preemption under section 521(b) of the act. The Commissioner proposes that the adoption of the Z80.1 and Z80.2 standards be exempted from preemption, except that he does not propose to exempt from preemption the requirement that, without exception, all eyeglass lenses be impact-resistant. The latter requirement is inconsistent with the Federal requirement under § 801.410(c), and the Commissioner believes that exemption from preemption is inappropriate because of the need for uniform national policy and the public health interest in enabling the visual needs of all patients to be met. In addition, the Commissioner plans to evaluate the other California requirements for prescription opthalmic devices under section 2541.3 that are proposed for exemption from preemption at the time Federal standards and requirements for those products are promulgated under section 514 of the act.

The Commissioner finds that the requirements of section 2541.6 of the Business and Professions Code that pertain to specifications in State procurement contracts are not preempted by section 521(a) of the act because they are not general legal requirements applicable to devices within the meaning of section 521 of the act. Similarly, the Commissioner finds that the requirements of section 14110.5 of the Welfare and Institutions Code that pertain to the payment of State contractual obligations under Medi-Cal are not preempted by section 521(a) of the act because they are not general legal requirements applicable to devices within the meaning of section 521 of the act.

The Commissioner finds that the requirements of section 26685 of the Health and Safety Code that pertain to licensing of manufacturers, wholesalers, and importers of prescription ophthalmic devices are not preempted by section 521 (a) of the act because they are not considered to be requirements applicable to a device within the meaning of section 521 of the act but rather are general enforcement provisions.

7. Senate Bill No. 173, dated January 7, 1975, pending legislation on hearing aids, proposes requirements for licensing and regulation of hearing aid dispensers and the conditions under which hearing aids mays be fited or sold to patients.

The Commissioner finds that this legislation, because it is pending in the California legislature, has no force and effect of law and is not a "requirement" within the meaning of section 521(a) of the act. The Commissioner therefore finds that it would be premature to review this application for exemption from preemption under section 521(b) of the act. The Commissioner believes it generally desirable that State and local governments develop requirements for labeling of hearing aids and the conditions of their use that are consistent with FDA requirements. He therefore recommends that California review the final Federal regulation pertaining to requirements for hearing aid labeling and conditions for sale which appears elsewhere in this issue of the FEDERAL REGISTER, before enacting this pending legislation. The Commissioner notes that certain State and local requirements concerning hearing aids that are in addition to FDA requirements will not be affected by section 521 of the act to the extent that they pertain to licensing of health professionals and related occupations.

8. An order amending section 10376 of Title 17 of the California Administrative Code increases the annual State licensing fee for device manufacturers to $200.

The Commissioner does not believe that section 521(a) of the act was intended to include State fee requirements for business licenses as requirements applicable to devices within the meaning of section 521 of the act. Accordingly, he does not regard amended section 10376 of the California Administrative Code as preempted by section 521(a) of the act.

9. Senate Bill No. 86, dated July 12, 1975, Chapter 5, Division 2 of the Business and Professions Code (Practice of Acupuncture) prescribes the requirements and conditions for practicing acupuncture in the State of California.

Because the Commissioner does not believe that section 521(a) of the act applies to State licensing and certification of the persons qualified to administer and use devices, this law is not preempted by section 521(a) of the act.

However, in the FEDERAL REGISTER of March 9, 1973 (38 FR 6419), FDA notified manufacturers, packers, and distributors of acupuncture devices concerning labeling requirements that FDA concluded were necessary for such devices in light of the absence of substantial evidence of safety and therapeutic usefulness of such devices. The policy ex-

pressed in that notice with respect to persons qualified to receive and use acupuncture devices is still in effect. Therefore, it is possible that FDA may take enforcement action where acupuncture devices are received and used by persons the agency regards as unqualified under its March 9, 1973 notice, notwithstanding that the person may be licensed or certified to practice acupuncture under State law. These devices may also be subject to future Federal requirements pertaining to exemptions for investigational use of devices under section 520(g) of the act, restricted use requirements under section 520(e) of the act, and other Federal requirements that may take precedence over California law.

EFFECTIVE DATE

The final regulations will be published in the FEDERAL REGISTER after consideration of all comments submitted in response to this proposal and data and views presented at any oral hearing that may be granted. Because the regulations proposed below would be rules granting or recognizing exemptions to, or relieving restrictions upon, the State of California, the regulations do not require a delayed effective date. Accordingly, the Commissioner is proposing that the final regulations become effective upon their date of publication in the FEDERAL REGISTER.

The Commissioner has carefully considered the environmental effects of the proposed regulations and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 521, 701, 52 Stat. 1055–1056 as amended, 90 Stat. 574 (21 U.S.C. 360k, 371)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 808, consisting at this time of § 808.55, to read as follows:

PART 808—EXEMPTIONS FROM FEDERAL PREEMPTION OF STATE AND LOCAL MEDICAL DEVICE REQUIREMENTS

Subpart A—[Reserved]

Subpart B—Listing of Specific State and Local Exemptions

§ 808.55 California.

(a) The following California medical device requirements are enforceable notwithstanding section 521 of the Federal Food, Drug, and Cosmetic Act, either because they are not preempted by section 521(a) or because the Commissioner of Food and Drugs has granted an exemption from preemption pursuant to section 521(b) of the act:

(1) Sherman Food, Drug, and Cosmetic Law (Division 21, Health and Safety Code).

(2) Health and Safety Code, Chapter 2 (Powers and Duties).

(3) California Administrative Code, Article 2—Drugs and Devices Regulations under Title 17.

(4) Business and Professions Code, Division 1, Chapter 5, Article 13, Section 2378.5 (Diagnosis and Treatment of Cancer).

(5) Health and Safety Code, Sections 1700 through 1721, Division 2, Chapter 7 (Diagnosis and Treatment of Cancer).

(6) California Administrative Code, Title 17, Chapter 5, Subchapter 2, Article 2, Sections 10400.2 and 10400.6 (Bolen Test and Anthrone Test).

(7) Business and Professions Code, Section 2541.3 pertaining to prescription ophthalmic devices except those requirements that are inconsistent with § 801.410 (c) of this chapter.

(8) Business and Professions Code, Section 2541.6 (State contract specification for prescription ophthalmic devices).

(9) Welfare and Institutions Code, Section 14110.5 (Medi-Cal payments for prescription ophthalmic devices).

(10) Health and Safety Code, Section 26685 (licensing of manufacturers, wholesalers, or importers of prescription ophthalmic devices).

(11) California Administrative Code, Title 17, amended Section 10376, (Licensing Fees for Device Manufacturers).

(12) Senate Bill No. 86, dated July 12, 1975, Chapter 5, Division 2, Business and Professions Code (Practice of Acupuncture).

(b) The following California medical device requirement has been preempted: Business and Professions Code, Section 2541.3, to the extent that the section states requirements that are inconsistent with the requirements of § 801.410(c) of this chapter.

Interested persons may, on or before April 18, 1977, submit to the Hearing Clerk, Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments (perferably in quintuplicate and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug 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. A copy of the inflation impact assessment is on file with the Hearing Clark, Food and Drug Administration.

Dated: February 10, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77–4655 Filed 2–14–77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 688–3]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Revisions to the Monterey Bay Unified Air Pollution Control District Rules and Regulations in the State of California

On October 23, 1974, November 3, 1975 and November 10, 1976 the State of California submitted to the Regional Administrator, Region IX, revisions to the Monterey Bay Unified Air Pollution Control District (APCD) Regulation II—Permits, as part of the California State Implementation Plan (SIP). As revised Monterey Bay APCD Regulation II, Rules 200–213 will provide a procedure by which persons who wish to construct, modify or operate any article, machine, equipment, or other contrivance that may cause the issuance of air contaminants may be granted a permit to do so. A permit shall not be granted, however, if it is determined that such construction, modification, or operation would interfere with the attainment or maintenance of a National Ambient Air Quality Standard.

The State of California requested, by letter of August 26, 1976, that the Regional Administrator waive the thirty (30) day public notice period required by 40 CFR 51.4 since prior to January 1, 1976 the California Health and Safety Code required the APCDs to give at least ten (10) days notice of public hearings to adopt, amend or repeal their rules and regulations. The California Health and Safety Code was amended on January 1, 1976 to require a thirty (30) day notice period prior to public hearings. By letter of September 21, 1976, the Regional Administrator approved the procedures employed by APCDs prior to January 1, 1976. Thus the revisions submitted on October 23, 1974 and November 3, 1975 and adopted after public hearings held on August 28, 1974 in Santa Cruz, California and September 11, 1975 in Watsonville, California, respectively, conform with the notice requirements of 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

The State of California has certified, by letter of November 10, 1976, that the revision to its SIP for Monterey Bay Unified APCD, submitted on the same date, was adopted after public hearing was held on July 15, 1976 in Watsonville, California, after notice conforming to 40 CFR Part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans was given.

The decision of the Administrator to approve or disapprove the proposed revisions to the SIP will be based on whether or not they meet the requirements of Clean Air Act Section 110(a)(2)(A)–(H), the requirements of 40 CFR Part 51, Requirements for Preparation, Adoption,

and Submittal of Implementation Plans, and particularly 40 CFR 51.18.

This notice is to advise the public of receipt of this proposal and to request public comments. Copies of the proposed revisions are available for public inspection during regular business hours at:

Environmental Protection Agency, Region IX, Enforcement Division, 100 California Street, San Francisco, CA 94111.
State of California, Air Resources Board, 1709 11th Street, Sacramento, CA 95814.
Monterey Bay Unified APCD, 1270 Natividad Road, Salinas, CA 93901.
Public Information Reference Unit, Room 2922, U.S. Environmental Protection Agency, 401 "M" Street, S.W., Washington, D.C. 20460.

Interested persons may participate in the rulemaking process by submitting written comments to Regional Administrator, Attention: Enforcement Division, EPA, Region IX, 100 California Street, San Francisco, California 94111. Relevant comments received on or before March 17, 1977 will be considered. Comments received will be available for inspection during normal working hours at the Region IX office and at 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: January 17, 1977.

PAUL DE FALCO, Jr.,
Regional Administrator.

[FR Doc.77-4790 Filed 2-14-77;8:45 am]

FEDERAL MARITIME COMMISSION

[46 CFR Part 551]

[Docket No. 72-41; General Order 35]

TRUCK DETENTION AT THE PORT OF NEW YORK

Parties Responsible for Receipt and Settlement of Claims

The following constitutes an addition to the list of Parties Responsible For Receipt And Settlement Of Claims in this proceeding published September 21, 1976, [41 FR 41162].

SEA-LAND SERVICE, INC., Mr. Brian E. Dugan, Manager, Elizabeth Operations, P.O. Box 2000, Elizabeth, N.J. 07207. (212) 289-6000.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-4769 Filed 2-14-77;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[29 CFR Part 90]

CERTIFICATION OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Extension of Comment Period on Proposed Rulemaking

On January 14, 1977, a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (42 FR 2981), concerning proposed amendments to 29 CFR Part 90, the regulations pertaining to certification of eligibility to apply for worker adjustment assistance pursuant to Sections 221-250 of the Trade Act of 1974 (19 U.S.C. 2271-2322). The Notice invited interested persons to submit written comments regarding the proposed amendments on or before February 10, 1977. On January 28, 1977, a correction notice was published in the FEDERAL REGISTER (42 FR 5372) inviting the written submission of comments on or before February 14, 1977.

On the basis of a request for additional time, I hereby extend the period for public comment by 30 days until March 16, 1977. Accordingly, any interested person may submit comments concerning the proposed amendments on or before March 16, 1977 to the Director, Office of Trade Adjustment Assistance, Room S5303(a), U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed this 9th day of February 1977.

HERBERT N. BLACKMAN,
Acting Deputy Under Secretary.

[FR Doc.77-4744 Filed 2-14-77;8:45 am]

Occupational Safety and Health Administration

[29 CFR Part 1910]

[Docket No. H-004]

PROPOSED STANDARD FOR EXPOSURE TO LEAD

Availability of Technological Feasibility and Economic Impact Study; Certification of Economic Impact; and Identification of Additional Studies

The Occupational Safety and Health Administration (OSHA) published in the FEDERAL REGISTER on October 3, 1975 (40 FR 45934) a proposed standard for exposure to lead. On January 4, 1977, OSHA announced in the FEDERAL REGISTER (42 FR 808) the availability of a preliminary technological feasibility and inflationary impact study for the proposed lead standard. The notice invited public comment on these matters as well as several additional issues and scheduled an informal rulemaking hearing on all relevant issues relating to the proposal, including its economic impact. The hearing will begin on March 15, 1977, at 9:30 a.m. in the Departmental Auditorium on Constitution Avenue between 12th and 14th Streets, N.W., Washington, D.C.

When the availability of this preliminary study was announced, it was also stated that a final study, based on the supplemental data collection effort by D.B. Associates of Salt Lake City, Utah, would be made available at least four weeks prior to the public hearing. That study is now available for public inspection and copying at the following address: Technical Data Center, Occupational Safety and Health Administration, U.S. Department of Labor, Room N-3620, Third and Constitution Avenue, N.W., Washington, D.C. 20210 (Telephone: 202-523-8076). OSHA hereby certifies that the economic impacts of the proposed lead standard have been carefully evaluated pursuant to section 6(b) of the Act and in accordance with Executive Order 11821, as amended by Executive Order 11949 (42 FR 1017, January 5, 1977).

The notice published January 4, 1977 (42 FR 808), invited interested parties to submit information, comments and data on the issue of economic feasibility of the proposal and any other issue raised by the preliminary study, including:

(1) Cost impact on consumers, businesses, markets, or Federal, State or local government; (2) Effect on productivity of wage earners, businesses (both small and large) or government; (3) Effect on competition; (4) Effect on imports and exports; (5) Effect on supplies of important materials, products or services; (6) Effect on employment; (7) Ability of specific industries to absorb costs of compliance; and (8) Effect on energy supply or demand.

The notice also indicated that persons wishing to testify at the hearing must submit, by February 11, 1977, an appropriate notice of hearing which includes a statement of position and of the evidence to be adduced at the hearing to support that position. The notice further stated that prepared written statements or documents intended to be submitted for the record at the hearing, would have to be submitted by March 11, 1977. These requirements remain in effect for all evidence, studies, economic data and similar materials.

We are now inviting comments on the above issues, and on the issue of benefits to be derived from implementation of the proposed standard, as these comments relate to analysis of this final economic study. With respect to this limited area, interested parties who have submitted notices of appearance and intend to present evidence at the hearing concerning this economic study must submit a detailed statement of position and the basis therefor, in quadruplicate, to be received by March 11, 1977. This statement of position and basis therefor must be received by Mr. Clarence Page, OSHA Committee Management Office, Room N-3633, U.S. Department of Labor, 3rd and Constitution Avenue, NW., Washington, D.C. 20210 (Telephone: (202) 523-8024) by close of business March 11, 1977.

This requirement also applies to interested parties who have not yet submitted notices of appearance but wish to appear at the hearing to discuss only the final economic impact study. Their notices of intention to appear as well as their detailed statement of position must be received by March 11, 1977.

Interested persons who are not appearing at the hearing or do not intend to submit testimony at the hearing concerning analysis of the new study are invited to submit written comments on the information and issues in the new study, postmarked no later than March 15, 1977. These written comments must be submitted in quadruplicate to the Docket Officer, Docket No. H-004, Room N-3620, U.S. Department of Labor, 3rd and Constitution Avenue, NW., Washington, D.C. 20210. Written submissions must

clearly identify the portion of the study addressed and the position taken with regard to each issue therein. The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely written submissions received shall be made a part of the record of this proceeding.

Additional studies. Since publication of the notice of January 4, 1977, OSHA has identified further studies and reports not listed therein or in the proposal that may be significant. These studies may be discussed at the March 15, 1977, rulemaking hearing and will be part of the record on which the final standard will be based. In order to alert interested parties to these studies and reports at the earliest possible time, a list of the new material is provided below:

1. Archibald J.: A Clinical and Biochemical Study of Early Lead Poisoning, Project Number 0 33–74–1 ENV–UK, Department of Occupational Health, University of Manchester, England, (1976).

2. Azar A.; R. Snee; and K. Habibi: An Epidemiologic Approach to Community Air Lead Exposure Using Personal Air Samplers. Envir Qual Safe Suppl 2:254–260, (1975).

3. Center For Disease Control, United States Department of Health, Education and Welfare (HEW): Lead Poisoning—Tennessee. Morbidity and Mortality Weekly Report 25: 181–188, (1976).

4. Center for Disease Control: Occupational Lead Poisoning—Utah. Morbidity and Mortality Weekly Report 25:181–188, (1976).

5. Chamberlain A.; W. Clough; M. Heard; D. Newton; A. Scott; and A. Wells: Uptake of Inhaled Lead From Motor Exhaust. Postgrad Med Jour 51:790–794, (1975).

6. Chisolm J.: Lead Poisoning. Scientific American 224:15–24, (February, 1971).

7. Conference on Occupational Lead and Arsenic Exposure—A Symposium, Chicago, Ill. (Feb. 24–25, 1975) HEW Publication No. 76–134, (NIOSH).

8. Early Detection of Health Impairment in Occupational Exposure to Health Hazards, World Health Organization, Technical Report Series 571.

9. Fugas M.: Biological Significance of Some Metals as Air Pollutants, Part I: (January 15, 1969–January 15, 1974). Final Report on Agreement No. 02–302–3 to Consumer Protection and Environmental Health Services, PHS, HEW.

10. Griffin T.; F. Coulston; L. Goldberg; H. Wills; J. Russell; and J. Knelson: Clinical Studies on Men Continuously Exposed to Airborne Particulate Lead. Envir Qual Safe Suppl 2:221–240, (1975).

11. Hricko, A.: Working For Your Life: A Woman's Guide to Job Health Hazards, Labor Occupational Health Program/Health Research Group, Berkeley, Calif., (June, 1976).

12. Hunt V.: Occupational Health Problems of Pregnant Women, A Report and Recommendations for the Office of the Secretary, HEW (April, 1975).

13. Infante P.; J. Wagoner: The Effects of Lead on Reproduction. Presented at the Conference on Women and the Workplace, June 17–19, 1976, Washington, D.C. In Press, Proceedings of Conference.

14. Lead Absorption and Lead Poisoning, Lancet 1307:1308, (June 11, 1966).

15. Rabinowitz M.: Lead Contamination of the Biosphere by Human Activity; a Stable Isotope Study. Ph.D. thesis, University of California, Los Angeles, 120 pp.

16. Treatment of Lead Poisoning, Medical Letter, Lancet 14:5–7, (Feb, 4, 1972).

NOTE.—It is hereby certified that the economic impacts of this proposed regulation have been evaluated in accordance with Executive Order 11821, as amended by Executive Order 11949.

Signed at Washington, D.C. this 14th day of February, 1977.

B. M. CONCKLIN,
Acting Assistant Secretary of Labor.

[FR Doc.77-4977 Filed 2-14-77;10:21 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 AGRICULTURE

Commodity Credit Corporation

1976 CROP LOAN COTTON

Final Date of Redemption and Acquisition

All outstanding loans on cotton under Commodity Credit Corporation's (CCC) 1976 Cotton Loan Program mature and are due and payable on the last day of the tenth calendar month from the first day of the month in which the loan (or advance) was made, unless CCC makes demand for payment at an earlier date. If the maturity date falls on a nonworkday for county offices, the date of maturity shall be the next workday. Notice is hereby given that if the borrower or a purchaser of his equity does not redeem the cotton securing any outstanding loan on or before the close of business on the date of maturity and if CCC has not made demand for payment at an earlier date, CCC will, pursuant to the provisions of the loan agreement covering such loan, acquire title to such cotton at the close of business on the maturity date, and title thereto shall, without a sale thereof vest in CCC at that time: *Provided,* That CCC will not acquire title to such cotton if repayment has been mailed to the county ASCS office by letter postmarked (not patron postage meter date stamped) not later than the maturity date. As provided in the loan agreement, CCC will not pay for any market value which the cotton may have in excess of the loan value plus applicable charges and interest. If warehouse receipts representing any such cotton are sent to a local bank at the request of the producer or a purchaser of his equity, the loan value of the cotton plus charges and interest, must be received by the local bank not later than the close of business on the maturity date.

In the event a producer has made a fraudulent representation in the loan documents or in obtaining the loan, the producer shall be personally liable for any amount by which the amount due on the loan exceeds the market value of the cotton securing the loan as of the date title vests in CCC, as determined by CCC. In the event a person who has filed a Form CCC–813 with a county ASCS office fails to redeem the cotton covered by the Form CCC–813, CCC may elect to purchase the cotton on the maturity date and such person shall be liable for any amount by which the amount due on the loan on such cotton exceeds the market value of the cotton as of the maturity date, as determined by CCC.

Effective date. This notice takes effect on February 15, 1977.

Signed at Washington, D.C., on February 7, 1977.

VICTOR A. SENECHAL,
Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc.77–4594 Filed 2–14–77;8:45 am]

Forest Service

FINAL 1976 COOPERATIVE WESTERN SPRUCE BUDWORM PEST MANAGEMENT PLAN

Availability of Draft Environmental Statement Addendum

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Forest Service, Department of Agriculture, has prepared a Draft Environmental Statement Addendum for control of the western spruce budworm in Oregon and Washington, USDA–FS–R6–DES(Adm)–76–7.

The Environmental Statement Addendum concerns the possible treatment of western spruce budworm on 670,380 acres of infested Federal, State, and private lands in Oregon and Washington during the spring and summer of 1977 with carbaryl to suppress the western spruce budworm.

This Draft Environmental Statement Addendum was transmitted to CEQ on February 7, 1977.

Copies are available for inspection during regular working hours at the following locations:

USDA, Forest Service, South Agriculture Bldg., Room 3210, 12th St. & Independence Ave., S.W., Washington, D.C. 20250.
USDA, Forest Service, Pacific Northwest Region, 319 S.W. Pine Street, Portland, Oregon 97204.
Okanogan National Forest, 219 Second Avenue South, Okanogan, Washington 98840.
Wenatchee National Forest, 301 Yakima Street, Wenatchee, Washington 98801.
Bureau of Indian Affairs, 1425 N.E. Irving, Portland, Oregon 97232.
National Park Service, Pacific Northwest Region, 4th and Pike, Seattle, Washington 98101.
Washington State Department of Natural Resources, Public Lands Building Room 201, Olympia, Washington 98504.

A limited number of single copies are available upon request to Regional Forester, T. A. Schlapfer, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208.

Copies of the Draft Environmental Statement Addendum have been sent to various Federal, State, and local agencies as outlined in the CEQ guidelines.

Comments are invited from the public and from the State and local agencies which are authoried to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved for which comments have not been requested specifically.

Comments concerning the action alternatives and requests for additional information should be addressed to Regional Forester, T. A. Schlapfer, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208. Comments must be received April 8, 1977 in order to be considered in the preparation of the final Environmental Statement Addendum.

CURTIS L. SWANSON,
Regional Environmental Coordinator, Planning, Programing, and Budgeting.

[FR Doc.77–4659 Filed 2–14–77;8:45 am]

Rural Electrification Administration

MINNKOTA POWER COOPERATIVE, INC.

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration intends to prepare a Draft Environmental Impact Statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 in connection with certain Federal approvals, required by Minnkota Power Cooperative, Inc., Box 1318, Grand Forks, North Dakota 58201, to provide a new generation facility.

The proposed generating facility consists of one 30 MW combustion turbine to be constructed in Beltrami County near Shooks, Minnesota.

Interested persons are invited to submit comments which may be helpful in preparing the Draft Environmental Impact Statement.

Comments should be forwarded to the Assistant Administrator—Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, with a copy to the borrower whose address was given above. Additional information may be obtained at the borrower's office during regular business hours.

Dated at Washington, D.C., this 10th day of February 1977.

DAVID A. HAMIL,
Administrator.

[FR Doc. 77–4938 Filed 2–14–77;8:45 am]

CIVIL AERONAUTICS BOARD

[Dockets 25137, 29627; Order 77-2-49]

ALLEGHENY AIRLINES, INC.

Order To Show Cause

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 10th day of February, 1977.

By Order 75-11-62, dated November 18, 1975, the Board authorized Allegheny Airlines to temporarily suspend service at Glens Falls, N.Y., and approved an agreement between Allegheny and Air North providing for commuter replacement service at that point. As discussed in greater detail below, the foregoing authorization and approval were made in accordance with the Board's decision in the *Service to Glens Falls Case*, wherein the Board, after denying Allegheny's request to delete the community, found that the public interest required a one-year test of the community's ability to support a suitable pattern of local air service. Allegheny commuter service commenced at Glens Falls on December 1, 1975.

Allegheny has now filed an application in Docket 29627 to delete Glens Falls as a separate point on its Route 97, and a petition therein for Board action on its application by show cause procedures. In support of its application, Allegheny asserts that commuter replacement service at Glens Falls has been a failure. Specifically it maintains that the community has made little use of the commuter flights; that Allegheny has experienced substantial losses in providing the service; and that "the losses Allegheny is sustaining cannot be justified in terms of the de minimis public benefits the service is producing." Allegheny has submitted detailed evidentiary material in support of its contentions.

The County of Warren, N.Y. has filed a consolidated answer to Allegheny's application and petition, in which the County requests that Allegheny's application and petition be denied, or, alternatively, that "public hearings be held on all issues which may properly come before the Board." In support of its position, Warren County maintains that Allegheny has not provided the community with a fair test of its traffic generating potential as required by the Board. It also argues that a number of other important considerations warrant denial of Allegheny's requests, including the contribution that certificated service makes to the development of the Warren County area, the investment that the community has made in the development of the local airport, and the inconvenience that local area travelers would experience if certificated air service was terminated at Glens Falls.

Upon consideration of the pleadings and all relevant facts, in light of the Board's decision in the Service to Glens Falls Case, supra, the Board has tentatively decided to grant Allegheny's deletion request. Our analysis of Allegheny's experience in providing commuter replacement service at Glens Falls shows that Glens Falls has not generated—and is unlikely to generate—traffic sufficient to permit economic operations in response to service well attuned to its needs. Furthermore, the record in the Service to Glens Falls Case, as well as additional evidentiary material submitted by Allegheny, indicates that the community's air transportation requirements can be readily served through the neighboring facility at Albany, N.Y. Accordingly, consistent with Board precedent in similiar circumstances, we tentatively find that the public convenience and necessity require termination of Allegheny's certificate responsibilities at Glens Falls, N.Y.[1]

We have also determined that there is no need for further evidentiary hearings in this proceeding. A substantial evidentiary record has already been developed in this docket on the past and future of certificated air service at Glens Falls. Moreover, the major issue currently before the Board is whether there has been sufficient traffic response to Allegheny's commuter service during the one year test to warrant continued certification. In this regard, the data presented by Allegheny are essentially uncontested and the community's request for continued service goes to the Board's evaluation of these data in light of all the other relevant decisional criteria. In these circumstances, we have decided to direct all interested persons to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein and amending Allegheny's certificate for Route 73 so as to delete Glens Falls, N.Y. therefrom.[2]

BACKGROUND

Glens Falls is located in Warren County, N.Y., about 55 miles north of Albany near the major resort areas of Lake George and Sarasota Springs. Glens Falls receives local air service through the Warren County Airport. In addition, travelers to the area use the more extensive facilities available at the Albany Airport, which is less than an hour's drive from Glens Falls.

The history of certificated air service at Glens Falls, including Allegheny's previous effort to seek deletion of the community, is documented in the original opinions of the judge and the Board in the Service to Glens Falls Case, supra. For present purposes we note that from 1961 to 1972 the community was served on a north-south routing by Mohawk Airlines. In 1972 Mohawk's service responsibilities were assumed by Allegheny following its merger with Mohawk. Less than a year after consummation of the merger, Allegheny filed an application to delete Glens Falls. Following a public hearing, an administrative law judge recommended denial of Allegheny's request. On review, the Board made two determinations that are pertinent here. First, it agreed with the administrative law judge that Allegheny's certificate responsibilities at Glens Falls should not be summarily terminated. In reaching this conclusion, the Board recognized that Glens Falls had experienced traffic generating difficulties in recent years, and that Allegheny's exhibits indicated that Allegheny had sustained losses at Glens Falls.[3] However, the Board found that Allegheny had not offered service responsive to the community's needs, and that in these circumstances, the carrier had not provided the community with a reasonable opportunity to demonstrate that it could support air service at its local airport. Second, the Board stated that it would be prepared to reassess its decision to deny Allegheny's deletion request following the operation of a suitable pattern of experimental air service designed to test the community's traffic generating ability. In connection with service during the test period, the Board stated:

> "In view of our decision not to delete Glens Falls, we would hope that Allegheny would undertake an experimental program of Glens Falls service which will include, at a minimum, (a) direct Glens Falls-New York City service or (b) Glens Falls-Albany service offering reasonable connections with Allegheny's Albany-New York flights. Such service should include morning and evening flights sufficient to permit a Glens Falls-New York traveler to conduct a full day's business and return home in the late afternoon or evening,[12] and should also take into account the community's peak summer service needs. . . . The experimental program should be of at least one year's duration, and should include the peak season through September 1976.[13] The Board will thereafter entertain any further request from the carrier should

[1] See Eastern Airlines Deletion of Bowling Green, Ky., Order 72-7-25, July 7, 1972, aff'd sub nom. Bowling Green-Warren County v. CAB, 479 F. 2d 553 (6th Cir. 1972). See, also, Eastern Airlines Deletion of Rome, Ga., Order 72-1-60; January 18, 1972; Eastern Airlines Waycross Deletion Case, Order 72-5-50, May 12, 1972; Allegheny Airlines Deletion of Marion, Ind., Order 72-10-26, October 10, 1972; Allegheny Airlines Deletion of Lima, Ohio, Order 74-10-52, October 9, 1974, and most recently, Frontier Airlines Deletion of Moab, Utah, Order 76-10-84, October 19, 1976.

[2] Interested persons shall be given 21 days following service of this order to comment on the Board's tentative findings and conclusions. Comments so filed shall conform to the requirements of the Board's Rules of Practice (14 CFR 302) for the filing of documents. Further, since an opportunity to file comments is provided for, petitions for reconsideration of this order will not be entertained.

[3] For example, the record in Docket 25137 indicates that Glens Falls traffic decreased from 21,520 on-line O&D passengers in 1965 to 4,420 such passengers in 1972. In 1973, after Allegheny began serving the community, Glens Falls produced 4,480 on-line O&D passengers. The record in Docket 25137 contains no evidence of profit or loss associated with Mohawk's Glens Falls operations. However, Allegheny's exhibits indicate that Allegheny sustained an operating loss of approximately $41,000 at Glens Falls during the period in which it served the community.

[12] The civic witnesses expressed a need for this type of service. (Tr. 14-15, 119-121, 141-143.)

[13] We do not foreclose, however, continued large-aircraft service by Allegheny should the carrier, upon reappraisal, determine that such service will meet the community's needs on an economic basis.

the coming year's operations establish that Glens Falls service cannot be operated on an economic basis or that continued service to Glens Falls represents an unsound allocation of transportation resources.

In response to the Board's Service to Glens Falls decision, Allegheny subsequently applied for approval of an agreement between Allegheny and Air North providing for Allegheny Commuter service between Glens Falls and Albany to be operated by Air North. The agreement afforded Glens Falls essentially the same type of Allegheny Commuter service provided by Air North at other points on Allegheny's route system.[4] Furthermore, in order to ensure that Glens Falls received the full benefit of such service, Allegheny agreed to staff and to operate the Glens Falls station, and to fully underwrite the costs of the commuter operation. Allegheny further agreed to make monthly cash payments to Air North to cover the cost of acquiring an additional aircraft necessary to provide Glens Falls-Albany service, the additional direct and indirect flight operating expense incurred by such service, and an amount sufficient to afford Air North a predetermined profit. Under the arrangement Allegheny retained all revenues generated by the Glens Falls service.[5]

As noted above, by Order 75-11-62, the Board approved the agreement between the carriers and authorized Allegheny to suspend service at Glens Falls for a period of one year, subject to the provision of Glens Falls-Albany commuter replacement service by Air North.[6] By the terms of the order, Air North was required to provide at least two daily Glens Falls-Albany round trips, of which "at least one morning flight and one evening flight in each direction must provide reasonable connections with Allegheny's Albany-New York flights."

Air North began providing Glens Falls with Allegheny Commuter service on December 1, 1975. Appendix A summarizes Air North's commuter operations, including the number of Glens Falls departures scheduled and operated and the performance factor achieved, for the period in question. Appendix B outlines Air North's Glens Falls-Albany schedules and Allegheny's Albany-New York City schedules, and shows the connecting opportunities available for Glens Falls-New York air travelers. Appendix C shows the scheduled arrival times in New York of the first morning flight from Glens Falls, the departure time of the last evening flight from New York, and the total time in various schedules allows the Glens Falls passenger in New York for the transaction of business. Finally, Appendix D shows (1) total enplanements and deplanements at Glens Falls and (2) the cost of providing commuter service at Glens Falls during the test period.

FINDINGS AND CONCLUSIONS

1. *Service.* Allegheny has provided Glens Falls with a full and fair test of its ability to support local air service at the Warren County Airport. As shown in Appendix B, Air North's initial service pattern consisted of six southbound and four northbound flights between Glens Falls and Albany, well above the minimum required. On March 1, 1976, Air North reduced its southbound service from 6 to 5 daily flights. This pattern of service was maintained with only minor timing adjustments for over 6 months, and significantly, during Glens Falls' peak summer season. On September 16, 1976 Air North reduced service at Glens Falls to two daily round trips. These flights, however, continued to provide early morning departures and late evening arrivals in both directions as required by the Board's original decision.[7]

It is also important to note that Air North's flights were scheduled to provide Glens Falls passengers with excellent connecting opportunities to New York City. As also shown in Appendix B, Air North and Allegheny's coordinated schedules provide at least 10 daily connecting flights between Glens Falls and New York City during the first nine months of the trial period. Moreover, the Allegheny/Air North flights were arranged to permit single-day, round-trip travel in both directions. For example, as reflected in Appendix C, during the March 1–September 15 period, a passenger originating at Glens Falls could spend approximately 10 hours in New York and return on the same day, while a passenger originating in New York could spend approximately 8 hours in Glens Falls and return the same day. The elapsed time under the schedules now in effect offer a Glens Falls passenger 6 hours in New York, and New York City passenger 9 hours in Glens Falls.

In sum, the evidence before us demonstrates that Glens Falls has received frequent commuter service to and from Albany consisting of at least 4½ daily round trips throughout most of the trial period. These schedules were well spaced throughout the day in both directions, and were tailored to accomodate any reasonable travel demand, including reasonably convenient single-day round-trip service to and from New York City via connections at Albany.

However, the community claims that Allegheny has both discouraged the use of commuter service and has failed to provide reasonably usable New York City service by making it difficult to obtain bookings on the Albany-New York legs of Glens Falls-New York flights. In support of its allegation, Warren County has submitted a survey of telephonic requests made by Glens Falls travelers for reservations on Allegheny's Albany-New York flights. In our judgment, however, the community's contentions are not supported by the facts. First, there has been no showing that Glens Falls travelers experienced difficulty in booking Albany-New York flights between December 26, 1975 and June 27, 1976. This is a pertinent consideration, because, as we shall discuss in the next section, at no time during that seven-month period did Glens Falls traffic approach levels necessary to support the Allegheny Commuter service. Second, the survey cites to only seven instances during the remainder of the survey period (which includes the peak summer travel season) where a Glens Falls traveler was unable to obtain a reservation for an Albany-New York flight—and in each instance the reservation was requested on extremely short notice, *i.e.* for same day or next day transportation. It should be appreciated that travelers in many markets receiving the benefits of excellent service experience difficulty in obtaining reservations on scheduled flights where, as here, they have attempted to make reservations on short notice during peak travel periods. In short, there has been no showing that Glens Falls travelers have experienced undue difficulty in obtaining Glens Falls-New York air transportation, or, equally important, that such difficulties as may exist have had a significant impact on traffic generation at Glens Falls. Moreover, there has been no showing that Allegheny has otherwise discouraged use of the commuter service at Glens Falls, as the community alleges. Indeed, uncontested data submitted by Allegheny show that the carrier has devoted substantial effort and expense in promoting the Glens Falls commuter program.[8]

2. *Traffic response and cost of providing service.* Traffic response at Glens Falls has not been, and is not likely to be, sufficient to permit air service on an economic basis. As shown in Appendix D, 4042 passengers used the service during

[4] For example, Air North uses the Allegheny trade name "Allegheny Commuter"; its services are advertised and promoted by Allegheny; Allegheny furnishes computerized telephone reservations service; and provides handling assistance as well as through fares.

[5] Allegheny stated in its application that it was necessary to purchase an additional Twin Otter aircraft to operate Glens Falls-Albany servcie because Air North's existing fleet could not be stretched to cover Glens Falls without serious disruption of Air North' existing services.

[6] By Order 76-11-91, dated, Nov. 16, 1976, the Board extended its approval and authorization pending final Board action on Allegheny's application to delete Glens Falls in this proceeding.

[7] For the entire period in question, Air North achieved a performance factor of approximately 88 percent. During the peak summer season (May through August) the carrier's performance factor exceeded 91 percent. In our view the carrier's operational reliability has been good, taking into consideration data showing that approximately 45 percent of Air North's flight cancellations were attributable to adverse weather conditions.

[8] As reflected in Appendix I of Allegheny's petition, the carrier spent approximately $7,000 promoting the commuter service during the first eight months of the trial period. Promotional activities included newspaper and radio advertising, direct mailings to area professional and business organizations, and sales calls by Allegheny's sales staff. Allegheny states that it "received good cooperation from the local Chamber of Commerce which undertook a mailing of commuter timetables to its membership, and the media and news coverage of the new service was excellent." Petition, p. 4.

the first 10 months of the trial period. This figure translates into an overall average of only 6.4 enplanements per day, and less than 1.5 enplanements per departure, at Glens Falls. Traffic response during the trial period, as in the past, was greatest during the summer months. However, at no time during the test period was traffic reasonably responsive to the multi-frequency service the community was receiving. Even during the June–August peak period, enplanements at Glens Falls averaged only about 8 per day and only 1.9 per departure. Indeed, traffic never reached three passengers a departure at Glens Falls itself on a monthly basis, and exceeded that figure in the northbound direction only during one month—August. However, in the following month traffic declined to averages approximating those for the entire period, i.e. 5 daily enplanements and only 1.5 per departure at Glens Falls. Moreover, since Glens Falls traffic has historically declined after the conclusion of the summer travel season, there is no reason to believe that Glens Falls traffic will increase during the remainder of the year.

On its face, the low levels of Glens Falls traffic experienced during the past year strongly suggest that Glens Falls cannot support commuter service at its own airport. This inference is confirmed by data submitted by Allegheny showing that it has sustained substantial losses in underwriting commuter service at Glens Falls. In this connection, the carrier estimates that the commuter operation produced a cash loss of about $225,000 after the first ten months of operation—or about $47 for each Glens Falls passenger transported—and that such losses may be expected to increase by the end of the one-year trial period. Allegheny's figures also show that the commuter service produced cash losses in every month of the period, with monthly losses ranging from a low of $15,434 in September, to a high of $39,103 in December, 1975. Allegheny also estimates that it suffered a cash loss of about $60,000 during the June–August period when, as noted, Glens Falls' traffic reached its highest levels. Warren County raises no objections to the financial estimates submitted by Allegheny.

In sum, it is clear that at no time during the test period have traffic volumes approached the levels that are required to sustain service at Glens Falls and, as we now discuss, in view of the attraction of alternate air transportation service, there is no basis for concluding that they will ever be able to do so in the future.

3. *Alternate service.* Glens Falls and the surrounding area have reasonable access to the national transportation network through the neighboring airport facilities at Albany. As indicated, the Albany airport is located approximately 50 miles from Glens Falls, and can be reached by private automobile in less than an hour. Excellent ground transportation is available between Glens Falls and the Albany airport. In this connection, it is significant to point out that since the issuance of the Board's decision in the Service to Glens Falls Case, limousine service has been available in the Glens Falls area affording a reasonable alternative to use of the private automobile.[9] Furthermore, the Albany airport is classified as a medium hub and is served by Allegheny and American Airlines with numerous daily departures (primarily with jet equipment) and with numerous single-plane frequencies in a variety of domestic markets. It also appears that Albany meets whatever need Glens Falls travelers may have for New York City service; at the present time, Allegheny offers seven daily nonstop round trips, all with jet aircraft.[10] In these circumstances, it is not surprising that the evidence is that most Glens Falls travelers now use Albany in preference to the more limited service available at the Warren County Airport.[11]

In our judgment, Allegheny's dismal experience in providing reliable and satisfactory commuter service, coupled with the availability of alternate air transportation at Albany, provides a definitive basis for the following conclusions regarding certificated service at Glens Falls. First, if certificated service were terminated at Glens Falls, the Albany airport would readily service the air transportation needs of the Glens Falls area, and would do so without placing any undue inconvenience on area travelers.[12] Conversely, as Allegheny argues, in view of the accessibility and proximity of the excellent Albany air service, a continuation of local service at Glens Falls will produce benefits that are simply too limited, when compared with the costs involved, to justify a continuation of certificated service at that point.

[9] Allegheny's exhibits show that the limousine service is well patronized. For example, during May and June 1976 the local limousine operator carried over 500 round trips passengers between Glens Falls and the Albany airport, which amounted to about 65 percent of Air North's Glens Falls–Albany O&D traffic for the same period. The limousine fare is only $12 one way, and $18 round trip, or about one-half the one-way air fare and one-third the round-trip air fare.

[10] OAG, Nov. 1, 1976.

[11] Allegheny's data shows that Glens Falls area travelers preferred to use the more extensive air transportation services available at the Albany airport during the commuter experiment. For example, a travel agent survey conducted by Allegheny in June, 1976 shows that notwithstanding 4½ Glens Falls-Albany round trips by Air North, nearly 92 percent of the travel agency tickets were for Albany flights. These results are consistent with those reflected in Allegheny's exhibits in the earlier phase of the Service to Glens Falls Case, wherein a survey of Allegheny's Glens Falls area telephone reservations for April, 1973 showed that 83 percent of such reservations resulted in a boarding at Albany. Similarly 90 percent of all tickets issued by Glens Falls travel agents for the February 11–March 10, 1972 period were for use at Albany. See Exs. A1–414, 415, 416, Docket 25137.

[12] Warren County argues that alleged parking lot deficiencies at the Albany airport are reasons for denying Allegheny's deletion application. We disagree. It does not appear that these alleged deficiencies significantly affect the use of the airport. As noted above, the vast majority of Glens Falls travelers now use the Albany airport, and, presumably the parking lot.

Environmental and Energy Considerations

Our decision in this proceeding should have a generally beneficial effect on the environment. Elimination of Allegheny's underutilized commuter service will result in some decrease in operations with a positive impact on noise and air pollution. These benefits should also offset the secondary effects (principally exhaust pollution) that are likely to flow from the relatively small increase in surface travel between Glens Falls and the Albany Airport. Furthermore, we note that no party has argued that any action that we might take would come within the terms of the National Environmental Policy Act of 1969. In all these circumstances, we have tentatively concluded that our decision will not result in a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA.

The elimination of Allegheny's underutilized commuter operation should also result in a decrease in aviation fuel consumption, and should make a positive contribution to the efficient utilization of fuel resources. These beneficial effects on energy conservation and efficiency should offset any adverse effects thereon that are likely to result from the increase in surface transportation between Glens Falls and Albany. Accordingly, we have also tentatively included that our decision in this proceeding will not have an adverse impact on energy conservation and efficiency within the meaning of the Energy Policy and Conservation Act of 1975.

Conclusion

Our 1975 decision recognized that certificated air service to Glens Falls had, in large measure, been operated at a loss and that the neighboring facility at Albany was meeting some, or perhaps all, of Glens Falls' need for air service. We also could not ignore that Allegheny's certificate requires only one daily round trip and that this constitutes some evidence that the community has historically been considered as a low traffic generating point even among small communities. Nonetheless, we were unprepared to sanction the termination of a certificated carrier's service obligation where, as a result of poor service clearly within the carrier's control, the community had not been offered a fair test of its traffic-generating capability. Simply stated, the community has now received that fair test—and, indeed, more than a fair test—and has failed.

In reaching today's decision we have carefully considered the community's contention that Allegheny's deletion request should be denied because a termination of service at the Warren County Airport will adversely affect the development of an industrial park site, now planned for construction near the airport. We are also mindful of our recent expression of views in Application of Frontier Airlines to delete Paris and McAlester, Order 76–10–150, October 29, 1976, that we do not wish to delete points from the certificated route

map at this time where such communities might be candidates for some new form of subsidized service, either as a result of legislative change or future Board policy action. However, as the Board stated in one of its earlier deletion decisions:

> * * * [T]he cost of providing air services must be assigned to the various beneficiaries * * *.[13]

Since Allegheny is currently unsubsidized, and Glens Falls is, in any event, ineligible for subsidy, the costs of continuing uneconomic service at Glens Falls must be borne by Allegheny and, ultimately, by the traveling public in the form of higher fares or poorer service. Adoption of the community's position would be tantamount to requiring the traveling public to assume the cost of underwriting the development of Glens Falls' industrial park. While the Board traditionally examines the impact of its action on the overall economic well-being of the community in deciding deletion cases, we are unable to conclude that termination of certificated service will have a material adverse effect on the overall growth and development of Glens Falls.[14]

This is not to say, of course, that air service through the local airport could not make some contribution to the area's development or that, as we have indicated in the past, we would be unwilling to use our regulatory authority as a means of assisting a community which sought to provide a financial guarantee for air service which it viewed as necessary.[15] However, our examination of Glens Falls' air service needs convinces us, first, that the traveling public in general should not be burdened with the cost of continued air service and, second, that Glens Falls is not a likely candidate for air service underwritten by the Federal Treasury in light of any legislative changes or future policy action which might arise. In such circumstances, deletion at this time is appropriate and a grant of Allegheny's application is required by the public convenience and necessity.[16]

Accordingly, *it is ordered*, That:

1. All interested persons are directed to show cause why the Board should not issue an order making final the tentative findings and conclusions stated herein and amending the certificate of public convenience and necessity of Allegheny Airlines, Inc., for Route 97 so as to delete Glens Falls, N.Y., therefrom, effective April 12, 1977.

2. Any interested person having objection to the issuance of an order making final any of the proposed findings, conclusions, or certificate amendments set forth herein shall, within 21 days after the service of a copy of this order, file with the Board, and serve upon all parties to this proceeding, a statement of objections together with a summary of testimony, statistical data, and other evidence expected to be relied upon to support the stated objections;

3. If timely and properly supported objections are filed, full consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board;

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Board may proceed to enter an order in accordance with the tentative findings and conclusions set forth herein; and

5. A copy of this order shall be served upon The County of Warren, N.Y.; Airport Manager, Warren County Airport; the New York State Department of Transportation; the Postmaster General and Allegheny Airlines, Inc., who are hereby made parties to the proceeding in Docket 29627.

This order shall be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX A.—*Aircraft departures at Glens Falls*

Period	Departures		Performance factor percent
	Scheduled	Performed	
December 1975	328	283	86.3
January 1976	327	282	86.2
February 1976	310	266	85.8
March 1976	279	240	86.0
April 1976	270	247	91.5
May 1976	279	255	91.4
June 1976	270	245	90.7
July 1976	280	261	93.2
August 1976	278	249	89.6
September 1976	202	155	76.7
Total	2,823	2,483	88

[13] *Piedmont Aviation Deletion of Southern Pines-Pinehurst-Aberdeen, N.C.*, Order 72-4-97, April 18, 1972.

[14] We note, in this connection, that between 1970 and 1972 the community continued to grow and prosper notwithstanding the total interruption in service due to the Mohawk strike and the substantial reduction in service thereafter. Exs. WC-106 and 107; Tr. 19-22, Warren County Brief pp. 15-16. Furthermore, testimony establishes the good health of the community continued through 1973 in the face of service which the Board found to be substandard. Tr. 80, 132. Cf: Tr. 140.

[15] See, by way of example, Application of Ozark Air Lines, Order 72-3-43, March 14, 1972, and orders cited therein, where the Board granted Ozark exemption authority to provide service to Lake of the Ozarks under a plan whereby the local business interests financially guaranteed an experimental pattern of seasonal service. See also Application of Frontier Airlines to delete Moab, Utah, Orders 76-8-159, August 31, 1976 and 76-10-84, October 19, 1976, where we discussed a suspension of certificated service where the commuter replacement carrier expended significant advertising funds on its own in an attempt to promote service and the State of Utah actually subsidized the commuter operation.

[16] For similar reasons, we do not share the community's view that capital expenditures at the Warren County Airport justify a continuation of local air service. Indeed, in view of our tentative finding that further service by Allegheny has virtually no prospects for success, we believe that a continuation of such service would be counterproductive since it would tend to encourage further expenditures by the Federal government and the local community for needless airport development.

APPENDIX B.—*Air North and Allegheny Glens Falls-Albany-New York Schedules, Dec. 1, 1975—Present*

Effective date of schedule:							
Dec. 1, 1976	Leave Glens Falls	0615	0910	1145	1325	1735	1850
	Arrive Albany	0640	0935	1210	1350	1800	1915
	Leave Albany	0700	0955	1230/1255	1635	1820	2010
	Arrive New York City	0745	1040	1315/1345	1725	1905	2055
Mar. 1, 1976	Leave Glens Falls	0605	0900	1205	1325	1810	
	Arrive Albany	0630	0925	1230	1350	1835	
	Leave Albany	0710	1045	1330	1410	1921	
	Arrive New York City	0804	1139	1424	1504	2015	
Sept. 15, 1976	Leave Glens Falls	0922	1836				
	Arrive Albany	0942	1856				
	Leave Albany	1045	1921				
	Arrive New York City	1139	2015				
Oct. 31, 1976	Leave Glens Falls	0903	1856				
	Arrive Albany	0923	1916				
	Leave Albany	0943	2048				
	Arrive New York City	1030	2135				
Dec. 1, 1976	Leave New York City	0840	1334	1344	1700	2015	
	Arrive Albany	0920	1420	1430	1744	2059	
	Leave Albany	1015	1616		1815	2125	
	Arrive Glens Falls	1040	1641		1840	2150	
Mar. 1, 1976	Leave New York City	0833	1130	1230	1450	1530	1750
	Arrive Albany	0930	1227	1337	1547	1627	1847
	Leave Albany	0955	1247	1616		1910	
	Arrive Glens Falls	1020	1312	1641		1935	
June 1, 1976	Leave New York City	0835	1045	1530	1750		
	Arrive Albany	0932	1142	1627	1847		
	Leave Albany	1002	1247	1647	1910		
	Arrive Glens Falls	1027	1312	1712	1935		
Sept. 15, 1976	Leave New York City	0835		1530			
	Arrive Albany	0932		1627			
	Leave Albany	1015		1721			
	Arrive Glens Falls	1035		1741			
Oct. 31, 1976	Leave New York City		0520	1630			
	Arrive Albany		0900	1710			
	Leave Albany	0930	1015	1741			
	Arrive Glens Falls	0950	15035	101			

APPENDIX C.—*Elapsed time between the first morning arrival and last evening departure under the Air North Allegheny schedules serving Glens Falls and New York City*

Period	First Glens Falls arrival in New York City	Last New York City departure for Glens Falls	Elapsed time available in New York City (hours and minutes)
Dec. 1, 1975 to Feb. 29, 1976	0745	2015	12:30
Mar. 1 to Apr. 24, 1976	0604	1750	9:46
Apr. 25 to Sept. 14, 1976	0500	1750	9:50
Sept. 15 to Oct. 30, 1976	1139	1530	3:51
Oct. 31, 1976 to present	1030	1630	6:00
	First New York City arrival in Glens Falls	**Last Glens Falls departure for New York City**	**Elapsed time available in New York City (hours and minutes)**
Dec. 1, 1975 to Feb. 29, 1976	1040	1850	8:10
Mar. 1 to Apr. 24, 1976	1020	1810	7:50
Apr. 25 to Sept. 14, 1976	1027	1810	7:43
Sept. 15 to Oct. 30, 1976	1035	1836	8:01
Oct. 31, 1976 to present	0950	1856	9:06

APPENDIX D.—*Summary of traffic and financial results for the Glens Falls-Albany Allegheny commuter service*

Period	Traffic response						Financial results		
	Glens Falls-Albany			Albany-Glens Falls					
	Total	Per day	Per departure	Total	Per day	Per departure	Revenues	Expenses	Profit (loss)
1975—									
December	195	6.29	1.29	170	5.48	1.29	$8,912	$30,103	$(30,191)
1976									
January	180	5.81	1.21	160	5.16	1.19	8,803	35,173	(26,370)
February	216	7.45	1.52	184	6.34	1.48	10,077	33,765	(23,688)
March	168	5.42	1.28	154	4.97	1.41	10,045	34,275	(23,030)
April	190	6.33	1.43	157	5.23	1.38	12,432	35,416	(22,984)
May	166	5.35	1.23	223	7.19	1.80	11,701	34,123	(22,422)
June	185	6.17	1.14	210	7	1.84	10,320	32,751	(22,431)
July	253	8.16	1.79	316	10.2	2.63	15,370	35,751	(20,375)
August	269	8.68	2.05	366	11.8	3.10	16,157	33,241	(17,084)
September	122	4.07	1.63	158	5.27	1.03	7,760	23,194	(15,434)
Totals	1,944	6.37	1.45	2,098	6.86	1.81	112,183	336,792	224,609

[FR Doc.77-4782 Filed 2-14-77;8:45 am]

[Docket No. 26603; 26838; Order 77-2-45]

EASTERN, AIR LINES, INC.

Order of Suspension Regarding Increased Freight Rates Between Puerto Rico and Virgin Islands

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 9th day of February, 1977.

By tariff revisions [1] issued January 14 and marked to become effective February 14, 1977, Eastern Air Lines, Inc. (Eastern) proposes to increase, with certain exceptions, most bulk general and specific commodity rates and charges and some container general commodity rates and charges between U.S. points, on the one hand, and Ponce, San Juan, St. Croix, and St. Thomas, on the other hand, generally as follows:

1. Bulk general and specific commodity rates by 9 percent.

2. Container general commodity rates and charges between San Juan and Boston, Hartford, New York/Newark, and Philadelphia by 3 percent.

3. Bulk general and specific commodity express rates by 9 percent, maintaining the current 130 percent premium over regular rates.

Exceptions include the bulk minimum charges per shipment, which are not to be increased, and bulk general commodity rates in the Boston, Hartford, New York, and Philadelphia markets, which would be increased by about 12 percent.[2]

Eastern contends, inter alia, that the proposal, which is expected to yield an additional $1 million annually, is necessary to reduce freight operating losses in these markets from $3.85 million to $2.8 million annually.

All the proposed increased rates and charges come within the scope of either the investigation in Puerto Rico/Virgin Islands Freight Rates, Docket 26603, or the Priority Reserved Air Freight Rates Investigation (PRAFRI), Docket 26838, and their lawfulness will be determined in these proceedings. The issue now before the Board is whether to suspend the proposed rates or to permit them to become effective pending investigation.

Upon consideration of all relevant factors, the Board concludes that all rate increases applicable to exception-rated commodities will be suspended because

[1] Revisions to Air Tariffs Corporation, Agent, Tariffs C.A.B. Nos. 57 and 68.

[2] These four markets were not included in Eastern's previous 3-percent increase effective December 1, 1976.

they would exceed costs.[3] The remaining increases do not appear excessive and the Board will permit them to become effective.

Accordingly, pursuant to the Federal Aviation Act of 1958, and particularly Sections 204(a), 403, 404, and 1002 thereof,

It is ordered, That:

1. Pending hearing and decision by the Board, the increased rates, charges, and provisions described in Appendix A hereto are suspended and their use deferred to and including May 14, 1977, unless otherwise ordered by the Board, and that no change be made therein during the period of suspension, except by order or special permission of the Board; and

2. Copies of this order shall be filed with the tariffs and served upon all parties in Docket 26603.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

APPENDIX A.—TARIFF C.A.B. No. 57, ISSUED BY AIR TARIFFS CORPORATION, AGENT

1. All increased general commodity rates, minimum charges, and provisions on the pages lised in paragraph 3 insofar as they would be used in the determination of rates and minimum charges in conjunction with exception ratings to general commodity rates in Item Nos. 1, 3, and 4 in Section 4 on behalf of "EA".

2. All increased Eastern air express general commodity rates, minimum charges, and provisions on the pages listed in paragraph 3 insofar as they would be used in the determination of rates and minimum charges in conjunction with exception ratings to general commodity rates in Item No. 1 in Section 4 on behalf of "EA".

3. Pages which contain rates, charges, and provisons suspended in paragraphs 1 and 2 above:

14th Revised Page 29
14th Revised Page 30
15th Revised Page 31
15th Revised Page 32
15th Revised Page 33
15th Revised Page 34
7th Revised Page 35
17th Revised Page 36

[FR Doc.77-4783 Filed 2-14-77;8:45 am]

[Docket No. 30255]

TRANS-MEDITERRANEAN AIRWAYS, S.A.L. FOREIGN AIR CARRIER PERMIT

Postponement of Hearing

In response to a motion by Trans-Mediterranean Airways, S.A.L. objecting to holding the hearing in this proceeding immediately following the prehearing conference notice is hereby given that the hearing in the above-entitled matter now scheduled for February 15, 1977 (42 FR 4880, January 26, 1977) is postponed until February 24, 1977, at 9:30 a.m. (local time) in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue, NW., Washtington, D.C., before the undersigned administrative law judge.

The prehearing conference will be held on February 15, 1977, as scheduled.

Dated at Washington, D.C., February 9, 1977.

WILLIAM A. KANE, JR.,
Administrative Law Judge.

[FR Doc.77-4779 Filed 2-14-77;8:45 am]

[3] Industry-average costs, as adopted by the administrative law judge in the Domestic Air Freight Rate Investigation, Docket 22859, and updated for cost increases during the 12-month period ended September 30, 1976. See Orders 76-12-151 and 76-11-146. Exception-rated commodities are charged percentages of the general commodity rate. Exception rates which are suspended, together with the current exception rating stated as a percentage of the general commodity rate, are as follows:

Commodity:	Percentage
Live animals	125
Uncremated human remains	125
Articles of extraordinary value	[1] 200

[1] Of the under 100-lb rate.

DEPARTMENT OF COMMERCE

Bureau of the Census

CENSUS ADVISORY COMMITTEE ON THE BLACK POPULATION FOR THE 1980 CENSUS

Public Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C., Appendix I (1974)), notice is hereby given that the Census Advisory Committee on the Black Population for the 1980 Census will convene on March 11, 1977 at 9:00 a.m. The Committee will meet in Room 2424, Federal Building 3, at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on the Black Population for the 1980 Census is composed of 21 members appointed by the Secretary of Commerce. It was established in October 1974 to advise the Director, Bureau of the Census, on such 1980 census planning elements as improving the accuracy of the population count, recommending subject content and tabulations of special use to the black population, and expanding the dissemination of census results among present and potential users of census data in the black population.

The agenda for the meeting is: (1) Current status of the 1980 census planning; (2) race, ethnic origin, and language questions; (3) Camden, N.J. pretest census—report on operations, and Committee members' observations; (4) Oakland, California pretest census; (5) affirmative action; (6) Census Bureau's Public Information Office plans for the 1980 census; and (7) Committee review and discussion of recommendations.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons wishing further information concerning these meetings or who wish to submit written statements may contact Clifton S. Jordan, Deputy Chief, Demographic Census Staff, Bureau of the Census, Room 3779, Federal Building 3, Suitland, Maryland. (Mailing address: Washington, D.C. 20233) Telephone: 301-763-5169.

Dated: February 10, 1977.

ROBERT L. HAGAN,
Acting Director,
Bureau of the Census.

[FR Doc.77-4686 Filed 2-14-77;8:45 am]

SURVEY OF RETAIL SALES, PURCHASES, AND INVENTORIES

Determination

In accordance with title 13, United States Code, sections 182, 224, and 225, and due notice of consideration having been published January 3, 1977 (42 FR 59), I have determined that certain 1976 annual data for retail trade are needed to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data are also applicable to a variety of public and business needs. This annual survey is a continuation of similar surveys conducted each year since 1951. It provides, on a comparable classification basis, data covering 1975 and 1976 year-end inventories and 1976 annual sales and purchases. These data are not publicly available on a timely basis from nongovernmental or other governmental sources.

Reports will be required only from a selected sample of retail firms in the United States. The sample will provide, with measurable reliability, statistics on the subjects specified above. Reports will be requested from a sample of stores on the basis of their sales size, selection in existing census list (mail) sample panels, and location in census designated sample areas.

Report forms will be furnished to the firms covered by the survey and will be due 20 days after receipt. Copies of the forms are available on written request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed that an annual survey be conducted for the purpose of collecting these data.

Dated: February 10, 1977.

ROBERT L. HAGAN,
Acting Director,
Bureau of the Census.

[FR Doc.77-4687 Filed 2-14-77;8:45 am]

Maritime Administration

[Docket No. S-546]

CHAS. KURZ AND CO., INC., ET AL.

Multiple Applications

Notice is hereby given that the subject companies, Chas. Kurz & Co., Inc.,

Keystone Shipping Co., Keystone Tankship Corporation, Fredericksburg Shipping Company, have applied for written permission under section 805(a) of the Merchant Marine Act, 1936, as amended (the Act), in connection with their applications for operating-differential subsidy to engage in bulk cargo carrying service in the U.S. foreign trade, principally between the United States and the Union of Soviet Socialist Republics, to expire on or before December 31, 1977, unless extended, or upon completion of a voyage(s) then in progress. Previous written permission under section 805(a) was granted to the applicants in connection with their applications for subsidy by the Assistant Secretary for Maritime Affairs/Maritime Subsidy Board on December 16, 1976, for affiliated or associated companies to operate up to a total of 31 U.S. flag bulk cargo vessels in specified U.S. coastwise trades.

The applicants now request written permission under section 805(a) for (1) an affiliate to enter into a Vessel Furnishing Agreement under which a proposed self-unloading dry bulk carrier—to be bareboat chartered by the affiliate from the owner—will be used by a U.S. citizen company to transport its dry bulk commodities between U.S. Pacific, Gulf, and East Coast ports; and (2) Keystone Shipping Co. to serve as managing agent for the proposed bulk carrier.

Any person, firm, or corporation having any interest (within the meaning of section 805(a)) in such applications and desiring to be heard on issues pertinent to section 805(a) and desiring to submit comments or views concerning the applications must, by close of business on February 23, 1977 file same with the Secretary, Maritime Administration/ Maritime Subsidy Board, in writing, in triplicate, together with petition for leave to intervene which shall state clearly and concisely the grounds of interest, and the alleged facts relied on for relief.

If no petitions for leave the intervene are received within the specified time or if it is determined that petitions filed do not demonstrate sufficient interest to warrant a hearing, the Maritime Administration will take such action as may be deemed appropriate.

In the event petitions regarding the relevant section 805(a) issues are received from parties with standing to be heard, a hearing will be held, the purpose of which will be to receive evidence under section 805(a) relative to whether the proposed operations (a) could result in unfair competition to any person, firm, or corporation operating exclusively in the coastwise or intercoastal service, or (b) would be prejudicial to the objects and policy of the Act relative to domestic trade operations.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By Order of the Maritime Subsidy Board.

Dated: February 10, 1977.

JAMES S. DAWSON, JR.,
Secretary.

[FR Doc.77-4786 Filed 2-14-77;8:45 am]

National Oceanic and Atmospheric Administration

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Meeting

Notice is hereby given of a meeting of the New England Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265).

The New England Fishery Management Council will have authority, effective March 1, 1977, over fisheries within the fishery conservation zone adjacent to the States of Maine, New Hampshire, Massachusetts, Rhode Island, and Connecticut. The Council will, among other things, prepare and submit to the Secretary of Commerce fishery management plans with respect to fisheries within its area of authority, prepare comments on applications for foreign fishing, and conduct public hearings.

This meeting of the Council will be held on March 8 and 9, 1977, from 10:00 a.m. to 5:00 p.m., and 9:00 a.m. to 3:00 p.m., respectively, at the Holiday Inn, Junction of Routes 1 and 128, Peabody, Massachusetts.

PROPOSED AGENDA

1. Review of Council management plans: Cod, Haddock and Yellowtail Flounder.
2. Review of foreign offshore fishing activities.
3. Review of Council staff and office matters.
4. Review of foreign fishing permit applications, if any.
5. Other management business.

This meeting is open to the public and there will be seating for approximately 30 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. Interested members of the public should contact:

Mr. Spencer Apollonio, Executive Director, New England Fishery Management Council, c/o National Marine Fisheries Service, State Fish Pier, Gloucester, Massachusetts 01930.

on or about 10 days before the meeting to receive information on changes in the agenda, if any.

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 provide written comments should do so by submitting them to Mr. Apollonio 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.

WINFRED H. MEIBOLM,
Associate Director,
National Marine Fisheries Service.

FEBRUARY 10, 1977.

[FR Doc.77-4764 Filed 2-14-77;8:45 am]

MARINE MAMMALS

Receipt of Application for a General Permit

Notice is hereby given that the following applications have been received to take marine mammals incidental to the course of commercial fishing operations as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the regulations thereunder.

Hokuyo Longline—Gillnet Association, Zenkeiren Building, 7, Hirakawacho 2, Chiyoda-ku, Tokyo, Japan, has applied for a general permit, Category 5, "Other Gear;" and

Japan Deep Sea Trawlers Association, Daito Building, 6/F, Ogawa-che, 3-6, Kanda, Chiyoda-ku, Tokyo, Japan, has applied for a general permit, Category 1, "Towed or Dragged Gear;"

The National Federation of Medium Trawlers, Showa Kaikan, 3-2, Kasumigaseki 3, Chiyoda-ku, Tokyo, Japan, has applied for a general permit, Category 1, "Towed or Dragged Gear."

Copies of the applications are available for review in the following offices:

Director, National Marine Fisheries Service, 3300 Whitehaven Street, N.W., Washington, D.C.

Regional Director, National Marine Fisheries Service, Northwest Region, 1700 Westlake Avenue North, Seattle, Washington 98109.

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99801 (Tel. 907/586-7221).

Interested parties may submit written views on this application on or before March 17, 1977, to the Director, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235.

Dated: February 10, 1977.

ROBERT J. AYERS,
Acting Assistant, for Fisheries Management, National Marine Fisheries Service.

[FR Doc.77-4682 Filed 2-14-77;8:45 am]

CONSUMER PRODUCT SAFETY COMMISSION

PRIVACY ACT OF 1974

System of Records Amendment; Adoption of New Routine Use and Corrections to Notice

In the FEDERAL REGISTER of December 17, 1976 (41 FR 55220, FR Doc. 76-

37150), the Consumer Product Safety Commission proposed, in accordance with section 3(e)(11) of the Privacy Act of 1974, 5 U.S.C. 552a(e)(11), to adopt the routine use set forth below. This routine use was proposed in order to provide for the disclosure of accident reports made by Commission personnel to other Federal, State or local agencies as authorized by section 29(e) of the Consumer Product Safety Act, as amended. The Commission invited public comment on the proposed routine use. No comments were received.

Accordingly, the following routine use for Commission system of records CPSC–1, Accident Reports (In-Depth) as published in the FEDERAL REGISTER, September 2, 1976 (41 FR 37292) is hereby adopted:

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Records may be provided to another Federal, State or local agency or authority engaged in activities relating to health, safety or consumer protection in accordance with section 29(e) of the Consumer Product Safety Act, as amended (Pub. L. 92–573, as amended by Pub. L. 94–284, 15 U.S.C. 2078(e)).

In addition, Commission system of records CPSC–1, as published in the FEDERAL REGISTER of September 2, 1976 contains an error in the paragraph titled "Retrievability". That paragraph should read as follows:

Retrievability:

Records are retrievable by a coded number which indicates the date of assignment of the investigation, the Commission unit requesting the report, the product involved and a sequential number assigned to the investigation.

Dated: February 4, 1977.

Effective date: February 15, 1977.

SADYE E. DUNN,
Secretary, Consumer Product Safety Commission.

[FR Doc.77-4692 Filed 2-14-77;8:45 am]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEPARTMENT OF DEFENSE WAGE COMMITTEE

Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, effective January 5, 1973, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, April 5, 1977; Tuesday, April 12, 1977; Tuesday, April 19, 1977; and Tuesday, April 26, 1977 at 9:45 a.m. in Room 1E801, The Pentagon, Washington, D.C.

The Committee's primary responsibility is to consider and submit recommendations to the Assisted Secretary of Defense (Manpower and Reserve Affairs) concerning all matters involved in the development and authorization of wage schedules for Federal prevailing rate employees pursuant to Pub. L. 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Pub. L. 92–463, the Federal Advisory Committee Act, meetings may be closed to the public when they are concerned with matters listed in section 552(b) of Title 5, United States Code. Two of the matters so listed are those related solely to the internal personnel rules and practices of an agency, (5 U.S.C. 552(b)(2)), and those involving trade secrets and commercial or financial information obtained from a person and privileged or confidential (5 U.S.C. 552(b)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy) hereby determines that this meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552(b)(2)), and the detailed wage data considered by the Committee during its meetings have been obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552(b)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the Chairman concerning matters believed to be deserving of the Committee's attention. Additional information concerning this meeting may be obtained by contacting the Chairman, Department of Defense Wage Committee, Room 30281, The Pentagon, Washington, D.C.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

FEBRUARY 10, 1977.

[FR Doc.77-4784 Filed 2-14-77;8:45 am]

LABOR-MANAGEMENT ADVISORY COMMITTEE OCCUPATIONAL SAFETY AND HEALTH

Establishment, Organization, and Functions

In accordance with the provisions of Public Law 92–463, Federal Advisory Committee Act, notice is hereby given that the Labor-Management Advisory Committee on Occupational Safety and Health has been found to be in the public interest in connection with the performance of duties imposed on the Department of Defense by law. The Office of Management and Budget has also reviewed the justification for this advisory Committee and concurs with its establishment.

The nature and purpose of the Labor-Management Advisory Committee on Occupational Safety and Health is indicated below:

The committee will be constituted and will serve as the consultative body to the Office of the Secretary of Defense and the Department of Defense Components at the national level pursuant to the guidelines set forth in 29 CFR 1960.17, as prescribed in Executive Order 11807. The committee will meet quarterly, or more often as necessary, at the call of the Deputy Assistant Secretary of Defense (Environment and Safety), to consult and advise the Assistant Secretary for Installations and Logistics on occupational safety and health matters coming within the purview of Executive Order 11807, which implements Public Law 91–596, the Occupational Safety and Health Act of 1970.

MAURICE W. ROCHE,
Director, Correspondence and Directives, OASD (Comptroller).

FEBRUARY 9, 1977.

[FR Doc.77-4678 Filed 2-14-77;8:45 am]

Defense Supply Agency

PRIVACY ACT OF 1974

Notice of Change of Title

Pursuant to the authority of the Secretary of Defense, contained in DoD Directive 5105.22 dated January 5, 1977 subject title is amended as follows:

Wherever the title "Defense Supply Agency (DSA)" appears in a system notice it is changed to read "Defense Logistics Agency (DLA)".

The following entries are brought to your attention:

40 FR 36045, Mon. August 18, 1975; 41 FR 2951, Tues. January 20, 1976; 41 FR 2989, Tues. January 20, 1976; 41 FR 31027, Mon. July 26, 1976; 41 FR 30823, Mon. July 26, 1976; 41 FR 31142, Mon. July 26, 1976; 41 FR 32249, Mon. August 2, 1976.

This notice is effective January 1, 1977.

By order of the Director.

J. J. MCALEER, Jr.,
Colonel, USA, Staff Director, Administration.

MAURICE W. ROCHE,
Director, Correspondence and Directive OASD (Comptroller).

FEBRUARY 10, 1977.

[FR Doc.77-4680 Filed 2-14-77;8:45 am]

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

[ERDA–1555–D]

PORTSMOUTH GASEOUS DIFFUSION PLANT SITE; PIKETON, OHIO

Availability of and Public Hearing Concerning Draft Environmental Impact Statement

Notice is hereby given that the Draft Environmental Statement, ERDA–1555–D, Portsmouth Gaseous Diffusion Plant Site, Piketon, Ohio, has been issued pursuant to the Energy Research and Development Administration's (ERDA) implementation of the National Environmental Policy Act of 1969. The statement

was prepared to assess the cumulative impact on the environment of operation of the Portsmouth gaseous diffusion plant, including the impact of offsite electric power generating plants which supply power to the plant.

The Portsmouth gaseous diffusion plant has been in operation for about 20 years as part of ERDA's uranium enrichment complex. The plant consists of about 4,000 diffusion stages, with an unimproved capacity of 5.2 million separative work units per year, which are housed in three process buildings covering about 93 acres of the 640-acre site. Upon completion of the Cascade Improvement and Cascade Uprating Programs, the capacity of the Portsmouth plant will be 8.6 million separative work units per year.

A separate draft environment impact statement (ERDA-1549) was issued for review and comment in October 1976 covering a proposed add-on to the Portsmouth plant. This plant with the add-on will have essentially twice the enrichment capacity as the current improved and uprated plant.

Copies of the draft statements have been distributed for review and comment to Federal, State, and local agencies and other organizations and individuals. Copies of the draft statements and comments received on the ERDA-1549 draft are available for public inspection in the ERDA public document rooms located at:

ERDA Headquarters, 20 Massachusetts Avenue, Washington, D.C.
Albuquerque Operations Office, Kirtland Air Force Base East, Albuquerque, New Mexico.
Chicago Operations Office, 9800 South Cass Avenue, Argonne, Illinois.
Idaho Operations Office, 550 Second Street, Idaho Falls, Idaho.
Nevada Operations Office, 2753 South Highland Drive, Las Vegas, Nevada.
Oak Ridge Operations Office, Federal Building, Oak Ridge, Tennessee.
Richland Operations Office, Federal Building, Richland, Washington.
San Francisco Operations Office, 1333 Broadway, Oakland, California.
Savannah River Operations Office, Savannah River Plant, Aiken, South Carolina.

Comments and views concerning the draft environmental impact statement are requested from other interested agencies, organizations and individuals. Single copies of the draft statement will be furnished for review and comment upon request addressed to W. H. Pennington, Director, Office of NEPA Coordination, U.S. Energy Research and Development Administration, Mail Station E-201, Washington, D.C. 20545 (301) 353-4241. Comments should be sent to the same address.

In accordance with guidelines from the Council on Environmental Quality, agencies and members of the public submitting comments on the draft environmental statement should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form in the impact statement. It would assist in the review of comments if the comments were organized in a manner consistent with the structure of the draft statement. Emphasis should be placed on the assessment of the environmental impacts of the Portsmouth activities, and the acceptability of those impacts on the quality of the environment, particularly as contrasted with the impacts of reasonable alternatives. Commenting entities may recommend modifications and/or new alternatives that will enhance environmental quality and avoid or minimize adverse environmental impacts. Comments on the draft environmental statement will be placed in the above-referenced document rooms and will be considered in the preparation of the final environmental impact statement if received by April 4, 1977.

Notice is also given that ERDA will conduct a public hearing in connection with the draft statement commencing at 9:00 a.m. on April 5, 1977, at the Netherland Hilton Hotel, Fifth and Race Street, Cincinnati, Ohio.

The purpose of the hearing is to afford further opportunity for public comment regarding the draft statement (ERDA-1555-D) and for the furnishing of any additional information which will assist ERDA in the continued operation of the plant.

The hearing will be conducted by a three-man Presiding Board chaired by Mr. John B. Farmakides, Chairman of the ERDA Board of Contract Appeals. The other two members of the Board will be Daniel Bienstock of the Pittsburgh Energy Research Center and Philip F. Gustafson of Argonne National Laboratory. Two members of the Board will constitute a quorum if one member is the chairman.

Persons, organizations, or governmental agencies wishing to appear and make a presentation are encouraged to become "full participants" in the proceedings by filing with Mr. W. H. Pennington, Director, Office of NEPA Coordination, ERDA, Mail Station E-201, Washington, D.C. 20545 (301-353-4241), not later than the close of business on March 25, 1977, a notice of intention to participate. The notice shall set forth: (1) The name and address of the participant; (2) the nature of the participant's interest in the proceeding, or his organizational affiliation; (3) the text of any statements to be presented at the hearing, or a reasonably detailed summary thereof; (4) the names and addresses of all witnesses to be produced at the hearing by the participant and a summary of the substance of the proposed testimony; and (5) the amount of time desired to complete the presentation. The Presiding Board will endeavor to schedule the full amount of time requested by full participants (those who file a timely notice) subject to the imposition of such reasonable time limits as may be consistent with orderly procedures and as will assure other full participants a meaningful opportunity to present their views.

Persons, organizations, or governmental agencies wishing to participate but who do not file a timely notice as specified herein, may notify Mr. Pennington before the hearing or the Presiding Board during the hearing of their desire to make a presentation. Such parties shall be admitted as "limited participants" and shall be heard at such times as the Presiding Board shall permit for a period of not more than 15 minutes each, unless the Presiding Board, in its discretion, allows additional time.

The public hearing will be legislative rather than adjudicatory in nature. Formal discovery, subpoena of witnesses, cross-examination of participants, testimony under oath and similar formal procedures appropriate to a trial-type hearing will not be provided. Participants may, but need not, be represented by counsel. Participants and their counsel will reference and produce, on request of the Presiding Board, the documents on which they rely.

The agency will make available appropriate witnesses to explain the background and purpose of the operation of the plant, the contents of the draft environmental impact statement and to respond to appropriate questions.

Questions may be posed to participants (including ERDA staff members), during the course of the hearing by other participants (including ERDA staff members) and the Presiding Board, either orally or in writing provided that: (a) All questioning shall be subject to the control and discretion of the Presiding Board, (b) questions shall be permitted from participants who have not provided advance notice of their participation only to the extent that they are relevant to the issues identified in the staff statement, and (c) any participant (including ERDA staff members) may elect to answer any such questions either orally at the hearing or subsequently in writing submitted to the Presiding Board before the close of the hearing record, which shall be determined by the Board.

Consistent with the full and true disclosure of the facts, duplicative, redundant, irrelevant, or otherwise unproductive testimony or questioning will not be permitted and the Presiding Board will impose suitable restrictions to that end. The Presiding Board is authorized to take appropriate action to control the course of the hearing including authority to maintain order; rule on offers of, and receive, evidence; dispose of procedural requests or similar matters; allocate among participants the time available for presentation; provide for consolidation of presentations, as appropriate; examine participants or witnesses; and hold conferences before or during the hearing for the purpose of delineating contested issues or for other purposes within the authority of the Presiding Board.

In addition to controlling the course of the hearing, the Presiding Board may examine participants in order to elicit fuller information, probe sensitive issues, and discover the bases and sources of

views, so as to produce a satisfactory record upon which the agency may evaluate the concerns of the interested public.

A transcript of the hearing will be made. The record of the hearing shall consist of the transcript, all documents received into the record by the Presiding Board, and a Report of the Presiding Board as provided below. The record will be placed in the ERDA public document rooms noted above as soon as practical after the close of the hearing where it will be available for inspection by members of the public.

After the close of the hearing record, the Presiding Board shall render its Report and forward it, together with the record to the Administrator. These documents will be considered in the preparation of the final environmental statement and in making determinations concerning the continuation of the operation of the plant. The Report shall be based upon the Presiding Board's review of the draft environmental statement and the hearing record and shall: (a) Identify those unresolved issues raised at the hearing which the Presiding Board deems to be critical to future decisions concerning the Program, and (b) present the recommendations of the Presiding Board concerning the treatment of these issues in the final environmental statement in a manner which will promote informed decisionmaking. In discharging its function, however, the Presiding Board shall not undertake to resolve issues or render judgment concerning the course of the Program.

Dated at Germantown, Md., this 10th day of February 1977.

For the Energy Research and Development Administration.

JAMES L. LIVERMAN,
Assistant Administrator for Environment and Safety.

[FR Doc.77-4822 Filed 2-14-77;8:45 am]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 687-2]

AIR QUALITY STANDARDS

Petition for Review of Photochemical Oxidant Criteria, Standard, and Control Program

On December 9, 1976, the American Petroleum Institute and 29 member companies (collectively "API") petitioned the Administrator of the Environmental Protection Agency to institute administrative proceedings to review and revise the Agency's present air quality criteria, standard, and control program for photochemical oxidants.

Specifically, the action petitioned the Agency to:

(1) Revise the air quality criteria for photochemical oxidants pursuant to section 108(c) of the Clean Air Act within six months of the filing of the Petition in light of information regarding the causes, effects, and extent of ozone and oxidants detailed in the Petition;

(2) Revise the national primary ambient air quality standard pursuant to section 109(b)(1) of the Clean Air Act based on studies described in the Petition;

(3) Revise the national secondary ambient air quality standard pursuant to section 109(b)(2) of the Clean Air Act;

(4) State the new primary and secondary standards so as to permit reliable assessments of compliance by existing monitoring networks;

(5) Specify the exclusive use of an appropriate measurement method such as ethylene chemiluminescence calibrated by either gas phase titration or ultraviolet photometry for the monitoring of ozone in the ambient air; and

(6) Revise the "Requirements for Preparation, Adoption, and Submittal of Implementation Plans," (40 CFR Part 51) to: (i) Delete the assumption of "no background concentration of photochemical oxidants"; (ii) specify oxidant prediction relationships to replace Appendix J and similar rollback techniques for determining the degree of necessary precursor emission reductions; and (iii) include such other modifications as are indicated by the new criteria and primary secondary standards.

EPA has had underway a series of reviews of the standard for photochemical oxidant and related control programs. The reviews involve extensive evaluation by affected groups including API and member petroleum and chemical companies. The Administrator has concluded that in aggregate these reviews provide for comprehensive evaluation of the program on oxidant and respond adequately to the request from API. Furthermore, EPA has concluded that the new information available to date on effects, transport, natural sources, and control effectiveness suggest that more, not less, control of organics will be needed than required by current regulatory programs. Therefore, the current review efforts should not be allowed to affect existing regulatory programs directed toward reduction of oxidant in the air.

The U.S. Environmental Protection Agency responded to Mr. Frank N. Ikard, President of the American Petroleum Institute, in a letter, dated January 19, 1977. The text of the letter is presented below.

MR. FRANK N. IKARD,
President, American Petroleum Institute
2101 L Street, N.W.,
Washington, D.C. 20037

DEAR MR. IKARD: EPA has received and reviewed the API petition and supporting material relating to the criteria document and air quality standard for photochemical oxidants.

We agree that much new information has become available in the past five years. Indeed, EPA itself has led much of the research and development on pollutant effects, air chemistry and measurement and control techniques in a continuing effort to ensure that control efforts are appropriate and effective. It is clear that for our Nation's air pollution control program to endure and remain vigorous it must pursue realistic goals and effective control strategies.

Of course, the risk of unnecessary industry and consumer expense must be balanced against the risk of damage to the health and welfare of the public that might result from being overly cautious and delaying action until all aspects of the oxidant problem are fully understood and agreed to by all observers. It seems unlikely to me that, in an area as complex as control of oxidants, we will [n]ever have enough information to completely satisfy everyone. This is a problem common to most environmental programs and I believe that we must continue to take prudent action in situations of uncertainty.

As you know, EPA already has been actively evaluating nearly all of the items delineated in your petition. These ongoing proceedings are outlined below.

Work is currently underway on revisions to the criteria documents for hydrocarbons and oxidant. Our schedule calls for a draft to be available for external review in March 1977. No decision has been made to revise the oxidant standard, although an agency working group is being formed to reevaluate the standard. The detailed development schedule for that reevaluation will be available soon. We will be looking at the numerical limits, the frequency, the form of the standard, analytical techniques, and the need for a separate secondary standard to protect public welfare. The need for air quality standards for specific oxidant compounds other than ozone also will be considered.

A series of projects are underway to review and modify as appropriate, the guidelines for preparation of State Implementation Plans. These include:

a. A comprehensive Control Strategy Manual for Photochemical Oxidants will be published this month. The manual will be revised as additional EPA guidelines and policy decisions become available.

b. A new quantitative procedure for relating various degrees of control of organic compounds to O_x reduction (Appendix J) is being developed.

c. Guidelines for determining geographic areas for the most effective control of organics based on hydrocarbon to NO_x ratios and population of metropolitan areas have been under development for about six months. They were discussed generally in the new source review which was published on December 21, 1976.

d. A series of guidelines on available control technology for sources of organics emissions are being prepared. General definitions and philosophy on the application of this technology were provided in my memorandum to the Regional Administrators, dated December 9, 1976 (copy enclosed). A model regulation for major solvent users is now being reviewed. An EPA revised policy on reactivity of organics and on the role of solvent substitution was discussed with all affected groups at a meeting in Chicago on October 13-14, 1976, and a final position paper is being prepared. The first five control documents for selected major sources are now being distributed.

e. Revised emission factors for motor vehicles are being prepared along with new techniques for estimating the future impact of federal standards and the effectiveness of transportation control measures such as inspection and maintenance. Appendix N, "Emissions Reduction Achievable Through Inspection, Maintenance, and Retrofit of Light Duty Vehicles," and a revised Supplement 5 to AP-42. "Compilation of Air Pollution Emission Factors," are being developed.

Natural sources of O_x, including stratospheric intrusion, are mentioned often in your petition. This matter also was a major topic at the International Conference on Photochemical Oxidant Pollution and its

Control, held September 12–20, 1976, in Raleigh, North Carolina. Formal reviews of this conference are being prepared, highlighting natural O_x and other aspects of oxidant formation, transport and measurement. the work will proceed over the next several months, reaching a consensus when possible. The evaluation will be done principally by non-EPA scientists, primarily academicians and consultants.

It is my judgement that the EPA's current and planned activities respond substantially to your petition for review of the O_x standard and related control regulations. These reviews have been accorded a high priority and are being completed as expenditiously as possible.

As for the impact on existing regulations, I do not expect any. Our current programs on organic emission controls focus on broad urban areas having O_x levels far in excess of the standard. In many cases, the currently required emission controls are not based on attainment but on application only of available control technology. Generally, it is our belief that the new information on effects, transport, natural sources and other control effectiveness will require more, not less, control of organics than to existing regulations. If so, we will of course build upon what has been done to date.

On those studies that have proceeded far enough for external review we have involved representatives of API or member companies. I have attached a list of some of the formal contacts that we have had with these representative. It is EPA policy to consult with all affected groups — industry, environmentalists, State and local air pollution control officials and the public—prior to selecting strategies or publishing guidelines. This is especially important in an area as complex as O_x reduction, and we expect to have maximum participation in all aspects of our oxidant program review. All interested members of the public will be encouraged to participate in meetings and hearings and to provide formal comments. In this regard, we met with your representatives on January 18, 1977, and we look forward to working with API and the oil industry in reexamining the technical bases for the air pollution control programs for O_x.

Sincerely yours,

ROGER STRELOW,
Assistant Administrator for Air and Waste Management.

Enclosures to the letter, a copy of the API petition, and supporting materials will be available for review at Public Information Reference Unit, EPA, 401 M Street, S.W., Washington, D.C. 20460.

Dated: February 8, 1977.

EDWARD F. TUERK
Acting Assistant Administrator for Air and Waste Management.

[FR Doc. 77-4642 Filed 2-14-77;8:45 am]

[FR 687-1]

AMBIENT AIR MONITORING REFERENCE AND EQUIVALENT METHODS

Receipt of Application for Reference or Equivalent Method Determination

Notice is hereby given that on January 4, 1977, the Environmental Protection Agency received an application from the Thermo Electron Corporation, Waltham, Massachusetts, to determine if its Model 43 Pulsed Fluorescent SO_2 Analyzer with Aromatic Hydrocarbon Cutter should be designated by the Administrator of the EPA as a reference or equivalent method under 40 CFR Part 53, promulgated February 18, 1975 (40 FR 7044). If, after appropriate technical study, the Administrator determines that this method should be so designated, notice thereof will be given in a subsequent issue of the FEDERAL REGISTER.

Dated: February 8, 1977.

WILSON K. TALLEY,
Assistant Administrator for Research and Development.

[FR Doc.77-4641 Filed 2-14-77;8:45 am]

[FRL 687-3]

SCIENCE ADVISORY BOARD (EXECUTIVE COMMITTEE)

Open Meeting

Pursuant to Pub. L. 92-463, notice is hereby given that a meeting of the Executive Committee of the Science Advisory Board will be held on March 4, 1977. The meeting will begin at 9:00 a.m. and will take place in Room 1101, Waterside Mall West Tower, 401 M Street, S.W., Washington, D.C.

The agenda includes reports on the activities of member committees and subcommittees of the Board; consideration of Committee action on a prospectus proposing that the Agency place greater emphasis on exploratory research on environmental problems; action to determine the approach of the Board in response to an Agency request to review a revised air quality criteria document for photochemical oxidants; a brief discussion of Agency responses to past activities of the Board; and Member items of interest.

The meeting is open to the public. Any individual or organization wishing to attend, participate, present a paper or obtain additional information should contact Dr. Thomas D. Bath at (202) 755-0263, no later than February 28, 1977.

Dated: February 9, 1977

THOMAS D. BATH,
Staff Director, Science Advisory Board.

[FR Doc.77-4646 Filed 2-14-77;8:45 am]

[FRL 687-4]; [OPP-180103A]

STATE OF HAWAII

Issuance of Specific Exemption To Control Carmine Mite on Papaya on Island of Maui; Correction

In FR Doc. 76-38239 appearing at page 56888 in the issue of December 30, 1976, the fourth sentence of paragraph 2 in the second column is corrected to read as indicated below. Three sentences have also been added before the final sentence of that paragraph.

Beginning with the fourth sentence, that paragraph should read as follows:

Based on a petition granted by this Agency that calls for a sixty (60) day preharvest interval after application of Morestan, EPA has granted a one-half (0.5) ppm tolerance for residues of the pesticide in or on citrus fruits. The first application of Morestan will be to nonbearing papaya plants. However, if a second application becomes necessary, Morestan would be applied to papaya bearing fruit; in this case, a ninety (90) day preharvest interval will be observed. Further, EPA has determined that residue levels as a result of this application should not exceed 0.5 ppm in order to protect the public health. No serious adverse effects on man and the environment are anticipated as a result of use of this pesticide on papaya in Princess Orchard, located in an isolated area on the Island of Maui.

Dated: February 8, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator for Pesticide Programs.

[FR Doc.77-4645 Filed 2-14-77;8:45 am]

MICHIGAN

State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides; Approval Status

Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 *et. seq.*), and the implementing regulations of 40 CFR Part 171, require each State desiring to certify applicators to submit a plan for such purpose, subject to approval by the Environmental Protection Agency (EPA).

On June 10, 1976, the Michigan State Plan was approved, contingent upon promulgation of necessary regulations under the Michigan Pesticide Control Act. Notice of contingent approval was published in the FEDERAL REGISTER (41 FR 28841) on July 13, 1976. Subsequently, on November 10, 1976, regulations necessary to implement the Michigan Pesticide Control Act were promulgated. The implementing regulations establish the following new commercial applicator subcategories under category 7. These subcategories have been added to the State Plan.

(7) Industrial, Institutional, Structural and Health Related Pest Control.
(a) General Pest Control.
(b) Wood Destroying Organisms.
(c) Contractual Public Health Pest Control.

The Agency has reviewed the final regulations and State Plan amendments. It has been determined that all legal authorities required by FIFRA and 40 CFR Part 171 are now enacted and promulgated, and the Regional Administrator, EPA Region V, hereby gives notice that the Michigan State Plan is now fully approved.

Dated: February 2, 1977.

GEORGE R. ALEXANDER, JR.
Regional Administrator Region V.

[FR Doc.77-4643 Filed 2-14-77;8:45 am]

[FRL 686-8; OPP—42042]

STATE OF OHIO

Submission of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973 (7 U.S.C. 136 et seq.)) and 40 CFR Part 171, the Honorable James A. Rhodes, Governor, State of Ohio, has submitted a State Plan for the Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval. All legal authorities necessary to implement the State Plan have been established and are effective.

Notice is hereby given of the intention of the Regional Administrator, EPA, Region V, to approve this Plan. A summary of the Plan follows. The entire Plan, together with all appendices (except for complete examinations and sample examination questions), may be examined during normal business hours at the following locations:

(1) Office of the Director, Ohio Department of Agriculture, 65 S. Front St., Columbus, Ohio 43215, telephone 614-466-2732.

(2) Room 1147, 230 South Dearborn Street, Chicago, Illinois 60604, (Pesticide Branch, Air and Haardous Materials Division), EPA, Region V, telephone 312-353-2192.

(3) Room 401, East Tower, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460 (Federal Register Section, Technical Services Division, WH-569), Office of Pesticide Programs, EPA, telephone 202-755-4854.

SUMMARY OF STATE PLAN

The Ohio Department of Agriculture (ODA) has been designated the State lead agency for the administration of the pesticide applicator certification program. The Ohio Pesticide Law of 1976 provides for an Interagency Pesticide Advisory Council which reviews policies, procedures, legislation and regulations pertaining to the pesticide regulatory program, including pesticide applicator certification. The Council consists of the directors of the ODA, Department of Natural Resources, Agricultural Research and Development Center, the Dean of the College of Biological Sciences of the Ohio State University, and one member each of the State House of Representatives and State Senate. The ODA is responsible for enforcement of the Ohio Pesticide Law.

The State Cooperative Extension Service has overall responsibility for pesticide applicator training programs. This includes the selection and development of most of the training materials. Dates and locations of training programs, along with scheduled applicator examinations, are jointly determined by the Cooperative Extension Service and the ODA.

Legal authority for the program is contained in the Ohio Pesticide Law and Rules and Regulations which became effective on January 1, 1977. Copies of these legal authorities are attached to the State Plan.

The Plan indicates that adequate personnel are available to the ODA and cooperating agencies to carry out the certification program. The Plan includes a budget for the pesticide program within the ODA for the 1976-1977 biennium. In addition, Federal moneys will also be available for applicator certification. The Agency has determined that adequate funding is available to carry out the certification program.

The ODA will submit an annual report to EPA on or before July 1 of each year and other reports requested by the Administrator of EPA.

Ohio estimates that approximately 9,000 commercial and 35,000 private applicators will need to be certified. Both certified commercial and private applicators will be issued certification credentials. The credential will identify in which category(ies) and subcategory(ies), if any, the applicator is certified.

For commercial applicators, the ODA plans to continue to categorization scheme utilized under the State applicator licensing program established in 1970. Categories described in the State Plan are those found in 40 CFR 171.3(b). Two new categories are proposed: Aerial Pest Control and Vertebrate Animal Control. The State Plan further subcategorizes the Agricultural Pest Control-Animal subcategory, 40 CFR 171.3. Subcategories are proposed as follows:

(1) Aerial Post Control.
(a) Rotary Wing.
(b) Fixed Wing.
(2) Agricultural Pest Control.
(a) Agronomic Pest Control.
(b) Horticultural Pest Control.
(c) Agricultural Weed Conrol.
(d) Tobacco Sucker Control.
(e) Soil Fumigation.
(f) Seed Treatment.
(3) Aquatic Pest Control.
(a) General.
(b) Swimming Pool.
(4) Industrial Vegetation Control (Right-of-Way Pest Control).
(a) General.
(b) Blacktopping.
(9) Animal Pest Control (Agriculture related).
(a) General.
(b) Sheep Dipping.
(c) Animal Quarters Pest Control.
(10) Domestic, Institutional, Structural and Health-Related Pest Control (Industrial, Institutional, Structural and Health-Related Pest Control).
(a) General Pest Control.
(b) Termite Control.
(c) Fumigation.
(d) Mosquito, House Fly, and other Vector Control.

Standards of competency for commercial applicators in Ohio are the same as those in 40 CFR 171.4 (b) and (c) and 171.6. Standards for the two new categories have been established and are elaborated in the State Plan. All commercial applicators of restricted use pesticides will be required to pass written examinations covering both the general standards and the specific standards for the category/subcategory in which they wish to become certified. No performance testing procedures are proposed. All written examinations will be administered and graded by the ODA. To renew a certificate, commercial applicators will be required to either (1) take another examination, or (2) attend at least one ODA approved training course, at three year intervals.

The standards of competency for private applicators are the same as those listed in 40 CFR 171.5 and 171.6. Private applicators will be certified in one or more of twelve categories as identified in the State Plan. Applicator competency will be determined on the basis of a written examination covering the required competency standards and one or more category examinations covering the applicator's specific area of agricultural production. Applicators who fail the written examination will be given an opportunity to retake the examination at a later date or take an oral examination conducted by an ODA official. The procedure for renewing a private applicator certificate is the same as for the commercial applicator; certificates will be valid for a three year period.

A single purchase/single use procedure for private applicators is elaborated in the State Plan. This procedure entails a modified training program, conducted by either Cooperative Extension Service or ODA official, geared to the objective of establishing the applicator's competency in the use of a single product for a single use. After October 21, 1978, the single purchase/single use option will be available to applicators only in emergency situations involving unpredicted pest outbreaks.

An applicator who can not read may complete the same training courses available to other applicators. However, the nonreader will be tested orally on the training course material by an ODA representative. Certification will be limited to those products in which the nonreader has demonstrated competency.

Sample examination questions for new categories and subcategories of commercial applicators, and complete examinations for the private applicator and existing commercial applicator licensing categories, are attached to the Plan. However, in view of the need to preserve the confidentiality of the examination

format, sample questions and complete examinations have been removed from the public inspection copies of the Plan.

A statement addressing state certification under the Government Agency Plan (GAP) will be forwarded within 60 days after the approval of GAP by the EPA.

The Ohio Department of Agriculture has not entered into any reciprocal agreements with other states. Any agreements which are made will be forwarded to EPA as part of the Plan.

Other Ohio regulatory activities and authorities are pesticide registration, restricted use pesticide dealer licensing and regulation, and product sampling and analysis. A regular program of inspection, product sampling, and follow-up investigations of accidents and complaints will continue by ODA personnel.

PUBLIC COMMENTS

Interested persons are invited to submit written comments on the proposed State Plan for the State of Ohio to the Regional Administrator, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604. The comments must be received on or before March 17, 1977, and should bear the identifying notation (OPP-42042). All written comments filed pursuant to this notice will be available for public inspection at the above mentioned locations from 8:30 a.m. to 3:30 p.m. Monday through Friday.

Dated: February 2, 1977.

GEORGE R. ALEXANDER, Jr.,
Regional Administrator Region V.

[FR Doc.77-4644 Filed 2-14-77;8:45 am]

[FRL 688-2; OPP-50276]

MOBIL CHEMICAL CO.

Issuance of an Experimental Use Permit

Pursuant to section 5 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 experimental use permit has been issued to the following applicant. Such permit is in accordance with, and subject to, the provisions of 40 CFR Part 172; Part 172 was published in the FEDERAL REGISTER on April 30, 1975 (40 FR 18780), and defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 2224-EUP-9. Mobil Chemical Company, Richmond, Virginia 23261. This experimental use permit allows the use of 1,760 pounds of the insecticide ethoprop on cabbage, corn, peanuts, soybeans, and tobacco, to evaluate control of armyworms and cutworms. A total of 745 acres is involved; the program is authorized only in the States of Alabama, Arkansas, California, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, Washington, and Wisconsin. The experimental use permit is effective from January 26, 1977, to January 26, 1978. Permanent tolerances have been established for residues of the active ingredient in or on cabbage, corn, peanuts, and soybeans.

Interested parties wishing to review the experimental use permit are referred to Room E-315, Registration Division (WH-567), Office of Pesticide Programs, EPA, 401 M St. SW., Washington, D.C. 20460. It is suggested that such interested persons call 202/755-4851 before visiting the EPA Headquarters Office, so that the appropriate permit may be conveniently available for review purposes. This file will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: February 4, 1977.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-4793 Filed 2-14-77;8:45 am]

[FRL 688-1; OPP-00043]

PESTICIDE PROGRAMS

Chlorofluorocarbons in Aerosol Products

The Registration Division, Office of Pesticide Programs, Environmental Protection Agency (EPA), has addressed two notices to producers, formulators, and registrants of pesticide products containing chlorofluorocarbons. Because of demonstrated interest in aerosol products containing chlorofluorocarbons by other parties, the Agency is taking this opportunity to give notice of the actions taken thus far with regard to the registration and/or reregistration of pesticide products containing this ingredient. Both notices are reproduced below.

Anyone wishing to comment on these notices should address such remarks to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, Environmental Protection Agency, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Three copies of the comments should be submitted to facilitate the work of the Agency and others interested in inspecting them. The comments must bear the identifying document control number "OPP-00043". 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 p.m. on normal business days.

Dated: February 10, 1977.

EDWIN L. JOHNSON,
Deputy Assistant Administrator,
for Pesticide Programs.

[PR Notice 76-3]

NOTICE TO PRODUCERS, FORMULATORS, AND REGISTRANTS OF PESTICIDES

Attention: Persons Responsible for Federal Registration of Pesticides

Subject: Chlorofluorocarbons Used as Aerosol Propellants

October 18, 1976.

On December 4, 1975, this Agency issued PR Notice 75-6 concerning the use of chlorofluorocarbon propellants in aerosol pesticide products registered by EPA. That notice described the concern about the possible relationship between use of chlorofluorocarbon propellants and the reduction of ozone in the stratosphere, and encouraged registrants to voluntarily elect to substitute alternative propellants.

The recent report issued by the National Academy of Sciences further strengthens the theory linking chlorofluorocarbons and ozone depletion and thus heightens the concern of this Agency about chlorofluorocarbon releases to the atmosphere resulting from pesticide product use.

During the upcoming reregistration process, we will be scrutinizing very carefully those pesticide products containing chlorofluorocarbon propellants with the presumption that chlorofluorocarbons should be discontinued unless they can be shown to be essential to the safety and efficacy of the product. We very strongly urge registrants to voluntarily utilize propellants other than chlorofluorocarbons 11 and 12 in registered pesticide products. Institution of cancellation proceedings appears to be the eventual course of action, based on the trend of the evidence, and it would, at the very least, be prudent to resolve this problem cooperatively before such severe regulatory measures must be initiated.

Because of consumer awareness and concern about this issue, we are taking an immediate step to ensure that the pesticide user has the option of purchasing products which do not contain these chlorofluorocarbons.

The labels of all pesticide products which contain these chlorofluorocarbon propellants and which are produced or released for shipment on or after April 15, 1977, must prominently display on the front panel the statement:

This Product Contains Chlorofluorocarbon-11 (or -12, as appropriate)

This statement must be clearly legible to a person with normal vision and must be of a type size comparable to other front panel text so that it may be easily read under customary conditions of purchase and use.

Existing stocks of product already in channels of trade do not need to be relabeled. Registrants are not required to submit amended labeling to the Agency solely for the purpose of adding the statement. If, however, labels are submitted to the Agency prior to April 15, 1977, for other purposes (e.g., reregistration, amendment), the statement must be included on such labeling.

We strongly urge registrants of pesticide products containing these chlorofluorocarbons to use substitute propellants where possible. If a registrant chooses to substitute propellants, he must first submit an application for amended registration. Such an application will be approved if the requirements of 40 CFR Part 162 are satisfied.

JOHN B. RITCH, Jr.,
Director, Registration Division.

[PR Notice 77-1]

NOTICE TO PRODUCERS, FORMULATORS AND REGISTRANTS

Attention: Persons Responsible for Federal Registration of Pesticides

Subject: Permissible labeling statement pertaining to chlorofluorocarbons in aerosol pesticide products

On October 18, 1976, this Agency issued PR Notice 76-3 concerning the use of chlorofluorocarbons as propellants in the formulation of pesticides. This notice expressed our continuing concern about the possible deleterious effects of chlorofluorocarbons on human health and the environment. Specif-

ically, the notice (1) recommended that chlorofluorocarbons-11 and -12 be voluntarily removed from pesticide products in the face of the increasing probability of strict regulatory controls in the near future; and (2) required that an advisory statement appear on the labels of products containing chlorofluorocarbons-11 and -12, beginning April 15, 1977.

PR Notice 76-3 did not address the permissibility of a statement that a product does not contain chlorofluorocarbons. Such a statement has generally been deemed an implied safety claim, and, as such, is specifically prohibited by the Regulations (40 CFR 162.-10(a)(5)(ix)).

Since the issuance of the notice, the Agency has received numerous requests from registrants to allow the use of a negative advisory statement on products not containing chlorofluorocarbons. They argue that it is of equal benefit to the public to be aware of the absence of chlorofluorocarbons as to be aware of their presence, that requiring the positive declaratory statement without allowing the corresponding negative statement offers a biased option to the consumer, and that the industry will suffer from the inconsistency created between non-EPA-regulated products (bearing the negative statement) and EPA-regulated products (bearing only a positive statement).

The Agency is persuaded that an exception to established policy may be made in the case of chlorofluorocarbons. We have determined that the use of a negative statement of chlorofluorocarbon content will complement in the public mind the positive warning required by PR Notice 76-3, and will allow the consumer a fully informed choice in the purchase and use of aerosol pesticide products. This exception will not negate the regulatory prohibition against negative statements in other situations.

Accordingly, the Agency will allow, beginning immediately, the use of the statement, "Does not contain chlorofluorocarbons", on the label of aerosol pesticide products. This language is the only acceptable wording which may be used for this purpose.

The statement may appear anywhere on the label, provided that it is not emphasized or highlighted in any manner so as to detract from required label information.

It is not necessary to submit amended labels, to the Agency solely for the purpose of adding the optional statement; however, should the registrant elect to use the statement, any subsequent labels submitted for other purposes must bear the statement.

Should the use of specific chlorofluorocarbons, or fluorocarbons in general, be prohibited, or restricted in any fashion so as to preclude their use as propellants in pesticide products, the Agency will reevaluate the need for and permissibility of both the warning statement and the negative advisory statement.

DOUGLAS D. CAMPT,
Acting Director,
Registration Division.

[FR Doc.77-4792 Filed 2-14-77;8:45 am]

[FRL 688-5; OPP-42002B]

STATE OF GEORGIA

Extension of Contingency Approval of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of Section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136 et seq.) and 40 CFR Part 171 (39 FR 36445 (October 9, 1974) and 40 FR 11698 (March 12, 1975)) the Honorable George Busbee, Governor of the State of Georgia, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On July 29, 1975, the Regional Administrator, EPA Region IV, approved the Plan on a contingency basis for a twelve-month period. Notice of the approval was published in the FEDERAL REGISTER on August 8, 1975 (40 FR 33488).

The Georgia Pesticide Control Act and Pesticide Use and Application Act and amendments to the Georgia Structural Pest Control Act were passed by the 1976 Session of the Georgia Legislature and became effective January 1, 1977. Implementing regulations are expected to be completed shortly. As a result the State of Georgia has requested an extension of the Georgia contingency approval pending final implementation of regulations and further amendment of the Structural Pest Control Act. The Agency finds that there is good cause for approving the request and as such has granted Georgia an extension, effective until October 21, 1977.

Dated: February 10, 1977.

JOHN A. LITTLE,
Acting Regional
Administrator, Region IV.

[FR Doc.77-4788 Filed 2-14-77;8:45 am]

[FRL 688-4; OPP-42007B]

STATE OF MISSISSIPPI

Extension of Contingency Approval of State Plan for Certification of Pesticide Applicators

In accordance with the provisions of section 4(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (86 Stat. 973; 7 U.S.C. 136) and 40 CFR Part 171 (39 FR 36445 (October 9, 1974) and 40 FR 11698 (March 12, 1975)) the Honorable William L. Waller, Governor of the State of Mississippi, submitted a State Plan for Certification of Commercial and Private Applicators of Restricted Use Pesticides to the Environmental Protection Agency (EPA) for approval on a contingency basis, pending promulgation of implementing regulations. On January 6, 1976, the Regional Administrator, EPA Region IV, approved the Plan on a contingency basis for a twelve-month period. Notice of the approval was published in the FEDERAL REGISTER on February 11, 976 (41 FR 6122).

The Mississippi Pesticide Application Act and the Mississippi Pesticide Law were passed by the Mssissippi Legislature on March 4, 1975. Proposed regulations for the enforcement of the Acts have been drafted, public hearings have been held and final regulations are expected to be published by April 1, 1977. As a result, on January 14, 1977, the State of Mississippi requested an extension of the Mississippi contingency approval pending final promulgation of regulations as described in the State Plan. The Agency finds that there is good cause for approving the request and has granted an extension until July 1, 1977.

Dated: February 10, 1977.

JOHN A. LITTLE,
Acting Regional
Administrator, Region IV.

[FR Doc.77-4789 Filed 2-14-77;8:45 am]

[FRL 688-6]

TOXIC SUBSTANCES

Meeting

Immediately after the Toxic Substances Control Act was signed into law on October 11, 1976 the Administrator established a Task Group representing many segments of the Agency to develop an overall strategy for implementing the various requirements of this comprehensive Act. Because there are a number of major issues which require resolution prior to finalizing the Strategy, the Task Group has prepared a discussion paper concerning the Strategy. Since the Strategy document will be EPA's long range plan to implement the Act, it is the Agency's position that interested persons be given ample opportunity to express their views about this plan either in public discussion or by individual submission before the Agency finalizes the document.

Copies of the discussion paper will therefore be made available during the last week of February to industry components, professional and trade associations, environmental and conservation groups, state and federal officials, and other interested parties. Copies will also be available in Regional offices.

On March 22 and 23, 1977, the Agency will hold an open public meeting in Washington, D.C. to provide interested parties opportunity to present their views on the discussion paper as developed by the Agency, to hear the views of others, and to discuss segments of the plan in special workshops. The morning session of the first day from 9:00 a.m. to 12:00 noon will be a plenary session during which the EPA personnel will present an overview of the Strategy together with a discussion of the major issues. There will also be time allowed for the prepared comments or questions from the attendees.

The afternoon of the first day will provide for several concurrent workshop sessions from 1:15 to 3:30 p.m. to permit individuals the opportunity to discuss and comment on specific aspects of the discussion paper. EPA members will be present in each of the workshops to answer questions and receive comments.

The morning of the second day from 9:00 a.m. to 12:00 noon will again be a plenary session at which each workshop moderator will present summary reports on these sessions. Opportunity will also be given for further general observations and comments by attendees.

The proceedings will be recorded and a transcript will be available for public inspection at EPA by April 30, 1977.

Subject to time limitations, anyone wishing to make a brief oral presentation will be given the opportunity to do so. Such persons are requested to notify, in writing or by telephone, their desire to make a presentation to Mr. John B. Ritch, Jr., Director, Industry Assistance Office, OTS (WH-557), Rm. 1341, West Tower, U.S. Environmental Protection Agency, 401 "M" Street S.W., Washington, D.C. 20460, telephone no. (202) 755-0322, no later than March 18. Written comments are also desired and should be submitted to the same address no later than April 15, 1977.

Dated: February 9, 1977.

KENNETH L. JOHNSON,
Acting Assistant Administrator for Toxic Substances.

[FR Doc.77-4787 Filed 2-14-77;8:45 am]

FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21090]

ALI HASSAN

Designating Application for Hearing on Stated Issues

Adopted: February 1, 1977.

Released: February 8, 1977.

In the matter of the application of Ali Hassan, 6043 Third Avenue, Los Angeles, California 90043, for Amateur Radio Station and (Technician Class) Operator Licenses.

The Chief, Safety and Special Radio Services Bureau has under consideration the captioned application for Amateur radio station and (Technician Class) Operator Licenses.

It appears, That the applicant is the licensee of Citizens Band radio station KFN-4952.[1]

It appears further, that Citizens Band radio station KFN-4952 was operated in violation of §§ 95.41(d)(2) (intrastation use of interstation frequency) and 95.83 (a)(1) (hobby communications) on April 30, 1975; §§ 95.55(c)(1) use of non-type accepted, non-crystal controlled transmitter) and 95.95(c) (failure to identify) on June 2, 1976; and §§ 95.43 (use of excessive power) and 95.37(c) (use of overheight antenna) on April 30, 1975, and June 2, 1976. Additionally, it appears that Citizens Band radio station KFN-4952 was not in compliance with §§ 95.55(c)(4) (transmitter equipped to operate on frequencies not assigned to Citizens Band radio service) and 95.105 (copy of Part 95 not maintained as part of station records) on June 2, 1976; and § 95.44 (station equipped with external radio frequency power amplifier) on April 30, 1975, and June 2, 1976.[2]

It further appears, that the foregoing violations were brought to the applicant's attention by Official Notices of Violation issued May 5, 1975, and June 10, 1976.

It further appears, that in light the foregoing, the Commission is unable to conclude that a grant of the above captioned Amateur application would serve the public interest, convenience and necessity and, therefore, must designate the application for hearing regarding Hassan's requisite qualifications.

Accordingly, *it is ordered*, pursuant to Section 309(e) of the Communications Act of 1934, as amended, and §§ 1.973(b) and 0.331 of the Commission's Rules, that the captioned application is designated for hearing at a time and place to be determined by further order upon the following issues:

1. To determine the facts and circumstances concerning the operation and condition of Citizens Band radio station KFN-4952 on April 30, 1975, and June 2, 1976.

2. To determine, in light of the evidence adduced pursuant to the foregoing issue, whether the applicant has willfully or repeatedly violated the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether the applicant has the requisite qualifications to be a licensee in the Amateur Radio Service.

4. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether a grant of the above captioned application would serve the public interest, convenience and necessity.

It is further ordered, That, to avail himself of the opportunity to be heard, the applicant herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall within 20 days of the mailing of this Order file with the Commission, in triplicate, a written appearance stating an intent to appear on the date fixed for hearing and to present evidence on the issues specified in this Order.

Chief, Safety and Special Radio Services Bureau.

GERALD M. ZUCKERMAN,
Chief, Legal, Advisory and Enforcement Division.

[FR Doc.77-4689 Filed 2-14-77;8:45 am]

[Docket No. 21093, File No. BPH-9492; Docket No. 21094, File No. BPH-9582]

COVE BROADCASTING CO., INC. AND ALTOONA TRANS-AUDIO CORP., INC.

Designating Applications for Consolidated Hearing on Stated Issues

Adopted: February 2, 1977.

Released: February 9, 1977.

In re applications of Cove Broadcasting Company, Inc., Hollidaysburg, Pennsylvania, requests: 104.9 MHz, #285A; 120 W (H&V); 1,220 ft. (H&V); and Altoona Trans-Audio Corporation, Inc., Altoona, Pennsylvania, requests: 104.9 MHz, #285A; 235 W (H&V); 890 ft. (H&V); for construction permits.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned applications which are mutually exclusive in that they propose co-channel operation in adjacent communities.

2. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

3. The applicants are qualified to construct and operate as proposed. However, because the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, *it is ordered*, That pursuant to section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the areas and populations which would receive primary aural (1 mV/m or greater in the case of FM) service from the proposals and the availability of other primary service to such areas and populations.

(2) To determine, in light of Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

(3) To determine, in the event it is concluded that a choice between the applications should not be based solely on considerations relating to Section 307(b), which of the operations proposed in the above-captioned applications would, on a comparative basis, better serve the public interest.

(4) To determine in light of the evidence adduced pursuant to the foregoing issues, which, if either, of the applications should be granted.

5. *It is further ordered*, That to avail themselves of the opportunity to be heard, the applicants herein, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, shall, within twenty (20) days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this Order.

6. *It is further ordered*, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 1.594 of the Commission's Rules, give notice of the hearing, either individually or, if feasible and consistent with the rules, jointly, within the time and in the manner prescribed in such rule, and shall advise the Commission of the publica-

[1] By Order adopted this date, the applicant has been Ordered to Show Cause why the license for Citizens Band radio station KFN—4952 should not revoked.

[2] Certain sections of Part 95 of the Commission's Rules have been renumbered, revised, or deleted since the date of the alleged violations. The Rules referred to herein are those in effect at the time of the operation.

tion of such notice as required by § 1.594(g) of the Rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc.77-4690 Filed 2-14-77;8:45 am]

TV BROADCAST APPLICATIONS

Availability for Processing

Adopted: January 26, 1977.

Released: February 4, 1977.

Notice is hereby given, pursuant to § 1.572(c) of the Commission's Rules, that on March 8, 1977 the TV Broadcast applications listed in the attached Appendix will be considered as ready and available for processing. Pursuant to § 1.227(b)(1) and § 1.591(b) of the Commission's Rules, an application in order to be considered with any application appearing on the attached list or with any other application on file by the close of business on March 7, 1977 which involves a conflict necessitating a hearing with any application on this list, must be substantially complete and tendered for filing at the offices of the Commission in Washington, D.C., by the close of business on March 7, 1977.

The attention of any party in interest desiring to file pleadings concerning any pending TV broadcast application, pursuant to section 309(d)(1) of the Communications Act of 1934, as amended, directed to § 1.580(i) of the Commission's Rules for provisions governing the time for filing and other requirements relating to such pleadings.

FEDERAL COMMUNICATIONS COMMISSION,
VINCENT J. MULLINS,
Secretary.

BPET-544 (new) Moline, Ill., West Central Illinois Educational Telecommunications Corp., Channel 24. ERP: Vis.: 1200kw, HAAT: 927.5 ft.

BPCT-4961 (WSLA) Selma, Ala., Central Alabama Broadcasting, Inc., Channel 8. Change ERP: Vis.: 316kw, HAAT: 1716 ft.

BPCT-4971 (new) Bend, Oreg., Radio Medford, Inc., Channel 21. ERP: Vis.: 77.6kw, HAAT: 570 ft.

BPCT-4974 (new) Mt. Vernon, Ill., Evans Broadcasting Corp., Channel 13. ERP: Vis.: 316kw, HAAT: 956 ft.

BPCT-4975 (new) Fort Wayne, Ind., Ontario Corp., Channel 55. ERP: Vis.: 599.41kw, HAAT: 782.9 ft.

BPCT-4979 (new) Bluffs, Ill., West Central Illinois Educational Telecommunications Corp., Channel 14. ERP: Vis.: 4020kw, HAAT: 1608 ft.

BPCT-4980 (new) Cincinnati, Ohio, Buford Television of Ohio, Inc., Channel 64. ERP: Vis.: 1000kw, HAAT: 765 ft.

BPCT-4981 (new) Baltimore, Md., Buford Television of Maryland, Inc., Channel 24. ERP: Vis.: 1320kw, HAAT: 570 ft.

BPCT-4982 (new) KLOC Broadcast Co., Inc., Salinas, Calif., Channel 35. ERP: Vis.: 1584kw, HAAT: 241 ft.

BPCT-4983 (new) Hanover, N.H., Taft Broadcasting Corp., Channel 31. ERP: Vis.: 29.9kw, HAAT: 470 ft.

BPCT-4986 (new) Denver, Colo., American Television and Communications Corp., Channel 20. ERP: Vis.: 4335kw, HAAT: 1099 ft.

[FR Doc.77-4562 Filed 2-14-77;8:45 am]

FEDERAL ENERGY ADMINISTRATION

CONSTRUCTION ADVISORY COMMITTEE

Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92-463, 86 Stat. 770) notice is hereby given that the Construction Advisory Committee will meet Wednesday, March 9, 1977, at 10 a.m., Conference Room B, Departmental Auditorium, Constitution Avenue between 12th and 14th Street, NW., Washington, D.C.

The Committee was established to advise the Administrator, FEA with respect to the interests and problems of the construction industry as they relate to the policy and implementation of programs to meet the current and continuing national energy shortage.

The agenda for the meeting is as follows:

1. Opening Remarks by Robert A. Georgine, President, Building and Construction Trades Department, AFL-CIO, and Harry P. Taylor, President, Council of Construction Employees.
2. Summary of Old and New Committee Business.
3. Committee Reorganization.
4. Presentation of an Incentive Proposal Designed to Motivate Capital Expenditures for Building Retrofitting.
5. Energy Conservation, Voluntary or Mandatory.
6. Comments from the Floor (10 Minute Rule).

Subcommittees may meet informally in Washington, D.C. the preceding evening, at the discretion of the Subcommittee Chairmen; the meetings will be open to the public. For further information on Subcommittee activities, call Lois G. Weeks, Director, Advisory Committee Management at (202) 566-7022.

The Committee 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.

The transcript of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room 2107, FEA, Federal Building, 12th and Pennsylvania Avenue, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Any person may purchase a copy of the transcript from the reporter.

Issued at Washington, D.C. on February 9, 1977.

DAVID G. WILSON,
Acting General Counsel.

[FR Doc.77-4649 Filed 2-14-77;8:45 am]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1687]

ACTION WORLD SHIPPERS, INC.

Order of Revocation

By letter dated January 17, 1977, Ms. Susan E. Lee, President, Action World Shippers, Inc., 4239 No. Nordica, Norridge, IL 60634 was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1687 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission on or before February 7, 1977.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will be automatically revoked or suspended for failure of a licensee to maintain a valid bond on file.

Action World Shippers, Inc., has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised section 5.01(c)) dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 1687 issued to Action World Shippers, Inc., be returned to the Commission for cancellation.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1687 be and is hereby revoked effective February 7, 1977.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon Action World Shippers, Inc.

LEROY F. FULLER,
Director, Bureau of Certification and Licensing.

[FR Doc.77-4770 Filed 2-14-77;8:45 am]

CERTIFICATES OF FINANCIAL RESPONSIBILITY (OIL POLLUTION)

Certificates Issued

Notice is hereby given that the following vessel owners and/or operators have established evidence of financial responsibility, with respect to the vessels indicated, as required by section 311(p)(1) of the Federal Water Pollution Control Act, and have been issued Federal Maritime Commission Certifi-

cates of Financial Responsibility (Oil Pollution) pursuant to Part 542 of Title 46 CFR.

Certificate No.	Owner/operator and vessels
01011	Aktieselskabet Det Ostasiatiske Kompagni: *Panama.*
01039	Den Norske Amerikalinje A/S: *Tanafjord.*
01111	Trade Lines Inc.: *Nikos Kazantzakis.*
01428	Ocean Transport & Trading Ltd.: *Fourah Bay.*
01447	Scotstoun Shipping Co. Ltd.: *Atholl Forest.*
01449	The Cairn Line of Steamships Ltd.: *Cairnash, Cairnelm.*
01809	Partenreederei Ms Dalmitia: *Concordia Dalmitia.*
01935	Partnership between Steamship Company Svendborg Ltd. and Steamship Company of 1912 Ltd.: *Maersk Breaker, Maersk Blower, Maersk Boulder.*
02001	Rederiaktiebolaget Transatlantic: *Knut Mark.*
02041	Dalmor Przedsiebiorstwo Polowow Dalekomorskich I Uslug Rybackich: *Indus.*
02239	CIA Marittima Carlo Cameli: *Jole Fassio, Alderamine.*
02274	Albis Ardua Societa Di Navigazione: *Humilitas.*
02367	Canadian Pacific (Bermuda) Ltd.: *Port Vancouver.*
02492	Interstate and Ocean Transport Co.: *Rockland, New London, Interstate 140.*
02734	Italia Societa Per Azioni De Navigazione: *Kudu.*
02862	Ocean Shipping & Enterprises Ltd.: *Chai Varee.*
02874	West India Industries, Inc.: *Inagua Island.*
02930	Compania Sud Americana De Vapores: *Lontue.*
02958	Kawasaki Kisen K.K.: *Pacific Highway.*
03294	Companhia De Navegacao Lloyd Brasileiro: *Lloyd Humaita.*
03438	Inui Kisen Kabushiki Kaisha: *Kenkon Maru.*
03462	Mitsubishi Koseki Yuso K.K.: *Santa Silvia Maru.*
03692	Marmac Corporation: *GBL–1, GBL–4, GBL–6, GBL–7, GBL–8, MRBL–88.*
03903	Silverstone Shipping Corp.: *Alassiri.*
03968	Zim Israel Navigation Co. Ltd.: *Avedat, Engedi.*
04226	National Marine Service Inc.: *N.M.S. No. 1457, N.M.S. No. 1458.*
04404	Lars Rej Johansen: *Josky.*
04675	Naviera Santa Catalina S.A.: *Pola De Lena.*
04703	Yokkaichi Enyo Gyogyo K.K.: *Nansei Maru No. 18.*
05003	Wisconsin Barge Line Inc.: *James E. Snyder.*
05098	Esso Tankers Inc.: *Esso Uruguay, Esso Le Havre, Esso Punta Del Este.*
05140	Marva Compania Maritima S.A.: *Maria.*
05271	Compania Chilena De Navegacion Interoceanica: *Antartico.*
05437	The Dow Chemical Co.: *Leviticus.*
05520	Union Carbide Corp.: *USL–499, USL–600, USL–605.*
05577	Far Eastern Shipping Co.: *Kapitan Vasilevskiy, Uelen, Ilya Mechnikov, Gavrill Kirdischev.*
05943	Kanagawa Prefectural Government: *Shonan Maru.*
06498	Federal Steam Navigation Co. Ltd.: *Wild Gannet.*
06570	Jebsen Dillingham Shipping Ltd.: *Bolnes.*
06847	Getty Refining and Marketing Co.: *Delaware Getty, New York Getty, Louisiana Getty, Wilmington Getty, Providence Getty.*
06887	Devcon International Corp.: *Electra.*
06914	Mckeil Workboats Ltd.: *Cargo Master.*
06949	Mickie B. Jones: *Double Star, Polar Bear.*
07255	Teh Tung Steamship Co. Ltd.: *Marquis.*
07267	Taiheiyo Suisan K.K.: *Hatsue Maru No. 62.*
07366	Compagnie Maritime Des Chargeurs Reunis: *Chevalier Paul, Chevalier Roze.*
07561	Gulf Atlantic Transport Corp.: *Gatco 93.*
07772	Great Eastern Maritime Co. Ltd.: *Monarch.*
07805	Surgelati Tontini Pesca Spa: *Assunta Tontini Madre.*
08377	Tri-Ocean Shipping Corp. Ltd.: *Vela.*
08823	Conoco Shipping Co.: *Conoco Independence.*
09035	Chi Shin Navigation Inc.: *Chi Shin.*
09047	R/A Hadrian: *Octavian, Hadrian.*
09393	Hongkong Senpaku Co. Ltd. S.A.: *Okuni.*
10143	Compagnie Maritime Zairoise: *Mpolo, Okito.*
10214	Arco Iris Naviera S.A.: *Global Pioneer.*
10260	Hollywood Marine Inc.: *Hollywood 2006.*
10481	Tracey Navigation Co. Ltd.: *Lago Izabal.*
10519	Moore-McCormac Bulk Transport Inc.: *Mormacsky.*
10790	Coordinated Caribbean Transport Inc.: *Consolidator.*
10931	Hansung Shipping Co. Ltd.: *Blue Matsuyama, Blue Uranus, Dona Placida.*
11466	Lee Vac Ltd.: *Z–100.*
11568	Pescapuerta S.A.: *Pescapuerta Tercero.*
11714	Global Transport Organization: *Federal 400–3.*
11781	Ohio Power Co.: *Robert M. Kopper, G. L. Furr, A. N. Prentice, F. M. Baker, William J. Stewart, C. J. Ryan, Joe P. Gills, E. Gene Fournace.*
11206	Akmi Shipping Corp.: *Akmi.*
11804	Beker Industries Corp.: *NMS 1952, NMS 1953.*
11828	Kosmos Bulkschiffahrt GmbH: *Berlin, Bremen.*
11938	Varnima Corporation International S.A.: *Ras Tanura.*
11943	Nazca Marine Corporation of Panama: *M. Alexand.*
11951	I/S Rederiet Erik B. Kromann: *Erik Boye.*
11964	Nankai Gyogyo Kabushiki Kaisha: *Nankai Maru No. 18.*
11979	Icanstream S.A.: *Chrysanthi.*
12030	Atlantic Supply A/S: *Atlantic Grip.*
12041	Uiterwyk Corp.: *Polar Ecuador, Maria U, Polar Argentina.*
12061	South Caribbean Navigation Co. Inc.: *Vencemos.*
12069	Langada Shipping Co. Ltd.: *Lagada.*
12073	Intercoastal Bulk Carriers Inc.: *Valerie F, Valerie F (Barge).*
12102	Psiloritis Shipping Co. S.A.: *Yannis P.V.*
12104	Ionian Breeze Marine Inc.: *Avra.*
12108	A/S Dynamic Drilling: *Pelerin.*
12116	K.K. Kiyofuji Kaiun: *Seiwa Maru.*
12124	Golden Navigation S.A.: *Golden Peak.*
12145	Chevron U.S.A. Inc.: *Chevron Hawaii, Chevron Mississippi, Chevron California, Chevron Oregon, Chevron Washington, Chevron Colorado, J. H. Tuttle, Hillyer Brown, Nevada Standard, BCG–100, S–87, S–92, Idaho Standard, J. L. Hanna, Alaska Standard, S.O. Co. No. 17, Chevron Tongass, S.O. Co. No. 7, S.O. Co. No. 18, Chevron Oiler, S–81, S–54, S–94, S–93, No. 28.*
12147	Ever Modest Line S.A.: *Ever Modest.*
12151	Caravelle Shipping Co. Ltd.: *Samos Star.*
12163	Oy Starkjohann & Co. AB: *Peter.*
12168	Golden State Navigation Corp.: *Golden State.*
12170	Balboa Compania Naviera S.A.: *G. P. Cosmas.*
12171	Pozega Shipping Co.: *Pozega.*
12174	Stunning Compania Naviera S.A.: *Polys.*
12182	Cob Navigation Co. Inc.: *Dolores Swann.*
12184	Oyster Shipping Corp.: *Yeong Ta.*
12185	Ihn Sung Fisheries Co. Ltd.: *No. 71 Kwangil Ho.*
12186	Toei Suisan Kabushiki Kaisha: *Seiko Maru No. 18.*
12187	Rederij M.S. Imke: *Imke.*
12189	Norrona Shipping Co. (Pte) Ltd.: *Cherry Lord.*
12190	New Jersey Shipping Enterprises Corp.: *Moorgate Queen.*
12191	Zui Kong Steamship Co. Ltd.: *Yeh Yung.*
12193	Astir Marine Cor.: *Thomas A.*
12194	Barque Shipping Cor.: *Maribianca.*
12195	Clavelina S.A.: *Fiesta I.*
	Odfjell (Overseas) Liberia Ltd.: *Proof Trader, Proof Spirit.*
12197	Newfoundland Marine Services Ltd.: *Newfoundland Coast.*
12198	Genuine Shipping S.A.: *Seagirt.*
12199	Marquis Compania Naviera S.A.: *Wesermunde.*
12200	Kittiwake Compania Naviera S.A.: *Vegesack.*
12201	K/S Polyvictoria A/S: *Polyvictoria.*

Certificate No.	Owner/operator and vessels
12204---	Notis Shipping Corp.: *Notis.*
12205---	Salora Oy: *Eesthel.*
12209---	Seatrade Inc. Monrovia: *Trado.*
12211---	Partrederiet for Mt Inland: *Inland.*
12213---	Aiden Shipping Co. Ltd. and Bibby Freighters Ltd.: *Volnay.*
12216---	Ionian Mountain Marine Inc.: *Manos P.*
12223---	Crescent Maritime Inc.: *Lucent Star.*
12224---	Venus Orient Steamship Corp.: *Antares.*
12225---	Secam Corp.: *Sweet Flag.*
12226---	Evermore Ascendant Shipping S.A.: *Evermore Ascendant.*

By the Commision.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-4775 Filed 2-14-77;8:45 am]

[Independent Ocean Freight Forwarder License No. 952]

J. E. BERNARD & CO., INC.

Order of Revocation

On February 7, 1977, Edward L. Jordan, Vice President and General Manager, J. E. Bernard & Co., Inc., 1111 Nicholas Blvd., Elk Grove Village, IL 60007. voluntarily surrendered his Independent Ocean Freight Forwarder License No. 952 for revocation.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1 (Revised), section 5.01 (b), dated June 30, 1975;

It is ordered, That Independent Ocean Freight Forwarder License No. 952 issued to J. E. Bernard & Co., Inc. be and is hereby revoked effective February 7, 1977 without prejudice to reapply for a license in the future.

It is further ordered, That a copy of this Order be published in the FEDERAL REGISTER and served upon J. E. Bernard & Co., Inc.

LEROY F. FULLER,
Director Bureau of Certification & Licensing.

[FR Doc.77-4771 Filed 2-14-77;8:45 am]

JAPAN LINE, LTD., ET AL.

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 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 March 7, 1977. 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 statment should also be forwarded to the party filing the agreement (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreement filed by:

Charles F. Warren, Esq., 1100 Connecticut Avenue, N.W., Washington, D.C. 20036.

Agreement No. 9975-6, among Japan Line, Ltd., Kawasaki Kisen Kaisha, Ltd., Mitsui O.S.K. Lines, Ltd., Nippon Yusen Kaisha and Yamashita-Shinnihon Steamship Company, Ltd., is a petition to extend the duration of Agreement No. 9975, the Japan-East Coast U.S.A. Containership Service Agreement, to and including August 22, 1980. The agreement has a present termination date of August 22, 1977.

Dated: February 10, 1977.

By order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-4774 Filed 2-14-77;8:45 am]

PUERTO RICO PORTS AUTHORITY AND PUERTO RICO MARITIME SHIPPING AUTHORITY

Agreements Filed

Notice is hereby given that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of the agreements at the Washington office of the Federal Maritime Commission, 1100 L Street, NW., Room 10126; or may inspect the agreements 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 March 7, 1977. Any person desiring a hearing on the proposed agreements 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 agreements (as indicated hereinafter) and the statement should indicate that this has been done.

Notice of agreements filed by:

America Lameiro de Irizarry, Esquire, Secretary and General Counsel, Puerto Rico Ports Authority, G.P.O. Box 2829, San Juan, Puerto Rico 00936.

Agreement No. T-3211-2/T-3212-1, between the Puerto Rico Ports Authority (Port) and the Puerto Rico Maritime Shipping Authority (PRMSA), is a letter agreement which in effect modifies two agreements between the Port and PRMSA; Agreement No. T-3211, which provides for PRMSA's 15-year lease of Parcels IV-F and IV-G, which consist of 9.98 cuerdas located in the Central Market Development in Puerto Nuevo, San Juan, Puerto Rico; and T-3212, which provides for PRMSA's 11-year lease of Lot 9, Puerto Nuevo, which is adjacent to the properties leased under Agreement No. T-3211. The purpose of Agreement No. T-3211-2/T-3212-1 is to grant an option to renew Agreements Nos. T-3211 and T-3212 for additional 15-year terms upon expiration of their present terms.

Agreement No. T-3393, which is also between the Port and PRMSA, is a letter agreement granting PRMSA an option to lease a 32-acre tract of land behind Berth J, Puerto Nuevo, San Juan, for a term of 15 years, with further options to renew for two additional terms of 15 years each.

Agreement No. T-3416, which is also between the Port and PRMSA, is a letter agreement granting PRMSA an option to lease a 15.3 cuerda portion of Lot C, which is behind Berth G, Puerto Nuevo, San Juan, for a 15-year term with an option to renew for an additional 15-year period upon the expiration of the original term.

Dated: February 9, 1977.

By order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77-4772 Filed 2-14-77;8:45 am]

PACIFIC WESTBOUND 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 agree-

ment at the Field Offices located at New York, N.Y., New Orleans, Louisiana, San Francisco, California and San Juan, Puerto Rico. Comments on such agreements, including requests for hearing, may be submitted to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before March 7, 1977. 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.

Notice of agreement filed by:

Edward D. Ransom, Esq., Lillick McHose & Charles, Two Embarcadero Center, San Francisco, California 94111.

Agreement No. 57–104, filed on behalf of the members of the Pacific Westbound Conference, amends the Appendix (Rules and Regulations) to the basic agreement by the addition of a new Article 14 which establishes procedural rules for the operation of the independent action provision set forth in the second paragraph of Article 1(c) of the agreement, as amended. The independent action provision, provides that any member line to the agreement may take independent action with respect to intermodal tariff matters.

Dated: February 9, 1977.

By order of the Federal Maritime Commission.

JOSEPH C. POLKING,
Acting Secretary.

[FR Doc.77–4773 Filed 2–14–77;8:45 am]

FEDERAL POWER COMMISSION

[Project No. 82]

ALABAMA POWER CO.

Further Extension of Time

FEBRUARY 7, 1977.

On January 28, 1977, Alabama Power Company filed a motion to further extend the time to comply with ordering paragraph (B) of Opinion No. 596–A issued August 31, 1976, as most recently modified by notice issued December 15, 1976 in the above-designated proceeding. The motion states that Staff Counsel has no objection to the extension of time.

Upon consideration, notice is hereby given that an extension of time is granted to and including March 1, 1977, within which to comply with ordering paragraph (B).

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–4714 Filed 2–14–77;8:45 am]

[Docket No. RP72–110 (PGA77–6)]

ALGONQUIN GAS TRANSMISSION CO.

Rate Change Pursuant to Purchased Gas Cost Adjustment Provision

FEBRUARY 8, 1977.

Take notice that Algonquin Gas Transmission Company ("Algonquin Gas"), on January 13, 1977, tendered for filing Twenty-Seventh Revised Sheet No. 10 to its FPC Gas Tariff, First Revised Volume No. 1.

This tariff sheet is being filed pursuant to Algonquin Gas' Purchased Gas Cost Adjustment Provision set forth in Section 17 of the General Terms and Conditions of its FPC Gas Tariff, First Revised Volume No. 1. The rate adjustment, amounting to a net decrease of $.0032 per MMBtu in Algonquin Gas' sales rates under applicable rate schedules, is being filed to amortize the balance in Algonquin Gas Unrecovered Purchased Gas Cost Account.

The proposed effective date of the revised tariff sheet is March 1, 1977.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, NE, Washington, DC 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–4708 Filed 2–14–77;8:45 am]

[Docket Nos. E–9364, E–9366 and ER76–96]

BOSTON EDISON CO.

Order Approving Electric Rates Settlement

FEBRUARY 7, 1977.

On September 9, 1976, the Presiding Administrative Law Judge in these proceedings certified to the Commission proposed Settlement Agreements together with the record. The Commission finds that the Settlement Agreements are in the public interest and accepts and approves them as hereinafter ordered and conditioned.

Docket Nos. E–9364 and E–9366 were initiated on April 6, 1975, when Boston Edison Company (Edison) filed initial unit sale agreements with Bangor Hydro-Electric Company (Bangor) and Cambridge Electric Light Company (Cambridge), respectively. By order issued July 31, 1975, the Commission accepted the agreements for filing, instituted an investigation under Section 206 of the Federal Power Act, and consolidated the two dockets. On September 2, 1975, Edison filed in Docket No. ER76–96 a similar agreement with New England Power Company (NEPCO). By order issued October 20, 1975, the Commission accepted the agreement for filing, instituted a Section 206 investigation, and consolidated all of the subject dockets for hearing and decision. All of the subject unit sale agreements provide for the sale of portions of capacity and related energy from Edison's Mystic Unit No. 7.

Under the proposed settlement, joined in by all parties, the subject rate schedules will be revised to include a ceiling limiting the return plus taxes that Edison may earn under the rate schedules as originally filed. As originally filed, the rate schedules provided for a floor below which return on equity could not fall but also provided that return on equity could vary upwards to whatever annual percentage return on common equity was actually earned according to Edison's annual report data.

Public notice of the proposed settlement was issued on September 14, 1976, with responses due on or before September 24, 1976. On September 21, 1976, Staff filed comments in support of the proposed settlement.

Based on our review of the record in these proceedings, including the settlement agreements themselves, the Commission finds that the proposed settlement represents a reasonable resolution of the issues in these proceedings in the public interest. Accordingly, the settlement shall be approved.

The Commission finds: The proposed settlement agreements should be approved and made effective as hereinafter ordered and conditioned.

The Commission orders: (A) The settlement agreements certified to the Commission by the Presiding Administrative Law Judge in these proceedings are hereby accepted, incorporated herein by reference and approved subject to the following conditions.

(B) Edison shall file within 30 days of the issuance of this order rate schedule supplements appropriate to reflect the terms of the settlement agreements.

(C) This order is without prejudice to any findings or orders which have been made or which may hereafter be made by the Commission, and is without prejudice to any claims or contentions which may be made by the Commission, its Staff, or any party or person affected by this order in any proceedings now pending or hereafter instituted by or against Edison or any other person or party.

(D) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77–4695 Filed 2–14–77;8:45 am]

[Docket No. RP72-142 (PGA77-4)]

CITIES SERVICE GAS CO.

Proposed Changes in FPC Gas Tariff

FEBRUARY 8, 1977.

Take notice that Cities Service Gas Company (Cities Service) on January 10, 1977 tendered for filing proposed changes in its FPC Gas Tariff, Second Revised Volume No. 1. Cities Service states that the proposed changes are based solely on increased purchase gas costs which will result from filings by one of its pipeline suppliers, Oklahoma Natural Gas Gathering Corporation (ONGG). The proposed effective date is February 23, 1977.

ONGG's increased rate reflected on its Second Amended Eleventh Revised Sheet PGA-1 was accepted by Commission order issued January 3, 1977, in Docket No. RP72-115 (PGA77-1) and permitted to become effective January 1, 1977.

Cities Service states that it has filed its Eighteenth Revised Sheet PGA-1 to reflect the rate on ONGG's Second Amended Eleventh Revised Sheet PGA-1.

Cities Service states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties to the proceeding in Docket Nos. RP72-142 and RP76-135.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 22, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4719 Filed 2-14-77;8:45 am]

[Docket No. RP77-29]

CONSOLIDATED GAS SUPPLY CORP.

Order Accepting for Filing and Suspending Proposed Interim Emergency Modification of Curtailment Plan and Providing for Hearing

FEBRUARY 5, 1977.

On January 25, 1977, Consolidated Gas Supply Corporation (Consolidated) tendered for filing in Docket No. RP77-29 proposed First Revised Sheet No. 36 to its FPC Gas Tariff, Second Revised Volume No. 1. Consolidated proposed thereby to incorporate a new section 11.06 of the general terms and conditions of its tariff, entitled "Interim Emergency Modification of Curtailment Plan." The proposed modification would have precluded deliveries of natural gas by Consolidated for priority 2 industrial loads in excess of plant protection requirements to any of its customers serving loads in priority 3 or lower from any source. Consolidated requested that the proposed modification be made effective on January 27, 1977, and to remain in effect through March 31, 1977.

On January 26, 1977, the Public Service Commission of the State of New York (New York) filed a notice of intervention in the proceeding and moved the Commission to defer action on Consolidated's request. New York stated that additional time was required to enable Consolidated's customers, including those in New York, to analyze and discuss the possible impact of Consolidated's proposal. On February 1, 1977, New York filed a protest stating that the proposed new section 11.06 would inhibit New York's flexibility in dealing with situations which could result in drastic economic dislocation for individual industrial companies and their employees in the state of New York.

On February 3, 1977, Consolidated submitted for filing proposed Substitute First Revised Sheet No. 36, embodying certain revisions to the originally proposed new section 11.06 of its tariff. For the reasons stated below, the Commission finds the interim emergency modification of Consolidated's curtailment plan, as proposed in its filing of February 3, 1977, may be reasonable in light of the conditions existing on Consolidated's system, and the proposed modification will therefore be accepted for filing, suspended for one day, and permitted to become effective thereafter as proposed.

In its filings herein, Consolidated states that due to the severe weather conditions experienced during the current winter heating season and the resulting large increase in demand for natural gas for space heating purposes, Consolidated, on January 16, 1977, invoked the force majeure provisions of its tariff, thereby limiting deliveries of natural gas to industrial consumers to the minimum quantities needed for plant protection. As a result approximately 1600 industrial plants throughout Consolidated's service area have been forced to close down, and over 130,000 employees have been thrown out of work.

The proposed temporary emergency curtailment plan is proposed by Consolidated as a means of reducing the adverse economic effects, including unemployment, resulting from the stringent industrial curtailments imposed under the force majeure provision, and to prevent to the extent possible disproportionate economic effects in some portions of its service area.

The substitute proposal submitted by Consolidated on February 3, 1977, represents an effort to achieve the desired objectives while at the same time satisfying the objections raised by New York. Substitute section 11.06 incorporates two changes in the original plan. First, the amended provision would first become effective upon the lifting of the current force majeure curtailment and continue through March 31, 1977. Consolidated requests an effective date of February 5, 1977, which presumably is the expected date of implementation of the emergency plan. Second the prohibition against deliveries of gas by Consolidated for priority 2 industrial loads in excess of plant protection requirements to any of its resale customers serving loads in priority 3 or below, has been amended to except loads being served, with state regulatory approval, with gas which would otherwise be physically delivered to identified higher priority customers.

Consolidated has informed the Commission that it has canvassed its wholesale customers and the regulatory commissions of the states of New York, Ohio, Pennsylvania, and West Virginia, and states that none of the customers or state commissions has raised an objection to the substitute emergency plan.

Based on a review of Consolidated's filing and the facts and circumstances disclosed, the Commission finds that the proposed interim emergency curtailment plan may be reasonable and in the public interest. The Commission further finds that the adverse economic consequences resulting from industrial plant closings and related unemployment in Consolidated's service area constitute an emergency situation warranting the waiver of the Commission's notice requirements so as to permit the immediate implementation of the proposed temporary emergency plan. However, since the Commission is acting under a waiver of the normal notice requirements and Consolidated's customers and interested state commissions have thus had only limited opportunity to comment on the proposal, the proposed substitute temporary plan shall be suspended for one day, permitted to go into effect thereafter on February 6, 1977, and set for hearing. The plan shall be implemented upon the lifting of Consolidated's force majeure curtailment.

The Commission orders: (A) Consolidated's Substitute First Revised Tariff Sheet No. 36 is accepted for filing, suspended for one day, and permitted to become effective thereafter on February 6, 1977, upon motion by Consolidated in accordance with the provisions of the Natural Gas Act.

(B) The emergency plan accepted by paragraph (A) above shall be implemented by Consolidated upon the lifting of its force majeure curtailment.

(C) Section 154.22 of the Commission's Regulations is waived for purposes of the order in paragraph (A) above.

(D) Pursuant to the authority of the Natural Gas Act, particularly sections 4 and 5 thereof, and the Commission's rules and regulations thereunder, a public hearing shall be held concerning the lawfulness of Consolidated's proposal. The hearing date shall be established by subsequent notice.

(E) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4699 Filed 2-14-77;8:45 am]

[Docket N. E-7172]

DEPARTMENT OF THE INTERIOR, SOUTHWESTERN POWER ADMINISTRATION

Request for Extension of Approval and Confirmation of Rates

FEBRUARY 8, 1977.

Take notice that in January 27, 1977, the Secretary of the Interior (Interior), on behalf of the Southwestern Power Administration (SWPA) filed with the Commission a request for extension of confirmation and approval of the following rate schedules:

Rate Schedule F-1 (Firm Power)
Rate Schedule P-2 (Revised) (Peaking Power)
Rate Schedule EE (Excess Energy)
Rte Schedule IC (Interruptible Capacity)
Contract No. ISPA-356 (with Oklahoma Gas and Electric Company and Public Service Company of Oklahoma)
Contract No. 14-02-001-864 (with Tex-La Electric Cooperative, Inc.)

The Commission, by order issued August 17, 1976, in this docket, extended its confirmation and approval of the above rate schedules to November 30, 1976. Interior is currently requesting that the Commission extend its confirmation and approval of the rate schedules set forth above to June 30, 1977.

Interior states that studies completed by SWPA indicate that revenues derived under the presently effective rate schedules are inadequate to fulfill SWPA's repayment obligation as required by Section 5 of the Flood Control Act of 1944. Interior further states that an increase of approximately $9.0 million per year in additional revenues will be required and that SWPA is currently making preparations to review a draft system repayment study supporting the increase with its customers.

Any person desiring to be heard or to protest said filing should submit written comments to the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. All such comments should be filed on or before February 25, 1977. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4705 Filed 2-14-77;8:45 am]

[Docket No. RP72-149 (PGA77-5)]

MISSISSIPPI RIVER TRANSMISSION CORP.

Proposed Change in Rates

FEBRUARY 8, 1977.

Take notice that Mississippi River Transmission Corporation ("Mississippi") on January 27, 1977, submitted for filing Fifty-Fourth Revised Sheet No. 3A to its FPC Gas Tariff, First Revised Volume No. 1, to become effective March 1, 1977.

The instant filing is being made pursuant to the provisions of Mississippi's purchased gas cost adjustment clause to track a rate change filing of Natural Gas Pipeline Company of America ("Natural"), made pursuant to the terms of the PGA provisions of its tariff. Mississippi has also included in the rate change filing, an adjustment to reflect the reductions in United Gas Pipe Line Company's ("United") PGA filing to be effective January 2, 1977 at Docket No. RP72-133 and Natural's general rate increase filing effective December 1, 1976 at Docket No. RP76-106.

Mississippi submitted schedules containing computations supporting the rate changes to be effective March 1, 1977. Mississippi states that copies of its filing were served on Mississippi's jurisdictional customers and the State Commissions of Arkansas, Illinois and Missouri.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene unless such petition has previously been filed. Copies of the filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB;
Secretary.

[FR Doc.77-4706 Filed 2-14-77;8:45 am]

[Docket No. RI77-27]

ENERGY RESERVES GROUP, INC.

Petition for Special Relief

FEBRUARY 8, 1977.

Take notice that on January 13, 1977, Energy Reserves Group, Inc., 217 No. Water, Wichita, Kansas 67201, filed a petition for special relief in Docket No. RI77-27 pursuant to Section 2.76 of the Commission's General Policy and Interpretations (18 CFR 2.76).

Petitioner seeks authorization to charge 48 cents per Mcf for the sale of gas to Texas Gas Transmission Corporation from a well located in Jefferson Island Field, Iberia Parish, Louisiana, in consideration for the installation of compression facilities. The subject gas is currently being sold at the rate of 25 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 25, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4707 Filed 2-14-77;8:45 am]

[Docket No. CP77-179]

FLORIDA GAS TRANSMISSION CO., ET AL.

Findings and Order Issuing a Limited Term Temporary Certificate Authorizing Sale and Purchase of Natural Gas

FEBRUARY 7, 1977.

On February 2, 1977, Florida Gas Transmission Company (Florida Gas), Southern Natural Gas Company (Southern) and Sun Oil Company (Sun) filed a joint application for an emergency limited term certificate with pregranted abandonment pursuant to Section 7 of the Natural Gas Act in order to allow Sun to sell to Southern up to 40,000 MMBtu per day released by Florida Power Corporation (Florida Power) for up to thirty days, all as more fully set forth in the joint application in this proceeding.[1]

Southern asserts and the Commission has found that a state of emergency exists on the Southern system as a result of limited available gas supplies and abnormally large gas requirements in light of the substantially colder than normal winter weather now prevailing east of the Rocky Mountains. By telegram dated January 18, 1977,[2] the Commission stated, "You are to use the above provisions [of Southern's tariff] to the extent necessary to maintain deliveries at levels sufficient to meet essential Priority 1 requirements and any service to entities not properly classified in Priority One which cannot safely sustain natural gas curtailment required to prevent irreparable injury to life or property (such as service to hospitals which lack alternative fuel capability)."

Curtailments by Southern have been made into Priority one requirements. Gas available from Southern's Muldon Storage Field has declined from 750,000 Mcf per day to approximately 400,000 Mcf per day. Further declines are projected unless storage can be replenished. Distributors report that, notwithstanding the curtailment of industrial users, their peak shaving storage has also reached critical levels (an average of 4 or 5 days supply of propane). Replenishment of the distributors peak shaving is hampered by the cold weather and adverse climate conditions prevailing east of the Rocky Mountains. At the same time, cold weather has continued in these areas.

To alleviate this emergency situation on the Southern system and to implement the Commission's January 18th

[1] Sun is currently selling gas to Florida Power which has agreed to permit Sun to reduce its deliveries to Florida Power during this period.

[2] As supplemented by telegram dispatched January 19, 1977.

directive, Southern proposes to purchase up to 40,000 MMBtu of natural gas from Sun for a thirty-day period. The gas will be delivered to Southern by Florida Gas at existing interconnections. Sun has gas available for this sale to Southern because Florida Power has agreed to reduce its gas purchases as a result of these emergency circumstances on the condition that Sun sell such volumes to Southern. Florida Power will replace the released gas volumes with fuel oil during the period. Under the terms of the release, Florida Power may terminate or suspend at any time in whole or in part the released volumes on 24-hour notice.

Sun seeks authority to make the limited term sales to Southern for a period of up to thirty days and to terminate that sale at the end of that period or when sooner terminated by Florida Power without further order of the Commission. Sun would make this sale without prejudice to its right to subsequently sell all or part of the gas pursuant to Section 157.29 of our Regulations. Southern seeks authority from the Commission to purchase the gas for Priority One requirements and/or to replenish its dwindling Muldon Storage Field and to recover the cost of the gas, the cost of transportation and the cost of providing fuel oil to Florida Power as more fully described below.

As provided in the agreements, Southern will pay Sun the current contract rate authorized by its contract with Florida Power which is estimated to be $1.53 per MMBtu. Florida Power will continue to pay Florida Gas for the full transportation charges pursuant to Florida Gas FPC Tariff, Rate Schedule T-1. In addition, Southern will pay Sun and Florida Gas for the transportation of gas above existing transportation obligations, which in the case of Sun is approximately 11 cents per MMBtu for all volumes delivered to Southern on any day in excess of 17,500 MMBtu and in the case of Florida Gas is 5.39 cents per MMBtu for all volumes delivered to Florida Power and Southern on any day in excess of 50,000 MMBtu per day. Southern will also pay Florida Power's fuel oil supplier (a non-affiliated supplier) the delivered cost (estimated at $2.25 per MMBtu) of the equivalent Btu's of fuel oil minus the rate which Florida Power will have paid Sun under its direct sales contract for an equivalent number of Btu's (approximately $1.53 per MMBtu) so that this transaction will not affect the cost of power to Florida Power's ratepayers. Southern estimates that the cost of the replacement fuel oil and Florida Power's handling costs will cost Southern's customers between 60 and 65 cents per MMBtu. It appears to the Commission that these financial arrangements are designed to make all parties whole and are not intended to result in any additional profit to any party.

The Commission finds: (1) Applicants, Florida Gas Transmission Company, Southern Natural Gas Company and Sun Oil Company are "natural gas companies" within the meaning of the Natural Gas Act.

(2) An emergency gas shortage exists across the system of Applicant Southern Natural Gas Company requiring Southern to acquire additional gas supplies to meets its "current essential Priority 1 requirements and any services to entities not properly classified in Priority 1 which cannot safely sustain natural gas curtailment which is required to prevent irreparable injury to life or property (such as service to hospitals which lack alternate fuel capability."

(3) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act and the requirements, rules and regulations of the Commission thereunder.

(4) The granting of a temporary certificate to the Applicants is required by the public convenience and necessity and therefore should be permitted as hereinafter ordered and conditioned. Further, the present or future public convenience and necessity permit the abandonment and discontinuance of this sale 30 days after commencement without the need for further proceedings.

(5) The release of gas by Florida Power is not a sale of natural gas by Florida Power and hence cannot be considered such within the meaning of the Natural Gas Act and does not affect the transportation certificates previously issued to Florida Gas authorizing transportation for Florida Power.

(6) The Commission finds that prior public notice of this proceeding is impracticable, unnecessary and contrary to the public interest given the circumstances set forth above.

The Commission orders: (1) Pursuant to Sections 4, 5, 7, and 16 of the Natural Gas Act, temporary certificates are issued to Sun Oil Company authorizing the limited term sale of gas to Southern Natural Gas and to Florida Gas Transmission Company authorizing the limited term transportation of gas to Southern under the following terms and conditions:

A. The sale by Sun shall be made for a period of 30 days from the date deliveries commence and shall be terminated unless terminated sooner under the agreement between Southern and Sun without further order from the Commission at the end of that period. Floridea Gas is authorized to transport the gas contemplated under the sale by Sun to Southern.

B. Southern Natural is authorized to track the cost of this transaction including the amounts paid to Sun and to Florida Gas for the gas and its transportation and to Florida Power's fuel oil supplier (less the amount which would have been paid to Sun by Florida Power through the Purchased Gas Adjustment Provision in Section 17 of its FPC Gas Tariff, Sixth Revised Volume No. 1. Section 154.38(d) of the Regulations under the Natural Gas Act is waived to permit the flowthrough of the costs incurred by Southern pursuant to the terms of this order.

(2) All parties to these emergency transactions have acted to ameliorate a critical gas supply shortage on the Southern system and therefore shall not be prejudiced in any pending or future proceedings including any present or future proceeding before this Commission as a result of providing this emergency assistance. Nor shall Sun be precluded from using the provisions of Section 157.29 of our Regulations as a result of this limited term sale to Southern hereunder.

(3) Southern shall submit, as exhibits to the joint application, the Agreements implementing this limited term sale within ten days from the date of this order.

(4) For good cause above, this order is effective on the date of issuance, and the Secretary shall cause this order to be published in the FEDERAL REGISTER.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4718 Filed 2-14-77;8:45 am]

[Docket No. ER77-175]

FLORIDA POWER & LIGHT CO.

Agreement To Provide Specified Transmission Service

FEBRUARY 8, 1977.

Take notice that Florida Power & Light Company (FP&L), on January 28, 1977, tendered for filing as an initial rate an Agreement executed only by it, entitled "Agreement To Provide Specified Transmission Service Between Florida Power & Light Company and The Utilities Commission Of The City of New Smyrna Beach, Florida." Under the Agreement, FP&L will transmit to the Utilities Commission of the City of New Smyrna Beach (City) the City's portion of the power and energy generated from Florida Power Corporation's Crystal River No. 3 Nuclear Power Unit (CR-3), together with any power and energy resources provided by Florida Power Corporation as backup to CR-3, all as specified in the Agreement.

FP&L requests an effective date of March 1, 1977 the date scheduled for commercial operation of CR-3. FP&L states that a copy of the filing was served on the Utilities Commission of New Smyrna Beach, Florida.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 21, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any

person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4703 Filed 2-14-77;8:45 am]

[Docket No. E-9574]

FLORIDA POWER AND LIGHT CO.

Order Accepting for Filing and Denying Motion To Reject Application, Granting Intervention, Providing for Hearing

FEBRUARY 7, 1977.

Florida Power & Light Company (FP&L) submitted for filing on November 26, 1976, an application seeking, pursuant to Section 203 of the Federal Power Act, an order authorizing it to acquire the fixed assets constituting the electrical system owned and operated by the City of Vero Beach, Florida. In its application FP&L states that it will pay a sum of up to $39,057,000 in exchange for the assets, subject to adjustments at the time of closing.

Vero Beach is a municipally owned system and the sale of the facilities is not subject to Commission jurisdiction. FP&L is a "public utility" under the Federal Power Act and the acquisition of the Vero Beach power system is subject to Commission jurisdiction.

Notice of the application was issued by the Commission December 9, 1976, with comments, protests, or petitions to intervene due on or before January 10, 1977. On January 10, 1977, a timely "Protest, Petition to Intervene and Motion to Reject Application" was filed by John B. Dawson, Eugene Lyon, and Fred Gossett. Dawson, Lyon and Gossett subsequently filed an "Errata Sheet" on January 19, 1977, making minor revisions of their original filing. Dawson claims to be a resident and taxpayer of the City of Vero Beach, Florida and an electric purchaser from the municipal power system. Lyon alleges that he is an electric purchaser from the municipal system although not a resident of Vero Beach. Gossett avers that he is an electric purchaser of FP&L although neither a resident of Vero Beach nor an electric purchaser from the municipal system.

Staff Counsel filed an "Answer To Protest, Petition To Intervene and Motion to Reject of John B. Dawson, Eugene Lyon, and Fred Gossett" on January 13, 1977, a copy of which was served on all parties of record in the proceeding. Staff Counsel recommended (1) that the motion to reject FP&L's application be denied and that FP&L's application be accepted for filing; (2) that the Petitioners Dawson, Lyon, and Gossett be granted permission to intervene and be made full parties to the proceeding; and (3) that a formal investigation and hearing be held in these proceedings.

On January 10, 1977, within the time prescribed for intervention in this proceeding, the Attorney for the City of Vero Beach filed a letter with the Commission in support of the application of FP&L. The Attorney for the City sent a letter to Staff Counsel dated January 21, 1977, which was received on January 25, 1977, requesting that the prior letter be considered a petition to intervene.

FP&L filed an Answer to the Dawson, et al. Protest, Petition and Motion on January 25, 1977, and suggested that all three petitions for intervention should be denied, that the motion to reject the application was meritless and should be denied, and that a hearing in this proceeding would be adverse to the public interest.

Petitioners Dawson, et al. raise substantial objections to the proposed acquisition, including the possibility of anticompetitive practices by FP&L in its dealings with the City of Vero Beach, the failure of the City to adequately assess (a) the true value of the municipal system, (b) the effect that the sale would have on the City's future credit position, and (c) other viable alternatives to outright sale to FP&L. They also question the timing of FP&L's announcement of a retail rate increase request, only a few days prior to the September 7, 1976, city-wide referendum on the proposed acquisition.

FP&L responds that the proposed retail rate increase was adequately explained to the City by means of a full page advertisement in the City newspaper prior to the voting day. It also avers that the sale is supported by the Vero Beach City Council and was overwhelmingly approved by the City electorate. Further, it alleges that the sale will result in lower retail rates for the present customers of the municipal system. In sum, FP&L maintains that the sale is in the public interest and that a hearing is neither mandated by Section 203 of the Federal Power Act nor is it necessary in this proceeding.[1]

It is true that the standard to be applied in determining whether the Commission should approve a merger is whether the merger comports with the public interest. In Commonwealth Edison Company and Central Illinois Gas and Electric Company 36 FPC 927, 931 (1966), the Commission announced:

> In other words, the ultimate determination in passing upon a merger application is not whether in the Commission's judgment merger is the only technique by which the companies involved could accomplish the over-all objectives of the Act; rather, it is enough if, upon our analysis of all the relevant factors, we conclude that the merger, in the particular circumstances of the applicants, *is consistent with the public interest.* (emphasis supplied)

The Commission again addresesed itself to the issue of the standard to be applied in deciding to authorize a merger of electric utilities in its Order Authorizing Merger, issued May 25, 1976, Central Maine Power Company, Docket No. E-9547. At page 8 of the Order the Commission stated:

> [T]he mere existence of benefits, in the form of lower rates or otherwise, will not in itself justify a merger resulting in substantial restraint of competition.

Petitioners Dawson, et al., have made allegations of possible substantial anticompetitive practices. It is the view of the Commission that a formal investigation is required to resolve the allegations of restraint of competition before a merger can be authorized.

Furthermore, the Commission agrees with the position taken by Staff that a hearing would be required if only due to the magnitude of the proposed merger involved in this proceeding.

In Commonwealth Edison Company, supra, at page 930, the Commission restated its intention (from a prior order)[2] "to require public hearings in the future on all applications requesting approval of the merger or consolidation of two or more Class A electric utilities." Although Vero Beach is a municipal system and, therefore, cannot be categorized as a Class A electric utility, its annual electric operating revenues are in excess of the $2.5 million needed to attain Class A status.

The Commission finds: (1) Good cause exists to accept for filing FP&L's application for an order authorizing the purchase of the electric facilities of the City of Vero Beach, and to deny the motion of petitioners Dawson, Lyon, and Gossett to reject the application.

(2) Good cause exists to grant the petition of Dawson, Lyon, and Gossett to intervene and each to be made a full party to the proceeding by virtue of his status as an electric customer of either FP&L or the City of Vero Beach system and the fact that it may be in the public interest.

(3) Good cause exists to grant the petition of the City of Vero Beach, Florida to intervene and be made a full party to the proceeding as it may be in the public interest.

(4) It is necessary and in the public interest that an evidentiary hearing be held in this Docket in order for the Commission to discharge its statutory responsibilities under Section 203 of the Federal Power Act.

(A) That FP&L's application, filed November 26, 1976, is hereby accepted for filing and the motion by Dawson, Lyon and Gossett to reject the application is hereby denied.

(B) That the petition to intervene of Dawson, Lyon, and Gossett is hereby granted as to each and each will be made a full party to the proceeding; *provided, however,* That participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *provided, further,* That the admission of such intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order or orders of the Commission entered in this proceeding.

[1] Answer of FP&L to Dawson et al., filed January 25, 1977. Page 8.

[2] Order Providing for Hearing, Commonwealth Edison Company, 35 FPC 872 (1966).

(C) That the petition to intervene of the City of Vero Beach, Florida, is hereby granted and the City is made a full party to the proceeding; *provided however,* That participation of such intervenor shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *provided, further,* That the admission of such intervenor shall not be construed as recognition by the Commission that he might be aggrieved because of any order or orders of the Commission entered in this proceeding.

(D) An evidentiary hearing on the application of FP&L, commencing with a prehearing conference before an Administrative Law Judge on March 1, 1977, at 10 A.M. in a hearing room at the Federal Power Commission, 825 North Capitol St., N.E. Washington, D.C. 20426.

(E) That a Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR 3.5(d)), shall preside at the hearing in this proceeding, shall prescribe relevant procedural matters not herein provided, and shall control this proceeding in accordance with the policies expressed in the Commission's Rules of Practice and Procedure.

(F) That nothing contained herein shall be construed as limiting the rights of parties to this proceeding regarding the convening of conferences or offers of settlement pursuant to Section 1.18 of the Commission's Rules of Practice and Procedure.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4696 Filed 2-14-77;8:45 am]

[RP74-26 (PGA77-1)]

LOUISIANA-NEVADA TRANSIT CO.

Proposed Changes in FPC Gas Tariff

FEBRUARY 8, 1977.

Take notice that Louisiana-Nevada Transit Company on February 1, 1977, tendered for filing proposed changes in its FPC Gas Tariff, Volume 1. The proposed changes are to reflect changes in purchased gas cost as provided in the company's Purchase Gas Adjustment Clause applicable to its Rate Schedule No. G-1. The change provides for a total adjustment of 1.13¢ per Mcf including a deferred gas cost adjustment of 0.09¢ per Mcf, to amortize a deferred balance, and a cumulative cost of gas adjustment of 1.04¢ per Mcf. The proposed effective date is March 1, 1977.

Copies of the filing were served upon the company's jurisdictional customer and the Arkansas Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commissions Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4709 Filed 2-14-77;8:45 am]

[Project No. 184]

PACIFIC GAS AND ELECTRIC CO.

Issuance of Annual License(s)

FEBRUARY 8, 1977.

On February 27, 1970, Pacific Gas and Electric Company, Licensee for the El Dorado Project No. 184, located in El Dorado, Alpine, and Amador Counties, California, on the South Fork of the American River partially within the boundaries of El Dorado National Forest, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 184 was issued effective February 23, 1922, for a period ending February 22, 1972. Since expiration of the original license, the project has been maintained and operated under annual licenses, the most recent of which will expire on February 22, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to the Pacific Gas and Electric Company.

Take notice that an annual license is issued to Pacific Gas and Electric Company for the period February 23, 1977, to February 22, 1978, or until Federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the El Dorado Project No. 184 subject to the terms and conditions of the original license. Take further notice that if Federal takeover or issuance of a new license does not take place on or before February 22, 1978, a new annual license will be issued each year thereafter, effective February 23 of each year, until such time as Federal takeover takes place or a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4710 Filed 2-14-77;8:45 am]

[Docket No. RP76-100]

MICHIGAN WISCONSIN PIPE LINE CO.

Tender of Stipulation and Agreement

FEBRUARY 8, 1977.

Take notice that on January 31, 1977, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing a Stipulation and Agreement together with a Motion for approval thereof to resolve the issues pending in the above-captioned docket.

Michigan Wisconsin states that it has pending before the Commission a general rate increase proceeding resulting from a filing made on April 30, 1976, the effectiveness of which was suspended until November 1, 1976, by the Commission's order of May 28, 1976. As effectuated subject to refund on November 1, 1976, the rates reflected adjustments to delete from rate base non-certificated facilities at October 31, 1976 and to reflect an increase in its purchased gas costs.

Under the Stipulation and Agreement, issues relating to the proposed rate base treatment of certain advance payments and costs associated with the Gas Arctic and Northern Border projects have been reserved for Commission decision.

Copies of the Stipulation and Agreement are on file with the Commission and are available for public inspection. Any person desiring to comment on matters contained therein should file comments with the Federal Power Commission, 825 North Capitol Street NW., Washington, D.C. 20426, on or before February 25, 1977. Any reply comments should be filed on or before March 11, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4720 Filed 2-14-77;8:45 am]

[Docket No. RP76-69]

MID LOUISIANA GAS CO.

Order Approving Settlement Agreement and Providing for the Filing and Acceptance of Tariff Sheets

FEBRUARY 7, 1977.

On March 9, 1976, Mid Louisiana Gas Company (Mid-La) filed tariff sheets containing a proposed end-use curtailment plan which conforms almost exactly with the order of priorities set forth in Section 2.78 of the Commission's General Policy and Interpretations (18 CFR 2.78) as promulgated by Order 467-B (49 FPC 583 (1973)). Mid-La's end-use plan was proposed to replace its pro-rata curtailment plan previously approved by the Commission. (47 FPC 986 (1972)).

After due notice, one customer of Mid-La, Mississippi Valley Gas Company (MVGC), objected to the proposed plan. By order issued April 30, 1976, in the subject docket the Commission accepted for filing and suspended for one day Mid-La's tariff sheets filed March 9, 1976, and prescribed formal hearing to determine their lawfulness. By motion of Mid-La

the proposed curtailment plan was made effective on June 1, 1976.

Pending hearing in this proceeding Mid-La and MVGC reached a settlement which was set forth in a Stipulation and Agreement. At a hearing held July 27, 1976, the Stipulation and Agreement was tendered to the Presiding Judge without any expression of dissent by the parties present.[1] On July 29, 1976, the Presiding Judge certified to the Commission the Stipulation and Agreement along with proposed revised tariff sheets,[2] Schedules A and B which show certain calculations in support of the settlement, and the attendant hearing record. After due notice of said certification, no comments adverse to the proposed settlement have been received.

The settlement curtailment plan provides for a 9-priority scheme with priority categories which deviate from those of Order 467–B in but two respects: (1) firm industrial sales under 300 Mcf of gas per day are included in Priority 2, and (2) no customer storage injection volumes are reflected in Priority 2. Both these deviations appear reasonable in this case. The Commission has previously approved the inclusion of firm industrial requirements under 300 Mcf per day in priority 2 for small companies such as Mid-La.[3] As for the latter deviation, no storage injection volumes are reflected simply because none of Mid-La's customers have storage operations.

Mid-La's proposed curtailment plan provides for certain implementation procedures designed to protect high priority, temperature sensitive requirements. First, Mid-La's plan sets forth Daily Base Requirements, which represent each customer's usage, by priority, excluding any temperature sensitive requirements. To determine this requirement, sales during the May through September period were considered as non-temperature sensitive. To provide added protection to high priority users and to alleviate adverse impacts due to possible abnormal data, Mid-La has increased the customer's Priority 1 and 2 non-temperature sensitive base requirements by 15 percent to arrive at the Daily Base Requirement. Then, the projected degree day deficiency for a particular period of time is calculated by subtracting the projected mean temperature for that period from 65°, the base temperature above which Mid-La presumes there is no heat-related consumption. Next, Mid-La's plan sets forth certain Temperature Adjustment Factors which are the quantities of gas that are required by each of Mid-La's customers for each degree day deficiency. By multiplying each customer's Temperature Adjustment Factor by the projected degree day deficiency the customer's temperature sensitive load is derived. That temperature sensitive load is added to Daily Base Requirements for each customer to determine each customer's total requirements. Finally, Mid-La projects it curtailments as the volumetric difference, if any, between its customers' total requirements less Mid-La's projected gas supply.

According to the evidence in this case, Mid-La's deliveries to its customers are significantly influenced by temperature changes. The foregoing implementation procedure appears to be a reasonable means of providing for such temperature effect.

As reflected in the Stipulation and Agreement, the terms of the settlement have revised Mid-La's March 9, 1976, filing to include two changes of substance. The first modification permits balancing of deliveries. During the summer period May through September customers may balance daily volumes over the entire 5-month period. During the winter period October through April the balancing of deliveries is permitted within each month, subject to limitation on particularly cold days. The second modification establishes separate winter and summer Daily Base Requirements for Priorities 1 and 2 use and changes Daily Base Requirements and Temperature Adjustment Factors for several customers, based on revised data. The calculations of the revised Daily Base Requirements and temperature adjustment factors are shown on Schedules A and B, attached in the proopsed settlement.

As previously indicated the foregoing modifications have not precipitated any further complaint. In fact, the only complaint (submitted by MGVC) regarding Mid-La's proposed curtailment plan has been withdrawn. The Commission finds the curtailment plan offered in settlement to be in the public interest.

It should be noted that the curtailment plan offered by Mid-La in settlement is a temporary plan effective only until December 31, 1979, before which time Mid-La agrees to file a superseding curtailment plan. The settlement further provides that Mid-La or any of its customers may seek revisions to or earlier termination of the plan through appropriate proceedings. Because the settlement does not propose a permanent plan, a environmental impact statement is not required.[4] The Commission finds that its approval of the instant settlement does not constitute a major Federal action significantly affecting the quality of the human environment.

The Commission finds: The settlement of this proceeding on the basis proposed and agreed to by the parties as summarized above and as more specifically set forth in the Stipulation and Agreement certified on July 29, 1976, is reasonable and proper in the public interest in carrying out the provisions of the Natural Gas Act, and such proposed settlement should be approved subject to the terms and conditions hereinafter prescribed.

The Commission orders: (1) The settlement of this proceeding on the basis of the terms contained in the Stipulation and Agreement is approved subject to the terms and conditions hereinafter ordered.

(2) The proposed tariff sheets attached to the Stipulation and Agreement are accepted for filing, made effective on the date of this order, and designated as follows:

Second Revised Sheets Nos. 22 and 23, First Revised Sheets Nos. 23(a) through 23(g) and Original sheets Nos. 23(h) and 23(i) to First Revised Volume No. 1 of Mid-La's FPC Gas Tariff.

(3) Mid-La shall file with the Commission the proposed tariff sheets attached to the Stipulation and Agreement within 15 days after the date of the issuance of this order.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4700 Filed 2-14-77;8:45 am]

[Project No. 632]

MONROE CITY, UTAH

Issuance of Annual License(s)

FEBRUARY 8, 1977.

On September 17, 1976, Monroe City, Utah, Licensee for the Lower Monroe Hydroelectric Project No. 632, located on Monroe Creek, in Fish Lake National Forest, Sevier County, Utah, filed an application for a license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 632 was issued effective February 16, 1926, for a period ending February 15, 1976. Since expiration of the original license, the project has been maintained and operated under an annual license which will expire February 15, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to Monroe City, Utah.

Take notice that an annual license is issued to Monroe City, Utah, for the period February 16, 1977, to February 15, 1978, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Lower Monroe Hydroelectric Project No. 632 subject to the terms and conditions of the original license. Take further notice that if issuance of a new license does not take place on or before February 15, 1978, a new annual license will be issued each year thereafter, effective February 16 of each year, until such time as a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4711 Filed 2-14-77;8:45 am]

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[1] In addition to MVGC, Acme Brick Company and the Commission Staff were in attendance at the hearing.

[2] Second Revised Sheets Nos. 22 and 23, First Revised Sheets Nos. 23(a) through 23(g), and Original Sheets Nos. 23(h) and 23(i) to First Revised Volume No. 1 of Mid-La's FPC Gas Tariff.

[3] See North Penn Gas Co., order issued November 5, 1976, in Docket No. PR75-81.

[4] See e.g. Atlanta Gas Light Co. v. FPC, 476 F. 2d 142, 150 (5th Cir. 1973).

[Docket No. CP74-187]

MONTANA POWER CO.

Findings and Order Further Amending Order Authorizing the Importation of Natural Gas

FEBRUARY 7, 1977.

On July 19, 1976, Montana Power Company (Petitioner) filed in Docket No. CP74-187 a petition to amend further the Commission's order, issued March 21, 1975, in said docket (58 FPC ——), as amended, pursuant to Section 3 of the Natural Gas Act by authorizing an increase in the annual volumes of natural gas which Petitioner can import from Canada into the United States at a border point near Aden, Alberta, Canada from 10,000,000 Mcf to 19,892,000 Mcf, effective November 1, 1976, as such volume is set forth in amendments to Canadian-Montana Pipeline Company's (Pipeline Company) export Licenses issued by the National Energy Board of Canada (NEB), all as more fully set forth in the petition to amend further in this proceeding.

On April 29, 1976, the NEB issued orders authorizing Pipeline Company to export at Aden, Alberta, an additional quantity of gas to be purchased by Petitioner not to exceed 99,460 Mcf per day or 19,892,000 Mcf in any consecutive 12-month period commencing with November 1, 1976. Petitioner is currently authorized in the subject docket to import up to 99,460 Mcf of gas per day but only 10,000,000 Mcf in any 12-month period at Aden. Petitioner imports from Canada more than 70 percent of the natural gas supply necessary to serve its market and the ability of Petitioner to meet its market requirements and avoid curtailment of service directly depends on continued importation of natural gas under the authorization granted in the subject docket. Accordingly, Petitioner requests that its import authorization in the subject docket be amended to authorize the importation from Canada into the United States at a border point near Aden up to 19,892,000 Mcf of gas during any consecutive 12-month period commencing November 1, 1976.

In view of the unprecedented cold weather which affected the United States east of the Rocky Mountains and the fact that numerous natural gas pipelines are now facing or shortly will face natural gas supply shortfalls to meet high priority loads and that emergency measures are needed to cope with this situation,[1] the Commission reaches no conclusions as to the need of Petitioner relative to other pipelines. Viewed in the context of Petitioner's needs alone, we shall grant authorization for the proposed importation to the extent possible. The public interest requires that the authorization here issued be conditioned to allow a subsequent evaluation of the relative needs and appropriate response thereto. This authorization will be granted under the broad powers conferred upon the Commission by Sections 3 and 16 of the Natural Gas Act. *Public Service Commission of the State of New York v. FPC*, 327 F.2d 893. *Niagara Mohawk Power Corporation* v. *FPC*, 379 F.2d 153 (D.C. Cir., 1967).

Due notice of the filing of the petition to amend further and opportunity for hearing thereon has been given by publication in the FEDERAL REGISTER on August 11, 1976 (41 FR 33946). No petition to intervene, notice of intervention, or protest to the granting of the petition to amend further has been filed in this proceeding.

The Commission finds: It is necessary and appropriate in carrying out the provisions of the Natural Gas Act and the public convenience and necessity require that the Commission's order, issued March 21, 1975, in Docket No. CP74-187, as amended, be further amended as hereinafter ordered.

The Commission orders: (A) The Commission's order, issued March 21, 1975, in Docket No. CP74-187, as amended, is further amended by authorizing an increase in the volumes of natural gas imported by petitioner from Canada into the United States at a border point near Aden from 10,000,000 Mcf to 19,892,000 Mcf during any consecutive 12-month period commencing November 1, 1976, as hereinbefore described and as set forth in the petition to amend further in this proceeding and as conditioned below.

(B) It could become necessary for Petitioner to sell this additional amount of natural gas authorized to be imported herein above, as directed by the Commission, to pipelines with a greater need to protect high priority users. This order is conditioned to allow a subsequent evaluation of the relative needs of Petitioner and other natural gas pipelines to the subject gas and appropriate action by the Commission relative thereto.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4698 Filed 2-14-77;8:45 am]

[1] (*See* Order issued January 14, 1977, in Docket No. CP77-116, Houston Pipeline Company)

[Docket No. RP71-125 (PGA77-2)]

NATURAL GAS PIPELINE CO. OF AMERICA

Purchased Gas Cost Adjustment to Rates and Charges

FEBRUARY 8, 1977.

Take notice that on January 14, 1977, Natural Gas Pipeline Company of America (Natural) submitted for filing as part of its FPC Gas Tariff, Third Revised Volume No. 1, the below listed tariff sheets, to be effective March 1, 1977:

Thirty-first Revised Sheet No. 5
Sixth Revised Sheet No. 5A

Natural states purpose of the filing is to track producer and pipeline supplier price changes and recover the accumulated deferred purchased gas costs as of November 30, 1976, through unit rate adjustments computed pursuant to provisions of Natural's Purchased Gas Cost Adjustment Clause.

Natural states that the annual effect of producer supplier changes increases its purchased gas cost by approximately $76.6 million which equates to a current PGA unit adjustment of 7.56¢ per Mcf.

Natural states that the annual effect of pipeline supplier increases amounts to approximately $29.6 million and equates to a current PGA unit adjustment of 2.92¢ per Mcf. This increase is due primarily to increases in the cost of Canadian gas purchased from Great Lakes Gas Transmission Company. The Canadian Government increased the export price of gas from $1.60/MMBtu to $1.80/MMBtu effective September 10, 1976, and to $1.94/MMBtu effective January 1, 1977. These two increases account for approximately $22.9 million of the annual increase.

Natural also states that the Deferred Purchased Gas Cost Account Balance filed for has been adjusted to reflect elimination of that portion of the retroactive payments related to Opinion No. 770-A increases booked through November, 1976, based on the estimated annual increases filed by Natural on November 24 ,1976, in Docket No. RP71-125 (PGA 77-1). The accumulated deferred purchased gas costs for the six months through November amounted to approximately $70.9 million; as explained above, $29.4 million has been eliminated leaving a balance of approximately $41.5 million. This results in a current PGA unit adjustment of 4.35¢ per Mcf.

The Base Rates included on the above tariff sheets are at the levels effective, subject to refund, under Natural's filing in Docket No. RP76-106.

Copies of this filing were mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Section 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4704 Filed 2-14-77;8:45 am]

[Docket No. E-9581]

PENNSYLVANIA ELECTRIC CO.

Proposed Sale of Electric Distribution Facilities

FEBRUARY 8, 1977.

Take notice that Pennsylvania Electric Company ("Penelec"), on January 26, 1977, applied for an Order under Section 203(a) of the Federal Power Act

authorizing the sale by Pennsylvania Electric Company to Valley Rural Electric Cooperative, Inc. ("Valley") for $83,999 of 5.8 miles of Penelec's 23 KV Harrisonville distribution line (and related rights of way) in Clay and Springfield Townships, Huntingdon County, Pennsylvania, supplying Valley's Three Springs delivery point.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 23, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 77-4702 Filed 2-14-77;8:45 am]

[Project No. 199]

SOUTH CAROLINA PUBLIC SERVICE AUTHORITY

Application for Use of Project Lands and Waters

FEBRUARY 8, 1977.

Public notice is hereby given that an application was filed on June 28, 1976, under the Federal Power Act, 16 U.S.C. §§ 791a et seq., by the South Carolina Public Service Authority (Applicant) (Correspondence to: Mr. William C. Mescher, President and Chief Executive Officer, South Carolina Public Service Authority, P.O. Box-398, Moncks Corner, South Carolina 29461; and to Mr. Thomas M. Howell, Attorney at Law, P.O. Drawer 1115, Walterboro, South Carolina 29488) for Commission approval to authorize the construction of a residential and recreational development to be in part located on project lands and waters of Applicant's Santee-Cooper Project No. 199, located on the Santee and Cooper Rivers in Berkeley, Calhoun, Clarendon, Orangeburg and Sumter Counties, South Carolina.

The proposed residential and recreational development by the Fick Family Trust involves approximately 20.34 acres of project lands leased from the Applicant by the Fick Family Trust (Trust). The project lands involved are located on Wyboo Creek in Lake Marion, approximately 3 miles south-southwest of Jordan, South Carolina, on State Highway 5-14-378, west of State Highway 260 in Clarendon County. Applicant states that initial development will consist of a boat ramp, a six-table picnic area, roads, parking area and a 15-lot subdivision. The area currently designated for recreational development is about 2.5 acres, with an additional approximately 6.2 acres set aside for future recreational development, dependent upon demand. Future commercial water-oriented recreational facilities proposed include development of docking facilities and a full service bait and tackle shop with adequate sanitary facilities. Applicant states that 15 residential subdivision lots will be leased to the public on long-term leases on a first-come, first served basis.

Proposed restrictions on leased lots include a 30-foot horizontal building setback from the maximum high water level of the reservoir; controlled vegetative clearing in the 30-foot shoreline buffer; single-family dwellings, modular or mobile homes of 1,000 square-foot minimum area; approved sewage (septic tanks) and garbage disposal; and rear lot-line easements for utility installation and maintenance. Applicant states that a letter permit has been issued by the Wateree District Department of Health for the installation of septic tanks on the leased parcel. Water will be supplied to the lots from two state-approved freshwater deep wells built to supply the adjacent, proposed, privately-owned Lake Shore Estates subdivision. Road construction has been completed and accepted for maintenance by Clarendon County.

The proposed recreational and residential subdivision on project lands is contiguous to and will be an extension of, a proposed subdivision of about 156 acres owned by the Trust which applicant states is planned for development within 3 to 5 years. Applicant states that proposed waterfront recreational facilities on leased land will be open to the general public and are not intended for the private or exclusive use of the residents of the adjacent proposed private residential development (Lake Shore Estates). Applicant has requested the shortened procedure pursuant to Section 1.32(b) of the Commission's Rules and Regulations.

The application is on file with the Commission and is available for public inspection.

Any person desiring to be heard or to make a protest with reference to this application should on or before March 21, 1977, file with the Federal Power Commission, 825 North Capitol Street, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 1.8 or 1.10 (1976). 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 this proceeding. Any person wishing to become a party to this proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and conferred upon the Federal Power Commission by Sections 308 and 309 of the Federal Power Act, 16 U.S.C. §§ 825g and 825h, and the Commission's Rules of Practice and Procedure, specifically Section 1.32(b), 18 C.F.R. § 1.32(b) (1976, as amended by Order No. 518, a hearing before the Commission may be held on this application without further notice if no issue of substance is raised by any request to be heard, protest, or petition subsequent to this notice within the time required herein, and if the applicant request that the shortened procedure of Section 1.32(b) be used. If an issue of substance is so raised, or the applicant fails to request the shortened procedure, further notice of hearing will be given.

Under the shortened procedure herein provided for, unless otherwise advised, it will not be necessary for the applicant to appear or be represented at the hearing before the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4721 Filed 2-14-77;8:45 am]

[Docket No. RP73-49 (PGA 77-2)]

SOUTH GEORGIA NATURAL GAS CO.

Revision to Tariff

FEBRUARY 8, 1977.

Take notice that, on January 28, 1977, South Georgia Natural Gas Company (South Georgia) tendered for filing Twenty-third Revised Sheet No. 3A to Original Volume No. 1 of its FPC Gas Tariff. The proposed changes would decrease South Georgia's rates $1,105,748.

South Georgia states the instant filing is made pursuant to Section 14 (Purchased Gas Adjustment) of the General Terms and Conditions of South Georgia's Original Volume No. 1.

South Georgia is making this filing as a result of the Commission's Order issued January 11, 1977 in Southern Natural Gas Company's (Southern) FPC Docket No. RP75-84. Therefore, South Georgia requests this proposed decrease be made effective February 1, 1977, or such other date as the rate decrease proposed by Southern is permitted to go into effect.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4701 Filed 2-14-77;8:45 am]

[Project No. 382]

SOUTHERN CALIFORNIA EDISON CO.

Issuance of Annual License(s)

FEBRUARY 8, 1977.

On February 4, 1972, Southern California Edison Company, Licensee for the Borel Project No. 382, located on the North Fork of the Kern River, Kern County, California, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 382 was issued effective February 28, 1925, for a period ending February 27, 1975. Since expiration of the original license, the project has been maintained and operated under annual license, the most recent of which will expire February 27, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensee's application, it is appropriate and in the public interest to issue an annual license to the Southern California Edison Company.

Take notice that an annual license is issued to the Southern California Edison Company for the period February 28, 1977, to February 27, 1978, or until Federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Borel Project No. 382 subject to the terms and conditions of the original license. Take further notice that if Federal takeover or issuance of a new license does not take place on or before February 27, 1978, a new annual license will be issued each year thereafter, effective February 28 of each year, until such time as Federal takeover takes place or a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4716 Filed 2-14-77;8:45 am]

[Project No. 405]

SUSQUEHANNA POWER CO. AND PHILADELPHIA ELECTRIC POWER CO.

Issuance of Annual License(s)

FEBRUARY 8, 1977.

On November 8, 1972, the Susquehanna Power Company and the Philadelphia Electric Power Company, Licensees for Conowingo Project No. 405, located in Harford and Cecil Counties, Maryland, and Lancaster, Montgomery, Chester and Delaware Counties, Pennsylvania, filed an application for a new license pursuant to the Federal Power Act and Commission Regulations thereunder.

The license for Project No. 405 was issued effective February 20, 1926, for a period ending February 19, 1976. Since expiration of the original license, the project has been maintained and operated under an annual license which will expire February 19, 1977. In order to authorize the continued operation and maintenance of the project, pending Commission action on Licensees' application, it is appropriate and in the public interest to issue an annual license to the Susquehanna Power Company and the Philadelphia Electric Power Company.

Take notice that an annual license is issued to the Susquehanna Power Company and the Philadelphia Electric Power Company for the period February 20, 1977, to February 19, 1978, or until Federal takeover, or until the issuance of a new license for the project, whichever comes first, for the continued operation and maintenance of the Conowingo Project No. 405 subject to the terms and conditions of the original license. Take further notice that if Federal takeover or issuance of a new license does not take place on or before February 19, 1978, a new annual license will be issued each year thereafter, effective February 20 of each year, until such time as Federal takeover takes place or a new license is issued, without further notice being given by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4712 Filed 2-14-77;8:45 am]

[Docket No. CP77-186]

TEXAS EASTERN TRANSMISSION CORP.

Order Authorizing Importation of Natural Gas for Specified Period

FEBRUARY 4, 1977.

On February 4, 1977, Texas Eastern Transmission Corporation (Texas Eastern) filed in Docket No. CP77-186 an application pursuant to Section 3 of the Natural Gas Act for authorization to import natural gas from Mexico to the United States for a period to expire no later than August 1, 1977, for use in its general system supply to meet the needs of its customers, all as more fully set forth in the application.

Texas Eastern requests authorization to import and purchase from Petroleos Mexicanos (Pemex) up to 40,000 Mcf per day, commencing immediately following Commission approval of this request and continuing for a period to expire no later than August 1, 1977. Texas Eastern will pay Pemex $2.25 per Mmbtu at a pressure base of 14.73 psia for such volumes. This gas will be imported into the United States through the existing facilities of Texas Eastern in the vicinity of McAllen, Texas, covered by an existing Presidential Permit. Accordingly, no additional Presidential Permit will be required.

The contract between Pemex and Texas Eastern for this emergency supply which will be produced from new fields located in Northeast Mexico is for an initial term of 60 days with provisions for extension to August 1, 1977, by mutual agreement.

Prompt authorization of this emergency importation and purchase is in the public interest and is urgently required to assist Texas Eastern in meeting the requirements for high priority uses of natural gas, including short-term storage replenishment or injection for protection of high priority uses. Texas Eastern is advised by Pemex that initial deliveries of this gas will commence as soon as the requested import authorization is granted by the Commission.

No contract for this purchase was submitted with the application by Texas Eastern pursuant to Section 153.4 of the Commission's Regulations. In view of the emergency to be addressed, we will waive this requirement; however, the authorization herein granted will be conditioned upon the filing of such contract as required by Section 153.8 of our Regulations.

The Commission is cognizant of the unprecedented cold weather which has affected the eastern and southern portions of the country including Texas Eastern's service region. On January 14, 1977, in the order issued in Docket No. CP77-116, Houston Pipeline Company, we noted that numerous natural gas pipelines are now facing, or shortly will face, natural gas supply shortfalls to meet high priority loads and that emergency measures are needed to cope with this situation (mimeo p. 2). The application by Texas Eastern for a specified period authorization herein clearly demonstrates that additional gas is needed to assist Texas Eastern in maintaining its ability to render natural gas service to its customers.

The Commission reaches no conclusion as to the need of Texas Eastern relative to other pipelines. Viewed in the context of Texas Eastern's needs alone, we shall grant authorization for the proposed importation to the extent possible. The public interest requires that the authorization here issued be conditioned to allow a subsequent evaluation of the relative needs and appropriate response thereto. This authorization will be granted under the broad powers conferred upon the Commission by Sections 3 and 16 of the Natural Gas Act. *Public Service Commission of the State of New York* v. *FPC*, 327 F.2d 893. *Niagara Mohawk Power Corporation* v. *FPC*, 379 F.2d 153 (D.C. Cir., 1967).

The Commission finds: (1) A natural gas supply emergency situation exists on the Texas Eastern Transmission Corporation system which has substantially diminished Texas Eastern's ability to render natural gas service to its high priority customers.

(2) Approval of the proposed importation of gas by Texas Eastern will materially assist in helping to alleviate curtailment of high priority customers and is consistent with the public interest.

(3) It is not inconsistent with the public interest to authorize the importation of natural gas as proposed by Texas Eastern.

(4) It is necessary and appropriate for the purposes of the Natural Gas Act and the Commission's Regulations thereunder to waive the Commission's Regulations as hereinafter provided.

The Commission orders: (A) Texas Eastern Transmission Corporation is hereby authorized to commence the importation of up to 40,000 Mcf of natural gas per day from Mexico for a period to expire no later than August 1, 1977, as

hereinbefore described and as more fully described in the application in Docket No. CP77-186, upon the terms and conditions outlined below.

(B) The gas imported under the subject arrangement shall not be used to displace alternate fuel capability or cause other gas to displace alternate fuel capability.

(C) Texas Eastern shall file within 10 days after the initial importation of gas herein its contract for the purchase of such gas with Pemex and any other contracts, if any, which are designed to effectuate the transportation of the imported gas to its intended market.

(D) Pursuant to the provisions of Section 1.7 of the Commission's Rules of Practice and Procedure, the following sections of the Commission's Regulations are hereby waived to facilitate issuance of this order: Section 2.1 of the Commission's General Policy and Interpretations and Section 153.4 of the Commission's Regulations under the Natural Gas Act.

(E) It could become necessary for Texas Eastern to sell this imported gas, as directed by the Commission, to pipelines with a greater need to protect high priority users. This order is conditioned to allow a subsequent evaluation of the relative needs of Texas Eastern and other natural gas pipelines to the subject gas and appropriate action by the Commission relative thereto.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4697 Filed 2-14-77;8:45 am]

[Docket No. RP73-3 (PGA77-2)]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Purchased Gas Cost Adjustments to Rates and Charges

FEBRUARY 8, 1977.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) on January 28, 1977, tendered for filing certain revised tariff sheets to its FPC Gas Tariff, Second Revised Volume No. 1 to become effective March 1, 1977. Pursuant to the Purchased Gas Adjustment Clause (PGA Clause) contained in its Tariff, Transco proposes to increase its rates effective March 1, 1977 to reflect the net effect of a current purchased gas cost increase and a deferred adjustment decrease.

First Revised Sheet No. 12 and First Revised Sheet No. 15 included in Appendix A of the filing reflect a net rate increase of 4.1¢ per dekatherm (dt) which is the result of a 7.2¢ per dt current gas cost increase and a decrease of 3.1¢ per dt to eliminate the credit balance in the Company's unrecovered purchase gas cost account as of December 31, 1976 for gas purchase costs exclusive of amounts attributable to Opinion No. 770-A.

The Company states that copies of the filing have been mailed to each of its jurisdictional customers and interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before February 25, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspections.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4717 Filed 2-14-77;8:45 am]

[Docket No. RP71-29, et al., (Phase II)]

UNITED GAS PIPE LINE CO.

Extension of Procedural Dates

FEBRUARY 4, 1977.

On February 4, 1977, Air Products and Chemicals, Inc., Courtaulds North America, Inc., Reichhold Chemicals, Inc., Armstrong Cork Company and Stauffer Chemical Company filed a motion to extend the hearing date set by the Commission Order issued January 25, 1977.

Upon consideration, notice is hereby given that the hearing date in the above-designated proceeding is extended to February 23, 1977.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4715 Filed 2-14-77;8:45 am]

[Docket No. E-9147 (Phase II)]

VIRGINIA ELECTRIC AND POWER CO.

Further Extension of Time

FEBRUARY 7, 1977.

On January 27, 1977, ElectriCities of North Carolina filed a motion to further extend the procedural dates fixed by order issued January 22, 1975, as most recently modified by Notice issued December 10, 1976, in the above-designated proceeding. The motion states that all parties have been contacted, and there are no objections.

Notice is hereby given that the procedural dates are further extended as follows:

Service of Intervenor Testimony, April 7, 1977.
Service of Staff Testimony, May 9, 1977.
Service of Company Rebuttal, May 23, 1977.
Service of Intervenor Rebuttal, June 13, 1977.
Hearing, June 21, 1977 (10:00 a.m. EDT).

By direction of the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4713 Filed 2-14-77;8:45 am]

CONSOLIDATED GAS SUPPLY CORP.

Application To Import Liquefied Natural Gas and Request for Waiver

FEBRUARY 8, 1977.

Take notice that on February 7, 1977, Consolidated Gas Supply Corporation (Consolidated), 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP77-189 an application pursuant to section 3 of the Natural Gas Act and Part 153 of the Commission's regulations (18 CFR, Part 153), for authorization to import liquefied natural gas (LNG) from Algeria to the United States at Everett, Massachusetts, thence for further transportation by exchanges with existing pipelines to the Consolidated system, all as more fully set forth in the application which is on file with the Commission.

Consolidated seeks authorization to import up to 58,000 cubic meters of LNG in two shiploads purchased from Sonatrach at Skikda, Algeria, and has arranged for its transportation to the LNG terminal and revaporization facilities of Distrigas of Massachusetts Corporation (DOMAC). The revaporization LNG will be physically delivered through the local distribution facilities of Boston Gas Company (Boston Gas) and Consolidated will receive gas via exchange with either Tennessee Gas Pipeline Company, a Division of Tenneco Inc., or, alternatively, a combination of Texas Eastern Transmission Corporation and Algonquin Gas Transmission Company. Although oral understandings have been reached, no written contracts have been executed for the purchase from Sonatrach or for ocean transportation.

Consolidated proposes to purchase the subject gas from Sonatrach F.O.B. Skikda, Algeria, at a price of $1.40 per million Btu and has arranged with Hilmar Rekston, a Norwegian corporation, for its transoceanic transportation at a rate of $.75 per million Btu. DOMAC will charge Consolidated 97.5 cents per million Btu to receive, terminal, and revaporize the LNG imported. In addition, Boston Gas will impose a charge of 23.5 cents per million Btu as a handling and Btu equalization charge. It is estimated that the total cost will be approximately $3.40 per Mcf, plus any charges assessed as a result of exchanges with other pipelines. No estimate of charges for the exchanges is submitted.

Consolidated proposes to flow through the charges from Sonatrach, Hilmar Rekston, DOMAC, and Boston Gas under the purchased gas adjustment (PGA) clause of its tariff and specifically requests a waiver of § 154.38(d)(4) of the regulations under the Natural Gas Act (18 CFR 154.38(d)(4)) to the extent that such regulation would prohibit Consolidated from flowing through the cost related to the LNG to be imported under its PGA clause.

In its application, Consolidated asserts that prompt authorization of the importation and purchase is urgently needed to assist in mitigating the unprecedented emergency gas supply situation over its system. Consolidated describes its

supply situation as follows: On January 18, 1977, Consolidated instituted a force majeure curtailment requiring the curtailment of all industrial loads except plant protection as defined by § 2.78 of our Statements of General Policy and Interpretations (18 CFR 2.78). We noted in the order issued February 5, 1977, in Docket No. RP77-29, that the implementation of the force majeure provisions of its tariff resulted in the closing of 1600 industrial plants throughout Consolidated's service area. More than 130,000 employees are out of work.

Consolidated has requested that its commercial and human needs customers such as schools and hospitals reduce consumption. Despite all the measures Consolidated has taken, a grave supply shortage still exists on its system. On February 1, 1977, Consolidated's storage inventories were 50 million Mcf below the normal level for that date. In view of the severity of the situation, Consolidated requested immediate authorization granted by Commission order issued February 8, 1977.

Any person desiring to be heard or to make any protest with reference to said application and request for waiver should on or before February 15, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). Due to the severity of the current emergency, good cause exists to allow the shortened notice period. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4899 Filed 2-11-77;2:18 pm]

[Docket Nos. RI76-138, CI76-578, CI76-579 and CP76-410]

SOUTHERN UNION SUPPLY CO. AND EL PASO NATURAL GAS CO.

Amended Petition for Special Relief

FEBRUARY 9, 1977.

Take notice that on February 1, 1977, Southern Union Supply Company (Petitioner), 1800 First International Building, Dallas, Texas, 75270, filed a proposed amendment in the above-captioned consolidated dockets which amends its petition for special relief filed July 21, 1976,[1] in Docket No. RI76-138 pursuant to § 2.56a(g) of the Commission's General Policy and Interpretations wherein petitioner sought rolled in "average" rates to Southern Union Company (Southern) and El Paso Natural Gas Company (El Paso) of approximately $1.13 and 86 cents per Mcf. These total rates which petitioner sought to change were based on the provisions of Opinion 699-H, and more particularly, the base national rate of 52 cents per Mcf, adjusted upward to $1.13 and 86 cents, respectively, for taxes, Btu loss, shrinkage and transportation. On the basis of the amended filing of February 1, 1977, petitioner proposes to adjust upward the total rates requested to Southern and El Paso to approximately $2.48 and $2.18, respectively, reflecting substitution of the new base national rate of $1.42 adjusted as of January 1, 1977, to $1.44, in the same formula utilized to derive the total rates initially requested.

It appears reasonable and consistent with the public interest in this case to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to make any protest with reference to said application should on or before February 18, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4900 Filed 2-14-77;2:18 pm]

[Docket No. CP77-154]

TENNESSEE GAS PIPELINE CO., AND EAST TENNESSEE NATURAL GAS CO.

Application

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and East Tennessee Natural Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP77-154 a joint application pursuant to Section 7(c) of the Natural Gas Act and Section 2.79 of the Commission's General Policy and Interpretations (18 CFR 2.79), for a certificate of public convenience and necessity authorizing the transportation of up to 3,000 Mcf of natural gas per day on a best-efforts basis for Aluminum Company of America (Alcoa), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that pursuant to the Commission's order issued in Docket No. CP76-267 on November 4, 1976 (56 FPC ____), Texas Gas Transmission Company (Texas Gas) is authorized to transport up to 7,957 Mcf of natural gas per day, for a period of two years, for Alcoa for use in its plant located in Warrick, Indiana. It is further stated that such gas is purchased by Alcoa from Par Oil Corporation (Par) from its Athens Field, Claiborne Parish, Louisiana, at a price of $1.50 per Mcf during the first year of deliveries.

It is stated that by its telegram of January 24, 1977, Alcoa has requested that Tennessee and East Tennessee assist Texas Gas in transporting up to 3,000 Mcf of gas per day to Alcoa's plant located in Alcoa, Tennessee, which gas was then being delivered to Alcoa's Warrick Plant, in order to enable Alcoa to offset the effects of curtailment being imposed on the Alcoa Plant by East Tennessee.

It is stated that Tennessee would receive such gas at its Greenville, Mississippi, Sales Delivery Point from Texas Gas and would deliver it to East Tennessee for the account of Alcoa at its existing Greenbrier Sales No. 2 Delivery Point in Robertson County, Tennessee. It is further stated that East Tennessee would transport and deliver such volumes less fuel and use requirements to Alcoa's Alcoa Plant.

It is stated that Alcoa has agreed to pay Tennessee a monthly charge to be determined by multiplying 12.59 cents by the volume of natural gas transported and delivered to East Tennessee, and Tennessee would receive each day for its fuel and use requirements a volume of gas equal to 3.0 percent of the volume transported for such day. It is further stated that Alcoa has agreed to pay East Tennessee a monthly transportation charge to be determined by multiplying the rate of 25.0 cents per Mcf by the volume of natural gas actually transported and delivered by East Tennessee to Alcoa, and East Tennessee would retain a daily volume determined by multiplying .72 percent by the volume delivered by Tennessee to East Tennessee for the account of Alcoa for such day for fuel and use requirements.

It is stated that such transportation service by Tennessee and East Tennessee would be for a period not to exceed 30 days from the date of initial delivery, which period commenced January 28, 1977, pursuant to the temporary authorization granted by the Commission in its letter order dated January 28, 1977.

Tennessee and East Tennessee state that this transportation service would be made to the extent operating conditions permit through the utilization of existing facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered

[1] Notice issued August 4, 1976. Published in the FEDERAL REGISTER on August 11, 1976 at 41 F.R. 33948.

by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4842 Filed 2-11-77;2:18 pm]

[Docket No. CP76-322]

TENNESSE GAS PIPELINE CO., EAST TENNESSEE NATURAL GAS CO.

Petition to Amend

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), P.O. Box 2511, Houston, Texas 77001, and East Tennessee Naturial Gas Company (East Tennessee), P.O. Box 10245, Knoxville, Tennessee 37919, filed in Docket No. CP76-322 a petition to amend the Commission's order issued pursuant to Section 7(c) of the Natural Gas Act on June 30, 1976 (55 FPC ——), so as to authorize Tennessee to transport and deliver up to 325 Mcf of natural gas per day to Tennessee Natural Gas Lines, Inc. (Tennessee Natural) for the account of Stauffer Chemical Company (Stauffer), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Tennessee states that it is presently authorized to transport up to 1,700 Mcf of gas per day to East Tennessee for the account of Stauffer for utilization by Stauffer at its Mt. Pleasant, Tennessee, plant.

It is stated that Stauffer also operates a plant in Nashville, Tennessee, served by Nashville Gas Company (Nashville), which is served by Tennessee Natural, a resale customer of Tennessee. It is further stated that in the latter part of January and early February 1977, Stauffer has been curtailed down to 67 Mcf per day by Nashville, and as a result has lost 80 percent of the plant's daily production and exposed much of the equipment to damage from freezing.

It is stated that pursuant to a letter to the Commission dated January 25, 1977, Tennessee and Tennessee Natural requested authorization to transport up to 325 Mcf of gas per day, now being delivered to Stauffer's Mt. Pleasant plant, to Stauffer's Nashville plant. Tennessee states that it would deliver such volumes to Tennessee Natural at its Main Line Valve 863-1+9.5 miles which would in turn deliver equivalent volumes to Nashville for delivery to Stauffer, during the period ending March 31, 1977. Tennessee also states that such deliveries would be made pursuant to its Rate Schedule T-34 and it would continue to receive volumes in excess of the transportation volumes for its fuel and use requirements, which volumes would equal 9.2 percent of the transportation volumes.

It is stated that the delivery commenced February 2, 1977, pursuant to the temporary authorization granted by the Commission in its letter order dated January 28, 1977. Tennessee states that no new or additional facilities are required to effectuate the transportation service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4843 Filed 2-11-77;2:18 pm]

[Docket No. CP76-267]

TEXAS GAS TRANSMISSION CORP.

Petition to Amend

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Texas Gas Transmission Corporation (Petitioner), P.O. Box 1160, Owensboro, Kentucky 42301, filed in Docket No. CP 76-267 a petition to amend the Commission's order of November 4, 1976 (56 FPC ——), amending prior Commission orders issued May 24, 1976 (55 FPC ——), and August 31, 1976 (56 FPC ——), issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the transportation of natural gas for Aluminum Company of America (Alcoa), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that by Commission order issued on November 4, 1976, amending prior Commission orders issued May 24, 1976, and August 31, 1976, it is authorized to transport up to 7,957 Mcf of gas per day, on an interruptible basis, for Alcoa, an existing industrial customer of Southern Indiana Gas and Electric Company (SIGECO), one of Petitioner's resale customers. It is stated that Petitioner receives such volumes in Claiborne Parish, Louisiana, and redelivers the gas to SIGECO at existing points of delivery for the account of Alcoa. Alcoa, it is further stated, pays Petitioner 15.51 cents per Mcf for volumes delivered to SIGECO for Alcoa's account and Petitioner retains 9.0 percent above the delivered transportation volume for compressor fuel and line loss makeup.

It is stated that on January 25, 1977, Petitioner requested, by telegram, authorization to permit it to divert a portion of the volumes of natural gas, up to 3,000 Mcf per day, presently being delivered to SIGECO. Petitioner proposed to transport and deliver such gas to Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee), at Greenville, Mississippi, for ultimate delivery by East Tennessee Natural Gas Company (East Tennessee) to Alcoa's Alcoa, Tennessee, plant. It is further stated that Alcoa would pay Petitioner a charge of 7.33 cents for each Mcf of natural gas delivered to Tennessee for Alcoa's account, and Petitioner would retain a volume of natural gas equal to 1.6 percent above the delivered volume for use in the operation of its pipeline system necessary to deliver the volume to Tennessee.

It is stated that Petitioner would divert volumes for Alcoa's account, for a period not to exceed thirty days from the date of initial delivery, which period commenced January 28, 1977, pursuant to the temporary authorization granted by the Commission in its letter order dated January 28, 1977. Petitioner states that no new facilities are required to effectuate the diversion of volumes for the account of Alcoa.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4845 Filed 2-11-77;2:18 am]

[Docket No. CP76-416]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Petition to Amend

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Transcontinental Gas Pipe Line Corporation (Petitioner), P.O. Box 1396, Houston, Texas 77001, filed in Docket No. CP76-416 a petition to amend the Commission's order of December 23, 1976 (56 FPC ——), issued in the instant docket pursuant to Section 7(c) of the Natural Gas Act so as to authorize the delivery of certain volumes of natural gas from additional sources to South Jersey Gas Company (South Jersey), all as more fully set forth in the petition to amend which is on file with the Commission and open to public inspection.

Petitioner states that it is presently transporting on an interruptible basis for South Jersey, one of its resale customers served under its Rate Schedule CD-3, quantities of natural gas which South Jersey purchases from its production affiliate South Jersey Exploration Company (Exploration) in the East Point Blue Field, Evangeline Parish, Louisiana.

It is stated that Exploration now has production also in the East Hordes Creek Field, Goliad County, Texas; the South Gist Field, Newton County, Texas; South Tomball Field, Harris County, Texas; and the North Jefferson Island Field, Iberia Parish, Louisiana, which would be sold to South Jersey.

It is asserted that by letter agreement dated December 28, 1976, Petitioner and South Jersey have amended their transportation agreement dated May 7, 1976, so as to provide for the transportation of the following estimated maximum daily quantity of gas from such additional sources:

	Cubic feet (in thousands)
East Point Blue Field	2,000
East Hordes Creek Field	[2] 3,000
South Gist Field	[2] 200
South Tomball Field	[2] 700
North Jefferson Island Field	[1] 1,400

[1] At 15.025 psia.
[2] At 14.65 psia.

Petitioner states that transportation by other pipeline companies would be necessary to enable certain of the above gas to reach its system, as follows:

South Gist Field	Texas Eastern Transmission Corporation.
South Tomball Field	Trunkline Gas Company.
North Jefferson Island Field.	Texas Gas Transmission Corporation.

Petitioner states that no additional facilities would be required to receive gas from these companies due to existing interconnections between the respective systems.

It is stated that with respect to the East Hordes Creek Field, Petitioner proposes to construct and operate a meter and regulator station at Mile Post 90.14 on its 24-inch McMullen Lateral, Goliad County, Texas, in order to receive gas for the account of South Jersey, and would be reimbursed by South Jersey for the actual cost of such facility estimated at $52,500.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4846 Filed 2-11-77;2:18 am]

[Docket No. RP77-33]

TRANSCONTINENTAL GAS PIPE LINE CORP. AND JANNEY CYLINDER CO.

Petition for Relief From Curtailment

FEBRUARY 11, 1977.

Take notice that on February 7, 1977, Janney Cylinder Company (Petitioner), Philadelphia, Pennsylvania, filed a petition for waiver of Section 2.78(a) of the Commission's General Policy and Interpretations pursuant to Section 2.78(b) thereof, requesting the Commission to authorize restoration of partial or full natural gas service to Petitioner from Philadelphia Gas Works (PGW) in order to resume its production under Department of Defense subcontracts.

Petitioner, a natural gas customer of PGW, is a manufacturer of formed metal parts. It has been a Priority Two user of natural gas on the basis of having firm industrial requirements for process needs. It requests that 1,500 Mcf of natural gas be delivered to it on a monthly basis and 75 Mcf on peak days under a firm service contract for the duration of the period of curtailment, or in any event until May 31, 1977.

In support of its petition for relief from curtailment, Petitioner contends that (1) although PGW is now serving, in general, only Priority One loads, PGW has made exceptions; (2) the 1,500 Mcf of natural gas per month and 75 Mcf per peak day will be required to perform its high priority Department of Defense contracts; and (3) all of the production in its plant is dependent on the use of natural gas, and there are no existing alternate fuel capabilities to replace the use of natural gas.

It appears reasonable and consistent with the public interest in this proceeding to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Power Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10) on or before February 18, 1977. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene in accordance with the Commission's Rules. This filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4844 Filed 2-11-77;2:18 p.m.]

[Docket No. RI77-24]

VENTURE GAS CO.

Petition for Special Relief

FEBRUARY 11, 1977.

Take notice that on January 10, 1977, Venture Gas Company (Venture), Rimersburg, Pa. 16248, filed in Docket No. RI77-24 a petition for special rate relief. The gas sale is to Columbia Gas Transmission Corporation from Venture's Duane W. Bain well in Redbank Township, Armstrong County, Pennsylvania. The current rate is 49.58 cents per Mcf. Venture, a small producer, has recently performed a workover and fracture on the Bain well and seeks a special relief rate of 61.71 cents per Mcf.

Any person desiring to be heard or to make any protest with reference to said petition should on or before February 24, 1977, file with the Federal Power Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any party wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc.77-4841 Filed 2-11-77;2:18 p.m.]

[Docket No. E77-12]

MEMPHIS LIGHT, GAS AND WATER DIVISION AND B. V. LONG, ET AL. TRUSTEE

Emergency Natural Gas Act of 1977; Emergency Order

On February 7, 1977, Memphis Light, Gas and Water Division (Memphis) filed an application pursuant to section 6 of the Emergency Natural Gas Act of 1977 (Pub. L. 95-2) for aproval of a sale by B. V. Long, et al. Trustee (Long) to Memphis of approximately 3,000 Mcf per day (with a possibility of up to 9,000 Mcfd) at a price of $2.45 per Mcf. The gas would be delivered to United Gas Pipe Line Company (United by Long's affiliate, Rusk County Well Service Company, Inc. (Rusk). United would then deliver the gas to Texas Gas Transmission Corporation (Texas Gas) for delivery to Memphis through existing interconnections. Rusk proposes a transportation charge of $0.25 per Mcf to cover the cost of installing some 20,000 feet of four-inch diameter pipeline, dehydration facilities, and a metering station.

I find that the above stated transaction should not be authorized as requested. Order No. 2 established a price of $2.25 per MMBtu for producer sales up to which prior approval would not be required. There has been no showing that a price of $2.45 per Mcf should be authorized. As part of its application, Memphis submitted information from Long

as to costs in the general area of the proposed sale. However, that information does not establish Longs costs for this particular well nor does it demonstrate that Long could realize a price of $2.45 per Mcf in the intrastate market. Thus, Memphis has failed to demonstrate that the proposed price is fair and equitable as required by Pub. L. 95-2.

I will authorize the proposed sale on the condition that the price not exceed $2.25 per MMBtu. This authorization is subject to the submission of information by Rusk supporting the proposed transportation charge of $0.25 per Mcf. If Long determines to consummate the proposed sale on the conditions set forth above, he shall report to the Administrator within seventy-two (72) hours of the commencement of deliveries.

This order shall be served upon Memphis Light, Gas and Water Division and B. V. Long, et al. Trustee. The order shall also be published in the FEDERAL REGISTER.

This order is subject to the continuing authority of the Administrator under Pub. L. 95-2 and the rules and regulations which may be promulgated thereunder.

RICHARD L. DUNHAM,
Administrator.

FEBRUARY 11, 1977.

[FR Doc.77-4991 Filed 2-14-77;10:55 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Federal Council on the Aging

MEETING

The Federal Council on the Aging was established by the 1973 amendments to the Older Americans Act of 1965 (Pub. L. 93-29) for the purpose of advising the President, the Secretary of Health, Education, and Welfare, the Commissioner on Aging, and the Congress on matters relating to the special needs of older Americans.

Notice is hereby given pursuant to Pub. L. 92-463 that the Federal Council on the Aging will meet on March 8, 1977 from 9:30 a.m. to 5 p.m. in Room 4131 and on March 9, 1977, from 9:30 a.m. to 5 p.m. in Room 5051, HEW-North Building, 330 Independence Ave., SW., Washington, D.C. 20201. The agenda will consist of: Follow-up to FCA Benefits Study; Review of FCA Actions on Health Care for the Elderly; Review of Roles of Federal Units on Aging; Review of Federal Budget Proposals Affecting the Elderly; Review of Frail Elderly Projects; 1978 Amendments to Older Americans Act; Status of National Meals on Wheels Legislation; Status of Assets Project; Establishment of Social Security Advisory Council; Status of Minority Research Project and Status of Health Manpower Project.

This meeting will be open for public observation.

Further information on the Council may be obtained from: Cleonice Tavani, Executive Director, Federal Council on the Aging, Washington, D.C. 20201, telephone: 202-245-0441.

CLEONICE TAVANI,
Executive Director,
Federal Council on the Aging.

FEBRUARY 9, 1977.

[FR Doc.77-4677 Filed 2-14-77;8:45 am]

Office of Education

NATIONAL ADVISORY COUNCIL ON INDIAN EDUCATION

Meetings

AGENCY: National Advisory Council on Indian Education.

ACTION: Notice.

SUMMARY: The notice sets forth the schedule and proposed agenda of forthcoming meetings of the National Advisory Council on Indian Education. It also describes the functions of the Council. Notice of these meetings is required under the Federal Advisory Committee Act (5 U.S.C. Appendix 1, 10(a)(2)). This document is intended to notify the general public of their opportunity to attend.

DATES: Meetings: March 4, 1977, 8:30 a.m. to 4:30 p.m. Closed, March 5, 1977, 8:30 a.m. to 4:30 p.m., and March 6, 1977, 8:30 a.m. to 3:00 p.m.

ADDRESS: March 4, 1977, 425 13th Street, N.W., Room 326, Washington, D.C., and March 5 & 6, 1977, FOB 6, Room 1134, 400 Maryland Avenue, S.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Stuart A. Tonemah, Acting Executive Director, Office of the National Advisory Council on Indian Education, 425 13th Street, N.W., Washington, D.C. 20004 (202-376-8882).

The National Advisory Council on Indian Education is established under Section 442 of the Indian Education Act, Title IV of P.L. 92-318, (20 U.S.C. 1221g).

The Council is directed to:

(1) Advise the Commissioner of Education with respect to the administration (including the development of regulations and of administrative practices and policies) of any program in which Indian children or adults participate from which they can benefit, including Title III of the Act of September 30, 1950 (P.L. 81-874), as added by this Act, and Section 810, Title VIII of the Elementary and Secondary Education Act of 1965, as added by this Act and with respect to adequate funding thereof;

(2) Review applications for the assistance under Title III of the Act of September 30, 1950 (P.L. 81-874), as added by this Act, Section 810 of Title VIII of the Elementary and Secondary Education Act of 1965, as added by this Act and Section 314 of the Adult Education Act, as added by this Act, and make recommendations to the Commissioner with respect to their approval;

(3) Evaluate programs and projects carried out under any program of the Department of Health, Education, and Welfare in which Indian children or adults can participate or from which they can benefit, and disseminate the results of such evaluations;

(4) Provide technical assistance to local educational agencies and to Indian educational agencies, institutions, and organizations to assist them in improving the education of Indian children;

(5) Assist the Commissioner in developing criteria and regulations for the administration and evaluation of grants made under Section 303(b) of the Act of September 30, 1950 (P.L. 81-874); and

(6) To submit to the Congress not later than March 31 of each year a report on its activities, which shall include any recommendations it may dem necessary for the improvement of Federal education programs in which Indian children and adults participate, or from which they can benefit, which report shall include statement of the National Advisory Council's recommendations to the Commissioner with respect to the funding of any such programs.

The Council, pursuant to the authority contained in Section 441(a) of P.L. 92-318, (20 U.S.C. 1221f), shall submit a list of nominees from which the Commissioner of Education shall appoint a Deputy Commissioner of Indian Education.

The meeting on March 4, 5, 6, 1977, will be open to the public beginning at 8:30 a.m. and ending 4:30 p.m. each day, except as otherwise noted in the next paragraph of this notice. This meeting will be held at the Pennsylvania Building and FOB 6, Washington, D.C.

The proposed agenda includes:

(1) Executive Director's Report.
(2) Action on previous meeting minutes.
(3) Committee reports and discussions.
(4) Plans for NACIE IV Annual Report.
(5) Review NACIE FY '77 Budget.
(6) Special Reports.
(7) Plans for future NACIE activities.
(8) Regular Council Business.

The session on Friday, March 4, 1977, from 8:30 a.m. to 4:30 p.m. will be closed to the public to review applications and hold interviews with the applicants for the position of Executive Director of the National Advisory Council on Indian Education which must be held in confidence, under the authority of Section 10(d) of the Federal Advisory Committee Act (P.L. 92-463) and under the exemptions contained in the Freedom of Information Act, section 552(b) (2) and (6) of Title 5 U.S.C., (Pub. L. 9023), 45 CFR 5.71(a) and 5.71(c). Discussion of the applications and interviews will include consideration of the qualifications and fitness of the candidates and will touch upon many matters which would constitute a serious invasion of privacy if conducted in an open session.

The meeting of the Full Council on March 5-6, 1977, will be open to the public, but because of the use of Fed-

eral space on Saturday and Sunday, anyone wishing to attend the meeting should inform the Council's staff office (202-376-8882) no later that February 25, 1977, to be put on the list to enter the Federal office building.

Records shall be kept of all Council proceedings and shall be available 14 days after the meeting to the public at the office of the National Advisory Council on Indian Education located at 425 13th Street, N.W., Washington, D.C. 20004.

Signed at Washington, D.C. on February 7, 1977.

STUART A. TONEMAH,
Acting Executive Director, National Advisory Council on Indian Education.

[FR Doc.77-4685 Filed 2-14-77;8:45 am]

Food and Drug Administration

[Docket No. 76P-0344]

MEDICAL DEVICES

Opportunity for Oral Hearing on Proposed Action on State of California Application for Exemption From Preemption of Medical Device Requirements

The Food and Drug Administration (FDA) announces an opportunity for oral hearing on its proposal on the State of California application for exemption from preemption of medical device requirements. Interested persons may request an oral hearing on or before March 17, 1977.

Elsewhere in this issue of the FEDERAL REGISTER, the Commissioner of Food and Drugs proposes to grant the State of California Department of Health an exemption from Federal preemption for certain State laws and regulations pertaining to medical devices, allowing 60 days for comment. To enable expeditious review of any request for an oral hearing, the Commissioner has limited the period for requesting an oral hearing to the first 30 days of the comment period. Upon a determination that an oral hearing should be held, the Commissioner shall publish notice in the FEDERAL REGISTER of the time, date, and place of the hearing. The procedures to govern any such oral hearing are those applicable to a public hearing before the Commissioner under Subpart E of Part 2 (21 CFR Part 2, Subpart E) published in the FEDERAL REGISTER of November 2, 1976 (41 FR 48258).

Interested persons may on or before March 17, 1977, submit requests for an oral hearing on the subject matter to the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. All requests should be identified with the Hearing Clerk docket number found in brackets in the heading of this notice.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 521, 90 Stat. 574 (21 U.S.C. 360k)) and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)).

Dated February 10, 1977.

SHERWIN GARDNER,
Acting Commissioner, Food and Drugs.

[FR Doc.77-4656 Filed 2-14-77;8:45 am]

Office of the Secretary

NATIONAL ADVISORY COUNCIL ON SERVICES AND FACILITIES FOR THE DEVELOPMENTALLY DISABLED

Meeting

The National Advisory Council on Services and Facilities for the Developmentally Disabled was established by Section 133(a)(1) of Pub. L. 91-517, which was signed on October 30, 1970, to advise the Secretary with respect to any regulations promulgated or proposed to be promulgated by him in the implementation of the Act and study and evaluate progress authorized by the Act with a view to determining the purposes for which they were established.

Notice is hereby given, pursuant to Pub. L. 92-463, that the National Advisory Council on Services and Facilities for the Developmentally Disabled will hold a meeting on March 2, 3, and 4, 1977. The meeting will be held in Room 339-A, South Portal Building, Department of Health, Education, and Welfare, 200 Independence Avenue, S.W., Washington, D.C. from 9:00 a.m. to 5:00 p.m. Agenda: Remarks by the Assistant Secretary for Human Development; Research and Evaluation Strategy; Training and Technical Assistance Strategy; Goals and Objectives of the Council; Election of Vice-Chairman and Council Organizations; Protection and Advocacy; and discussion of State and Regional Concerns.

This meeting is open for public observation.

Further information on the Council may be obtained from Mr. Francis X. Lynch, Executive Secretary, National Advisory Council on Services and Facilities for the Developmentally Disabled, Room 3070, Mary Switzer Building, 330 "C" Street, S.W., Washington, D.C. 20201, telephone 202-245-0335.

FRANCIS X. LYNCH,
Executive Secretary.

FEBRUARY 9, 1977.

[FR Doc. 77-4676 Filed 2-14-77;8:45 am]

ANALYSIS OF ELIGIBLE POPULATIONS FOR FEDERAL POVERTY PROGRAMS UNDER ALTERNATIVE DEFINITIONS OF POVERTY

Program Results

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-644), 42 U.S.C. 2946, this agency announces the findings reported as a result of activities associated with an HEW project entitled "Analysis of Eligible Populations for Federal Poverty Programs Under Alternative Definitions of Poverty."

This report compares the demographic characteristics of two populations—those eligible for welfare and those who are poor. The "welfare" population consists of those eligible for Aid to Families with Dependent Children (AFDC) program or the Supplemental Security Income (SSI) Program. The "poverty" population consists of those defined as poor according to the official statistical poverty measure. In addition, these analyses considered "poverty" populations under alternative poverty measures. The analyses focus on what percentage of the poor is eligible for welfare and what percentage of welfare eligible is non-poor.

The Census Bureau's March 1975 Current Population Survey, a sample consisting of 55,000 households, was used in the study. TRIM, a microsimulation model, was used to statistically simulate the welfare eligible population and compare this to the "poor" populations. Data were obtained from the Census Population Surveys of March 1968, 1973 and 1975 for income years 1967, 1972 and 1974.

The welfare eligibles and poverty populations are different as a result of difference in concept and because the welfare eligibility dollar levels and the official poverty lines are not adjusted at the same rate each year. There is some overlap between the two populations. According to the analyses, in 1974 there were about 24.3 million poor persons and 24.6 million persons eligible for welfare. About 13.0 million were both poor and eligible for welfare.

The percent of poor families eligible for public assistance increased from 53 percent in 1967 to 65 percent in 1974. The percent of poor unrelated individuals eligible for welfare decreased between 1967 and 1974. But 13 percent of unrelated individuals who were eligible for welfare were nonpoor in 1967—and 30 percent in 1974.

In 1974, using the current measure, 92 percent of poor families headed by a woman were eligible for welfare—but only 42 percent of poor families headed by a man. Eighty-one percent of black families—and 58 percent of white families—that were poor were eligible for welfare. Fifty-three percent of working heads, but 78 percent of non-working heads, who were poor, were eligible for welfare. There was considerable geographic variation; 58 percent of poor families in the South and 75 percent of poor families in the Northeast were eligible for welfare.

A copy of this report will be filed with and will be available from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151.

Dated: February 8, 1977.

GERALD BRITTEN,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc.77-4726 Filed 2-14-77;8:45 am]

DESIGN OF ANALYTIC MODEL AND SURVEY INSTRUMENT FOR DATA ON SINGLE-PARENT HOUSEHOLDS FOR FOLLOW-ON SIE SURVEY

Program Results

Pursuit to section 606 of the Community Services Act of 1974 (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the results of activities associated with an HEW project entitled, "Design of an Analytic Model and Survey Instrument for Data on Single-Parent Households for a Follow-On SIE Survey."

There were two products associated with this project. The first is a questionnaire designed for use in a proposed follow-on survey of single heads of families identified by the Bureau of the Census' 1976 Survey of Income and Education (SIE). In that it was designed to supplement and complement data produced by the SIE itself, the survey instrument alone was not intended to be comprehensive. It might, however, serve as a model for those intending to study single-parent families. The instrument includes the following types of questions about the single head of family: Family history; marital history; life situation before and after becoming a single head of family (including education, employment, child care arrangements, income and expenses, living arrangements, and public program participation); assistance history; current financial resources (including payments received as a result of becoming a single-parent; e.g., child support); current employment, expenses and time use; and perceived needs. The second product is an analytic model. This document lays out a framework for the analysis of the data which would be generated by the survey instrument in combination with the SIE. It should be reiterated that the products of this study were limited to a questionnaire and an analytic model; consequently, no data were generated by this effort.

Copies of both products will be available upon request from the Women's Action Program, DHEW, Room 438F South Portal Building, 200 Independence Avenue, SW., Washington, D.C. 20201.

Dated: February 9, 1977.

GERALD H. BRITTEN,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc.77-4724 Filed 2-14-77;8:45 am]

RURAL INCOME MAINTENANCE EXPERIMENT

Program Results

Pursuant to section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the results of an HEW projected entitled, "The Rural Income Maintenance Experiment".

The "Summary Report: Rural Income Maintenance Experiment" reports the findings of a three-year experiment whose main purpose was to determine whether income-conditioned cash payments would cause low-income families headed by able-bodied males to work less or to drop out of the labor force entirely, and also to measure the size of any such response.

The study was performed by the Institute for Research on Poverty at the University of Wisconsin and involved more than 800 randomly-selected low-income families in rural areas of Iowa and North Carolina.

The effects of the Rural Experiment were measured by comparing the behavior of families in an experimental group, to whom various benefit formulas were assigned, with the behavior of a control group which received no benefits. The benefit formulas were structured like a negative income tax and consisted of a basic benefit, the minimum level of income guaranteed to families with no other income; and an implicit tax rate, the rate at which the benefit was reduced as other income increased.

The experiment showed that in rural families whose heads worked primarily for wages, experimental payments had very little effect on husbands' hours of work. Husbands' labor force participation was not affected at all. Wives of wage earners, however, were much less likely to work as a result of the experiment. The employment rate of wives in the experimental group averaged 26 percent lower than that of similar controls.

Total hours of work for farm families receiving benefits remained similar to controls' or were slightly lower, and some evidence appears of a shift in hours from wage work to work on the farm for members of experimental families. Profits and output sold among the experimental group were lower than among similar controls by differentials ranging from 8 to 25 percent.

In addition to the analysis of labor market behavior, the study also measured other effects of the payments on recipients. Notably, adequacy of nutrition improved for North Carolina experimental families relative to controls. The school performance of North Carolina grade school children also improved as a result of the experimental benefits. But most social and psychological characteristics of recipients were unaffected by the experimental payments.

A copy of this report will be filed and available as soon as possible from the National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151, and from the Publications Department, Institute for Research on Poverty, Social Science Building, University of Wisconsin, Madison, Wisconsin 53706.

Dated: February 9, 1977.

GERALD BRITTEN,
Acting Assistant Secretary for Planning and Evaluation.

[FR Doc.77-4725 Filed 2-14-77;8:45 am]

Food and Drug Administration

[Docket No. 76N-0379]

PLASTIC BOTTLES FOR CARBONATED BEVERAGES AND BEER

Environmental Impact Determination

The Commisioner of Food and Drugs is giving notice of his determination to take no action at this time based upon his authority under the National Environmental Policy Act (NEPA) with respect to food additive regulations permitting the use of certain plastic bottles for carbonated beverages and beer.

In a future issue of the FEDERAL REGISTER the Commissioner will stay the food additive regulations permitting the use of acrylonitrile copolymers in the fabrication of plastic bottles for carbonated beverages and beer on the basis of recently acquired information regarding its safe use in or as articles intended for use in contact with food. This information, the results of a teratology study required by the interim regulations for acrylonitrile copolymers under § 121.4010 (21 CFR 121.4010), published in the FEDERAL REGISTER of June 14, 1976 (41 FR 23491), and the preliminary results of an ongoing chronic feeding study, indicates that the use of acrylonitrile in plastic bottles for carbonated beverages and beer should be discontinued at the present time. The Commissioner will also shortly propose to amend the interim regulation for acrylonitrile copolymers in all food contact applications. The proposed amendments would reduce the amount of acrylonitrile monomer permitted to migrate to food from 0.3 part per million to 50 parts per billion.

BACKGROUND

In a notice published in the FEDERAL REGISTER of September 7, 1973 (38 FR 24391), the Commissioner concluded that preparation of an Environmental Impact Statement (EIS) was a necessary prerequisite for Food and Drug Administration (FDA) action on substances used or intended for use in the fabrication of plastic bottles for carbonated beverages and beer. This notice indicated that an Environmental Impact Analysis Report (EIAR) containing the information prescribed by § 6.1(g) (21 CFR 6.1(g)) and § 121.51 (c) and (h) (21 CFR 121.51 (c) and (h)) was to be submitted by all petitioners for food additive regulations, by all persons marketing articles covered by existing food additive regulations, and by recipients of advisory opinions (except those opinions stating that a substance is not subject to the Federal Food, Drug, and Cosmetic Act) issued before March 15, 1973, for substances used or intended for use in the fabrication of plastic bottles to be used as containers for carbonated beverages and beer.

A notice of availability of a draft EIS was published in the FEDERAL REGISTER of April 14, 1975 (40 FR 16708), requesting comments by June 13, 1975. The Council on Environmental Quality (CEQ) issued a further notice of availability published in the FEDERAL REGISTER

of June 13, 1975 (40 FR 25250), which provided for an additional 45-day public comment period ending July 29, 1975. Comments were received from Federal and State agencies, consumers, environmental groups, private companies, and trade associations. Comments received after the comment period had ended were also considered. A notice of availability of the final EIS was published in the FEDERAL REGISTER of October 5, 1976 (41 FR 43944). In the FEDERAL REGISTER of October 22, 1976 (41 FR 46642), CEQ published its notice of availability of the final EIS. The final EIS analyzed the potential environmental impact of plastic bottles for carbonated beverages and beer but did not indicate the FDA position on pending petitions and existing regulations. The notice of availability indicated that FDA's decision on such pending petitions and existing regulations would be announced in the FEDERAL REGISTER not earlier than 30 days following the availability of the final EIS.

The draft EIS stated the agency's position, since modified, that adverse environmental impact is not a ground for revocation or denial of a food additive petition under section 409 of the Federal Food, Drug, and Cosmetic Act (the act), the section of the act governing approval of food additives. The draft EIS explained that, in the Commissioner's view, Congress had specified in section 409(c) of the act the exclusive factors to be considered in approving, denying, or revoking a food additive petition, and did not include the impact on the human environment of the use of the additive (draft EIS pp. 80–81). Reflecting his position as stated in the draft statement, the Commissioner issued an order (published in the FEDERAL REGISTER of April 14, 1975 (40 FR 16662)) amending FDA's regulations concerning environmental impact consideration to notify the public of the agency's interpretation of its statutory authority under NEPA which would be uniformly followed in all agency environmental impact statements. As amended, § 6.1(a)(3) indicated that, in the judgment of the agency, a determination of adverse environmental impact did not independently authorize the Commissioner to take or withhold any action under the laws he administers.

Soon afterwards the Environmental Defense Fund brought suit seeking to invalidate § 6.1(a)(3). On March 26, 1976, United States District Judge John H. Pratt declared the regulation invalid. "Environmental Defense Fund, Inc. v. Mathews," 410 F. Supp. 336 (D.D.C., 1976). Judge Pratt held that while NEPA does not supersede the agency's other statutory duties or require that environmental consideration be favored over other factors, it does provide supplementary authority to the agency to act on the basis of all environmental considerations. Pursuant to the Court order, the Commissioner revoked § 6.1(a)(3), effective May 24, 1976, by order published in the FEDERAL REGISTER of May 28, 1976 (41 FR 21768).

As stated on page 14 of the final EIS, the ruling in "Environmental Defense Fund, Inc. v. Mathews," supra, recognizes that NEPA provides the agency authority to base substantive action on adverse environmental impact. The Commissioner has concluded, however, that the weight to be accorded environmental factors must be determined on a case-by-case basis. Consequently, the final EIS pointed out that the weight to be accorded the environmental factors identified in that statement would be determined by the Commissioner in considering whether to take or withhold action with respect to the food additive petitions and regulations covered by the statement. This notice therefore describes the factors considered by the Commissioner in deciding to take no action at this time based upon his authority under NEPA with respect to food additive regulations permitting the use of plastic bottles for carbonated beverages and beer, and specifies the weight accorded environmental factors in reaching that decision.

PLASTIC BARRIER BOTTLES FOR CARBONATED BEVERAGES AND BEER

A number of food additive petitions have been submitted to FDA requesting that regulations be amended, and regulations have been amended, to permit the use of certain polymeric materials with special gas barrier properties in food contact containers. These special characteristics make the materials physically suitable for packaging carbonated beverage and beer.

The resins currently most suitable for such containers are acrylonitrile (nitrile) and polyethylene terephthalate (polyester). The final EIS analyzes the potential environmental impact of conventional blow-molded plastic bottles incorporating these substances as well as the polyester film pouch and the non-blow-molded nitrile plastic bottle. This notice, however, is not applicable to nitrile bottles, because the food additive regulations permitting their use for carbonated beverages and beer will soon be stayed. This notice also does not discuss the decision of the agency with respect to the polyester film pouch in detail, because it is unlikely that there will be widespread use of the pouch for carbonated beverages and beer in the United States in the near future, and because the final EIS establishes that this container presents a comparatively lesser risk of adverse environmental impact than do the conventional blow-molded plastic bottles.

APPROVAL OF PLASTIC BOTTLES UNDER SECTION 409 OF THE ACT

Plastic barrier bottles for beverages are the subject of several approved and pending food additive petitions under section 409 of the act (21 U.S.C. 348) because, by virtue of the migration of certain of their component substances into the beverages they contain, they constitute food additives within the meaning of section 201(s) of the act (21 U.S.C. 321(s)). Section 201(s) defines a food additive as any substance whose intended use results or may reasonably be expected to result in its becoming a component of any food. Section 409 of the act establishes the criteria that must be satisfied before any person may use a food additive in any food product. Under paragraph (b) of that section, a petition must be filed with the Secretary of Health, Education, and Welfare to establish the safety of the food additive for its intended use. Under § 5.1 (21 CFR 5.1), the Secretary's authority has been delegated to the Commissioner of Food and Drugs. The petition must propose "the issuance of a regulation prescribing the conditions under which such additive may be safely used." (21 U.S.C. 348(b)(1).) The types of safety data and other information that are required to be submitted as part of each petition are prescribed in 21 U.S.C. 348(b)(2)(A)–(E). Within 30 days after the petition is filed, the Secretary is required to publish a notice of the proposed regulation (21 U.S.C. 348(b)(5)).

If the Secretary, after reviewing the food additive petition, determines that the additive can be used safely in food products, he must promulgate an order establishing a regulation prescribing the conditions under which such additive may be used safely (21 U.S.C. 348(c)(1)(A)). The Secretary can refuse to issue a regulation and deny the petition only if a fair evaluation of the data fails to establish that the proposed use of the food additive will be safe (21 U.S.C. 348(c)(1)(B) and (3)(A)). The order establishing the regulation or denying the petition, which must be issued no later than 180 days after the petition has been filed (21 U.S.C. 348(c)(2)), must also be published in the FEDERAL REGISTER, and is effective upon publication.

On the basis of all the data accompanying the food additive petitions involved here, the non-acrylonitrile bottles have been found safe for use under certain prescribed conditions and therefore meet the criteria for approval established by Congress under section 409 of the act. Accordingly, applicants are entitled to continuation and/or approval of such food additive regulations or interim food additve regulations, which permit the use of non-acrylonitrile bottles for carbonated beverages and beer, unless the agency's consideration of the environmental effects of the use of the bottles justifies action to limit or revoke such food additive regulations under the authority provided by NEPA.

BENEFICIAL ENVIRONMENTAL EFFECTS OF PLASTIC BOTTLES

The final EIS identifies a number of beneficial environmental effects that are likely to result from the use of plastic bottles for carbonated beverages and beer. These include possible energy savings, greater safety from cuts caused by broken bottles, and advantages over nonrefillable glass and metal containers in disposal by incineration.

Energy savings. The final EIS presents data establishing that refillable containers with adequate trippage rates consume substantially less energy than nonrefilla-

ble containers. For that reason, the displacement of refillable containers by plastic bottles or any other throwaway containers results in a net energy loss. While plastic bottles are expected to displace some refillable containers, they are expected to compete primarily with nonrefillable glass and metal cans for a share of the beverage container market. To the extent that plastic bottles displace other throwaway containers, energy savings will result. This will be true to a greater degree as plastic bottles replace aluminum cans, as larger size (32 fluid ounces and above) plastic bottles replace similar size nonrefillable containers of other types, and as larger size plastic bottles displace smaller size throwaways of other types.

For example, the final EIS, Table 5, shows that the 10-ounce polyester plastic bottle, which requires 451 BTU's per filled ounce, requires about as much energy as the steel can and nonrefillable glass bottle but less than aluminum cans; a 32-ounce nonrefillable glass soft drink bottle requires 290 BTU's per filled ounce while a 32-ounce polyester plastic bottle requires only 248 BTU's per filled ounce; and a 64-ounce polyester bottle requires only 215 BTU's per filled ounce while a 12-ounce nonrefillable glass soft drink bottle requires 410 BTU's per filled ounce.

Avoidance of injury from breakage. It is a matter of common knowledge that broken glass from soft drink and beer bottles causes numerous injuries. The final EIS, pages 75 to 76, contains data showing the frequency of such injuries. Plastic bottles pose a much lower risk of causing such injuries, because plastic bottles do not break as easily as glass, and if broken, the resulting fragments of plastic bottles have duller edges than glass.

Advantages in disposal by incineration. The final EIS pages 64 to 65, lists several advantages of the plastic bottle over glass and metal containers in disposal by incineration. While the final EIS recognizes that this method of disposal is used only for a minor part of urban waste, where it is used, plastic bottles provide fuel, are completely combustible, and leave no residue. In contrast, glass leaves residue, steel cans are relatively unchanged by incineration, and aluminum cans melt and may clog grates.

Adverse Environmental Effects of Plastic Bottles

The final EIS identifies a number of adverse environmental effects that may be expected from the use of plastic bottles for carbonated beverages and beer. While probably not severe, these adverse effects are not insignificant; they include increased litter, increased volume of solid waste, and increased manufacturing effluents.

Increased litter. The growing concern about the increasing volume of litter in parks, wilderness, and recreation areas, as well as urban areas, is reflected in the final EIS, pages 66 to 74. The final EIS concludes that the introduction of plastic bottles will increase litter to the extent that plastic bottles displace refillable glass bottles and expand the total nonrefillable container market. In addition, the large scale introduction of smaller size plastic bottles, whether they displace refillables or other throwaways, will result in the noticeable presence of plastic bottles in litter. Consequently, the use of plastic bottles for carbonated beverages and beer will have at least as great an adverse environmental impact as litter as do other throwaway containers.

Increased volume of solid waste. Like other throwaway beverage containers, plastic bottles for carbonated beverages and beer are expected to contribute to the increasing volume of solid waste. As the final EIS points out, pages 62 to 65, there are some differences between plastic bottles and other containers with respect to disposal via land-fill, open dumping, incineration and pyrolysis, but the overall environmental impact resulting from the disposal of each type of container is much the same. The final EIS recognizes, however, that to the extent that nonrefillable plastic bottles replace refillable glass bottles there will be an increase in the volume of solid waste.

Increased manufacturing effluents. Appendix A of the final EIS presents a detailed breakdown of the estimated requirements for raw materials and the expected effluents by type and volume for plastic barrier bottles and for other container types. This shows that there is little demonstrated difference in terms of manufacturing effluents between conventionally blow-molded plastic bottles and other containers, but that refillable glass bottles present a distinct overall advantage in terms of environmental pollution produced during the manufacturing process. Therefore, the final EIS recognizes that to the extent that refillable bottles are replaced by plastic nonrefillable bottles there will be an increase in environmental pollution resulting from manufacturing effluents.

Risk of exposure to toxic gases. In addition to the adverse effects discussed above, the final EIS, pages 76 to 78, discusses the concern that the combustion of nitrile plastic bottles under certain conditions could expose the public to toxic gases such as hydrogen cyanide, acrylonitrile, and acrolein. The final EIS concludes that, although the likelihood of exposure to these gases in dangerous concentrations may be slight, these containers do present a potential hazard that does not exist with noncombustible bottles and cans. Available information suggests that polyester resins are less likely than nutrile to produce noxious emissions. The risk of exposure to toxic gases upon the combustion of the bottles no longer constitutes a potential adverse environmental impact, in view of the agency's intention to stay the food additive regulations permitting the use of acrylonitrile in plastic bottles for carbonated beverages and beer.

Decision To Take No Action To Limit or Revoke Food Additive Regulations Authorizing Plastic Bottles for Carbonated Beverages and Beer

The final EIS, pages 85 to 90, summarizes alternatives to the continuation and promulgation of food additive regulations permitting the use of plastic bottles for carbonated beverages and beer. With respect to the conventional blow-molded plastic barrier bottle, which is principally the subject of this notice, the alternatives are:

1. Disapproval of food additive petitions for all plastic bottles. If plastic bottles were not available for soft drink and beer use, refillable glass bottles and nonrefillable glass bottles and metal cans would continue to be available. None of the new environmental impacts, adverse or beneficial, associated with the introduction of plastic bottles would occur. However, the environmental effects associated with existing containers would continue.

2. Approval only of smaller than 32-fluid-ounce conventional blow-molded plastic bottles. This alternative is environmentally undesirable because the beneficial environmental effects that may result from the use of larger size plastic bottles would be lost, but it was included for purposes of comparison.

3. Approval only of 32-fluid-ounce and larger conventional blow-molded plastic bottles. This alternative carries the potential for energy savings, to the extent that throwaway glass bottles and cans requiring more energy are displaced; for reduction in litter; and for little, if any, effect on solid waste volume. But this alternative would preclude competition between smaller size plastic bottles and similar size throwaway glass bottles and cans that require about the same or more energy than the smaller size plastic bottle.

In deciding whether to elect an alternative, the Commissioner was required to decide the weight to be accorded the environmental factors analyzed in the final EIS and more particularly the most significant environmental factors referred to above. The Commissioner acknowledges the difficulty of evaluating interests such as energy conservation and reduction of litter under a statutory provision that limits the agency's range of consideration to safety and functionality. Nevertheless, this evaluation is guided by the Court's opinion in "Environmental Defense Fund, Inc. v. Mathews," supra, which teaches that NEPA provides supplementary authority to the agency but does not require that environmental consideration be favored over other factors. Applying that principle, the Commissioner concludes that the beneficial and adverse environmental impacts identified in the final EIS carry no greater weight than the factors required to be considered in section 409 of the act. So weighted, the Commissioner further concludes that the adverse environmental effects of the action, to some extent offset by the potential beneficial effects, are not of sufficient mag-

nitude to justify limitation or revocation of food additive regulations permitting plastic bottles for carbonated beverages and beer. The Commissioner's estimation of the magnitude of the environmental effects of the action is based on the projection, fully explained in the final EIS, pages 44 to 46, that plastic bottles will displace some refillable glass bottles, but will primarily displace other throwaways.

The Commissioner recognizes that this decision to take no action to limit or revoke food additive regulations permitting non-acrylonitrile bottles may appear to be inconsistent with recent developments reflecting environmental concerns about beverage containers. For example, on September 21, 1976, the Environmental Protection Agency issued "Solid Waste Guidelines for Beverage Containers," requiring a deposit on beverage containers in Federal facilities to encourage return of containers for reuse and recycling. Several States, including Oregon, Vermont, Michigan, and Maine, have elected to require a deposit on all beverage containers. Nevertheless, these recent developments cannot relieve the Commissioner of his obligation under section 409 of the Federal Food, Drug, and Cosmetic Act to approve petitions for food additives that have been shown to be safe for their intended use, in the absence of a potentially adverse environmental impact of sufficient magnitude to justify an alternate action under the authority of NEPA (see "Environmental Defense Fund, Inc. v. Mathews," supra).

Therefore, under the National Environmental Policy Act of 1969 (sec. 102 (2)(C), 83 Stat. 853 (42 U.S.C. 4332)); under the Council on Environmental Quality Guidelines for Preparation of Environmental Impact Statements (40 CFR 1500.11, 1500.13); and under authority delegated to the Commissioner (21 CFR 5.1) (recodification published in the FEDERAL REGISTER of June 15, 1976 (41 FR 24262)), the Commissioner has determined that no amendment is needed for existing regulations permitting the use of non-acrylonitrile containers at this time. However, the Commissioner advises that all future agency actions regarding these containers, including consideration of petitions, will be the subject of environmental impact assessment. The Commissioner further advises that if and when the use of plastic bottles increases, he will consider new data submitted to him, and he solicits such data, that may indicate that his present determination and/or the environmental information on which it is based should be reassessed.

Dated: February 11, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

[FR Doc.77-4987 Filed 2-14-77;11:08 am]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[Docket No. NFD-421; FDAA-3028-EM]

INDIANA

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Indiana dated February 2, 1977, and amended on February 3, 1977, and on February 6, 1977, is hereby further amended to include the following counties among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 2, 1977:

The Counties of:

Adams	Randolph
Blackford	Ripley
Elkhart	Rush
Jennings	Switzerland
Kosciusko	Warren
Lake	Whitley

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: February 8, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-4728 Filed 2-14-77;8:45 am]

[Docket No. NFD-422; FDAA-3030-EM]

MICHIGAN

Amendment to Notice of Emergency Declaration

Notice of emergency for the State of Michigan dated February 5, 1977, is hereby amended to include the following county among those counties determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of February 5, 1977.

The County of:

Hillsdale

(Catalog of Federal Domestic Assistance No. 14.701 Disaster Assistance.)

Dated: February 7, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc. 77-4727 Filed 2-14-77;8:45 am]

[Docket No. NFD-423; FDAA-528-DR]

NEW JERSEY

Notice of Major Disaster and Related Determinations

Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on February 8, 1977, the President declared a major disaster as follows:

I have determined that the situation in certain areas of the State of New Jersey resulting from ice conditions on the Delaware Bay and its tributaries and along the Atlantic Coast, beginning about December 26, 1976, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of New Jersey.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Thomas R. Casey, FDAA Region II, to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of New Jersey to have been adversely affected by this declared major disisater:

The Counties of:

Atlantic	Monmouth
Cape May	Ocean
Cumberland	Salem

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

Dated: February 8, 1977.

THOMAS P. DUNNE,
Administrator, Federal Disaster Assistance Administration.

[FR Doc.77-4729 Filed 2-14-77;8:45 am]

Office of Interstate Land Sales Registration

[Docket No. N-77-714]

CARDINAL HARBOUR

Hearing

In the matter of: Cardinal Harbour, Fourth Avenue-Irvin, Joint Venture and D. Irving Long, Authorized Agent, 76-350-IS OILSR No. 0-4438-20-81. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), notice is hereby given that:

1. Cardinal Harbour, Fourth Avenue-Irvin, Joint Venture and D. Irving Long, Authorized Agent, and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 9, 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 Cardinal Harbour located in Oldham County, Kentucky, 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 November 24, 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 February 23, 1977 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 January 27, 1977.

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.

By the Secretary.

Dated: December 6, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4664 Filed 2-14-77; 8:45 am]

[Docket No. N-77-712]

EVERGREEN HIGHLANDS

Hearing

In the matter of: Evergreen Highlands Units 1-4, Evergreen Estates, Inc. and Roy R. Romer, President and Director, 76-305-IS OILSR No. 0-1996-05-193 and (A). Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), notice is hereby given that:

1. Evergreen Highlands Units 1-4, Evergreen Estates, Inc. and Roy R. Romer, President and Director, authorized agents 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 October 13, 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 Evergreen Highlands Units 1-4, located in Jefferson County, Colorado, 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 November 4, 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 March 10, 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 February 14, 1977.

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.

By the Secretary.

Dated: November 24, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4666 Filed 2-14-77; 8:45 am]

[Docket No. N-77-711]

FRIENDLY ACRES

Hearing

In the matter of: Friendly Acres, Charles D. Swezy, 76-344-IS OILSR No. 0-1936-44-103. Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b), notice is hereby given that:

1. Friendly Acres, Charles D. Swezy, authorized agents and officers, hereinafter referred to as "Respondent", being subject to the provisions of the Interstate Land Sales Full Disclosure Act (Pub. Law 90-448) (15 U.S.C. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 8, 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 Friendly Acres; 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 November 30, 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 March 17, 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 February 18, 1977.

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.

By the Secretary.

Dated: December 17, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4667 Filed 2-14-77; 8:45 am]

[Docket No. N-77710]

PASO de SOL

Hearing

In the matter of: Paso de Sol, Desetundra Development Company, Inc. and William E. Bittner, President, 76-349-IS, OILSR No. 0-2826-02-584; Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Paso de Sol, Desetundra Development Company, Inc. and William E. Bittner, President, authorized agents 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. 1710, et seq.) received a Notice of Proceedings and Opportunity for Hearing issued November 9, 1976, which was sent to the developer pursuant to 15 U.S.C. 1706(d), 24 CFR 1710.45(b) (1) and 1720.15 informing the developer of information obtained by the Office of Interstate Land Sales Registration alleging that the Statement of Record and Property Report for Paso del Sol located in Yavapai County, Arizona, 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 necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received December 2, 8, 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, ursuant to the provisions of 15 U.S.C. 1706(d) ad 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 March 7, 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 February 18, 1977.

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.

By the Secretary.

Dated: December 17, 1976.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4668 Filed 2-14-77;8:45 am]

[Docket No. N-77-709]

SADDLE LAKE

Hearing

In the matter of: Saddle Lake, Saddle Lake, Inc. and Edward T. Tisdall, President, 76-238-IS, OILSR No. 0-2087-44-117; Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Saddle Lake, Saddle Lake, Inc. and Edward T. Tisdall, President, Authorized agents and officers, hereinafter referred to as "Resonent" 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 October 20, 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 Saddle Lake located in Wyoming 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 November 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 March 16, 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 February 22, 1977.

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: December 17, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4669 Filed 2-14-77;8:45 am]

[Docket No. N-77-708]

WHITE SANDS

Hearing

In the matter of: White Sands, White Sands Investment Company and Diana D. Chesley, President, 76-337-IS, OILSR No. 0-2091-24-36; Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. White Sands, White Sands Investment Company and Diana D. Chesley, President, authorized agents 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 November 4, 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 White Sands located in Calvert 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 December 2 and 8, 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 March 9, 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 February 18, 1977.

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: December 17, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4670 Filed 2-14-77;8:45 am]

[Docket No. N-77-713]

WILLOW SPRINGS COUNTRY CLUB

Hearing

In the matter of: Willow Springs Country Club, Willow Springs Enterprises, Inc. and Stanley A. Harwood, President & Director, 76-347-IS, OILSR No. 0-3605-05-400; Pursuant to 15 U.S.C. 1706(d) and 24 CFR 1720.160(b).

Notice is hereby given that: 1. Willow Springs Country Club, Willow Springs Enterprises, Inc. and Stanley A. Harwood, President & Director, authorized agents 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 November 9, 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 Willow Springs Country Club, located in Jefferson County, Colorado, 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 necessary to make the statements therein not misleading.

2. The Respondent filed an Answer received December 1, 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, purusant 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 March 4, 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 February 17, 1977.

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: December 17, 1976.

By the Secretary.

JAMES W. MAST,
Administrative Law Judge.

[FR Doc.77-4665 Filed 2-14-77;8:45 am]

Office of the Secretary

[Docket No. D-77-480]

ASSISTANT REGIONAL ADMINISTRATOR FOR ADMINISTRATION, ET AL.

Designation to Serve as Acting Regional Administrator, (Region V) Chicago Regional Office

The officers appointed to the following listed position in Region V (Chicago) are hereby designated to serve as Acting Regional Administrator, Region V (Chicago), during the absence of both the Regional Administrator and the Deputy Regional Administrator, with all the powers, functions and duties redelegated or assigned to both the Regional Administrator and Deputy Regional Administrator, provided that no officer is authorized to serve as Acting Regional Administrator unless all other officers whose title precede his in this designation are unable to act by reason of absence:

1. Assistant Regional Administrator for Administration.
2. Assistant Regional Administrator for Community Planning and Development.
3. Assistant Regional Administrator for Housing.
4. Assistant Regional Administrator for Equal Opportunity.
5. Regional Counsel.

This designation supersedes the designation effective December 1, 1975.

Effective Date: January 1, 1977.

DON MONROW,
Regional Administrator,
Region V (Chicago).

[FR Doc.77-4660 Filed 2-14-77;8:45 am]

[Docket No. D-77-479]

DEPUTY REGIONAL ADMINISTRATOR, ET AL.

Designation as Acting Regional Administrator, Region IV (Atlanta)

The employees appointed to the following positions in Region IV (Atlanta) are hereby designated to serve as Acting Regional Administrator, Region IV, during the absence of the Regional Administrator, with all power, functions, and duties redelegated or assigned to the Regional Administrator, provided that no employee is authorized to serve as Acting Regional Administrator unless all other employees whose titles precede his in this designation are unable to serve by reason of absence:

1. Deputy Regional Administrator.
2. Assistant Regional Administrator for Community Planning and Development.
3. Assistant Regional Administrator for Housing Production and Mortgage Credit.
4. Assistant Regional Administrator for Housing Management.
5. Assistant Regional Administrator for Equal Opportunity.
6. Regional Counsel.
7. Assistant Regional Administrator for Administration.
8. Regional Director of Program Planning & Evaluation.
9. Special Assistant to the Regional Administrator.
10. Special Assistant to the Regional Administrator (Regional Council).
11. Regional Emergency Services Officer.
12. Regional Labor Relations Office.

This designation supersedes the designation effective March 15, 1976 (41 FR 21215, May 24, 1976).

(Delegation of Authority effective May 4, 1962 (27 FR 4319, May 4, 1962); Dept. Interim Order II (31 FR 815, January 21, 1966).)

Effective Date: This designation is effective January 17, 1977

M. BRUCE NESTLEHUTT,
Acting Regional Administrator
Region IV (Atlanta).

[FR Doc.77-4661 Filed 2-14-77;8:45 am]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

QUARTZ VALLEY RANCHERIA IN CALIFORNIA

Termination of Federal Supervision Over Property: Correction

FEBRUARY 3, 1977.

This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Commissioner of Indian Affairs by 230 DM 2.

On January 19, 1961, "A Plan for the Distribution of Assets of the Quartz Valley Rancheria according to the provisions of Pub. L. 85-671, August 18, 1958," was approved by George W. Abbot, Assistant Secretary of the Interior, and accepted by the distributees in a referendum held at the Quartz Valley Rancheria on February 11, 1960. Notice of the termination of the Federal trust relationship over the Quartz Valley Rancheria in Siskiyou County, California, in accordance with the Plan was executed January 18, 1967, by Stewart L. Udall, Secretary of the Interior, and published in the FEDERAL REGISTER of January 20, 1967, on page 679 (32 FR 679). The names of Lorelei Jerry, Rebecca Louise Jerry and Kathleen Irene Jerry as dependent members of the immediate family of Anthony Jerry, a distributee, appeared on the list of persons affected by the termination action and such action has hampered the said Lorelei Jerry, Rebecca Louise Jerry, and Kathleen Irene Jerry in the exercise of their civil rights.

Notice is hereby given that names of Lorelei Jerry, now Aubrey, Rebecca Louise Jerry and Kathleen Irene Jerry are hereby stricken from "A Plan for the Distribution of the Assets of the Quartz Valley Rancheria according to the provisions of Pub. L. 85-671, August 18, 1958", nor shall said names appear in any of the official Federal documents relating to the termination of Federal supervision over the affairs and assets of the Quartz Valley Rancheria.

THEODORE C. KRENZKE,
Acting Deputy Commissioner
of Indian Affairs.

[FR Doc.77-4732 Filed 2-14-77;8:45 am]

Bureau of Land Management

[Serial No. I-7435]

IDAHO

Partial Termination of Proposed Withdrawal and Reservation of Lands: Correction

FEBRUARY 7, 1977.

In FR Doc. 77-2063, filed January 21, 1977 and appearing on page 4220 of the issue for January 24, 1977, the following corrections should be made:

T. 15 S., R 25 E., Sec. 34, All should read:
T. 15 S., R. 25 E.,
Sec. 35, All.
T. 16 S., R. 25 E., Sec. 11, S½, SW¼NW¼ should read:
T. 16 S., R. 25 E.,
Sec. 11, NE¼NE¼, SW¼NW¼, S½.
T. 16 S., R. 25 E., Sec. 12, S½ should read:

T. 16 S., R. 25 E.,
Sec. 12, NW¼NW¼, S½.

VINCENT S. STROBEL,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-4657 Filed 2-14-77;8:45 am]

[NM 29714]

NEW MEXICO

Application

FEBRUARY 8, 1977.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Northwest Pipeline Corporation has applied for one 4½-inch natural gas pipeline right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 29 N., R. 6 W.,
Sec. 35, NE¼SW¼ and N½SE¼.

This pipeline will convey natural gas across 0.483 miles of national resource land in Rio Arriba County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 6770, Albuquerque, New Mexico 87107.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc.77-4731 Filed 2-14-77;8:45 am]

National Park Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before February 4, 1977. Pursuant to § 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 February 25. 1977.

JERRY L. ROGERS,
Chief, Office of Archeology and Historic Preservation.

ALASKA

Anchorage Division

Anchorage, *N-5 (DC-3), FAA Hangar, International Airport.*

Fairbanks Division

Fairbanks, *Hinckley-Creamer Dairy,* between Farmer's Loop and College Rd.

Yukon-Koyokuk Division

Tanana vicinity, *Tanana Mission,* E. of Tanana.

CALIFORNIA

Los Angeles County

Pasadena, *Nicholson, Grace, Building,* 46 N. Los Robles Ave.

Whittier, *Bailey, Jonathan, House,* 13421 E. Camilla St.

Orange County

Santa Ana, *Orange County Original Courthouse,* 211 W. Santa Ana Blvd.

Riverside County

Riverside, *Harada House,* 3356 Lemon St.

San Mateo County

Redwood City, *San Mateo County Courthouse,* Broadway.

IOWA

Johnson County

Solon vicinity, *Buresh Farm,* W of Solon off IA 382.

KENTUCKY

Campbell County

Newport, *Southgate-Parker-Maddux House,* 24 E. 3rd St.

Fayette County

Lexington, *Floral Hall,* 847 S. Broadway.

Jefferson County

Anchorage, *Anchorage-Berrytown Historic District,* KY 146.

Louisville, *West Main Street Historic District* (Expanded), W. Main St.

Mercer County

Harrodsburg, *Sutfield-Thompson House* (Courtview), 362 N. Main.

Owen County

Owenton, *Highfield (Willis Roberts House),* 303 N. Adams St.

LOUISIANA

Orleans Parish

New Orleans, *Julia Street Row,* 602-646 Julia St.

MARYLAND

Frederick County

Frederick vicinity, *Nallin Farm Spring House and Bank Barn,* N. of Frederick.

NEW HAMPSHIRE

Grafton County

Orford, *Orford Street Historic District,* NH 10.

NEW JERSEY

Essex County

Newark, *First National State Bank Building,* 810 Broad St.

NEW MEXICO

Grant County

Silver City, *Silver City Historic District,* roughly bounded by Black (includes both sides), College, Hudson, and Spring Sts.

NORTH CAROLINA

Buncombe County

Asheville, *Richmond Hill House,* 45 Richmond Hill Rd.

Asheville, *Zealandia,* 40 Vanco Gap Rd.

Perquimans County

Belvedere, *Belvidere,* NC 37 (HABS).

Randolph County

Ramseur, *Deep River/Columbia Manufacturing Company,* Main St. at Deep River.

Vance County

Kittrell vicinity, *Ashburn Hall,* W of Kittrell on SR 1101.

Kittrell vicinity, *Capehart, Thomas, House,* W of Kittrell on SR 1105.

Wake County

Cary vicinity, *Lane-Bennett House,* S of Cary.

Warren County

Ridgeway vicinity, *Chapel of the Good Shepherd,* E of Ridgeway on SR 1107.

TENNESSEE

Claiborne County

Harrogate, *Lincoln Memorial University,* U.S. 25.

Hamilton County

Birchwood vicinity, *Rutherford Graded School and House,* N of Birchwood on Bunker Rd.

Sullivan County

Kingsport vicinity, *Looney, Moses, Fort House,* 5436 Old Island Rd.

Wilson County

Lebanon, *Memorial Hall, Cumberland University,* Cumberland University campus.

TEXAS

Cameron County

Brownsville, *Browne-Wagner House,* 245 E. St. Charles St.

Cass County

Queen City, *Mathews-Powell House,* Miller St.

Irion County

Sherwood, *Irion County Courthouse,* Public Sq.

[FR Doc.77-4318 Filed 2-14-77;8:45 am]

Bureau of Reclamation

FIELD OFFICERS

Redelegation of Authority

The delegation of authority to the field officers previously published in the FEDERAL REGISTER (20 FR 708) is amended to read as set forth below.

The following material is a portion of the Reclamation Instructions and the numbering system is that of the manual.

PART 053—BUREAU OF RECLAMATION

CHAPTER 2—AUTHORITY OF FIELD OFFICERS

053.2.3 *Redelegation.*—A. *Authority.* The following Upper Missouri Region officials, each with respect to the activities under his jurisdiction, are authorized to perform the functions and exercise the authority specified below in accord-

ance with authority delegated to the Regional Director in paragraph 053.2.1 of the Executive Manual:

Project Manager, Bismarck—Missouri-Souris Projects Office
Project Manager, Huron—Missouri - Oahe Projects Office
Project Manager, Riverton—Riverton Projects Office

(1) *Leases.* To execute leases for periods not to exceed 10 years for cottage or summer homesites; for periods not to exceed 5 years for grazing and agriculture; and for periods not to exceed 50 years for industrial and commercial purposes covering lands acquired or withdrawn for Reclamation purposes; to consent to sublease thereunder; and to modify, consent to assignment of, terminate, or cancel such leases.

(2) *Licenses.* To grant licenses for specified rights not to exceed 50 years for the use of rights-of-way and lands acquired or withdrawn for Reclamation purposes; to consent to sublicenses thereunder; and to modify, consent to assignment of, terminate, or cancel such licenses; but excluding rights for the development or transmission of electric power and energy.

(3) *Permits.* To grant permits for periods not to exceed 5 years for the removal of sand, gravel, or building materials from lands acquired or withdrawn for Reclamation purposes, and to modify, consent to assignment of, terminate, or cancel such permits.

(4) *Water Service and Repayment Contracts.* To act for the Secretary of the Interior and the Regional Director as the Contracting Officer under the terms of water service and repayment contracts in the following:

(a) Issuance of notices to contracting entities relating to annual operation and maintenance charges, water service charges, construction installments, and miscellaneous charges:

(b) Approval of water delivery schedules;

(c) Routine matters pertinent to general administration of such contracts.

B. The Project Manager, Missouri-Souris Projects Office, is authorized, subject to the provisions of paragraph E below, to:

(1) Approve appraisal reports.

(2) Executive land purchase contracts, easements, and other instruments of conveyance.

C. The Project Manager, Missouri-Oahe Projects Office, is authorized, subject to the provisions of paragraph E below to:

(1) Approve appraisal reports.

(2) Execute land purchase contracts, easements, and other instruments of conveyance.

D. *Redelegation.* Authorities delegated in paragraph 053.2.3 may not be redelegated.

E. *Exercise of Authority.* Exercise of this authority shall be in accordance with provisions of Part 053, Executive Manual, and Part 215, Reclamation Instructions, except that all proposed documents and other actions initiated by operating offices under this delegation of authority shall be reviewed by the Regional Director's staff and the Field Solicitor prior to execution or issuance by the delegated official. A copy of each document and communication issued in accordance with this delegation of authority will be furnished to the Regional Director.

Dated: February 7, 1977.

G. G. STAMM,
Commissioner of Reclamation.

[FR Doc.77-4733 Filed 2-14-77;8:45 am]

Office of the Secretary

[INT DES 77-5]

BUMPING LAKE ENLARGEMENT, SUPPLEMENTAL STORAGE DIVISION, YAKIMA PROJECT, WASHINGTON

Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement concerning the proposed enlargement of Bumping Lake Dam and Reservoir on the Bumping River in the Yakima Basin, south-central Washington. The principle action would be construction of a new dam, just downstream from the existing structure, to enlarge Bumping Lake from an active storage capacity of 33,700 to 458,000 acre-feet for multipurpose uses.

Written comments may be submitted to the Regional Director (address below) on or before April 1, 1977.

Copies are available for inspection at the following locations:

Office of Assistant to the Commissioner—Ecology, Room 7620 Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone 202—343-4991.

Division of Engineering Support, Technical Services Branch, E&R Center, Denver Federal Center, Bureau of Reclamation, Department of the Interior, Denver, Colorado 80225, telephone 303-234-3007.

Office of the Regional Director, Bureau of Reclamation, Pacific Northwest Region, P.O. Box 043, 550 W. Fort Street, Boise, Idaho 83724, telephone 208-384-1208.

Yakima Project Office, Bureau of Reclamation, P.O. Box 1377, 1917 Marsh Road, Yakima, Washington 98901, telephone 509-575-5848.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. Copies will also be available for inspection in libraries in south-central Washington. Please refer to the statement number above.

Dated: February 10, 1977.

STANLEY D. DOREMUS,
Deputy Assistant Secretary of the Interior.

[FR Doc.77-4785 Filed 2-14-77;8:45 am]

COMMITTEE ON FUTURE ENERGY PROSPECTS NATIONAL PETROLEUM COUNCIL

Meeting

Notice is hereby given for the following meeting:

The National Petroleum Council's Committee on Future Energy Prospects will meet on Monday, March 7, 1977, at 10:00 a.m. in the Dolly Madison Room of the Madison Hotel, 15th and M Streets, NW., Washington, D.C.

The agenda includes the following items for discussion:

1. Review and discuss progress on completion of individual discussion papers.
2. Discuss overall plans and timetable for completion of study.
3. Discuss any other matters pertinent to the overall assignment of the Committee.

The purpose of the National Petroleum Council is to provide to the Secretary of the Interior, upon request, advice, information, and recommendations upon any matter relating to petroleum or the petroleum industry.

The meeting will be open to the public to the extent that space and facilities permit. Any member of the public may file a written statement with the Council either before or after the meeting. Interested persons who wish to speak at the meeting must apply to the Council and obtain approval in accordance with its established procedures.

Further information about the meeting may be obtained from Ben Tafoya, Office of the Assistant Secretary-Energy and Minerals, Department of the Interior, Washington, D.C. (telephone: 343-6226).

Dated: February 10, 1977.

ROBERT L. PRESLEY,
Emergency Coordinator, Office of the Assistant Secretary-Energy and Minerals.

[FR Doc.77-4734 Filed 2-14-77;8:45 am]

DEPARTMENT OF JUSTICE

Office of the Attorney General

UNITED STATES V. EMPIRE COKE CO.

Proposed Consent Decree in Action To Enjoin Discharges of Air and Water Pollutants

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on February 3, 1977, a proposed consent decree in "United States v. Empire Coke Co." was lodged with the United States District Court for the Northern District of Alabama. The proposed decree would impose a $2000 civil penalty on the Empire Coke Co. for failing to comply with its National Pollutant Discharge Elimination System Permit, to wit it failed to submit its treatment plant construction plans to EPA by September 1, 1975, and failed to commence construction of the plant by January 1, 1976. The Company in the Consent Decree commits itself to attain the treatment level specified in its per-

mit by June 30, 1977, the statutory deadline.

The Department of Justice will receive for fifteen (15) days from the date of this notice written comments relating to the proposed judgment. The usual thirty (30) day comment period has been shortened in this case because of the need to have confirmed, as soon as possible, the treatment plant completion date provided in the Decree, thus assuring compliance with the treatment levels provided in the Federal Water Pollution Control Act.

The proposed consent decree may be examined at the Office of the United States Attorney, 200 Federal Courthouse, 1800 Fifth Avenue North, Birmingham, Alabama 35203, at the Region IV Office of the Environmental Protection Agency, Enforcement Division, 3545 Courtland Street, N.E., Atlanta, Georgia 30308, and at the Pollution Control Section, Land and Natural Resources Division, Department of Justice (Rm. 2625) Ninth Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530. A copy of the proposed decree may be obtained in person or by mail from the Pollution Control Section, Land and Natural Resources Division, Department of Justice.

PETER R. TAFT,
Assistant Attorney General, Land and Natural Resources Division.

[FR Doc.77-4735 Filed 2-14-77;8:45 am]

DEPARTMENT OF LABOR

Office of the Secretary

[TA-W-1318]

ACME NIPPLE MANUFACTURING CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1318: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on November 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Buffalo, New York plant of Acme Nipple Manufacturing Company.

The notice of investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54552). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and officials of Acme Nipple Manufacturing Company.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Buffalo, New York plant of Acme Nipple Manufacturing Company produces pipe fittings and nipples.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Buffalo, New York plant of Acme Nipple Manufacturing Company have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 2nd day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4745 Filed 2-14-77;8:45 am]

[TA-W-1,617]

ALLAN SHOE MANUFACTURING CO., INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 24, 1977 the Department of Labor received a petition dated January 21, 1977 which was filed under Section 221(a) of the Trade Act of 1974 (the "Act") on behalf of the workers and former workers of Allan Shoe Manufacturing Co., Inc., Norwich, Connecticut, a Division of Charles Pinbych, Inc., Scarsdale, New York (TA-W-1,617).

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 work boots and casual boots produced by Allan Shoe Manufacturing Co., 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 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 ineligibility 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 February 25, 1977.

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 February 25, 1977.

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 January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4746 Filed 2-14-77;8:45 am]

[TA-W-1458]

ALLIED CHEMICAL CORP., SEMET SOLVAY DIVISION

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1458: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 15, 1976 in response to a worker petition received on December 15, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Semet Solvay Division, Detroit, Michigan of the Allied Chemical Corporation, Morristown, New Jersey.

The notice of investigation was published in the FEDERAL REGISTER on January 7, 1977 (42 FR 1531). No public

hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and the Allied Chemical Corporation.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the worker's firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Semet Solvay Division of the Allied Chemical Corporation, Detroit, Michigan, produces coke. Corporate headquarters for the Allied Chemical Corporation are in Morristown, New Jersey.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Semet Solvay Division, Detroit, Michigan of the Allied Chemical Corporation, Morristown, New Jersey have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4747 Filed 2-14-77;8:45 am]

[TA-W-1,615]

ANNA AND WILLIAM BERMAN

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 26, 1977 the Department of Labor received a petition dated January 10, 1977 which was filed under Section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Anna and William Berman, South River, New Jersey (TA-W-1,615). 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' slacks produced by Anna and William Berman 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 February 25, 1977.

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 latter than February 25, 1977.

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 January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4748 Filed 2-14-77;8:45 am]

[TA-W-1,611]

COLEMAN PRODUCTS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 26, 1977 the Department of Labor received a petition dated January 24, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Coleman Products Company, Coleman, Wisconsin, a wholly-owned subsidiary of American Motors, Detroit, Michigan (TA-W-1,611). 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 automobile wire harness produced by Coleman Products 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 Feb. 25, 1977.

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 Feb. 25, 1977.

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 January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4749 Filed 2-14-77;8:45 am]

[TA-W-1,612]

COLEMAN PRODUCTS CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 26, 1977 the Department of Labor received a petition dated January 24, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Iron River plant, Iron River, Michigan of Coleman Products Company, Coleman, Wisconsin, wholly-owned subsidiary of American Motors Corp., Detroit, Mich.

(TA-W-1,612). 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 automobile wire harness produced by Coleman Products 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 February 25, 1977.

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 February 25, 1977.

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 January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4750 Filed 2-14-77;8:45 am]

[TA-W-1354]

CONTINENTAL PIPE PRODUCTS MANUFACTURING CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1354: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Chicago, Illinois plant of Continental Pipe Products Manufacturing Company.

The Notice of Investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 873). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from officials of the United Steelworkers of America and the Continental Pipe Products Manufacturing Company.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any other criteria have been met, criterion (4) has not been met.

The Continental Pipe Products Manufacturing Company in Chicago, Illinois is a distributor of pipe fittings. A small portion of their operation involves the cutting of steel pipe for nipples.

Evidence developed in the Department's investigation reveals that only two production workers have been laid off from November 1, 1975, one year prior to the signature date of the petition, to the present. These workers were "order fillers" engaged in packaging and their separations occurred as a result of a management decision to embark upon a modernization program. Packaging machinery that reduced the number of necessary manual operations was purchased and did most of what the "order fillers" were doing. No partial separations or reduced work weeks have occurred during the relevant period. These separations occurred during the first 10 months of 1976. Sales during this period increased almost 30 percent over the first 10 months of 1975.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports did not contribute importantly to the total or partial separation of the workers at the Chicago, Illinois plant of Continental Pipe Products Manufacturing Company as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4751 Filed 2-14-77;8:45 am]

[TA-W-1,613]

CONVERSE RUBBER CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 25, 1977 the Department of Labor received a petition dated January 20, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Rubber, Cork, Linoleum & Plastic Workers of America on behalf of the workers and former workers of Tyer Rubber Division, Andover, Massachusetts of Converse Rubber Co., Wilmington, Mass., a Division of Eltra Corporation, New York, New York (TA-W-1,613). 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 rubber & canvas footwear & leather athletic footwear produced by Converse Rubber 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 February 25, 1977.

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 February 25, 1977.

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 Washintgon, D.C., this 31st day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4752 Filed 2-14-77;8:45 am]

[TA-W-1,614]

CONVERSE RUBBER CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 25, 1977 the Department of Labor received a petition dated January 17, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Granite State Division, Berlin, New Hampshire of Converse Rubber Co., Wilmington, Mass., a Division of Eltra Corporation, New York, New York (TA-W-1,614). 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 canvas and rubber footwear produced by Converse Rubber 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 show below, not later than February 25, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Direcor, Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 1977.

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 January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4753 Filed 2-14-77;8:45 am]

[TA-W-1,616]

CTS OF PADUCAH, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 26, 1977 the Department of Labor received a petition dated January 24, 1977 which was filed under section 221(a) of the Trade Act of 1977 ("the Act") by the United Automobile, Aerospace, Agricultural and Implement Workers of Amercica on behalf of the workers and former workers of CTS of Paducah, Inc., Paducah, Kentucky, a wholly-owned subsidiary of CTS Corporation, Elkhart, Indiana (TA-W-1,616). 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 loud speakers produced by CTS of Paducah, Incorporated 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 subtantial 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 February 25, 1977.

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 February 25, 1977.

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 January 1976.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4754 Filed 2-14-77;8:45 am]

[TA-W-1,584]

DAVE GOLDBERG MANUFACTURING CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On December 29, 1976 the Department of Labor received a petition dated December 22, 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 Dave Goldberg Manufacturing Company, Antioch, Illinois (TAW-1,584). 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 rainwear, winter jackets, ski clothing & sport clothing for men & women produced by Dave Goldberg Manufacturing 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 February 25, 1977.

Interested persons are invited to submit written comments regarding the subject matter of this investigation to the Director, Office of Trade Adjustments Assistance, at the address shown below, not later than February 25, 1977.

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 18th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4755 Filed 2-14-77;8:45 am]

[TA-W-1349]

GULF AND WESTERN INDUSTRIES

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1349: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing pipes and piping components at the Somerville, New Jersey plant of Gulf and Western Industries.

The notice of investigation was published in the FEDERAL REGISTER on December 21, 1976 (41 FR 55605). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and officials of the Stainless and Alloy Division of Gulf and Western Industries.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Somerville, New Jersey plant of Gulf and Western Industries produces stainless and alloy steel pipes and piping components.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Somerville, New Jersey plant of Gulf and Western Industries have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4756 Filed 2-14-77;8:45 am]

[TA-W-1353]

HUNT VALVE CO., INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1353: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Salem, Ohio plant of the Hunt Valve Company, Incorporated.

The notice of investigation was published in the FEDERAL REGISTER on January 7, 1977 (42 FR 1533). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and the Hunt Valve Company, Incorporated.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Salem, Ohio plant of the Hunt Valve Company, Incorporated produces auto and hand hydraulic and water valves of carbon steel, stainless steel, brass, and aluminum.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Salem, Ohio plant of the Hunt Valve Company Incorporated have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4757 Filed 2-14-77;8:45 am]

[TA-W-1329]

HYDRIL CO.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1329: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 30, 1976 in response to a worker petition received on November 30, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Houston, Texas plant of the Hydril Company.

The notice of investigation was published in the FEDERAL REGISTER on December 14, 1976 (41 FR 54558). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and the Hydril Company.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased

quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Houston, Texas plant of the Hydril Company produces tubing and casting made from flat-cold-rolled sheet steel.

Evidence developed in the Department's investigation reveals that no involuntary separations occurred from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Houston, Texas plant of the Hydril Company have not become totally or partially separated as required in section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4758 Filed 2-14-77;8:45 am]

[TA-W-1357]

INTERNATIONAL BASIC ECONOMIC CORP.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1357: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 1, 1976 in response to a worker petition received on December 1, 1976 which was filed by the United Steelworkers of America on behalf of workers producing steel, alloy, copper, and brass fittings, valves, couplings, flanges, etc. at the Morgan Avenue, Akron, Ohio plant of the International Basic Economic Corporation, Bellows International Division.

The notice of investigation was published in the FEDERAL REGISTER on January 4, 1977 (42 FR 885). No public hearing was requested and none was held.

The information upon which the determination was made was obtained from the United Steelworkers of America and the International Basic Economic Corporation, Bellows International Division.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations or threat thereof; and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

Without regard to whether any of the other criteria have been met, criterion (1) has not been met.

The Morgan Avenue plant of the International Basic Economic Corporation, Bellows International Division produces valves known as Sinclair-Collins valves. These are large bronze process control valves used primarily in the rubber tire press and record press industries.

Evidence developed in the Department's investigation reveals that no workers have been laid off or experienced significant reductions in their hours of work from November 1, 1975, one year prior to the signature date of the petition, to the present.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that a significant number or proportion of the workers at the Morgan Avenue, Akron, Ohio plant of the International Basic Economic Corporation, Bellows International Division have not become totally or partially separated as required in Section 222 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4759 Filed 2-14-77;8:45 am]

[TA-W-1,609]

JO-GAL SHOE, INC.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 14, 1977 the Department of Labor received a petition dated January 12, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") on behalf of the workers and former workers of Jo-Gal Shoe, Incorporated, Lawrence, Mass. a Division of Morse Shoe Co., Canton, Mass. (TA-W-1,609). 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 imitation leathershoes for misses, children and infants produced by Jo-Gal Shoe, Incorporated, 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 writting with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than February 25, 1977.

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 February 25, 1977.

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 27th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4760 Filed 2-14-77;8:45 am]

[TA-W-1,610]

JONELL SHOE, INCORP.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 24, 1977 the Department of Labor received a petition dated January 17, 1977 which was filed under section 221(a) of the Trade Act of 1974 ("the Act") by the United Shoe Workers of America on behalf of the workers and former workers of Jonell Shoe, Incorporated, Lawrence, Massachusetts, a subsidiary of Marse Shoe, Inc., Canton, Mass. (TA-W-1,610). 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 casual cloth & canvas vulcanized footwear produced by Jonell Shoe, Incorporated 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 February 25, 1977.

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 February 25, 1977.

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 27th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4761 Filed 2-14-77;8:45 am]

[TA-W-1,608]

NEW HUMOR CO.

Investigation Regarding Certification of Eligibility To Apply for Worker Adjustment Assistance

On January 24, 1977 the Department of Labor received a petition dated November 22, 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 New Humor Company, Dallas, Texas (TA-W-1,608). 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 jute, ginham and bamboo plant hangers produced by New Humor 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 February 25, 1977.

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 February 25, 1977.

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 27th day of January 1977.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc.77-4762 Filed 2-14-77;8:45 am]

[TA-W-1160]

STONEART, INC.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-1160: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 13, 1976 in response to a worker petition received on that date which was filed on behalf of workers and former workers of StoneArt, Inc., Racine, Wisconsin.

The Notice of Investigation was published in the Federal Register on October 29, 1976 (41 FR 47630). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of StoneArt, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely;

(3) That articles like or directly competitive with those produced by the firm or subdivision are being imported in increased quantities, either actual or relative to domestic production; and

(4) That such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production. The term "contributed importantly" means a cause which is important but not necessarily more important than any other cause.

The investigation has revealed that although the first three criteria have been met, the fourth criterion has not been met.

SIGNIFICANT TOTAL OR PARTIAL SEPARATIONS

The average number of workers at StoneArt, Inc. decreased 66.7 percent in the first quarter of 1976 compared to the same period in 1975. All workers were separated by May 1976 when the plant closed.

SALES OR PRODUCTION, OR BOTH, HAVE DECREASED ABSOLUTELY

Sales of flower pots produced at StoneArt, Inc. decreased 38.1 percent in quantity and declined 17.3 percent in value in the first quarter of 1976 compared to the same quarter in 1975. Production was terminated in May 1976 when StoneArt, Inc. closed.

INCREASED IMPORTS

Imports of ceramic art and ornamental articles of earthenware or stoneware increased absolutely and relative to domestic production in each year from 1971 through 1974. The ratio of imports to domestic production declined from 84.8 percent in 1974 to 84.2 percent in 1975. Imports increased in value from $91.5 million in the first three quarters of 1975 to $106.2 million in the same period in 1976.

CONTRIBUTED IMPORTANTLY

The StoneArt production process was deficient in one important respect that resulted in a defective product. Because of this, customers returned flower pots ordered from StoneArt and discontinued their purchases of the StoneArt product. These customers did not import.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with flower pots produced at StoneArt, Inc., did not contribute importantly to the total or par-

tial separations of the workers at that firm.

Signed at Washington, D.C. this 2nd day of February 1977.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc.77-4763 Filed 2-14-77;8:45 am]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on February 10, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503 (202-395-4529), or from the reviewer listed.

NEW FORMS

VETERANS ADMINISTRATION

Application for Authority to Close Loans on an Automatic Basis—Nonsupervised Lenders, 26 8736, on occasion, lenders, Caywood, D. P., 395-3443.

Nonsupervised Lenders' Nomination and Recommendation of Credit Underwriter, 26 8736A, on occasion, lender's, Caywood, D. P., 395-3443.

NATIONAL SCIENCE FOUNDATION

Application for NSF Public Service Science Residencies and Internships, annually, scientists and engineers, science and engineering students, Tracey Cole, 395-5870.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service, Subscription Renewal Notice (Report Evaluation Questions), single time, subscribers to reports, Will Sherman, 395-4730.

DEPARTMENT OF COMMERCE

Bureau of Census:
Electricity/Utility Gas Cost Record Check, DG 9A-D, single time, utility companies, C. Louis Kincannon, 395-3211.
(Part of 1980 Decennial Census of Population and Housing), Precanvass Address Register—1977 Census of Oakland, California, DH 103, A&B, single time, all households in the city of Oakland, California, Georgia Hall, 395-6140.
Point of Purchase Questionnaire, Consumer Item Checklists, "Respondent" Letter, CPP L,2A,2B, CPP 3, annually, households in 86 selected SMSA's and smaller cities, Strasser, A., 395-5867.

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Office of Education, Nominations for the National Advisory Council on Indian Education, OE 543, annually, authorized officials for tribes and organizations, Tracey Cole, 395-5870.
Office of the Secretary, DFAFS Report No. 27 Recipient Report of Expenditures, OS 5 77, quarterly-all recipients of HEW grants in aid, Caywood, D. P., 395-3443.

DEPARTMENT OF THE INTERIOR

Bureau of Sport Fisheries and Wildlife, Transfer of Ownership: Threatened Species, on occasion, seller or donor of captive threatened species, Tracey Cole, 395-5870.

REVISIONS

VETERANS ADMINISTRATION

Veterans Supplemental Application for Assistance in Acquiring Specially Adapted Housing, 26 4555C, on occasion, veterans, Caywood, D. P., 395-4730.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service, June Enumerative Survey (ND labor), annually, farmers, Will Sherman, 395-4730.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food and Nurtition Service:
Child Care Food Program Regulations, 7 CFR 226, on occasion, State agencies, nonshcool, public or private, Tracey Cole, 395-5870.
Monthly Report of the Child Care Food Program and Summer Food Service Program for Children, FNS-44, monthly, State agencies, Will Sherman, 395-4730.

DEPARTMENT OF COMMERCE

Bureau of Census, Survey of Local Government Tax Revenues and Intergovernmental Revenues—Municipalities and Townships, RS 9A, 2D 47 RS-9, annually, Government officials, Ellett, C. A., 395-5867.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education, Teacher Corps Intern Application, OE7210, annually, individuals of the population at large, Warren Topelius, 395-5872.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-4923 Filed 2-14-77;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on February 9, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number(s), if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529), or from the reviewer listed.

NEW FORMS

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

ERDA Uniform Contractor Reporting Guide (UCRG), other (see SF-83), Contractors to the ERDA, Caywood, D. P., 395-3443.

DEPARTMENT OF COMMERCE

Domestic and International Business Administration:
Impact of Energy and Severe Weather, DIB-397, single-time, largest companies in 7 industry groups, Ellett, C. A., Strasser, A., 395-5867.

DEPARTMENT OF DEFENSE

Departmental and Other:
Application for U.S. Government Bill(s) of Lading/Domestic Route Order/Export Traffic Release, DD-1659, on occasion, DOD Contractors, Warren Topelius, 395-5872.

DEPARTMENT OF LABOR

Employment and Training Administration:
Report of Activities Related to Expanded PSE Program, ETA 1, other (see SF-83), State employment security agency, Lowry, R. L., 395-3772.

REVISIONS

VETERANS ADMINISTRATION

Request for Determination of Eligibility and Available Loan, guaranty entitlement, 26-1880, on occasion, veterans, Caywood, D. P., 395-3443.

DEPARTMENT OF AGRICULTURE

Agriculture Research Service:
Request for Proposal for 1977-78 Nationwide Surveys of Household Food Consumption and Food Intake of Individuals With 7 Supplements, single-time, households in 50 States and Puerto Rico, Sunderhauf, M. B., 395-6140.
Food and Nutrition Service:
Food Preference Report-School Lunch Purchases Under Section 6, FNS-35, annually, school lunch directors, Warren Topelius, 395-5872.

DEPARTMENT OF COMMERCE

Bureau of Census:
Survey of Food Stamp Recipients: CPS Supplement for August 1976, CPS-1, single-time, 53,000 interviewed HH in April 1977 CPS, Sunderhauf, M. B., 395-6140.

DEPARTMENT OF DEFENSE

Departmental and Other:
Application for review of discharge or separation from the Armed Forces of the United States, DD-293, on occasion, applicants, Lowry, R. L., 395-3772.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Housing Production and Mortgage Credit, Notice of Job Changes and Changes in Adult Family Income, HUD-93115, on occasion, recipients of asistance, housing, veterans and labor division, 395-3532.

Housing Management:

Recertification of Income and Family Composition, section 235(B), HUD 9301, 93101A, 93101B, on occasion, mortgagors receiving benefits, housing, veterans and labor division, 395-3532.

DEPARTMENT OF TRANSPORTATION

Coast Guard:

Application for Enlistment, CG-2520, on occasion, general public—ages 17-42, Warren Topelius, 395-5872.

EXTENSIONS

VETERANS ADMINISTRATION

Trainee Interview Sheet, 21E-8662, on occasion, veteran, Caywood, D.P., 395-3443.

EXTENSIONS

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service:

Day Care Requirements for Non-Licensed Institutions (Child Care Food Program), annually, institutions administration by FNS, Warren Topelius, 395-5872.

Claim for Reimbursement and Worksheet—Summer Food Service Program for Children, FNS143, monthly, sponsors approved to operate the summer food service program, Warren Topelius, 395-5872.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Human Development:

Intake and Service Summary Program Feedback, other (see SF-83), staff of funded runaway youth projects, Tracey Cole, 395-5870.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc.77-4924 Filed 2-14-77;8:45 am]

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on February 7, 1977 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; the frequency with which the information is proposed to be collected; the name of the reviewer or reviewing division within OMB, and an indication of who will be the respondents to the proposed collection.

The symbol (x) identifies proposals which appear to raise no significant issues, and are to be approved after brief notice through this release.

Further information about the items on this Daily List may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C. 20503, (202-395-4529).

NEW FORMS

ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Assessment of Industry Energy RD&D, single-time, firms self-financing RD&D programs, Charles A. Ellett, 395-5867.

DEPARTMENT OF AGRICULTURE

Statistical Reporting Service:

On-Farm Grain Storage Survel (Kansas), single-time, grain farmers, Will Sherman, 395-4730.

DEPARTMENT OF COMMERCE

National Bureau of Standards:

Agency Impact Survey of State Purchasing Officials, NBS-1074, single-time, State purchasing officials, Louis C. Kincannon, 395-3211.

National Oceanic and Atmospheric Administration:

Seafood Opinion Survely, single-time, Consumers who eat seafood products at home, Will Sherman, 395-4730.

Bureau of the Census:

(Part of 1980 Decennial Census) Reconciliation Record 1977 Rural Relist Test, DI-106, single-time, selected households in 9 counties in LA, MS, AR, Marla Gonzalez, 395-6132.

Survey of Swine Flu Immunization, CPS-1, single-time, 39,800 interviewed households in April 1976 CPS sample, Richard Eisinger, 395-6140.

1977 Economic Censuses General Schedule, NC-X3, single-time, single establishment companies in all economic areas, Milo O. Peterson, 395-5631.

1977 Economic Censuses Central Administrative Office or Auxiliary Establishment, NC-X6, single-time, administrative and auxiliary establishments, Milo O. Peterson, 395-5631.

DEPARTMENT OF LABOR

Departmental and Other:

Transit Management Questionnaire and Transit Union Questionnaire, AS/per 2, single-time, transit agencies: Unions, Louis C. Kincannon, 395-3211.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education:

Cost and Characteristics Questionnaires and Cost Data Interview Guide-Compensatory Education Study, OE-502-11, 12, 13, annually, LEA personnel, school principal, human resources division, Robert W. Raynsford, 395-3532.

Health Services Administration:

Applicant Evaluation Health Record Administration Training, HSA-271, annually, teachers, supervisors of applicants, Roye L. Lowry, 395-3772.

Center for Disease Control:

Study of Epidemiology of Flavobacterium Meningosepticum Infections, TF 4.284 A & B, single-time, physicians caring for patients who have had meningosepticum infections, Richard Eisinger, 395-6140.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development:

Request for Rehabilitation Loan Check—Rehabilitation Loan Program, HUD-6236, on occasion, low income owners and occupants in UR area, housing, veterans and labor division, 395-3532.

Request for Verification of Mortgage or Deed of Trust, HUD-6239, on occasion, mortgage holders, housing, veterans and labor division, 395-3532.

GENERAL SERVICES ADMINISTRATION

Statement of Witness, SF-94, other (see SF 83), witness to accident, David P. Caywood, 395-3443.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Community Planning and Development:

Application for Rehabilitation Loan-Investor owned Residential Property or Mixed-use Loan, HUD-6243, on occasion, investor owning residential or mixed-use property, housing, veterans and labor division, 395-3532.

Request for Verification of Deposit—rehabilitation Loan and Grant Programs, HUD-6234, on occasion, banks and other financial institutions used as depositories of funds, housing, veterans and labor division, 395-3532.

Application for Section 115 Rehabilitation Grant, HUD-6260, on occasion, for income individuals and households, housing, veterans and labor division, 395-3532.

Application for Rehabilitation Loan-Owner Occupied Property Containing One-To-Four Dwelling Units, HUD-6230, on occasion, owner-occupiers of 1 to 4 dwelling units, housing, veterans and labor division, 395-3532.

Request for Verification of Employment—Rehabilitation Loan Program, HUD-6233, on occasion, employers of applicants for rehabilitation loans, housing, veterans and labor division, 395-3532.

Personal Financial Statements, HUD-6243A, on occasion, investor as sole proprietorship in residential or mixed-used property, housing, veterans and labor division, 395-3532.

Housing Management:

Claim for Payment of HUD Security Deposit Guarantee and Compensation for Vacancy Loss, HUD-52676, on occassion, Ind. owners of units W/HAP contracts under sec. 8, housing, veterans and labor division, 395-3532.

DEPARTMENT OF TRANSPORTATION

Departmental and Other:

A Study of Coordinated Transportation for Handicapped and Elderly, single-time, public and private agencies providing and or paying for transportation, Louis C. Kincannon, 395-3211.

REVISIONS

DEPARTMENT OF COMMERCE

Bureau of the Census:

Economic Censuses Classification Survey, NC-X1T, single-time, single establishment companies in all economic areas, Milo O. Peterson, 395-5631.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration:

Determining Level of Care Required by Patient in Skilled Nursing Facility—Part I—Request and Part II—Notice, SSA-1922, on occasion, profit and non-profit skilled nursing facilities, David P. Caywood, 395-3443.

Certificate of Applicant for Benefits on Behalf of Another, SSA-780, on occasion, relative or other person having and interest in a beneficiary's welfare, David P. Caywood, 395-3443.

EXTENSIONS

ENVIRONMENTAL PROTECTION AGENCY

Survey of State and Local Environmental Noise Control Programs, other (see SF 83), States and selected cities and counties, Charles A. Ellett, 395–5867.

FEDERAL HOME LOAN BANK BOARD

Application H–(D)2, H–(D)2 on occasion, Savings and Loan Holding Companies, Tracey Cole, 395–5870.

DEPARTMENT OF AGRICULTURE

Rural Elecritrification Administration:
Final Inventory—Telephone Construction Contract (Labor and Materials) REA Borrowers 724, 724 A&B, on occasion, consulting engineers employed by REA telephone borrowers, Warren Topelius, 395–5872.

Statistical Reporting Service:
Nursery Sales of Fruit Trees (California), annually, fruit tree nurseries, Will Sherman, 395–4730.

Rural Electrification Administration:
Final Inventory, Telephone Force Account Construction—REA Borrowers, 817, 817 A&B, on occasion, consulting engineers employed by REA telephone borrowers, Warren Topelius, 395–5872.

Food and Nutrition Service:
Application for Participation and Agreement, FNS–341, and 344, annually, public and non-profit private institutions, Tracey Cole, 395–5872.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration:
Shrimp Purchases—Dealer Schedule and Shrimp Trip Interview, NOAA 88–20, A and B, monthly, Captains or fishermen on shrimp fishing craft, Tracey Cole, 395–5872.

DEPARTMENT OF DEFENSE

Office of the Assistant Secretary, Industrial Equipment Modernization Program Post Analysis Report, DOD contractors, occasional, Warren Topelius, 395–5872.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration:
Sick Pay and Plan or System Questionnaire, SSA–7203, occasional, employers, Marsha Traynham, 395–3773.
Nursing Home Accountability Questionnaire, SSA–2895, annually, nursing homes, David P. Caywood, 395–3443.

Health Services Administration:
1976 National Public Health Program Reporting System, annually, 56th state agencies, Richard Eisinger, 395–6140.

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Policy Development and Research:
Survey of Landlords—Section 8 Program, single time, landlords in one SMSA, housing, veterans, and labor division, 395–3532.

Housing Management:
Request For Approval of Advances Under a Preliminary Loan Contract or Under a Loan Contract for Planning and Land Acquisition, HUD 51991, on occasion, public housing agencies, Roye L. Lowry, 395–3772.

PHILLIP D. LARSEN,
Budget and Management Officer.

[FR Doc. 77–4925 Filed 2–14–77;8:45 am]

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATION

TRADE POLICY STAFF COMMITTEE

Footwear Import Relief; Solicitation of Public Views

Pursuant to section 201 of the Trade Act of 1974, the United States International Trade Commission has reported to the President on the case of nonrubber footwear (Investigation No. TA–201–18). The Commission submitted a report containing an affirmative determination that footwear, provided for in items 700.05 through 700.85 inclusive (except items 700.51, 700.52, 700.53, 700.54, and 700.60, and disposable footwear designated for one-time use provided for in item 700.85) of the Tariff Schedules of the United States (TSUS, 19 U.S.C. 1202), is being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing articles like or directly competitive with the imported articles.

Four Commissioners found and recommended that the imposition of a system of tariff-rate quotas on all the imported articles that were covered by the Commission's injury finding (except athletic footwear as defined in TSUS Schedule 7, Part 1A, statistical headnote 1(a), in whatever item provided for, if valued over $8 per pair) was necessary to remedy the serious injury. One Commissioner found and recommended that the imposition of higher duties was necessary to remedy the serious injury. One Commissioner found and recommended that adjustment assistance under Chapters 2, 3, and 4 of the Trade Act of 1974 could remedy such injury.

Copies of the Report of the U.S. International Trade Commission on this matter are available to the public, as long as the supply lasts, from the Office of the Secretary, U.S. International Trade Commission, E Street between 7th and 8th Streets, N.W., Washington, D.C. 20436.

Within 60 days of receiving a report from the Commission containing an affirmative determination, the President must determine (a) what method and amount of import relief he will provide, or (b) that the provision of relief is not in the national economic interest, and (c) whether he will direct expeditious consideration of adjustment assistance petitions.

In determining whether to provide import relief, and what method and amount of import relief he will provide, the President must take into account, in addition to other considerations he may deem relevant, the following factors:

(1) The probable effectiveness of the import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any possible modification of duties or other import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States;

(6) The extent to which the United States market is a focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were or were not provided.

The Special Representative for Trade Negotiations chairs the interagency Trade Policy Committee structure that makes recommendations as to what action, if any, the President should take on reports submitted by the USITC under section 201 of the Trade Act. In order to assist the Trade Policy Staff Committee (TPSC), a subcommittee of the Trade Policy Committee, in developing these recommendations as to what action, if any, should be taken under sections 202 and 203 of the Trade Act, the TPSC welcomes briefs from interested parties on the USITC report and possible actions of the President described herein.

Briefs should be submitted in twenty (20) copies to Chairman, Trade Policy Staff Committee, Room 728, Office of the Special Representative for Trade Negotiations, 1800 G Street NW., Washington, D.C. 20506.

To be considered by Trade Policy Staff Committee, submissions should be received in the Office of the Special Representative for Trade Negotiations no later than March 2, 1977.

WILLIAM B. KELLY, Jr.,
Chairman, Trade Policy Staff Committee.

[FR Doc.77–4778 Filed 2–14–77;8:45 am]

PRIVACY PROTECTION STUDY COMMISSION

MEETING

The Privacy Protection Study Commission announced in the FEDERAL REGISTER dated January 27, 1977, that it would hold an open meeting on February 17 and 18, 1977 from 9:00 a.m. to 5:30 p.m. each day at Room 2358, Rayburn House Office Building, Washington, D.C. This meeting, open to the public, is post-

poned and is rescheduled for March 2 and 3, 1977, between 9:30 a.m. and 5:30 p.m. each day at Room 2358, Rayburn House Office Building. These sessions will include a discussion of Commission business and of the Commission's projects on education records and research and statistics.

For further information, contact John F. Barker, Public Affairs Director, at (202) 634-1477.

CAROLE W. PARSONS,
Executive Director, Privacy Protection Study Commission.

[FR Doc.77-5002 Filed 2-14-77;11:39 am]

RENEGOTIATION BOARD

STANDARD FORMS OF CONTRACTOR'S REPORT (RB FORM 1) AND APPLICATIONS FOR COMMERCIAL EXEMPTION

Extension of Time for Filing

Effective this date, notice is hereby given that all contractors and subcontractors with fiscal years ending subsequent to September 30, 1976 and prior to February 1, 1977 are granted an extension of time of three months for filing Standard Forms of Contractor's Report (RB Form 1) and Applications for Commercial Exemption.

Dated: February 10, 1977.

REX M. MATTINGLY,
Chairman.

[FR Doc.77-4742 Filed 2-14-77;8:45 am]

SMALL BUSINESS ADMINISTRATION

BALTIMORE DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Baltimore District Advisory Council will hold a public meeting at 9:30 a.m., until 4:30 p.m., Friday, May 13, 1977 and at 9:30 a.m., until 12:00 noon, Saturday, May 14, 1977, at the Wisp Hotel in Oakland, Maryland, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information write or call Gerard J. Lang, U.S. Small Business Administration, 7800 York Road, Towson, Maryland 21204, (301) 922-2150.

Dated: February 7, 1977.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.77-4736 Filed 2-14-77;8:45 am]

CASPER DISTRICT ADVISORY COUNCIL

Public Meeting

The Small Business Administration Casper District Advisory Council will hold a public meeting at 9:30 a.m., Friday, May 6, 1977, in the Champagne Room of the Ramada Inn, Casper, Wyoming, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present. For further information write or call Jerry S. King, U.S. Small Business Administration, P.O. Box 2839, Casper, Wyoming 82602, 307-265-5550, Extension 5266.

Dated: February 7, 1977.

HENRY V. Z. HYDE, Jr.,
Deputy Advocate for Advisory Councils.

[FR Doc.77-4737 Filed 2-14-77;8:45 am]

DEPARTMENT OF THE TREASURY

Office of the Secretary

LIST OF COUNTRIES REQUIRING COOPEARTION WITH AN INTERNATIONAL BOYCOTT

In order to comply with the mandate of section 999(a) (3) of the Internal Revenue Code of 1954, the Department of Treasury is publishing a current list of countries which may require participation in or cooperation with an international boycott. This lis is the same as the list published in the November 3, 1976, FEDERAL REGISTER. In the future, a current list will be published at the beginning of each calendar quarter.

Pursuant to the requirement of section 999(a) (3) of the Internal Revenue Code of 1954, the Department of the Treasury has compiled a list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b) (3) of the Internal Revenue Code of 1954).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b) (3) of the Internal Revenue Code of 1954):

Bahrain	Saudi Arabia
Egypt	Syria
Iraq	United Arab Emirates
Jordan	Yemen Arab Republic
Kuwait	Yemen, Peoples Democratic Republic of
Lebanon	
Libya	
Oman	
Qatar	

Dated: February 10, 1977.

W. MICHAEL BLUMENTHAL,
Secretary of the Treasury.

[FR Doc.77-4979 Filed 2-14-77;10:30 am]

INTERSTATE COMMERCE COMMISSION

[Notice No. 326]

ASSIGNMENT OF HEARINGS

FEBRUARY 10, 1977.

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 52917 Sub-No. 64, Chesapeake Motor Lines, Inc. now being assigned February 28, 1977 at the Offices of the Interstate Commerce Commission in Washington, D.C.

MC 115730 (Sub-No. 22), The Mickow Corp., now being assigned March 17, 1977 (2 days), at Columbus, Ohio, in Room 235, Federal Office Building, 85 Marconi Boulevard.

MC 103158 (Sub-No. 58), Mid-Continent Freight Lines, Inc., now assigned March 1, 1977, at St. Paul, Minn. is canceled and application dismissed.

MC 139236, Sub 1, M.O.R.T. Enterprises, Inc., now assigned March 9, 1977 (3 days) at Seattle Wash., will be held in Room 2866, Federal Bldg., 912 2nd Avenue.

MC 142134, Donald J. Bryden, dba Bryden Trucking, now assigned March 8, 1977 (1 day) at Seattle, Wash., will be held in Room 2866, Federal Bldg., 915 Second Avenue.

MC 61592 Sub 394, Jenkins Truck Line, Inc., MC 74321 Sub 125, B. F. Walker, Inc., MC 82841 Sub 199, Hunt Transportation, Inc., MC 100666 Sub 329, Melton Truck Lines, Inc., and MC 109397 Sub 345, Tri-State Motor Transit Co., now assigned March 14, 1977 (2 weeks) at Seattle, Wash., will be held in Room 2866, Federal Bldg., 915 Second Avenue.

MC 83539 Sub 439, C & H Transportation Co., Inc., now assigned March 14, 1977 at Seattle Washington, will be held in Room 2866 Federal Bldg., 915 Second Avenue.

I & S No. 9149, Restrictions on Service in New York Terminal Area, Conrail, now assigned March 1, 1977 at New York, N.Y., will be held in Room E-2222, Federal Bldg., 26 Federal Plaza.

MC 59457 Sub 31, Sorensen Transportation Co., Inc., now assigned March 7, 1977 at New York, N.Y., will be held in Room E-2222, Federal Bldg., 26 Federal Plaza.

MC 61502 Sub 9, Wm. McCullough Transportation Co., Inc., now assigned March 9, 1977 at New York, N.Y., will be held in Room E 2222, Federal Bldg., 26 Federal Plaza.

MC 45656 Sub 20, Anderson Truck Line, Inc., now assigned March 1, 1977 at Charlotte, N.C., will be held in the Holiday Inn, 212 Woodlawn Road.

MC 142215, Duke Transportation, Inc., now assigned March 15, 1977, at Baton Rouge, La., will be held on the 5th floor Conference Room, State Library, 760 Riverside Mall.

MC 128720 Sub 5, Merchants Freight Line, Inc., now assigned March 15, 1977 at Nashville, Tenn., will be held Room A-961 Federal Courthouse Annex, 801 Broadway; on March 21, 1977 at Nashville, Tenn., will be held in Room A-440, Federal Courthouse Annex, 801 Broadway; and on March 23, 1977 at Nashville, Tenn., will be held in Room A-961, Federal Courthouse Annex, 801 Broadway.

MC 114533 Sub 341, Bankers Dispatch Corp., now assigned March 28, 1977 at Kansas City, Mo., will be held in Room 829 U.S. Circuit Court of Appeals, 811 Grand Street.

MC-C-8974, Mrs. Charles Hodgens, Individual, dba Tour of the Month Club and Greyhound World Tours, Inc., V.S. & C. Corp., dba Piedmont Tours, now assigned March 30, 1977, at Columbia, S.C., will be held in Court #3, City Municipal Courthouse, 811 Washington St.

MC 108247 Sub 1, Westchester Motor Lines, Inc., now assigned March 23, 1977, at New York, N.Y., will be held in Room E-2222, Federal Bldg., 26 Federal Plaza.

MC 116763 (Sub-355), Carl Subler Trucking, Inc., application dismissed.

No. 36434, Petition for Declaratory Order and Reconsideration (Commuter Fares—Consolidated Rail Corporation, New Jersey and New York) and No. 36474, Benjamin Rail Corporation and Metropolitan Transportation Authority of New York, now assigned February 14, 1977, at New York, N.Y., is postponed to March 7, 1977 at New York, N.Y., in Room F-2220, Federal Building, 26 Federal Plaza.

MC 106497 Sub 132, Parkhill Truck Co., now assigned March 30, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.

MC 127042 Sub 175, Hagen, Inc., now assigned March 29, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut St.

MC 30844 Sub 571, Kroblin Refrigerated Xpress, Inc., now assigned April 4, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.

MC 109692 Sub 38, Grain Belt Transportation Co., and MC 138076 Sub 6, Heavy Hauling, Inc., now assigned March 31, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.

MC 114273 Sub 254, Crst, Inc., now assigned April 5, 1977, at Kansas City, Mo., will be held in Room 609 Federal Office Bldg., 911 Walnut Street.

MC 139923 Sub 15, Miller Trucking, Inc., now assigned April 7, 1977, at Kansas City, Mo., will be held in Room 609, Federal Office Bldg., 911 Walnut Street.

MC-F-12953, Red Ball Motor Freight, Inc.—Purchase (Portion)—Thunderbird Freight Lines, Inc.; FD 28260 Red Ball Motor Freight Inc. NOTE.—MC 2229 Sub 196, Red Ball Motor Freight Inc., and MC 69512 Sub 11, Thunderbird Freight Lines, Inc., now assigned April 12, 1977 at Los Angeles, Calif., will be held at the Biltmore Hotel, 515 S. Olive.

MC-F-12935, Stanley L. Watkins, & Stan Watkin Trucking, Inc.—Investigation of Control—Tiger Transportation, Inc., and Eugene Tripp, now assigned March 28, 1977 at Billings, Mont. will be held in Room 2222, Federal Bldg., 316 N. 26th Street.

MC 142189 Sub 1, C. M. Burns, an individual dba Western Trucking, now assigned March 23, 1977, at Billings, Mont., will be held in Room 2222, Federal Bldg., 316 N. 26th Street.

MC 123048 Sub 344, Diamond Transportation System, Inc., now assigned March 30, 1977, at Billings, Mont., will be held in Room 2222, Federal Bldg., 316 N. 26th Street.

MC 117068 Sub 66, Midwest Specialized Transportation, Inc., now assigned March 29, 1977, at Billings, Mont., will be held in Room 2222, Federal Bldg., 316 N. 26th Street.

AB 12 Sub 25, Southern Pacific Transportation Co., Abandonment between Hazen and Fallon in Churchill County, Nevada, now assigned April 4, 1977, at Fallon, Nevada, will be held in the Law Enforcement Facility, 3rd floor, 73 North Main Street.

AB 19 Sub 28, Buffalo Rochester & Pittsburgh Railway Co., & Baltimore and Ohio Railroad Co. Abandonment between Ashford & Leroy including Silver Lake Branch between Silver Lake Junction and Chace in Genesse Wyoming, Allegany & Cattaraugus Counties New York, now assigned March 16, 1977, at Warsaw, N.Y., will be held in the Wyoming County Courthouse, Court Room, Main & Court Streets.

MC 115452 Sub 4, Husband Transport Limited, A corp., now assigned March 21, 1977, at Buffalo, N.Y., will be held in Room No. 226, Federal Bldg., 111 W. Huron.

MC 113666 Sub 106, Freeport Transport, Inc., now assigned March 7, 1977, at Chicago Ill., will be held in Room 1319, Everett McKinley Dirksen Bldg., 2219 S. Dearborn Street.

No. MC-F-12678, Jenkin Truck Line, Inc., Control, Larry L. Fenner Transport, Inc., and MC 120298 Sub. 2, Larry L. Fenner Transport, Inc., now assigned March 9, 1977, at Chicago, Ill., will be held in Room 1319 Everett McKinley Dirksen Bldg., 219 South Dearborn Street.

AB 18 Sub 14, Chesapeake & Ohio Railway Co., Abandonment portion Paw Paw Subdivision between Hartford and Paw Paw, All within Van Buren County, Mich., now assigned March 2, 1977, at Paw Paw, Michigan, will be held in the Van Buren County Courthouse.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-4768 Filed 2-14-77;8:45 am]

[Rule 19; Ex Parte No. 241; 23d Rev. Exemption No. 90]

BALTIMORE AND OHIO RAILROAD CO. ET AL.

Exemption Under Provision of Mandatory Car Service Rules

It appearing, That the railroads named below own numerous 50-ft. plain boxcars; that under present conditions there are substantial surpluses of these cars on the lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 402, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM," and bearing reporting marks assigned to the railroads named below, shall be exempt from the provisions of Car Service Rules 1, 2(a), and 2(b).

The Baltimore and Ohio Railroad Company
Reporting Marks: BO
Cadiz Railroad Company
Reporting Marks: CAD
The Chesapeake and Ohio Railway Company
Reporting Marks: CO-PM
The Clarendon and Pittsford Railroad Company[1]
Reporting Marks: CLP
Elgin, Joliet and Eastern Railway Company
Reporting Marks: EJE
Green Mountain Railroad Corporation
Reporting Marks: GMRC
Geenville and Northern Railway Company
Reporting Marks: GRN
Louisville and Wadley Railroad Company
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Company
Reporting Marks: LNAC
Missouri-Kansas-Texas Railroad Company
Reporting Marks: BKTY-MKT
New Jersey, Indiana & Illinois Railroad Company
Reporting Marks: NJII
Norfolk and Western Railway Company
Reporting Marks: N&W-ACY-NKP-P&WV-WAB
Ogdensburg Bridge and Port Authority
Reporting Marks: NSL
Pearl River Valley Railroad Company
Reporting Marks: PRV
The Pittsburgh and Lake Erie Railroad Company
Reporting Marks: P&LE
Raritan River Rail Road Company
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN
St. Johnsbury & Lemoille County Railroad
Reporting Marks: SJL
Sierra Railroad Company
Reporting Marks: SERA
Tidewater Southern Railway Company
Reporting Marks: TS
Toledo, Peoria & Western Railroad Company
Reporting Marks: TPW
Vermont Railway, Inc.
Reporting Marks: VTR
WCTU Railway Company
Reporting Marks: WCTR
Western Maryland Railway Company
Reporting Marks: WM
Yreka Western Railroad Company
Reporting Marks: YW

Effective January 31, 1977, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., January 26, 1977.

INTERSTATE COMMERCE COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc.77-4765 Filed 2-14-77;8:45 am]

[No. 36279]

DENENHOLZ & JANER, INC.

Petition for Declaratory Order-Statute of Limitations

Order. At a session of the Interstate Commerce Commission, Division 2, acting as an Appellate Division, held at its office in Washington, D.C., on the 4th day of February 1977.

Upon consideration of the record in the above-entitled proceeding including the petition by Denenhol & Janer filed on May 20, 1976, for reconsideration of the order of the Commission served May 3, 1976, denying petitioner's request for a declaratory order; and,

It appearing, that petitioner represents several shippers who have timely filed overcharge claims with carriers who are presently in bankruptcy and that petitioner contends that notice to said bankrupt carrier also served as notice to connecting, through, and interlining carriers;

It further appearing, that upon reconsideration it has been shown that an issue of importance, arising from a dispute as to the proper interpretation of the Interstate Commerce Act has been raised, and that the outcome will affect numerous shippers and carriers;

[1] Addition.

It further appearing, that petitioner requests an interpretation that (1) The statute of limitations on overcharge claims are tolled upon the filing of an overcharge claim with any carrier participating in a through joint rate; (2) a carrier's failure, because of bankruptcy or other financial inability to pay an overcharge claim which it acknowledges to be correct, establishes a privilege and a right to transfer said overcharge claim for handling by any financially capable connecting carrier in the route movement; and (3) a connecting carrier's failure to accept and honor such binding obligation shall constitute a disallowance of the claim as said term is used in the statute of limitations on overcharge claims;

And it further appearing, That it has become necessary to interpret sections 16(3)(c) and 204a(2) of the Act (49 U.S.C. 16 and 304) to determine whether notification of an overcharge claim to the primary carrier tolls the statute of limitations as to connecting carriers, through carriers, and interlining carriers;

Wherefore, and for good cause:

It is ordered, That petition reconsideration be, and it is hereby granted.

It is further ordered, That pursuant to section 554(e) of the Administrative Procedure Act, 5 U.S.C. 554(e), and in the exercise of the Commission's sound discretion thereunder, this petition for a declaratory order be, and it is hereby, granted.

It is further ordered, That this proceeding be, and it is hereby, instituted to clarify the matters herein as to the application of the statute of limitations with respect to connecting carriers, through carriers, or interlining carriers who may be liable to shippers for overcharges;

It is further ordered, That petitioner be, and is hereby, made a party to this proceeding and that all other persons desiring to participate shall make such fact known by notifying the Office of Proceedings, Room 5342, Interstate Commerce Commission, Washington, D.C., 20423, on or before March 7, 1977, and that as soon as practicable, thereafter, the Commission will serve a list of the names and addresses of all persons on whom service of an opening and reply statement shall be made;

And it is further ordered, That a copy of this order be served upon petitioner and all parties to No. 36435 including those persons who requested to be advised of Commission actions therein, that a copy be deposited in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and that notice of this order be given to the public by delivery of a copy thereof to the Director, Office of the Federal Register for publication therein.

By the Commission, Division 2, acting as an Appellate Division. Commissioner Hardin, O'Neal and Christian.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-4766 Filed 2-14-77;8:45 am]

FOURTH SECTION APPLICATION FOR RELIEF

FEBRUARY 10, 1977.

An application, as summarized below, has been filed requesting relief from the requirements of section 4 of the Interstate Commerce Act to permit common carriers named or described in the application to maintain higher rates and charges at intermediate points than those sought to be established at more distant points.

Protests to the granting of an application must be prepared in accordance with Rule 40 of the general rules of practice (49 CFR 1100.40) and filed by March 2, 1977.

FSA No. 43320—*Joint Water-Rail Container Rates—States Steamship Company.* Filed by States Steamship Company, (No. 103), for itself and interested rail carriers. Rates on general commodities, between ports in Hong Kong, Japan, Korea, Philippines, Taiwan and Thailand, and rail stations on the U.S. Atlantic and Gulf Seaboard ports.

Grounds for relief—Water competition.

By the Commission.

ROBERT L. OSWALD,
Secretary.

[FR Doc.77-4767 Filed 2-14-77;8:45 am]

federal register

TUESDAY, FEBRUARY 15, 1977

PART II

COMMODITY FUTURES TRADING COMMISSION

■

COMMODITY POOL OPERATORS

Proposed Comprehensive Scheme For Regulation

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 4]

COMMODITY POOL OPERATORS

Proposed Comprehensive Scheme for Regulation

The Commodity Futures Trading Commission ("Commission") is proposing the adoption of new regulations under the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 1–22 (Supp. V, 1975), to establish a comprehensive scheme for the regulation of commodity pool operators.[1] The proposed regulations would: (1) Define the term "individual principal" of a commodity pool operator; (2) require that a pool operator furnish a written disclosure statement to prospective pool participants on or before the date it solicits, accepts, or receives funds from such prospective participants; (3) permit prospective pool participants to obtain the return of funds contributed to a pool upon demand made within two business days of receipt of the required disclosure statement; (4) establish record-keeping requirements for pool operators, including the maintenance of monthly financial statements for each pool and a record of the trading activities of the pool operator and its individual principals for their own account and a provision that pool participants have immediate access to such records; (5) establish reporting requirements for pool operators, including a requirement that a pool operator provide monthly statements of account to each pool participant setting forth the number of commodity interests traded by the pool, the pool operator and its individual principals; and (6) prohibit pool operators from advertising the results of simulated or hypothetical commodity accounts or transactions.

General Explanation

Commodity pool operators represent a new category of Commission registrant, subject to comprehensive regulation under the Act only since July 18, 1975, the effective date of section 205 of the Commodity Futures Trading Commission Act of 1974 ("CFTC Act"), Pub. L. 93–463, 88 Stat. 1389, 1397. The CFTC Act extensively amended the Act, adding to it, among other things, a definition of the term "commodity pool operator" and a requirement that commodity pool operators register with the Commission.[2] As amended by the CFTC Act, the Act also requires that a pool operator "maintain books and records and file such reports in such form and manner as may be prescribed by the Commission;[3]" furnish the Commission, upon its request, with the name and address of each pool participant and samples of all literature or advice distributed to any pool participant or to any prospective participant;[4] disclose to participants the futures market positions of the "individual principals" of the pool operator;[5] and regularly furnish pool participants with statements of account that are "in such form and manner as may be prescribed by the Commission.[6]" The Act further provides that it is unlawful for any registered pool operator to defraud or deceive any participant or prospective pool participant.[7] The Commission's current proposals would implement these provisions of the Act and many of the recent recommendations of the Commission's Advisory Committee on Commodity Futures Trading Professionals ("Advisory Committee").[8]

One principle which pervades all the proposed pool operator regulations and which, therefore, should be discussed at the outset is the extension of the regulations to trading by a commodity pool in commodity options and leverage contracts as well as in commodity futures contracts. Section 2(a)(1) of the Act, 7 U.S.C. 2, defines a commodity pool operator as a person who, among other things, "solicits, accepts, or receives from others, funds, securities, or property * * * for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market. * * *" For purposes of the proposed record-keeping and reporting requirements for pool operators, the Commission does not believe that meaningful distinctions can be made between the types of commodity interests traded by the pool; the rationale for regulation is the same. Therefore, pursuant to its broad rulemaking authority with respect to transactions involving commodity options under sections 2(a)(1) and 4c of the Act and with respect to leverage contracts under section 217 of the CFTC Act and its rulemaking authority under sections 8a(5) and 8a(8) of the Act, the Commission has proposed that trading by a commodity pool in these commodity interests be regulated in the same manner as trading in commodity futures contracts. This is done by defining the term "commodity interests" to include commodity futures contracts, commodity options and leverage contracts.

Summary of Proposed Regulations

Commodity Pool Operator Disclosure Statement. The legislative history of section 4n of the Act that relates to commodity pool operators indicates that the section was designed to protect unsophisticated traders from undesirable managerial and trading practices of pool operators.[9] A full disclosure of the material facts of the pool's organization and operations, as well as of the pool operator's background and qualifications, may expose and thus help to circumscribe the undesirable business practices of some pool operators. Proposed § 4.2 requires that specified items be disclosed in a written statement which is furnished to each prospective pool participant before a pool operator solicits the funds of such participant, or, if the pool operator does not solicit funds, before such pool operator accepts or receives the funds of such participant. The requirement of furnishing a written disclosure statement is designed to afford a prospective participant the opportunity to become informed of the material facts regarding the pool operator, the pool and trading in commodity interests, before investing funds in the pool.

To assure that the pool participant has the opportunity to read and to consider the disclosure statement before investing funds in the pool, proposed § 4.2(a) requires that the pool operator return any funds, securities or property contributed by such prospective participant if he so demands within two business days of his receipt of the statement. While the proposed regulation does not require a pool operator to obtain approval by the Commission of the written statement before distributing it to prospective participants, it does require the pool operator to file a copy of the written statement with the Commission within seven (7) days of the date it commences distribution of the statement to prospective pool participants.

Proposed § 4.2(b) sets forth the specific information which must be included in the disclosure statement. Some of the more significant disclosures are:

(1) The background and experience of the pool operator and its individual principals in commodities and other business matters;

(2) Certain information about the pool, including trading objectives, trading strategies, amount of assets that will be committed as margin for the trading of commodity interests, payment of dividends and

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[1] The term "commodity pool operator" is defined in 7 U.S.C. 2 as: "any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith, solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract market, but does not include such persons not within the intent of this definition as the Commission may specify by rule or regulation or by order."

[2] 7 U.S.C. 2 and 6m.

[3] 7 U.S.C. 6n(4)(A).

[4] *Id.*

[5] 7 U.S.C. 6n(4)(B).

[6] 7 U.S.C. 6n(5).

[7] 7 U.S.C. 6o(1).

[8] A summary of the major recommendations of the Advisory Committee Report is set forth at ¶20,197, CCH Comm. Fut. L. Rep. (Aug. 20, 1976). The Advisory Committee Report is set forth in full text in CCH Comm. Fut. L. Rep., Special Edition No. 29, Part II (Aug. 20, 1976).

[9] See, e.g., Statement of Dr. Clayton Yeutter, Assistant Secretary of Agriculture, House Committee on Agriculture Report on Commodity Futures Trading Commission Act of 1974, H.R. Report No. 93–975, 93d Congress, 2d Sess., 79 (1974).

"One of the ways in which unsophisticated traders have lost substantial amounts of money was through commodity advisors and commodity pool operators. This bill will provide for the registration of all such persons, establish procedures under which they would be permitted to operate and specifically eliminate certain undesirable practices which have enticed unsuspecting traders into the markets with, far too often, substantial loss of funds."

any restrictions on the redemption or transfer of interests in the pool;

(3) A general description of the nature of trading in commodity interests;

(4) Past performance of other pools operated by the pool operator and other accounts controlled by the pool operator;

(5) An explanation of all fees and expenses which may be incurred by the pool;

(6) The background and experience of each commodity trading advisor with which the pool intends to maintain an advisory services contract;

(7) An explanation of any business, arrangement between the pool operator, any individual principal thereof or the trading advisor with which the pool maintains an advisory services contract and any futures commission merchant which may carry the pool's account;

(8) The extent to which the pool operator or any individual principal thereof trades or intends to trade for its own account;

(9) The nature of any actual or potential conflict of interest between the pool and the pool operator, any individual principal thereof or any trading advisor with which the pool maintains an advisory services contract;

(10) The extent, if any, of participants' liability in excess of funds contributed;

(11) Any material civil or criminal proceedings against the pool operator or any individual principal thereof.

A profile of pool operators recently compiled by the Commission's Division of Trading and Markets from information contained in applications for registration as pool operators reveals an array of trading policies and methods of compensation employed by pool operators, as well as a wide diversity in the organizational forms and the amount of assets of pool entities. In view of the widespread differences among pool operators with respect to their managerial and trading practices, the disclosures required under proposed § 4.2(b) are critical if prospective pool participants are to make informed investment decisions.

Commodity trading is a complex field, requiring substantial skill and knowledge. A knowledge of the background and experience of a pool operator, its individual principals and any trading advisor with which the pool intends to maintain an advisory services contract appears essential to a meaningful evaluation of the services offered by those persons. In most instances in which the relationship between a commodity trading advisor and a pool is such that the advisor may be able to exercise immediate control, either directly or indirectly, over the trading decisions made by or for the pool, that relationship is evidenced by a contract or less formal agreement calling for the trading advisor to render advice to the pool or the pool operator on a regular or continuing basis or to actually manage the account of the pool. The term "advisory services contract" is used throughout the proposed rules to describe such contracts or agreements and is defined in paragraph (d) of proposed § 4.1 as any contract or other agreement whereby a commodity trading advisor agrees:

(i) To advise another person on a regular or continuing basis as to the advisability of engaging in any transaction in a commodity interest or the holding of a market position in any commodity interest other than through the use of a market letter, or other publication of wide-spread distribution; or

(ii) To manage any commodity interest account for any other person.

Each pool operator is required under proposed § 4.2(b) to disclose specified information regarding any commodity trading advisor who will maintain an advisory services contract with a pool, including, among other things, the advisor's background and experience, past account performance, any affiliation or other business arrangement with the commodity pool operator or its individual principals or a futures commission merchant who may carry the pool's account, and the terms and conditions of any contract between the pool or pool operator and such trading advisor. The requirement that all fees that may be incurred for managerial or advisory services be disclosed is similarly designed to afford prospective pool participants the information necessary in order to assess costs and possibilities of returns, and thus to evaluate the services offered by the pool operator and any trading advisor with which the pool intends to maintain an advisory services contract.

The proposed regulation also requires the disclosure of the performance of each account managed by and each pool operated by the pool operator in terms of the percentage of return on an investment in such account or pool for the year preceding the date on which the written disclosure statement is first distributed to a prospective pool participant. The Commission recognizes that this requirement may impose substantial burdens on certain pool operators. Because no requirement now exists to maintain such performance records and because such information may be more accessible to the futures commission merchants carrying such accounts, the effective date of any requirement for pool operators to disclose past account performance might be structured to permit them to comply with such a requirement by keeping such performance records from the date these proposed regulations are adopted. The Commission requests comments with regard to the degree of inquiry which a pool operator might be required to make in order to compile such performance records and whether such disclosures of performance should take on a prescribed format or should include certain specified information in addition to percentage of return on investment.

Disclosure of any business arrangement between a pool operator or the individual principals thereof and any futures commission merchant carrying the pool's account permits a prospective participant to judge whether the pool operator or its individual principals may benefit, directly or indirectly, from the brokerage commissions derived from the trading of the pool's funds. If the pool operator or an individual principal will receive any share of such brokerage commissions or will otherwise benefit from the maintenance of the pool's account with a futures commission merchant, the possibility exists that the pool operator or individual principal may encourage, or may fail to monitor, the issuance of trading recommendations which generate excessive commissions. The Commission believes that prospective pool participants should be made aware of any affiliation or financial arrangement between the pool operator or its individual principals and any futures commission merchant carrying the pool's account.

The Commission believes that the disclosure of the extent to which the pool operator or its individual principals engage in or intend to engage in trading activities on their own behalf would alert prospective pool participants to the possibility that the relationship between the pool operator and pool participants is subject to the abuses which may accompany this type of dual trading. This requirement also augments the regulatory scheme embodied in the record-keeping and reporting requirements set forth in section 4n(4) of the Act and proposed §§ 4.4 and 4.5. Such disclosure would also alert the prospective pool participants to the significance of the record-keeping and reporting requirements set forth in proposed §§ 4.4 and 4.5 for pool operators and individual principals who trade for their own account.

The Commission believes that a prospective pool participant should be informed about certain principal elements of trading commodity interests before investing funds in a pool engaged in such trading. The proposed regulation requires that the leverage and risk of loss inherent in the trading of commodity interests, as well as such features of commodity futures trading as initial and maintenance margin, speculative trading and position limits and daily price fluctuation limits, be described in the written disclosure statement.

Proposed § 4.2(c) requires that the written disclosure statement furnished to prospective pool participants state prominently on the first page in bold-face type that (1) the pool operator must furnish such written disclosure statement to a prospective pool participant on or before the date the pool operator solicits, accepts or receives the funds, securities or property of such prospective participant, (2) a prospective participant may demand the return of such funds, securities or property within two business days of his receipt of the written disclosure statement and (3) the Commodity Futures Trading Commission has not reviewed or passed upon the accuracy or adequacy of the written disclosure statement. It is intended that the emphasis placed upon those provisions of the proposed regulations which must be accepted in bold-face type on the first page of the disclosure statement will clearly inform the prospective participant of the significance of the written disclosure statement and encourage prospective participants to carefully consider the statement before investing funds in a pool. The lack of review or approval of the disclosure statement by the Commission is also made clear to prospective pool participants.

Proposed §§ 4.2(d) requires a pool operator to correct promptly any inaccurate material information contained in the disclosure statement of which it knows or has reason to know before the commencement of trading by the pool. Since the inaccurate material information subsequently corrected by the pool operator may have constituted a material fact upon which the prospective pool participant relied in his intial investment decision, the pool operator is required to return the funds of any prospective participant if such participant so demands within two business days of his receipt of the amended disclosure statement. The Commission is also considering the adoption of a rule which would require a pool operator to inform a pool participant of any material changes which have occurred after trading is commenced by a pool in the information provided in the disclosure statement required under proposed § 4.2.

Proposed § 4.2(e) provides that a community pool operator is not relieved of any other requirement under the Act and the regulations thereunder by complying with the requirements of § 4.2. For example, the furnishing of a written disclosure statement to prospective pool participants pursuant to § 4.2 would not relieve a commodity pool operator from any obligation under section 4o of the Act, 7 U.S.C. 6o, to refrain from:

(1) Employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(2) Engaging in any tranaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

Treatment of Pool Participants' Funds. A principal recommendation of the Advisory Committee for the regulation of pool operators concerned the treatment of pool funds by pool operators:

> Just as FCM's must separately account for customers' funds (and other property) and refrain from commingling them with FCM funds, pool operators should be required to give similar treatment to the funds received by the operator from pool participants, and to the funds accruing to the pool as the result of trades and other activities. Those funds should be treated by the operator as belonging to the pool and segregated from the funds of the operator, except to the extent they are committed to paying the operator's fees.[10]

Stating that the treatment of pool funds by a commodity pool operator is especially critical "due to the complexities of futures trading and the unsophisticated nature of many pool participants," the Advisory Committee Report concluded that it is "vital that the Commission adopt and enforce rules requiring pool operators to deal properly with the funds and other assets belonging to the pool.[11]"

[10] CCH Comm. Fut. L. Rep., Special Edition No. 29, Part II, August 20, 1976, p. 26.

[11] Id.

Proposed § 4.3 requires a pool operator to separately account for the funds of pool participants and prohibits the commingling of pool funds with the assets of the pool operator or other entities. The proposed regulations would not prohibit a pool operator from investing its own funds in a pool which is operates. The proposed regulations would, however, require that such funds invested by a pool operator be separately accounted for and not be commingled with other assets of the pool operator.

Record keeping by Commodity Pool Operators. Section 4n(4)(A) of the Act, 7 U.S.C. 6n(4)(A), provides in pertinent part that registered pool operators shall "maintain books and records * * * in such form and manner as may be prescribed by the Commission." Proposed § 4.4 would implement this provision by requiring each pool operator to keep certain books and records for each pool it operates. The required books and records include an itemized daily record of each commodity interest purchased or sold by the pool and the realized gain or loss on each commodity interest purchased or sold by the pool, a journal of all receipts and disbursements of the pool funds and monthly and annual statements of financial condition and income (loss) for the pool, as well as certain records supporting such statements. Additionally, a pool operator must keep records of each commodity interest purchased or sold for the accounts of the pool operator or any individual principal thereof. Proposed § 4.4(c) provides that these required records be made available at the principal business office of the pool operator to any pool participant for inspection and copying during normal business hours and that copies of the required records be furnished immediately upon request to a pool participant.

A primary purpose of the record-keeping requirements is to enable pool participants and the Commission to ascertain whether pool operators are dealing properly with pool funds. It would be difficult for pool participants or the Commission to make this determination unless the pool operator maintains the books and records specified in the regulation. Proposed § 4.4 is also intended to promote sound business practices and the development of internal controls among pool operators. Additionally, proper record keeping should serve as a basis for the timely and accurate reporting of the pool's operations to participants required under proposed § 4.5.

The requirement that each commodity interest purchased or sold for the accounts of the pool operator or any individual principal thereof be recorded has several purposes. Though inspection of these records the Commission or pool participants will be able to ascertain whether such persons may be using their knowledge of the pool's orders in effecting trades for their own accounts (see the discussion of proposed § 4.5, infra) and whether the pool operator is properly disclosing those trades under proposed § 4.5, which implements section 4n(4)(B) of the Act. The proposed regulation is designed to minimize costs of record keeping by permitting pool operators to maintain the required records of the trading by the pools, the pool operators themselves and their individual principals by assembling an orderly collection of confirmation statements received from the futures commission merchants carrying the respective accounts. The pool operator would be required to retain these confirmations for the period and in the manner prescribed in § 1.31.

Proposed § 4.4(b) requires pool operators to retain a copy of all reports, literature or advice that it distributes to any pool participant or prospective pool participant or that it receives from any commodity trading advisor with which the pool maintains an advisory services contract. These provisions will work in the Act, which provides in pertinent part that:

> Upon the request of the Commission, a registered * * * commodity pool operator shall submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or other literature or advice distributed to * * * participants * * * or prospective * * * participants.

Unless such copies are kept by the pool operator, compliance with this section of the Act would appear impossible.

Statements to be Furnished to Pool Participants. Section 4n(5) of the Act, 7 U.S.C. 6n(5), requires every pool operator to furnish "regularly" to each participant in its pool operations "statements of account" that are "in such form and manner as may be prescribed by the Commission" and that include "complete information as to the current status of all trading accounts" in which a pool participant has an interest. Section 4n(4)(B) of the Act, 7 U.S.C. 6n(4)(B), provides in pertinent part that "[u]nless otherwise authorized by the Commission," all pool operators must disclose to their participants "all futures market positions taken or held by the individual principals of their organization." Proposed § 4.5 relates to both of these provisions; it prescribes the form and manner in which the statements of account must be furnished and it establishes a procedure, in furtherance of section 4n(4)(B), for the disclosure of commodity positions taken or held by pool operators and their individual principals.

Proposed § 4.5 requires pool operators to furnish pool participants with two types of statements. The first is a statement showing, among other things, the net asset value of one unit of participation in the pool at the end of the monthly period and the total net asset value of all such units held by the pool participant. The monthly statement must also show the number of each type of commodity interest purchased and the number of each type of commodity interest sold, by the pool, pool operator and its individual principals during the monthly period; and the number of each type of commodity interest held, by the pool, the pool operator and its individual principals at the beginning and at the end of the monthly period. The number

of each type of commodity interest purchased, sold or held by the pool, pool operator and its individual principals must be itemized in each instance by respective delivery month, or expiration date. In addition, the monthly statement must show certain material changes in the operation of the pool, including any change of commodity trading advisor with which the pool maintains an advistory services contract, any material changes in trading policies, and any financial transactions between the pool and the pool operator or its individual principals. The second required statement is an annual financial statement including, among other things, a Statement of Financial Condition, Statements of Income (Loss), Changes in Financial Position,[12] and Changes in Ownership Equity. The monthly statement must be furnished to participants within fifteen (15) days of the last day included in the monthly report. The annual statement must be furnished to participants and to the Commission within sixty (60) days of the last day included in the annual statement.

As noted above, proposed § 4.5(a) requires disclosure of the number of commodity interests purchased, sold or held for the accounts of the pool in each commodity. The regulation is designed to inform pool participants in summary fashion of the volume of trading in each commodity, and would permit a comparison of the pool's trading with any trading conducted by the pool operator or its individual principals. For example, since the same type of disclosure is required under proposed § 4.5(a) of the trading conducted by the pool operator or its individual principals, a pool participant could readily identify those commodities in which trading on behalf of the pool overlapped with, or ran contrary to, trading for the accounts of the pool operator and its individual principals. Furthermore, disclosure of the number of commodity interests traded would indicate, in summary fashion, the respective volume of trading in those accounts and, therefore, may in some instances indicate excessive trading of the pool's account. If the pool participant, from his review of the information revealed on the monthly report, desires more detailed information with respect to the purchase, sale or holdings of commodity interests by the pool, the pool operator or its individual principals, he could, pursuant to proposed § 4.4(c), obtain that information from the pool operator immediately upon request.

The full disclosure of market positions required under section 4n(4)(B) of the Act appears to have been designed to expose potential conflicts between the trading conducted by individual principals for their own accounts and the trading conducted on behalf of the pool.[13] However, Congress was apparently aware that the disclosure required by section 4n(4)(B) of the Act might be unnecessary or unduly burdensome in certain instances. Accordingly, section 4n(4)(B) permits the Commission to authorize alternatives to the "full and complete disclosure" requirements set forth therein.

The Commission believes that section 4n(4)(B) may be analyzed in light of its apparent purpose to preclude the abuse of the relationship which exists between a pool operator and pool participants. The less burdensome and simpler reporting system of § 4.5 has been proposed because the Commission believes it would serve the intended purposes of section 4n(4)(B) by supplying information to pool participants in a manner which can be understood by even unsophisticated traders. The requirements under proposed § 4.4 that pool operators keep accurate daily records of their own trading activity and that of their individual principals, and that such records be made available to pool participants immediately upon request, permit a more detailed examination of the trading of pool operators and their principals if pool participants wish to determine whether abusive trading practices have occurred. Moreover, the reports required under proposed § 4.5 would compress lengthy trading records into a manageable report, even for those pools which conduct a large volume of trading.

The Commission invites comment with regard to any additional information, such as the amount of brokerage commissions or management and advisory fees, which should be set forth in the monthly statement furnished to pool participants. The Commission particularly requests comments with regard to the need for such information in the monthly report in view of its availability in the financial records required to be kept under proposed § 4.4, which are available to pool participants for inspection immediately upon request.

With regard to the disclosure requirements of proposed § 4.5, it should be noted that the position disclosure requirements of section 4n(4)(B) of the Act apply only to the "individual principals" of a pool operator. In many instances, this may result in the disclosure of the positions of the pool operator as well. However, in those instances where such disclosure would not be required, the Commission believes that the potential for abuse by the pool operator of its relationship with pool participants is as great. Accordingly, the Commission has structured proposed § 4.5 to require that the appropriate disclosures be made of the positions taken or held by the pool operator as well as by its individual principals.

Because the term "individual principal" is so important to the proposed regulations but not defined in the Act, it has been defined in a manner which the Commission believes inconsistent with the purposes of section 4n(4)(B). Secton 4n(4)(B) was apparently intended to deter individual principals of pool operators from abusing the relationship of the pool operator with participants for their own gain. Accordingly, section 4n(4)(B) disclosure may be viewed in one of two ways. First, it may be seen as a deterrent to abuses not only by those persons who are in a position to exercise a controlling influence over the pool's trading, but also by those persons who may influence or participate in the formulation of the pool's trading policies or gain knowledge of the prospective market positions of the pool. Alternatively, section 4n(4)(B) disclosure may be viewed as a deterrent to abuses by only those persons whose relationship with the pool operator is such that they may control or determine the trading conducted on behalf of a pool. The Commission believes the latter approach is more appropriate. Accordingly, the term "individual principal" is defined in § 4.1 as any general partner, director, or officer of the pool operator, or any person performing similar functions, or any holder of more than 10 percent of the equity interest in the pool operator. However, the Commission specifically requests comments from interested persons as to the appropriateness of this definition and on alternatives to this proposal.

Also in order to achieve the purposes of section 4n(4)(B) proposed § 4.5 is designed to require disclosure of all trading activity in commodity interests for any account in which a pool operator or any of its individual principals has a significant interest. In order to attain such disclosure, the Commission, in proposed § 4.1(c), has defined the phrase "account of the commodity pool operator or individual principal thereof" broadly to include any account in which the pool operator or an individual principal thereof or certain relatives of these persons who reside in the same home of such pool operator or individual principal have a beneficial interest of more than ten percent.

Proposed § 4.5(c) requires certification of the annual statement by an independent public accountant for pools with $150,000 or more in assets or more than fifteen (15) participants (other than the commodity pool operator and individual principals thereof) at any time during the pool's fiscal year. In proposing the requirement that the annual financial statement for certain pools be certified by an independent public accountant, the Commission has considered the additional costs which will be imposed on those pools and ultimately on pool participants. The Commission specifically

[12] This statement, which is required under generally accepted accounting principles, is important because it summarizes the financial and trading activities of the pool, including the extent to which the pool generated funds from operations. *See* Opinion 19 (March 1971) of the Accounting Principles Board of the American Institute of Certified Public Accountants, Inc.

[13] Abuses by pool operators of their relationship with participants or prospective participants may take many forms. For example, a pool operator may direct trading on behalf of the pool solely to improve the market positions of the pool operator, which positions may have been assumed by "trading ahead" of the market orders of the pool. Moreover, since a pool operator is often able to influence the frequency and the volume of trading conducted on behalf of the pool, the pool operator may be in a position to churn, or excessively trade, the pool's account.

requests comments regarding the level of assets and maximum number of participants proposed in the regulation for exemption from the certification requirement. Comment is also requested on whether certification should be required for pools managed by the same pool operator if the total number of participants or amount of assets in such pools exceeds the levels set forth in proposed § 4.5(c).

The accounting practices and procedures required under proposed § 4.5(c) for pool operators are, with certain exceptions, similar to those proposed for futures commission merchants by the Commission on October 15, 1976. (See 41 FR 45706, October 15, 1976, for the Commission's proposed financial and reporting requirements applicable to futures commission merchants.) The liquidity of pool assets enhances the significance of the accounting requirements set forth in paragraphs (d), (e), (f), and (g) of proposed § 4.5.

Proposed § 4.5(d) requires computation of required financial statements in accordance with generally accepted accounting principles. Proposed § 4.5(e) requires that the monthly and annual statements of income be itemized with respect to brokerage commissions, management and advisory fees, and realized net gain or loss from each commodity interest purchased or sold by the pool and that they show unrealized net gain or loss in open positions in commodity interests held as of the last day of the period for which the report is made. Proposed § 4.5(f) sets forth a procedure for the election of a fiscal year by a commodity pool operator for each pool that it operates. Proposed § 4.5(g) requires that the monthly and annual financial statements be certified by specified officials of the pool operator.

Prohibition upon advertising of simulated trading results. Proposed § 4.6 prohibits pool operators from advertising the performance of any simulated or hypothetical transaction, series of transactions or account involving commodity interests. The Commission recognizes that this prohibition may create some difficulties for new entrants into the profession; however, the importance of restricting the potential for deception inherent in the advertising of simulated trading appears to outweigh the significance of these difficulties.

It may be relatively easy, through hindsight, to design a successful simulated account. However, since a commodity pool operator cannot be required to maintain a record of the "trades" in a simulated account because such "trades" never actually took place, it would be difficult, time-consuming and frequently impossible for a prospective pool participant or the Commission to obtain sufficiently detailed records to verify the accuracy and legitimacy of statements regarding such accounts. The validity of simulated accounts is also questionable because of the uncertainties of order execution. There may be instances in which the hypothetical trade that was "executed" for the simulated account could not have taken place in actual trading. For example, if the market in a particular contract were relatively inactive, only a portion of the "order" may have been executable at the assumed price.

The Commission is also considering the adoption of a regulation which would place restrictions on the ability of pool operators to advertise selectively the performance of only certain commodity accounts or of only certain periods of trading or trading sequences in such accounts. These restrictions would include requirements that a pool operator advertise the results of all accounts controlled by, or pools operated by, the pool operator if it chooses to advertise the results of any such account or pool, and that the pool operator advertise the long-term performance of such accounts or pools as opposed to their short-term performance.

Exemptions. Proposed § 4.50 would permit the Commission, in its discretion, to exempt a pool operator from any of the provisions of proposed §§ 4.1 through 4.6 if the Commission determines that such an exemption is not contrary to the public interest to be furthered by, or the purposes of, the provision from which exemption is sought. Such exemptions may be given by the Commission upon its own motion or upon written application, and the Commission may condition the exemption as it deems appropriate. The Commission has received numerous inquiries and suggestions with regard to possible exemptions from pool operator regulations for certain types of pools. The Commission requests comments regarding those specific regulations proposed for pool operators from which an exemption should be granted for certain types of pools.

Other Reporting Requirements. The Commission is also considering the adoption of a reporting requirement for pool operators under which they would be required to provide to the Commission certain information periodically regarding the pool's business and trading activities, including such items as the number of pool participants for whom they perform services, the amount of assets under their management and the volume of trading conducted for pool accounts.

Additional Regulation of Commodity Pool Operators

In addition to requesting comments on the proposed regulations, the Commission seeks comments regarding additional restrictions or requirements which should be imposed upon pool operators. Specifically, commentators' views are sought on the following regulatory provisions that other regulatory authorities have in the past imposed upon pool operators.[14]

1. Prohibition on incentive fees. Investment advisers are, with certain exceptions, generally prohibited by the Investment Advisers Act of 1940 from receiving compensation based upon the trading gains achieved by their clients.[15] Since commodity pool operators and trading advisors to a pool may perform functions similar to those of investment advisers, the Commission is considering whether to prohibit pool operators or trading advisors to a pool from charging incentive fees.

The Commission's Advisory Committee considered this prohibition at length and concluded:

> The apparent reason for this prohibition [in the Investment Advisers Act] was a belief that incentive fees caused undue risk-trading by portfolio managers. But since risk-trading is an accepted element of commodities speculation, there is no basis for extending the prohibition to pool operators and trading advisors. In addition, there ap-

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[14] Since April 21, 1975, the effective date of the CFTC Act, state regulation of the activities of commodity pool operators has been preempted. Section 2(a)(1) of the Act grants the Commission exclusive jurisdiction over, among other things, "accounts, agreements * * * and transactions involving contracts of sale of a commodity for future delivery, traded or executed on a contract market * * *" The activities of commodity pool operators necessarily concern accounts, agreements and transactions involving futures contracts. In addition, Congress has granted the Commission pervasive authority under Sections 4*l*, 4m, 4n, 4o and 8a of the Act, to register and otherwise to regulate the activities of commodity pool operators.

The Conference Committee report of the CFTC Act specifically addressed the scope of the Commission's exclusive jurisdiction:

> Under the exclusive grant of jurisdiction to the Commission, the authority in the Commodity Exchange Act (and the regulations issued by the Commission) would preempt the field insofar as futures is concerned. Therefore, if any substantive State law regulating futures trading was contrary to or inconsistent with Federal law, the Federal law would govern. In view of the broad grant of authority to the Commission to regulate the futures trading industry, the Conferees do not contemplate that there will be a need for any supplementary regulation by the States.

S. Rep. No. 93-1194, 93rd Cong., 2d Sess. 35-36 (1974); H.R. Rep. No. 93-1383, 93rd Cong., 2d Sess. 35-36 (1974).

Notwithstanding this congressional intent, the Commission understands that there remain among the laws of several of the states provisions which purport to regulate pool operator activities. But one of the major reasons that prompted Congress to amend the Act in 1974 was to avoid overlapping and duplicative regulation, which might result from the application of diverse and often conflicting laws of the various states. Senator Talmadge and Representative Poage, principal sponsors of the bill that became the CFTC Act, pointed to this problem during the Congressional debates. See 119 Cong. Rec. S11353 (daily ed., December 13, 1973); 120 Cong. Rec. S16126 (daily ed., September 9, 1974).

In view of this Congressional purpose, and the unambiguous language of the Act, as amended, there is no basis in law for any supplementary regulation by the states of the activities of commodity pool operators except, to the extent that pool operators also engage in securities-activities subject to the jurisdiction of the state regulatory authorities.

Nevertheless, the Commission believes that the experience of state authorities, particularly in administering state securities laws, can be particularly useful to the Commission in developing its regulatory program. Accordingly, the Commission encourages those authorities to comment on its proposals.

[15] See 15 U.S.C 80b-5(1).

pears to be an affirmative need for incentive fees in commodities trading. Because large trades tend to move prices significantly, there is a practical limit to the size of commodity pools, and thus a limit to the amount a pool operator can charge by way of a net asset fee. (Footnote omitted.) [15]

The Commission agrees with the conclusion of its Advisory Committee that a prohibition of incentive fees with respect to services performed in conjunction with the trading of commodity interests would be unwarranted at this time and, accordingly, has not proposed such a prohibition.

While the Commission does not presently intend to bar pool operators from charging incentive fees, it is concerned about the possibility that unsophisticated traders could be induced to enter into incentive fee arrangements that result in excessive payments. For example, if an incentive fee were calculated monthly as a percentage of trading gains, without any adjustment for losses in prior months, a pool operator or trading advisor to the pool could receive substantial fees even though the value of the account had declined from the beginning to the end of a yearly period. To illustrate, if a $10,000 account declined the first month to $5,000 and then rose the next month to $7,000, the advisor could possibly receive a percentage of the $2,000 "gain", although the account had incurred an overall loss for the two months. Accordingly, the Commission is considering the adoption of a rule which would prohibit incentive fees that were not based on the appreciation over the highest previous value within the past year of the account. The Commission invites comment on such a limitation on the assessment of incentive fees and on the appropriate period, yearly or otherwise, to which this restriction should apply.

2. A minimum net proceeds requirement for commodity pools formed through public solicitations. The minimum levels of pool assets which have been applied or proposed by state securities regulators are designed to assure a minimal degree of potential diversification in trading conducted by the pool.

3. A minimum net worth requirement for pool operators. The Advisory Committee recommended such a requirement, reasoning that an under-capitalized pool operator might be tempted to misappropriate assets of the pool. An under-capitalized pool operator is also vulnerable to abrupt disruptions in business operations which may injure pool participants who depend upon the pool operator for continuing managerial and advisory services.

4. A requirement that the pool operator participate in the pool. For example, the pool operator might be required to own five (5) percent of the outstanding units of participation in the pool. The Advisory Committee recommended against such a requirement on the ground that it might preclude qualified persons without substantial financial resources from operating commodity pools. State securities regulators have required such participation.

5. Suitability standards for pool participants. For example, pool participants might be required to have a net worth of at least $75,000 and a gross income of $20,000 per year. The Advisory Committee did not consider a net worth requirement to be an appropriate suitability standard because of the varying degrees of risk involved in the trading conducted by commodity pools.

6. A minimum participation requirement for pool participants. The minimums that are applied by state securities regulators range from $2,000 to $5,000.

7. A requirement that pools be structured so that pool participants are accorded limited liability. About eighty (80) percent of the commodity pools now in operation are organized as limited partnerships or corporations. Thus, pool participants in these pools, in their capacity as limited partners or shareholders, now have limited liability.

8. A restriction on the amount of management and advisory fees that may be charged. For example, management fees might be limited to a certain percentage of the pool's net assets and incentive fees might be limited to a certain percentage of pool's annual profits. The Advisory Committee concluded that fee ceilings were inappropriate if the nature of all management or incentive fees were disclosed at the outset to prospective pool participants.

9. A prohibition or greater restriction on the receipt of management or advisory fees by pool operators or trading advisors to the pool who benefit, directly or indirectly, from the handling of the pool's account by a certain futures commission merchant. For example, if a pool operator were a subsidiary of the futures commission merchant carrying the pool's account, it would be prohibited from, or greatly restricted in, receiving any management or advisory fees from the pool.

10. A prohibition on the sale of additional participation units in the pool after the pool has commenced trading in commodity interests.

11. A restriction on the borrowing of funds by pools. Such a restriction would preclude the pool or the pool operator from borrowing funds on behalf of the pool in order to margin market positions of the pool.

12. A limitation on the percentage of the pool's assets that may be committed as initial margin for trading in commodity interests. Certain commodity exchanges have required higher initial margin deposits for trading conducted by commodity pools than those required of other commodity accounts and certain state securities regulators have applied limits to the amount of a pool's assets which may be committed as initial margin for the trading of commodity interests.

13. Restrictions on the investment of pool funds not committed as margin for trading in commodity interests. The investments that futures commission merchants may lawfully make with customers' funds are prescribed under § 1.25 of the regulations (17 CFR 1.25.) The Advisory Committee, after recognizing a potential problem of regulatory jurisdiction arising from any similar restrictions on the use of pool funds, recommended against any such restrictions on investments by pools if prospective investments were fully disclosed.

14. A limitation on the percentage of the pool's assets that may be committed to a single delivery or expiration month of a particular commodity. This limitation is applied by some state securities regulators to prevent undue concentration in the trading of a pool and to insure that a minimal level of diversification in trading is attained by a pool.

15. A requirement that interests in a pool be redeemable at regular intervals and without substantial penalties. For example, pools might be required to provide an opportunity at least annually or perhaps quarterly, for redemption of participation units at net asset value.

16. A prohibition of exculpatory and indemnification agreements purporting to relieve the pool operator of liability for negligence or for willful misconduct.

17. Automatic suspension or termination of trading by the pool if the net asset value of the pool falls below a certain percentage of the amount of pool assets on the date trading was commenced or on the first day of the then current fiscal year of the pool. Such a suspension or termination of trading may permit a pool participant to limit losses and, in certain instances, to recover a portion of his initial contribution to the pool before it would otherwise be obtainable through redemption or other means.

Additionally, a pool operator might be required to report to the Commission if the net asset value of any pool it operates declines to fifty (50) percent of either its original net asset value or its net asset value as of the first day of the then current fiscal year. Such a requirement would enable the Commission to learn which pools have declined substantially in net asset value and thus afford the Commission an opportunity to monitor more closely those pools through inspection of their records.

Proposed Exclusions

On July 3, 1975, the Commission proposed the adoption of a rule which would exclude from the definition of a commodity pool operator certain persons who may fall within the literal definition of a commodity pool operator in section 2a(1) of the Act, but whose registration and consequent regulation would provide minimal benefit to pool participants and to the public in general. 40 FR 29091 (July 10, 1975). The proposed exclusion provides that:

[A] person is not a commodity pool operator within the meaning of the Act if each of the following conditions are met:

(1) Such person is an operator of no more than one commodity pool at any time;

(2) There are no more than 10 participants in the pool operated by such person;

(3) Neither such person nor any participant in the pool operated by such person;

[15] CCH Comm. Fut. L. Rep., Special Edition No. 29, Part II, p. 36 (August 20, 1976).

(i) Is a futures commission merchant, an associated person or a director, officer, partner or person performing similar functions or controlling person of a futures commission merchant, or

(ii) Receives any compensation or payment, directly or indirectly, from any futures commission merchant with which such pool has an account;

(4) Neither such person nor any partner, officer, director, person performing similar functions or controlling person of any of the foregoing persons, nor any person acting on behalf of, or at the direction of, any of the foregoing persons, in connection with the formation or operation of the pool operated by such person, or the solicitation, acceptance or receipt of the funds, securities, or property to be invested in, or contributed to such pool, shall use any form or means of general solicitation or general advertisement, including but not limited to, any advertisement, article, notice or other communication published in any newspaper, magazine or similar medium or broadcast over television or radio, or any seminar; and

(5) The total assets of the pool operated by such person which are used for the purpose, or intended to be used for purpose, of trading in any commodity for future delivery on or subject to the rules of any contract market shall not exceed $50,000.

The Commission again requests comments on the appropriateness of excluding such persons from the definition of a commodity pool operation, in light of the purposes of section 4n of the Act, when the conditions of the proposed exclusion are met. Comment is also requested regarding what other types of persons might appropriately be included within this exclusion.[17]

(Section 2(a)(1), 4c, 4n, 4o, 8a(5) and 8a(8) of the Commodity Exchange Act, as amended, and section 217 of the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. 2a, 6c, 6n, 6o, 12a(5), 12a(8) and 15a (Supp. V, 10755).)

In consideration of the foregoing, the Commission hereby proposes to amend 17 CFR Chapter 1 by adding a new Part 4 to read as follows:

PART 4—COMMODITY POOL OPERATORS

Sec.
4.1 Definitions.
4.2 Commodity pool operator disclosure statement.
4.3 Treatment of funds, securities or property of pool participants or prospective pool participants.
4.4 Recordkeeping by commodity pool operators.
4.5 Statements to be furnished to pool participant.
4.6 Simulated or hypothetical accounts or transactions.
4.50 Exemptions.

§ 4.1 Definitions.

For purposes of this part:

(a) The term "commodity interest" means:

(1) Any contract for the purchase or sale of any commodity for future delivery traded on or subject to the rules of a contract market;

(2) Any agreement or transaction in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as, an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty" involving any commodity regulated under the Act other than wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products and frozen concentrated orange juice;

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(b) The term "individual principal" means any general partner, director, officer, person performing functions similar to those of a general partner, director, or officer, or holder of more than 10 percent of the equity securities or equity interest in the commodity pool operator.

(c) The "account of the commodity pool operator or an individual principal thereof" includes any account in which a beneficial interest is owned by:

(1) The commodity pool operator or an individual principal thereof;

(2) Any relative or spouse of such commodity pool operator or individual principal, or any relative of such spouse, who shares the same home as such commodity pool operator individual principal;

(3) Any trust or estate in which such commodity pool operator or individual principal or any of the persons related to such commodity pool operator or individual principal as specified in paragraph (b)(2) of this section collectively have more than 10 percent of the beneficial interest (excluding contingent interests); or

(4) Any corporation or other organization of which such commodity pool operator or individual principal or any of the persons related to such commodity pool operator or individual principal as specified in paragraph (b)(2) of this section collectively are the beneficial owners of more than 10 percent of the equity securities or interest.

(d) The term "advisory services contract" means any contract or other agreement whereby a commodity trading advisor agrees:

(1) To advise another person on a regular or continuing basis as to the advisability of the purchase or sale of any commodity interest or the holding of a market position in any commodity interest other than through the use of a market letter or other publication of wide-spread distribution;

(2) To manage any commodity interest account for any other person.

(e) The term "net asset value" means total assets minus total liabilites with each position in a commodity interest marked to the market or accounted for at fair market value.

(f) The term "pool" means an investment trust, syndicate or similar form of enterprise described in section 2(a)(1) of the Act.

(g) The term "participant" means any individual, association, partnership, corporation, trust, or other entity, which has a right to share in the profits of the pool or otherwise to participate in a distribution of the assets thereof

§ 4.2 Commodity pool operator disclosure statement.

(a) No commodity pool operator may, directly or indirectly, solicit, accept, or receive funds, securities, or property from any prospective pool participant unless, on or before the date it solicits, accepts, or receives such funds, securities or property, each such prospective participant is furnished a written disclosure statement as specified by this section. The commodity pool operator must return any such funds, securities or property to the prospective pool participant if such prospective participant so demands within two business days after his receipt of the statement. A copy of this written disclosure statement must be furnished to the Commission at its principal office in Washington, D.C., within seven (7) business days of the date it is first furnished to a prospective pool participant pursuant to this section.

(b) The written disclosure statement required by paragraph (a) of this section shall set forth, at a minimum, the following information:

(1) *Commodity pool operator organization.* The name, organizational form, net worth and principal business address of the commodity pool operator; the background and experience of the commodity pool operator in the management of commodity pools and accounts and, generally, in the management of the funds of others; the name of each individual principal of the commodity pool operator and the present business affiliations and experience of each such person within the past ten years in general business and in commodities matters.

(2) *General nature of the pool.* With respect to the pool:

(i) Name and form of organization;

(ii) Trading objectives;

(iii) The terms and conditions of any contract between the pool and the commodity pool operator;

(iv) Any beneficial interest in the pool held or which may be held by the com-

[17] In announcing the proopsed exclusion, the Commision stated that it—

* * * recognizes that publishing this rule for comment will cause some uncertainty with regard to the registration status of those persons who might be within the proposed exclusion. To alleviate that uncertainty somewhat, it has been determined that until such time as the Commission reviews the comments received respecting this proposed rule and determines whether to adopt the rule as proposed, in an amended form, or not at all, no enforcement action will be taken, on the basis of failure to register, against any person who is within the proposed exclusion.

The Commission stresses that it will continue in this "no enforcement" posture with respect to persons falling within the exclusion proposed on July 3, 1975, until such time as the Commission determines whether to adopt this exclusion.

modity pool operator or its individual principals;

(v) Nature and scope of the authority of each commodity pool operator and commodity trading advisor to the pool with respect to participants' funds;

(vi) Trading strategies to be used, use of funds not employed for purposes of trading in commodity interests, types of investments other than commodity interests it may trade, and percentage of pool assets which may be used for such other investments;

(vii) Manner of maintaining the confidentiality of prospective market orders for the pool;

(viii) Manner in which orders for the pool's account will be placed or executed in relation to orders placed or executed for the accounts of other pools operated by the commodity pool operator or with which any commodity trading advisor to the pool maintains an advisory services contract;

(ix) Manner in which the pool may fulfill its margin requirements;

(x) Policies with respect to borrowing and lending of funds;

(xi) Policies with respect to the making or taking of delivery of commodities in transactions involving commodity interests;

(xii) Policies with respect to the payment of dividends and other cash distributions;

(xiii) Any restrictions upon the redeemability and transferability of interests in the pool; and

(xiv) Other material aspects of the operation of the pool.

(3) *Commodity trading.* A brief description of each type of commodity interest in which the pool may trade and the manner in which such type of commodity interest is traded, including an explanation of initial and maintenance margin in commodity futures trading; the leverage available in trading commodity interests; the material risks inherent in trading each such type of commodity interest; speculative trading and position limits set by the Commission and contract markets; and daily price fluctuation limits set by contract markets and their effect on market liquidity.

(4) *Funds required to commence trading.* The amount of funds that will be necessary for the commencement of trading by the pool; if appropriate, the maximum funds which may be contributed to the pool; the manner in which the commodity pool operator expects to obtain those funds; and the treatment that will be accorded the funds if the commodity pool operator does not receive the necessary amount of funds to commence trading.

(5) *Past performance.* The percentage of return on a participant's investment for every commodity pool or controlled account for which the commodity pool operator or any individual principal thereof solicited, accepted or received funds, securities or property within one year preceding the date on which the written disclosure statement is first distributed to prospective pool participants, and the manner in which such percentage is calculated.

(6) *Fees and expenses.* The bases and amount of all fees that may be incurred by the pool for managerial and advisory services, including a complete description of any incentive fees that may be paid by the pool, and of all other expenses that may be incurred by the pool, including general office, accounting, bookkeeping, legal and organizational expenses.

(7) *Commodity trading advisor to the pool.* The name, background and experience of each commodity trading advisor with which the pool intends to maintain an advisory services contract, including the percentage of return on investment for all commodity pools or controlled accounts with which the commodity trading advisor maintained an advisory services contract within one year preceding the date on which the written disclosure statement is first distributed to a prospective pool participant and the manner in which such percentage is calculated, the precise nature of any affiliation or busines arrangement, direct or indirect, between such commodity trading advisor and the commodity pool operator or any individual principal thereof or any futures commission merchant with which the pool intends to maintain an account; the precise nature of any arrangement whereby such commodity trading advisor may benefit, directly or indirectly, from the commissions generated by the trading of the pool's funds or otherwise benefit, directly or indirectly, from the maintenance of the pool's account with any futures commission merchant; and the terms and conditions of any contract between the pool or the commodity pool operator and any such commodity trading advisor to the pool.

(8) *Futures commision merchant for the pool.* The name of each futures commission merchant with which the commodity pool operator intends to maintain an account for the trading of commodity interests by the pool; the precise nature of any affiliation or business arrangement, direct or indirect, between the commodity pool operator or any individusal principal and each such futures commission merchant, including any arrangement whereby the commodity pool operator or any individual principal thereof may benefit, directly or indirectly, from the maintenance of the pool's commodity account with any futures commission merchant; and the terms and conditions under which brokerage commissions paid by the pool will be negotiated.

(9) *Trading by the commodity pool operator and the individual principals thereof.* The extent to which the commodity pool operator or any individual principal thereof engages or intends to engage in the trading of commodity interests for its own account.

(10) *Speculative limits.* Whether the commodity futures trades or positions of any commodity trading advisor, commodity pool operator, futures commission merchant or other person will limit the commodity futures trades or positions of the pool as a result of the speculative trading and position limits set by the Commission or any contract market.

(11) *Extent of liability.* The extent to which a participant may be held liable for obligations of the pool in excess of the funds contributed by the participant to the pool.

(12) *Conflicts of interest.* The nature of any existing or potential conflict of interest between the pool and the commodity pool operator of any individual principal thereof, any commodity trading advisor to the pool, or the futures commission merchant carrying the pool's account.

(13) *Material administrative, civil or criminal proceedings.* Any material administrative, civil or criminal action against the commodity pool operator or any individual principal thereof that was decided during the three years preceding the date upon which trading in commodity interests is to be commenced by the pool or that may remain pending on the date upon which trading in commodity interests is to be commenced by the pool.

(14) *Sales commission or fee.* Any commission or other fee that is paid or may be paid, directly or indirectly, by the commodity pool operator to any person in connection with the solicitation of funds, securities, or property for the purpose of participation in the pool, including any reciprocal business arrangements between the commodity pool operator or any individual principal thereof and such other person.

(15) *Monthly statements of account.* A statement that the commodity pool operator must provide to each pool participant monthly statements of account disclosing the net asset value per participation unit at the end of the monthly period, and the total value of all participation units held by the pool participant; the number of commodity interests purchased and the number of commodity interests sold, itemized by respective delivery month, or expiration date, and by commodity and type of commodity interest by the pool during the monthly period, and the positions in commodity interests held by the pool at the beginning and end of the monthly period; and the number of commodity interests purchased and the number of commodity interests sold, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, for the account of the commodity pool operator and the individual principals thereof during the monthly period and the positions in commodity interests held by such persons at the beginning and end of the monthly period.

(c) The written disclosure statement required by paragraph (a) of this section shall set forth prominently on the first page in boldface type:

(1) A statement that the commodity pool operator must provide the written disclosure statement to each prospective pool participant on or before the date the commodity pool operator solicits, ac-

cepts, or receives funds, securities or property from such prospective pool participant, and that such prospective pool participant may demand the return of such funds, securities or property within two business days of the receipt of the written disclosure statement; and

(2) A statement that the Commodity Futures Trading Commission has not reviewed or passed upon the accuracy or adequacy of the written disclosure statement.

(d) If the commodity pool operator knows or has reason to know before the commencement of trading by the pool that any material information contained in the written disclosure statement required by this section has become inaccurate, it shall amend the written disclosure statement to correct such information and shall distribute the amended written disclosure statement to all pool participants or all prospective pool participants within five (5) business days of the date upon which the commodity pool operator knows or has reason to know of such inaccurate material information and at least one business day before the commencement of trading by the pool. The commodity pool operator must return any funds, securities, or property solicited, accepted, or received from any pool participant or prospective pool participant, if such pool participant or prospective pool participant so demands within two business days after his receipt of the amended written disclosure statement.

(e) Nothing in this section shall relieve any commodity pool operator from any obligation under the Act or the regulations thereunder, including any obligation to disclose any information to pool participants or prospective pool participants not specifically required by this section.

§ 4.3 Treatment of funds, securities or property of pool participants or prospective pool participants.

All funds, securities, and property solicited, accepted or received by a commodity pool operator to margin, guarantee, secure, settle, purchase or sell commodity interests for a pool operated by such commodity pool operator and all funds, securities, and property accruing to such pool as a result of trading in commodity interests shall be separately accounted for, segregated as belonging to such pool and not be comingled with the funds, securities, and property of any other person. Such funds, securities or property solicited, accepted or received by a commodity pool operator shall not be used to margin, guarantee, secure, settle, purchase or sell the commodity interests, or to secure or extend the credit, of any person or pool other than the pool to which such funds, securities, and property belong. Such funds, securities and property solicited, accepted or received by a commodity pool operator, when deposited with any futures commission merchant, bank, trust company, or clearing organization of a contract market, shall be deposited under an account name which will clearly show that they are the funds, securities, and property of such pool, segregated as required by this regulation. *Provided, however,* That such funds, securities or property treated as belonging to a pool may for convenience be commingled by a futures commission merchant with the funds, securities, or property treated as belonging to any other customer or option customer of the futures commission merchant and may be deposited by the futures commission merchant in the same account or accounts with any bank or trust company or with any clearinghouse organization of any contract market.

§ 4.4 Record keeping by commodity pool operators.

(a) *Record keeping required.* Each commodity pool operator must make and keep for each commodity pool it operates the following books and records in an accurate, current and orderly manner, at its principal business office, for the period and in the manner specified in § 1.31:

(1) *Trading and financial records of the pool.* (i) An itemized daily record of each commodity interest purchased or sold for an account of the pool, showing the date, price, quantity, commodity interest, delivery or expiration month, the futures commission merchant carrying the account, if applicable, and whether the interest was purchased or was sold. This record may be in the form of either: (A) A daily journal or other daily record of original entry, or (B) Confirmations or similar statements received by the pool operator from each futures commission merchant carrying an account for the pool. If the commodity pool operator elects to maintain the records required by this paragraph in the latter form, the appropriate confirmations and statements must be received at its principal business office within fifteen (15) days of the date of each purchase or sale.

(ii) An itemized daily record of the realized gain or loss from each commodity interest purchased or sold by the pool. This record may be in the form of either: (A) A daily journal or other daily record of original entry, or (B) Purchase and sale statements or similar statements received by the pool from each futures commission merchant carrying an account for the pool. If the commodity pool operator elects to maintain the records required by this paragraph in the latter form, the appropriate statements must be received at its principal business office within fifteen (15) days of the date of the realized gain or loss.

(iii) A journal or other record of original entry for all receipts and disbursements of funds, securities or property.

(iv) Adjusting entries and any other records of original entry forming the basis of entries in any ledger.

(v) A general ledger which contains details of all assets, liability, capital, income and expense accounts.

(vi) A subsidiary ledger or other suitable record for each participant in the pool showing the participant's name and address and all funds, securities and property that the commodity pool operator or pool received from or distributed to the participant.

(vii) A copy of each monthly statement respecting a pool account required to be furnished to the commodity pool operator or the pool by a futures commission merchant pursuant to § 1.33.

(vii) Cancelled checks, journals, ledgers, invoices, copies of confirmations, copies of statements of purchase and sale and all other records, data and memoranda which support the financial statements required by this part.

(2) *Financial statements.* (i) A Statement of Financial Condition as of the close of business of the date selected in § 4.5(a), which shall be completed within twenty (20) days of that date.

(ii) A Statement of Income (Loss) for the period between the date of the most recent Statement of Financial Condition furnished to the Commission pursuant to § 4.5(b), [the effective date of these regulations], or the date of the formation of the pool (whichever occurs last) and the date of the Statement of Financial Condition required by § 4.4(a)(2)(i). The Statement of Income (Loss) must be completed within twenty (20) days of that day.

(3) *Commodity interests purchased or sold by the commodity pool operator and the individual principals thereof.* (i) An itemized daily record of each commodity interest purchased or sold for each account of the commodity pool operator and the individual principals thereof, showing the date, price, quantity, commodity interest, delivery or expiration month, person for whom the purchase or sale was effected, the futures commission merchant carrying the account, if applicable, and whether the interest was purchased or was sold. This record may be in the form of either (A) A daily journal or other daily record of original entry or (B) The confirmations or similar statements received by the commodity pool operator or individual principal thereof from each futures commission merchant carrying the account for which the purchase or sale was effected. If the commodity pool operator elects to maintain the records required by this paragraph in the latter form, the appropriate confirmations and statements must be received at its principal business office within fifteen (15) calendar days of the date of each purchase or sale.

(ii) Each monthly statement required to be furnished to the commodity pool operator or any individual principal thereof by a futures commission merchant pursuant to § 1.33.

(b) *Retention of certain documents.* Each commodity pool operator shall retain a copy of each statement of account, report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice distributed or caused to be distributed by such commodity pool operator to any pool participant or prospective pool participant or received by such commodity pool operator from any commodity trading advisor with participant for inspection and copy-

ing during normal business hours at the principal business office of the commodity pool operator immediately upon his request. Copies of any portion of these records requested by any pool participant must be furnished immediately to such pool participant, subject to the payment of reasonable reproduction and distribution costs.

§ 4.5 Statements to be furnished to pool participants.

(a) *Monthly statement.* Each commodity pool operator must furnish to each participant in a pool it operates, within twenty (20) days of the last day of each calendar month (or of any regular monthly date selected) a written statement of account as of the close of business on the last day of the calendar month (or of the regular monthly date selected). This written statement of account must contain the following information:

(1) (i) The net asset value per participation unit outstanding and the number of units used in the computation, and (ii) the total value of all participation units held by the pool participant;

(2) Any change of commodity trading advisors with which the pool maintains an advisory services contract, any material change in the trading policies of the pool, and any financial or other business transaction (other than payments of management or advisory fees or brokerage commissions), direct or indirect, between the pool and the commodity pool operator or any individual principal thereof which occurred during the monthly period;

(3) (i) The positions in commodity interest held, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, in the accounts of the pool at the beginning and at the end of the calendar month (or corresponding monthly period), and (ii) the number of commodity interests purchased and the number of commodity interests sold, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, for the accounts of the pool during the calendar month (or corresponding monthly period);

(4) (i) The position in commodity interests held, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, in each account of the commodity pool operator and the individual principals thereof at the beginning and at the end of the calendar month (or corresponding monthly period), and (ii) the number of commodity interests purchased and the number of commodity interests sold, itemized by respective delivery month, or expiration date and by commodity and type of commodity interest, for each account of the commodity pool operator and the individual principals thereof during the calendar month (or corresponding monthly period); and

(5) A statement that monthly financial statements and all supporting records, including records regarding each commodity interest purchased or sold for any account of the pool or for any account of the commodity pool operator or any individual principal thereof are kept at the principal business office of the commodity pool operator and must be made available to, or, upon the payment of reasonable reproduction and distribution costs, furnished to, pool participants immediately upon request.

(b) *Annual statement.* Each commodity pool operator must furnish an annual statement to each participant in each commodity pool it operates, within sixty (60) days of the last day of the pool's fiscal year. The commodity pool operator must also furnish the annual statement to the Commission at its principal office in Washington, D.C., within sixty (60) days of the last day of the period to which it relates. The annual statement must contain at least the following:

(1) A Statement of Financial Condition as of the close of the pool's fiscal year;

(2) Statements of Income (Loss), Changes in Financial Position, and Changes in Ownership Equity, for the period between the date of the most recent Statement of Financial Condition furnished to the Commission pursuant to this paragraph (or the beginning of the month immediately following the later date of (i) [the effective date of this section] or (ii) the date of the formation of the pool) and the close of the pool's fiscal year, together with Statements of Income (Loss) and Changes in Financial Position for the corresponding period of the previous fiscal year; and

(3) Appropriate footnote disclosures and such further material information as may be necessary to make the required statements not misleading.

(c) *Certification of statements.* (1) The annual statement required by paragraph (b) of this section must be certified by an independent public accountant in accordance with § 1.16, except that the following requirements of that section shall not apply:

(i) The audit objectives of § 1.16(d) concerning the reviews of the practices and procedures followed by the pool in making (A) periodic computations of the minimum capital requirements pursuant to § 1.17 and (B) periodic computation of the segregation requirements of section 4d(2) of the Act and the regulations thereunder;

(ii) All other references in § 1.16 to the segregation requirements of section 4d(2) of the Act and the regulations thereunder; and

(iii) Section 1.16 (f) (1) (vii) (C).

(2) The requirements of this paragraph (c) shall not apply to any pool which, at all times during the pool's fiscal year, has no more than fifteen participants (other than the commodity pool operators or individual principals thereof) and no more than $150,000 in assets.

(d) *Generally accepted accounting principles.* The financial statements and computations required by this part must be presented and/or be computed in accordance with generally accepted accounting principles consistently applied.

(e) *Content of statement of income (loss).* The Statements of Income (Loss) required by this part must be itemized at least with respect to brokerage commissions, management and advisory fees, incentive fees, and realized net gain or loss from each type of commodity interest purchased or sold, and must show unrealized net gain or loss on open positions in commodity interests held as of the last day of the period for which the statement is made.

(f) *Election of fiscal year.* A commodity pool operator may establish a fiscal year other than the calendar year for any pool it operates, but in no event may the first fiscal year end more than one year from the date of the formation of the commodity pool or more than one year after [the effective date of this rule], whichever is later. The commodity pool operator must give written notification to the Commission and all pool participants of the election of a fiscal year other than the calendar year, within 90 days after the date of the formation of the commodity pool or within 90 days after [the effective date of this regulation], whichever is later. A commodity pool operator which does not so notify the Commission and all pool participants will be deemed to have elected the calendar year as its fiscal year. A commodity pool operator must continue to use the elected fiscal year for a commodity pool unless a change in such election is approved by the Commission and written notice of such change is given to all pool participants.

(g) *Certification of correctness.* Each monthly statement of account and annual statement required by this section must contain a signed oath or affirmation that, to the best of the knowledge and belief of the individual making such oath or affirmation, the information contained in the statement is true and correct. If the commodity pool operator is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; and, if a corporation, by the chief executive officer and chief financial officer.

§ 4.6 Simulated or hypothetical accounts or transactions.

No commodity pool operator may publish, distribute or broadcast any report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including any television or radio announcement, seminar presentation or telephonic, telegraphic or face-to-face communication) that refers, directly or indirectly, to the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in commodity interests.

§ 4.5 Exemptions.

The Commission may by order, upon its own motion or upon written application, exempt a commodity pool operator from any provision of this part if it finds, in its discretion, that the exemption is not contrary to the public interest

and the purposes of the provision from which the exemption is sought. The Commission may attach such conditions to the exemption as it deems appropriate.

Interested persons may participate in this proposed rule-making proceeding by submitting comments in written form to the Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, Attn: Secretariat. All comments received on or before May 16, 1977, will be considered by the Commission before it takes final action on the proposed rules. Comments are also requested as to whether an oral hearing would be of value; if the Commission concludes that such a hearing would be appropriate, the time and place of the hearing will be set at a later date by public notice. Copies of all comments received regarding the proposal and the form of the rule-making proceeding will be available for inspection at the Commission's offices in Washington, D.C.

Issued in Washington, D.C., on February 9, 1977, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc.77-4500 Filed 2-14-77;8:45 am]

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TUESDAY, FEBRUARY 15, 1977

PART III

COMMODITY FUTURES TRADING COMMISSION

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COMMODITY TRADING ADVISORS

Proposed Comprehensive Scheme For Regulation

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 5]

COMMODITY TRADING ADVISORS

Proposed Comprehensive Scheme for Regulation

The Commodity Futures Trading Commission ("Commission") is proposing the adoption of new regulations under the Commodity Exchange Act, as amended ("Act"), 7 U.S.C. 1–22 (Supp. V, 1975), to establish a comprehensive scheme for the regulation of commodity trading advisors.[1] The proposed rules would: (1) define the term "individual principal" of a commodity trading advisor; (2) require that commodity trading advisors disclose certain information prior to entering into a contract to provide regular advisory services to any other person; (3) establish record-keeping and reporting requirements for trading advisors, including requirements that a record be kept of the trading activities of the advisor and its individual principals, that the clients and subscribers of the advisor have immediate access to such records, and that a specified class of trading advisors furnish their clients and subscribers with a monthly statement setting forth certain information concerning the trading activities of the advisor and its individual principals; and (4) prohibit trading advisors from advertising the results of simulated or hypothetical trading programs.

GENERAL EXPLANATION

Commodity trading advisors represent a new category of Commission registrant, subject to regulation under the Act only since July 18, 1975, the effective date of section 205 of the Commodity Futures Trading Commission Act of 1974 ("CFTC Act"), Pub. L. 93–463, 88 Stat. 1389, 1397. The CFTC Act extensively amended the Act, adding to it, among other things, a definition of the term "commodity trading advisor" and a general requirement that trading advisors register with the Commission.[2] As amended by the CFTC Act, the Act also requires commodity trading advisors to "maintain books and records and file such reports in such form and manner as may be prescribed by the Commission;"[3] to furnish the Commission, upon its request, with the name and address of each client or subscriber and samples of all literature sent to any client or subscriber or to any prospective client or subscriber;[4] and to make a "full and complete disclosure" to clients and subscribers of all futures market positions taken or held by the "individual principals" of the advisor.[5] The Act further provides that it is unlawful for any registered trading advisor to defraud or to deceive any client or subscriber or any prospective client or subscriber.[6] The Commission's current proposals would implement these provisions of the Act and many of the recent recommendations of the Commission's Advisory Committee on Commodity Futures Trading Professionals ("Advisory Committee").[7]

The legislative history of the statutory provisions added to the Act in 1974 to provide for the regulation of trading advisors indicates that those provisions were designed to protect clients and subscribers from abuses by trading advisors of their relationships with such clients and subscribers.[8] Congress was apparently aware, however, that uniform regulation of all those persons who fall within the broad definition of a commodity trading advisor set forth in section 2(a)(1) of the Act[9] might not be appropriate. Accordingly, Congress granted the Commission authority to establish the specifics of such regulation.[10]

The Commission believes that for purposes of regulation, especially in terms of the position disclosure requirements of section 4n(4)(B) of the Act, commodity trading advisors can be divided into two basic categories. The first of these categories is composed of those commodity trading advisors whose relationship with clients or subscribers is personal or confidential in nature and is characterized by an element of control by the advisor over the trading activities of the client or subscriber.[11] The advice rendered by such trading advisors is typically specific in nature and generally results in immediate trading activity on the part of a client or subscriber in accordance with the recommendations of the advisor. In such instances, the potential for abuse by a trading advisor of its relationship with clients and subscribers is readily apparent. On the other hand, where the elements of confidentiality and control are absent from the relationship of an advisor with its clients or subscribers and the advice rendered by the trading advisor is general in nature, the potential for abuse would appear to be greatly diminished. The advice rendered by this latter type of trading advisor, typically in the form of market letters, reports or other publications of wide-spread distribution, is frequently used by clients and subscribers in conjunction with other sources of information to form a basis upon which to make their own trading decisions. While such advice may well be extremely influential, the elements of confidentiality and control over the trading activity of clients and subscribers associated wiht the first type of trading advisor is absent, resulting, in the Commission's view, in a much lesser potential for abuse.[12] Accordingly, certain provisions of the regulations proposed herein would apply only to those trading advisors whose relationship with their clients or subscribers is such that

[1] The term "commodity trading advisor" is defined in 7 U.S.C. 2 as: "any person who, for compensation or profit, engages in the business of advising others, either directly or through publications or writings, as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analyses or reports concerning commodities; but does not include (i) any bank or trust company, (ii) any newspaper reporter, newspaper columnist, newspaper editor, lawyer, accountant, or teacher, (iii) any floor broker or futures commission merchant, (iv) the publisher of any bona fide newspaper, news magazine, or business or financial publication of general and regular circulation including their employees, (v) any contract market, and (vi) such other persons not within the intent of this definition as the Commission may specify by rule, regulation, or order: *Provided*, That the furnishing of such services by the foregoing persons is solely incidental to the conduct of their business or profession."

[2] 7 U.S.C. 2 and 6m.

[3] 7 U.S.C. 6n(4)(A).

[4] Id.

[5] 7 U.S.C. 6n(4)(B).

[6] 7 U.S.C. 6o(1).

[7] A summary of the major recommendations of the Advisory Committee report is set forth at ¶20,197, CCH Comm. Fut. L. Rep. (Aug. 20, 1976). The Advisory Committee's report is set forth in full text in CCH Comm. Fut. L. Rep., Special Edition No. 29, Part II (Aug. 20, 1976).

[8] See, e.g., the statement of Dr. Clayton Yeutter, Assistant Secretary of Agriculture, before the House Committee on Agriculture, H.R. Report No. 93–975, 93d Cong., 2d Sess. 79 (1974): "One of the ways in which unsophisticated traders have lost substantial amounts of money was through commodity trading advisors and commodity pool operators. This bill will provide for the registration of all such persons, establish procedures under which they would be permitted to operate and specifically eliminate certain undesirable practices which have enticed unsuspecting traders into the markets with, far too often, substantial loss of funds."

[9] 7 U.S.C. 2.

[10] See, e.g., sections 4n(4)(A) and (B) of the Act, 7 U.S.C. 6n(4)(A) and (B), which authorize the Commission to prescribe the books and records which must be maintained and the reports which must be filed by trading advisors and which permit the Commission to authorize other than "full and complete disclosure" by trading advisors to their clients and subscribers "of all futures market positions taken or held by the individual principals of their organizations."

[11] This element of control may be the result of an express, formal grant to the trading advisor of trading discretion or control over the account of the client or subscriber, or of a written contractual agreement or less formal "understanding" whereorby a client or subscriber agrees to implement immediately any trading recommendation made by the trading advisor or generated by the trading advisor's trading program.

[12] Abuses by trading advisors of their relationship with clients and subscribers may take many forms. For example, where fees paid to a trading advisor by a client or subscriber or by a futures commission merchant with which a client or subscriber maintains a commodity interest account are based in whole or in part upon a percentage of the commissions received by the futures commission merchant as a result of trading in the client's or subscriber's account, the trading advisor may initiate excessive trading in the account contrary to the client's or subscriber's best interests in order to generate commissions and thereby increase the advisor's fees. An advisor may also advise clients and subscribers to take market positions solely to improve the advisor's own positions. While the Commission is aware that such abuses may occur in almost any advisor-client (or subscriber) situation, it believes, as discussed above, that the significance and potential for such abuses is greatly diminished where the elements of confidentiality and control are absent from the advisor-client (or subscriber) relationship.

they may be able to exercise substantial control over the trading activities of such clients and subscribers.

In most instances in which the relationship between a commodity trading advisor and a client or subscriber is such that the advisor may be able to exercise immediate control, either directly or indirectly, over the trading decisions made by or for the client or subscriber, that relationship is evidenced by a contract or less formal agreement calling for the trading advisor to render advice to the client or subscriber on a regular or continuing basis or to actually manage the account of the client or subscriber. The term "advisory services contract" is used throughout the proposed rules to describe such contracts or agreements and is defined in paragraph (d) of proposed § 5.1 as any contract or agreement whereby a commodity trading advisor agrees:

(i) To advise another person on a regular or continuing basis as to the advisability of engaging in any transaction in a commodity interest [12] or the holding of a market position in any commodity interest other than through the use of a market letter, report or similar publication of wide-spread distribution; or

(ii) To manage any commodity interest account for any other person.

Trading advisors engaging in such contracts would be subject to all the provisions of the proposed rules while those trading advisors which do not engage in such contracts would be subject to only certain of these provisions.

SUMMARY OF PROPOSED RULES

Advisory Services Contracts: Prior Disclosure Requirements. Paragraph (a) of proposed § 5.2 prohibits a commodity trading advisor from entering into, extending or renewing an advisory services contract with any client or subscriber unless a written disclosure statement containing certain specified information is provided to such client of subscriber at least 24 hours prior to entering into, extending or renewing the contract. Paragraphs (b) and (c) of the proposed rule require that this disclosure statement set forth, among other things:

(i) The name of the advisor's individual principals;

(ii) The background and experience of the trading advisor and its individual principals;

(iii) A brief description of the nature of trading in each type of commodity interest with respect to which the trading advisor may render advice to the client or subscriber, including the material risks involved;

(vi) An explanation of any relation- trading advisor formulates its trading advice;

(v) An explanation of all fees involved in the advisory services contract;

(vi) An explanation of any relationship between the trading advisor or an individual principal thereof and any futures commission merchant;

(vii) A statement as to whether the trading advisor or any individual principal thereof trades or will trade for its own account; to what extent such trading occurs or will occur; and that a record of such trades is kept at the principal business office of the commodity trading advisor and is available to clients and subscribers upon request; and

(viii) A legend which predominently states that the Commission has not reviewed or passed upon the accuracy or adequacy of the written statement.

The Commission is also considering the adoption of a rule which would require a trading advisor to inform a client or subscribed with whom it has entered into an advisory services contract of any material changes in the information provided in the disclosure statement required under proposed § 5.2 or in the advisor's ability to perform its obligations under the advisory services contract which might cause the client or subscriber to alter his relationship with the trading advisor.

Paragraph (d) of proposed § 5.2 provides that a commodity trading advisor is not relieved of any other requirement under the Act and the regulations thereunder by complying with the requirements of § 5.2. For example, the furnishing of a written disclosure statement to clients and subscribers pursuant to § 5.2 would not relieve a commodity trading advisor from any obligation under section 4o of the Act, 7 U.S.C. 6o, to refrain from:

(1) Employing any device, scheme, or artifice to defraud any client or participant or prospective client or participant; or

(2) Engaging in any transaction, practice, or course of business which operates as a fraud or deceit upon any client or participant or prospective client or participant.

A knowledge of the background and experience of a trading advisor appears essential to a meaningful prospective evaluation of the value of the advisor's services. Commodity trading is a complex field, requiring substantial skill and knowledge. A prospective client or subscriber should be aware of the advisor's commodity and general business experience if he is to make an informed decision as to whether or not to avail himself of the advisor's services.[14] Similarly, a prospective client or subscriber should be aware of the nature of trading in commodity interests, especially the risks involved, in order to enable him to determine whether an investment in this area is appropriate in light of his financial condition and investment goals.

Disclosure of the general basis upon which an advisor's trading advice is formulated is also a necessary element in any informed evaluation of a trading advisor. The Commission points out, however, that the disclosure which would be required by § 5.2 is of a general, not specific, nature. For example, where the advisor bases its advice on a computer program, this fact, along with a general explanation of the controlling variables incorporated into the program, must be disclosed; however, the manner in which such variables interact in the program, the weight attached to each, and any other specific aspect of the program need not be revealed.

The requirement that all fees involved in an advisory services contract be disclosed is similarly designed to afford prospective clients and subscribers an adequate informational basis upon which to evaluate the contract.

Disclosure of the affiliation of the trading advisor or an individual principal thereof with any FCM to which the advisor refers clients or subscribers is necessary in order for the prospective client or subscriber to determine whether the advisor or any principal thereof will benefit personally—and, if so, to what extent—from the brokerage commissions charged to the client's or subscriber's trading account. If the advisor or a principal is to receive any share of those commissions, the advisor may tend to issue buy or sell recommendations merely to generate commissions. Prospective clients and subscribers should be aware of this possible conflict of interest.

Disclosure of the fact that the advisor or its principals engage or will engage in trading activities on their own behalf would alert prospective clients and subscribers to the possibility that the advisor may render advice and recommendations to improve its own market positions. This requirement also augments the regulatory scheme embodied primarily in the disclosure and recordkeeping requirements set forth in section 4n(4) of the Act and proposed §§ 5.3 and 5.4.

Disclosure of Positions. Section 4n(4)(B) of the Act, 7 U.S.C. 6n(4)(B), provides that:

> Unless otherwise authorized by the Commission by rule or regulation, all commodity trading advisors * * * shall make a full and complete disclosure to their subscribers or clients of all futures market positions taken or held by the individual principals of their organization.

[12] The term "commodity interest" is defined in proposed § 5.1(a).

[14] In this connection proposed § 5.2(b)(2) would require a commodity trading advisor to disclose, among other things, the percentage of return on investments for every commodity interest account controlled by the trading advisor or any individual principal, directly or indirectly (as a principal of another advsor or otherwise), within one year preceding the date the written disclosure statement is first furnished to a client or subscriber. The Commission recognizes that this requirement may impose substantial burdens on certain trading advisors. Because no requirement now exists to maintain such performance records and because such information may be more accessible to the futures commission merchants carrying such accounts, the effective date of any requirement for trading advisors to disclose past account performance might be structured to permit them to comply with such a requirement by keeping such performance records from the date these proposed regulations are adopted. The Commission requests comments with regard to the degree of inquiry which trading advisors might be required to make in order to compile such performance records. Comments are also solicited with regard to the possible requirements of a particular form for disclosure of account performance.

While section 4n(4)(B) requires only that "futures market positions" be disclosed, the Commission does not believe that a meaningful distinction can be drawn, for purposes of such disclosure requirement, between commodity futures contracts on the one hand and commodity options and leverage contracts on the other. The potential for abuse of the relationship between the trading advisor and its clients and subscribers is equally great in all three situations. Accordingly, pursuant to its broad authority over commodity options under sections 2(a)(1) and 4c of the Act and over leverage contracts under section 217 of the CFTC Act and pursuant to its authority under sections 8a(5) and 8a(8) of the Act, the Commission proposes to adopt § 5.3 in a form which would require that appropriate disclosure be made by trading advisors with respect to all "commodity interests." The term "commodity interest" is defined in proposed § 5.1(a) to include commodity options and leverage transactions as well as commodity futures contracts.

The disclosure requirement of section 4n(4)(B) of the Act appears to have been designed to expose potential conflicts between the trading conducted by the individual principals of a trading advisor for their own accounts and the advice rendered to clients and subscribers by the trading advisor. Congress was apparently aware, however, that the "full and complete disclosure" required by this section of the Act might be unnecessary or unduly burdensome in certain instances. Accordingly, section 4n(4)(B) permits the Commission to authorize alternatives to the "full and complete disclosure" requirements of that section.

In analyzing the provisions of section 4n(4)(B), the Commission considered, among other things, the apparent purpose of that section, the types of relationships which trading advisors may have with clients and subscribers, and the burden and benefits of "full and complete disclosure" by trading advisors. On the basis of this analysis, the Commission has concluded that it may be unnecessary and unduly burdensome to require trading advisors which are not in a position to control the trading decisions of their clients or subscribers to disclose the positions of their individual principals on an affirmative and regular basis. In view of the more remote relationship of such advisors to their clients and subscribers and of the burden of supplying continuous information concerning the positions of their individual principals to such clients and subscribers, the Commission believes that it may be more appropriate to require that such trading advisors merely keep an accurate record of the trading activity of their individual principals and that such record be made available to their clients or subscribers immediately upon request. Accordingly, a trading advisor which is not engaged in an advisory services contract with a client or subscriber would be exempted from the disclosure requirements of section 4n(4)(B) of the Act under proposed § 5.3 but would be required to comply with certain record-keeping requirements of § 5.4 regarding the trading activities of its principals.

Due to the control which commodity trading advisors typically exercise over the trading activities of clients and subscribers with whom they are engaged in advisory services contracts, the potential for abuse by such trading advisors of their relationships with clients and subscribers is substantial. However, even in these circumstances, the Commission does not believe, "full and complete disclosure" of all positions on a continual or periodic basis is the most effective regulatory method of exposing potential conflicts between the trading conducted by the individual principals of a trading advisor for their own accounts and the advice given to clients and subscribers by the trading advisor. As a result, proposed § 5.3(a) would require that trading advisors engaged in advisory services contracts make disclosure to their clients and subscribers only of the positions held by their individual principals at the beginning and at the end of each calendar month (or equivalent monthly period) and of the number of commodity interests purchased and sold during such period. The Commission believes that this requirement will alert clients and subscribers to potential abuses without entailing so large and unmanageable a disclosure document as to preclude its effective utilization.

The term "individual principal" is not defined in the Act and must therefore be interpreted and defined in light of the purposes of section 4n(4)(B). The Commission believes section 4n(4)(B) was intended to deter trading advisors and their individual principals from abusing the relationship of the trading advisor with clients and participants for their own gain. In light of this belief, section 4n(4)(B) disclosure can be viewed in one of two ways. First, it can be seen as a deterrent to abuses not only by those persons who are in a position to exercise a controlling influence over the advice rendered by the trading advisor, but also by those persons who may in any way influence or participate in the formulation of such advice or gain knowledge of that advice prior to its dissemination to clients and subscribers. Alternatively, section 4n(4)(B) disclosure can be seen as a deterrent to abuses by only those persons whose relationship with the trading advisor is such that they may control or determine the advice issued to clients and subscribers. The Commission believes the latter approach is more appropriate. Accordingly, the term "individual principal" is defined in § 5.1 as any general partner, director, or officer of the trading advisor, or any person performing similar functions, or any holder of more than 10 percent of the equity interest in the trading advisor. However, the Commission specifically requests comments from interested persons as to the appropriateness of this definition and on alternatives to this proposal.

The position disclosure requirements of section 4n(4)(B) of the Act apply only to the individual principals of a trading advisor. In most instances, this would result in the disclosure of the positions of the trading advisor as well. However, in those instances where such disclosure would not be required, the Commission believes that the potential for abuse by the trading advisor of its relationship with clients and subscribers is equally as great. Accordingly, the Commission has structured proposed § 5.3 to require that the appropriate disclosures be made concerning the trading activities of the trading advisor as well as of its individual principals.

Proposed § 5.3 is designed to require appropriate disclosure of all trading activity in commodity interests for any account in which a trading advisor or any of its individual principals has a significant interest. In order to attain such disclosure, the Commission, in proposed § 5.1(b), has defined the term "account of a commodity trading advisor or individual principal thereof" broadly to include any account in which the trading advisor or an individual principal thereof or any relative of the advisor or individual principal who lives in the same home as the advisor or principal has a significant beneficial interest.

Record keeping by commodity trading advisors. Section 4n(4)(A) of the Act provides in pertinent part that

> [e]very commodity trading advisor * * * registered under this Act shall maintain books and records * * * in such form and manner as may be prescribed by the Commission * * *

Proposed § 5.4(a) would implement this provision by requiring trading advisors to keep, among other things:

(i) A record of the name and address of each client or subscriber;

(ii) Samples or copies of all recommendations and other advice rendered by the trading advisor to its clients and subscribers, whether in written form or in the course of an oral presentation;

(iii) A record of all transactions in a commodity interest executed for the account of the trading advisor or any individual principal thereof;

(iv) A record of all accounts over which the trading advisor has discretionary trading authority, and of all transactions in commodity interests executed therefor; and

(v) A record of all written agreements with clients or subscribers, including those granting discretionary trading authority to the trading advisor.

Proposed § 5.4(b) would require further that any portion of the record of the trading activities of the advisor and its principals kept pursuant to § 5.4(a) be made available to or copies thereof furnished to any client or subscriber immediately upon request.

The first two requirements set forth above are designed to implement the provision of section 4n(4)(A) of the Act which requires that

> [U]pon the request of the Commission, a registered commodity trading advisor * * * shall furnish the name and address of each client [or] subscriber * * * and submit samples or copies of all reports, letters, circulars, memorandums, publications, writings, or

other literature or advice distributed to clients [or] subscribers * * * or prospective clients [or] subscribers * * *

Unless records of such information are kept by the trading advisor, prompt compliance with this section of the Act would appear impossible.

The requirement in paragraph (a) (4) of § 5.4 that a record be kept of all commodity interests purchased or sold for the account of a trading advisor or any individual principal thereof is designed to supplement the disclosure requirements of § 5.3. As previously discussed, it may be unnecessary to impose an affirmative duty of periodic disclosure upon a trading advisor who is not in a position to exercise substantial control over the trading decisions of its clients and subscribers, provided that a record of the trading activities of such advisor and the individual principals thereof is maintained and made immediately available to clients and subscribers upon request. Similarly, even in those instances where a trading advisor does exercise control over the trading decisions of its clients and subscribers, the "full and complete disclosure" of section 4n(4) (B) of the Act may be unnecessary in light of the apparent purposes of that statutory provision, if the appropriate record of the trading activities of the trading advisor and its principals is maintained and made accessible to clients and subscribers. In the absence of such a readily available record, however, it does not appear that the purposes of section 4n(4) (B) can be adequately served unless affirmative and regular disclosure of the trading activities of trading advisors and their individual principals is required.[15]

The record-keeping requirements set forth in § 5.4(a) (5)–(7), those relating to discretionary accounts controlled by trading advisors and to written agreements with clients and subscribers, would provide the Commission with immediate access to useful and essential information in the event the Commission undertakes a formal or informal investigation of the activities of a trading advisor. Should there be no such records maintained by the trading advisor, the Commission would be able to obtain this information only through a long, tedious and costly investigation, if at all. On the other hand, the costs of maintaining such records would appear to be minimal, and, in any event, these records would probably be kept by most trading advisors as a general business practice.

The Commission believes that solicitation of new clients and subscribers by a trading advisor while knowingly insolvent would be in violation of section 4o of the Act. Accordingly, the Commission is also considering the adoption of a rule which would require trading advisors to maintain such financial books and records as may be necessary to enable the Commission to determine if a trading advisor solicited new clients or subscribers while the advisor was insolvent or otherwise in such a financial position as to preclude it from fulfilling its obligations to such clients and subscribers. Comment is requested on the appropriateness of such a record-keeping requirement.

Prohibition upon advertising of simulated results. Proposed § 5.5 prohibits trading advisors from advertising the performance of any simulated or hypothetical transaction, series of transactions, or account involving commodity interests. The Commission recognizes that this prohibition may create some difficulties for new entrants into the profession; however, the importance of restricting the potential for deception inherent in the advertising of simulated trading appears to outweigh the significance of these difficulties.

It may be relatively easy, through hindsight, to design a successful simulated account. However, since a commodity trading advisor cannot be required to maintain a record of the "trades" in a simulated account because such "trades" never actually took place, it would be difficult, time-consuming and frequently impossible for a prospective client or subscriber or the Commission to obtain sufficiently detailed records to verify the accuracy and legitimacy of statements regarding such accounts. The validity of simulated accounts is also questionable because of the uncertainties of order execution. There may be instances in which the hypothetical trade that was "executed" for the simulated account could not have taken place in actual trading. For example, if the market in a particular contract were relatively inactive, only a portion of the "order" may have been executable at the assumed price.

The Commission is also considering the adoption of a regulation which would place restrictions on the ability of trading advisors to advertise selectively the performance of only certain commodity accounts or of only certain periods of trading or trading sequences in such accounts. These restrictions would include requirements that a trading advisor advertise the results of all accounts controlled or closely advised by the advisor if it chooses to advertise the results of any such account, and that the trading advisor advertise the long-term performance of such accounts rather than their short-term performance.

Exemptions. Proposed § 5.20 would permit the Commission, in its discretion, to exempt a trading advisor from any of the provisions of proposed §§ 5.1 through 5.5 if the Commission determines that such exemption is not contrary to the public interest to be furthered by, or the purposes of, the provision from which exemption is sought. Such exemptions may be given by the Commission upon its own motion or upon written application, and the Commission may condition the exemption as it deems appropriate.

Incentive Fees

Investment advisers are, with certain exceptions, generally prohibited by the Investment Advisers Act of 1940 from receiving compensation based upon the trading gains achieved by their clients.[16] Since commodity trading advisors may perform functions similar to those of investment advisers, the Commission is considering whether it would be appropriate to prohibit trading advisors from charging incentive fees.

The Commission's Advisory Committee considered this prohibition at length and concluded:

> The apparent reason for this prohibition [in the Investment Advisers Act] was a belief that incentive fees caused undue risk-taking by portfolio managers. But since risk-taking is an accepted element of commodities speculation, there is no basis for extending the prohibition to pool operators and trading advisors. In addition, there appears to be an affirmative need for incentive fees in commodities trading. Because large trades tend to move prices significantly, there is a practical limit to the size of commodity pools, and thus a limit to the amount a pool operator can charge by way of a net asset fee. (footnote omitted.)[17]

The Commission agrees with the conclusion of its Advisory Committee that a prohibition on the charging of incentive fees by trading advisors for advice rendered with respect to commodity interests may be unwarranted at this time and, accordingly, has not proposed such a prohibition.

While the Commission does not presently intend to bar trading advisors from charging incentive fees, it is concerned about the possibility that unsophisticated clients and subscribers could be induced to enter into incentive fee arrangements that result in excessive payments. For example, if an incentive fee were calculated monthly as a percentage of the trading gains in a client's account, without any adjustment for losses in prior months, the advisor could receive substantial fees even though the value of the account had declined during the course of the entire year's trading. To illustrate, if a $10,000 account declined the first month to $5,000 and then rose the next month to $7,000, the advisor could possibly receive a percentage of the $2,000 "gain" although the account had incurred an overall loss for the two months. Accordingly, the Commission is considering the adoption of a rule which would prohibit incentive fees that are not based on the appreciation over the highest previous value of the account within the year. The Commission invites comment on such a limitation on the assessment of incentive fees and on the appropriate period, yearly or otherwise, to which this restriction should apply.

Handling of Customer Margin by Commodity Trading Advisors

Several persons registered with the Commission solely as commodity trading advisors have inquired whether they

[15] An important feature of proposed regulation 5.4(a) (4) is that it would permit a trading advisor to maintain the record of its own or its principal's futures transactions through the prompt collection of the confirmations of those transactions, or copies thereof. The advisor would merely be required to retain these confirmations in an orderly manner for the period prescribed in § 1.31.

[16] See 15 U.S.C. 80b-5(1).

[17] CCH Comm. Fut. L. Rep., Special Edition No. 29, Part II, p. 36 (August 20, 1976).

may accept money, securities and property from "clients and subscribers" to margin, guarantee, or secure the commodity futures trades or contracts of such other persons without registering in some further capacity with the Commission. Section 2(a)(1) of the Act defines the term "commodity trading advisor" as:

* * * any person who, for compensation or profit, engages in the business of advising others, either directly or through publications or writings, as to the value of commodities or as to the advisability of trading in any commodity for future delivery on or subject to the rules of any contract market, or who for compensation or profit, and as part of a regular business, issues or promulgates analysis or reports concerning commodities. * * *

Neither this definition nor any other provision of the Act mentions the acceptance by trading advisors of funds to margin, guarantee or secure the commodity futures trades or contracts of other persons.

On the other hand, section 2a(1) defines the terms "futures commission merchant" and "commodity pool operator" as, respectively:

* * * individuals, associations, partnerships, corporations and trusts engaged in soliciting or in accepting orders for the purchase or sale of any commodity for future delivery on or subject to the rules of any contract market and that, in or in connection with such solicitation or acceptance of orders, accepts any money, securities, or property (or extends credit in lieu thereof) to margin, guarantee or secure any trades or contracts that result or may result therefrom;

and

* * * any person engaged in a business which is of the nature of an investment trust, syndicate, or similar form of enterprise, and who, in connection therewith solicits, accepts, or receives from others, funds, securities, or property, either directly or through capital contributions, the sale of stock or other forms of securities, or otherwise, for the purpose of trading in any commodity for future delivery on or subject to the rules of any contract markets. * * *

Furthermore, the regulatory provisions of the Act applicable to futures commission merchants and commodity pool operators are in many cases directed at the treatment by such persons of the funds of others, especially in the case of futures commission merchants, while none of the provisions relating to trading advisors deals with this subject. Accordingly, the Commission believes that any "trading advisor" who accepts funds from any other person, any portion of which is used or intended to be used to margin, guarantee or secure any commodity futures trade or contract of such other person, is either a futures commission merchant or a commodity pool operator and must register as such.[18]

[18] It should also be noted that newly adopted § 32.3 (41 FR 51808, 51814, November 24, 1976) provides that:

"(a) On and after January 17, 1977, it shall be unlawful for any person to accept any money, securities, or property (or to extend credit in lieu thereof) from an option customer as payment of the purchase price in connection with a commodity option transaction unless such person is registered as a futures commission merchant under the Act and such registration shall not have expired, been suspended (and the period of suspension has not expired) or revoked.

"(b) On and after January 17, 1977, it shall be unlawful for—

"(1) Any person to solicit or accept orders (other than in a clerical capacity) for the purchase or sale of any commodity option, or to supervise any person or persons so engaged, unless such person is—

"(i) Registered as a futures commission merchant under the Act, or

"(ii) If such person is an individual, registered as an associated person of a specific futures commission merchant under the Act; and such registration shall not have expired, been suspended (and the period of suspension has not expired) or revoked; and

(2) Any futures commission merchant to permit an individual to become or remain associated with such futures commission merchant as a partner, officer or employee (or in any similar status or position involving similar functions) in any capacity involving such solicitation, acceptance, or supervision if such futures commission merchant knew or should have known that such individual was not registered as an associated person or that such registration has expired, been suspended (and the period of suspension has not expired) or revoked * * *"

PROPOSED EXCLUSIONS

On July 3, 1975, the Commision proposed the adoption of a rule which would exclude from the definition of a commodiy trading advisor certain persons who may fall within the literal definition of a commodity trading advisor in section 2a(1) of the Act, but whose registration would serve no substantial public interest. 40 FR 29090 (July 10, 1975). The first of these proposed exclusions provides that:

[A] person is not a commodity trading advisor if:

(1) The furnishing by such person of the services specified in section 2(a)(1) of the Act is solely incidental to the conduct of such person's business or profession,

(2) Such person does not hold himself out generally to the public as a commodity trading advisor, and

(3) Such services:

(i) Are not intended, directly or indirectly, to forecast or predict the price of any commodity for future delivery on any contract market, and

(ii) Do not contain any advice or suggestion which, in light of the circumstances in which such services are rendered, is intended to, or can be expected to, encourage or discourage trading in any commodity for future delivery on any contract market.

The Commission believes it may be appropriate to utilize this or a similar exclusion to exclude many of the following persons from the definition of a commodity trading advisor:

(i) Cooperative associations of producers who issue analyses and reports solely to their members and cash commodity customers in a manner that is solely incidental to their cash commodity business;

(ii) Bona fide trade associations issuing analyses and reports to their members in an incidental fashion;

(iii) Dealers, processors, brokers, and sellers of cash commodities who issue analyses and reports to their customers in a manner solely incidental to their cash commodities business; and

(iv) Farming and livestock management service organizations who issue advice, analyses, and reports as a part of their managerial service.

The Commission requests comment on the appropriateness of excluding these types of persons from the definition of a commodity trading advisor in light of the purposes of sections 4m and 4n of the Act. Comment is also requested as to what other types of persons might appropriately be excluded from this definition.[19]

The Commission is also considering the adoption of a rule which would establish procedures pursuant to which persons may request exclusion from the definition of a commodity trading advisor on a case-by-case basis where the furnishing of advice by such persons is solely incidental to the conduct of their business or profession. Such exclusions would be granted where the Commission determines that the registration of such persons would serve no substantial public interest. The Commission points out, however, that such requests would necessarily entail substantial expenditures of time and effort by both the applicant and the Commission. Therefore, persons who may be classified generally by definition for purposes of exclusion from the term commodity trading advisor should submit appropriate comments to the Commission recommending exclusion of the definitional class of persons within which they fall.

(Sections 2(a)(1), 4c, 4n, 4o, 8a(5) and 8a(8) of the Commodity Exchange Act, as amended, and section 217 of the Commodity Futures Trading Commission Act of 1974, 7 U.S.C. 2a, 6c, 6n, 6o, 12a and 15a (Supp.) V 1975).

In consideration of the foregoing, the Commission hereby proposes to amend 17 CFR Chapter 1 by adding a new Part 5 to read as follows:

PART 5—COMMODITY TRADING ADVISORS

Sec.

5.1 Definitions.
5.2 Commodity trading advisor disclosure statement.
5.3 Disclosure of positions in commodity interests.

[19] In announcing the proposed exclusion, the Commission stated that it

"* * * recognizes that publishing this rule for comment will cause some uncertainty with regard to the registration status of those persons who might be within the proposed exclusion. To alleviate that uncertainty somewhat, it has been determined that until such time as the Commission reviews the comments received respecting this proposed rule and determines whether to adopt the rule as proposed, in an amended form, or not at all, no enforcement action will be taken, on the basis of failure to register, against any person who is within the proposed exclusion."

The Commission stresses that it will continue in this "no enforcement" posture with respect to persons falling within the exclusions proposed on July 3, 1975, until such time as the Commission determines whether to adopt these exclusions.

Sec.
5.4 Record keeping.
5.5 Simulated or hypothetical accounts or transactions.
5.20 Exemptions.

§ 5.1 Definitions.

For purposes of this part:

(a) The term "commodity interest" means:

(1) Any contract for the purchase or sale of any commodity for future delivery traded on or subject to the rules of a contract market;

(2) Any agreement or transaction in interstate commerce which is or is held out to be of the character of, or is commonly known to the trade as an "option", "privilege", "indemnity", "bid", "offer", "put", "call", "advance guaranty", or "decline guaranty" involving any commodity regulated under the Act other than wheat, cotton, rice, corn, oats, barley, rye, flaxseed, grain sorghums, mill feeds, butter, eggs, onions, Solanum tuberosum (Irish potatoes), wool, wool tops, fats and oils (including lard, tallow, cottonseed oil, peanut oil, soybean oil and all other fats and oils), cottonseed meal, cottonseed, peanuts, soybeans, soybean meal, livestock, livestock products and frozen concentrated orange juice; and

(3) Any standardized contract for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, commonly known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(b) The term "individual principal" means any general partner, director, officer, person performing functions similar to those of a general partner, director, or officer, or holder of more than 10 percent of the equity securities or equity interest in the commodity trading advisor.

(c) The "account of a commodity trading advisor or an individual principal thereof" includes any account in which a beneficial interest is owned by:

(1) The commodity trading advisor or the individual principal thereof;

(2) Any relative or spouse of such commodity trading advisor or individual principal, or any relative of such spouse, who shares the same home as such commodity trading advisor or individual principal;

(3) Any trust or estate in which such commodity trading advisor or individual principal or any of the persons related to such commodity trading advisor or individual principal as specified in paragraph (b) (2) of this section collectively have more than 10 percent of the beneficial interest (excluding contingent interests); or

(4) Any corporation or other organization of which such commodity trading advisor or individual principal or any of the persons related to such commodity trading advisor or individual principal as specified in paragraph (b) (2) of this section collectively are the beneficial owners of more than 10 percent of the equity securities or interest.

(d) The term "advisory services contract" means any contract or other agreement whereby a commodity trading advisor agrees:

(1) To advise another person on a regular or continuing basis as to the advisability of the purchase or sale of any commodity interest or the holding of a market position in any commodity interest other than through the use of a market letter or other publication of widespread distribution; or

(2) To manage any commodity interest account for any other person.

§ 5.2 Commodity trading advisor disclosure statement.

(a) *Furnishing of written disclosure statements.* No commodity trading advisor may enter into, extend or renew any advisory services contract with any person unless a written disclosure statement is furnished to such person at least 24 hours prior to entering into, extending or renewing such advisory services contract. A copy of this written disclosure statement must be furnished to the Commission at its principal office in Washington, D.C., within seven (7) business days of the date it is first furnished to a client or subscriber or prospective client or subscriber.

(b) *Content of written disclosure statement.* The written disclosure statement required by paragraph (a) of this section shall, at a minimum, set forth the following:

(1) *Commodity trading advisor organization.* The name and principal business address of the commodity trading advisor, and the name of each individual principal thereof.

(2) *Experience of the commodity trading advisor.* The commodities-related background and general business experience within the past ten years of the commodity trading advisor and of each individual principal thereof who determines or approves the commodity advice rendered by the commodity trading advisor, including the lengths of time the commodity trading advisor and each such individual principal has been engaged (i) In business as a commodity trading advisor and (ii) In any other commodities- or securities-related business, and the percentage of return on investments for every commodity interest account controlled by the commodity trading advisor or any such individual principal, directly or indirectly, within one year preceding the date the written disclosure statement is first furnished to a client or subscriber or prospective client or subscriber, and the manner in which such percentage is calculated.

(3) *Trading in commodity interests.* A brief description of each type of commodity interest with respect to which the commodity trading advisor may render advice to the client or subscriber and the manner in which such type of commodity interest is traded, including an explanation of initial and maintenance margin in commodity futures trading, the leverage available in trading commodity interests, the material risks inherent in trading each such type of commodity interest, speculative trading and position limits set by the Commission and contract markets, and daily price fluctuation limits set by contract markets and their effect upon market liquidity.

(4) *Basis for advice.* The general basis upon which the commodity trading advisor formulates its commodity advice.

(5) *Fees.* The bases and amount of all fees charged for the services which the commodity trading advisor renders; when such fees are payable; and, if such fees are payable before the rendering of the services relating thereto, a statement as to whether, to what extent, and under what conditions, if any, the fees will be refunded to clients or subscribers.

(6) *Relationship with other commodity firms.* The precise nature of any affiliation or business arrangement, direct or indirect, between the commodity trading advisor or any individual principal thereof and any futures commission merchant, including any arrangement whereby the commodity trading advisor or any individual principal thereof may benefit, directly or indirectly, from the maintenance of a client's or subscriber's commodity interest account with any futures commission merchant.

(7) *Trading by the commodity trading advisor and the individual principals thereof.* The extent to which the commodity trading advisor or any individual principal thereof engages or intends to engage in the trading of commodity interests for its own account; and a statement that the commodity trading advisor must provide each client or subscriber engaging in the advisory services contract with a monthly statement disclosing certain information regarding such trading.

(c) *CFTC Legend.* The written disclosure statement required by paragraph (a) of this section shall set forth prominently on the first page in bold-face type a statement that the Commodity Futures Trading Commission has not reviewed or passed upon the accuracy or adequacy of the written disclosure statement.

(d) *Effect of section upon other provisions.* Nothing in this section shall relieve any commodity trading advisor from any obligation under the Act or the regulations thereunder, including any obligation to disclose any information to clients and subscribers or prospective clients and subscribers not specifically required by this section.

§ 5.3 Disclosure of positions in commodity interests.

(a) *General requirement.* Each commodity trading advisor who is engaged in an advisory services contract with any client or subscriber must furnish directly to each such client or subscriber within fifteen (15) days of the last day of each calendar month (or of any regular monthly date selected), a written statement which discloses: (1) The positions in commodity interests held, itemized by respective delivery month, or expiration date, and by commodity and type of commodity interest, in each account of the commodity trading advisor and the individual principals thereof at the beginning and at the end of the calendar month (or corresponding monthly pe-

riod), and (2) The number of commodity interests purchased and the number of commodity interests sold, itemized by respective delivery month, or expiration date, and by commodity and type of commodity interest, for each such account during the calendar month (or corresponding monthly period). The written statement required by this section must state that a record of each purchase or sale of a commodity interest for any account of the commodity trading advisor and the individual principals thereof is kept at the principal business office of the commodity trading advisor and must be made available to, or, upon the payment of reasonable costs, furnished to, clients or subscribers immediately upon request.

(b) *Exemption.* A commodity trading advisor is exempt from the requirements of section 4n(4)(B) of the Act and of paragraph (a) of this section if the commodity trading advisor, during the course of the preceding twelve months, has not furnished commodity trading advice to more than fifteen persons and does not hold itself out generally to the public as a commodity trading advisor.

§ 5.4 Record keeping.

(a) *Record keeping required.* Each commodity trading advisor registered or required to be registered under the Act must make and keep the following books and records relating to its business as a commodity trading advisor in an accurate, current and orderly manner, at its principal business office, for the period and in the manner specified in § 1.31:

(1) *Clients or subscribers.* The name and address of each client or subscriber.

(2) *Written recommendations.* A sample or copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advisory document distributed or caused to be distributed by the commodity trading advisor to any client or subscriber or prospective client or subscriber, showing the date of distribution if not otherwise shown on the document.

(3) *Verbal recommendations.* A memorandum or other record of each recommendation regarding the advisability of engaging in the purchase or sale of a commodity interest and of each analysis or report concerning commodities that was issued or caused to be issued by the commodity trading advisor by means of television, radio, seminar presentation or similar form of communication, showing the date of the recommendation, analysis or report and a summary of the specific as well as general recommendations made.

(4) *Commodity interests purchased or sold by the commodity trading advisor and the individual principals thereof.*

(i) An itemized daily record of each commodity interest purchased or sold for each account of the commodity trading advisor and the individual principals thereof, showing the date, price, quantity, commodity interest, delivery or expiration month, person for whom the purchase or sale was effected, the futures commission merchant carrying the account, if applicable, and whether the commodity was purchased or sold. This record may be in the form of either (A) a journal or other record of original entry or (B) the confirmations or similar statements received by the commodity trading advisor or individual principal thereof from each futures commission merchant carrying the account for which the purchase or sale was effected. If the commodity trading advisor elects to maintain the records required by this paragraph in the latter form, the appropriate confirmations and statements must be received at its principal business office within fifteen (15) calendar days of the date of each purchase or sale.

(ii) Each monthly statement furnished to the commodity trading advisor or any individual principal thereof by a futures commission merchant pursuant to § 1.33.

(5) *Discretionary accounts.* A list or other record of all commodity interest controlled accounts of clients or subscribers which are controlled by the commodity trading advisor and of all purchases and sales of commodity interests effected therefor.

(6) *Powers of attorney.* All powers of attorney and other evidences of the granting of any control over a commodity interest controlled account by any client or subscriber to the commodity trading advisor, or copies thereof.

(7) *Agreements with clients and subscribers.* All written agreements, or copies thereof, entered into by the commodity trading advisor with any client or subscriber.

(b) *Availability of trading records.* The records required to be kept by paragraph (a)(4) of this section must be made available to any client or subscriber of the commodity trading advisor for inspection and copying during normal business hours at the principal business office of the commodity trading advisor immediately upon his request. Copies of any portion of these records requested by a client or subscriber must be furnished immediately to such client or subscriber, subject to the payment of reasonable costs.

§ 5.5 Simulated or hypothetical accounts or transactions.

No commodity trading advisor may publish, distribute or broadcast any report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including any television or radio announcement, seminar presentation or telephonic, telegraphic or face-to-face communication) that refers directly or indirectly, to the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest.

§ 5.20 Exemptions.

The Commission may, by order, upon its own motion or upon written application, exempt a commodity trading advisor or any class of commodity trading advisors from any provision of this part if it finds, in its discretion, that the exemption is not contrary to the public interest and the purposes of the provision from which the exemption is sought. The Commission may attach such conditions to the exemption as it deems appropriate.

Interested persons may participate in this proposed rule-making proceeding by submitting comments in written form to the Commodity Futures Trading Commission, 2033 K Street, N.W., Washington, D.C. 20581, Attn: Secretariat. All comments received on or before May 16, 1977, will be considered by the Commission before it takes final action on the proposed rules. Comments are also requested as to whether an oral hearing would be of value; if the Commission concludes that such a hearing would be appropriate, the time and place of the hearing will be set at a later date by public notice. Copies of all comments received regarding the proposal and the form of the rule-making proceeding will be available for inspection at the Commission's offices in Washington, D.C.

Issued in Washington, D.C., on February 9, 1977, by the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

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Federal Register

TUESDAY, FEBRUARY 15, 1977

PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

■

HEARING AID DEVICES

Professional and Patient Labeling and Conditions For Sale

Title 21—Food and Drugs

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

SUBCHAPTER H—MEDICAL DEVICES

[Docket No. 76N-0019]

PART 801—HEARING AID DEVICES

Professional and Patent Labeling and Conditions for Sale

The Food and Drug Administration (FDA) is establishing uniform professional and patient labeling requirements and conditions for sale of hearing aid devices. The regulations prescribe the types of information that must be included in the labeling to provide hearing health professionals and patients with adequate directions for the safe and effective use of a hearing aid; specify the technical performance data that must be included in the labeling to ensure that hearing health professionals have adequate information to select, fit, and repair a hearing aid for a patient; and restrict the sale of a hearing aid to those patients who have undergone medical evaluation within the past 6 months, but with a provision that fully informed adult patients (18 years of age or older) may waive the medical evaluation because of personal or religious beliefs. These regulations shall become effective August 15, 1977.

In the FEDERAL REGISTER of April 21, 1976 (41 FR 16756), the Commissioner of Food and Drugs proposed to amend Chapter I of Title 21 of the Code of Federal Regulations by adding new §§ 801.420 and 801.421 to establish professional and patient labeling and conditions for sale for hearing aid devices, referred to hereinafter as hearing aids. Interested persons were given until June 21, 1976 to submit written comments, suggestions or objections. Approximately 500 comments were received from consumers, consumer groups, hearing aid dispensers, trade associations, manufacturers, audiologists, physicians, and government agencies.

The following text contains pertinent background information and a summary of the comments received on the proposal, as well as the Commissioner's evaluation of and response to the comments:

The preamble to the proposed regulation contained a section entitled "Background," which summarized the activities of consumer groups, Congress, and the Department of Health, Education, and Welfare (HEW) that have identified problems in the present hearing aid health delivery system. The "Background" section in the proposal failed, however, to reference the efforts of two Congressional committees that held open hearings on the hearing aid health care delivery system. In May of 1975, the Subcommittee on Government Regulations of the Select Committee on Small Business, United States Senate, chaired by Senator Thomas J. McIntyre, held hearings on economic problems in the hearing aid industry (Ref. 14). The subcommittee investigated matters such as competition, prices, advertising and marketing practices, research and development, government purchasing and reimbursement, the role of small business, and in general, how the hearing aid industry has responded to the needs of the hearing impaired. In April of 1976 the Senate Permanent Subcommittee on Investigations, chaired by Senator Charles H. Percy, also held hearings on the hearing aid industry. These hearings reconfirmed that many hearing-impaired consumers do not obtain a medical evaluation of their hearing impairment before purchasing a hearing aid. Senator Percy, in closing the hearings, stated that "Twenty million hearing-impaired Americans are being denied top-flight treatment by a delivery system that simply is not working" (Ref. 15). As a result of testimony presented at these hearings, Senator Percy recommended that FDA promulgate regulations that would restrict the sale of hearing aids to those patients who have undergone a medical evaluation.

FEDERAL TRADE COMMISSION ACTIVITIES AFFECTING THE HEARING AID INDUSTRY

The Federal Trade Commission (FTC) also has been studying the hearing aid health care delivery system to determine what steps should be taken to protect consumers from unfair or deceptive acts or practices in the sale of hearing aids. In the FEDERAL REGISTER of June 24, 1975 (40 FR 26646), the FTC published an "initial notice" of a proposed trade regulation rule for the hearing aid industry. The rule making record was closed on October 22, 1976. The reports of the presiding officer and the FTC staff concerning the proposed rule are now being prepared.

The essential provisions of the FTC proposed rule are: (1) A requirement that every hearing aid buyer (with certain exceptions) be given the right to cancel the purchase for any reason any time within 30 calendar days of delivery and receive a refund of most of the purchase price (in effect, a mandatory trial rental period); (2) a requirement that sellers of hearing aids obtain prior express written consent to a sales visit in the buyer's home or office; (3) a prohibition of certain other selling techniques; (4) a prohibition of certain representations concerning hearing aid sellers; (5) a prohibition of certain representations concerning hearing aids; and (6) requirements that certain advertising representations be qualified.

Subsequent to the publication of the FTC proposed rule, the Medical Device Amendments of 1976 (Pub. L. 94-295) became law on May 28, 1976. The Amendments added new paragraph (r) to section 502 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 352(r)), which provides that a restricted device will be deemed to be misbranded unless all advertisements and other descriptive matter with respect to it (1) bear the device's established name, (2) include a brief statement of the intended uses of the device, relevant warnings, precautions, side effects, and contraindications, and (3) in instances in which it is necessary to protect the public health, include a description of the components of the device or its formula. Section 502(r) further provides that an advertisement for a restricted device shall not, with respect to matters covered by section 502(r) or covered by regulations issued under that section, be subject to the provisions of sections 12 through 15 of the Federal Trade Commission Act (15 U.S.C. 52 through 55), as that act relates to the dissemination of false advertisements for devices. (Section 502(r) of the act closely parallels section 502(n) of the act (21 U.S.C. 352(n)), relating to prescription drugs.)

Section 502(r) gives FDA jurisdiction for regulating certain specified advertising of restricted devices, and the section concurrently removes FTC authority to apply the sanctions of court injunction or criminal penalties under sections 12 through 15 of the Federal Trade Commission Act to prevent these acts. It is the Commissioner's opinion, however, that section 502(r) limits FTC authority only to the extent specifically stated in the section, i.e., section 502(r) applies only to restricted devices and only to possible FTC use of court injunctions or criminal penalties to prevent false advertising relating to the items of information specified in section 502(r). Moreover, section 502(r) does not extend to, or in any way limit, any other authority of FTC related to the regulation of the sale of devices, such as the authority provided to FTC under section 5 of the Federal Trade Commission Act (5 U.S.C. 45) to prevent unfair or deceptive acts or practices.

In sum, it is the Commissioner's opinion that the net effect of section 502(r), as of the comparable provision under section 502(n) relating to prescription drugs, is to enable each agency to approach the regulation of restricted devices from the perspective of its particular statutory mandate. It is also the Commissioner's belief that both agencies will continue, as they have in the past, to work together in pursuit of their separate but closely related mandates. The Food and Drug Administration has long been aware of the FTC activities in the regulation of hearing aids that led to the FTC proposed rule, and the Commissioner believes these activities complement, rather than conflict with, this FDA regulation relating to labeling and conditions of sale of hearing aids. The Commissioner generally supports the FTC proposed rule and believes that the matters addressed therein are particularly within the FTC statutory mandate and expertise.

GENERAL COMMENTS ON THE PROPOSED REGULATIONS

Many comments on the proposed regulations asserted that the proposal did not adequately deal with several major concerns about the present hearing aid health care delivery system. The inadequacy or absence of State licensing laws in requiring minimum competency standards for persons who dispense hearing aids was often mentioned in the comments.

The Commissioner recognizes that the professional and patient labeling regulations and restrictions on the sale of hearing aids are only a partial solution to the problems in the hearing aid health care delivery system, and that these regulations do not address the adequacy of existing State licensing laws that control the dispensing of hearing aids. The Commissioner notes also that the hearings before the Senate Permanent Subcommittee on Investigations of the Hearing Aid Industry (Ref. 15) produced testimony that "the competency and training of hearing health professionals, whether physicians, audiologists, or hearing aid dispensers, was of utmost importance to the delivery of quality hearing aid health care services. The Commissioner notes, however, that the Federal Food, Drug, and Cosmetic Act regulates the safety, effectiveness, and labeling of the hearing aid itself. State and local licensing laws, as administered by State and local agencies, are the appropriate legal mechanisms for establishing minimum competency standards for the practice of a health profession or related activity. A major purpose of such licensing laws is to establish standards for the various activities within their purview and to exclude from activities those persons who will not, or cannot, conform to these standards. Such licensing statutes thereby protect the public against unfit and inept practitioners in the health professions and other occupations affecting the public health and safety.

The Commissioner is aware of the efforts of the American Speech and Hearing Association, the National Hearing Aid Society, and other professional organizations to develop minimum competency standards for testing hearing loss for the purpose of selecting and fitting hearing aids. These programs often lead to certificates of competency from the sponsoring organization and often require participation in a continuing education program to maintain the certificates of competency. A shortcoming of such an approach is that these certification programs apply only to the members of the organization. Where State licensing laws are weak or nonexistent, a person dispensing hearing aids can ignore the certification program by not participating in the professional association.

The Comissioner therefore believes that strong State and local licensing laws are needed to establish and maintain minimum competency requirements for those persons who test for hearing loss and select and fit hearing aids. The Commissioner notes, however, that the establishment of such licensing laws is primarily the responsibility of State and local officials.

There were many comments that the proposed regulations provided no relief from the high cost of hearing aids. Moreover, many comments expressed concern that the regulations would add to the cost of hearing aids. The Commissioner notes also that both the Senate hearings and the HEW Intradepartmental Task Force produced testimony that suggested that many elderly Americans do not have hearing aids because of their high cost.

Although FDA does not have any direct control over the price of hearing aids, the Commissioner recognizes that ill-conceived and unnecessary regulations could cause the price of hearing aids to rise, thus creating an additional barrier to the receipt of quality hearing aid health care services. For this reason, FDA has judiciously exercised its rulemaking authority to provide for minimal Federal intervention consistent with essential protection of the public health in the delivery of hearing aid health care services. This approach recognizes the limitations of FDA statutory authority in dealing with such factors as the cost of a hearing aid and the inadequacy or absence of State licensing laws.

The Commissioner also recognizes that personal motivation often plays a major role in determining whether a person who has a hearing impairment will seek assistance. Information collected by the HEW Intradepartmental Task Force on Hearing Aids indicates that an estimated 10 million hearing-impaired persons have not received medical attention to assess their hearing loss and to determine what steps, if any, can be taken to improve their hearing (Ref. 4). The Commissioner believes that it is of paramount importance that any FDA regulations intended to protect the health and safety of the hearing impaired be positive in orientation and not create unnecessary economic or psychological barriers to the receipt of quality hearing aid health care. For these reasons, the FDA regulations have been developed in full awareness of the FTC proposed trade regulation rule for the hearing aid industry, and duplication of effort has been avoided.

A section in the preamble to the FDA proposed regulations entitled "Hearing Health Care Team" drew many comments from audiologists. In general, the audiologists objected to wording in this section, which identified hearing aid specialists or dealers (hearing aid dispensers) as hearing health professionals and legitimate members of the hearing health care team. Many audiologists stated that it was inaccurate to recognize hearing aid dispensing as a profession because many hearing aid dispensers have little academic training.

The Commissioner rejects the contention that hearing aid dispensers should not be included in a characterization of the hearing health care team. The various services provided by hearing aid dispensers, such as testing hearing for selecting and fitting hearing aids, motivating prospective users to try amplification, making impressions for ear molds, selecting and fitting hearing aids, counseling hearing-impaired persons on adapting to a hearing aid, and repairing damaged hearing aids are regarded by many of the hearing impaired as indispensable to their welfare. Many hearing aid users wrote to FDA supporting this position. Many hearing aid users emphasized that hearing aid dispensers were readily accessible for essential services such as repair work. Great importance was attached to the fact that the hearing aid dispenser operated from a place of business that was near to the hearing aid user and also that hearing aid dispensers typically did not require an appointment for services.

The Commissioner recognizes that the accessibility of hearing aid services is of great importance to the quality of hearing aid health care services. The hearing aid dispenser is the most accessible member of the hearing aid health care team, and the hearing aid dispenser sees the hearing-impaired person with greater frequency than either the physician or the audiologist. For these reasons the Commissioner regards the hearing aid dispenser as an important member of the hearing health care team, strategically positioned within the delivery system to provide the hearing aid user with essential services.

The Commissioner has concluded, however, that necessary improvements in the quality of hearing aid health care services depend largely on hearing aid dispensers recognizing their obligation to achieve greater competency in testing hearing in order properly to select and fit a hearing aid. Although many hearing aid dispensers already have obtained specialized training in hearing aid evaluation from hearing aid manufacturers and have completed formal academic programs in the selection and fitting of hearing aids, other hearing aid dispensers need additional training.

The Commissioner sees no value in characterizing hearing aid dispensers solely as "sales persons," or in minimizing the importance of "selling" as it relates to motivating persons to try amplification. Often a person with a hearing impairment lacks the motivation to try a hearing aid or believes a social stigma is attached to wearing a hearing aid (Ref. 4). Although there are a number of documented cases of excessive and abusive sales practices, this is not to say that some selling practices and techniques such as a trial-rental or purchase-option plan, which strengthen motivation to try a hearing aid, are inherently bad. When the number of hearing-impaired persons who currently wear hearing aids is contrasted with the number of people in the United States with a hearing impairment who could be helped by a hearing aid, it is clear that many people are reluctant to acknowledge their hearing impairment or to seek assistance. Ethical selling practices that provide the potential hearing aid user with incentives to try a hearing aid are therefore to be encouraged.

A majority of the comments addressed the medical evaluation provision of the proposed regulation, which required as a condition of sale that a person with hearing impairment obtain a medical evaluation from a physician, preferably an ear specialist, before buying a hearing aid.

The Commissioner has concluded, after consideration of these comments, that good hearing health care practice requires that persons with hearing loss have a medical evaluation by a licensed physician (preferably a physician who spe-

cializes in diseases of the ear) prior to the purchase of a hearing aid. The medical evaluation by the physician is necessary in determining the cause of, and the pathology associated with, the patient's hearing loss. Such a medical evaluation often includes an interpretation of a medical history, a physical examination, laboratory studies, X-ray studies, and, in some instances, a hearing test.

The Commissioner agrees with the American Council of Otolaryngology and other physicians who commented that the recognition of an organic cause for hearing impairment is of extreme importance to the health and safety of the hearing-impaired patient. The American Council of Otolaryngology pointed out that some of the causes for sensorineural hearing loss include conditions such as brain tumor, syphilis, endocrine disorder, collagen diseases, and endolymphatic hydrops. Accordingly, the final regulation continues to require as a condition for sale, that a person, as a general rule, have obtained a medical evaluation from a licensed physician within the preceding 6 months before he is sold a hearing aid. The Commissioner has determined that the medical evaluation is necessary to protect the health and safety of hearing-impaired patients because patients, audiologists, and hearing aid dispensers are unable to differentiate, diagnose, evaluate, and treat the medical cause or causes of a hearing impairment.

The Commissioner emphasizes, however, that the primary health concern underlying the medical evaluation requirement is not immediately related to any direct risk to a user from the hearing aid itself; rather, the medical evaluation requirement is based upon the recognition that an unnecessary or partially effective hearing aid device may be substituted for primary medical or surgical treatment, thus depriving the hearing-impaired patient of benefit of appropriate medical diagnosis and care and resulting in a detriment to health. In addition to delaying proper medical diagnosis and possibly reducing the efficacy of the correct treatment, purchase of a hearing aid device that may not achieve its intended effect involves a high and unnecessary cost to the patient.

A number of comments indicated that there is some confusion about the purpose of the medical evaluation requirement in the proposed regulation. Simply stated, the purpose of the medical evaluation by a licensed physician is to assure that all medically treatable conditions that may affect hearing are accurately identified and properly treated before a hearing aid is bought. It should be emphasized that the medical evaluation requirement does not require the physician to prescribe, recommend, or certify that a patient may be helped by a hearing aid. The provision simply requires that the physician provide the patient with a written statement indicating that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid.

The Commissioner notes that a hearing aid device is not an inherently dangerous device and that the number of persons who will in fact require a medical or surgical treatment is relatively small in comparison to the number of individuals who may benefit from amplification. For this reason, FDA has attempted to design the medical evaluation requirement to reflect the practical and logistical problems of medical evaluation, the availability of licensed physicians, the mobility of the hearing impaired, and the personal and religious beliefs of those persons who refuse to consult with physicians.

Several consumers wrote that since the hearing impaired patient is paying for the hearing aid and subsequent services, any medical evaluation requirement is ultimately an infringement of individual rights. These persons emphasized that currently it is a personal decision whether or not to see a physician. Other consumers objected to a medical evaluation on the basis of philosophical and political grounds, expressing the preference for freedom of choice. Other consumers indicated that a mandatory medical evaluation requirement would impose serious hardships in obtaining the services of a physician, particularly an ear specialist. The National Hearing Aid Society and a number of consumers felt that the medical evaluation requirement should be mandatory only before the fitting of the first hearing aid. They contended that this approach would assure adequate attention to the medical needs of the hearing-impaired person while promoting convenience, economy, and efficiency in the hearing aid health care delivery system.

In view of these comments, the Commissioner has concluded that the final regulation should contain provisions that would enable a fully informed adult to waive the medical evaluation. But, because the Commissioner believes that the exercise of such a waiver of medical evaluation is not in the best health interest of the patient, the opportunity for waiver is limited to fully informed adult patients. The final regulation prohibits any hearing aid dispenser from actively encouraging a prospective user to waive a medical evaluation.

Under proposed § 801.421(a)(3) a waiver of the medical evaluation would not have been permitted where it was evident to the dispenser after inquiry, actual observation, and review of any available information concerning the prospective user, that the prospective hearing aid user had any of seven designated otologic conditions at the time of sale. Because these otologic conditions may indicate that the hearing loss is symptomatic of a more serious medical dysfunction, and that other treatment is needed, the proposed regulation would have prohibited a dispenser from selling a hearing aid to a prospective user if any of these otologic conditions were evident.

The Commissioner is concerned that a hearing aid user would interpret the absence of these seven designated otologic conditions as a justifiable reason for ignoring the required medical evaluation. The Commissioner is also concerned that undue importance has been attached to the seven designated otologic conditions by incorporating these conditions into the waiver provision. In the proposed regulation, the seven designated otologic conditions were to serve as screening criteria for the hearing aid dispenser to use in determining whether the prospective hearing aid user could exercise the waiver to the medical evaluation requirement. The Commissioner has concluded that the health interest of the prospective user would be best served by obtaining a medical evaluation from a licensed physician before purchasing a hearing aid. A prospective user should not be misled into thinking that the absence of any of the seven otologic conditions indicates that there is no need to obtain a medical evaluation.

The Commissioner believes, however, that the designated otologic conditions continue to serve as useful warning signals or "red flags." Accordingly, reference to the presence of any of the designated otologic conditions has been moved to a new section of the User Instructional Brochure, entitled "Warning to Hearing Aid Dispenser." This new provision requires a hearing aid dispenser to advise a prospective hearing aid user to consult promptly with a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid if the hearing aid dispenser determines through inquiry, actual observation, or review of any other available information, that the prospective user has any of the designated otologic conditions. The complete text of the "Warning to Hearing Aid Dispenser" is also required to appear in the User Instructional Brochure to inform prospective users, as well as the dispenser, of the necessity to consult a physician if any of the designated otologic conditions are evident.

The American Speech and Hearing Association and many audiologists commented that a mandatory audiological evaluation by an audiologist should be required by Federal regulation as a condition for sale of a hearing aid. Comments on the proposed regulation expressed a wide diversity of opinion as to the reliability of audiological testing in predicting to a certainty whether or not a patient may benefit from a hearing aid. The American Council of Otolaryngology (ACO) stated that it was unable to find evidence to support the contention that audiological testing procedures will predict a patient's acceptance of a hearing aid device. It was pointed out by ACO that the terms "acceptance, benefit and satisfaction" when applied to hearing aids often involved a subjective response by the patient.

After reviewing all the conflicting information in the public record regarding the predictive value of audiological testing in determining whether or not a patient will benefit from a hearing aid, the Commissioner has concluded that a requirement that a patient obtain certain

mandatory audiological tests from an audiologist is not appropriate at this time. The Commissioner has concluded that the record does not justify requiring mandatory audiological evaluation to determine hearing aid candidacy or patient benefit from the use of amplification. Mandatory audiological evaluation would create an additional barrier to the receipt of a hearing aid device in those areas of the country where audiological services are scarce. Such a requirement also would increase the cost of obtaining a hearing aid without providing any conclusive assurance that the patient would benefit from amplification.

Because of the difficulty of determining in advance whether an individual will benefit from a hearing aid, FDA supports the requirement of a trial-rental or purchase option plan embodied in the FTC proposed rule, which will afford every prospective hearing aid user the opportunity to wear the selected hearing aid in a variety of uses during which the hearing-impaired user can make an informed judgment on whether a benefit is obtained from the use of amplification. The Commissioner believes that in the final analysis the hearing aid user is the person best qualified to determine whether or not a hearing aid is useful and effieacious for its intended purpose. A trial-rental option is better than mandatory audiological tests in determining patient benefit from amplification.

The Commissioner is aware that the FTC proposed rule requiring a mandatory trial-rental period will not be promulgated for some time. But the National Hearing Aid Society and several hearing aid manufacturers have adopted voluntary trial-rental or purchase-option programs for prospective hearing aid users. The Commissioner believes that these voluntary actions are important enough to the welfare of the hearing impaired to require that the User Instructional Brochure contain information advising prospective hearing aid users to inquire about the availability of a trial-rental or purchase-option program. In addition to helping to assure that the selected aid or aids will be beneficial, such a requirement will encourage hearing aid use among those prospective hearing aid users who lack the motivation to try a hearing aid because of the fear that they will spend a great deal of money with no guarantee of benefit.

Although the final regulation does not require a mandatory audiological evaluation as a condition for sale of a hearing aid, the Commissioner recognizes that the audiologist is an important member of the hearing health care team, qualified by academic and clinical training to assist in the prevention, identification, evaluation, and rehabilitation of persons with auditory disorders that impede or prevent the reception and perception of speech and other acoustic signals. In addition to basic audiometric evaluation, audiologists may provide hearing aid orientation, auditory training, speech reading, speech conservation, language development, and counseling and guidance services. The audioligist often provides health related services to children and adults with such identifiable disorders as receptive and/or expressive language impairment, stuttering, chronic voice disorders, and serious articulation problems affecting social, emotional and vocational achievement, and speech and language disorders accompanying conditions of hearing loss, cleft palate, cerebral palsy, mental retardation, emotional disturbance, multiple handicapping conditions, and other sensory and health impairments.

Because hearing loss may impede or prevent the reception and perception of speech and other acoustic signals, the Commissioner is requiring that the User Instructional Brochure contain advice that a child with a hearing loss should be directed to an audiologist for evaluation and rehabilitation. The Commissioner expects that the physician, in conducting the medical evaluation of a patient, will determine whether the patient's hearing loss or speech impairment will require the consultation of an audiologist. Notwithstanding this fact, the Commissioner has concluded that the User Instructional Brochure should contain special reference to the need for audiological consultation when the person experiencing the hearing impairment is a child.

Responses to Specific Comments

1. Three comments suggested that in the definition of "hearing aid" the word "designated" should be changed to "designed" so as to conform to the definition in the regulations proposed by FTC.

The Commissioner agrees with these comments and the change is made. The Commissioner notes that the definition for "hearing aid" as used in the regulation, includes over-the-ear, in-the-ear, eyeglass, and on-the-body type air-conduction hearing aids.

One comment noted that group auditory trainers, defined as a group amplification system purchased by a qualified school or institution for the purpose of communicating with or educating individuals with hearing impairments, would fall under the definition of "hearing aid" as used in the proposal. The comment further noted that it would be inappropriate to apply the proposed conditions for sale for hearing aid devices to group auditory trainers.

The Commissioner agrees with this comment and a change is made in the regulation so that the normal conditions for sale requirements do not apply to this special type of hearing aid.

2. Ten comments suggested that the definition of "seller" should be changed to indicate clearly that it applies to anyone who dispenses a hearing aid to a member of the consuming public. These comments pointed out that in addition to the hearing aid dealer, many physicians and audiologists dispense hearing aids.

The Commissioner agrees with these comments. The regulations are necessary to protect the consumer regardless of who dispenses the hearing aid device. The term "seller" is therefore changed to "dispenser" wherever appropriate in the regulation.

3. Two comments said that "sale" or "purchase" should not be applied to the lease or rental of a hearing aid because such transactions are substantially different from a sale or purchase in that the title to the hearing aid device remains with the lessor.

Although "sale" or "purchase" and "lease" or "rental" may be substantially different terms in business and legal effect, the Commissioner has determined that they should be treated in the same manner for the purposes of this regulation. Medical evaluation, the User Instructional Brochure, and the required notices to the prospective purchaser are all equally necessary to protect the consumer whether the transaction is in the form of a sale or lease or rental. Accordingly, these comments are rejected.

4. Seven comments suggested that "otolaryngologist" (ear specialist) and "audiologist" should be definited to clarify their roles in the hearing aid delivery system.

The Commissioner agrees with these comments and definitions of "audiologist" and "ear specialist" have been included in the regulation.

5. One comment suggested that the term "used hearing aid" should be defined, since the hearing aid dispenser must designate a "used hearing aid" as such. This comment pointed out that it may not be clear at what point a hearing aid becomes a "used hearing aid."

The Commissioner agrees with this comment and defines "used hearing aid" in the final regulation. The FTC proposed rule also requires that a "used hearing aid" be designated as such. The Commissioner believes that there should be conformity in this area and is adopting the definition included in the FTC proposed rule.

6. Various comments addressed the proposed labeling required to be placed on the hearing aid device, which included the name of the manufacturer or distributor, the model name, the serial number, and the month and year of manufacture. Five comments suggested that the information required would not fit on some of the smaller hearing aid units. Eight comments noted that the year of manufacture is irrelevant in that hearing aid models are not changed every year and therefore the fact that a hearing aid was manufactured in a previous year does not indicate that it is not the latest model. One of these comments further noted that the month of manufacture is certainly irrelevant. Four comments suggested that including the month and year of manufacture on hearing aids would cause inventory problems for manufacturers and dispensers because dispensers would be unwilling to order in advance, fearing that the hearing aids would remain on their shelves for some time and that customers would consider them outdated.

The preamble to the proposed regulation stated that this information was required to be placed on hearing aids for several reasons: To assure that the hear-

ing aid is adequately identified for quality control and repair, to identify the hearing aid in the event that a product defect warrants recall of the device, and to protect prospective users from false and misleading claims concerning the newness of the device. The Commissioner believes that these reasons are still persuasive, but he does believe that some adjustments can be made to mitigate some of the problems noted by the comments. The requirement that the model name be marked on the hearing aid is changed to "model name or number." This may ease the problem of including all this information on the smaller hearing aid units. The final regulation is also being changed to require that only the year, and not the month, of manufacture be marked on the hearing aid. Requiring that the month as well as the year of manufacture be marked on the hearing aid adds little to the solution of the problems necessitating this requirement, and omitting the requirement will reduce the amount of information to be included on the smaller hearing aids.

7. About the requirement that hearing aids be marked with a "+" symbol to indicate the positive connection for battery insertion, one comment suggested that FDA should require that all hearing aids be manufactured so that it is physically impossible to insert the battery in the reversed position.

Such a requirement would be of little value to the hearing aid user and would require a major redesign of many hearing aids, thus increasing the cost of hearing aids. The comment is therefore rejected.

8. Five comments said that the requirement that the User Instructional Brochure contain an illustration of the hearing aid adjustments should be modified to require that only user adjustments be illustrated. These comments pointed out that users would otherwise make adjustments which only qualified individuals should make and this would cause unnecessary problems in the use of the aid.

The Commissioner agrees with these comments and the change is made accordingly.

9. Three comments said that it would be very difficult to compile a complete list of suitable replacement batteries for inclusion in the User Instructional Brochure, as required by the proposed regulation, and that it would be better to require only a generic designation of replacement batteries.

The Commissioner agrees with these comments and the change is made.

10. Four comments said it would be impossible to list all repair facilities, as required by the proposed regulation.

The Commissioner agrees that it would be difficult to list all repair facilities and feels that a more general statement is desirable. As a result, the final regulation requires that the User Instructional Brochure contain information regarding how and where to obtain repair service, including a specific address, or addresses, where the user can go or send the hearing aid to have the repair done.

11. Three comments said the requirement that the User Instructional Brochure contain a description of environmental conditions that the hearing aid user may reasonably encounter that could adversely affect the hearing aid is vague.

The Commissioner agrees with these comments and the requirement is rewritten to provide examples of such conditions. The User Instructional Brochure is now required to include only commonly occurring avoidable conditions that could adversely affect or damage the hearing aid.

12. Twenty-nine comments said that the proposal did not include several side effects from hearing aid use that may warrant consulting with a physician, and that should be included in the User Instructional Brochure. These include tinnitus, headaches, dizziness, pain in the ear, acoustic trauma, feeling of blockage, loss of balance, fatigue, additional hearing loss, active drainage, and sudden hearing loss.

The Commissioner believes that such conditions would not be actual side effects from the use of the hearing aid but would be the result of misevaluation of the hearing problem or the result of a medical problem unrelated to the hearing aid itself.

But two comments mentioned that the ear may secrete additional cerumen (ear wax) to protect against the foreign object, i.e., the earmold, and that this would necessitate more frequent cleaning of the cerumen from the ear.

The Commissioner agrees with these comments and is amending the final regulation to include reference to the accelerated accumulation of cerumen as a possible side effect from the use of a hearing aid.

13. Five comments objected to the requirement that the User Instructional Brochure include the statement that infrequent use of a hearing aid usually does not permit the user to attain full benefit from its use. These comments pointed out that, in certain cases, the user should wear the hearing aid only at certain times. For example, a hearing aid user who works in high intensity noise conditions should not use the hearing aid at work. One of these comments said that the required statement would be confusing to such people.

The Commissioner believes that this statement is appropriate in the vast majority of cases and is therefore necessary because many users, to their own detriment, use their hearing aid only part-time. The Commissioner has, however, modified the statement to clarify the fact that it does not apply in all situations. The Commissioner believes that it is the responsibility of hearing aid dispensers to obtain sufficient information from the user regarding his type of employment or other activities to be able to inform him as to whether or not the hearing aid should be worn at all times.

14. Three comments objected to the requirement that the User Instructional Brochure include a statement that the use of a hearing aid is only part of hearing habilitation and that auditory training and instruction in lipreading may also be necessary. These comments noted that the dispenser would inform the user of any need for counseling during the adjustment period.

A hearing aid will not restore normal hearing, nor will a hearing aid always increase the ability of the user to distinguish different sounds. As a result, some hearing aid users become discouraged in the process of adapting to the use of a hearing aid, put the hearing aid aside, and discontinue its use in auditory habilitation.

The HEW Task Force pointed out that the problems resulting from a hearing loss are multidimensional, affecting both the total health and social well-being of the hearing-impaired person, and that there is a need to pursue a comprehensive and vigorous attack on hearing problems. Many people with hearing problems are not aware of the necessity and availability of auditory training and instruction in lipreading. The Commissioner has, therefore, determined that this statement should be retained in the User Instructional Brochure.

15. Five comments suggested that the manufacturer should not be required to include technical data relating to the hearing aid in the User Instructional Brochure because such information would not be understood by the average person and would be of little use to the consumer.

The Commissioner emphasizes that the User Instructional Brochure is intended not only for the hearing aid user but also for the physician, audiologist, and dispenser—it is useful to these person when fitting the hearing-impaired person with a hearing aid, when evaluating the appropriateness of an aid with which the user has been fitted, and when repairing the hearing aid. The Commissioner therefore rejects these comments.

16. The proposed regulation provided that the medical evaluation could not be waived if the prospective purchaser exhibited any one of seven listed conditions:

i. Visible congenital or traumatic deformity of the ear.

ii. History of active drainage from the ear within the previous 90 days.

iii. History of sudden or rapidly progressive hearing loss within the previous 90 days.

iv. Acute or chronic dizziness.

v. Unilateral hearing loss of sudden or recent onset within the previous 90 days.

vi. Audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz.

vii. Visible evidence of cerumen accumulation or a foreign body in the ear canal.

Many comments questioned whether dispensers could determine the existence of these conditions. Others questioned the completeness of the list.

The final regulation requires that all prospective hearing aid users obtain a medical evaluation to determine the cause of their hearing loss before pur-

chase of a hearing aid, unless the medical evaluation is specifically waived. The regulation also requires that each prospective user be provided with a User Instructional Brochure, which emphasizes the importance of medical evaluation. Although a waiver of the medical evaluation requirement is allowed, the hearing aid dispenser is prohibited from actively encouraging the use of this waiver.

The Commissioner wishes to avoid creating the impression that a medical evaluation is needed only if the enumerated symptoms are exhibited. As a result, the Commissioner is removing these seven conditions from the waiver provision. The final regulation requires that the hearing aid dispenser advise the prospective user to consult promptly with a licensed physician (preferably a physician who specializes in diseases of the ear) if the dispenser observes any of the listed conditions in the prospective user.

The original list of seven conditions was developed by the American Council of Otolaryngology (ACO) for use as a screening procedure by hearing aid dispensers. Although hearing aid dispensers cannot diagnose the cause of hearing loss, the Commissioner agrees with the ACO that hearing aid dispensers can recognize the existence of these symptoms. The Commissioner expects that hearing aid dispensers will be conscientious in impressing the importance of a medical examination upon prospective users exhibiting any of these symptoms.

One condition, pain or discomfort of the ear, has been added to the seven listed, because such pain or discomfort would indicate a medical problem that should be diagnosed and treated.

17. Nine comments objected to the caution statement required for hearing aids with a maximum sound pressure capability greater than 132 decibels (dB). Six of these comments stated that hearing aids with lower maximum output levels can cause auditory damage. The other three comments objecting to this statement, however, said that there is not sufficient evidence to support the assumption that hearing aids with maximum sound pressure capabilities greater than 132 dB can cause auditory damage.

As stated in the preamble to the proposed regulation, this statement was based on a recommendation from the Academy of Rehabilitative Audiology (ARA). It was stated by ARA that its recommendation was based on information available on the hazardous effects of high-level industrial and environmental noise and on certain scientific articles that advise caution in fitting high-output hearing aids. The academy noted that 132 dB might eventually be determined to be too high and some lower level should be substituted but that, in the absence of such data, the statement should be included in the regulation as proposed.

To avoid unnecessarily alarming persons who have reservations about hearing aids, the Commissioner feels that this statement should be required only for hearing aids whose maximum sound pressure capability exceeds 132 dB. The Commissioner expects that hearing health professionals will take the possible side effects from a high-output aid into consideration in selecting and fitting a hearing aid. Under the final regulation, this statement is required to be included in the warning statement entitled "Warning to Hearing Aid Dispensers."

18. Seven comments objected to the requirement that the entire text of proposed § 801.421, Hearing aid devices; conditions for sale be included in the User Instructional Brochure. These comments said that this section is long and cumbersome, would be difficult for the average consumer to understand, and certain passages of it, such as those about recordkeeping, are of little interest to the consumer.

The Commissioner is revising the final regulation so that the User Instructional Brochure include a summary of the requirements of § 801.421. This summary is now contained in the notice entitled "Important Notice for Prospective Hearing Aid Users." The Commissioner agrees that it is not necessary to require that the entire text of the regulation be included because the required summary will be more easily understood by hearing-impaired consumers.

19. Four comments suggested that the word "caution" be deleted from the "caution statements" required to be included in the User Instructional Brochure, because the word "caution" implied a danger that did not exist and would be unnecessarily alarming to some consumers. Eight comments objected to the required caution statement with reference to the sale of hearing aids being restricted by Federal regulation, because this tended to place hearing aids in the category of prescription devices, which they said is inappropriate. Two comments objected to the inclusion of the caution statement with respect to a hearing aid not restoring normal hearing and not preventing or improving the cause of the hearing loss. These comments said that this might be interpreted as implying that hearing aids will not improve hearing.

The final regulation is revised to require that the substance of three of the four caution statements in the proposed regulation be included in one section of the User Instructional Brochure under the heading, "Important Notice for Prospective Hearing Aid Users." The other caution statement concerning hearing aids with a maximum sound pressure capability greater than 132 dB is included in the User Instructional Brochure in the section entitled "Warning to Hearing Aid Dispensers."

The word "caution" is deleted from the "Important Notice for Prospective Hearing Aid Users" because the Commissioner believes that the use of such a word is not essential to the communication of necessary hearing aid health information and might unnecessarily frighten those consumers who have a negative attitude toward the use of a hearing aid.

The "Important Notice for Prospective Hearing Aid Users" does point out that Federal law restricts the sale of hearing aids. Upon the effective date of the regulation, hearing aids will become restricted devices under section 520(e) of the Federal Food, Drug, and Cosmetic Act. The Commissioner believes that it is necessary to alert hearing aid consumers and dispensers to this fact so that they are aware of the restrictions that apply to the sale of a hearing aid.

The Commissioner believes that the statement in the proposal that hearing aids do not restore normal hearing and do not prevent or improve hearing loss is necessary to protect prospective hearing aid users from misleading claims about the benefits to be expected from a hearing aid and, accordingly, is retaining the requirement that this statement appear in the User Instructional Brochure. Some promotional material for hearing aids, in the past, has been worded to imply that the hearing aid would restore normal hearing or would prevent or improve the organic conditions causing hearing loss.

Several comments suggested that a child with a hearing loss should be directed to an audiologist because of the importance of hearing habilitation to speech and language development, and the educational and social growth of the child.

The Commissioner agrees with these comments and is including such a statement in the "Important Notice for Prospective Hearing Aid Users".

20. Three comments objected to the fact that technical data, required to be provided in the User Instructional Brochure, would have to be measured in accordance with the test procedures of the Acoustical Society of America, Standard for Specification of Hearing Aid Characteristics, ASA STD 7–1976 (previously ANSI S3.22–1976). These comments generally pointed out that it was inappropriate for the Commissioner to establish such a test-reference requirement. One of these comments also argued that it would be necessary for the Commissioner to follow the procedures of section 514 of the Medical Device Amendments of 1976 to establish performance standards.

It should be emphasized that the proposed regulation did not establish, nor did it contain, performance standards for hearing aids. The regulation would merely describe the test reference methods to be used to determine the technical data values that must be included in hearing aid labeling and would not prescribe any minimum or maximum performance levels or product design requirements. The purpose of the test reference method requirement is to simplify comparing the performance of various hearing aids and measuring the performance of a particular hearing aid to determine if it is performing within labeled specifications and thus to ensure that the labeling is accurate and not false or misleading. The Commissioner believes that the technical data requirement is needed and is authorized by section 701(a) of

Federal Food, Drug, and Cosmetic Act for the effective enforcement of section 502 of the act, and that the labeling requirement is meaningless without a standardized test procedure to develop the required information.

21. Seven comments suggested that the term "useful gain" has no scientific meaning, was not used by the Acoustical Society of America, and should not be used in the regulation. These comments suggested that the term "Reference test gain" alone be used.

The Commissioner agrees with these comments and the change is made accordingly.

22. Four comments suggested that for clarity, the regulation should indicate that induction coil sensitivity is required only for aids with telephone coils. Further, five comments suggested that "input-output curve" and "attack and release times" are required only for hearing aids with automatic gain control.

The Commissioner agrees with all these comments and these changes are made accordingly.

23. One comment objected to the prohibition against including in the User Instructional Brochure any statement prohibited by FTC regulations. It asserted that the requirement is inappropriate as a matter of law because FDA regulations are enforceable by criminal penalties while FTC regulations are enforceable only by civil penalties, and if Congress had intended FTC regulations to be enforceable by criminal penalties, it would have so stated in the legislation governing that agency.

This statement (the prohibition) is not intended to incorporate by reference FTC regulations. The statement is intended to indicate that the requirement does not prevent FTC from enforcing its regulations. If a statement in the User Instructional Brochure violates FTC regulations but does not violate FDA regulations or otherwise constitute misbranding under section 502 of the act, the case will be referred to FTC for enforcement. It should be noted that certain statements that are prohibited by FTC regulations may also constitute misbranding under section 502 of the act and may thus be subject to action by either agency.

24. Two hundred and twenty-three comments supported the general requirement that a hearing aid shall not be sold unless the prospective user has been examined by a physician who has determined that the patient may be considered a candidate for a hearing aid. One hundred comments opposed this requirement.

Those comments supporting the general requirement generally stated that it is necessary that a physician examine a patient to determine the cause of the hearing loss and whether conditions causing the hearing loss are medically correctable. They also pointed out that a physician alone is trained to make such a diagnosis and that, if a hearing aid is purchased and a medically correctable condition goes undiagnosed and untreated, it could cause serious health problems for the hearing aid user.

Those opposing the general medical evaluation requirement generally argued that consumers should not be forced to see a physician if they do not want to, that the requirement would add an unnecessary cost to the already high cost of a hearing aid, and that physicians are not generally aware of the capabilities of hearing aids, even when such use is appropriate.

The Commissioner has determined that it is very important that all medically treatable conditions that may affect hearing be identified and treated before the hearing aid is purchased. The physician is the only person who is qualified to make a medical diagnosis and prescribe treatment. Some persons with remediable ear disease do not receive medical attention and rely solely on a hearing aid until the disease is no longer remediable. One purpose of the medical evaluation requirement is to prevent treatable conditions from going undiagnosed and untreated.

The general medical evaluation requirement is not expected to add considerably to the cost of a hearing aid. The Commissioner is aware of dispensing practices where the fee paid to the physician will be saved in the form of a lower fee paid to the hearing aid dispenser for the hearing aid. Further, many consumers will be saved the expense of an unnecessary purchase of a hearing aid.

The argument of people who feel that they should not be forced to undergo a medical evaluation is discussed below in the section dealing with the waiver of the medical evaluation requirement.

For these reasons, the Commissioner has determined that medical evaluation should generally be required before the purchase of a hearing aid.

25. Twenty-seven comments suggested that a medical evaluation should only be required for the first purchase of a hearing aid, because once the medical evaluation has been made, no conditions could arise that would make medical evaluation necessary in the future.

The Commissioner rejects these comments. The period between purchases could be 3 years or more. Many conditions causing further hearing loss could arise during such a period, and such conditions would warrant medical evaluation.

26. Forty-eight comments addressed the requirement that the medical evaluation occur 6 months before the purchase of the hearing aid. Twenty-one of these comments stated that the period should be less than 6 months. Most of these comments suggested a period of 3 months or less. The comments were generally based on the argument that too many changes could occur in a 6-month period and that these changes would negate a previous medical clearance. Ten comments said that 6 months was an appropriate period. Seventeen comments said that the period should be more than 6 months. Most of these comments suggested a period of 12 to 24 months. These comments generally argued that many people were slow to purchase a hearing aid and that the medical evaluation, once made, would be sufficient.

The Commissioner has determined that medical evaluation should be made no more than 6 months before the purchase of the hearing aid. This period is sufficiently long to give the purchaser time to shop around for a proper hearing aid, and it is sufficiently short to decrease the likelihood of substantial changes in the prospective user's medical condition.

27. Eight comments said that the parent or guardian of a prospective hearing aid user under the age of 18 should be permitted to waive the medical evaluation requirement for the child because parents should be free to determine what is in the best interest of their children.

Seventeen opposing comments specifically said that under no circumstances should a prospective hearing aid user under the age of 18 or the parent or guardian of such a person be permitted to obtain a hearing aid without a medical evaluation of the hearing loss because proper hearing is vital to the educational and social development of people in that age group.

The Commissioner has determined that, for those under the age of 18, there is a special concern that medical conditions that led to hearing impairment be identified, diagnosed, and treated by a physician. In addition to the risk to a child's health because of undiagnosed and untreated conditions, there is concern that a child's untreated, or inadequately treated, hearing impairment may interfere with the development of speech and language, learning, and normal adaptation to society. Accordingly, the final regulation does not allow a waiver of the medical evaluation requirement for anyone under the age of 18.

28. Three comments suggested that a physician may be unwilling to sign the required statement saying that he has found "no medical reasons why the individual should not be fitted with a hearing aid."

The Commissioner agrees that many physicians may be unwilling to sign such a statement. Such a statement is not necessary for the purposes of this regulation. The wording is therefore changed to reflect that the patient has been examined and that the physician has determined that the patient is a candidate for a hearing aid. This language was suggested in the comment of the American Council of Otolaryngology.

29. Thirty comments specifically said that a waiver of the medical evaluation requirement should be allowed. Sixty-one comments specifically said that such a waiver should not be allowed.

Comments supporting the waiver generally said that such a provision was necessary to protect the freedom of those who had strong feelings against being examined by a physician, especially those who had religious beliefs that forbade them from being treated by a physician. Many also pointed out that elderly peo-

ple in rural areas would be heavily burdened by the medical evaluation requirement, if a waiver were not allowed. Those who opposed the waiver, on the other hand, generally argued that medical evaluation is an absolute necessity because serious health problems could arise if a medical evaluation is waived and a correctable condition causing the hearing loss goes untreated.

Although the Commissioner strongly recommends that all prospective hearing aid users obtain a medical evaluation of a hearing loss before purchasing a hearing aid, he recognizes that a waiver should be allowed for those who have religious or personal beliefs against a medical evaluation and for the rare circumstance where an individual would have great difficulty in obtaining a medical evaluation due to the lack of a physician in the area. Accordingly, the final regulation permits a prospective hearing aid user over the age of 18 to waive the medical evaluation requirements.

30. Four comments objected to the statement in proposed § 801.421(a)(4) that State and local governments may impose more stringent conditions for sale than are imposed by the FDA regulation. These comments pointed out that section 521 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360k), which was added by the Medical Device Amendments of 1976, provides that State and local laws that are inconsistent with or in addition to the regulation are preempted.

Specifically section 521(a) of the act provides that no State or local government may establish or continue in effect any requirement with respect to the safety and effectiveness of a device or to any other requirement applicable to the device under the act, if such requirement is different from, or in addition to, requirements which are applicable to the specific device under the act. Section 521(b) provides that the Commissioner may upon application of a State or local government exempt a requirement from the preemption of section 521(a) if the State or local requirement for the device is more stringent than requirements for the device imposed by FDA under the act, or if the requirement is necessitated by compelling local conditions and compliance with the State or local requirement would not cause the device to be in violation of a requirement under the act.

Section 521 of the act applies to specific State and local requirements with respect to the safety and effectiveness of hearing aids. The section does not, however, preempt State and local laws with respect to the licensing of hearing aid dispensers, audiologists, or physicians. In the Commissioner's view, such laws do not constitute "requirements with respect to a device" within the meaning of section 521 of the act. Moreover, another provision of the Medical Device Amendments, section 520(e) (21 U.S.C. 360j(e)), explicitly recognizes the continued viability of State licensing laws to prescribe the practitioners qualified to administer or use devices.

Therefore, because State and local governments will be required to petition for exemptions from section 521(a) of the act for differing requirements concerning hearing aid labeling or conditions on the sale of hearing aids, the Commissioner has determined that the statement in the proposed regulation is inappropriate, and it is deleted from the final regulation. A proposed regulation governing the procedures pursuant to which State and local governments may petition for exemption from section 521(a) of the act will be published in the FEDERAL REGISTER in the near future.

The Commissioner has also determined that the preemption provision of section 521(a) of the act does not apply to rules or requirements established by Federal, State, or local agencies to control the expenditure of public funds for purchasing hearing aids and hearing health care services for the hearing impaired, i.e., third-party payment programs. Such requirements often establish standards for the screening and diagnosis of individuals who will receive hearing aids through publicly funded programs. These standards are to assure the proper use of public funds. It is the Commissioner's view that such rules and requirements for the expenditure of public funds for hearing aids are payment criteria established by the payer or purchaser and do not represent "requirements with respect to a device" within the meaning of section 521(a) of the act.

31. Four comments objected to the requirement that the dispenser read and explain to the prospective user the four caution statements imposed by § 801.420 (c)(2). These comments said this requirement is impractical and unnecessary and is an unwarranted interference in the hearing aid dispenser's business.

The Commissioner believes that this requirement is necessary to assure that the prospective user is informed of matters essential for the safe and effective use of a hearing aid. The burden placed on the hearing aid dispenser by this requirement is minimal. Therefore, the comments are rejected. The cautionary statements have been condensed into new sections entitled "Important Notice for Prospective Hearing Aid Users" and "Warning to Hearing Aid Dispensers". This notice for prospective hearing aid users describes, in lay language, the restrictions on the sale of hearing aids and the steps a prospective hearing aid user should follow to obtain quality hearing health care. The dispenser will be required to review this information with the prospective user before dispensing a hearing aid.

32. Four comments objected to the requirement that manufacturers and distributors provide, upon request, sufficient copies of the User Instructional Brochure for distribution to users or prospective users of hearing aids. These comments generally pointed out that this requirement was too broad, that too many people would request copies, and that it should be limited to those who have already decided to purchase a particular hearing aid.

The Commissioner believes that the User Instructional Brochure should be readily available to those who are shopping for a hearing aid and that such persons should be aware of the information contained in the User Instructional Brochure. The Commissioner also believes that any problems of persons requesting brochures for no reason will be minimal and will not significantly increase the cost of producing the brochure. Accordingly, this requirement is not changed in the final regulation.

33. Four comments objected to the requirement that the hearing aid dispenser retain for 3 years a copy of the physician's statement or the patient's waiver. Two of these comments said the period should be 5 years—the average life of a hearing aid. The other two comments said 1 year was sufficient because any problems would show up within 1 year.

The Commissioner is retaining the 3-year period for maintaining such records. Any problems resulting from the failure of the hearing aid dispenser to inform the user of the necessity of a medical evaluation would likely occur during the 3-year period after the sale.

34. Two comments suggested that it be clarified that mail order sales are not prohibited by the regulation.

The Commissioner is not aware of any abuses in mail order sales of hearing aids, and several users have indicated their satisfaction with hearing aids bought through the mail. The Commissioner has determined not to prohibit mail order sales provided that all the requirements of the regulation have been met. No statement in the regulation to this effect is necessary.

REVIEW OF LABELING

In the preamble to the proposed regulation, the Commissioner stated that the final regulation would be accompanied by a notice published in the same issue of the FEDERAL REGISTER and that the notice would require submission of copies of the proposed User Instructional Brochure and all other labeling for hearing aids no later than 60 days before the effective date of the final regulation.

At the time of the proposal, the legal authority for requiring such information was section 704 of the act (21 U.S.C. 374) relating to factory inspection. Section 704 authorizes FDA to enter at reasonable times and in a reasonable manner, establishments where devices are manufactured or held for sale and to inspect such establishments and related equipment and materials and specifically to inspect device labeling. It is the Commissioner's opinion that section 704 of the act, in authorizing on-site inspections of device labeling, also authorizes the Commissioner to require the submission of such labeling to FDA.

With the enactment of the Medical Device Amendments, additional authority was provided to FDA to require the submission of device labeling. Newly enacted section 519 of the act (21 U.S.C.

360i), Records and Reports on Devices, specifically authorizes FDA, within certain limits, to prescribe regulations to require device manufacturers to submit device labeling to FDA.

Accordingly, based on the authority provided to FDA by sections 519 and 704 of the act, the Commissioner has decided to require manufacturers of hearing aids that were in commercial distribution of the effective date of the regulation—August 15, 1977—to submit to FDA copies of the User Instructional Brochure and all other labeling for hearing aids. The Commissioner has also decided that this requirement should be included in the body of the final hearing aid labeling regulation, rather than as a separate notice as indicated in the proposal, to satisfy the requirements of section 519 of the act that a "regulation" be issued to require such submissions.

The Commissioner has determined that the submission of such labeling is necessary to ensure conformance with the requirements of § 801.420 and to determine whether such devices are adulterated or misbranded, or otherwise in violation of the act. The Commissioner has also determined that this requirement is not "unduly burdensome" within the meaning of section 519 of the act since such labeling is generally prepared by the manufacturer or distributor in the normal course of business.

The Commissioner also notes that the labeling for devices newly marketed subsequent to August 15, 1977 will be reviewed by FDA in accordance with the procedures of section 510(k) of the act (21 U.S.C. 360(k)) (premarket review); section 513(f)(2) of the act (21 U.S.C. 360c(f)(2)) (reclassification); or section 515 of the act (21 U.S.C. 360e) (premarket approval) of the act, as applicable.

Two comments on this portion of the proposal suggested that it would be difficult to comply with the labeling submissions requirement within the 120-day period allowed by the preamble to the proposed regulation. Accordingly, to allow more time to comply, § 801.420(d) requires that the manufacturer of a hearing aid submit to FDA a copy of the User Instructional Brochure and all other labels and labeling for the hearing aid on or before the effective date of the regulation—August 15, 1977—for those hearing aids in commercial distribution at that time.

Background data and information on which the Commissioner relies in promulgating this regulation have been placed on file for public review in the office of the Hearing Clerk, Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. The following is a list of these documents:

1. "Paying Through the Ear: A Report on Hearing Health Care Problems," Public Citizen's Retired Professional Action Group, 1973.

2. "Hearing Aids and the Older American," Hearings before the Subcommittee on Consumer Interests of the Elderly of the Special Committee on Aging, United States Senate, 93d Cong. 1st sess., Parts 1 and 2, Washington, DC, September 10, 1973.

3. Memorandum on the HEW Intradepartmental Task Force on Hearing Aids, including minutes of the HEW Intradepartmental Task Force Meetings and agency comments on the Task Force reports.

4. "Final Report to the Secretary on Hearing Aid Health Care," prepared by the Department of Health, Education, and Welfare Intradepartmental Task Force on Hearing Aids, July 1975. The report contains the following appendices:

Appendix A—Preliminary Report on Hearing Aid Health Care, September 1974.

Appendix B—Supplementary Report on Hearing Aid Health Care, October 1974.

Appendix C—Synopsis of written comments on the Preliminary and Supplementary Task Force Reports.

Appendix D—Transcript of public hearings on the Preliminary and Supplementary Task Force Reports.

Appendix E—Hearing Aid Specialists Act.

5. "1971 Health Survey Report," National Center for Health Statistics, Health Resources Administration, Public Health Service, Department of Health, Education, and Welfare.

6. "A Partnership in Better Hearing," a paper submitted by the Hearing Aid Industry Conference to the HEW Intradepartmental Task Force on Hearing Aids, August 13, 1974.

7. Minneapolis Study—Congressional Record—Senate, July 18, 1974, S12850. New York City Study—Congressional Record—Senate, July 11, 1974, S10300 through S10304. Baltimore Study—RPAG Report, "Paying Through the Ear—A Report on Hearing Health Care Problems," Private Citizens, Inc., 1973, Chapter I, p. 5. Detroit Study—Congressional Record—Senate, July 18, 1974, S12851 through S12854.

8. "The Hearing Aid Industry, A Survey of the Hard of Hearing," a report to the National Hearing Aid Society and the Hearing Aid Industry Conference, prepared by Market Facts, Inc., April 1971.

9. "1974 FDA Report on Hearing Aid Label Review."

10. S 3.22, 1976 American National Standard for Specification of Hearing Aid Characteristics.

11. S 3.3, 1960 (R. 1971) American National Standard Methods for Measurement of Electroacoustical Characteristic of Hearing Aids.

12. S 3.8, 1967 (R. 1971) American National Standard Method of Expressing Hearing Aid Performance.

13. "Staff Study of the State Licensing Laws and Training Requirements for Hearing Aid Dealers," Permanent Subcommittee on Investigations of the Senate Committee on Government Operations, 94th Cong., 1st Sess., October 1975.

14. "Problems of the Hearing Aid Industry," Hearings before the Subcommittee on Government Regulation of the Select Committee on Small Business, United States Senate, 94th Cong., 1st Sess., on Economic Problems in the Hearing Aid Industry, Washington, DC, May 20, 21, and 22, 1975.

15. Hearings before the Senate Permanent Subcommittee on Investigations, United States Senate, 95th Cong., 1st Sess., Hearings on the Hearing Aid Industry, Washington, DC, April 1 and 2, 1976.

16. Acoustical Society of America Standard, Specification of Hearing Aid Characteristics, ASA STD 7-1976 (ANSI S 3.22-1976), published by the American Institute of Physics for the Acoustical Society of America, 1976.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201 (h), (k), (m), (n), 502, 519, 520(e), 701(a), 704, 52 Stat. 1040–1041, as amended 1050–1051 as amended, 1055, 67 Stat. 477 as amended, 90 Stat. 564–565, 567 (21 U.S.C. 321(h), (k), (m), (n), 352, 360i, 360j(e), 371(a), 374)) 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 801 is amended as Subpart H by adding new §§ 801,420 and 801,421, to read as follows:

§ 801.420 Hearing aid devices; professional and patient labeling.

(a) *Definitions for the purposes of this section and § 801.421.* (1) "Hearing aid" means any wearable instrument or device designed for, offered for the purpose of, or represented as aiding persons with or compensating for, impaired hearing.

(2) "Ear specialist" means any licensed physician who specializes in diseases of the ear and is medically trained to identify the symptoms of deafness in the context of the total health of the patient, and is qualified by special training to diagnose and treat hearing loss. Such physicians are also known as otolaryngologists, otologists, and otorhinolaryngologists.

(3) "Dispenser" means any person, partnership, corporation, or association engaged in the sale, lease, or rental of hearing aids to any member of the consuming public or any employee, agent, sales person, and/or representative of such a person, partnership, corporation, or association.

(4) "Audiologist" means any person qualified by training and experience to specialize in the evaluation and rehabilitation of individuals whose communication disorders center in whole or in part in the hearing function. In some states audiologists must satisfy specific requirements for licensure.

(5) "Sale" or "purchase" includes any lease or rental of a hearing aid to a member of the consuming public who is a user or prospective user of a hearing aid.

(6) "Used hearing aid" means any hearing aid that has been worn for any period of time by a user. However, a hearing aid shall not be considered "used" merely because it has been worn by a prospective user as a part of a bona fide hearing aid evaluation conducted to determine whether to select that particular hearing aid for that prospective user, if such evaluation has been conducted in the presence of the dispenser or a hearing aid health professional selected by the dispenser to assist the buyer in making such a determination.

(b) *Label requirements or hearing aids.* Hearing aids shall be clearly and permanently marked with:

(1) The name of the manuacturer or distributor, the model name or number, the serial number, and the year of manufacture.

(2) A "+" symbol to indicate the positive connection for battery insertion, unless it is physically impossible to insert the battery in the reversed position.

(c) *Labeling requirements for hearing aids*—(1) *General.* All labeling information required by this paragraph shall be included in a User Instructional Brochure that shall be developed by the manufacturer or distributor, shall ac-

company the hearing aid, and shall be provided to the prospective user by the dispenser of the hearing aid in accordance with § 801.421(c). The User Instructional Brochure accompanying each hearing aid shall contain the following information and instructions for use, to the extent applicable to the particular requirements and characteristics of the hearing aid:

(i) An illustration(s) of the hearing aid, indicating operating controls, user adjustments, and battery compartment.

(ii) Information on the function of all controls intended for user adjustment.

(iii) A description of any accessory that may accompany the hearing aid, e.g., accessories for use with a television or telephone.

(iv) Specific instructions for:

(*a*) Use of the hearing aid.

(*b*) Maintenance and care of the hearing aid, including the procedure to follow in washing the earmold, when replacing tubing on those hearing aids that use tubing, and in storing the hearing aid when it will not be used for an extended period of time.

(*c*) Replacing or recharging the batteries, including a generic designation of replacement batteries.

(v) Information on how and where to obtain repair service, including at least one specific address where the user can go, or send the hearing aid to, to obtain such repair service.

(vi) A description of commonly occurring avoidable conditions that could adversely affect or damage the hearing aid, such as dropping, immersing, or exposing the hearing aid to excessive heat.

(vii) Identification of any known side effects associated with the use of a hearing aid that may warrant consultation with a physician, e.g., skin irritation and accelerated accumulation of cerumen (ear wax).

(viii) A statement that a hearing aid will not restore normal hearing and will not prevent or improve a hearing impairment resulting from organic conditions.

(ix) A statement that in most cases infrequent use of a hearing aid does not permit a user to attain full benefit from it.

(x) A statement that the use of a hearing aid is only part of hearing habilitation and may need to be supplemented by auditory training and instruction in lipreading.

(xi) The warning statement required by paragraph (c) (2) of this section.

(xii) The notice for prospective hearing aid users required by paragraph (c) (3) of this section.

(xiii) The technical data required by paragraph (c) (4) of this section, unless such data is provided in separate labeling accompanying the device.

(2) *Warning statement.* The User Instructional Brochure shall contain the following warning statement:

WARNING TO HEARING AID DISPENSERS

A hearing aid dispenser should advise a prospective hearing aid user to consult promptly with a licensed physician (preferably an ear specialist) before dispensing a hearing aid if the hearing aid dispenser determines through inquiry, actual observation, or review of any other available information concerning the prospective user, that the prospective user has any of the following conditions:

(i) Visible congenital or traumatic deformity of the ear.

(ii) History of active drainage from the ear within the previous 90 days.

(iii) History of sudden or rapidly progressive hearing loss within the previous 90 days.

(iv) Acute or chronic dizziness.

(v) Unilateral hearing loss of sudden or recent onset with the previous 90 days.

(vi) Audiometric air-bone gap equal to or greater than 15 decibels at 500 hertz (Hz), 1,000 Hz, and 2,000 Hz.

(vii) Visible evidence of significant cerumen accumulation or a foreign body in the ear canal.

(viii) Pain or discomfort in the ear.

Special care should be exercised in selecting and fitting a hearing aid whose maximum sound pressure level exceeds 132 decibels because there may be risk of impairing the remaining hearing of the hearing aid user. (This provision is required only for those hearing aids with a maximum sound pressure capability greater than 132 decibels (dB).)

(3) *Notice for prospective hearing aid users.* The User Instructional Brochure shall contain the following notice:

IMPORTANT NOTICE FOR PROSPECTIVE HEARING AID USERS

Good health practice requires that a person with a hearing loss have a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. Licensed physicians who specialize in diseases of the ear are often referred to as otolaryngologists, otologists or otorhinolaryngologists. The purpose of medical evaluation is to assure that all medically treatable conditions that may affect hearing are identified and treated before the hearing aid is purchased.

Following the medical evaluation, the physician will give you a written statement that states that your hearing loss has been medically evaluated and that you may be considered a candidate for a hearing aid. The physician will refer you to an audiologist or a hearing aid dispenser, as appropriate, for a hearing aid evaluation.

The audiologist or hearing aid dispenser will conduct a hearing aid evaluation to assess your ability to hear with and without a hearing aid. The hearing aid evaluation will enable the audiologist or dispenser to select and fit a hearing aid to your individual needs.

If you have reservations about your ability to adapt to amplification, you should inquire about the availability of a trial-rental or purchase-option program. Many hearing aid dispensers now offer programs that permit you to wear a hearing aid for a period of time for a nominal fee after which you may decide if you want to purchase the hearing aid.

Federal law restricts the sale of hearing aids to those individuals who have obtained a medical evaluation from a licensed physician. Federal law permits a fully informed adult to sign a waiver statement declining the medical evaluation for religious or personal beliefs that preclude consultation with a physician. The exercise of such a waiver is not in your best health interest and its use is strongly discouraged.

CHILDREN WITH HEARING LOSS

In addition to seeing a physician for a medical evaluation, a child with a hearing loss should be directed to an audiologist for evaluation and rehabilitation since hearing loss may cause problems in language development and the educational and social growth of a child. An audiologist is qualified by training and experience to assist in the evaluation and rehabilitation of a child with a hearing loss.

(4) *Technical data.* Technical data useful in selecting, fitting, and checking the performance of a hearing aid shall be provided in the User Instructional Brochure or in separate labeling that accompanies the device. The determination of technical data values for the hearing aid labeling shall be conducted in accordance with the test procedures of the Acoustical Society of America Standard for Specification of Hearing Aid Characteristics, ASA STD 7–1976.[1] As a minimum, the User Instructional Brochure or such other labeling shall include the appropriate values or information for the following technical data elements as these elements are defined or used in such standard:

(i) Saturation output curve (SSPL 90 curve).

(ii) Frequency response curve.

(iii) Average saturation output (HF-Average SSPL 90).

(iv) Average full-on gain (HF-Average full-on gain).

(v) Reference test gain.

(vi) Frequency range.

(vii) Total harmonic distortion.

(viii) Equivalent input noise.

(ix) Battery current drain.

(x) Induction coil sensitivity (telephone coil aids only).

(xi) Input-output curve (ACG aids only).

(xii) Attack and release times (ACG aids only).

(5) *Statement if hearing aid is used or rebuilt.* If a hearing aid has been used or rebuilt, this fact shall be declared on the container in which the hearing aid is packaged and on a tag that is physically attached to such hearing aid. Such fact may also be stated in the User Instructional Brochure.

(6) *Statements in User Instructional Brochure other than those required.* A User Instructional Brochure may contain statements or illustrations in addition to those required by paragraph (c) of this section if the additional statements:

(i) Are not false or misleading in any particular, e.g., diminishing the impact of the required statements; and

(ii) Are not prohibited by this chapter or by regulations of the Federal Trade Commission.

(d) *Submission of all labeling for each type of hearing aid.* Any manufacturer of a hearing aid described in paragraph (a) of this section shall submit to the Food and Drug Administration, Bureau of Medical Devices and Diagnostic Products, Division of Compliance, HFK–116, 8757 Georgia Ave., Silver Spring, MD 20910, a copy of the User Instructional Brochure described in paragraph (c) of this section and all other labeling for each type of hearing aid on or before August 15, 1977.

[1] Copies available from the Acoustical Society of America, 335 E. 45th St., New York, N.Y. 10017.

§ 801.421 Hearing aid devices; conditions for sale.

(a) *Medical evaluation requirements*—(1) *General.* Except as provided in paragraph (a) (2) of this section, a hearing aid dispenser shall not sell a hearing aid unless the prospective user has presented to the hearing aid dispenser a written statement signed by a licensed physician that states that the patient's hearing loss has been medically evaluated and the patient may be considered a candidate for a hearing aid. The medical evaluation must have taken place within the preceding 6 months.

(2) *Waiver to the medical evaluation requirements.* If the prospective hearing aid user is 18 years of age or older, the hearing aid dispenser may afford the prospective user an opportunity to waive the medical evaluation requirement of paragraph (a) (1) of this section provided that the hearing aid dispenser:

(i) Informs the prospective user that the exercise of the waiver is not in the user's best health interest;

(ii) Does not in any way actively encourage the prospective user to waive such a medical evaluation; and

(iii) Affords the prospective user the opportunity to sign the following statement:

I have been advised by

(Hearing aid dispenser's name)

that the Food and Drug Administration has determined that my best health interest would be served if I had a medical evaluation by a licensed physician (preferably a physician who specializes in diseases of the ear) before purchasing a hearing aid. I do not wish a medical evaluation before purchasing a hearing aid.

(b) *Opportunity to review User Instructional Brochure.* Before signing any statement under paragraph (a) (2) (iii) of this section and before the sale of a hearing aid to a prospective user, the hearing aid dispenser shall:

(1) Provide the prospective user a copy of the User Instructional Brochure for a hearing aid that has been, or may be selected for the prospective user;

(2) Review the content of the User Instructional Brochure with the prospective user orally, or in the predominate method of communication used during the sale;

(3) Afford the prospective user an opportunity to read the User Instructional Brochure.

(c) *Availability of User Instructional Brochure.* (1) Upon request by an individual who is considering purchase of a hearing aid, a dispenser shall, with respect to any hearing aid that he dispenses, provide a copy of the User Instructional Brochure for the hearing aid or the name and address of the manufacturer or distributor from whom a User Instructional Brochure for the hearing aid may be obtained.

(2) In addition to assuring that a User Instructional Brochure accompanies each hearing aid, a manufacturer or distributor shall with respect to any hearing aid that he manufactures or distributes:

(i) Provide sufficient copies of the User Instructional Brochure to sellers for distribution to users and prospective users;

(ii) Provide a copy of the User Instructional Brochure to any hearing aid professional, user, or prospective user who requests a copy in writing.

(d) *Recordkeeping.* The dispenser shall retain for 3 years after the dispensing of a hearing aid a copy of any written statement from a physician required under paragraph (a) (1) of this section or any written statement waiving medical evaluation required under paragraph (a) (2) (iii) of this section.

(e) *Exemption for group auditory trainers.* Group auditory trainers, defined as a group amplification system purchased by a qualified school or institution for the purpose of communicating with and educating individuals with hearing impairments, are exempt from the requirements of this section.

Effective date. This regulation shall become effective August 15, 1977.

(Secs. 201(h), (k), (m), (n), 502, 519, 520(e), 701(a), 704, 52 Stat. 1040–1041 as amended, 1050–1051 as amended, 1055, 67 Stat. 477 as amended, 90 Stat. 564–565, 567 (21 U.S.C. 321 (h), (k), (m), (n), 352, 360i, 360j(e), 371(a), 374).)

Dated: February 10, 1977.

SHERWIN GARDNER,
Acting Commissioner of Food and Drugs.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on January 13, 1977, and it is on file in the FEDERAL REGISTER library.

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Federal Register

TUESDAY, FEBRUARY 15, 1977

PART V

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

TRAWL FISHERIES AND HERRING GILLNET FISHERY OF EASTERN BERING SEA AND NORTHEAST PACIFIC

Preliminary Fishery Management Plan

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

TRAWL FISHERIES AND HERRING GILLNET FISHERY OF THE EASTERN BERING SEA AND NORTHEAST PACIFIC

Preliminary Fishery Management Plan

On the 4th of February, 1977, the Secretary of Commerce, through an appropriate delegation of authority to the Associate Administrator for Marine Resources of the National Oceanic and Atmospheric Administration and the Director of the National Marine Fisheries Service, published a Notice of Determination, Preparation, Issuance, and Implementation of Preliminary Fishery Management Plans at 42 FR 6873. In order that each Plan may have the widest possible circulation, the Secretary has decided that each should be published in the FEDERAL REGISTER.

Dated the 4th day of February, 1977 at Washington, D.C.

WINFRED H. MEIBORN,
Associate Director, National Marine Fisheries Service.

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1.0 INTRODUCTION

Resumption by Japan in 1954 of the limited trawling it had carried out prior to World War II marked the birth of the contemporary international fishery for bottomfish and herring in the Bering Sea-Aleutian Island region. Prior fishing was on a small scale—by Alaska natives for subsistence, by U.S. commercial fishermen for Pacific cod, and by U.S. and Canadian commercial fishermen for Pacific halibut. Since 1954 the fishery has expanded greatly in size of harvests and area of operations until it now ranks among the major fisheries in the world. The fishery has impacted both directly and indirectly on U.S. fisheries. This preliminary management plan is in direct response to the legislative requirements mandated by Pub. L. 94-265.

2.0 DESCRIPTION OF THE FISHERY

A. AREA STOCKS INVOLVED

The Bering Sea is characterized by an extensive area of continental shelf (approximately 1,000,000 km^2) and other features which favor the development of large bottomfish resources. Comprehensive resource surveys by the Soviet Union (Moiseev, 1964), the history of commercial fisheries (Pruter, 1973), and resource surveys by the National Marine Fisheries Service have shown the Bering Sea to be among the most productive fishing areas in the world. Over 300 fish species are known to occur in the Bering Sea (Wilimovsky, 1974), of which less than 15 species (excluding Salmon, shrimp, and crab) have been the target of the combined fisheries of Japan, the Republic of Korea, the Soviet Union, and the United States. In terms of commercial production, however, the annual total catch by all nations from the eastern Bering Sea approached or considerably exceeded 2 million mt during the 5 years 1969-1973, representing 76 to 86 percent of the groundfish and herring catch for the entire region from the Bering Sea to California.

There are important differences between the bottomfish community within the Bering Sea and those to the east and south in the Gulf of Alaska and Washington-California areas. In terms of biomass, the bottomfish community within the Bering Sea is much larger than its counterparts in the other areas. Since there also is a general simplification in the diversity of bottomfish species within the Bering Sea, the result is that certain species inhabiting the Bering Sea comprise some of the largest bottomfish resources found anywhere in the world.

Although in terms of biomass Alaska pollock dominates the community of demersal roundfishes within the eastern Bering Sea, there also are several other roundfishes which form large commercial aggregations. They include Pacific cod (*Gadus macrocephalus*); Pacific ocean perch (*Sebastes alutus*); sablefish, or blackcod (*Anoplopoma fimbria*); and grenadiers, or rattails (*Corphaenoides* sp.). Pacific cod mostly occurs on the continental shelf and often in close association with walleye, or Alaska, pollock (*Theragra chalcogramma*). The Bering Sea is characterized by a great reduction in number of rockfish species, compared to regions to the east and south, and a virtual absence of shallow-water forms. The three other rockfishes besides Pacific ocean perch which are fairly abundant in the eastern Bering Sea are *Sebastes aleutianus* and *Sebastes mystinus* and members of the genus *Sebastolobus*. All are residents of relatively deep waters of the outer shelf and upper continental slope. Sablefish and grenadiers are among the deepest-dwelling of the bottomfishes with commercial quantities occurring to depths of perhaps over 1,000 meters. Sablefish migrate rather freely between the deep waters of the slope and the shallower waters of the shelf; however, grenadiers are permanent residents of the deep, slope waters.

Whereas comparatively few species of commercially exploited roundfishes inhabit the eastern Bering Sea, there is no similar reduction in diversity of the flatfish community compared to the other areas to the east and south. Among the species which are known to occur in commercial aggregations are yellowfin sole (*Limanda aspera*), rock sole (*Lepidopsetta bilineata*), starry flounder (*Platichthys stellatus*), Alaska plaice (*Pleuronectes quadrituberculatus*), flathead sole (*Hippoglossoides classodon*), Pacific halibut (*Hippoglossus stenolepis*), Greenland turbot (*Reinhardtius hippoglossoides*), and arrowtooth flounder (*Atheresthes stomias*). Starry flounder is confined to coastal waters including those around the mouths of rivers. Yellowfin sole, rock sole, and Alaska plaice mostly occur on the Continental Shelf and, in summer particularly, on the inner shelf. Flathead sole, Pacific halibut, Greenland turbot, and arrowtooth flounder can be found in both shelf and slope waters with Pacific halibut occupying the greatest bathymetric range of all—from shallow bays to slope waters of over 500 meters in depth.

Elasmobranchs are relatively scarce in the eastern Bering Sea. Only skates (Rajidae) occur in significant quantities, but less so than in waters to the east and south.

In winter most of the bottomfishes retreat to waters overlying the outer shelf or upper slope in order to avoid below zero temperatures associated with the ice which at that time of year covers most

of the Bering Sea. The onset of spring brings warmer temperatures, a northward recession of ice, and the movement of many species out of the deep and onto the shelf to commence feeding migrations. Hydrographical conditions, even in summer, are conducive to formation of surface lenses of cold water (so-called "cold spots") whose location varies from year to year and even season to season. Knowledge of the location of these cold spots and being able to predict their effects on fishes are of great practical importance to the fishing fleets.

Although the picture is not clear, evidence suggests that most of the bottomfish in the eastern Bering Sea can be viewed as being permanent residents of that area. Some exchange with grounds off Siberia, the Gulf of Alaska, and as far south as off California has been noted for Pacific halibut and sablefish. The significance of these movements cannot yet be quantified, but it appears that the displacement of Pacific halibut and sablefish populations by emigration and immigration is a slow process. An aspect which could void the usefulness of this approach is the unknown extent to which the eastern Bering Sea may serve as a nursery ground for other regions. Large numbers of juvenile halibut are found in the southeastern Bering Sea but how important they are for replenishment of populations elsewhere is not clear. Little is known about the importance of the Bering Sea as a spawning and nursery area for sablefish, let alone whether juveniles from there contribute as recruits to populations outside the Bering Sea.

B. HISTORY OF EXPLOITATION

Sea mammals—not fish—were the incentive for the initial exploitation of Bering Sea resources in the 18th and 19th centuries. Some knowledge of fish and shellfish resources was obtained incidental to the early hunting of sea otters, fur seals, and whales, but the first commercial venture for bottomfish did not occur until 1864 when U.S. schooners began fishing for cod (Cobb, 1927). The fishery was carried out from ports in Washington and California as well as from shore stations in Alaska. Landings of cod were largest during World War I when almost 4 million fish were taken annually. Demand for cod declined in subsequent years and the U.S. line fishery was discontinued by the mid-1950's (Alverson et al., 1964). Most of the U.S. line catch of cod probably was from the Bering Sea and Aleutian Islands with the remainder from the Gulf of Alaska. Canadian vessels participated to a very limited extent in the line fishery for cod. It is not clear whether such participation occurred prior to 1900, but it is known that one or two Canadian operations for cod were carried out off Alaska about 1903 and 1913 (Forrester et al., in press).

Halibut were reported as being present in the Bering Sea by United States cod vessels as early as the 1880's. However, halibut did not reach North American markets from the Bering Sea until 1928 (Thompson and Freeman, 1930). Small and infrequent landings of halibut were made by United States and Canadian vessels between 1928 and 1950; catches were not landed every year until 1952 (Dunlop et al., 1964).

Present participation by North American nationals in the fisheries for bottomfish is confined to a relatively small longline fishery for halibut by United States and Canadian fishermen in the eastern Bering Sea and around the Aleutian Islands. There is also a small subsistence fishery for Pacific herring (*Clupea harengus pallasi*) by Alaskan natives at scattered places along the coast.

The earliest reported fishing by Japanese vessels off Alaska resulted from an order issued by the Secretary of Commerce in April 1918 and terminated in July 1921, which suspended the law forbidding the landing of catches by foreign vessels in U.S. ports. The suspension was to encourage the importation of fish in order to compensate for reduced food supplies caused by World War I. During the time the suspension was in effect, Japanese vessels landed 4½ million dry-salted cod and 176,000 pounds of stockfish at San Francisco and Puget Sound ports (Cobb, 1927). Although most of this cod was from around the Kurile Islands and Okhotsk Sea, in a few instances the Japanese vessels caught their fish off Alaska. Information is not available on whether the cod caught by Japanese vessels off Alaska were from the Bering Sea-Aleutian Island area or from the Gulf of Alaska.

The next effort by Japan off Alaska was a trawl fishery. Japanese exploratory trawlers carried out limited surveys of bottomfish resources in the Bering Sea as early as 1929–1931, and the first commercial operations were in 1933–1937 (Bourgois, 1951). This initial trawling venture by Japan was for fish meal and oil. It was followed by trawling in 1940–1941 for frozen fish for use as human food. Both the fish meal and frozen fish operations were off Alaska in Bristol Bay. The pre-World War II production of bottomfish by Japan from the Bering Sea is estimated to have amounted to less than 150,000 mt and was mostly comprised of flatfishes and walleye pollock.

Japan resumed its fishing operations in the eastern Bering Sea in 1954 and by 1961 the catch of bottomfish and herring had grown to over 600,000 mt. Catches declined to around 300,000 tons in 1963 but thereafter increased to about 1¾ million tons in 1971. The decline in catches between 1961 and 1963 was caused by overfishing of yellowfin sole by the combined efforts of Japan and the U.S.S.R.; the great increase in harvest after 1963 resulted from a shift to walleye pollock as Japan's primary target species. Catches of bottomfish and herring by Japan from the Bering Sea averaged 1.7 million mt annually during the period 1970–1974 and over 80 percent was comprised of walleye pollock.

The U.S.S.R. was the next nation to send its vessels to fishing grounds in the eastern Bering Sea. In 1959, the U.S.S.R. initiated winter fisheries for flatfishes and herring off Alaska in the southeastern Bering Sea (Chitwood, 1969). Both fisheries were at least in partial response to declining catches of flatfishes and herring in the Soviet Far East. Declining yields of yellowfin sole after the early 1960's and a sharp drop in production of herring after 1964 caused the Soviets to increasingly seek other species in the eastern Bering Sea. Alternate target species at first were rockfishes, primarily Pacific ocean perch, sablefish, and other species of flatfishes besides yellowfin sole. A significant recent event has been the entry of the U.S.S.R. into the fishery for walleye pollock which, since its inception, had been dominated by Japan. The first catch of pollock reported by the U.S.S.R. from the eastern Bering Sea was in 1969 when 27,000 mt were harvested. The Soviet fishery for pollock thereafter assumed increasing importance, exceeding 300,000 mt in 1974. Annual catches of bottomfish and herring from the Bering Sea by Soviet vessels averaged 0.4 million mt during the period 1970–1974.

In 1967 a trawler from South Korea commenced operations in the eastern Bering Sea. This scouting effort was followed in subsequent years by trawling for walleye pollock and other species of bottomfish and longlining for sablefish. Because South Korea has not provided statistics on its catches, it has been necessary to estimate harvests from observations by NMFS Law Enforcement personnel. According to these estimates, vessels of South Korea caught an annual average of 12,000 mt of bottomfish in the eastern Bering Sea during the period 1970–1974.

Participation has been minimal by other nations in the Bering Sea fisheries for bottomfish and herring. Polish vessels are believed to have caught about 400 mt of bottomfish in the eastern Bering Sea in 1973 and one trawler from Taiwan made three trips there between December 1974 and May 1975 with a reported catch target of 2,250 mt. Taiwan reportedly has few trawlers in its fleet which are large enough or suitably equipped for fishing in the eastern Bering Sea. However, there are many vessels among Taiwan's fleet of several hundred tuna longliners which could be converted to longlining for sablefish or other species.

Catches by each nation participating in the Bering Sea fisheries for bottomfish and herring are shown in Table 1 for the period 1933–1974. During this period, fishing by the United States was confined to comparatively small longline efforts for Pacific halibut and Pacific cod in addition to a subsistence fishery by Alaskan natives for herring. From the standpoint of size of harvests, the fishery has been dominated by Japan, whose cumulative catches of bottomfish and herring during the period 1933–1974 amounted to 14.9 million mt, or 77.8 percent of the all-nation harvest. The U.S.S.R. accounted for most of the remaining harvest—4.2 million mt or 21.7 percent of the cumulative total.

C. THE CONTEMPORARY FISHERY

(1) *United States and Canada.*—The contemporary United States fishery for bottomfish differs from those of other nations not only from the standpoint of the much smaller harvests taken, but also in the basic character of the fishing operation itself. The United States (and Canadian) fishery is directed entirely toward Pacific halibut and is prosecuted by small longline vessels. These longliners deliver their catches (Table 1) to ports in Alaska, Washington, and Canada when they are processed ashore. In contrast, other nations carry out distant-water operations in which fleets of large catcher vessels seek a variety of species and the catches are either processed at sea aboard the catcher vessels themselves or are transferred to factoryships, also called motherships, for processing. The foreign, distant-water fleets typically include a variety of support vessels besides factoryships, including refrigerator transports, oil tankers, personnel transports, hospital ships, tugs, patrol vessels, and research vessels. The flotillas of Japanese and Soviet vessels are self-supporting and usually obtain all their supplies and services from the homeland, except sometimes to obtain emergency medical aid in the United States for seriously injured or sick crewmen.

TABLE 1.—*Catches of bottomfish and herring in thousands of metric tons by all nations from the Bering Sea and Aleutian Island regions in calendar years 1933–74. Catches shown for the United States are Pacific halibut. Not included for the United States are catches of herring by Alaska Natives for subsistence purposes and line catches of Pacific cod during the period 1882–1955 which were mostly delivered to Washington and California ports*

Year and fishery	United States	Canada	Japan	U.S.S.R.	South Korea	Poland	Taiwan	Total
1933:								
Bottomfish			3					3
Herring	(?)							
Total			3					3
1934:								
Bottomfish			15					15
Herring	(?)							
Total			15					15
1935:								
Bottomfish			29					29
Herring	(?)							
Total			29					29
1936:								
Bottomfish			27					27
Herring	(?)							
Total			27					27
1937:								
Bottomfish			43					43
Herring	(?)							
Total			43					43
1940:								
Bottomfish			10					10
Herring	(?)							
Total			10					10
1941:								
Bottomfish			12					12
Herring	(?)							
Total			12					12
1945:								
Bottomfish	Tr.							Tr.
Herring	(?)							
Total	Tr.							Tr.
1950:								
Bottomfish	Tr.							Tr.
Herring	(?)							
Total	Tr.							Tr.
1952:								
Bottomfish	Tr.							Tr.
Herring	(?)							
Total	Tr.							Tr.
1952:								
Bottomfish	Tr.							Tr.
Herring	(?)							
Total	Tr.							
Total	Tr.							
1954:								
Bottomfish	Tr.			12				12
Herring	(?)							
Total	Tr.			12				12
1955:								
Bottomfish	Tr.			15				15
Herring	(?)							
Total	Tr.			15				15
1956:								
Bottomfish	Tr.	Tr.		25				25
Herring	(?)							
Total	Tr.	Tr.		25				25

Year and fishery	United States	Canada	Japan	U.S.S.R.	South Korea	Poland	Taiwan	Total
1957:								
Bottomfish	Tr.		24					24
Herring	(?)							
Total	Tr.		24					24
1958:								
Bottomfish	Tr.	1	48					49
Herring	(?)							
Total	Tr.	1	48					49
1959:								
Bottomfish	1	1	162	75				239
Herring	(?)			10				10
Total	1	1	162	85				249
1960:								
Bottomfish	1	2	449	95				547
Herring	(?)			10				10
Total	1	2	449	105				557
1961:								
Bottomfish	1	1	540	100				642
Herring	(?)		74	80				154
Total	1	1	614	180				796
1962:								
Bottomfish	2	2	479	95				578
Herring	(?)		10	150				160
Total	2	2	489	245				738
1963:								
Bottomfish	2	2	238	102				344
Herring	(?)		32	150				182
Total	2	2	270	252				526
1964:								
Bottomfish	1	1	357	122				481
Herring	(?)		43	176				219
Total	1	1	400	298				700
1965:								
Bottomfish	Tr.	Tr.	353	170				523
Herring	(?)		36	10				46
Total	Tr.	Tr.	389	180				569
1966:								
Bottomfish	Tr.	Tr.	420	130				550
Herring	(?)		28	5				33
Total	Tr.	Tr.	448	135				583
1967:								
Bottomfish	1	1	750	178	Tr.			930
Herring	(?)		33					33
Total	1	1	783	178	Tr.			963
1968:								
Bottomfish	Tr.	Tr.	918	134	1			1,053
Herring	(?)		45	22				67
Total	Tr.	Tr.	963	156	1			1,120
1969:								
Bottomfish	Tr.	Tr.	1,073	186	11			1,270
Herring	(?)		36	94				130
Total	Tr.	Tr.	1,109	280	11			1,400
1970:								
Bottomfish	Tr.	1	1,480	232	5			1,718
Herring	(?)		28	117				145
Total	Tr.	1	1,508	349	5			1,863
1971:								
Bottomfish	Tr.	Tr.	1,806	397	10			2,213
Herring	(?)		23	23				46
Total	Tr.	Tr.	1,829	420	10			2,259
1972:								
Bottomfish	Tr.	Tr.	1,917	412	9			2,338
Herring	(?)		6	54				60
Total	Tr.	Tr.	1,923	466	9			2,398
1973:								
Bottomfish	Tr.	Tr.	1,755	348	7	Tr.		2,110
Herring	(?)		2	34	Tr.			35
Total	Tr.	Tr.	1,757	382	7	Tr.		2,146
1974:								
Bottomfish	Tr.	Tr.	1,574	436	34		Tr.	2,044
Herring	(?)	(?)	6	20	Tr.			26
Total	Tr.	Tr.	1,580	456	34		Tr.	2,070

(2) *Japan.*—In keeping with the vast size of its operations, Japan employs more kinds of vessels and fishing gear than do the other nations which participate in the Bering Sea fisheries. There are four kinds of operations: a Mothership Fishery, North Pacific Trawl Fishery, Landbased Dragnet Fishery, and North Pacific Longline-Gillnet Fishery. Bottomfish are the primary target for all four fisheries.

The Mothership Fishery is licensed by Japan to fish only in the Bering Sea. It consists of several factoryships, each of which is accompanied by a fleet of catcher vessels. Catcher vessels servicing the motherships are Danish seiners, pair trawlers, or otter trawlers, with otter trawlers coming into increasing use in recent years. Otter trawlers tow a bag-shaped net whose mouth is held open vertically by floats on the head rope and weights on the foot rope and horizontally by so-called otter boards attached to or ahead of the wings of the net. Pair trawlers are simply two otter trawl vessels paired up to tow the same net. Danish seines differ from otter trawls primarily in the way they are set and hauled. Otter trawls are typically set directly off the stern and fished by the towing action of the vessel as it moves straight ahead. Danish seines are set on a triangular course, starting from and returning to an anchored buoy, and retrieved by winching the net in as the vessel slowly moves ahead (Alverson, et al., 1964).

Each mothership fleet consists of a factoryship, some of which are over 20,000 gross tons, which may be tended by up to about 30 catcher vessels. The mothership operations have changed from a short "fill-in" operation between salmon driftnet fishing in the spring and Antarctic whaling in the winter during the early period of the fishery to a year-around operation now. Over the years there has been some reduction in the numbers of catcher vessels assigned to each mothership but a great increase was achieved in the fishing power of individual catcher vessels as they became progressively larger and equipped with more powerful engines.

The North Pacific Trawl Fishery is carried out by trawlers operating independent of motherships and either offloading their catches to refrigerator transports or delivering the catches to Japan themselves. Since 1967, Japan has limited by license the number of vessels in this fishery to 42 at any one time; they may fish in waters east of 170° E and north of 10° N, which includes the Bering Sea, Aleutian Islands, and waters south and east off the Pacific Coast of the United States and Canada. Although some side trawlers were employed in this fishery in former years, fishing is now entirely by factory stern trawlers. A typical Japanese factory trawler now participating in the Bering Sea fishery is over 3,000 gross registered tons, and some exceed 5,000 gross tons with crews of 130 people or more.

As in the Mothership Fishery, there has been a major upgrading of the fleet over the years. This upgrading has been in terms of size of vessels; power of propulsion engines; and efficiency of fishing gear, navigation equipment, and fish-finding devices. For example, between 1967 and 1975 the average size of the factory trawlers employed in the North Pacific Trawl Fishery increased from about 1,500 gross tons to over 2,500 tons. The result of this upgrading has been a marked increase in the fishing power of the fleet which is not apparent when one considers just the numbers of vessels employed.

The landbased Dragnet Fishery ("hokutensen") is similar to the North Pacific Trawl Fishery in that the catcher vessels operate independent of motherships. Vessels licensed by Japan for the Landbased Dragnet Fishery are restricted to operating in waters north of 48° N latitude, east of 153° E longitude, and west of 170° W longitude. Most of the catch

by this fishery is from waters off Asia around Kamchatka and the northern Kuriles. Under terms of a bilateral agreement between the United States and Japan, the catch in 1975 and 1976 by the Landbased Dragnet Fishery off Alaska is limited to 35,000 mt (all species) in the eastern Bering Sea and 8,500 tons (all species) from the Aleutian Island area. Landbased dragnet vessels in current use are mostly stern trawlers, and limited by the Japanese Government to a maximum size of 349 gross registered tons.

Between 1961 and 1968 the fishing power of the Landbased Dragnet Fishery increased much more than the 3.5 fold increase in the number of vessels would indicate. In the earlier years most of the vessels were less than 100 gross tons and employed Danish seines. In contrast, almost all of the vessels are now of the 350 gross ton maximum size limit and most are stern trawlers which are generally more efficient than Danish seiners. As remarked earlier, vessels in the Landbased Dragnet Fishery deliver their catches to Japan rather than offloading to refrigerator transports.

Vessels are licensed separately by Japan to employ longlines for harvesting bottomfish. Pacific halibut was a primary target species off Japan's longline fishery west of 175° W longitude in the Bering Sea during the late 1950's and early 1960's and east of 175° W longitude for 2 years after 1962, when Japan was no longer required to abstain from fishing for Pacific halibut there under terms of the North Pacific Convention. As Japan's catches of halibut in the Bering Sea declined, the longliners increasingly switched to sablefish as the target species, first within the Bering Sea and later to the Gulf of Alaska.

TABLE 2.—*Number of vessels in Japanese fisheries and their catches from the Bering Sea and Aleutian Island region in thousands of metric tons. Years 1933–70 are calendar years; years 1971–75 are from Nov. 1 of preceding year to Oct. 31 of indicated year. Differences between catches shown here for the years 1971–74 and those in table 1 are due to use of calendar years in table 1 and "fishing years" here*

	1933	1934	1935	1936	1937	1940	1941	1954	1955	1956	1957	1958	1959	1960	1961
Mother ship:															
Number of mother ships	1	1	1	1	1	1	1	2	2	4	4	4	6	13	33
Number of catcher vessels	5	5	11	8	13	8	12	9	6	12	13	29	68	169	372
Bottom fish catch	3	15	29	27	43	10	12	10	9	23	24	48	160	449	539
Herring catch														+	74
North Pacific Trawl:															
Number of independent trawlers [1]								2	3	1			2		3
Bottom fish catch								2	6	2			2		1
Herring catch															+
North Pacific longline-gillnet:															
Number of longline-gillnet vessels [2]															
Bottom fish catch															
Herring catch															
Land-based dragnet:															
Number of vessels [3]															54
Bottom fish catch															
Herring catch															
Total catch by all gear:															
Bottom fish	3	15	29	27	43	10	12	12	15	25	24	48	162	449	540
Herring															74

	1962	1963	1964	1965	1966	1967	1968	1969	1970	1971 [4]	1972 [4]	1973 [4]	1974 [4]	1975
Mother ship:														
Number of mother ships	23	19	14	13	14	14	12	11	10	11	10	10	10	8
Number of catcher vessels	230	254	202	172	159	172	167	172	137	161	144	121	134	117
Bottom fish catch	471	225	339	326	390	705	774	818	1,180	1,233	1,287	1,099	950	(5)
Herring catch	10	32	43	36	28	33	23	12	11					(5)
North Pacific trawl:														
Number of independent trawlers [1]	2	2	2	2	2	42	42	42	42	42	42	42	42	42
Bottom fish catch	6	9	10	16	14	11	93	204	243	493	560	602	595	(5)
Herring catch							21	22	16					(5)
North Pacific longline-gillnet:														
Number of longline-gillnet vessels [2]						22	22	21	22	22	22	22	22	22
Bottom fish catch							1	1	1	6	2	4	5	(5)
Herring catch								1	1					(5)
Land-based dragnet:														
Number of vessels [3]	70	93	103	126	172	173	184	182	182	182	182	182	182	182
Bottom fish catch	2	4	8	11	16	34	50	50	56	69	90	66	91	(5)
Herring catch						+	1	1	+					(5)
Total catch by all gear:														
Bottom fish	479	238	357	353	420	750	918	1,073	1,480	1,801	1,939	1,771	1,551	(5)
Herring	10	32	43	36	28	33	45	36	28					(5)

[1] Number of vessels licensed to fish east of 170° longitude and north of 10° N. latitude, which includes waters to the east and south of the Bering Sea.
[2] Licensed to fish in Bering Sea and to south and east off the United States and Canada. Comparatively little fishing was done by this fleet in the Bering Sea.
[3] Number of vessels licensed for eastern and western North Pacific. Numbers that fished in Bering Sea are unknown but were only a fraction of those licensed.
[4] Combined bottom fish and herring catch.
[5] Not available.

Although bottomfish are the main target of all four kinds of Japanese fishing operations in the Bering Sea, some Pacific herring also are taken by each of the fisheries. Largest catches of herring are by the Mothership Fishery and North Pacific Trawl Fishery, but the value of herring caught by gillnets is greater than the comparatively small catches would suggest because the fish are taken for their valuable roe just prior to spawning. Catches of herring by the Landbased Dragnet Fishery are so small as to be viewed as being incidental to other target species.

Development of the different kinds of Japanesese fishing operations in the Bering Sea can be traced in Table 2. It was not until the late 1960's that other than mothership operations became significant, but the Mothership Fishery is still the dominant operation.

The North Pacific Trawl Fishery began in earnest in 1968 and catches increased dramatically from about 100,000 mt in that year to almost one-half million tons in 1971, just 3 years later. The Landbased Dragnet Fishery is very important in the western Pacific off Kamchatka and the Kurile Islands; however, in the eastern Bering Sea the catches by that fishery have not exceeded 100,000 tons in any year. Fishing by the North Pacific Longline-Gillnet fleet largely has been in the northeastern Pacific Ocean (mainly Gulf of Alaska), as reflected by the small catches shown in Table 2 for the Bering Sea.

During the entire period 1933–1974, Japanese vessels harvested a total of 14.9 million mt of bottomfish and herring from the Bering Sea and Aleutian Island regions. Over 97 percent of the total was from the Bering Sea with less than 3 percent coming from the Aleutian Island region. By kind of fishing operation, the Mothership Fishery accounted for 77.1 percent of Japan's total catch of bottomfish and herring during the period 1933–1975, North Pacific Trawl Fishery 19.0 percent, Landbased Dragnet Fishery 3.7 percent, and North Pacific Longline-Gillnet Fishery only 0.2 percent.

(3) *U.S.S.R.*—In 1959 the U.S.S.R. initiated winter fisheries for flounders and herring in the eastern Bering Sea. Both fisheries were at least in partial response to declining catches in the Soviet Far East. Declining production from its traditional herring and flounder fisheries in the eastern Bering Sea led the U.S.S.R. to seek other species as well as to send parts of its fleet to fishing grounds to the south and east off the United States and Canada.

Within the Bering Sea, the most significant recent event has been the entry of the U.S.S.R. into the fishery for walleye pollock which was initiated by Japan. The first Soviet catch of walleye pollock was reported in 1969 when 27,000 mt were taken. The Soviet fishery for pollock thereafter assumed increasing importance, exceeding 300,000 mt in 1974. Other bottomfish which have been sought

by the Soviets in the Bering Sea include Pacific ocean perch, sablefish, Pacific cod, and grenadiers. The fishery for grenadiers is a comparatively recent development in deeper waters than the other species of bottomfish are generally taken.

As for Japan, the catches of bottomfish by the U.S.S.R. from the Aleutian Island area have been much smaller than from the Bering Sea. In terms of relative importance, however, the Aleutian Island area has contributed a larger fraction of the Soviet catch (11 percent of the combined Bering Sea-Aleutian Island total during 1959–1975) than the Japanese catch. The main target of the Soviet fishery around the Aleutians was rockfish (mainly Pacific ocean perch) until recent years when their declining abundance led to a diversion to other species, such as walleye pollock, Atka mackerel (*Pleurogrammus monopterygius*), and grenadiers. Soviet catches from the combined Bering Sea-Aleutian area during the period 1959–1975 are shown in Table 1.

Whereas Japan uses trawls, Danish seines, longlines, and gillnets for harvesting bottomfish and herring, all of the Soviet catch is taken by trawls. Soviet trawlers are either side trawlers or factory stern trawlers (Hitz, 1968). Three classes of side trawlers have been used. Smallest and oldest of the side trawlers is the SRT class of 265–335 gross tons and a crew of 22–26. Next largest of the side trawlers is the SRTR class of refrigerated medium trawlers of 505–630 gross tons and a crew of 26–28. Largest of the refrigerated side trawlers is the SRTM class of around 700 gross tons with a crew of about 30. In recent years a new class of stern ramp trawler, apparently designed as an improvement on the SRTM, has appeared off Alaska. These vessels, known as SRTK's are about 775 gross tons and reportedly have the same basic hull and general machinery below decks as SRTM's but above deck are redesigned for more efficient trawling over the stern. Factory stern trawlers are the largest and increasingly common kind of catcher vessel employed by the U.S.S.R. The so-called BMRT has been the most common factory stern trawler and is of 3,170 gross tons with a crew of about 90. A new class of factory stern trawlers, the RTM, has come into increasing use. It is of the same general size as a BMRT but has the advantage of a larger deck area aft for handling gear and fish. Several new classes of "supertrawlers" have been scheduled for serial production by the U.S.S.R. They will be from 4,000 to 5,500 gross tons, up to 7,000 horsepower, and with double the daily fish production and freezing capacity of the factory stern trawlers now being used by the Soviets.

The U.S.S.R., perhaps more than any other nation, relies on the expeditionary or flotilla concept in its fishing operations. This involves the deployment of a variety of vessels in close support of its catcher fleet. Support vessels include factoryships for receiving and processing catches; refrigerator transports to replenish stores aboard the catcher vessels and transport their catches to the homeland; oil tankers; personnel transports; tugs; patrol vessels; and, occasionally, even hospital ships. The refrigerator transports are of varied sizes with some upwards of 200 meters in length and 25,000 gross tons or more. A large refrigerator transport of 25,000 tons has a hold capacity to store about 12,000 tons of frozen products—which is equivalent to the capacity loads of about 13 BMRT's or RTM's, or 6 to 8 of the new supertrawlers recently ordered into production.

The Soviets rely more heavily on support vessels than does Japan. This appears to be mainly because the catches are not processed to as great an extent aboard Soviet vessels as aboard Japanese vessels. Aboard Japanese vessels the catches are typically processed into "surimi" (minced flesh), fillets, and fish meal; a smaller proportion of the catch is frozen in the round or in a headed and eviscerated form than on Soviet vessels. The more highly processed Japanese products occupy less space aboard the catcher vessels, which means they do not have to unload as frequently as Soviet vessels; hence there is less need for refrigerator transports to be used in support of Japanese fishing operations than for Soviet operations.

As was remarked to be the case for Japan, there also has been a substantial increase in the fishing power of the Soviet fleet. In Table 3 the numbers of Soviet vessels sighted by NMFS personnel off Alaska during the period 1963–1974 are shown along with their equivalent gross tonnages. A great increase in Soviet fishing power off Alaska is shown by the shift within the side trawler class from the use of small SRT's to large SRTM's and the increasing deployment of large factory stern trawlers. Factory stern trawlers now comprise over one-third of the Soviet cather fleet off Alaska compared to only about 9 percent of the fleet in 1963–1965. The gross tonnages for the combined classes of vessels are better measures of the fishing power than just the number of vessels. As can be seen from Table 3, the gross tonnage and, hence relative fishing power of the Soviet fleet, increases from an average level of 160,000 gross tons in 1963–1965 to an average level of 514,000 gross tons in 1972–1974. The figures in Table 3 are for all waters off Alaska but are indicative of the general situation which has occurred within the Bering Sea.

TABLE 3.—*Number and equivalent gross registered tonnage of different Soviet catcher vessels sighted off Alaska, 1963–74. Sightings were by NMFS personnel and do not include repeated sightings of the same vessels. Observations not extensive enough to provide comparative numbers in 1959–62 and unavailable for 1975*

Year	Side trawlers					Factory stern trawlers			Equivalent gross tons, all classes
	SRT	SRTR	SRTM	SRTK	Total	BMRT	RTM	Total	
1963	155	7			162	10	1	11	79,000
1964	237	9	12		258	28	1	29	167,000
1965	330	11	25		366	33	3	39	233,000
1966	248	9	44		301	42	4	46	245,000
1967	191	7	66		264	53	4	57	279,000
1968	97	5	90		192	71	3	74	324,000
1969	66	9	127		202	79	6	85	377,000
1970	65	11	144		220	97	6	103	447,000
1971	92	7	102	2	203	102	5	107	423,000
1972	111	6	161	7	285	100	11	111	497,000
1973	25	7	155	9	196	105	15	120	493,000
1974	25	7	174	8	214	117	14	131	545,000

(4) *Other Nations.*—The first commercial fishery by South Korea was in 1967 when a refrigerator transport accompanied by eight pair trawlers was deployed to the eastern Bering Sea. These vessels fished for less than 1 week and only caught an estimated 100 tons of walleye pollock. The size of South Korea's fishing operations was increased in subsequent years and, by 1974, consisted of two factoryships—accompanied by a fleet of 29 dependent trawlers and eight longliners, whose catch was estimated to be 40,000 mt of bottomfish, mostly walleye pollock, but including about 3,000 tons of sablefish and 200 tons of herring. Catches were smaller in 1975 because of declines in demand and prices for fish coupled with increased operating costs. However, South Korea has announced its intention to increase its harvest of walleye pollock from the eastern Bering Sea in 1976 more than 100,000 mt over the 1975 level. Because South Korea has yet to provide the United States with statistics on its fishing operations off the Bering Sea and Pacific coasts of the United States, it has been necessary to estimate catches by its fleets from observations made by personnel of the Law Enforcement Division, NMFS.

Fishing by other nations in the eastern Bering Sea has been limited to exploratory probes by Taiwan and Poland. One Taiwanese stern trawler made three trips between December 1974 and May 1975 with a catch target of 2,250 mt. Taiwan has not provided the United States with statistics on its fishing operations. Poland has reported to the United States that one of its factory trawlers caught 393 tons of bottomfish in the eastern Bering Sea in 1973.

D. IMPACTS ON DOMESTIC FISHERY

The kinds of impacts on domestic fisheries have been much the same from the distant-water fleets of all nations. Impacts have included the interferences with or destruction of longline and pot gear employed by United States halibut and crab fishermen, pre-emption of fishing grounds by the large foreign fleets, and the reduction in abundance of spe-

cies of current or potential interest to U.S. fishermen.

The impact on stocks of fish of current interest to United States fishermen have been largely confined to halibut and crab. Purposeful and incidental catches of Pacific halibut by the foreign fisheries have contributed to a large decline in that resource, with serious economic consequences to United States and Canadian setline fishermen. In the Bering Sea, the halibut catch by trawls generally is incidental, but the Japanese land-based dragnet fishery occasionally targets on halibut. The total halibut catch by foreign trawl fleets in the Bering Sea increased throughout the 1960's and peaked at an estimated 11,519 mt in 1971. The trawl catch declined during 1972–1974, and a further decline is expected in 1975–1976 as a result of trawl closures agreed to by Japan and the U.S.S.R. About 100 million snow (Tanner) crabs (*Chionoecetes* sp.) mostly of subcommercial sizes, are estimated by United States and Canadian observers to be taken annually as a by-catch in Japan's Bering Sea fishery for bottomfish. Most of the juvenile snow crab die even when they are returned to sea. An evaluation of the impact on the United States crab fishery of these large incidental catches must await knowledge of the rate of natural mortality in order to calculate how many would have been available for capture as adults in the United States crab fishery if they had not been killed by Japan's trawl fisheries.

Among the major concerns voiced by U.S. fishermen has been the possibility that foreign trawlers catch many salmon of U.S. origin. Only a few salmon have been observed in hundreds of trawl hauls examined by U.S. observers aboard Japanese vessels trawling in the Bering Sea in spring, summer, and fall. Considerably more salmon, as high as 150 fish per vessel per month, have been observed during trawling in winter along the 100 meter isobath from Unimak Island along the shelf north, and west to about 161° N latitude in the eastern Bering Sea. The vast majority of the salmon observed have been chinook salmon (*Oncorhynchus tshawytscha*), with only one or two chum salmon (*O. keta*) seen out of a total of perhaps 400 fish observed.

The foreign fisheries of the eastern Bering Sea and Aleutian Island area have impacted both indirectly and directly on the populations of marine mammals. A direct impact has been the increasing frequency that northern fur seals (*Callorhinus ursinus*) on the Pribilof Islands have been observed to have scraps of fish netting, plastic wrapping bands, and other debris around their necks or otherwise entangled on their bodies. Most of the material must have been lost or deliberately discarded by the large foreign fishing fleets. Deaths of some fur seals are known to have resulted from entangling in such materials, but the total impact cannot yet be evaluated. An indirect impact of the fisheries would be in competing for some of the same species of fish and shellfish used as food by the northern fur seal and other marine mammals.

Among the many species of bottomfish present in the Bering Sea only Pacific halibut is now sought by United States fishermen. There are many reasons for this anomalous situation, including distance from United States markets and processing plants, but a contributing factor has been that foreign fishing had reduced stock densities of most of the desirable species to levels where they no longer are capable of yielding catch rates at which United States fishermen can afford to fish. The early foreign fisheries operated at high catch rates as a result of fishing on previously unutilized stocks. The effect of these high catch rates was to subsidize some of the costs required to develop the foreign harvesting and processing technology for utiliizing the resources. United States industry will not have the same advantage unless foreign fishing is reduced or stopped for a period of several years to allow the stocks to rebuild to higher levels of abundance.

Whereas the kinds of impacts on domestic fisheries have been much the same from the distant-water fleets of all nations, the degree of impact has been different between nations. This can be attributed to several factors, including differences in the size of the fishing and support operations by each nation; species sought; fishing gear and techniques used; and whether or not fisheries agreements have been signed with the United States and, if so, how well the agreements have been complied with.

Greatest impact from the standpoint of size of operations has been by Japan, followed by the U.S.S.R.—with South Korea a distant third and all other nations causing far less impact. Although Japan and the U.S.S.R. have tended to target on the same general species, the greater use of midwater trawling by the U.S.S.R. (and the U.S.S.R.'s tendency to seek certain species, such as grenadiers, in deep water) probably has resulted in a proportionately smaller Soviet by-catch of halibut and king crab (*Paralithodes camtschatica*), the species of most concern to United States fishermen. On the other hand, it appears from observations by NMFS Law Enforcement personnel that the Soviets frequently under-report their catches of bottomfish which means that the by-catch of halibut may be greater than inferred from official Soviet statistics.

The degree of compliance of Soviet vessels to agreements with the United States is much more difficult to evaluate than for Japan. Japan has agreed not to retain trawl-caught halibut east of 175° W longitude except in International North Pacific Fisheries Commission (INPFC) Area D when they may be retained during a short period in the spring. United States and Canadian personnel are allowed on some Japanese vessels to routinely observe operations and, in effect, evaluate the compliance or non-compliance with the agreements. The U.S.S.R. has not agreed to refrain from fishing for Pacific halibut but says its vessels do not target on halibut or take many as a by-catch. Few United States or Canadian observers have been allowed on Soviet vessels to check these statements and, on the few occasions they were permitted aboard Soviet vessels in the Bering Sea, felt that the activities were research in character and therefore not representative of commercial operations.

Overfishing is the most difficult of all impacts to evaluate, particularly in regard to those nations which do not provide the United States with any statistics on their fishing operations or those nations providing statistics of limited usefulness. Although vessels from South Korea first began fishing in the Bering Sea in 1967, no statistics had been provided to the United States on its operations to the time of this writing (July 1976), nor has Taiwan provided any data on its catches. The U.S.S.R. began fishing in the Bering Sea in 1959, but only began providing the United States with catch and effort data in 1967. Japan has furnished us with catch records from the inception in 1954 of its post-World War II fishery in the Bering Sea. Statistics provided to the United States by Japan have been among the most detailed and useful that are compiled by any nation in the world.

For lack of adequate statistics on catches and fishing effort from all nations participating in the Bering Sea fisheries for bottomfish and herring, it has been difficult, and for some species impossible, to adequately assess the effects of fishing. This situation has been aggravated by the pulse nature of the distant-water fisheries which have tended to generate massive fishing effort on localized stocks and thereby rapidly reduce their abundance. United States investigators often have not been aware that this process was occurring until after the foreign fleets had abandoned their operations to move on to other stocks, species, or fishing grounds. Some improvement has occurred in recent years with the incorporation of safeguards into the fisheries agreements with Japan and the U.S.S.R. in the nature of quotas on the catches of some species, provisions not to target on other species, as well as certain time-area and gear restrictions.

E. REGULATORY HISTORY AND VIOLATIONS

(1) *Fishery Restrictions.*—(a) *United States.* Fishery restrictions on U.S. nationals are those established by the State of Alaska and those promulgated by the Internatoinal Pacific Halibut Commission (IPHC), for the taking of Pacific halibut. The State of Alaska requires all commercial fishermen landing any species of fish or shellfish in Alaska to possess a commercial fishing license and the captain or operator-owner of all fishing vessels are required to license their vessels and the fishing gear employed. Buyers are required to keep records of each purchase and show the number and name of the vessel, the State license number of the vessel, date of landing, pounds

purchased or each species, statistical area in which the fish were caught, and the kind of gear used in taking the fish. There are no other substantive regulations by the State of Alaska on the taking of bottomfish, other than Pacific halibut, in the Bering Sea and Aleutian Island area.

Restrictions by the IPHC on the taking of Pacific halibut pertain to licenses, gear, size limits, seasons, closed nursery grounds, and catch quotas. Licenses issued by the IPHC are required for all vessels fishing for halibut except those less than 5 net tons or vessels which use hook and line gear other than setlines. As regards both commercial and sport gear, only hook and line gear is authorized by the IPHC for the taking of halibut.

(b) *Foreign nations.* The two kinds of fishery restrictions placed on foreign nations have been: (1) U.S. law establishing a 12-mile contiguous fishing zone (CFZ) within which all foreign fishing and activities in support of fishing are prohibited. This law was approved on October 14, 1966. Prior to then foreign fishing was prohibited within U.S. territorial waters which extend three miles from shore.

Enforcement of the CFZ and territorial waters is accepted by nations fishing off the U.S. as a U.S. right and responsibility.

(2) Provisions confained in bilateral and other agreements signed by foreign nations with the U.S. These provisions usually have been agreed to through a negotiating process in which concessions have been made by foreign governments to U.S. fishery interests in exchange for concessions granted by the U.S. to the fishery interests of other nations. Concessions granted by the U.S. have been in the nature of permission to fish or carry out activities in support of fishing at certain times and places within the CFZ. Concessions granted by foreign nations have been in the form of agreement not to fish at certain times and places on the high seas outside the CFZ, not to target on certain species, and not to exceed certain levels of catch (catch quotas).

Enforcement of the provisions of bilateral and other agreements and the penalties imposed for violations is the responsibility of the individual nations. For example, the U.S.S.R. is responsible for enforcing and imposing penalties on its own nationals for violations of provisions relating to fishing activities on the high seas, outside the U.S. CFZ.

Several restrictions on foreign nations in the form of catch quotas and area-time closures have been in effect in the eastern Bering Sea and Aleutian Island region in recent years. Annual catch quotas, in metric tons, for Japanese and Soviet fisheries for 1974–1976 are as follows:

Area and fishery	Species	1973	1974	1975–76
Japan				
Eastern Bering Sea mother ship—North Pacific trawl	Pollock	1,500,000	1,300,000	1,100,000
	Ground fish other than pollock.			150,000
	Herring	[1] (33,000)	[1] (33,000)	15,000
North Pacific long-line gill net	Herring	[2] (4,000)	[2] (4,000)	3,000
Land-based dragnet	Ground fish (all species)			35,000
Aleutian region:				
Mother ship—North Pacific trawl, and Long-line gill net.	Pacific Ocean perch			9,000
	Sablefish			1,200
Land-based dragnet	Ground fish (all species)			8,000
U.S.S.R.				
Eastern Bering Sea	Flatfish	100,000		[3]
	Pollock			210,000
	Herring			30,000
	Other species			120,000
Aleutian region	Rockfish			12,000
	Other species			16,000

[1] 1969 level.
[2] 1971 level.
[3] Included in other species.

Area-time closures currently in effect for Japanese and Soviet trawl fisheries in the southeastern Bering Sea are shown in Figures 1 and 2. Other provisions relating to Japanese and Soviet fisheries are shown in Figures 3 and 4.

Restrictions on fishing by Polish vessels in the eastern Bering Sea and Aleutian Island region are shown in Figure 5.

Major provisions of the U.S. fisheries agreement with South Korea are shown in Figure 6.

No official fisheries agreements have been signed with Taiwan.

(2) *Violations and Gear Losses*—Violations and gear losses off Alaska can be categorized as (1) violations of international agreements, (2) violations of U.S. waters and continental shelf resources, and (3) losses of crab pots and halibut skates to foreign fisheries. For convenience these violations and gear losses are summarized below according to nation. Not included in the following summaries are violations by foreign vessels fishing for crab, shrimp, or salmon, which will be discussed in the preliminary management plans for those fisheries.

A summary of violations of U.S. waters and continental shelf resources is provided in Table 4.

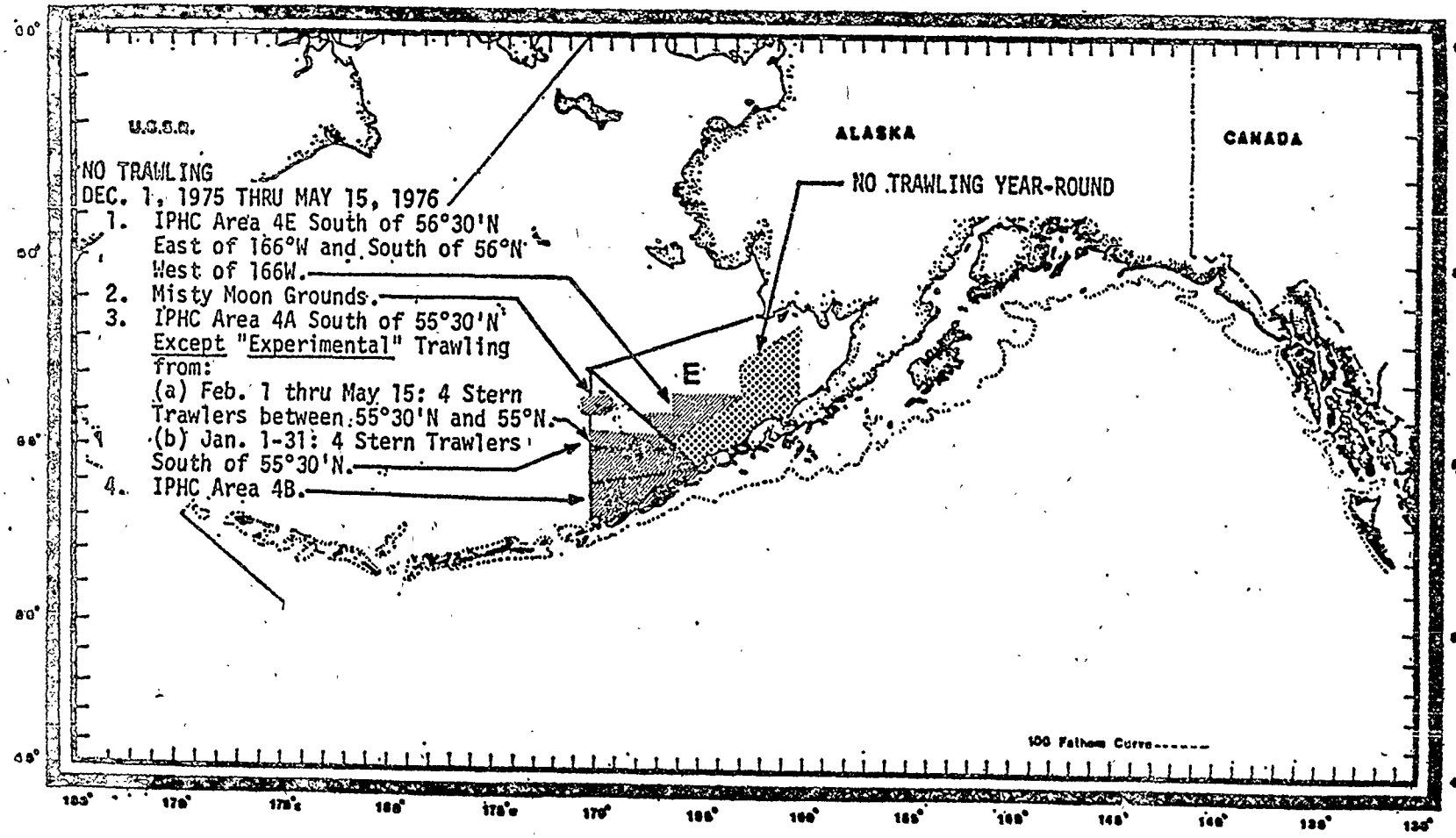


Figure 1.--Area-time closures and restrictions for Japanese trawl fisheries in southeastern Bering Sea, effective through December 31, 1976.

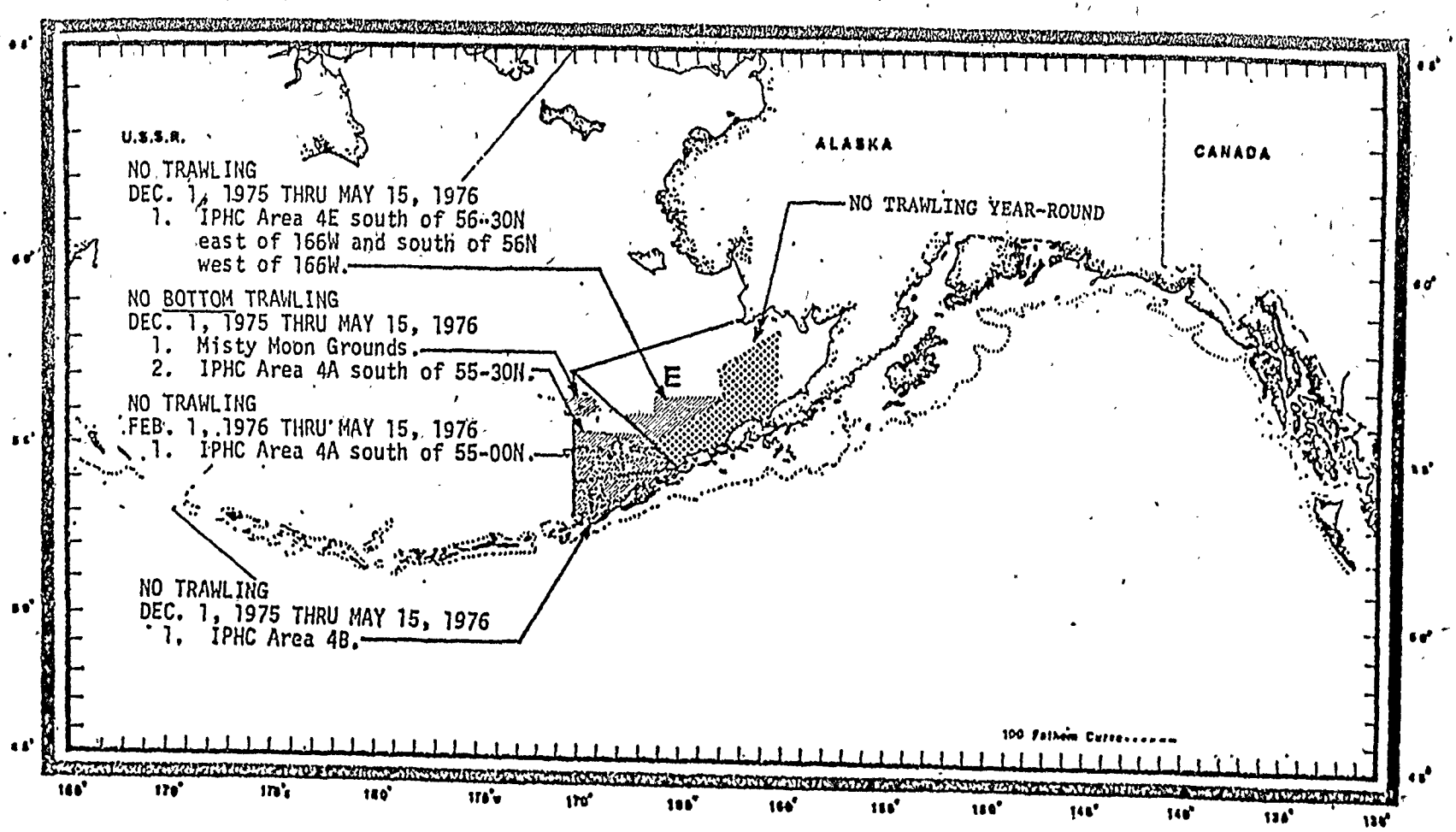


Figure 2.--Area-time closures and restrictions for Soviet trawl fisheries in southeastern Bering Sea, effective through December 31, 1976.

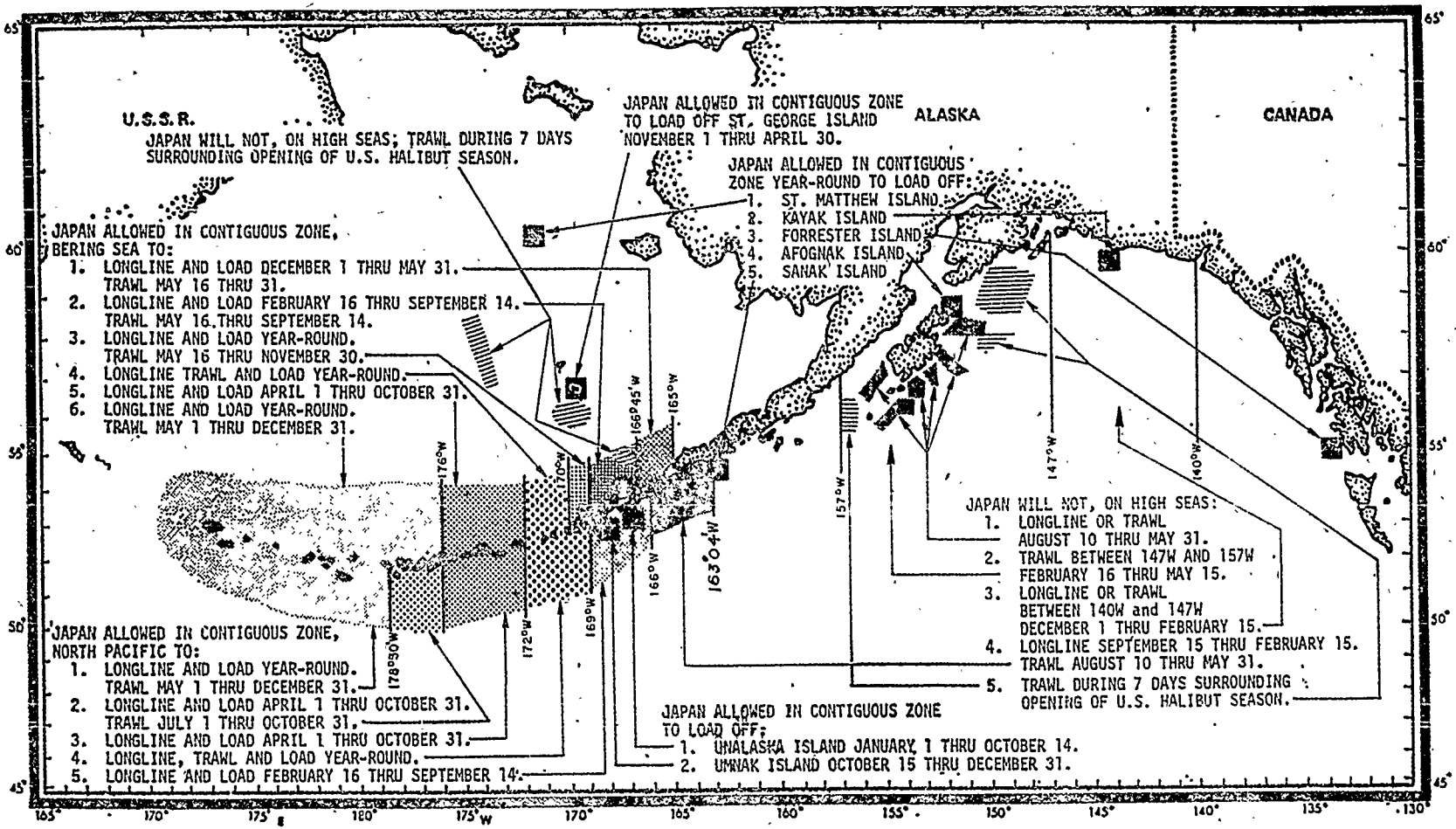


Figure 3.--Area-time closures and restrictions for Japanese trawl and longline fisheries in the Gulf of Alaska, effective through December 31, 1976.

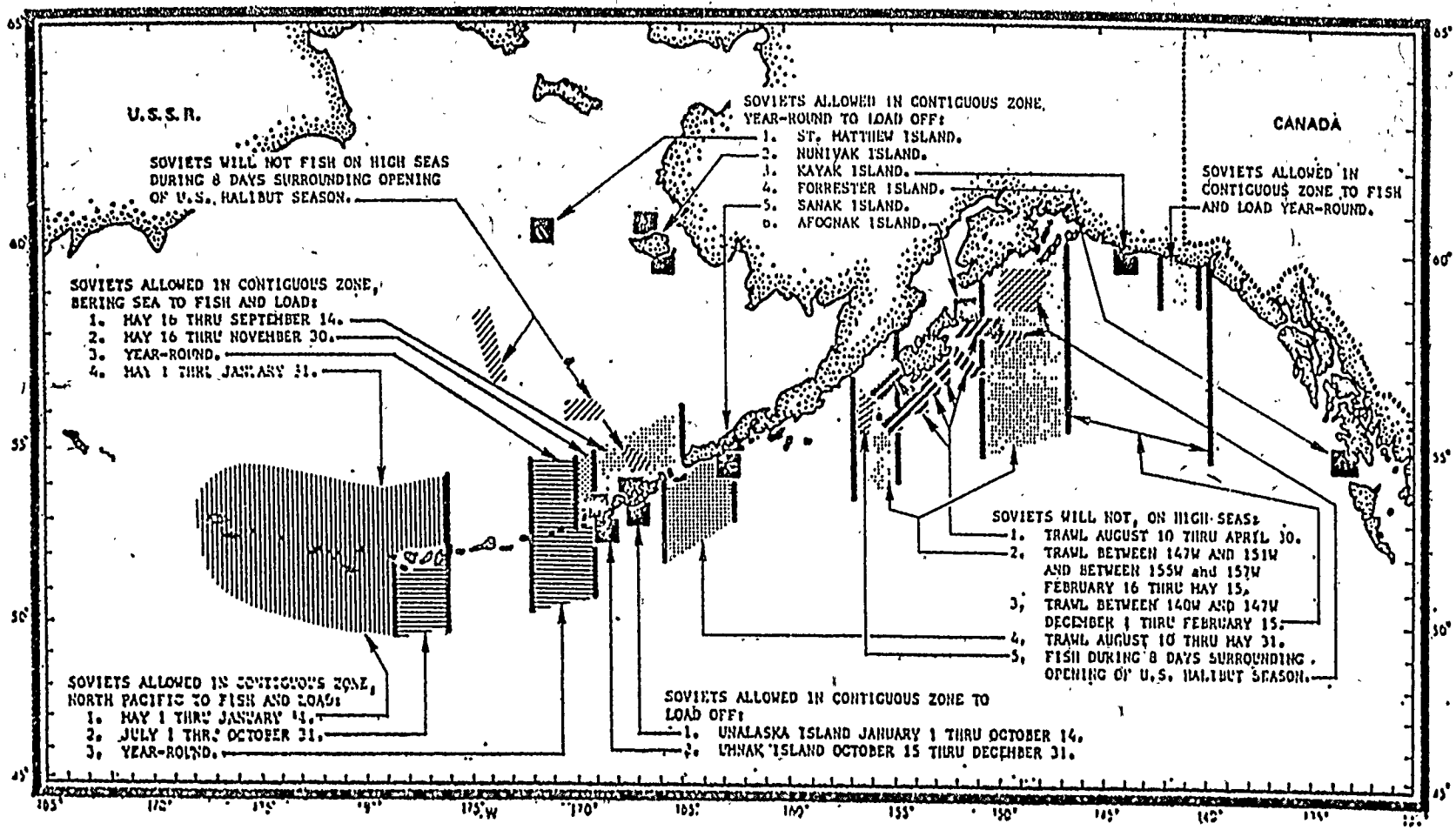


Figure 4.--Area-time closures and restrictions for Soviet trawl fisheries in the Gulf of Alaska, effective through December 31, 1976.

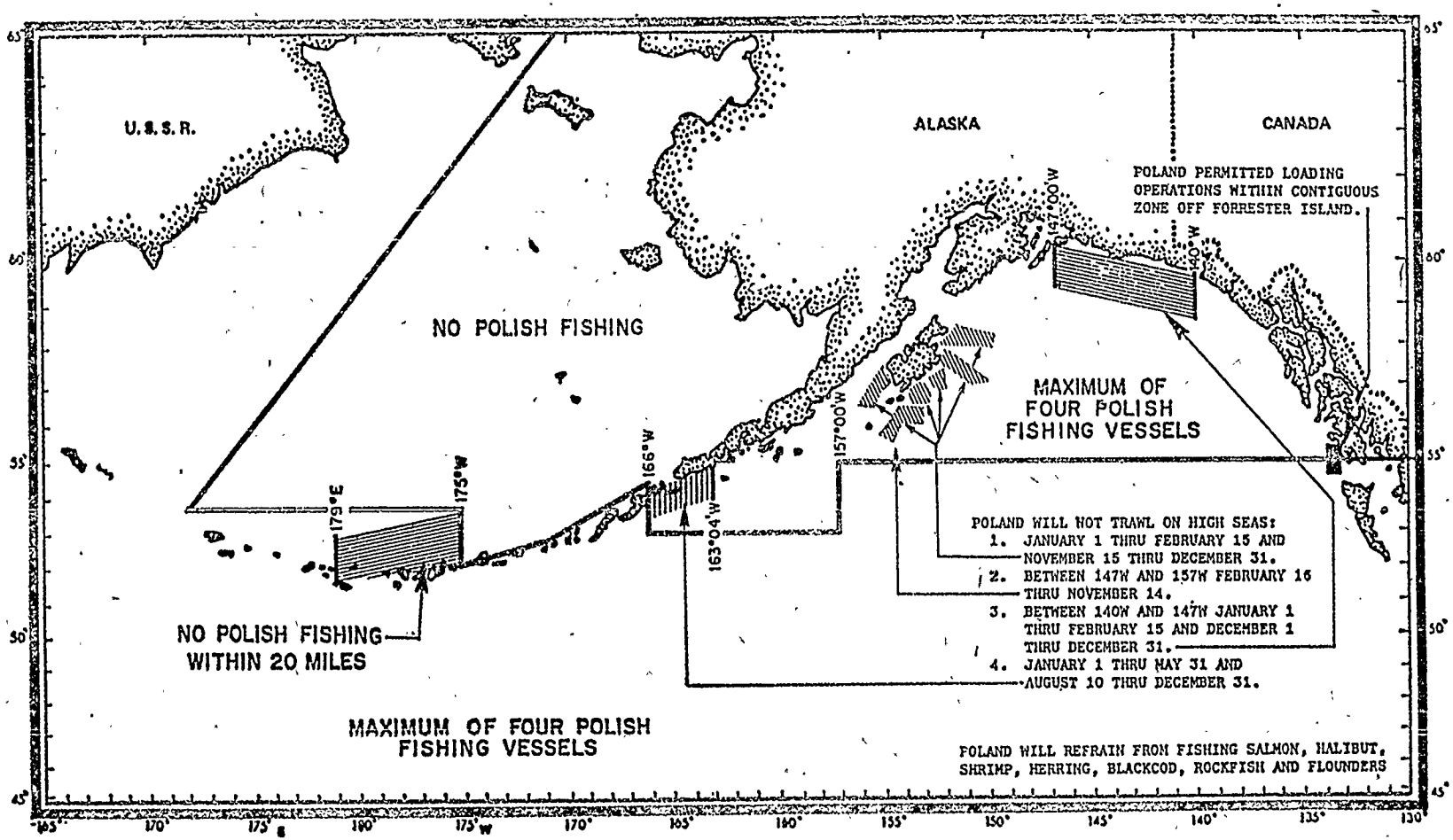


Figure 5.--Area-time closures and restrictions for fisheries of the Polish People's Republic in the Gulf of Alaska, effective through December 31, 1976.

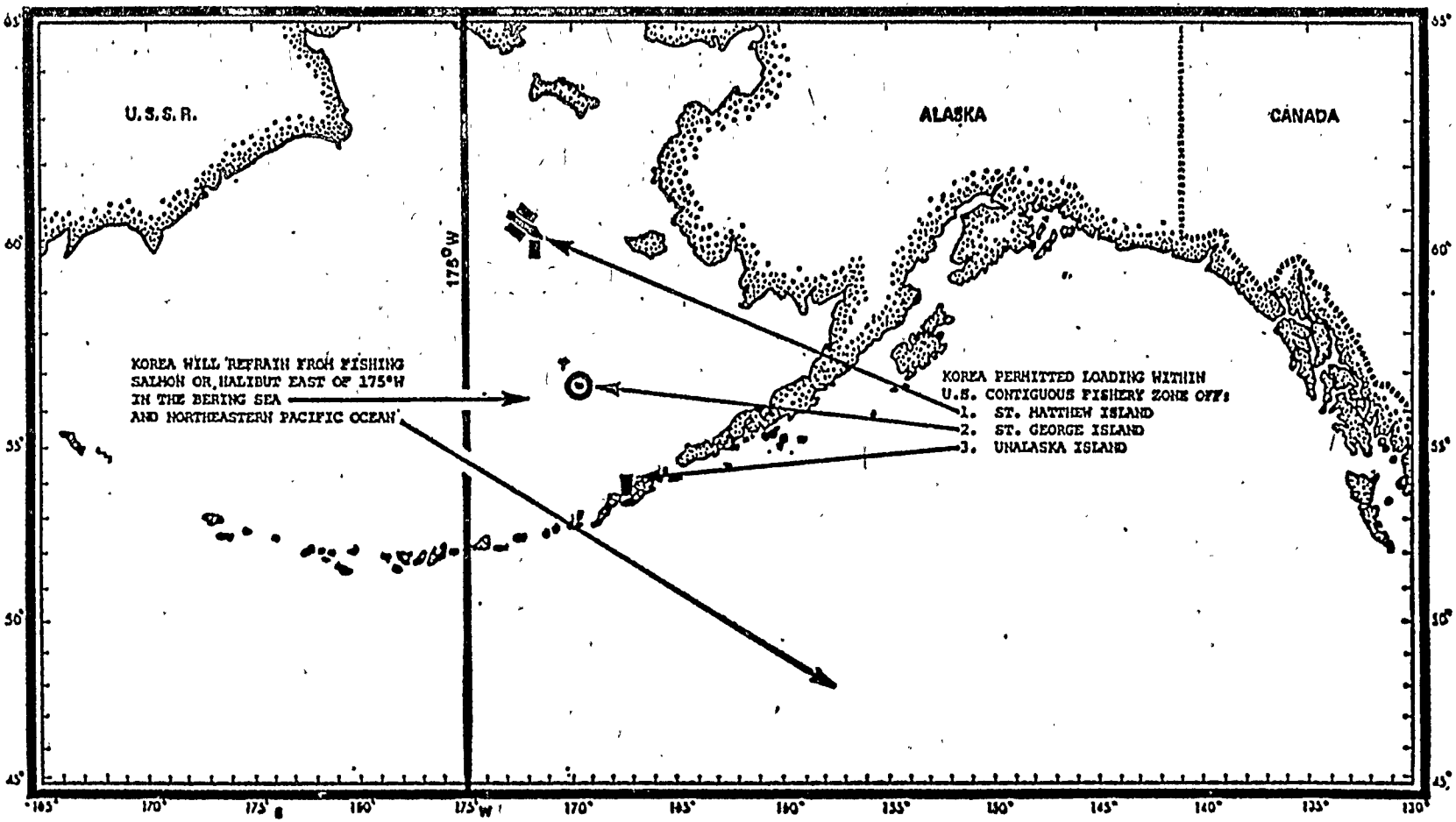


Figure 6.--Provisions of the United States-Republic of Korea Fisheries Agreement effective through December 12, 1977.

TABLE 4.—*Number of documented violations by foreign vessels of U.S. waters and continental shelf resources in the Bering Sea and Aleutian Islands, 1961–April 1976*

Nation:	Number of violations
U.S.S.R.	3
Japan	11
South Korea	-----
Taiwan	-----
Canada	1
Total	15

As may be seen in the preceding table, Japan accounted for 11, or 74 percent, of the documented violations. Considering the large size of its fishing operations, only three violations by the U.S.S.R. is a surprisingly small number. The 11 violations by Japan consisted of 6 CFZ violations by trawlers fishing for groundfish in Aleutian Island waters, 2 CFZ violations by longliners fishing for sablefish in Aleutian Island waters, and 1 violation by a trawler retaining king crab in violation of the continental shelf resource provision. Two of the three violations by the U.S.S.R. were of the CFZ by trawlers fishing for groundfish in Aleutian Island waters; the other was a CFZ violation in Norton Sound in support of the Soviet herring fishery. The single violation by Canada was a longliner fishing in U.S. territorial waters.

A summary of the violations of international agreements is provided in Table 5.

TABLE 5.—*Number of documented violations of international agreements by foreign vessels, Bering Sea and Aleutian Islands, 1961–April 1976*

Nation:	Number of violations
U.S.S.R.	6
Japan	2
Canada	2
Total	10

The six violations by the U.S.S.R. were trawling in the Unimak pot sanctuary. The two violations by Japan were for possession of Pacific halibut by a longliner in an area closed to halibut fishing and for retention of halibut by a trawler. Both violations by Canadian vessels were for longlining for Pacific halibut in closed areas or seasons.

The numbers of U.S. crab pots reported as having been lost to foreign fishing vessels are summarized in Table 6 according to nation causing the losses.

TABLE 6.—*Number of U.S. crab pots reported lost in Bering Sea and Aleutian Island to foreign vessels, 1963–April 1976*

Nation causing loss:	Number of pots lost
U.S.S.R.	107
Japan	31
South Korea	30
Unknown	[1] 168

[1] Including 85 believed lost to Soviet vessels, 19 to Japanese vessels, and 2 to Japanese or South Korean vessels.

As can be seen from Table 6, Soviet vessels have accounted for a very high proportion of the losses of U.S. crab pots in both the Bering Sea and Aleutian Islands. Also of significance is that vessels of South Korea have accounted for almost as many losses of crab pots as have Japanese vessels; yet, the Japanese fishery dwarfs that of South Korea and, in fact, has been much larger in the Bering Sea than that of the U.S.S.R. Not shown in the above table is the great reduction in the number of pot losses that has occurred in recent years.

The number of skates of halibut gear reported as having been lost by North American fishermen are summarized in Table 7 according to nation causing the losses. Not shown in the table, but as also noted for crab pots, there has been a significant reduction in the loss of halibut gear in recent years.

TABLE 7.—*Number of skates of halibut gear lost in Bering Sea and Aleutian Islands by North American fishermen, 1963–April 1976*

Nation causing loss:	Number of skates lost
U.S.S.R.	15
Japan	69
South Korea	—
Unknown	—
Total	84

As shown in Table 7, Japanese vessels have caused the most losses of halibut gear, as opposed to the situation for crab pots.

F. COOPERATIVE RESEARCH AND STATISTICAL EXCHANGE

(1) *Cooperative Research*—Several kinds of cooperative research have been carried out on the bottomfish and herring resources and fisheries of the Bering Sea-Aleutian Island region. The major kinds of cooperative research have been:

(a) Visits of U.S. and foreign scientists in laboratories and aboard vessels of the other country to become familiar with each other's research techniques, goals, and results.

(b) Exchange of scientific samples, data, and technical papers.

(c) Meetings of scientists to discuss results of research and to plan for future studies.

(d) Sampling by U.S. observers of commercial catches aboard foreign vessels.

(e) Joint operations of research vessels in cooperatively designed field programs.

All of the above kinds of cooperative research have been carried out with Japan. A large number of tangible benefits have accrued to the U.S., and for the past several years has included extensive at-sea sampling by U.S. observers aboard Japanese motherships and factory trawlers operating in the Bering Sea. Cooperative research with Japan has been facilitated by the existence of the International North Pacific Fisheries Commission, which has served as a forum for discussions and exchanges of data and reports between the scientists of the U.S., Canada, and Japan.

Cooperative research with the U.S.S.R. has been at a much lower level of activity than with Japan and has produced far fewer tangible results of benefit to the U.S. Of the several attempts at joint field activities in the Bering Sea-Aleutian Island region, none have been particularly successful. Cooperative bottomfish surveys by research vessels of the U.S. and U.S.S.R. have either failed to take place, have had to be substantially modified by the U.S. at the last minute with resultant loss of desired coverage, or basic data collected by Soviet scientists have not been made available to the U.S. at the end of the field season. An exception was a cooperative halibut tagging program in which the U.S.S.R. made one of its vessels available to personnel of the International Pacific Halibut Commission who tagged and released several hundred halibut in the western Bering Sea.

The major obstacle to meaningful cooperative research with the U.S.S.R. has been the absence of a set of mutually agreed upon objectives and priorities and a forum which allows as much dialogue as necessary to arrange the complicated logistics of joint field activity and agreed upon approaches to reaching mutual objectives.

Cooperative research with South Korea, the other major participant in the bottomfish fishery, has consisted of having an investigator from that Country spend a few weeks in Seattle, Washington, at the NMFS Northwest Fisheries Center and aboard a NOAA research vessel to become somewhat familiar with procedures used by U.S. investigators. Limited discussions have been held between U.S. and South Korean investigators at three technical workshops. At these workshops the South Koreans have had nothing substantive to report in the way of research conducted on the bottomfish resources of the Bering Sea-Aleutian Island region.

(2) *Exchange of Statistics on Fishing Operations.*—Statistics made available to the U.S. by Japan on its fishing operations have been among the most detailed and complete collected by any nation in the world. The statistics provided by Japan give much detail on area of origin of catches, species caught, size and kind of vessels used, fishing gear employed, and time period. An exception to this general rule has been for Japan's Land-based Dragnet Fishery. Statistics on that fishery have not been as timely, detailed, or complete as those provided by Japan on its other fisheries. This appears to reflect the fact that they have been collected at the provincial level in Japan, rather than by the Fisheries Agency of Japan, as has been the case for the other fisheries.

Statistics provided by the U.S.S.R. have been greatly inferior to those provided by Japan. From 1959 (when the Soviets began commercial operations off Alaska) until 1964, no statistics were provided on catches except what can be inferred from scientific reports published on a few species. In 1964, the U.S.S.R. began providing the Food and Agriculture Organization (FAO) of the United Nations with figures on the catches of certain species in the eastern North Pacific. However, the catch area identified by the Soviets essentially included all fishing grounds in the eastern North Pacific between northern California (lat 40°30′ N) and Cape Prince of Wales,

Alaska (lat 65° N), and offshore to long 175°00' W—which in the north intercepts the Chukchi Peninsula of the Soviet Union at East Cape, just south of the Arctic Circle (FAO Statistical Area 67). Catches for such a huge area are of extremely limited value in assessing the impact of fishing on individual stocks of fish and shellfish which typically inhabit much smaller areas and is in stark contrast to the detailed statistics on catches which were published or otherwise made available by the United States, Canada, and Japan for those years.

As a result of a bilateral fisheries agreement concluded between the United States and the U.S.S.R., statistics on the fisheries of the two nations in the eastern North Pacific were exchanged, beginning in 1967. However, for most of the period since 1967 the data provided by the Soviets has lacked detail on the area of capture and on the species harvested. The practice, until recently, was to provide data on catches of only a few primary target species and to combine the catches of all remaining species in a "miscellaneous" or "other species" category. On a few occasions this had led to the anomalous situation whereby the reported catch of miscellaneous or other species approached or even exceeded the reported catches of some of the target species.

As regards other nations fishing for bottomfish in the Bering Sea-Aleutian Island region, Poland has provided detailed statistics on the very limited operations by its vessels there. South Korea carried out a fairly large fishery for bottomfish but to date has not provided the U.S. with any useful statistics. Operations by Taiwanese vessels have been few and no statistics have been provided to the U.S.

3.0 Status of Stocks:

A. General distribution and abundance

The species of traditional importance to the region's trawl fisheries are listed in Table 8; their relative abundance can be inferred from the magnitude of recent catches. Prior to the mid-1960's, yellowfin sole and Pacific ocean perch were the primary target species; since then, walleye pollock has been by far the dominant element in the fishery. Except for salmon, a few hundred tons of Pacific halibut, and a small Eskimo fishery for spawning Pacific herring, the region's finfishes are taken exclusively by foreign fishermen.

Since walleye pollock has become the preeminent target of the region's fishery, other species have provided little more than by-catches. Exceptions include a distinct winter flounder fishery in the southeastern part of the region, a herring trawl and gillnet fishery in the north central Bering Sea, and a relatively small fishery for Pacific ocean perch along the Aleutian Island chain.

Little is currently known of the population structure of most of the species in this region but intense resource assessment research now underway should soon begin to identify individual stocks and complement the available fishery data which bear on stock condition.

TABLE 8.—*Ground fish catches (approximate) from the Bering Sea and Aleutian region, 1967–75*

[In Thousands of metric tons]

Species and country	1967	1968	1969	1970	1971	1972	1973	1974	1975
Halibut:									
United States and Canada	1	1	1	1	1	1	Tr.	Tr.	(1)
Japan	4	3	3	2	5	1	1	Tr.	(2)
U.S.S.R.	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.
ROK	0	0	0	0	0	0	0	0	0
Total	6	4	4	3	6	2	1	1	(1)
Rockfishes:									
United States	0	0	0	0	0	0	0	0	0
Japan	31	50	22	25	25	15	13	30	(1)
U.S.S.R.	47	30	23	53	7	25	4	33	33
ROK	0	0	0	0	0	Tr.	0	(1)	(1)
Total	78	80	55	78	32	39	16	63	(1)
Pollock:									
United States	0	0	0	0	0	0	0	0	0
Japan	552	704	832	1,232	1,515	1,617	1,472	1,253	(1)
U.S.S.R.	(3)	(3)	34	45	236	215	220	331	220
ROK	Tr.	1	11	5	10	9	7	26	(1)
Total	552	705	878	1,281	1,761	1,841	1,760	1,610	(1)
Flounders:									
United States	0	0	0	0	0	0	0	0	0
Japan	94	64	116	110	149	130	147	178	(1)
U.S.S.R.	123	72	120	115	143	61	21	39	50
ROK	0	Tr.	0	0	0	0	0	(1)	(1)
Total	217	136	237	225	291	191	168	216	(1)
Sablefish:									
United States	0	0	0	0	0	0	0	0	0
Japan	12	12	16	19	15	14	7	7	(1)
U.S.S.R.	Tr.	4	2	3	3	2	1	Tr.	Tr.
ROK	0	0	0	0	0	Tr.	(1)	(1)	(1)
Total	12	16	18	22	18	16	9	7	(1)
Cod:									
United States	0	0	0	0	0	0	0	0	0
Japan	(3)	(3)	(3)	(3)	(3)	(3)	41	48	(1)
U.S.S.R.	(3)	(3)	(3)	(3)	4	7	13	17	24
ROK	0	Tr.	0	0	0	0	0	(1)	(1)
Total	(1)	(1)	(1)	(1)	(1)	(1)	54	64	(1)
Herring:									
United States	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.	Tr.
Japan	3	30	35	28	23	6	2	6	(1)
U.S.S.R.	0	23	94	117	23	54	34	20	19
ROK	0	Tr.	0	0	0	0	Tr.	Tr.	(1)
Total	3	61	129	146	46	60	37	26	(1)
Others:									
United States	0	0	0	0	0	0	0	0	0
Japan	33	61	57	81	73	72	43	53	(1)
U.S.S.R.	8	23	7	16	4	102	19	16	25
ROK	0	0	0	0	0	0	0	8	(1)
Total	42	89	64	96	77	174	62	82	(1)

B. Current status

Fishery data indicate that the groundfish resources of this region have suffered the effects of almost 20 years of purse fishing in which one after another of the most abundant species was fished down to the point where catch rates became uneconomical. This led to another species becoming the target. The succession was: yellowfish sole; Pacific ocean perch; and now walleye pollock. As exploitation centered around each new species, bycatches of previous target species prevented their recovery. This phenomenon occurred on an inter-regional basis for shrimp and herring: shrimp stocks of the eastern Bering Sea were fished to commercial extinction in the early 1960's then effort shifted to the western Bering Sea where a similar trend is now occurring; herring in the western Bering Sea were quickly depleted in the mid-1960's—then effort shifted to the eastern Bering Sea where the stocks now appear to be deteriorating.

Specific comments concerning the major groundfish resources of the region follow.

(1) *Walleye Pollock*—(a) *Distribution.* Walleye pollock are broadly distributed in shelf and upper slope waters (to 450 m) from the southern coast of Korea northward into the Bering Sea and off the North American coast southward as far as California. In North American waters it is most abundant in the eastern Bering Sea.

Pollock in the eastern Bering Sea occur in waters south of a line joining Cape Navarin and St. Matthews Island (Serobaba, 1970). As in the case with many boreal species, pollock have seasonal migrations (Figure 7).

The main wintering grounds for adult pollock lie north of Unimak Island along the outer shelf and upper slope (150–280 m) (Serobaba, 1967; Maeda, 1972) where bottom temperatures range from 2.5°–4.5° C, with greatest concentrations

in the 2°–4° C isotherm (Serobaba, 1970). As the water column warms in spring, pollock migrate to shallower water and spawn in depths of 50–300 m from March to the middle of July with the height of spawning in May (Serobaba, 1967). At that time surface water temperatures range between 1.4 and 3.3° C and bottom temperatures from below 0° C to 3.4° C. During this migration, larger fish mix with the smaller ones in shallow waters. When spawning begins, however, the sexually mature pollock generally separate from the nonspawning portion of the population (Maeda, 1972).

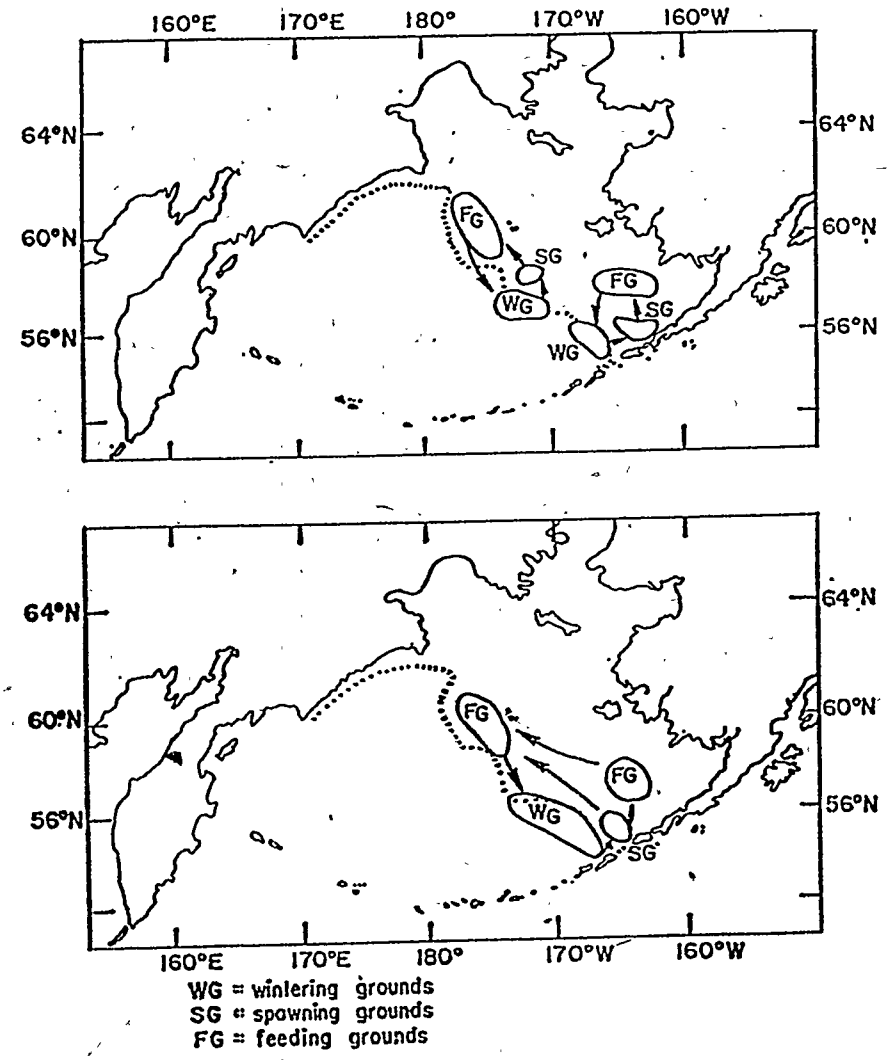


Figure 7. Schematic diagram showing the concept of one and two stocks of pollock in the eastern Bering Sea (Maeda, 1972).

In summer and autumn pollock are distributed on the inner and outer shelf of outer Bristol Bay and northwest of the Pribilof Islands. With the onset of winter, the pollock move back across the shelf to deeper water for overwintering (Figure 7).

The eastern Bering Sea pollock resource is considered by some scientists (National Marine Fisheries Service, 1974; Maeda, 1972) to be composed of two stocks. Catch patterns suggest that these two stocks are separated at about 170° W longitude. The southeastern stock is the larger of the two and has over the years contributed much more to the fishery.

Clear cut evidence is lacking to verify that these two stocks are in fact discrete because of different population reactions to environmental stresses (Ishida, 1967). Consequently, for practical purposes, analyses related to the appraisal of stock conditions assume the eastern Bering Sea pollock resource to be a single stock (Chang, 1974; Low, 1974, Takahashi, 1975).

(b) *Abundance.* Walleye pollock supports the largest single species fishery in the North Pacific; in recent years, this fishery has been second only to that for anchoveta (*Cetengraulis mysticetus*) off Peru. From 1970 through 1974 the annual catch of pollock in the Bering Sea and Aleutian Island area has exceeded 1 million mt with a maximum of about 1.9 million mt in 1972 (Table 9). During those years, Pollock constituted from 68 to 83 percent of the total fin-fish landings from the eastern Bering Sea.

TABLE 9.—*Annual catch of walleye pollock in the eastern Bering Sea, 1964–73 (in metric tons)*

Year	Nation			Total
	Japan [1]	U.S.S.R.[2]	ROK [3]	
1964	174,792	----------	----------	174,792
1965	230,551	----------	----------	230,551
1966	261,678	----------	----------	261,678
1967	550,362	----------	----------	550,362
1968	700,981	----------	1,200	702,181
1969	830,494	27,295	5,000	862,789
1970	1,231,145	20,420	5,000	1,256,563
1971	1,513,293	219,840	10,000	1,743,763
1972	1,651,438	213,896	9,200	1,874,534
1973	1,475,114	280,005	3,100	1,758,219
1974	[4] 1,193,073	309,613	20,000	1,528,686

[1] From Japan fisheries agency.
[2] U.S.S.R. trawl fishery east of 180° longitude in the Bering Sea.
[3] Estimates based on U.S. surveillance of ROK fishing activities.
[4] January to October figure (provisional data).

Both absolute and relative abundance have been estimated for the exploitable portion of the eastern Bering Sea pollock population. Using the area-swept method, Chang (1974) and Low (1974) estimated the exploitable biomass of pollock in the eastern Bering Sea in 1969 and 1970 to be in excess of 2.5 million mt. In another procedure using cohort analysis, Chang (1974) estimated the standing stock of pollock older than ages 2–3 to be at least 2.4 million mt or about 8.4 billion fish.

(c) *Maximum sustainable yield.* Estimates of maximum sustainable yield (MSY) for pollock have been obtained by two methods: the surplus production

model method of Pella and Tomlinson (1969) and the method of Alverson and Pereyra (1969) for the first approximation of yield per exploitable biomass.

Estimates thus derived range from 1.11 million mt to 1.58 million mt (Low, 1974).

Inasmuch as MSY pertains to the average, long-term situation, it has limited utility as a basis for determining the allowable harvest of such a short-lived species as pollock for any given year.

Although this species may live as long as 12 years, throughout the history of the fishery comparatively few fish older than 6 years have been taken, with the dominant age classes being 3–6 years. Without the buffering effect of an accumulation of year classes distributed over a wide range of age classes, the productivity of such a stock can be expected to respond very rapidly to variations in recruitment caused by changing environment. Therefore, year-to-year management of the fishery must consider other biological indicators relevant to the stock in its current rather than past state.

For instance, the fishery could be managed in such a manner that the harvest does not exceed the recruitment into the population.

Takahashi (1975) has estimated the annual recruitment to the eastern Bering Sea population by age groups and in numbers and weight for the period 1968 to 1973 (Table 10) and found that annual recruitment ranged from 1 to 2 million mt. There are, however, practical problems associated with obtaining *in advance* accurate estimates of annual recruitment.

(d) *Status.* Certain evidence indicates that the pollock stock of the eastern Bering Sea has in recent years been overfished: catches in 1971–74 exceeded the upper limit of the MSY range; catches in 1973 and 1974 exceeded Takahashi's estimates of recruitment for those years; the overall CPUE for Japanese pair trawlers in 1973 and 1974 was only one-third that of 1969; catch rates were sustained at rather high levels for about 4 years by shifts in the areal allocation of effort; however, since 1970, CPUE has been at comparatively low levels in all areas of the eastern Bering Sea. Similar trends have been noted in overall CPUE values (Figure 8).

Condition of the pollock stock may be more unfavorable than is apparent from these trends in CPUE, in that the fishery has substantially altered the abundance of the age groups in the population. The average size of pollock in the Japanese catch has declined from over 44 cm in 1965 to about 32.2 cm in 1975 Table 11). This decline has resulted in the fishery now being heavily dependent upon pollock of younger age groups which were not exploited in the earlier years. In the past, catches were composed primarily of fish 3 through 5 years of age; in 1974, the 2-year-old age class was second in abundance in the Japanese catch and 1-year-old fish first appeared in measurable quantities (Figure 9).

TABLE 10.—*Estimated annual recruitment (in weight, metric ton) of pollock in the eastern Bering Sea, 1965–74. The method used was shown in the appendix of document 1699 and the parameters used were as follows: Natural mortality coefficient M=0.29; Catchability coefficient q=7.080×10⁻⁴, Dispersion coefficient (older than 6) B=0.81*

Year	Age											Total recruitment	Total catch
	2	3	4	5	6	7	8	9	10	11	12		
1965	420	78,153	686,714	0	0	0	0	0	0	0	0	765,287	225,966
1966	2,660	131,080	290,763	0	0	0	0	0	0	0	0	424,529	261,738
1967	103	183,573	715,366	85,073	0	0	0	0	0	0	0	984,079	844,553
1968	5,297	217,734	944,191	180,253	0	0	0	0	0	0	0	1,347,435	661,822
1969	631	107,499	652,562	0	0	0	0	0	0	0	0	1,121,491	823,835
1970	3,288	427,555	1,002,647	0	0	0	0	0	0	0	0	1,433,490	1,220,138
1971	21,372	360,038	733,038	33,531	0	0	0	0	0	0	0	1,094,908	1,483,770
1972	39,040	428,827	855,110	616,824	90,855	20,390	7,715	1,397	149	21	6	2,146,385	1,603,433
1973	33,520	537,370	724,109	157,512	0	0	0	0	0	0	0	1,452,044	1,453,040
1974	122,851	438,462	443,635	131,823	0	0	0	0	0	0	0	1,141,820	1,263,845

SOURCE: Takahashi, 1975.

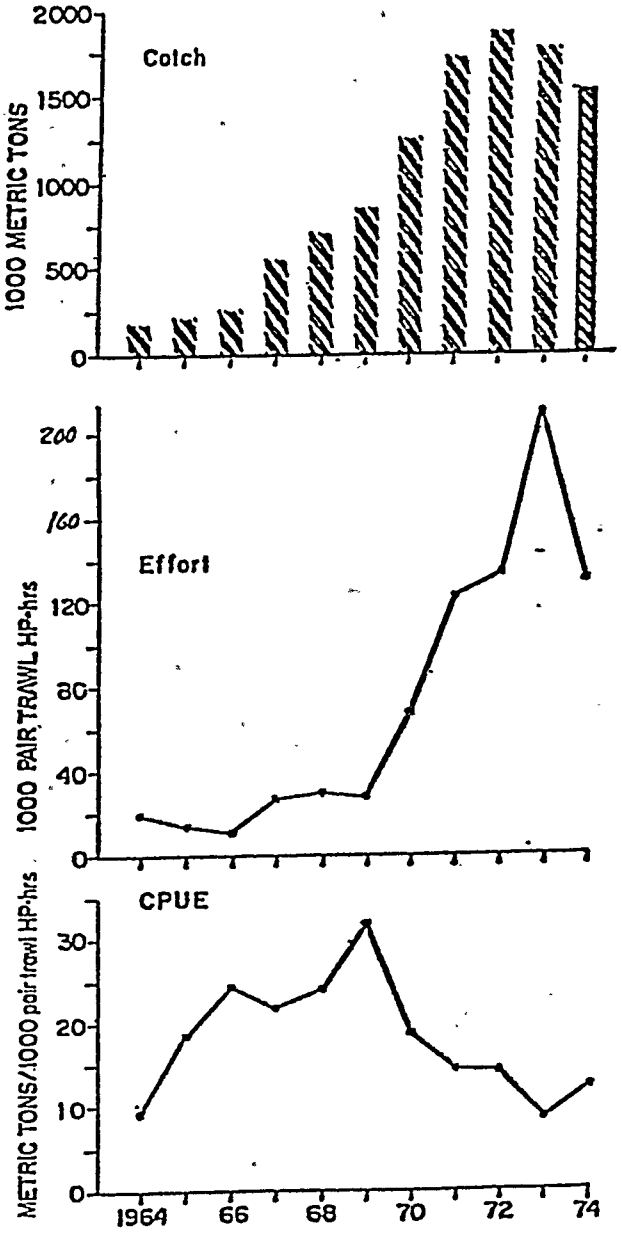


Figure 8.--Annual catch of pollock by all nations in the eastern Bering Sea and estimated effective effort and CPUE, 1964-1974

TABLE 11.—*Average body length of pollock taken in the Japanese eastern Bering Sea pollock fisheries (1964–75)*

Year	Average length (centimeters)	
	Japan fishery agency [1]	U.S. observers [2]
1964	42.7	
1965	44.3	
1966	42.8	
1967	43.2	
1968	42.7	
1969	42.8	
1970	40.8	
1971	40.3	
1972	39.8	
1973	37.7	36.2
1974	35.3	35.0
1975		[3] 32.2

[1] Mean size based on size and catch data provided by the fisheries agency of Japan through INPFC.
[2] Mean size based on catch data from fisheries agency of Japan and size data collected by U.S. observers aboard Japanese vessels.
[3] Mean size based on U.S. observer size data weighted by catch data from fisheries agency of Japan for January to July 1975 (INPFC document 1804), and catch data from fisheries agency of Japan for August to December 1974, by INPFC halibut conservation area and type of fisheries (Mothership Fishery and North Pacific Trawl Fishery).

Pollock attain sexual maturity at about 3 years of age or about 30 cm in length (Ishida, 1967; Serobaba, 1967). Chang (1974) noted that yield is maximized when pollock are recruited into the fishery at ages 3–4, which corresponds to 38–40 cm in length. Considering that pollock first spawn at about 30 cm or 3 years of age, the fishery is obviously exploiting substantial numbers of prespawners which, if excessive, would have unfavorable effects on the productivity of the stock.

The reduction in average size of pollock in the catch can also be interpreted as being indicative of the entry of very strong year classes into the population. Results of research vessel surveys, however, show that the relative abundance of 2 and 3 year old pollock has been declining in recent years.

Considering (1) that there has been a steady decline in CPUE throughout the entire eastern Bering Sea, (2) that the CPUE of mature pollock has been severely reduced in abundance with substantial increases in the catch of pollock of pre-spawning sizes, and (3) that the abundance of incoming year classes appears to have been dropping, there is reason to believe that the condition of the eastern Bering Sea pollock resource has been deteriorating in recent years.

(e) *Estimated equilibrium yield.* Knowledge of the eastern Bering Sea pollock stock condition is not exact enough to provide absolute values of recruitment and sustainable yield. Recent catches have been far in excess of MSY, and have forced the stock into a condition that will not allow MSY to be achieved. Therefore, equilibrium yield, under current conditions, would be substantially below MSY, perhaps near 1 million mt. An even lower catch would be required to allow the stock to rebuild, over a 1–3 year period, to a level that could produce MSY.

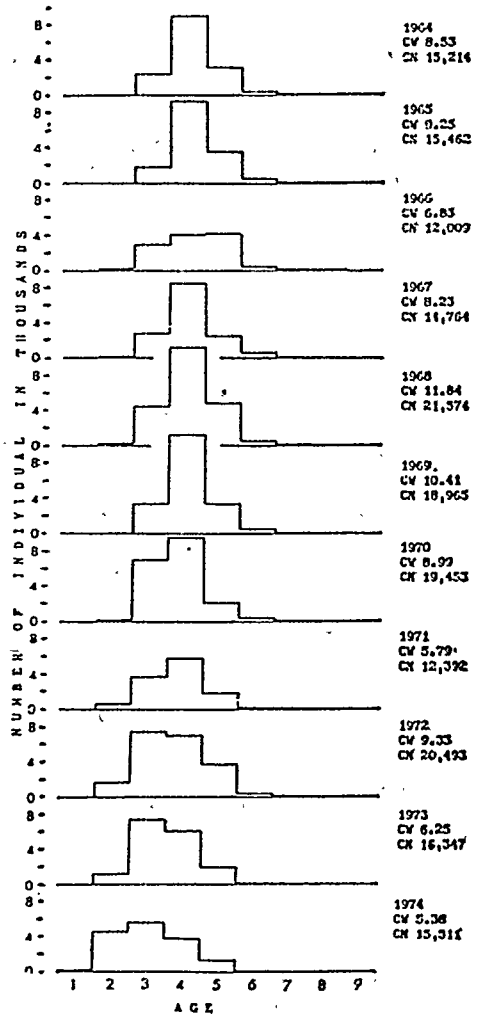


Figure 9.--Age composition of pollock samples collected from the Japanese trawl fishery in the eastern Bering Sea (CW = sample size in metric tons; CN = sample size in numbers of individuals).

(2) *Yellowfin Sole.*—(a) *Distribution.* Yellowfin sole are broadly distributed over the upper slope and shelf of the eastern Bering Sea with concentrations of commercial quantities confined to waters south of 60° N latitude. Evidence from Soviet resource surveys (Fadeev 1970) and the seasonal changes in fishing grounds (Wakabayashi 1974) indicate that the bathymetric distribution of yellowfin sole varies with season. During winter the species inhabits the outer shelf and upper slope (100–270 m), but with the onset of spring it migrates to shallower waters where spawning occurs during summer and early autumn on the inner shelf (<100 m).

Recent evidence from tagging indicates that there may be two yellowfin sole stocks separated by a line connecting St. George Island (about 58°58′ N, 164°14′ W) and Cape Avinof (about 59°58′ N, 164°14′ W). (Figure 10.) The stock inhabiting the southern area is by far the larger as evidenced by the fact that between 1964 and 1974, more than 80% of the Japanese catch was taken from there. Although the results of U.S. research surveys do not conclusively confirm the discreteness of the two stocks, they do show that the greatest proportion of the total eastern Bering Sea yellowfin sole population is in the southern area.

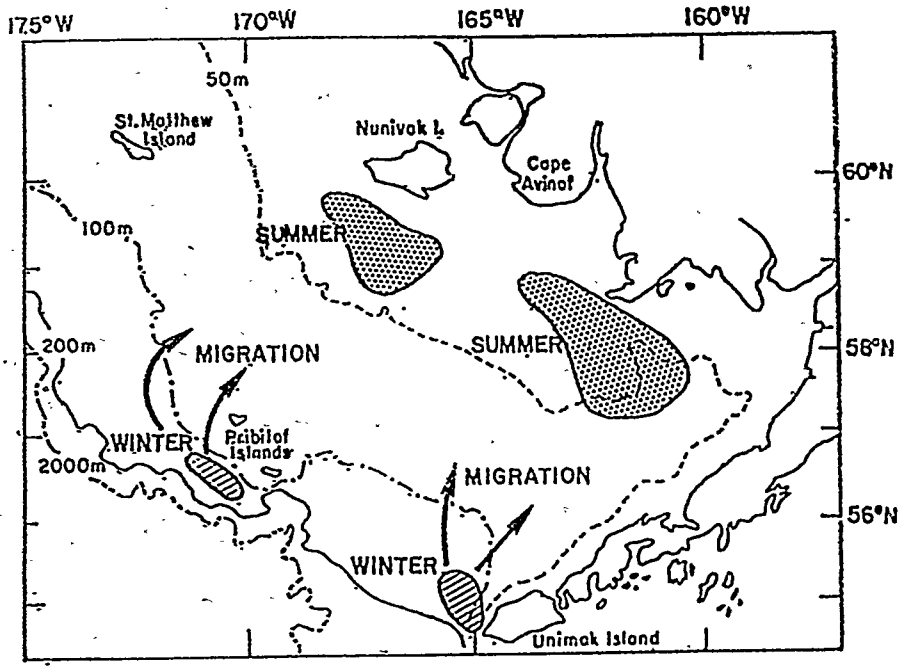


Figure 10.--Schematic diagram showing location of winter and summer concentrations of two yellowfin sole stocks in the eastern Bering Sea.

According to Fadeev (1970) the maximum age of yellowfin sole in the eastern Bering Sea is 19 years, at which a length of about 46 cm is attained. Wakabayashi (1974) reported the occurrence in Japanese catches of 20 year old fish and showed that the size at first spawning is 10.5 cm for males (2–3 yrs) and 18.5 cm (5–6 yrs) for females. The size at which 50% of the fish become mature is 13 cm (3–4 yrs) for males and 26 cm (8–10 yrs) for females. These fish are first recruited to the fishery at 4 years of age and are fully recruited at age 6, slightly before the age at which 50% reach maturity. In the early years of the fishery, individuals as old as 15 years were well represented in the landings but the accumulation of older age groups has been substantially reduced and the bulk of the catch in recent years has been composed of fish 12 years of age or younger.

(b) *Abundance.* Yellowfin sole are the most abundant of the flatfish in the eastern Bering Sea, constituting 73–85% of the total Soviet research vessel flatfish catches (Fadeev 1970).

Relative abundance of the yellowfin sole population has been evaluated by examination of catch per unit of effort (CPUE) of the Japanese trawl fisheries. Attempts have also been made to estimate the stock size of this population in terms of absolute biomass. To put the results of either procedure into perspective and to properly evaluate the current status of the stock requires a recapitulation of some historical events in the yellowfin flounder fishery.

Prior to the mid-1960's, the yellowfin sole was the principal target species of the eastern Bering Sea trawl fisheries. From 1954 through 1957, the Japanese were the only users of this resource with annual catches of less than 25,000 mt. In 1958 the Soviet fleet entered the fishery and the combined Japanese and Soviet catch increased to about 44,000 mt. The total catch increased substantially in 1959 to 185,000 mt, 493,000 mt in 1960, and peaked at about 610,000 mt in 1961. Production then fell off sharply to about 393,000 mt in 1962, fluctuated between 62,000 to 207,000 mt during 1963–1971, and has remained well below 100,000 mt since 1971 (Table 12).

TABLE 12.—*Annual catches of yellowfin sole in the eastern Bering Sea (east of 180°) in metric tons*

Year	Japan [1]	U.S.S.R. [2]	Total
1954	12,562	----------	12,562
1955	14,690	----------	14,690
1956	24,697	----------	24,697
1957	24,145	----------	24,145
1958	29,153	5,000	44,153
1959	123,121	62,200	185,321
1960	336,946	96,000	432,946
1961	455,885	154,200	610,085
1962	233,420	139,480	392,900
1963	21,576	92,596	114,172
1964	48,928	81,872	130,800
1965	26,030	36,170	62,200
1966	45,105	71,295	116,400
1967	58,415	120,000	178,415
1968	29,646	57,092	86,738
1969	81,448	103,820	185,268
1970	59,780	106,875	166,655
1971	82,205	124,441	206,646
1972	34,845	36,738	71,583
1973	75,514	4,497	80,011
1974	33,270	9,200	47,470
1975	[3] 20,594	49,800	70,394

[1] Catches by Japanese mother ship and North Pacific trawl fisheries. Catches for 1954 to 1963 are from Forrester et al. (1974) and for 1964 to 1975 from data provided to the United States by Japan. Includes catches of some other flounders up to 1961.

[2] U.S.S.R. catches from 1958 to 1961 from Fadeev (1970), for 1962 to 1966 from document 1669 and for 1967 to 1975 from data provided the United States by the Soviet Union. Soviet data includes catches of some other flounders. Catches for 1970 and 1971 differ from those in INPFC document 1785 due to the transfer of some flounders from the other fish category.

[3] January through July only.

Although catches during the mid and late 1960's were much smaller than those of the peak years of production, they were too high to allow any sustained recovery of the resource and the stock remained in a depressed condition into the early 1970's (Bakkala and Hirschhorn, 1975; Wakabayashi, 1975; International North Pacific Fisheries Commission, 1975) (Table 13; Figure 11).

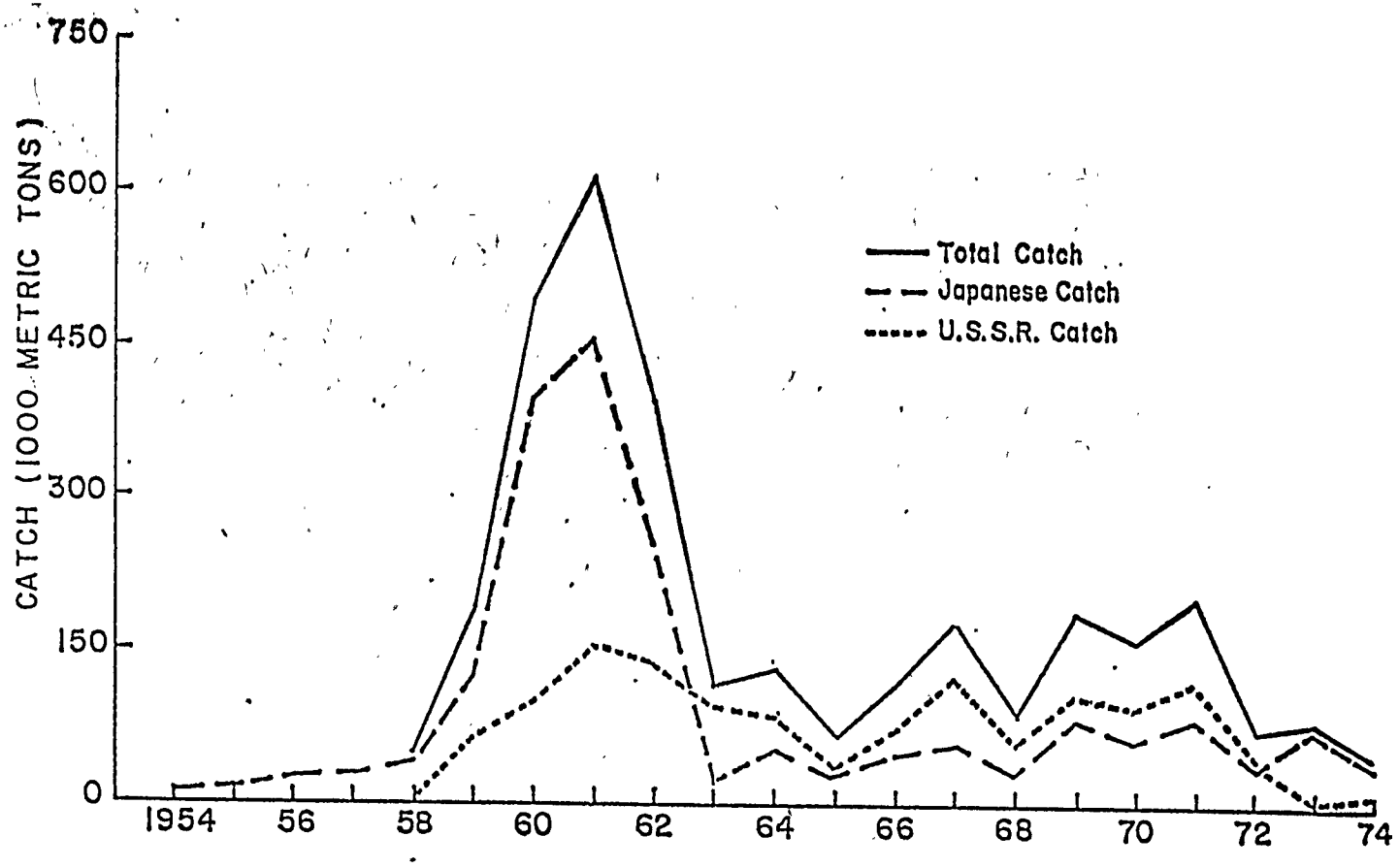
Wakabayashi (1974) estimated the stock of yellowfin sole 6 years old and older to be 1.3 million mt in 1955. Stock size increased to about 2 million mt in 1958-60 but declined to under 1 million mt during 1962–70. Low (1974) considers the stock to have passed through five phases of abundance: in the near virgin state of 1954–61, biomass was estimated to be about 600,000–1,000,000 mt; this was followed in 1961–64 by a rapid depletion phase to about 390,000 mt in 1964; the stock was in a depressed phase during 1964–69 when biomass varied between 250,000–390,000 mt; during 1969–71 biomass increased moderately to about 470,000 mt; during 1971–73 biomass again declined then stabilized at a level somewhat less than 300,000 mt.

Information from trawl surveys in 1975–76 (expanded by the area-swept technique) by the National Marine Fisheries Service indicates that the exploitable biomass of yellowfin sole (ages older than 6) has increased substantially to 865,000 mt (95 percent C.I. ≈ 725,000–1,005,000 mt).

TABLE 13.—*Catch of yellowfin sole, fishing effort, and CPUE for the Japanese trawl fisheries in the southeastern stock area of the eastern Bering Sea, 1964 to 1973. Data are for 1°×½° statistical blocks and months in which yellowfin sole made up 50 pct or more of the catch of groundfish*

Season	Gear	Year	Catch (metric tons)	Effort			CPUE in metric tons per 1,000 hph or hp-sets
				Number of hours or sets	Average horsepower[1]	Horsepower-hours or horsepower-sets (in thousands)	
Spring-summer (April to September)	Pair trawl	1964	15,760	2,275	325	739	21.33
		1965	6,108	763	328	252	24.24
		1966	3,333	909	315	286	11.65
		1967	895	210	380	80	11.19
		1968	0	0			
		1969	1,167	174	464	79	14.77
	Danish seine	1964	22,788	6,159	275	1,694	13.45
		1965	5,890	2,346	333	781	7.54
		1966	2,698	1,135	320	363	7.43
		1967	567	338	393	133	4.26
		1968	3,243	978	456	446	7.27
		1969	2,950	1,163	500	595	4.96
Winter (October to March)	Pair trawl	1969–70	14,250	1,925	1,200	2,310	6.17
		1970–71	26,766	1,762	1,200	2,114	12.66
		1971–72	25,812	2,929	1,400	4,101	6.29
		1972–73	31,328	2,700	1,400	3,780	8.29
		1973–74	27,234	1,853	1,400	2,594	10.50
	Stern trawl	1969–70	6,594	1,999	1,650	3,298	2.00
		1970–71	2,521	1,112	1,400	1,557	1.62
		1971–72	8,587	2,262	1,325	2,997	2.87
		1972–73	11,596	5,890	1,400	8,246	1.41
		1973–74	3,990	3,268	1,400	4,575	0.87

[1] Measures of average horsepower of pair trawlers and Danish seiners for 1964 to 1969 are from Takahashi (1974). Those for 1969–70 to 1973–74 are from Takahashi (personal communications, Takahashi, Y., Japan Fishery Agency Far Sea Fisheries Research Laboratory, Shimizu, Japan, March 1976. Source: Bakkala and Hirschhorn (1976)).



/ Figure 11.--Catches of yellowfin sole in the Bering Sea east of 180^0 by Japan and the Soviet Union

(c.) *Maximum sustainable yield.* Fadeev (1970) estimated natural mortality (M) of yellowfin sole to be 0.26. Using Wakabayashi's estimates of exploitable biomass for the period before the effects of heavy exploitation would have greatly depressed the virgin population (1.3–2.0 million mt) and applying Alverson and Pereyra's (1969) equation for a first approximation of "yield per exploitable biomass"[1] gives a potential yield range of 152,000–270,000 mt. Similar calculations using Low's (1974) estimate of near-virgin biomass (60,000–1,000,000 mt) results in an MSY range of 70,000–117,000 mt.

(d.) *Status.* After a short period of intense overexploitation and a decade of removals which, although much lower than during the peak years, were sufficient to prevent rebuilding—recent survey results indicate a substantial increase in the biomass of fish older than 4 years. Whether or not the stock can now be considered "healthy" or completely rebuilt, it does appear to be in much better condition than at any time during the last 15 years.

(e.) *Equilibrium yield.* On the basis of Wakabayashi's (1975) vitual population analysis, an exploitation rate of 0.146 applied to fish older than age 6 results in equilibrium yield.

Applying this exploitation rate to the current standing stock of yellowfin sole older than age 6 (725,000–1,005,00 mt; p. 69) provides an estimated current equilibrium yield of 106,000–147,000 mt.

(3) *Other Flounders.*—Flounders, primarily yellowfin sole, were the incentive for both Japanese and Soviet fishing in the eastern Bering Sea. Flatfishes other than yellowfin sole and Pacific halibut are now, for the most part, caught incidentally to the expanded pollock fishery. The most important of these species, in order of relative abundance, are arrowtooth flounder, flathead sole, and rock sole. The status of these resources is difficult to evaluate because of their secondary importance in the fishery.

(a) *Turbot.* The term "turbot" generally includes both arrowtooth flounder and Greenland turbot. Turbot are concentrated mainly on the continental slope and therefore inhabit deeper waters than yellowfin sole, flathead, and rock sole.

The peak catch of turbot was 63,300 mt in 1964; average catch over the next 7 years was about 27,800 mt (Table 14). In 1972, the catch increased to 56,000 mt —the second highest on record—then dropped to 46,100 mt in 1974.

Because it is taken only incidentally to fisheries for other species, the status of turbot stocks is difficult to assess with standard data bases and analyses. Inasmuch as peak catches of 63,300 mt (in 1964) and 56,900 mt in 1972) apparently could not be sustained, MSY and equilibrium yield appear to be near the 1973–74 catch level of 40,000 mt (Low, 1976).

TABLE 14.—*Flathead sole, rock sole, and turbot catch by nation in the Bering Sea in metric tons, 1965–74*

Year	Japan		U.S.S.R.[3]	Total
	MS-LG-NPT[1]	LBD[2]		
(A) FLATHEAD SOLE				
1964	12,301	0	10,285	22,586
1965	3,229	102	2,626	5,957
1966	4,802	259	5,099	10,160
1967	10,539	525	13,840	24,902
1968	11,101	1,465	12,896	25,462
1969	8,620	1,112	10,584	20,316
1970	18,377	2,594	19,969	40,940
1971	24,925	1,270	23,929	50,124
1972	9,427	993	4,630	15,050
1973	16,623	756	8,602	25,981
1974	12,763	442	14,553	27,758
(B) ROCK SOLE				
1964	2,773	0	2,319	5,092
1965	1,588	0	1,291	2,879
1966	4,414	0	4,687	9,101
1967	1,990	149	2,613	4,752
1968	2,352	327	2,732	5,411
1969	3,988	877	4,897	9,762
1970	9,674	806	10,510	20,990
1971	19,311	1,789	18,539	39,639
1972	44,269	1,540	21,741	67,550
1973	22,732	1,785	11,763	36,281
1974	17,214	752	19,629	37,595
(C) TURBOT				
1964	34,475	0	28,826	63,301
1965	7,582	309	6,165	14,056
1966	10,040	98	10,661	20,799
1967	20,032	356	26,307	46,695
1968	16,496	1,131	19,164	36,791
1969	13,414	1,136	16,471	31,021
1970	9,636	308	10,471	20,415
1971	6,417	12,576	6,160	25,153
1972	1,296	54,923	636	56,855
1973	1,570	31,809	812	34,191
1974	3,970	37,577	4,527	46,074

[1] Mothership, long-line gillnet, and North Pacific traw, fisheries. Catch by fishing year (November of previous year to October of statistic year).
[2] Land-based dragnet fishery. Catch by calendar year.
[3] U.S.S.R. statistics for 1964–66 from FAO fisheries statistics (north from 20° N. and east of 170° W.); for 1967–1972 from Larkins (1974); for 1973 from International North Pacific Fisheries Commission, 1975; and for 1974 from United States-U.S.S.R. data exchange (east of 180°, north of 54°30' N.). Catch of flatfishes were broken down by the ratio of Japanese species composition and by calendar year.

SOURCE: International North Pacific Fisheries Commission, 1975.

(b) *Rock Sole.* Rock sole are found mainly on the eastern Bering Sea shelf where yellowfin sole predominate. However, the abundance of this species is considerably less than that of yellowfin sole as indicated by catch rates and is an incidental catch to the yellowfin sole fishery.

Catches of rock sole varied betweenn 2,900 mt in 1965 and 9,800 mt in 1968 (Table 14), increased to the historical peak of 67,000 mt in 1972, then decreased to 37,600 mt in 1974. These figures may not be accurate because of inconsistencies in the categorization in vessel catch records of rock sole as a separate species group.

Wolotira (1975) reported that catches during recent years have been maintained by the relatively strong year-classes of 1965 and 1966 and that thses cohorts had been diminished by several years of exploitation with no sign of subsequent strong year classes. Size composition data for 1974 do not indicate otherwise.

Based upon historical catch pattern and apparent lack of year-class strength in the stocks, MSY and equilibrium yield appear to be somewhat below the catch level of 1974, and perhaps 35,000 mt (Low 1976).

(c) *Flathead sole.* Flathead sole are found mainly on the eastern Bering Sea shelf, but on somewhat deeper grounds than occupied by yellowfin sole and rock sole. They are caught mainly as an incidental species in the yellowfin sole and pollock fisheries, so catch rates are not appropriate indicators of flathead sole abundance.

Catches of flathead sole have ranged from 6,000 mt in 1965 to 50,000 mt in 1971 (Table 14). From 1969 to 1971, the catch more than doubled (from 20,300 mt to 50,000 mt), declined to 15,000 mt in 1972, and increased again to 27,800 mt in 1974. These values, however, may not be very accurate because of inconsistencies in the categorization of flathead sole as a separate species by Japanese fisheries (Takahashi, 1975). The U.S.S.R., on the other hand, provides no breakdown of the species composition of its flounder catch; it is assumed to be similar to that of the Japanese fishery.

Weighted size composition data for flathead sole taken in the Japanese fisheries show that more small fish were taken in 1974 than in previous years. If there was neither selection for smaller fish nor a shift of the fishery to a different segment of the population, this information suggests either relatively good recruitment of young fish into the fishery or lower abundance of larger individuals.

On the basis of recent catch trends and the indication of recent strong recruitment, MSY and equilibruim yield appear to be slightly above the 1974 catch level, and near 30,000 (Low, 1976).

(4) Pacific Ocean Perch.—(a) *Distribution and abundance.* Pacific ocean perch is the most abundant rockfish species in the North Pacific. Chikuni (1975a) identified two main stocks in the Bering Sea: an Eastern Slope stock along the southern half of the eastern Bering Sea continental slope and an Aleutian stock along both sides of the Aleutian Islands. These stocks may mix at various stages of life history but variations in growth rate, length-weight, age-length, and length-fecundity relationships suggest distinct stocks. Ocean perch are concentrated mainly in the upper waters of the continental slope (at depths of 150–500 m). In the Bering Sea the larger concentrations are located in the region of Pribilof Islands and at the southeastern part of the continental slope (Pautov, 1972). In the Aleutian Region, the largest concentration occurs between 175° W–180°, especially on the north side of the island chain (Low, 1976).

Of the two main stocks in the Bering Sea, the Aleutian stock, is at present, perhaps four times larger than that of the Eastern Slope. Chikuni estimated that in 1972 its biomass was close to 150 thousand mt. By comparison, biomass of the Eastern Slope stock is probably close to 35 thousand mt. Biomass estimates have not been made for more recent years but based upon CPUE analyses, they would undoubtedly be below those for 1972.

Catches from each of the stocks are shown in Table 15.

TABLE 15.—*Pacific ocean perch catches in the eastern Bering Sea and Aleutian, by regions in thousand metric tons, 1960–74*

Year	Eastern slope	Aleutian	Total
1960	6	----------	6
1961	47	----------	47
1962	20	(1)	20
1963	25	21	46
1964	26	92	118
1965	17	110	127
1966	20	90	110
1967	20	61	81
1968	32	51	83
1969	15	39	54
1970	10	67	77
1971	10	22	32
1972	6	34	40
1973	3	12	15
1974 [2]	14	22	36

[1] Less than 1,000 metric tons.
[2] Data is preliminary.

SOURCE: International North Pacific Fisheries Commission (1975).

(b) *Status.* Based upon analyses by Chikuni (1975b) and Wolotira (1975a), the INPFC Sub-Committee on Bering Sea Groundfish concluded that it is "apparent that stock abundance in the Eastern Slope region decreased drastically in the latter half of the 1960's. Since then it remained relatively stable * * * but * * * stock abundance was low" (International North Pacific Fisheries Commission, 1975).

The spawning stock of ocean perch in the Eastern Slope region is considered to be considerably reduced from the level of the mid-1960's. Chikuni (1975b) showed that the early extensive ocean perch harvests by Japan and the U.S.S.R. had removed most of the larger, older, and more fecund [2] fish from the stock. Therefore, in recent years, larval production by the stock must have been considerably reduced. Whether or not reduced larval production will result in reduced recruitment, however, has not been determined.

Chikuni (1975a) also found that ocean perch are being recruited into the fishery 1–2 years younger than desired to achieve maximum yield per recruit. Since 1968, the fishery has been heavily dependent upon young fish from the strong year-classes of 1961 and 1962 (Chikuni, 1974b); because of recent, heavy removals of these young year-classes, their strength is not expected to prevail and no other strong ones have appeared.

With regard to the Aleutian stocks, CPUE (mt per hour trawled) for Japanese stern trawlers has dropped from 7.3 in 1964 to 0.9 in 1972 and 0.8 in 1974. (Figure 12). Although the catch in 1974 was twice that of 1972, fishing effort more than tripled—reaching the highest level in history. Consequently, the catch rate in 1974 was less than that observed in 1973 and, indeed, was the lowest on record. Similar trends have occurred in other elements of the Japanese fishery.

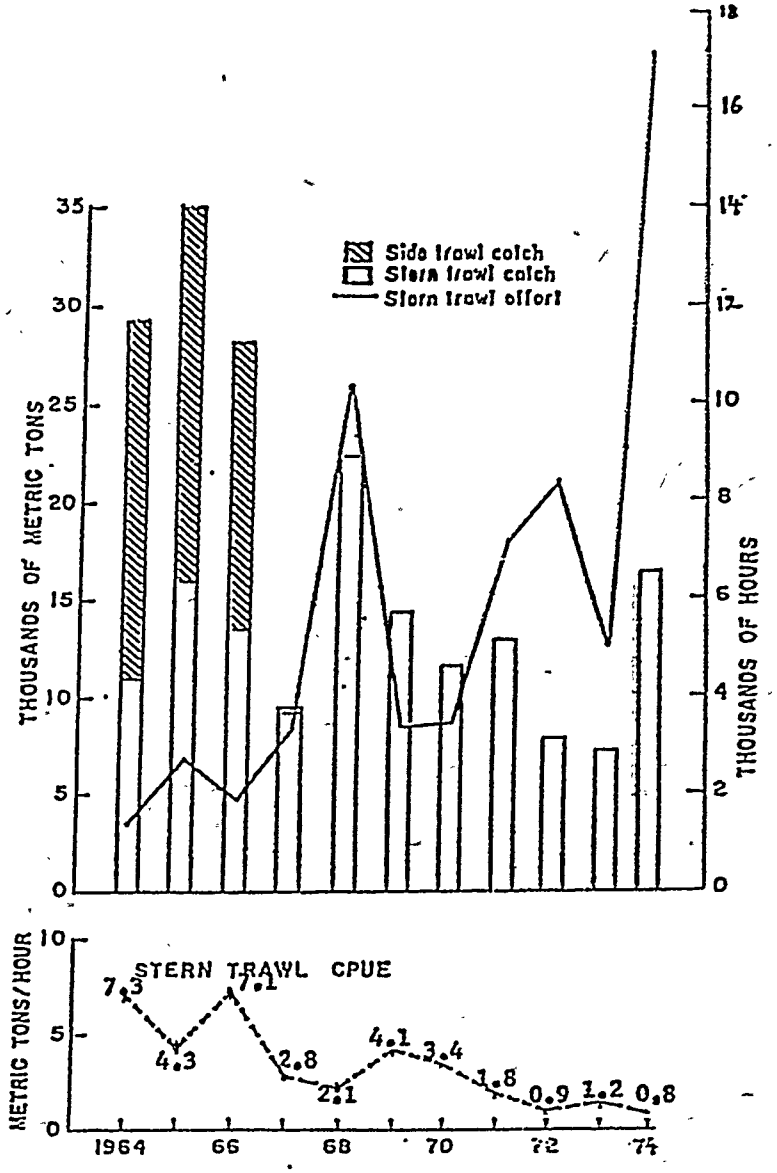


Figure 12.--Comparison of Pacific ocean perch catch, effort, and CPUE in the Aleutian Region by the Japanese mothership and North Pacific trawl fisheries, 1964-74.

In the early years of the fishery (1964–67), the size composition of the catch was relatively stable and dominated by fish greater than 28 cm (Figure 13). After that time, there were dramatic increases in the proportion of fish smaller than 28 cm, due to recruitment into the fishery of the strong year classes of 1961 and 1962 (Chikuni, 1974b) and in part to a considerable reduction in abundance of the larger-older perch after 1967. The abundance of these older fish remained low through 1974.

On the whole, catch rate and size composition information suggest that in the Aleutian Region both abundance and average size have been considerably reduced since the early years of the fishery. Stock condition appears to have been poorest in 1972 but seems to have been improving slightly since then. The optimistic trend of 1972–74 may not, however, continue because of the high catch of 22,400 mt in 1974.

(c) *Maximum sustainable yield:* As for other species in the Bering Sea which

have undergone considerable changes in population structure and abundance as a result of intensive "pulse" fishing, the interpretation of MSY must be viewed in its proper perspective. Under ideal resource conditions, MSY for the Pacific ocean perch stock in the Eastern Slope Region may be as high as 32 thousand mt; that in the Aleutian Region may be as high as 75 thousand mt (Chikuni, 1975a).

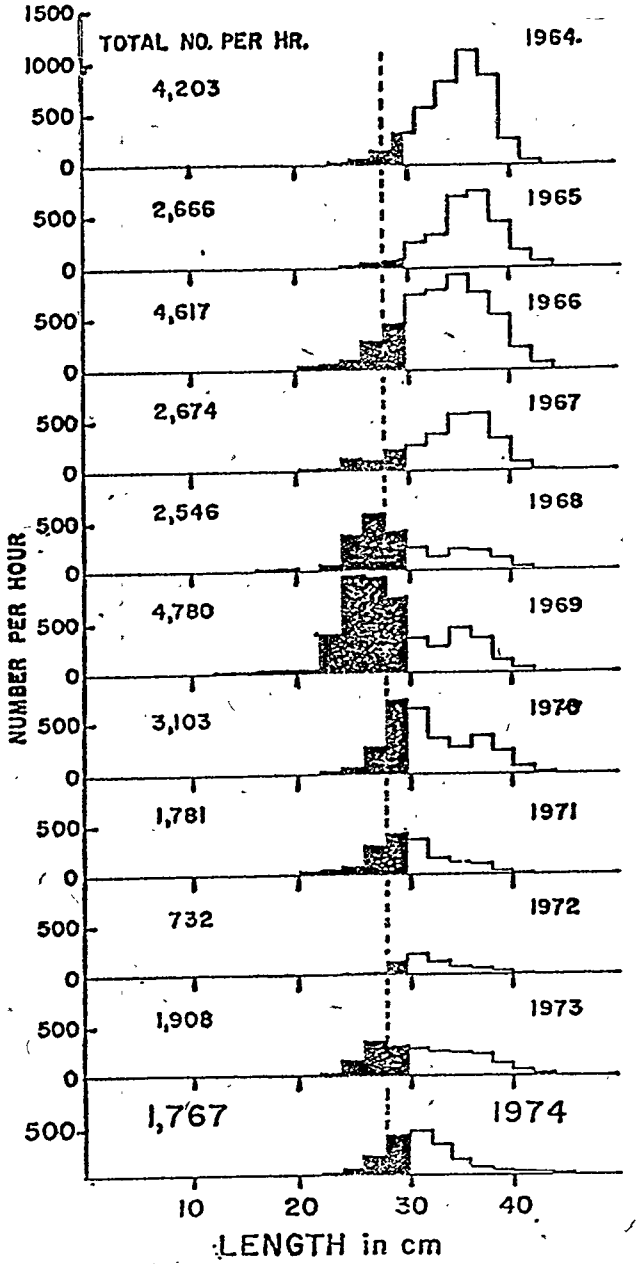


Figure 13.--Catch-per-unit-effort by size increment for Pacific ocean perch harvested by stern trawlers of the Japanese North Pacific Trawl fishery in the Aleutian Region, 1964-74.

(d) *Estimated equilibrium yield:* Since 1960, the Eastern Slope Region has produced catches in excess of 32 thousand mt only twice (1961 and 1968). Following high catches, CPUE and catch decreased substantially—for example, the 32 thousand mt catch in 1968 has been followed by catches of less than 15 thousand mt per year. Judging from catch patterns through 1974, the ocean perch stock in the Eastern Slope Region could not support removals of even 10–15 thousand mt annually without detrimental effects to the already low level of stock abundance.

In the Aleutian Region, there were clear cases of overexploitation in the early stages of the fishery when amounts in excess of 90 thousand mt were taken consecutively from 1964 through 1966 (Wolotira, 1975b). Since then, catches have dropped to 12 thousand mt in 1973 and 22 thousand mt in 1974. It is evident that the sustained annual catch of 75 thousand mt estimated by Chikuni cannot now be realized because of the poor condition of this stock.

Because ocean perch is a long-lived, slow-growing species with full maturity not occurring until age 9 and a life span of 25 years, stock conditions are not expected to improve for many years even if recruitment improves and removals remain at modest levels.

Low (1974) estimated equilibrium yield for both stocks combined, under stock conditions prevailing in the early 1970's, to be 12,000–17,000 mt. In view of the slight improvement noted in the Aleutian stock in very recent years, equilibrium yield might now be near 21,500 mt. Considering relative stock sizes and conditions, this yield might be reasonably apportioned as folows: 15,000 mt to the Aleutian stock; 6,500 mt to the Eastern Slope stock.

(5) *Sablefish.*—This species is covered thoroughly in a separate Preliminary Fishery Management Plan.

In general, sablefish stocks in the Bering Sea and Aleutian area are in poor condition, as evidenced by catch rates which have declined 24–93 percent since 1967 (Low, 1976).

Estimates of MSY, derived from a general production model, range from 10,000–20,000 mt, but slight overfishing for 15 years has caused a gradual decline in abundance, and the population in this region is now thought to be capable of producing an equilibrium yield of perhaps 8,000–10,000 mt.

(6) *Pacific Cod.*—a. *Distribution and abundance of stock:* Pacific cod are distributed widely over the Bering sea shelf but occur mainly on the continental slope. This distributional pattern is quite similar to that of pollock. During the early 1960's, when a fairly large Japanese longline fishery operated on the continental slope, cod was harvested by longliners for the frozen fish market. Beginning in 1964, the Japanese North Pacific trawl fishery for pollock expanded and cod became an incidental catch to the pollock fishery. At present, cod are believed to be only an occasional target species when high concentrations are detected during pollock fishing operations.

The annual catch of Pacific cod by Japan increased from 19,100 mt in 1964 to about 74,400 mt in 1970; since then, catches have varied between 41,000 and 50,600 mt. Catches by the USSR have been reported only since 1971 and have increased from 2,500 mt in 1971 to 16,600 mt in 1974. Therefore, for all nations combined, the Pacific cod catch for 1974 was the second highest on record at 67,200 mt.

The biology and behavior of Pacific cod in the Bering Sea have not been studied adequately to delineate stocks; catch patterns suggest that only a single stock exists in the eastern Bering Sea.

On the basis of catch history, the abundance of Pacific cod in the 1970's appears to be about 5 percent that of pollock. This estimate assumes that the catchability coefficients for pollock and cod are the same. However, it is more likely that this coefficient is lower for cod because of its pelagic and dispersed distribution.

(b) *Maximum sustainable yield.* Because of the lack of information concerning potential yield of cod in the Bering Sea and the difficulty of estimating its biomass, only a rough approximation of MSY is possible. Using Japanese commercial catch-effort statistics through 1973 and the surplus production model of Pella and Tomlinson (1969), Low (1974) estimated that the MSY for Pacific cod could be as high as 85,000 mt per year.

(c) *Status.* Pruter (1973) explained that the traditional catch-per-unit-effort measure of stock abundance is probably not a reliable estimator of Pacific cod abundance in the Bering Sea. Although catch rates for cod by gear type were computed by Takahashi (1975) and Low (1976) to indicate relative cod abundance, they are considered inadequate to gauge the current status of stocks. Japanese Danish seiners and pair trawlers account for most of the cod landings, but cod catch rates for these gear types—knowing that their effort is largely directed to target on walleye pollock—impart little information on the condition of stocks.

Size composition of cod landed by the Japanese fisheries generally varies from 30 to 80 cm (Figure 14). Because most of the cod were taken by trawl gear capable of retaining fish down to 20 cm and because there is no indication that selection for larger cod had taken place in the fishery, the proportion of small fish (below 40 cm) suggests that recruitment was low both in 1973 and 1974. This does not necessarily indicate that the stock is in poor condition, as year-to-year variations in recruitment are normal and expected. Since the stock (and fishery) is made up of fish varying over a wide size (and presumably wide age) range, a few years of poor recruitment should not be cause for concern.

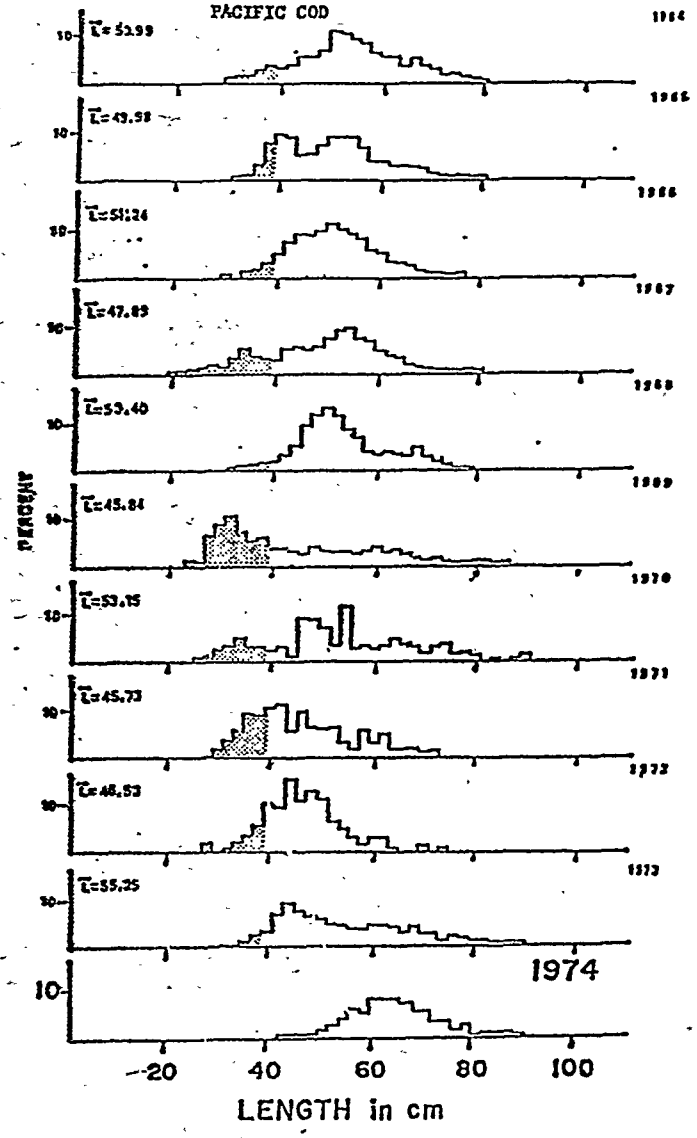


Figure 14.--Length frequency distributions of Pacific cod from samples of catches by the Japanese mothership, North Pacific trawl, and longline fisheries in the Bering Sea, 1964-74.

(d) *Equilibrium yield.* At present, there is no reason to believe that cod stocks in the Bering Sea are in poor condition; neither, however, is there evidence to show that higher catches would be sustainable. In fact, when the total catch exceeded 74,000 mt in 1970, catches subsequently declined. Therefore, equilibrium yield is considered to be equal to the 1972-74 catch level of about 58,000 mt.

(7) *Pacific Halibut.*—The demise of the North American setline fishery in the Bering Sea (and the halibut resource which supported it) has been well documented over the past 10 years (Table 16). Part of this deterioration may have been caused by combined North American and Japanese setline catches during 1960–63, but the situation was undoubtedly aggravated by the enormous incidental catch of juvenile halibut by Japanese and Soviet trawlers (International Pacific Halibut Commission, 1976; Hoag and French, 1974, 1975). Even though such incidentally caught halibut are to be returned to the sea by Japanese fishermen, most do not survive.

MSY as it applies to the setline fishery is believed by IPHC to be in the order of 2,000–3,000 mt.

In response to the critical halibut situation, arrangements were made through the International North Pacific Fisheries Commission and bilaterally with Japan and the U.S.S.R. for winter closures of key trawl grounds where juveniles were known to concentrate and were highly susceptible to trawls. These arrangements, instituted in late 1973, are still in force in slightly modified form.

Annual trawl surveys conducted by IPHC to estimate relative abundance of juvenile halibut showed that during 1966–72 catch per hour dropped from 31.8 to 3.1 individuals but increased in 1975 to 11.9. The recent increase is considered to be at least partially a result of the winter trawl closures. If such is the case, and similar protective measures continue, IPHC believes that enhancement of the North American setline fishery should become apparent by about 1980.

TABLE 16.—*Catch (metric tons, round weight) of Pacific halibut by North American and Japanese setlines in the Bering Sea.*

Year	North American setline	Japanese setline	Total
1959	1,313	1,271	2,584
1960	2,508	2,240	4,748
1961	3,408	6,931	10,339
1962	2,394	[1] 11,141	13,535
1963	4,447	[1] 9,868	14,315
1964	4,908	7,899	12,807
1965	1,405	709	2,114
1966	800	16	822
1967	721	215	936
1968	1,444	83	1,527
1969	797	168	965
1970	743	12	755
1971	685	5	690
1972	523	0	523
1973	442	0	442
1974	172	0	172
1975	264	0	264
1976	317	0	317

[1] Includes an unknown catch by trawls.

A winter trawl closure and a ban on retention of trawl-caught halibut are key elements of this plan—they are de-

signed to improve somewhat on the existing arrangements to hasten halibut stock rehabilitation and U.S. fishing potential.

(8) *Herring.*—There are three principal fisheries for Pacific herring in the eastern Bering Sea: a Japanese trawl fishery, a Soviet trawl fishery, and a Japanese gillnet fishery (Table 17). The Republic of Korea conducted a minor trawl fishery for herring off the Bering Sea coast of Alaska in 1974. The estimated catch by that fishery was 200 mt. The main trawl fisheries operated along and inside the 200-meter line between the Pribilof Islands and St. Matthew Island during the winter-spring months, November to March. The gillnet fishery operates off the Bering Sea coast of Alaska from Bristol Bay to Norton Sound during the spring months, usually April into June.

Herring is a species that shows strong schooling and migratory characteristics. Rumyantsev and Darda (1970) noted periodic large concentrations of herring which winter near Nunivak Island, Unimak Island, St. Matthew Island, and the Pribilofs, then move toward the Alaskan coast and into the Bays during summer.

Most concentrations large enough to sustain commercial fisheries are found in waters shallower than 200 meters. Their stock sizes vary considerably from year to year as year-class strength has a tendency to fluctuate widely. Because of this potential for annual variation in abundance (hence yield), MSY has little value.

TABLE 17.—*Catch of herring in metric tons, by Japanese and Soviet trawlers east of 180° in the Bering Sea and Japanese gillnet vessels west and east of 175° W. in the Bering Sea, excluding the Aleutian region, 1964–75.*

Fishing year (July-June)	Trawl fisheries			Japanese gillnet fishery			
	Japan	U.S.S.R.	Total	Calendar year	West of 175° W.	East of 175° W.	Total
1964–65	1,362	(1)	(2)	1964	41,597		41,597
1965–66	3,117	(1)	(2)	1965	34,659		34,659
1966–67	2,831	(1)	(2)	1966	24,118		24,118
1967–68	9,486	9,800	19,286	1967	30,167		30,167
1968–69	50,857	75,379	126,236	1968	5,183	818	6,001
1969–70	23,901	92,228	116,129	1969	680	1,949	2,629
1970–71	24,236	60,126	84,362	1970		1,585	1,585
1971–72	13,143	67,547	80,690	1971		4,603	4,603
1972–73	346	39,999	40,345	1972		472	472
1973–74	219	16,810	17,029	1973		1,878	1,878
1974–75	2,685	19,342	22,027	1974		3,337	3,337
				1975 [3]		651	651

[1] Not available. [2] Incomplete. [3] Preliminary.

DATA SOURCES: *Japanese fisheries:* International North Pacific Fisheries Commission docs. 833, 879, 1021, 1102, 1275, 1339, 1423, 1525, 1599, 1769, 1692, 1802, 1804, 1806 and 1813. *U.S.S.R. fishery:* 1967–75: Furnished by the U.S.S.R. under provisions of United States-U.S.S.R. fisheries agreements.

Analyses of catch and CPUE, uncorrected for the possible existence of more than one stock or for factors other than abundance (such as ice and weather) that might affect fishery performance, suggest a substantial decline in resource abundance: (1) A downward trend in total catch from the peak year of 1968–69 through 1974–75; (2) a general downward trend in CPUE of small Japanese trawlers; and (3) a recent sharp decline in CPUE of large Japanese trawlers (Mason, 1976).

These symptoms mirror those observed in the herring fishery of the western Bering Sea shortly before its collapse in the late 1960's.

Catches of 80,000–126,000 mt obviously could not be sustained, yet they were not so large as to obliterate the resource. Empirically, then, it can be reasoned that MSY is in the range of 50,000–100,000 mt, but that current equilibrium yield is much lower, perhaps near the 1974–75 catch level of 21,000 mt.

(9) *Squid.*—Although known from incidental research and commercial catches, and from stomach analyses of prey species to be abundant, little is known of the squid resource of the Bering Sea. Japanese records indicate a catch of 5,000 mt in 1975. Intuitively, MSY is greater than 10,000 mt.

(10) *Other Species.*—Little information concerning species composition, abundance, stock units, stock condition, or potential yield is available for the statistical category "other" included in the reported catches.

If the fishery seeks certain components and purposely avoids others, or if certain components are mixed with major target species and taken incidentally while others are not, exploitation rates would be grossly disproportionate among the components. This could easily lead to overfishing of certain species or localized stocks if the allowable catch for this category is a significant portion of the total catch for the entire fishery.

4.0 TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING

A. OPTIMUM YIELD (PRELIMINARY DETERMINATION)

The concept of optimum yield incorporates consideration of a broad range of socio-economic factors relating to impacted fisheries, as well as the biological characteristics of the exploited stocks. In the time and with the data available, it has not been possible to make other than a cursory evaluation of socio-economic factors; hence for the purpose of this Preliminary (and interim) Management Plan, optimum yields are considered as equivalent to total allowable catches (TAC's). These figures have been determined on the basis of biological information concerning the characteristics of exploited resources, with certain adjustments to accommodate for the quality of the data base. Although regulations in this Preliminary Plan deal only with the activities of foreign vessels, the reduction in fishing levels implied by the TAC's in this Plan should result in improved stock conditions, and, therefore, improve the economic viability of the U.S. fisheries. Further adjustments of TAC's to attain optimality are anticipated in succeeding interations of the management plan.

B. TOTAL ALLOWABLE CATCH

Pertinent information concerning stock condition, sustainable yields under current conditions, domestic production potentials and the surplus available for foreign use is summarized in Table 18.

Rationales for differences, when they occur, between maximum sustainable yield (or equilibrium yield) and total allowable catch are as follows:

(1) *Walleye Pollock.*—Equilibrium yield for this resource is believed to currently be about one million mt. In order to begin restoring the population to the level of abundance that could produce MSY, a TAC of 850,000 mt would be appropriate. This, however, would result in a single step, one-third reduction in the foreign pollock catch. Anticipating little U.S. involvement in this fishery in the immediate future, and in a attempt to minimize the abruptness of economic dislocations in the foreign fisheries, the TAC in 1977 is set at 950,000 mt. This harvest level is not expected to permit significant rebuilding to occur, but it is believed to be low enough to arrest the downward trend in abundance.

(2) *Yellowfin Sole.*—Although the current estimate of exploitable biomass is based on seemingly firm survey data, and the exploitation rate used to estimate equilibrium yield is based on a generally recognized population model, the yellowfin sole resource is obviously not stable. Therefore, the TAC will be set conservatively at the low end of the equilibrium yield range—at 106,000 mt. This will allow a catch in 1977 that is more than 50 percent greater than the average of the last three years of record (1972–74).

TABLE 18.—*Total allowable level of foreign fishing in the Bering Sea and Aleutian Islands trawl fishery*

Species	Data base	1974 U.S. catch	1974 foreign catch	Estimate MSY	Estimate EY	Status	1977 TAC	U.S. capacity	Total allowable level of foreign fishing
Pollock	Good	0	1,600,000	1,100,000–1,600,000	1,000,000	Overfished from 1972–75; near-future recruitment looks poor; heavy reliance on juveniles.	930,000	0	930,000.
Yellowfin sole	do	0	51,000	70,000–270,000	106,000–147,000	Greatly overexploited in early 1960's; signs of significant recovery in 1975–76.	106,000	0	106,000.
Other flounders	Fair	0	100,000	105,000	105,000	Slightly underfished as a complex; some species or stocks may now be overexploited, others may have substantially more potential.	105,000	0	105,000.
Pacific Ocean perch	Good	0	62,000	110,000	21,500	Greatly overexploited in early 1960's—remain depressed.	6,500	0	6,500-areas I, II, III, combined.
							15,000	0	15,000-area IV.
Sablefish	Fair	0	8,000	10,000–20,000	8,000–10,000	Slight overfishing for 15 yr has caused gradual decline to current low level.	5,000	0	5,000-areas I, II, III combined.[3]
							2,400	0	2,400-area IV.[3]
Cod	do	0	64,000	85,000	58,000	Fully utilized; current recruitment appears lower than in recent past.	58,000	0	58,000.
Halibut	Excellent.	300	300	2,000–3,000	(?)	Commercially extinct in terms of setline fishery due to high-incidental mortality of juveniles caused by trawling.	[4] Tr.	[4]>Tr.	0 to no retention.
Herring	Poor	Tr.	26,000	50,000–100,000	21,000	Overfished; probably subject to highly variable recruitment.	21,000	1,000	20,000.
Squid	do	0	<5,000	>10,000	>10,000	Known to be large resource	10,000	0	10,000.
Others	do	0	104,000	(?)	(?)	(?)	59,600	0	59,600-areas I, II, III combined.
							34,000	0	34,000-area IV.

[1] Applies to combined long-line and trawl catch
[2] Includes Canadaian catch.
[3] Limited North American setline fishery for resource assessment purposes.
[4] Tr.=Trace, less than 500 metric tons.
[5] Not applicable.

(3) *Other Flounders.*—The TAC for this species category in 1977 will be set at the level of current equilibrium yield—105,000 mt.

(4) *Pacific Ocean Perch.*—The TAC for this species in 1977 will be set at the equilibrium yield of 21,500 mt. Because stock condition and potential yield are quite different in the Bering Sea and the Aleutian areas, the TAC will be divided into 6,500 mt for the eastern Bering Sea proper and 15,000 mt from the Aleutian area.

(5) *Sablefish.*—Equilibrium yield for this resource is believed to currently be about 8,000 to 10,000 mt. In order to restore the population to the level which will eventually produce MSY, the TAC for 1977 will be set at 7,400 mt. Considering separately the condition of stocks in the eastern Bering Sea proper and along the Aleutian Island chain, the TAC will be subdivided into 2,400 mt from the Aleutian area and 5,000 mt from the Bering Sea proper.

(6) *Cod.*—At present, there is no reason to believe that cod stocks in the Bering Sea are in poor condition; neither, however, is there evidence to show that higher catches would be sustainable. In fact, when the total catch exceeded 74,000 mt in 1970, catches subsequently declined. Therefore, until further information concerning recruitment becomes available, total allowable catch will be held at the equilibrium yield level of 58,000 mt.

(7) *Halibut.*—The 1977 TAC for halibut will be controlled by measures adapted by the International North Pacific Fisheries Commission and the International Pacific Halibut Commission.

(8) *Herring.*—The TAC for this species in 1977 will be held near the catch set at the level of current equilibrium yield—21,000 mt.

(9) *Squid.*—A pre-emptive TAC of 10,000 mt will be set for 1977, with adjustments.

(10) *Other Species.*—The TAC for this species category in 1977 will be set 10 percent below the last catch of record—to 93,600 mt—with the intention of similar reduction in each succeeding year until it reaches no more than 2 percent of the total catch of the fishery. This phased reduction is intended to:

(a) Prevent circumventing individual species allocations by reporting significant overages in a large "Other" category;

(b) Prevent excessive exploitation of small or previously unfished stocks which are unregulated because of a lack of fishery or biological data; and

(c) Force more precise statistical reporting for resource assessment and management purposes.

5.0 CONSERVATION AND MANAGEMENT MEASURES APPLICABLE TO FOREIGN FISHERMEN

A. REGULATIONS

The management policy for the Bering Sea shall be to arrest the decline in abundance of overfished stocks and allow them to begin rebuilding to levels that will produce MSY; to rebuild the halibut resource of the region to a level that will allow a viable U.S. setline fishery; and to prevent stocks that are currently healthy from being overfished.

All foreign vessels wishing to operate in this Management Unit must obtain a permit from the Secretary of Commerce.

(1) *Region-wide Restrictions.*—(a) No retention of salmon, halibut[3] or Continental Shelf Fishery Resources (to prevent covert on species of special importance to U.S. fishermen).[4]

b. No trawling or gillnetting within 12 miles of the baseline used to measure the Territorial Sea, except in the western Aleutian Islands as described in Appendix A (to prevent conflicts with U.S. fixed gear and small, inshore fishery vessels; to prevent catch of localized inshore species important to U.S. fishermen and natives).[4]

c. No fishing for shrimp (earlier foreign fisheries reduced this resource to commercial extinction).[4]

(2) *Time-Area Closures.*—(a) No trawling year-round in the Bristol Bay "Pot Sanctuary," i.e. in the area enclosed by straight lines from Cape Sarichef to 55°16′ N–166° W, to 56°20′ N–163°00′ W, to 58°10′ N–166°00′ W, then due south along 160°00′ W to the Alaska Peninsula (to prevent conflicts between foreign mobil gear and concentrations of U.S. crab pots).[4]

b. No trawling from December 1 to May 31 in the following INPFC Conservation Areas (Figure 15) (to protect winter concentrations of juvenile halibut, to protect spawning concentrations of pollock and flounders).[4]

No trawling from December 1 to May 31 in the following INPFC Conservation Areas (Figure 15) (to protect winter concentrations of juvenile halibut, to protect spawning concentrations of pollock and flounders).[5]

1. Area B.
2. Area E, east of 166° W—south of 56° N.
3. Area E, west of 166° W—south of 56°30′ N.
4. Area A, south of 55°30′ N.
5. Misty Moon Ground.

c. No fishing for herring year-round east of 168° W, north of 58° N (to prevent overexploitation of specific herring stocks important to the well-being of native Eskimo fishermen and villages).[5]

d. This management unit (or individual sub-areas where specific quotas apply) will be closed to fishermen of a nation for the remainder of the calendar year when that nation's allocation of any species listed in Table 18 is exceeded (to discourage foreign fleets from covertly targetting on depleted species/stocks and to prevent damaging by-catches after the allotted catch has been taken; this provision places the burden of responsibility on the foreign fleets to avoid taking such species/stocks and to develop fishing gear and fishing practices which will minimize or eliminate their incidental capture.

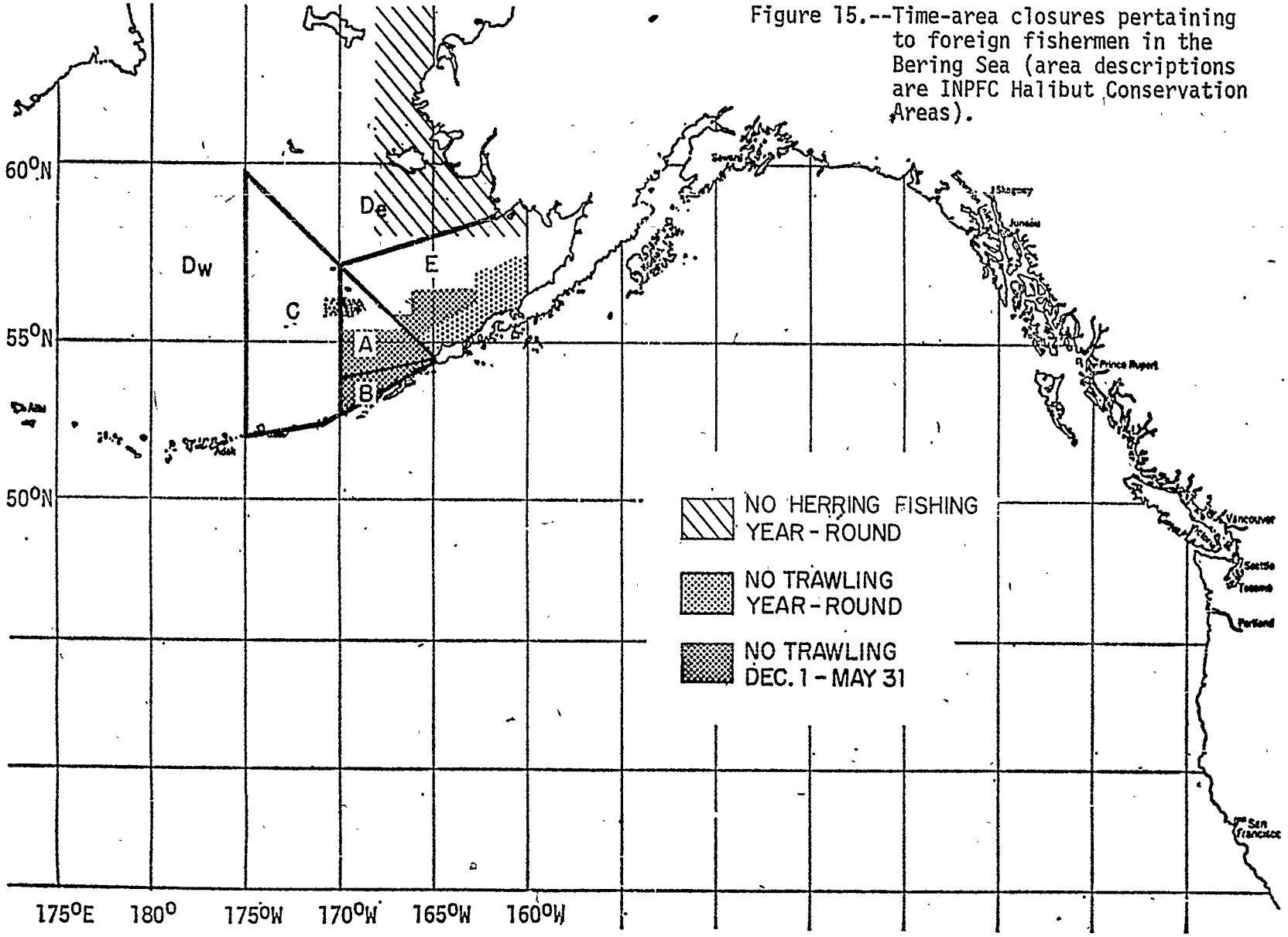


Figure 15.--Time-area closures pertaining to foreign fishermen in the Bering Sea (area descriptions are INPFC Halibut Conservation Areas).

B. STATISTICAL REPORTS

(1) *Annual.*—Each nation whose fishermen operate in the Region shall report[7] by May 30 of the following year—annual catch and effort statistics, as follows: Effort in hours trawled, by vessel class, by gear type, by month, by ½° (lat.) ×1° (long.) statistical area; Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) ×1° (long.) statistical area, by the following species groupings:

Yellowfin sole, rock sole, flathead sole, arrowtooth flounder, Greenland turbot, other flounders, Pacific ocean perch, Pacific cod, sablefish (backcod), walleye (Alaska) pollock, Atka mackerel, Pacific herring, squid, any other species taken in excess of 1,000 mt, other fishes.

(2) *Monthly.*—In addition to the annual statistical report in (1) above, each nation will report[7] by the end of the following month, provisional fishery information for each month as follows: Effort in vessel-days on the grounds by vessel-class and gear-type; and Catch in metric tons of flounders, rockfishes, cod, pollock, sablefish, Atka mackerel, herring, squid, and others, for each of the areas shown in Figure 16.

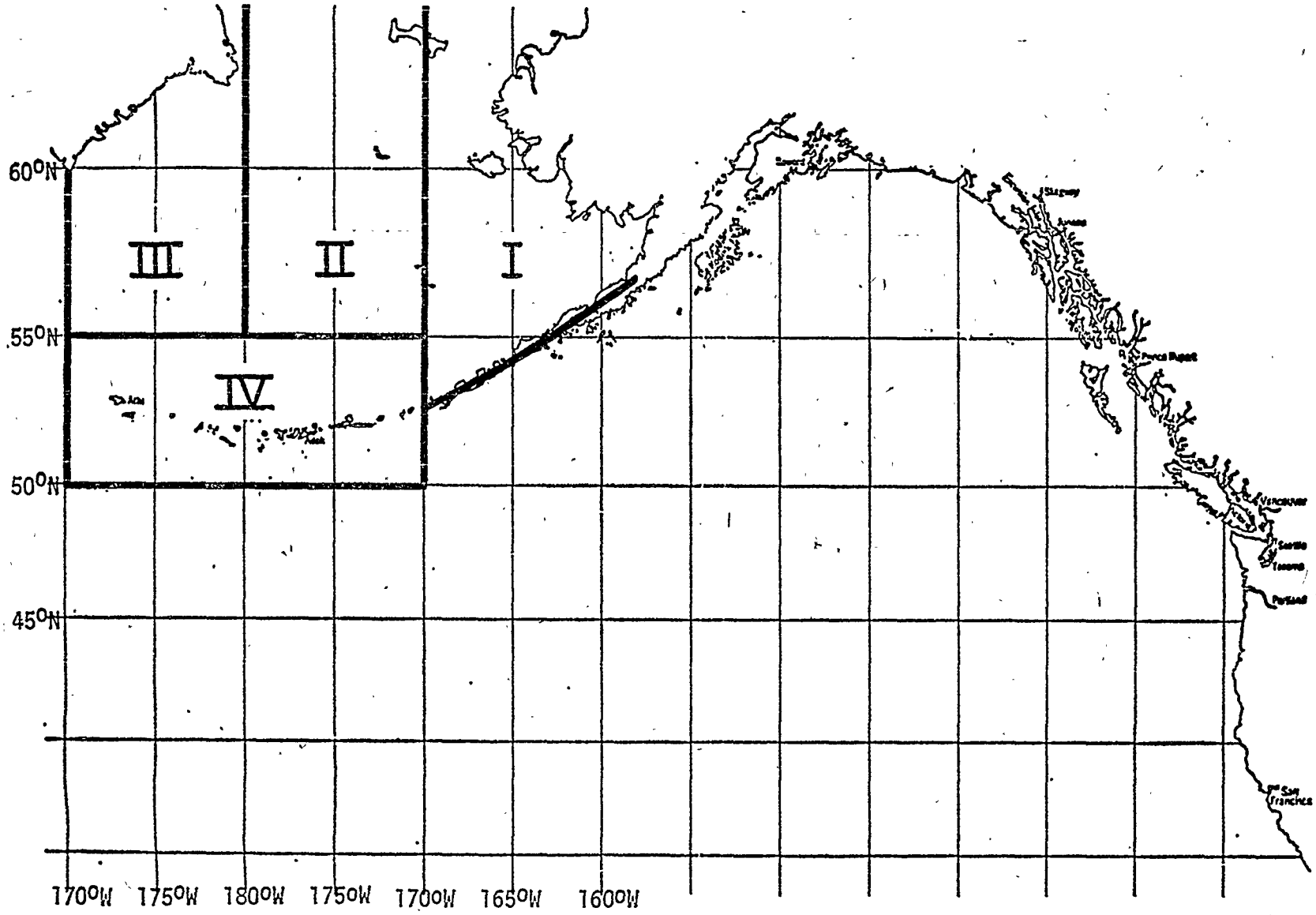


Figure 16.--Major statistical areas in the Bering Sea.

C. FLEET DISPOSITION REPORTS

The appropriate fleet commander or individual vessel master will report[7] by radio prior to the commencement of fishing, the arrival in this management unit of each fishing and processing vessel, giving the vessel's name and other identifying marks, size, and intended target species. A similar report[7] will be made at the time of departure of each vessel from the Region. These reports, augmented with U.S. surveillance observations and monthly catch and effort reports, will be used to monitor adherence to limitations.

D. OBSERVERS

All vessels of each nation operating in this management unit will have available at no cost to the U.S., accommodation for one U.S. observer. Observers will be assigned to individual vessels and for periods at the discretion of the U.S. to measure daily catch rates; estimate species, size, and age composition; collect other biological data as appropriate; determine location and duration of hauls; and observer gear dimensions and performance.

E. RESEARCH

Bona fide fishery or fishery-related research (but not exploratory fishing) by foreign governments will be encouraged. Valid results of such research will be considered by the management entity in determining total allowable catches and other management measures. Cooperative U.S.-foreign research ventures will be planned and executed when they are found to be in the best regional interest of the U.S.

6.0 Relation to National Standards

The prescriptive measures contained in this Preliminary Fishery Management Plan (total allowable catches, allocation to foreign fishermen, and regulations pertaining to foreign fishermen) have been designed to be consistent with the seven national standards listed in Pub. L. 94–265.

Total allowable catches are entirely for the purpose of preventing overfishing (standard No. 1), are based upon the best scientific evidence available (standard No. 2), and are applied to the extent possible to individual stocks or stock complexes throughout their range (standard No. 3).

Inasmuch as this document deals solely with foreign fisheries, that provision of the legislation concerning nondiscrimination among the residents of states (standard No. 4) does not apply.

Those regulations which isolate the foreign trawl fisheries from fisheries for other species (2.4.1.2.a) and from key areas where there are incidental catches of species especially important to the U.S. (2.4.1.2.b) will promote efficiency in resource utilization (standard No. 5) by reducing potentials for gear conflict, incidental catch of non-target species, and exploitation of juvenile fish which have not reached the size where cohort production is maximized. Further, the provision (2.4.1.2.c) which calls for termination of a nation's fishing operations in the region when the quota for any species is achieved will promote efficiency in resource utilization by providing a tremendous incentive for developing species-specific gear and fishing strategy.

Monthly catch reports (2.4.2.2), check-in/check-out procedures (2.4.3), and observers monitoring fishery performance (2.4.4) will permit the timely detection of anomolies in the catch or the fishery (standard No. 6).

Reliance upon easily monitored time-area closures (2.4.1.–2) will minimize that surveillance and enforcement activity required to assure foreign compliance to this plan (standard No. 7).

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8.0 Footnotes

[1] M=0.26; a=0.45 (0.5 used by Alverson & Pereyra, 0.4 used by Gulland); B_o=1.3-2.0 million mt.

[2] From Chikuni (1975a) fecundity, in thousands of eggs, by age are 10 at age 7, 29 at age 10, 75 at age 15, 122 at age 20, and 162 at age 25.

[3] Except Canadian fishermen under provisions of the Halibut Convention of 1953.

[4] Identical to current bilateral arrangements.

[5] Similar to current bilateral arrangements but somewhat more restrictive.

[6] New restriction.

[7] To the Director, Alaska Region, Natl. Mar. Fish. Serv., Juneau, Alaska.

9.0 Appendices

Appendix A

I. Areas in the Aleutian Islands where foreign fishing is permitted up to the Territorial Sea.

(A) In the waters off the Bering Sea coast of the Aleutian Islands:

(1) Between 169° and 170° West longitude, dragnet fishing from May 16 to November 30 inclusive, and longline fishing year-round;

(2) Between 170° and 172° West Longitude, dragnet and longline fishing year-round;

(3) Between 172° and 176° West Longitude, longline fishing from April 1 to October 31 inclusive;

(4) West of 176° West Longitude, dragnet fishing from May 1 to December 31 inclusive and longline fishing year-round.

(B) In the waters off the Pacific coast of the Aleutian Islands:

(1) Between 169° and 172° West Longitude, dragnet and longline fishing and loading year-round;

(2) Between 172° and 178°30' West Longitude, longline fishing from April 1 to October 31 inclusive;

(3) Between 176° and 178°30' West Longitude, dragnet fishing from July 1 to October 31 inclusive;

(4) west of 178°30' West Longitude, dragnet fishing from May 1 to December 31 inclusive and longline fishing year-round.

II. Misty Moon Ground.

That area bounded by straight lines connecting the following coordinates in the order listed:

North latitude	*West longitude*
56°18'	170°24'
56°20'	169°03'
56°12'	168°46'
55°56'	169°10'
55°56'	170°24'

Appendix B—Summary conditions and restrictions

Subpart F—Bering Sea and Aleutian Islands Trawl Fishery

1.0 Definitions

(a) Unless otherwise defined herein, the terms used in this Subpart will have the meanings ascribed to them.

(b) The conditions and restrictions shall apply to all species of fish and invertebrates taken in trawl gear,

(c) The regulatory area for taking those species listed in (b) above is defined to include that portion seaward of the Territorial sea in the Bering Sea and Aleutian Islands over which the United States exercised fisheries jurisdiction.

2.0 Catch quotas

(a) The 1977 annual catch quotas for foreign fishermen in the Bering Sea and Aleutian Islands are as follows:

Species	*Catch quota (metric tons and area)*
Pollock	950,000.
Yellowfin sole	105,000.
Other flounders	100,000.
Pacific Ocean perch.	6,500, East Bering Sea; 15,000, Aleutians.
Sablefish	5,000, East Bering Sea; 2,400, Aleutians.
Cod	57,000.
Herring	20,000.
Others	59,600, East Bering Sea; 34,000, Aleutians.

3.0 Open season

(a) The open season for foreign fishing in the Bering Sea and Aleutian Islands area will be consistent with the time-area closures in section 4.0.

(b) The open seasons for foreign fishing in the Aleutian Islands area within 12 miles of and beyond 3 miles from the baseline used to measure the territorial sea are as follows:

(1) In the waters off the Bering Sea coast of the Aleutian Islands;

1. Between 169° and 170° West longitude, dragnet fishing from May 16 to November 30 inclusive, and longline fishing year-round.

2. Between 170° and 172° West longitude, dragnet and longline fishing year-round.

3. Between 172° and 176° West longitude, longline fishing from April 1 to October 31 inclusive.

4. West of 176° West longitude, dragnet fishing from May 1 to December 31 inclusive and longline fishing year-round.

(2) In the waters off the Pacific coast of the Aleutian Islands:

1. Between 169° and 172° West longitude, dragnet and longline fishing and loading year-round.

2. Between 172° and 178°30' West longitude, longline fishing from April 1 to October 31 inclusive.

3. Between 176° and 178°30' West longitude, dragnet fishing from July 1 to October 31 inclusive.

4. West of 178°30' West longitude, dragnet fishing year-round.

4.0 Closed seasons and areas

Trawling by foreign vessels is prohibited in the following areas:

(a) No trawling year round in the Bristol Bay "Pot Sanctuary", i.e. in the area enclosed by straight lines from Cape Sarichef to 55°16'N—166°10'W, to 56°20'N—163°00'W, to 57°10'N—163°00'W, to 58°10'N—166°00'W, then due south along 160°00'W to the Alaska Peninsula.

(b) No trawling from December 1 to May 31 in the following INPFC Conservation Areas:

1. Area B.
2. Area E east of 166°—south of 56°30'N.
3. Area E west of 166°W—south of 56°N.
4. Area A—south of 56°N.

(c) The entire region will be closed to fishermen of a nation when that nation's allocation of any species listed in Section 2.0 is exceeded.

5.0 Gear restrictions

Gear restrictions for foreign fishing in the regulatory area are described in Section 3.0 during the open season for specific areas.

6.0 Statistical reporting

(a) Annual. Each nation whose fishermen operate in the Region shall report by May 30 of the following year—annual catch and effort statistics, as follows: *Effort* in hours trawled, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area; *Catch* in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area, by the following species groupings:

Yellowfin sole
Rock sole
Flathead sole
Arrowtooth flounder
Greenland turbot
Other flounders
Pacific ocean perch
Pacific cod
Sablefish (blackcod)
Walleye (Alaska) pollock
Atka mackerel
Pacific herring

Any other species taken in excess of 1,000 mt
Other fishes

(b) Monthly. In addition to the annual statistical report in (a) above, each nation will report by the end of the following month, provisional fishery information for each month as follows:

"Effort" in vessel-days on the grounds, by vessel-class, and gear-type; and "Catch" in metric tons of flounders, rock-fishes, cod, pollock, sablefish, Atka mackerel, herring, and others.

7.0 General restrictions

(a) No retention of salmon, halibut, or CSPR.

(b) No trawling within 12 miles of the baseline used to measure the Territorial Sea, except in the Western Aleutian Islands as described in Section 3.0 above.

(c) No fishing for shrimp.

[FR Doc.77-4157 Filed 2-14-77;8:45 am]

federal register

TUESDAY, FEBRUARY 15, 1977

PART VI

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

SNAIL FISHERY OF THE EASTERN BERING SEA

Preliminary Fishery Management

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

SNAIL FISHERY OF THE EASTERN BERING SEA

Preliminary Fishery Management

On the 4th of February, 1977, the Secretary of Commerce, through an appropriate delegation of authority to the Associate Administrator for Marine Resources of the National Oceanic and Atmospheric Administration and the Director of the National Marine Fisheries Service, published a Notice of Determination, Preparation, Issuance, and Implementation of Preliminary Fishery Management Plans at 42 FR 6873. In order that each Plan may have the widest possible circulation, the Secretary has decided that each should be published in the FEDERAL REGISTER.

Dated the 7th day of February 1977 at Washington, D.C.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

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1.0 Introduction

The snail fishery is based on the snail resource of the eastern Bering Sea, which consists of some 35 different species of large marine gastropods. The commercial harvest by Japan began in 1971 and catches have ranged between 3,000 and 3,500 metric tons of recovered edible meat (11,000 to 13,000 metric tons live weight). The snails are taken in pots and the catch is processed at sea. Fishery statistics and research data are very limited. No U.S. fishery occurs.

This preliminary management plan is for foreign fisheries that take snails (marine gastropods) in the eastern Bering Sea within U.S. jurisdiction.

2.0 ~~2.1~~ Description of the Fishery

A. ~~2.1.1~~ Areas and Stocks Involved

At least 35 different species of large marine snails inhabit the eastern Bering Sea shelf. Some of these are more or less evenly distributed over the entire shelf, but most have limited distributions within the area. A list of 15 of the most abundant large marine snails of the eastern Bering Sea, as determined by National Marine Fisheries Service (NMFS) trawl surveys, is given in Table 1. Some of these species are harvested in the Japanese commercial fishery while others, seemingly as abundant in different areas, remain unexploited. Distributions of the 15 species are described in Figures 1-15.

Some problems exist regarding the taxonomy of eastern Bering Sea snails. A number of species taken in the Japanese commercial fishery have different names in NMFS studies. To clarify these discrepancies, a table (Table 2) has been prepared that relates the names used in Japanese works on the eastern Bering Sea snail resources to those used by NMFS. It must be kept in mind that in this report the names used will be those in use by NMFS.

By far the most important commercially utilized species in the eastern Bering Sea is Neptunea pribiloffensis (Dall, 1919). In his study of the 1973 Japanese fishery northwest of the Pribilofs, Nagai (1974) found that 80 percent by number and 90 percent by weight of the entire catch consisted of the three species N. pribiloffensis; Buccinum scalariforme Moller, 1842; and B. angulossum Gray, 1839 (Table 3), with N. pribiloffensis contributing 50 percent of the catch by number and 70 percent by weight. Buccinum scalariforme made up 16 percent by number and 11 percent by weight; Buccinum angulossum made up 19 percent by number and 11 percent by weight. The lack of variety in the catch is due, at least in part, to the limited area of operation of the vessel used in the study. That area extended 60 miles latitudinally and 80 miles

Table 1. -- A list of fifteen of the most abundant large eastern Bering Sea snails listed roughly in order of decreasing aoundance.

	Species	Figure showing distribution
1.	Neptunea pribiloffensis (Dall, 1919)	Figure 1
2.	N. heros (Gray, 1850)	Figure 2
3.	N. lyrata (Gmelin, 1791)	Figure 3
4.	N. ventricosa (Gmelin, 1791)	Figure 4
5.	Fusitriton oregonensis (Redfield, 1848)	Figure 5
6.	Buccinum angulossum Gray, 1839	Figure 6
7.	B. scalariforme Moller, 1842	Figure 7
8.	B. plectrum Stimpson, 1865	Figure 8
9.	Beringius beringii (Middendorff, 1849)	Figure 9
10.	Volutopsius middendorffii (Dall, 1891)	Figure 10
11.	Clinopegma magna (Dall, 1875)	Figure 11
12.	Plicifusus kroeyeri (Moller, 1842)	Figure 12
13.	Volutopsius fragilis (Dall, 1891)	Figure 13
14.	B. polare Gray, 1839	Figure 14
15.	Pyrulofusus deformis (Reeve, 1847)	Figure 15

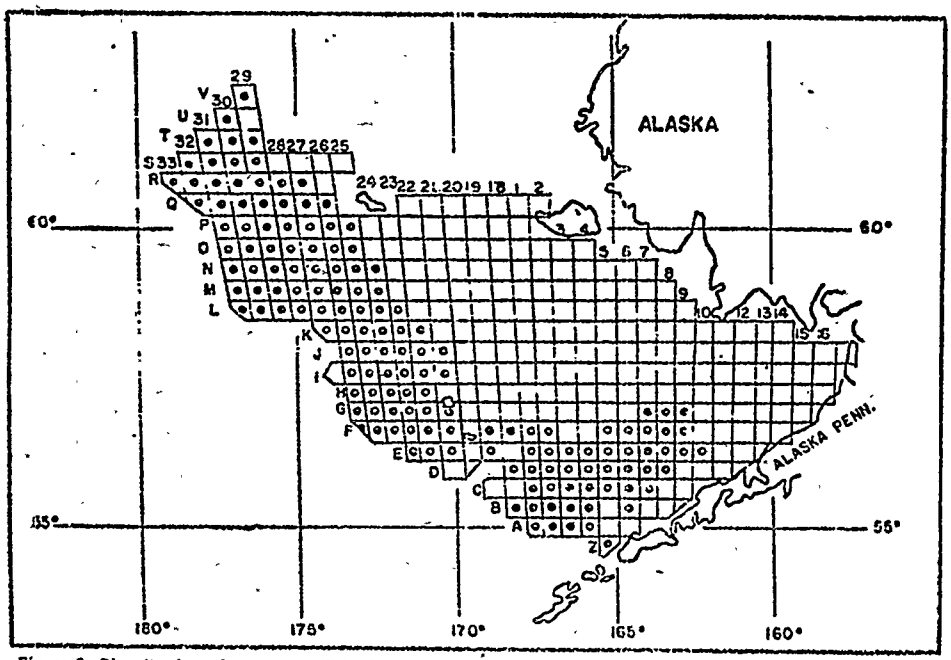

Figure 1. Distribution of Neptunea pribiloffensis (Dall, 1919) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

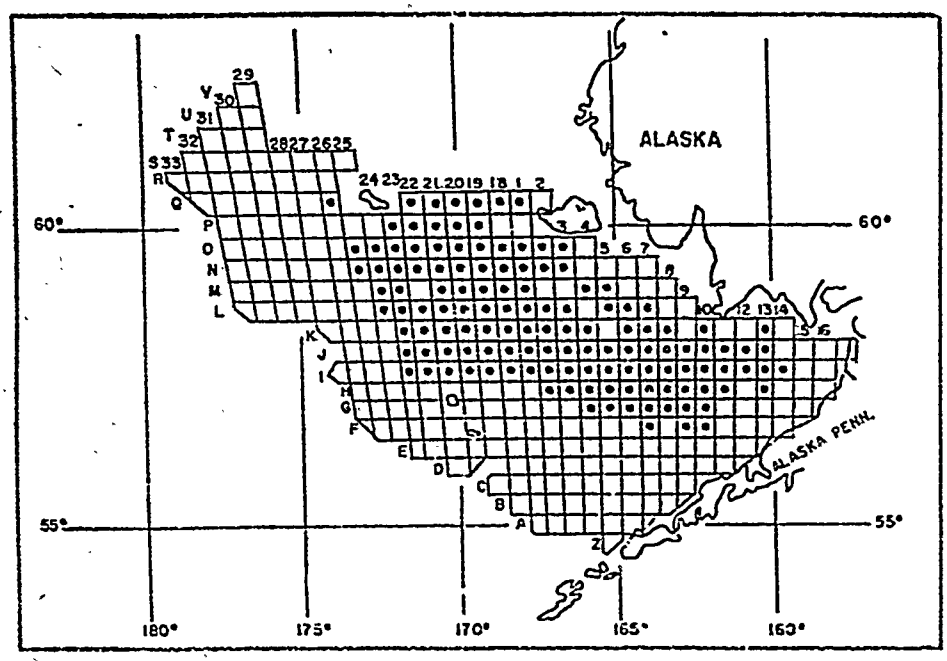

Figure 2. Distribution of Neptunea heros (Gray, 1850) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

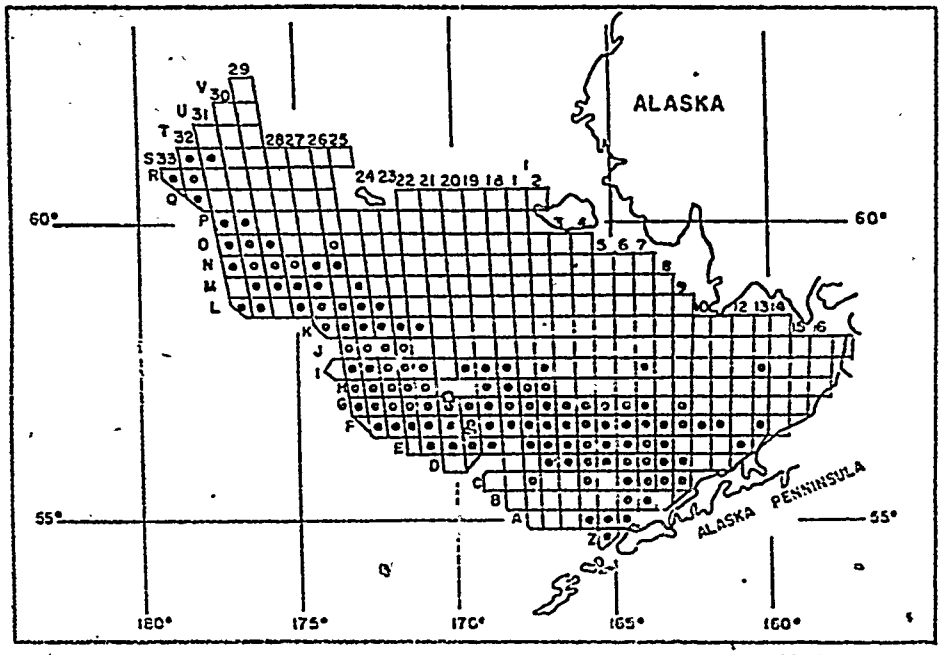

Figure 3. Distribution of Neptunea lyrata (Gmelin, 1791) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

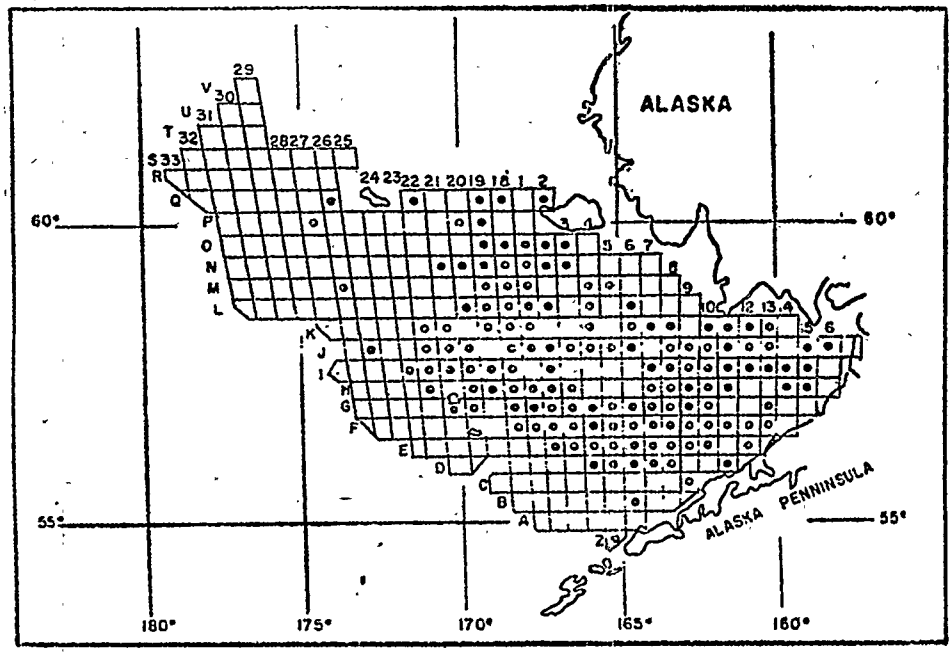

Figure 4. Distribution of Neptunea ventricosa (Gmelin, 1791) in the eastern Bering Sea as determined by NMFS

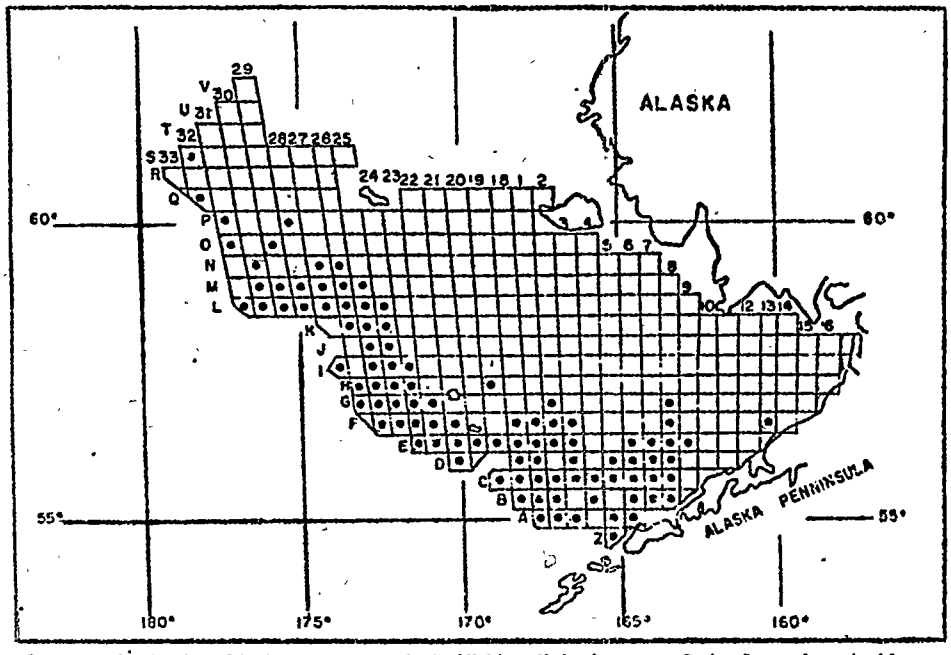

Figure 5. Distribution of Fusitriton oregonensis (Redfield 1848) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

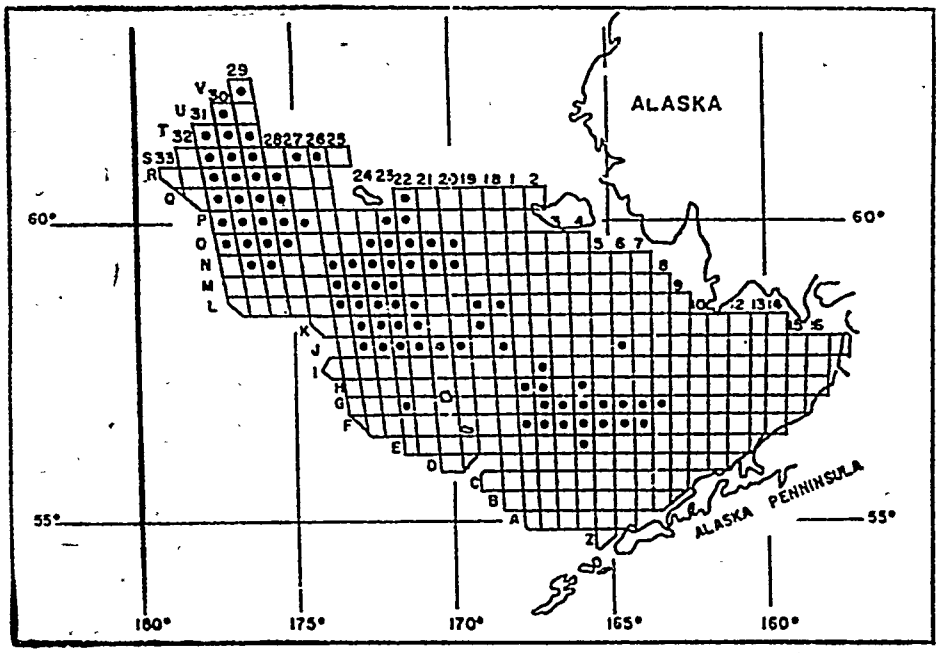

Figure 6. Distribution of Buccinum angulossum Gray, 1839 in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

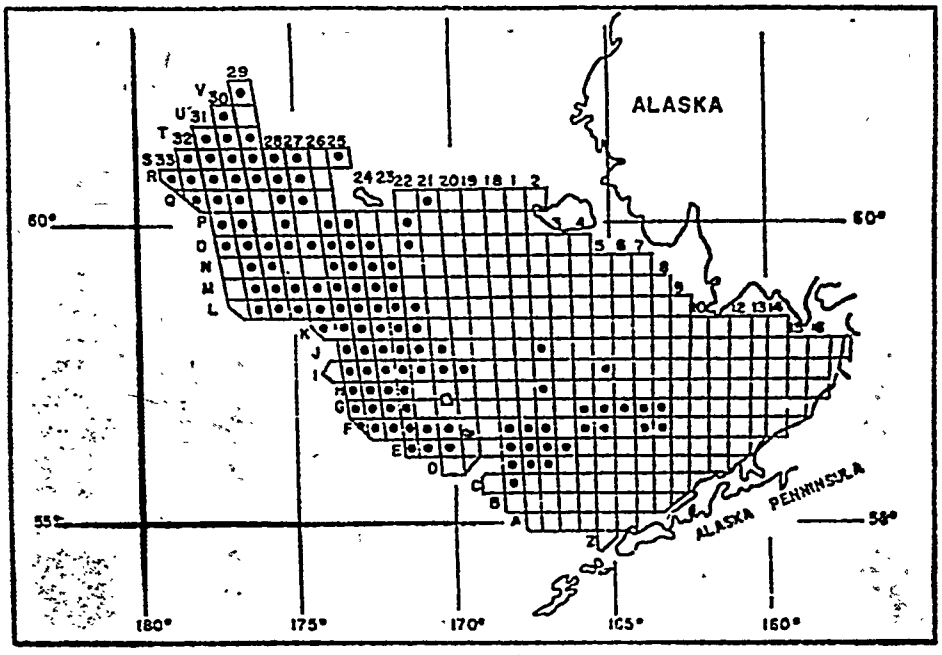

Figure 7. Distribution of Beringius scalariforme Moller, 1842 in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

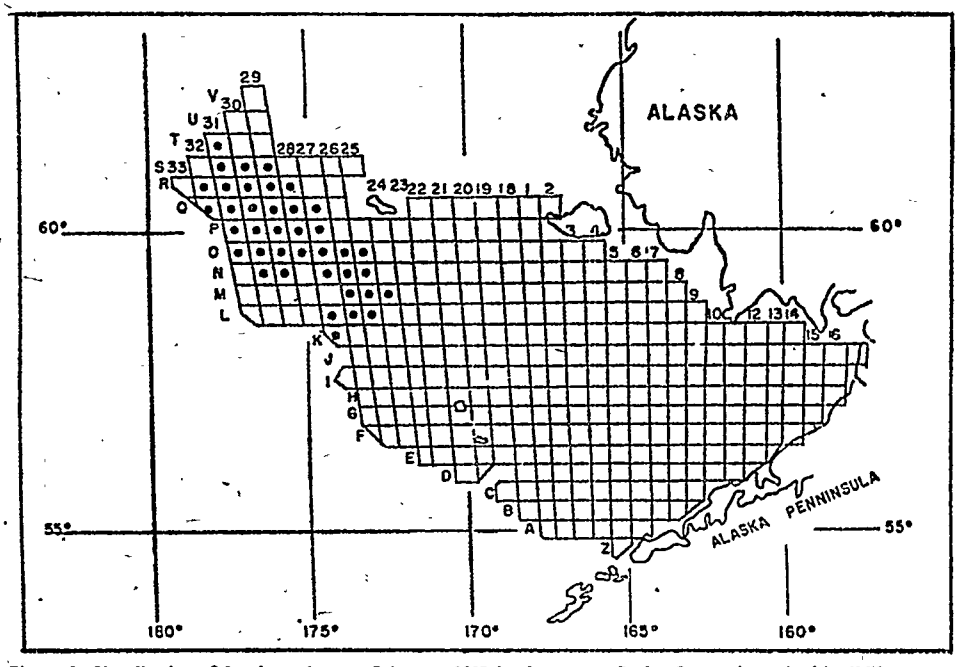

Figure 8. Distribution of Buccinum plectrum Stimpson, 1865 in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

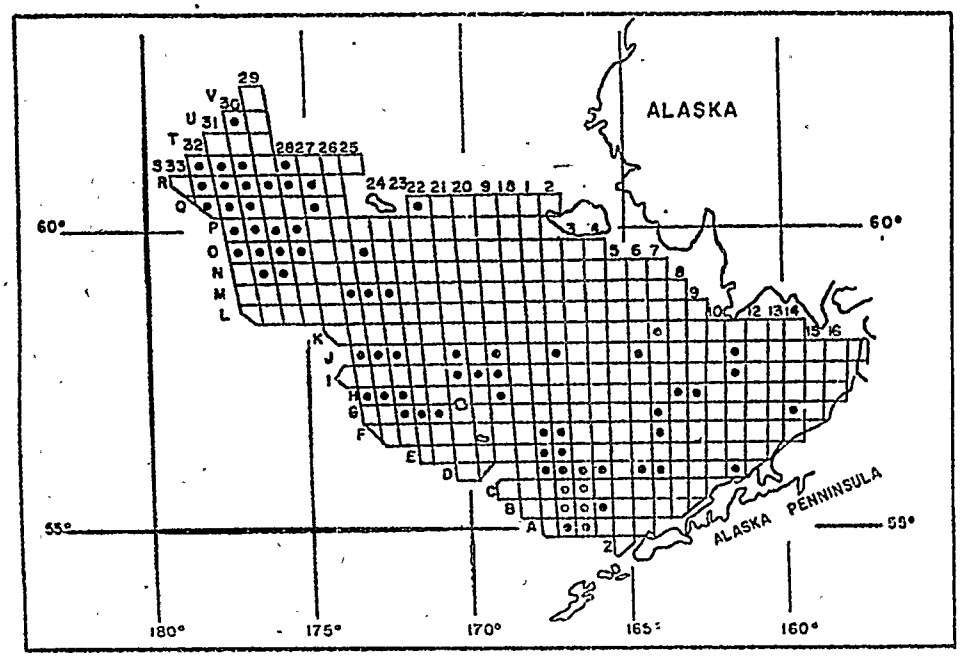

Figure 9. Distribution of Beringius beringii (Middendorff, 1849) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

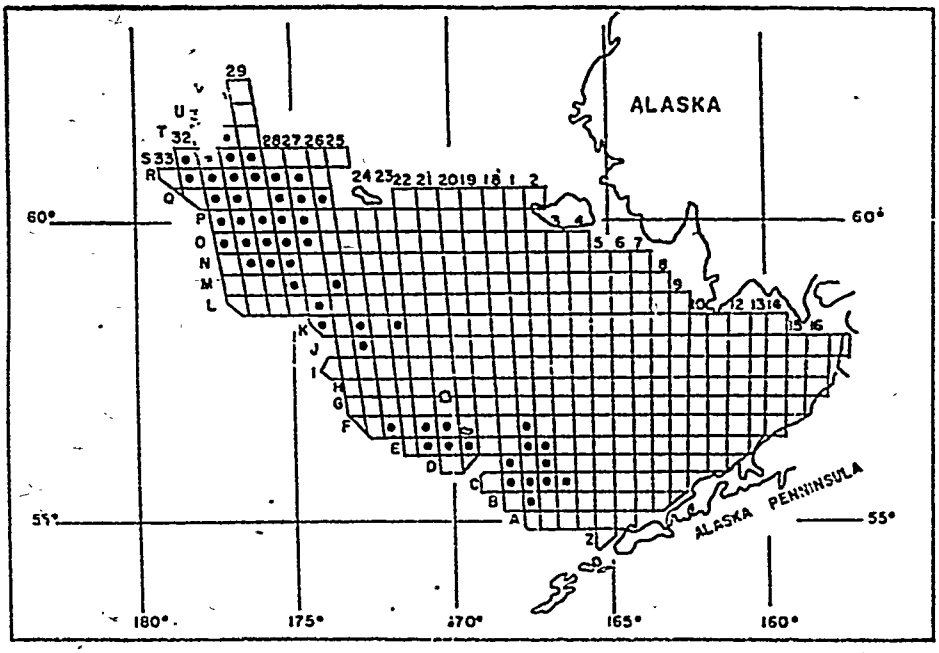

Figure 10. Distribution of Volutopsius middendorffii (Dall, 1891) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

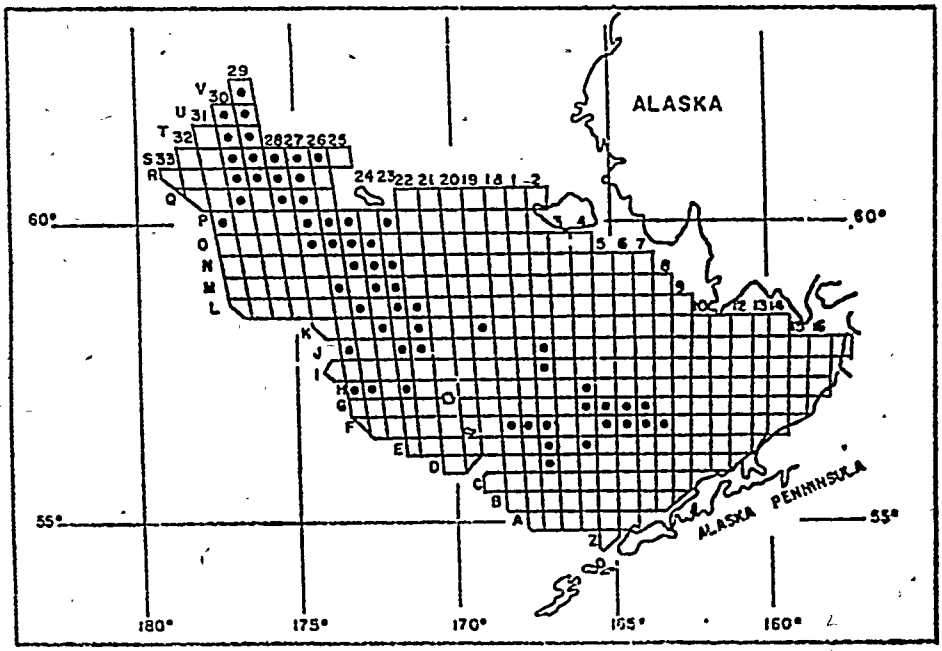

Figure 11. Distribution of Chionoecetes magna (Dall, 1875) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

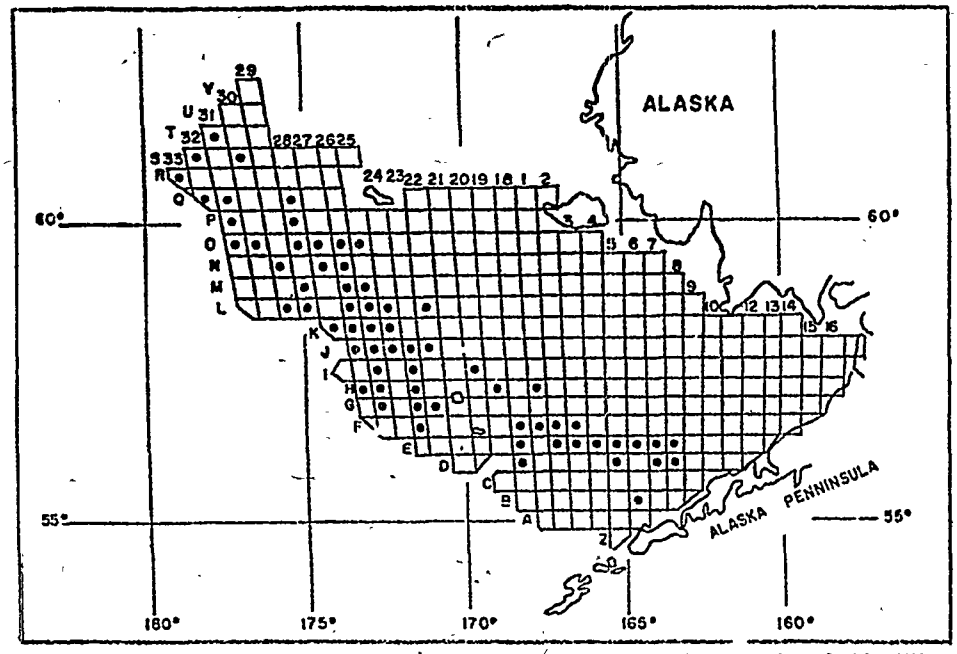

Figure 12. Distribution of Plicifusus kroeyeri (Moller, 1842) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

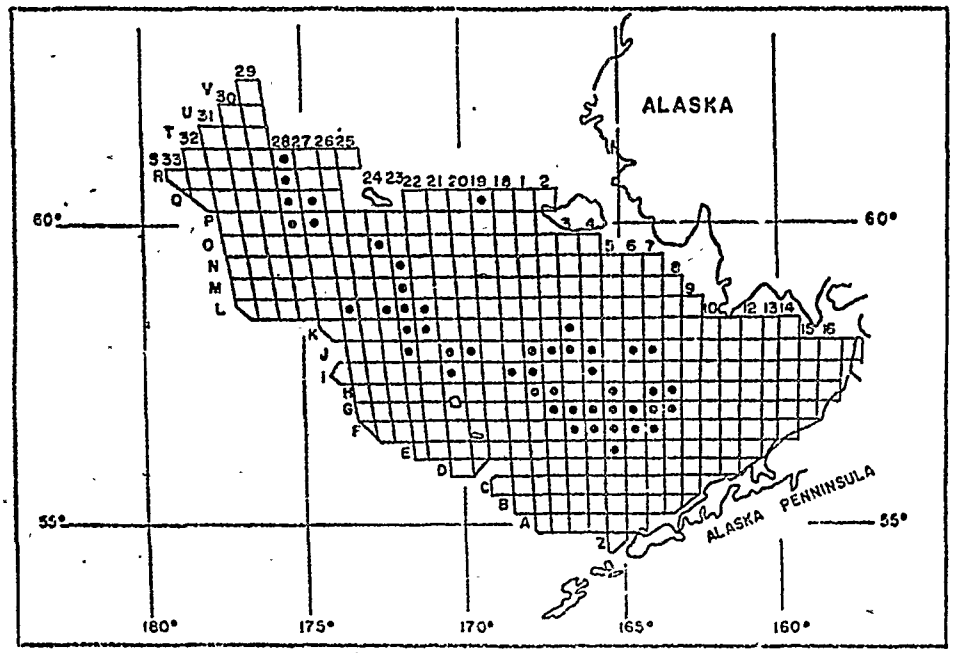

Figure 13. Distribution of Volutopsius fragilis (Dall, 1891) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

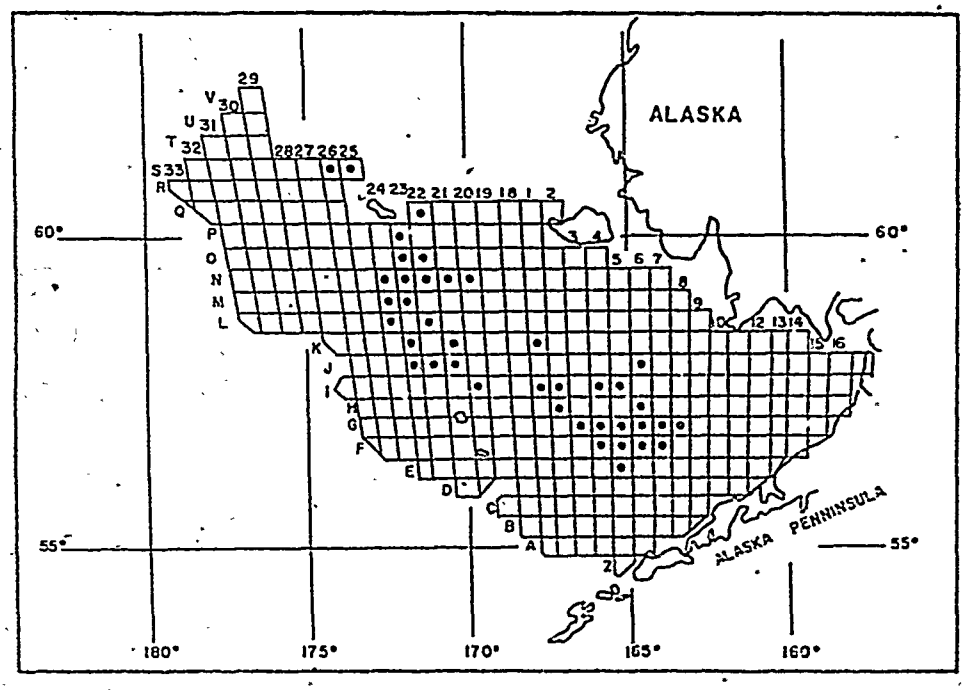

Figure 14. Distribution of Buccinum polare Gray, 1839 in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

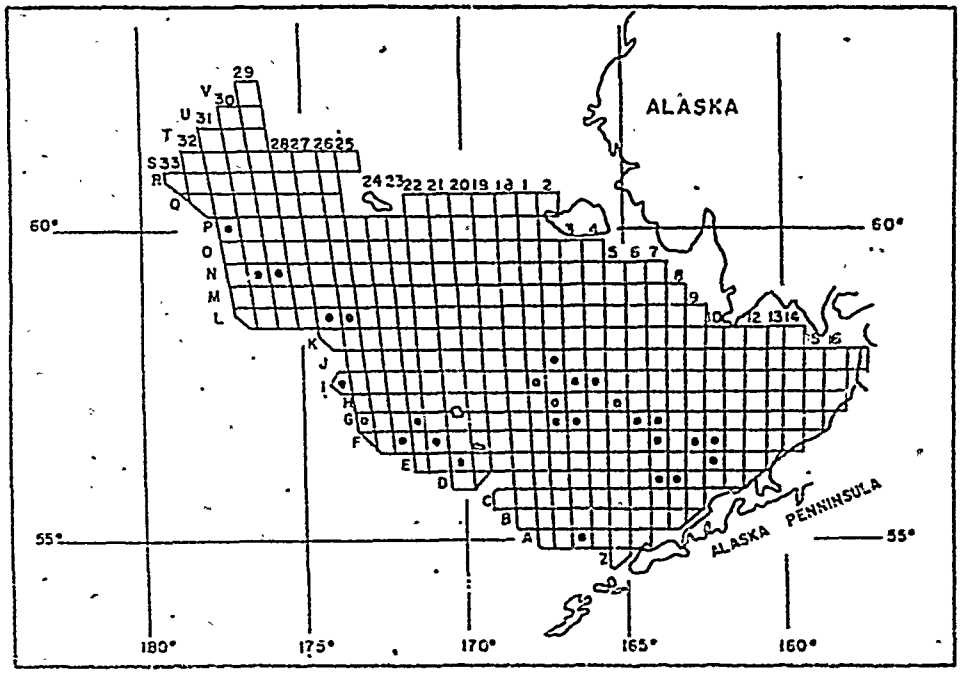

Figure 15. Distribution of Peruloidous deformis (Reeve, 1847) in the eastern Bering Sea as determined by NMFS trawl survey in 1975.

Table 2.-- A comparison of the names used in literature on the Japanese eastern Bering Sea snail catch by Nagai (1974) and those currently in use by National Marine Fisheries Service.

Nagai	NMFS
Neptunea intersculpta pribiloffensis (Dall, 1919)	N. pribiloffensis (Dall, 1919)
Baccinum tenue (Gray, 1939)	B. scalariforme Moller, 1842
Baccinum angullossum (Gray, 1839)	Same
Buccinum oedetum (Dall, 1907)	B. scalariforme Moller, 1842
Plicifusus kroyeri (Moller)	Plicifusus koreyeri (Moller, 1842)
Fusitrition oregonensis (Redfield, 1848)	Same
Buccinum subreticulatum (Habe et Ito nov)	B. polare Gray, 1839
Beringion beringii (Midd, 1847)	Beringius beringii (Midd, 1849)
Neptunea ventricosa varicifera (Dall, 1907)	N. heros (Gray, 1850)
Volutopsius middendorffii (Dall, 1891)	Same
Clinopegma buccinoides (Hab et Ito)	C. magna (Dall, 1875)

Table 3. -- Species composition by percent weights and numbers of a portion of the 1973 Japanese eastern Bering Sea snail catch (Adapted from Nagai, 1974).

Snail	Percent by number	Percent by weight
Neptunea pribiloffensis	46.7	70.
Buccinum scalariforme	25.1	16.
Buccinum angulossum	19.2	11.
Plicifusus kroeyeri	3.5	2.
Fusitriton oregonensis	.5	0.
Buccinum	3.8	1.
Miscellaneous	1.2	0.

longitudinally with 56°N and 172°W at its center.

A number of other species were reported as being less commonly taken in the Japanese catch. All of these species: Plicifusus kroeyeri (Moller, 1842); Fusitriton oregonensis (Redfield, 1848); Buccinum polare (Gray, 1839); Beringius beringii (Middendorff, 1849); Neptunea heros (Gray, 1850); Volutopsius middendorffii (Dall, 1891); and Clinopegma magna (Dall, 1875) are among the 15 most abundant species as recorded in NMFS trawl surveys.

All of the species under discussion are truly creatures of the continental shelf in that they lack even a pelagic larval stage. These snails spend their entire life, which probably exceeds 10 years in the larger Neptunea, in contact with the continental shelf. Eggs are laid in capsules that are usually attached to live or dead snails and from which fully formed juvenile snails hatch.

3. History of Exploitation

The fishery for marine gastropods in the eastern Bering Sea began in 1971 by Japan. Other Japanese north Pacific snail fisheries occur off east Sakhalin Island and in the northern Okhotsk Sea in Soviet waters. It was a relatively easy matter for the Japanese to expand the fishery from those waters to the vicinity of the Pribilof Islands, 1,300 miles to the northeast (Figure 16).

At the time of its inception, the eastern Bering Sea fishery was not regulated by the Japanese Government and no fishery statistics are available for the first year of its operation. Information on the number of vessels involved and their individual efforts, however, can be

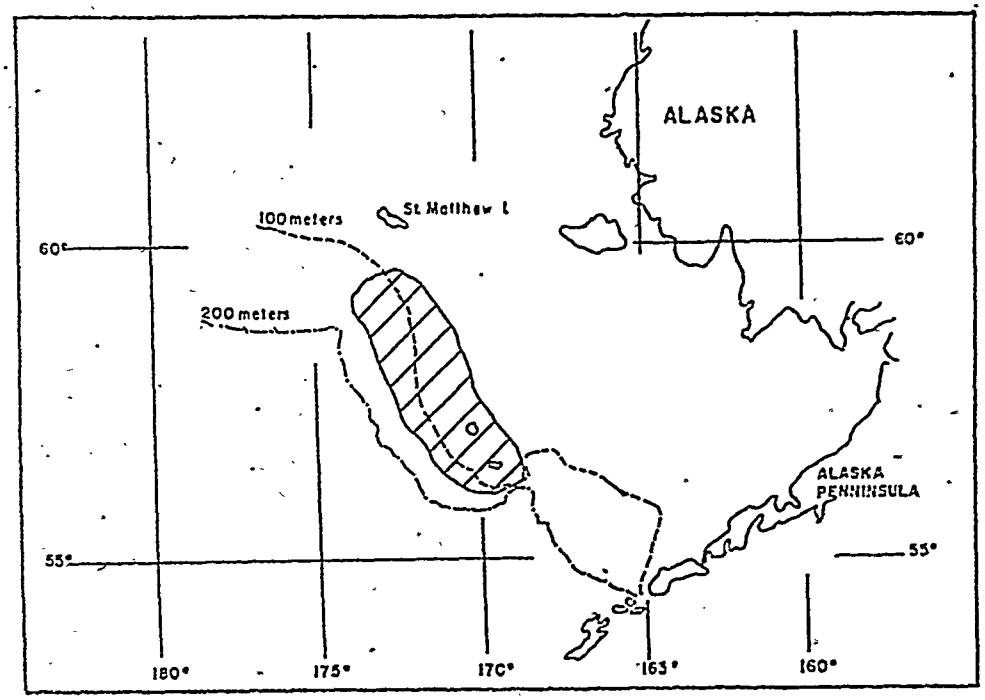

Figure 16. Distribution of Japanese snail fishing effort in the eastern Bering Sea.

inferred from observations made by National Marine Fisheries Service Enforcement and Surveillance personnel on the eastern Bering Sea fisheries patrols. Correlation between the amount of observed snail fishing effort and catch as reported by the Fisheries Agency of Japan in succeeding years is not good. The Japanese catch data are for the entire eastern Bering Sea shelf east of 175°W; no breakdown to more specific areas is available.

In the spring of 1971, United States fisheries patrol units first detected Japanese vessels fishing specifically for snails in the eastern Bering Sea. The 1971 fishery was conducted on the continental shelf, primarily around the Pribilof Islands, and to the northwest towards the central Bering Sea. Fishing was sporadic and occurred from mid-March until early October. Fourteen vessels were identified, and at its peak, the 1971 fishery involved about six vessels fishing simultaneously. The fishery is probably related to Japanese snail fishing activities in the northern Sea of Okhotsk and off east Sakhalin, and at least some of the Bering Sea vessels also fished snails off the Soviet coast.

In 1972; United States fisheries patrols identified only five Japanese snail fishing vessels with no more than three of them fishing at one time. Fishing began about mid-May and continued through July. A single boat was again seen fishing in the last 2 weeks of September. The catch for 1972 was reported as 3,218 metric tons of edible meat (Table 4). Using conversions that apply to 1974 catch statistics, this would amount to about 11,918 metric tons of live snails.

Table 4. -- Statistics of the Fisheries Agency of Japan on the eastern Bering Sea snail fishery east of 175°West longitude.

Year and type of data	Available statistics
1972	
Effort	21 licensed vessels
Vessel size	Not available
Catch	3,218 MT of recovered edible meat
1973	
Effort	21 licensed vessels
Vessel size	96-500 gross tons
Catch	3,319 MT of recovered edible meat
1974	
Effort	21 licensed vessels
Vessel size	96-490 gross tons
License period	May 1-December 31
Catch	13,237 MT live snails 3,574 MT of recovered edible meat
1975	
Effort	Not available
Vessel size	Not available
License period	Not available
Catch	3,000 MT of recovered edible meat (estimated)

In 1973, the eastern Bering Sea Japanese snail catch was reported as 3,319 metric tons of recovered edible meat (about 12,293 metric tons of live snails). Four vessels operated from mid-May to late September northwest of the Pribilof Islands (Nagai, 1975a). Only one vessel was observed by NMFS fisheries patrols during 1973 in mid-June on the continental shelf west of the Pribilof Islands. A second vessel, licensed by the Fisheries Agency of Japan to fish for snails in the eastern Bering Sea, was observed to be fishing for snow crab. Judging from catch per vessel day data supplied by Nagai (1975a) for a portion of the 1973 fleet, 12 vessels would have had to fish for 4 months to take the tonnage reportedly caught.

The first snail boats detected by NMFS patrols in 1974 were three boats in July northwest of the Pribilof Islands. These boats were observed through late August when their number increased to five vessels and one factoryship. The 1974 reported catch of 3,574 metric tons of recovered edible meat (about 13,237 metric tons of live snails) is only slightly higher than the catches for the previous 2 years.

In 1975 the discrepancy between the NMFS fisheries patrol observations and reported Japanese snail catches became even more evident. While patrols did not encounter a single snail vessel on the eastern Bering Sea shelf, the Japanese reported a catch of about 3,000 metric tons of shucked snail meat from east of 175°W.

Through June 1976, patrols again failed to find a single snail vessel, while Japanese sources indicated that 28 vessels were fishing in the eastern Bering Sea around the Pribilof Islands (Pers. Comm., Dr. Hideo Seda, Dept. Fisheries, Nihon Univ., Tokyo, Japan).

The only United States attempt to harvest and market snails on the west coast occurred in 1974 when a Cordova, Alaska, cannery, Saint Elias Ocean Products, secured about 5,000 pounds of Neptunea pribiloffensis and Fusitriton oregonensis from snow crab fishermen. The snails were caught incidentally in snow crab fishing operations over a period of about 3 months and were delivered live to the cannery where they were brine frozen in the shell and shipped to Seattle where marketing possibilities were explored. No interest was shown in the product and the cannery dropped the project (Pers. Comm., Jim Poor, St. Elias Ocean Products, Cordova, Alaska).

C. Vessels and Gear Types Employed

Fishing vessels in the Japanese snail fishery range in size from about 96 to 700 gross tons. The vessels are similar to those used in the Japanese sablefish longline fishery. Some vessels in the snail fleet operate independently while others fish for a factory vessel which processes the catch from several boats.

The gear used in the fishery consists of pots, fished on a groundline, which are similar in shape to those used in Japan's eastern Bering Sea snow crab fishery. To the floatline attached to the end of each groundline is a buoy, a pole with flag attached, and sometimes a radio beacon.

There has been a considerable amount of experimentation with gear types in terms of number and placement of pots on a groundline

and length of soak (the time the baited gear remains in the water). NMFS Reports of Boarding of Japanese snail vessels indicate that some vessels have fished as few as 30 pots on a 2,000 meter groundline, while others have fished as many as 200 pots. Soak times were reported as being from 24 to 48 hours. Nagai (1975a), in reporting on the 1973 commercial fishery, cites the use of four 500-pot groundlines picked every 3 days. A vessel having three such sets of gear picks and resets 6,000 pots in a 3-day period.

The gear is pulled with a standard long-line hauler located forward of the wheelhouse on an open deck. The pots can be stacked by loosening the line that purses the web across the bottom of the pot. Access for baiting and removing snails is gained through this hole.

Snail processing techniques vary somewhat from vessel to vessel. Aboard one vessel boarded by NMFS enforcement and surveillance agents the snails were processed as follows:

The larger snails are fed into a crushing machine that breaks away much of the shell and are then conveyed to a vibrating screen where more of the shell is removed. The remaining meats travel to a cooking basket where the meat is briefly cooked. The snails are removed from the cooker and dumped into a circular stainless steel vat with three agitator vanes that are designed to flush out more of the shell with the help of a constant water stream through a perforated screen near the bottom of the vat. From the vat, the meat is run through a "squirrel cage" washer which removes much of what little shell remains. Finally the meats are placed on a screened table where the remaining shell is picked out by hand. The meats are then placed in standard 12 kg trays and quick frozen. Some grading by meat size is done. Small snails are often frozen whole in the shell aboard ship.

D. ~~Impact~~ Impact on Domestic Fishery

At the present time there is no United States fishery for marine snails in the north Pacific or Bering Sea. The entire commercial catch is taken by the Japanese in the eastern Bering Sea. A fairly large number of snails are taken by foreign vessels in bottom trawls in the eastern Bering Sea, but at least in the Japanese trawl fleets, none of these snails are processed for market. (Pers. Comm., Larry Nelson, NMFS, Seattle, Washington).

Domestic processors have recently shown interest in the possibility of developing a fishery for snails in the eastern Bering Sea. United States crab fishing vessels certainly have the capacity to catch and hold live snails and deliver them to shore-based plants for processing.

Gear conflicts between Japanese snail fishing vessels, which have operated primarily in the waters around the Pribilof Islands and to the northwest along the continental shelf edge, and United States fishing vessels has been negligible.

Relatively little is known about the extent of non-target species mortalities in Japan's eastern Bering Sea snail fishery. National Marine Fisheries Service Enforcement agents, upon boarding Japanese snail vessels, sometimes find a few snow (Tanner) crab (Chionoecetes spp.) on deck and hung up in snail pot webs (NMFS, Reports of Boardine).

In one study of the Japanese snail fishery (Nagai, 1975b), the animals included in the incidental catch and the percent of pots in which they occurred was as follows: hermit crabs (69.3 percent), brittle stars (13.5 percent), starfish (7.6 percent), toad crab (6.8 percent), and snow crab (2.8 percent). While it appears that the incidental catch of snow crab is quite small, it must be remembered that this study was based on catches from one relatively small area and that incidental catches of snow crab could be significantly higher in other areas.

E, [illegible] Regulatory History

In May of 1973, the Fisheries Agency of Japan licensed the operation of 21 vessels for the 1973 eastern Bering Sea snail fishery. This was the first time the Japanese government had moved to regulate the fishery. Applications only for those vessels which had operated in that fishery in 1971-72 were accepted. Vessels licensed to engage in crab and bottom trawl fishing in the eastern Bering Sea were excluded from the list. The authorized area of operations was established as east of 175°W longitude and the open season as March 26 to December 31 (Shin Suisan Shimbun Sokuho, March 30, 1973).

With licensing of the fishery, it became mandatory for small vessels to submit catch reports to the Fishery Agency at the end of the season (Nagai, 1975a). The catch report includes the daily number of pot haulings and the total daily catch.

To date there are no United States regulations regarding the taking of snails by foreign or domestic fleets on the continental shelf of the United States. Snails are not currently listed on the Continental Shelf Fisheries Resources Listing published in the Federal Register.

No violations of U.S. law have been observed.

F. [illegible] History of Cooperative Research and Statistical Exchange

Japan has conducted an eastern Bering Sea snail research program since at least 1973, and the United States began investigating the resource in 1975; no cooperative research has been suggested or attempted.

The statistical data supplied by Japan has been minimal. Included are: (1) the number of vessels licensed to (vs those which do) fish for snails in the eastern Bering Sea; (2) the size range (gross tons) of vessels licensed to fish for snails; and (3) the total weight of the annual catch in metric tons of recovered edible meat (Table 4). Three scientific papers published by Japan since 1974 on the eastern Bering Sea snail fishery have, however, added to the previously scant literature.

J. [illegible] Status of Stocks

NMFS has conducted resource assessment surveys for marine gastropods in 1975 and 1976. As can be seen in Figure 1, Neptunea pribiloffensis occurs in a band along the edge of the continental shelf from the vicinity of Unimak Pass, to and probably beyond 62° latitude. The entire range of the species is known to extend from the eastern Bering Sea south to British Columbia. Buccinum scalariforme and Buccinum angulosum, the two other important components of the Japanese catch,

are also found to be more abundant nearer the edge of the continental shelf (Figures 7 and 6). Three additional species occurring in large numbers in the eastern Bering Sea are Neptunea lyrata (Figure 3), Neptunea heros (Figure 2), and Neptunea ventricosa (Figure 4).

Nagai, (1975a) has studied variations in catch per unit effort in the Japanese snail fishery and their relationship to stock abundance. Nagai's values for snail catch per pot, catch per string of gear, etc., will be of value in assessing the condition of snail stocks when data for additional years are available and yearly comparisons can be made.

Lack of data on most population parameters prevents estimating MSY for snails in the eastern Bering Sea.

4.0 Total Allowable Catch and Foreign Allocation

Since neither MSY (maximum sustainable yield) nor status of stock information are available, the total allowable catch for 1977 will be fixed at the 1975 catch level--3,000 metric tons of edible meat. Since no U.S. fishery has yet occurred, all of the total allowable catch is available for allocation to foreign fisheries.

5.0 Conservation and Management Measures Applicable to Foreign Fishery

A. Regulations

No restrictions other than catch allocation apply to the 1977 fishery.

B. Statistical Reports

Each nation whose fishermen operate in the Region shall report to the Regional Director, NMFS, Juneau, Alaska, by May 30 of the following year, annual catch and effort statistics as follows: effort in pots hauled, by month, by ½° (lat) x 1° (long) statistical area; catch in metric tons of recovered edible meat, by month, by ½° (lat) x 1° (long) statistical area.

In addition to the annual statistical report in the paragraph above, each nation will submit monthly reports within 30 days of the end of the month in which the fishing occurred containing provisional fishery information as follows: effort in vessel-days on the grounds; and catch in metric tons of recovered edible meat.

C. Fleet Disposition Reports

The appropriate fleet commander or individual vessel master will report to the Regional Director, NMFS, Juneau, Alaska, by radio prior to the commencement of fishing, the arrival in the Region of each fishing and processing vessel, giving the vessel's name and other identifying marks, size, and intended target species. A similar report will be made at the time of departure of each vessel from the Region. These reports, augmented with U.S. surveillance observations and monthly catch and effort reports, will be used to monitor adherence to limitations.

D. Observers

All vessels of each nation operating in the Region will have available at no cost to the U.S. accomodation for one U.S. observer. Observers will be assigned to individual vessels and for periods at the discretion of the U.S. to measure daily catch rates; estimate species, size and age compositions; collect other biological data as appropriate; determine location and duration of hauls; and observe gear dimensions and performance.

Research

Bona fide fishery or fishery-related research (but not exploratory fishing) by foreign governments will be encouraged. Valid results of such research will be considered by the United States management entity in determining total allowable catches and other management measures. Cooperative U.S.-foreign research ventures will be planned and executed when they are found to be in the best regional interest of the U.S.

Cited References

LITERATURE CITED

Nagai, Tatsuki.
1974. Studies on the marine snail resources in the eastern Bering Sea. I. Species composition, sex ratio, and shell length composition of snails in the commercial catch by snail-basket-gear in the adjacent waters of Pribilof Islands, 1973. Far Seas Fish. Res. Lab., Bull. 10:141-156. (In Japanese).

Nagai, Tatsuki.
1975a. On the variation of catch per unit effort. I. An analysis of the snail fishing data in the eastern Bering Sea. Far Seas Fish. Res. Lab., Bull. 12:121-135. (In Japanese).

Nagai, Tatsuki.
1975b. Studies on the marine snail resources in the eastern Bering Sea. II. List of Gastropoda and Bivalvia (mollusca) species collected with snail-basket and some information about the incidental catch in the adjacent waters of the Pribilof Islands, 1973. Far Seas Fish. Res. Lab., Bull. 12:137-143. (In Japanese).

APPENDIX

Summary

Conditions and Restrictions

Subpart D – Snails

1.0 Definitions

(a) Unless otherwise defined herein, the terms used in this subpart will have the meanings ascribed to them.

(b) Conditions and restriction in this subpart will apply to all species of snails taken by the fishery.

(c) Regulatory area for taking snails by foreign fishery vessels is only that portion of the Bering Sea over which the United States exercises fishery jurisdiction.

2.0 Area quota

The 1977 annual catch quota for all species of snails combined in the Bering Sea shall not exceed 3,000 metric tons of edible meat.

3.0 Open season

The open season for taking snails by foreign fishing vessels in the Bering Sea shall begin at 0001 hours on March 1, 1977, and terminate at a time and date to be announced.

4.0 Closed season and areas

There are no closed seasons or areas within the regulatory area.

5.0 Gear restrictions

There are no gear restrictions.

6.0 Statistical reporting

(a) Annual—Each country whose fishermen operate in the Region shall report to the Regional Director, NMFS, Juneau, Alaska, by May 30 of the following year, annual catch and effort statistics as follows: Effort in pots hauled, by month, by ½° (lat) x 1° (long) statistical area; Catch in metric tons of recovered edible meat, by month, by ½° (lat) x 1° (long) statistical area.

(b) Monthly—In addition to the annual statistical report in paragraph (a) above, each nation will submit monthly reports within 30 days of the end of the month in which the fishing occurred containing provisional fishery information as follows: Effort in vessel-days on the grounds; and Catch in metric tons of recovered edible meat.

[FR Doc.77-4509 Filed 2-14-77;8:45 am]

federal register

TUESDAY, FEBRUARY 15, 1977

PART VII

OFFICE OF MANAGEMENT AND BUDGET

■

BUDGET RESCISSIONS AND DEFERRALS

Cumulative Report, February 1977

OFFICE OF MANAGEMENT AND BUDGET

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS FEBRUARY 1977

This report is submitted in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all current year budget authority with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of February 1, 1977, of the 13 rescissions and 52 deferrals contained in the first seven special messages transmitted to the Congress for fiscal year 1977. These messages were transmitted to the Congress on July 29, September 22, October 1, November 5, December 3, 1976, and January 7, and 17, 1977.

RESCISSIONS (TABLE A AND ATTACHMENT A)

Eleven rescissions totaling $1,055.4 million in FY 1977 budget authority are presently pending before the Congress. Table A summarizes the status of rescissions proposed as of February 1, 1977. Attachment A shows the history and status of each rescission proposed for fiscal year 1977.

DEFFERALS (TABLE B AND ATTACHMENT B)

As of February 1, 1977, $4,505.7 million in 1977 budget authority was being deferred from obligation and another $59.5 million in 1977 obligations was being deferred from expenditure. Table B summarizes the status of existing deferrals. Attachment B shows the history and status of each deferral proposed during fiscal year 1977.

INFORMATION FROM SPECIAL MESSAGES

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the FEDERAL REGISTERS of:

Tuesday, August 3, 1976 (Vol. 41, No. 150, Part VI).
Monday, September 27, 1976 (Vol. 41, No. 188, Part III).
Thursday, October 7, 1976 (Vol. 41, No. 196, Part IV).
Wednesday, November 10, 1976 (Vol. 41, No. 218, Part VII).
Wednesday, December 8, 1976 (Vol. 41, No. 237, Part II).
Thursday, January 13, 1977 (Vol. 42, No. 9, Part X).
Monday, January 24, 1977 (Vol. 42, No. 15, Part VIII).

BERT LANCE,
Director.

TABLE A

STATUS OF 1977 RESCISSION PROPOSALS

	Amount (In millions of dollars)
Proposed rescissions	1,135.4
Withdrawn (R77-4A, Special Message No. 4)	-35.0
Accepted by the Congress	---
Rejected by the Congress	-45.0
Pending before the Congress:	1,055.4
Special Message No. 2, less R77-4 withdrawn in Special Message No. 4 by R77-4A (transmitted September 22, 1976)	(54.1)
Special Message No. 7 (transmitted January 17, 1977)	(1,001.3)

* *

TABLE B

STATUS OF 1977 DEFERRALS

	Amount (In millions of dollars)
Proposed deferrals	7,048.1
Routine Executive releases (-1,987.0M) and adjustments (-496.0M) 1/ through February 1, 1977	-2,483.0
Overturned by the Congress	---
Currently before the Congress	4,565.1 2/

1/ An amount equal to $756.0 million included in the "Adjustments" column of Attachment B to this report represents superseded deferrals. This amount is not included in the "adjustments" entry above because superseded deferrals are netted out in calculating the amount shown on the line "Deferrals proposed by the President" to avoid double counting.

2/ Includes $59.5 million of outlays in two Treasury deferrals--D77-26 and D77-27A.

ATTACHMENT A

STATUS OF RESCISSIONS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

As of February 1, 1977

Agency/Bureau/Account	Rescission Number	Amount Proposed for Rescission	Date Special Message Transmitted to Congress	Amount Rescinded	Date Rescission Act Signed	Amount Made Available	Date Made Available
Funds Appropriated to the President							
International Security Assistance:							
Foreign military credit sales	R77-5	41,500 1/	01-17-77				
Department of Commerce							
U.S. Travel Service							
Salaries and expenses	R77-6	525	01-17-77				
National Oceanic and Atmospheric Administration:							
Operations, research, and facilities	R77-7	1,500	01-17-77				
Department of Defense-Military							
Retired pay, Defense	R77-8	143,600	01-17-77				
Shipbuilding and conversion, Navy	R77-9	721,000 2/	01-17-77				
Other procurement, Air Force	R77-10	14,350	01-17-77				
Department of Defense-Civil							
Corps of Engineers-Civil:							
Revolving fund	R77-2	6,600	09-22-76				
Department of the Interior							
Bureau of Mines:							
Helium fund	R77-3	47,500	09-22-76				
Department of State							
Contributions for international peacekeeping activities	R77-11	12,000	01-17-77				

Agency Bureau Account	Rescission Number	Amount Proposed for Rescission	Date Special Message Transmitted to Congress	Amount Rescinded	Date Rescission Act Signed	Amount Made Available	Date Made Available
Department of Transportation							
Federal Highway Administration:							
Highway crossing Federal projects	R77-4	[35,000]	09-22-76				
	R77-4A	0	11-05-76			35,000 3/	10-01-76
Coast Guard:							
Retired pay	R77-12	6,803	01-17-77				
Other Independent Agencies							
Legal Services Corporation:							
Payment to the Legal Services Corporation	R77-1	[45,000] 4/	07-29-76			45,000	10-01-76
Small Business Administration							
Business loan and investment fund	R77-13	60,000	01-17-77				
TOTAL		1,055,378				80,000	

1/ This amount was included in a deferral (D77-38) that was transmitted to the Congress on 12-03-76.

2/ Of this amount, $452,600,000 was assumed to be included in a deferral of $929,250,000 (D77-34) transmitted to the Congress on 11-05-76. Shipbuilding funds are available for obligation for five years. It was estimated that 15% of the 1977 appropriation would be obligated after 1977.

3/ A supplementary report withdrawing the proposed rescission was transmitted to the Congress on November 5, 1976.

4/ These funds were not withheld during the 45-day Congressional consideration period.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Funds Appropriated to the President

Attachment B

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Emergency Refugee and Migration Assistance Fund	D77-1		8,640	10-01-76					
				10-28-76	-1,000				
				11-12-76	-1,200				
				12-29-76	-2,000				
				01-10-77	-1,000				
				01-31-77	-2,100				1,340
International Security Assistance									
Military assistance, 1977	D77-37		73,000	12-03-76					73,000
Foreign military credit sales	D77-38		740,000	12-03-76				-41,500 1/	
				01-10-77	-23,627				
				01-25-77	-585,533				89,340
TOTAL			821,640		-616,460			-41,500	163,680

1/ This amount is included in a rescission proposal (R77-5) transmitted to the Congress on 01-17-77.

STATUS OF DEFERRALS

B-2

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Agriculture

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Foreign Agricultural Service									
Salaries and expenses (Special foreign currency program)	D77-2	[1,610]		10-01-76					
				01-17-77				-1,610 1/	
	D77-2A		1,743	01-17-77					1,743
Agricultural Stabilization and Conservation Service									
Commodity credit corporation administrative expenses	D77-3		2,919	10-01-76					
				12-30-76	-2,629				290
Forest Service									
Expenses, brush disposal	D77-4		22,321	10-01-76					22,321
Licensee programs	D77-5	[146]		10-01-76					
				01-17-77				-146 1/	
	D77-5A		239	01-17-77					239
TOTAL		1,756	27,222		-2,629			-1,756	24,593

1/ Subsequently incorporated in a supplementary report.

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Commerce

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
General Administration									
Special foreign currency program	D77-45		654	01-17-77					654
National Oceanic and Atmospheric Administration									
Operations, research, and facilities	D77-46		7,500	01-17-77					7,500
Promote and develop fishery products and research pertaining to American fisheries	D77-6	[1,771]		10-01-76					
				01-07-77				-1,771 1/	
	D77-6A		1,772	01-07-77					1,772
Fisheries loan fund	D77-7		5,799	10-01-76					5,799
Offshore shrimp fisheries fund	D77-8		59	10-01-76					59
Fishermen's guaranty fund	D77-9	[356]		10-01-76					
				10-01-76				-356 1/	
	D77-9A		544	01-07-77					544
Maritime Administration									
Ship construction	D77-47		200,900	01-17-77					200,900
TOTAL		2,127	217,228					-2,127	217,228

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Defense, Military

Bureau/Account	Deferral Number	Amount Transmitted in Special Message		Date of Action	Releases Resulting From Subsequent Actions Taken by			Adjustments	Amount Deferred as of 02-01-77
		Superseded	Current		OMB/Agency	House	Senate		
Shipbuilding and conversion, Navy	D77-34		929,250	11-05-76 01-17-77				-452,600 1/	476,650
Military contruction, all services	D77-10	[76,483]		10-01-76 12-03-76				-76,483 2/	
	D77-10A	[335,883]		12-03-76 01-17-77				-335,883 2/	
	D77-10B		387,652	01-17-77					387,652
TOTAL		412,366	1,316,902					-864,966	864,302

1/ This amount is included in a rescission proposal (R77-9) transmitted to the Congress on 01-17-77.
2/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Defense, Civil

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Panama Canal									
Canal Zone Government: Capital outlay	D77-11		146	10-01-76					146
Miscellaneous Accounts									
Wildlife conservation, etc., military reservations	D77-12		363	10-01-76					363
TOTAL			509						509

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Health, Education, and Welfare

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Office of the Assistant Secretary for Health									
Scientific activities overseas (Special foreign current program)	D77-13	[1,113]		10-01-76					
				01-07-77				-1,113 1/	
	D77-13A		2,113	01-07-77					2,113
Office of Education									
Higher education	D77-14	[31,702]		10-01-76					
				11-05-76				-31,702 1/	
	D77-14A		303,862	11-05-76					303,862
Social Security Administration									
Limitation on construction	D77-15	[17,272]		10-01-76					
				11-05-76				-17,272 1/	
	D-77-15A		18,673	11-05-76					18,673
Special Institutions									
Howard University	D77-35		500	11-05-76					500
TOTAL		50,087	325,148					-50,087	325,148

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of the Interior

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Bureau of Land Management									
Oregon and California grant lands	D77-16		5,426	10-01-76					5,426
Bureau of Outdoor Reclamation									
Land and water conservation fund	D77-17		30,000	10-01-76					30,000
National Park Service									
Road construction	D77-18		3,245	10-01-76					
				10-01-76	-3,245				0
Geological Survey									
Payment from proceeds, sale of water	D77-19		30	10-01-76					30
Bureau of Mines									
Drainage of anthracite mines	D77-20		3,525	10-01-76					3,525
TOTAL			42,226		-3,245				38,981

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Justice

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Federal Prison System:									
Buildings and facilities	D77-21		1,900	10-01-76				1,900 1/	
TOTAL			1,900					1,900	

1/ This deferral resulted from anticipated savings attributable to a plan for leasing a New York State correctional facility. The lease proposal on which the deferral was based was not accepted by New York and the funds are needed to construct the facility as originally planned. Funds related to this deferral were not withheld.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Labor

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Employment and Training Administration									
Advances to the unemployment trust fund and other funds	D77-39		2,919,000	12-03-76 12-28-77	-1,119,000				1,800,000
TOTAL			2,919,000		-1,119,000				1,800,000

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of State

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Administration of Foreign Affairs									
Acquisition, operation, and maintenance of buildings abroad	D77-22		14,225	10-01-76					14,225
TOTAL			14,225						14,225

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of Transportation

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Coast Guard									
Acquisition, construction and improvements	D77-23		22,581	10-01-76					22,581
Federal Aviation Administration									
Civil supersonic aircraft development termination	D77-24	[464]		10-01-76					
				01-17-77				-464 1/	
	D77-24A		8,080	01-17-77					8,080
Facilities and equipment (Airport and airway trust fund)	D77-25	[276,101]		10-01-76					
				01-17-77				-276,101 1/	
	D77-25A		287,095	01-17-77					287,095
Federal Highway Administration									
Trust fund share of other highway programs	D77-48		31,250	01-17-77					31,250
TOTAL		276,565	349,006					-276,565	349,006

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Department of the Treasury

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Office of the Secretary									
State and local government fiscal assistance trust fund	D77-26		113,732 1/	10-01-76					
				11-01-76	-28,433 1/				
				01-31-77	-28,433 I/				56,866 1/
State and local government fiscal assistance trust fund	D77-27	[10,000] 1/		10-01-76					
				12-03-76				-10,000 1/2/	
	D77-27A		21,075 1/	12-03-76					
				12-31-76	-16,893 1/				
I				01-31-77	- 1,590 I/				2,592 1/
State and local government fiscal assistance trust fund	D77-28		81,500	10-01-76					
				11-01-76	-226				
				12-01-76	-186				
				12-31-76	-7,888				73,200
Loans to the District of Columbia for capital outlay	D77-36		51,002	11-05-76					51,002
TOTAL			132,502BA		-8,300BA				124,202BA
		10,0000	134,8070		-75,3490			-10,0000	59,4580

1/ Outlays only.
2/ Subsequently incorporated in a supplementary report.

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Energy Research and Development Administration

Bureau/Account	Deferral Number	Amount Transmitted in Special Message Superseded	Amount Transmitted in Special Message Current	Date of Action	Releases Resulting From Subsequent Actions Taken by OMB/Agency	Releases Resulting From Subsequent Actions Taken by House	Releases Resulting From Subsequent Actions Taken by Senate	Adjustments	Amount Deferred as of 02-01-77
Operating expenses (Energy extension service)	D77-49		7,500	01-17-77					7,500
Operating expenses (Magnetic fusion energy)	D77-50		12,000	01-17-77					12,000
Operating expenses (Program support-community operations)	D77-51		5,400	01-17-77					5,400
Operating expenses (Biomedical and environmental research)	D77-52		8,200	01-17-77					8,200
TOTAL			33,100						33,100

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: General Services Administration

Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Superseded	Amount Transmitted in Special Message: Current	Date of Action	Releases Resulting From Subsequent Actions Taken by: OMB/Agency	House	Senate	Adjustments	Amount Deferred as of 02-01-77
Rare Silver Dollar Program	D77-29	[1,709]		10-01-76 01-07-77				-1,709 1/	
	D77-29A		1,797	01-07-77					1,797
TOTAL		1,709	1,797					-1,709	1,797

1/ Subsequently incorporated in a supplementary report.

STATUS OF DEFERRALS

FISCAL YEAR 1977
(Amounts in thousands of dollars)

Agency: Other Independent Agencies

Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Superseded	Amount Transmitted in Special Message: Current	Date of Action	Releases Resulting From Subsequent Actions Taken by: OMB/Agency	House	Senate	Adjustments	Amount Deferred as of 02-01-77
Action									
Operating expenses, international and domestic programs	D77-40		550	12-03-76 12-31-76	-15				535
Foreign Claims Settlement Commission									
Payment of Vietnam prisoner of war claims	D77-30		10,833	10-01-76					10,833
American Revolution Bicentennial Administration									
Commemorative activities fund	D77-31	[1,346]		10-01-76 01-07-77				-1,346 1/	
	D77-31A		198	01-07-77					198
Interstate Commerce Commission									
Payment for directed rail service	D77-32		13,700	10-01-76					13,700
National Commission on the Observance of International Women's Year									
Salaries and expenses	D77-33		680	10-01-76					680
U.S. Information Agency									
Salaries and expenses (special foreign currency program)	D77-41		2,437	01-07-77					2,437
Special international exhibitions	D77-42		1,716	01-07-77					1,716
Special international exhibitions (special foreign currency program)	D77-43		112	01-07-77					112

Bureau/Account	Deferral Number	Amount Transmitted in Special Message: Superseded	Amount Transmitted in Special Message: Current	Date of Action	Releases Resulting From Subsequent Actions Taken by: OMB/Agency	House	Senate	Adjustments	Amount Deferred as of 02-01-77
U.S. Railway Association									
Payments for the purchase of Conrail securities	D77-44		680,700	01-07-77					
				01-27-77	-162,000				518,700
TOTAL			710,926		-162,015			-1,346	548,911
TOTAL, ALL DEFERRALS		745,956BA	6,913,331BA		-1,911,649BA			-1,241,956BA	4,505,682BA
		10,000O	134,807O		-75,349O			- 10,000O	59,458O

1/ Subsequently incorporated in a supplementary report.

[FR Doc.77-4037 Filed 2-14-77;8:45 am]

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