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federal register

TUESDAY, MAY 9, 1978

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Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
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	HEW/HSA			HEW/HSA
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Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

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[3195-01]

Title 3—The President

REORGANIZATION PLAN NO. 1 OF 1978

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

Equal Employment Opportunity

SECTION 1. *Transfer of Equal Pay Enforcement Functions*

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11 (a), (b), and (c); 16 (b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211 (a), (b), and (c); 216 (b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

SECTION 2. *Transfer of Age Discrimination Enforcement Functions*

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

SECTION 3. *Transfer of Equal Opportunity in Federal Employment Enforcement Functions*

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16 (b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a

Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

SECTION 4. *Transfer of Federal Employment of Handicapped Individuals Enforcement Functions*

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

SECTION 5. *Transfer of Public Sector 707 Functions*

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

SECTION 6. *Transfer of Functions and Abolition of the Equal Employment Opportunity Coordinating Council*

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

SECTION 7. *Savings Provision*

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

SECTION 8. *Incidental Transfers*

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall deter-

mine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 9. *Effective Date*

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

[FR Doc. 78-12759 Filed 5-5-78; 8:45 am]

LEGISLATIVE HISTORY:

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:

Vol. 14, No. 8: Feb. 23, Presidential message transmitting Reorganization Plan No. 1 of 1978 to Congress.

HOUSE REPORT No. 95-1069 accompanying H. Res. 1049 (Comm. on Government Operations).

SENATE REPORT No. 95-750 accompanying S. Res. 404 (Comm. on Governmental Affairs).

CONGRESSIONAL RECORD, Vol. 124 (1978):

Feb. 24,	H. Res. 1049,	resolution of disapproval, introduced in House and referred to Committee on Government Operations.
	S. Res. 404,	resolution of disapproval, introduced in Senate and referred to Committee on Governmental Affairs.
Apr. 25,	H. Res. 1049	rejected by House.

[3195-01]

Executive Order 12057 • May 8, 1978

National Advisory Committee for Women

By virtue of the authority vested in me as President by the Constitution of the United States of America, and in order to expand the membership of the National Advisory Committee for Women, Section 2 of Executive Order No. 12050 of April 4, 1978 is hereby amended to read as follows:

"Sec. 2. *Membership.* The President shall appoint not more than forty individuals to serve on the Committee and shall designate a chairperson or co-chairpersons from among the members.".

Jimmy Carter

THE WHITE HOUSE,
May 8, 1978.

[FR Doc. 78-12804 Filed 5-8-78; 11:44 am]

rules and regulations

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

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

[6325-01]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Up to 30 positions at grades GS-15 and below involved in conducting a study of universal Social Security coverage pursuant to the Social Security Amendments of 1977 are excepted under schedule A because it is impracticable to examine for them. Employment in these positions may not exceed December 31, 1979.

EFFECTIVE DATE: April 21, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3116(e)(3) is added as set out below:

§ 213.3116 Department of Health, Education, and Welfare.

* * * * *

(e) *General.* * * *

(3) Not to exceed 30 positions established for the purpose of conducting a study of universal Social Security coverage pursuant to section 311 of Pub. L. 95-216. Employment under this authority may not exceed December 31, 1979.

* * * * *

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

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-12509 Filed 5-8-78; 8:45 am]

[3410-02]

Title 7—Agriculture

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

[Papaya Reg. 8, Amdt. 1]

PART 928—PAPAYAS GROWN IN HAWAII

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment relaxes the quality and size requirements for Hawaiian papayas during the period May 16 through July 15, 1978. Specification of minimum quality and size requirements for Hawaiian papayas is necessary because of current and prospective supply and demand for the fruit and to maintain orderly marketing conditions in the interest of producers and consumers.

EFFECTIVE DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Pursuant to the marketing agreement and order No. 928 (7 CFR part 928) regulating the handling of papayas grown in Hawaii, 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 Papaya Administrative Committee, established under this marketing order, and upon other information, it is found that this amendment will tend to effectuate the declared policy of the act.

The amendment reflects the Department's appraisal of the current and prospective supply and market demand conditions for Hawaiian papayas. It is designed to assure an ample supply of acceptable quality fruit to consumers consistent with the quality and size composition of the crop.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date of this amendment until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553) in that 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 restrictions on the handling of papayas grown in Hawaii.

In § 928.308 (Papaya regulation 8; 42 FR 65133), the provisions of paragraph (a) are amended to read as follows:

§ 928.308 Papaya regulation 8.

(a) * * * (1) During the period May 16 through July 15, 1978, to any destination within the production area unless said papayas grade at least Hawaii No. 1, except that the allowable tolerances for defects shall be 5 percent: *Provided,* That not more than 3 percent shall be permitted for serious damage, not more than 1 percent for immature fruit, and not more than 1 percent for decay: *Provided further,* That such papayas individually weigh not less than 14 ounces.

(2) During the period May 16 through July 15, 1978, to any export destination unless said papayas grade at least Hawaii No. 1, except they shall be free from injury caused by bruises and free from deep scars; and scars, when scaly, cracked, or not smooth, shall not aggregate a circle greater than 1 inch in diameter, or when smooth shall not aggregate more than 7.5 percent of the surface of the fruit, except that the total tolerance for all defects shall not exceed 3 percent: *Provided,* That of this amount not more than 1 percent shall be for immature fruit and not more than 1 percent shall be for decay: *Provided further,* That such papayas shall individually weigh not less than 11 ounces each.

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

Dated May 4, 1978, to become effective May 16, 1978.

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

[FR Doc. 78-12626 Filed 5-8-78; 8:45 am]

[3410-37]

CHAPTER XXVIII—FOOD SAFETY AND QUALITY SERVICE, DEPARTMENT OF AGRICULTURE

PART 2852—PROCESSED FRUITS, VEGETABLES, PROCESSED PRODUCTS THEREOF, AND CERTAIN OTHER PROCESSED FOOD PRODUCTS

Subpart—United States Standards for Grades of Canned Tomato Juice [1]

Agency: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule will change the grade standards for canned tomato juice. This action was initiated at the request of the industry. The effect of the change will be to provide for the use of electronic color meters as an alternative means of determining the color of tomato juice.

EFFECTIVE DATE: June 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Donald R. Burton, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, phone: 202-447-6193.

SUPPLEMENTARY INFORMATION: Notice of a proposal to amend the United States Standards for Grades of Canned Tomato Juice (7 CFR 52.3621—52.3630) (recodified 7 CFR 2852.3621—2852.3630) was published in the FEDERAL REGISTER of September 13, 1977 (42 FR 45933). Interested persons were given until December 31, 1977, to submit written data, views, or arguments concerning the proposed amendment.

Four letters were received in response to the notice. Brief summaries of the comments received along with the USDA's views and comments thereto and the reasons for such responses follow.

Two letters were received expressing full support of the proposed amendment.

A third comment expressed concern about the possible safety and/or purity of tomato juice that had been checked for color by any electronic or electrical device.

Response: Electronic color meters do not use radioactive materials or harmful emissions of any kind; nor do they in any way alter or contaminate the product they are used upon.

The color of foodstuffs, when determined by electronic color meters, is usually based upon shining a light of known energy or intensity upon a product and then measuring the amount of energy reflected back from that product. In the case of tomato juice, the use of electronic color meters would have no more effect than shining a flashlight upon a glassful of tomato juice for a few seconds.

In the fourth letter, the following issues were presented:

(1) General support was expressed for USDA's effort to recommend and develop the use of objective color meters to determine the color of foodstuffs.

(2) An opinion that the definitions for color for tomato juice that are provided in the current grade standards are ambiguous in that the color limits are established on the basis of hue alone and considerations of chroma (saturation) or value (lightness) are disregarded.

(3) A view that electronic color meters cannot be used as proposed because no single defined methodology of use or calibration is provided.

(4) A concern that the appropriate equations to convert electronic color meter readouts into score points are not given in the proposed amendment.

(5) The recommendation that the standardization or calibration of the electronic color meters that are used be made to a "standard" white source such as magnesium oxide.

Response: The USDA acknowledges that the technical concept of color is a three-dimensional one. The concept is expressed in terms of hue, value and chroma or other synonymous terms.

The references cited in the USDA grade standards for the visual evaluation of the color of tomato juice are discs of colored paper of specified hue, chroma and value. These discs, when used as specified, result in a "blended composite color" which, although expressed in terms of hue, also incorporates considerations of chroma and value. The applicable phraseology used to further describe the subjective limits of the color of different grades of tomato juice also imply references to the chroma and value of the product.

The USDA cannot recommend any given electronic color meter or methodology to the discriminatory exclusion of other meters or procedures which provide equivalent results. Because instrument manufacturers produce a variety of electronic color meters—each utilizing a somewhat different method of use, calibration or standardizing procedure, or color space reference—no one given set of procedures can apply to all instruments.

It is the intention of the USDA that any color measurement system may be used; provided such system is subject to review and approval of the USDA.

Because the calibration procedures differ somewhat, depending upon the instrument(s) involved, no single specified calibration procedure is set forth in this amendment. The USDA prefers, therefore, when necessary, to consult and collaborate with the various concerned color instrument manufacturers to develop acceptable and approved calibration procedures which incorporate the capabilities and color scales used in a particular instrument(s). After calibration, the respective electronic color meters must then provide suitable values or readouts that can be used to "grade the color" of tomato juice.

The appropriate equations used to convert electronic color meter readouts into score points are not included in these standards because the equations vary, again depending upon the color scale that is used and/or the instrumental values provided.

It is expected that more electronic color meters will be developed and marketed in the future. Accurate and reliable data from which conversion equations may be derived will have to be accumulated and analyzed. Since the resultant equations will be somewhat different for the different instruments, it would be easier and more efficient to periodically develop and release an official updated list of mathematical equations to all concerned parties, especially processors and instrument manufacturers. This process could be effected far more quickly than continual formal amendments to the grade standards. Such a list would include all of the mathematical equations that had been developed from reliable and adequate data up until the date or publication and would include the approved equation for the given product (such as tomato puree or tomato juice) for the cited electronic color meter. Such equations might then be further disseminated by involved parties. In some of the newer, more advanced kinds of electronic color meters, the equations can actually be programmed into the instrument to provide desired information or determinations.

The visual evaluations of the color of tomato juice are based on specified references which occupy the same approximate color space as the product. Thus, the data-gathering procedures used to establish the relationship between visual evaluations and electronic color meter measurements used color references that were quite similar to the product. In other words, a "red" reference was used to evaluate a "red" product.

These closely related color references helped to assure the accuracy of the color measurements.

[1] Compliance with the provisions of these standards shall not excuse failure to comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or with applicable State laws and regulations.

Since judgements of the color of tomato juice involve, primarily, the dark red area of the spectrum, the USDA believes, at this time, that electronic color meters that are "standardized" to this approximate area are slightly more accurate in providing the values necessary to evaluate the color of tomato juice.

However, the standardizing of an appropriate electronic color meter to a "standard" white source or reference (such as magnesium oxide) is not precluded in these grade standards. Any system, instrument, or standardizing procedure may be used; provided accurate, documented data are available to guarantee that sufficient accuracy and reproducibility exist to warrant approval by the USDA and to permit the USDA to derive and establish the necessary mathematical equations.

Therefore, after careful consideration, the text of the United States Standards for Grades of Canned Tomato Juice, including the adopted amendment as proposed on September 13, 1977, is set forth below. Minor editorial changes have been made in the text for clarification purposes.

Effective date: The revised United States Standards for Grades of Canned Tomato Juice shall become effective June 15, 1978.

Sec.
2852.3621 Product description.
2852.3622 Grades of canned tomato juice.
2852.3623 Recommended fill of container.
2852.3624 Determining the grade of a sample unit.
2852.3625 Color.
2852.3626 Consistency.
2852.3627 Defects.
2852.3628 Flavor.
2852.3629 Determining the grade of a lot.
2852.3630 Score sheet for canned tomato juice.

AUTHORITY: Agricultural Marketing Act of 1946, Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; (7 U.S.C. 1622, 1624).

§ 2852.3621 Product description.

"Canned tomato juice" means tomato juice prepared from clean, sound tomatoes of the red or reddish varieties, as such product is defined in the Standard of Identity for Tomato Juice (21 CFR 156.145) issued pursuant to the Federal Food, Drug, and Cosmetic Act. It is packed in hermetically sealed containers and is sufficiently processed by heat, before or after sealing, to assure preservation of the product.

§ 2852.3622 Grades of canned tomato juice.

(a) *"U.S. Grade A"* is the quality of canned tomato juice that has a good color; that has a good consistency; that is practically free from defects; that has a good flavor; and scores not less than 85 points when scored in accordance with the scoring system outlined in this subpart: *Provided*, That the canned tomato juice may have only a fairly good color, scoring not less than 25 points and a fairly good consistency, if the total score is not less than 85 points.

(b) *"U.S. Grade C"* is the quality of canned tomato juice that has a fairly good color; that has a fairly good consistency; that is fairly free from defects; that has a fairly good flavor, and that scores not less than 70 points when scored in accordance with the scoring system outlined in this subpart.

(c) *"Substandard"* is the quality of canned tomato juice that fails to meet the requirements of U.S. Grade C.

§ 2852.3623 Recommended fill of container.

Fill of container is not incorporated in the grades of the finished product, since fill of container, as such, is not a factor of quality for the purposes of these grades. It is recommended that each container of tomato juice be filled as full as practicable without impairment of quality, and that the product occupy not less than 90 percent of the capacity of the container.

§ 2852.3624 Determining the grade of sample unit.

In addition to considering other requirements outlined in the standards, the quality factors of color, consistency, defects, and flavor are evaluated in determining the grade of the product. The relative importance of each factor is expressed numerically on the scale of 100. The maximum number of points that may be given for each such factor is:

Factors	Points
Color	30
Consistency	15
Defects	15
Flavor	40
Total score	100

§ 2852.3625 Color.

(a) *General.* The amount of red in canned tomato juice is determined by comparing the color of the product with that produced by spinning a combination of the following Munsell color discs:

Disc 1—Red (5R 2.6/13) (glossy finish).

Disc 2—Yellow (2.5 YR 5/12) (glossy finish).

Disc 3—Black (N1) (glossy finish).

Disc 4—Grey (N4) (mat finish).

Such comparison is made under a diffused light source of approximately 250 foot-candle intensity and having a spectral quality approximating that of daylight under a moderately overcast sky, and a color temperature of 7,500 degrees Kelvin ±200 degrees. With the light source directly over the disc and product, observation is made at an angle of 45 degrees and at a distance of 12 inches or more from the product.

(b) *Availability of color reference.* The colors referred to in this section are available for the approved supplier under a license from the U.S. Department of Agriculture: Munsell Color Co., 2441 North Calvert Street, Baltimore, Md. 21218.

(c) *Use of electronic color meters.* (1) Values that may be used for conversion to a numerical score point color evaluation of the product may be determined by any electronic color meter system approved by the United States Department of Agriculture.

(2) The values derived with the approved electronic color meter system shall be resolvable into a calculated numerical score point by use of any appropriate conversion formula that has been approved by the USDA.

(d) *Grade A classification.* (1) Canned tomato juice that has a good color may be given a score of 26 to 30 points. "Good color" means a color that is typical of canned tomato juice, made from well ripened red tomatoes, which has been properly prepared and properly processed. Such color contains as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color: 65 percent of the area of Disc 1; 21 percent of the area of Disc 2; and 14 percent of the area of either Disc 3 or Disc 4; or 7 percent of the area of Disc 3 and 7 percent of the area of Disc 4, whichever most nearly matches the reflectance of the product.

(2) Any calculated numerical score of 26 points for the product shall be equivalent to a visually evaluated color score of 26 points produced under the conditions specified in paragraph (d)(1) of this section. Proportionally higher calculated numerical scores or visually assigned score points may be assigned to products which show more redness.

(e) *Grade C classification.* (1) Canned tomato juice that has a fairly good color may be given a score of 23 to 25 points. Canned tomato juice that scores 23 to 24 points for color shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a partial limiting rule). "Fairly good color" means a color that is typical of canned tomato juice. To score 25 points for color, the juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color: 59 percent of the area of Disc 1; 24½ percent of the area of Disc 2; and 16½ percent of the area of either Disc 3 or Disc 4; or 8¼ percent of the area of Disc 3 and 8¼ percent of the area of Disc 4, whichever most nearly matches the reflectance of the product.

(2) Any calculated numerical score of 25 points for a product shall be equivalent to a visually evaluated color score produced under the conditions specified in paragraph (e)(1) of this section.

(3) To score 23 or 24 points for color the canned tomato juice shall contain as much red as, or more red than, that produced by spinning the specified Munsell color discs in the following combinations or an equivalent of such composite color: 53 percent of the area of Disc 1: 28 percent of the area of Disc 2; and 19 percent of the area of either Disc 3 or Disc 4; or 9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the reflectance of the product.

(4) Any calculated numerical score of 23 points for a product shall be equivalent to a visually evaluated color score produced under the conditions specified in paragraph (e)(3) of this section. A proportionally higher calculated numerical score or visually asigned score may be assigned to products which show more redness.

(f) *Substandard classification.* Canned tomato juice that fails to meet the requirements of paragraph (e) of this section may be given a score of 0 to 22 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 2852.3626 Consistency.

(a) *General.* This factor has reference to the viscosity of the product. The tendency of the insoluble solids to separate, leaving practically clear liquid at the top is also to be noted in this connection.

(b) *Grade A classification.* Canned tomato juice that has a good consistency may be given a score of 13 to 15 points. "Good consistency" means that the canned tomato juice flows readily; has a normal amount of insoluble tomato solids in suspension; and that there is little tendency for such solids to settle out.

(c) *Grade C classification.* If the canned tomato juice has a fairly good consistency a score of 10 to 12 points may be given. "Fairly good consistency" means that the product flows readily; has a normal amount of insoluble tomato solids in suspension; and that there is not a marked tendency for such solids to settle out.

(d) *Substandard classification.* Canned tomato juice that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 9 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 2852.3627 Defects.

(a) *General.* The factor of defects refers to the degree of freedom from defects, such as dark specks or scale-like particles, seeds, particles of seed, tomato peel, core material, or other similar substances.

(b) *Grade A classification.* Canned tomato juice that is practically free from defects may be given a score of 13 to 15 points. "Practically free from defects" means that any defects present do not more than slightly affect the appearance or drinking quality of the product.

(c) *Grade C classification.* If the canned tomato juice is fairly free from defects a score of 10 to 12 points may be given. Canned tomato juice that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly free from defects" means that any defects present may be noticeable, but are not so large, so numerous, or of such contrasting color as to seriously affect the appearance or drinking quality of the product.

(d) *Substandard classification.* Canned tomato juice that fails to meet the requirements of paragraph (c) of this section may be given a score of 0 to 9 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 2852.3628 Flavor.

(a) *Grade A classification.* Canned tomato juice that has a good flavor may be given a score of 33 to 40 points. "Good flavor" means a distinct canned tomato juice flavor and odor characteristic of good quality tomatoes. To score in this classification the flavor of the product shall not be adversely affected by stems, leaves, crushed seeds, cores, immature tomatoes, or the effects of improper trimming or processing.

(b) *Grade C classification.* If the tomato juice has only a fairly good flavor a score of 27 to 32 points may be given. Canned tomato juice that falls into this classification shall not be graded above U.S. Grade C, regardless of the total score for the product (this is a limiting rule). "Fairly good flavor" means a characteristic canned tomato juice flavor. To score in this classification the flavor may be affected adversely, but not seriously so, by stems, leaves, crushed seeds, cores, immature tomatoes, or the effects of improper trimming or processing.

(c) *Substandard classification.* Canned tomato juice that fails to meet the requirements of paragraph (b) of this section may be given a score of 0 to 26 points and shall not be graded above Substandard, regardless of the total score for the product (this is a limiting rule).

§ 2852.3629 Determining the grade of a lot.

The grade of a lot of canned tomato juice covered by these standards is determined by the procedures set forth in the regulations governing inspection and certification of processed fruits and vegetables, processed products thereof, and certain other processed food products (§§ 2852.1 to 2852.83).

§ 2852.3630 Score sheet for canned tomato juice.

Type of container .....
Container size .....
Label .....
Code .....
Volume (fluid ounces) .....
Vacuum (inches) .....

Factors			Score points
Color	30	(A)	26-30
		(C)	[1]23-25
		(SStd.)	[1]0-22
Consistency	15	(A)	13-15
		(C)	10-12
		(SStd.)	[1]0-9
Defects	15	(A)	13-15
		(C)	[2]10-12
		(SStd.)	[1]0-9
Flavor	40	(A)	33-40
		(C)	[2]27-32
		(SStd.)	[1]0-26
Total score	100		

Grade .....

[1]Indicates partial limiting rule.
[2]Indicates limiting rule.

The U.S. Standards for Grades of Canned Tomato Juice as hereby amended shall become effective June 15, 1978, and thereupon will supersede U.S. Standards for Grades of Canned Tomato Juice which have been in effect since June 24, 1958.

NOTE.—The Food Safety and Quality 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 April 28, 1978.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

[FR Doc. 78-12482 Filed 5-8-78; 8:45 am]

[3128-01]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

[1]Editorial Note: Chapter II will be renamed at a future date to reflect that it con-

Footnotes continued on next page

ACTION: Notice of Interpretations.

SUMMARY: Attached are the Interpretations issued by the Office of the General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period April 1, 1978 through April 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Diane Stubbs, Office of the General Counsel, Department of Energy, 12th and Pennsylvania Avenue NW., Room 1121, Washington, D.C. 20461, 202-566-9070.

SUPPLEMENTARY INFORMATION: Interpretations issued pursuant to 10 CFR Part 205, Subpart F, are published in the FEDERAL REGISTER in accordance with the editorial and classification criteria set forth in 42 FR 7923, February 8, 1977, as modified in 42 FR 46270, September 15, 1977.

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The Interpretations published below are not subject to appeal. However, any person aggrieved by an Interpretation may submit a petition for reconsideration pursuant to § 205.85(f). The Interpretations appended hereto are published today only for general guidance in accordance with the reasons set forth in the Notice first cited above.

Issued in Washington, D.C., May 4, 1978.

WILLIAM S. HEFFELFINGER,
Director of Administration, Department of Energy.

APPENDIX

No.	To	Date/ Category
1978-11	Pennzoil Company	Apr. 7 Price
1978-12	The Permian Corporation.	Apr. 7 Price
1978-13	Atlantic Richfield Company.	Apr. 7 Price
1978-14	Amoco Oil Company	Apr. 14 Price
1978-15	John D. Manley III	Apr. 14 Price
1978-16	HNG Petrochemicals, Inc.	Apr. 14 Price
1978-17	Pennzoil Offshore Gas Operators, Inc.	Apr. 21 Price
1978-18	Transcontinental Gas Pipeline Corporation.	Apr. 21 Price
1978-19	Sun Oil Company of Pennsylvania.	Apr. 27 Price
1978-20	Collier & Collier, *et al*	Apr. 27 Price
1978-21	Gravcap, Inc.	Apr. 27 Price

INTERPRETATION 1978-11

To: Pennzoil Company
Date: April 7, 1978
Rules Interpreted: § 212.83(c)(2); § 212.31
Code: GCW—PI—Refiner Price Rule; Definition of Covered Product

FACTS

Pennzoil Company (Pennzoil) is a refiner as that term is defined in 10 CFR 212.31 and is therefore subject to the provisions of 10 CFR Part 212, Subpart E. Pennzoil owns and operates four refineries in Pennsylvania, West Virginia, and Louisiana. The firm has also entered into a processing agreement with Ashland Oil Company for the exclusive use of its Freedom, Pennsylvania, refinery through 1979. The firm's refineries in Pennsylvania and West Virginia, including the Freedom, Pennsylvania, refinery (the lube refineries) have a combined capacity of 23,500 barrels of crude oil per day.[1] Approximately 27 percent of the lube refinery yield of Pennzoil's Pennsylvania and West Virginia refinery operations is lubricating base oil stocks as contrasted with a national average of 1 to 3 percent among other refineries. Pennzoil transfers the lubricating base oil stocks from the lube refineries to one of five branded automotive motor oil canning and packaging plants. At these plants, Pennzoil mechanically blends certain lubricant additives purchased by Pennzoil from other firms to the Pennzoil lubricating base oil stocks and then packages the product as lubricating oil for sale. According to Pennzoil, the purchased lubricant additives are composed by volume of 50 to 100 percent lubricant base oil stocks. The remaining components of the purchased lubricant additives are nonpetroleum based substances and some petroleum based chemicals which have not been subject to the Mandatory Petroleum Allocation and Price Regulations. Pennzoil further notes that the purchased lubricant additives have been used exclusively by the firm in the manufacture of lubricating oils and account for approximately 20 percent of the volume and 36 percent of the cost of the finished lubricating oil.

ISSUE

In calculating the increased product costs attributable to lubricants in accordance with the formula for General Refinery Products set forth in 10 CFR 212.83(c)(2), may a firm include, as product costs, those increased costs attributable to lubricant additives which consist of 50 to 100 percent lubricating base oil stocks?

[1]Pennzoil's Atlas Refinery in Louisiana has a crude oil capacity of 45,000 barrels per day and produces no lubricating oils.

INTERPRETATION

For the reasons set forth below, it has been determined that "lubricant additives" which consist of 50-100 percent lubricating base oil stocks should have been treated as a product cost for inclusion in the formula for General Refinery Products set forth at 10 CFR 212.83(c)(2).

The price rules applicable to refiners have undergone substantial revision since their initial adoption by the Federal Energy Office (a predecessor of the Federal Energy Administration (FEA) and the Department of Energy (DOE)) on January 15, 1974. Until their exemption from the Mandatory Petroleum Allocation and Price Regulations on September 1, 1976,[2] both lubricants and lubricant base oil stocks were defined in § 212.31 as covered products.[3] As a result, any increased costs incurred in the mixture of lubricants and lubricant base oil stocks purchased from other firms or any other use of lubricants or lubricant base oil stocks purchased from other firms in the production or sale of covered products by a refiner was calculated pursuant to the "B" factor—the increased product cost provision—of the refiner price rule as set forth at 10 CFR 212.83(c)(2)(iii)(D).[4]

These increased product costs are currently defined in that section in pertinent part as:

> ". . . the total increased cost of the specific covered product or products . . . purchased or landed in the period 't' [the month of measurement], provided such cost is not included in computing 'A'; [increased cost of crude oil]. The cost of a specific covered product or products . . . shall include the cost of a product or products . . . which was a covered product as of May 31, 1976 and is purchased and refined or blended, that is attributable to the production of the covered product or products . . ."

It is therefore clear that increased costs of lubricants and lubricant base oil stocks attributable to the production of a covered product, have been and are used in determining the total product costs for that covered product. Thus, increased costs of lubricant additives composed entirely of lubricant base oil stocks or other covered products have been treated as increased product costs pursuant to § 212.83(c)(2) in the production of finished lubricants.

However, in its submission Pennzoil states that in certain instances, lubricant additives

[2]41 FR 30096 (July 22, 1976).

[3]See 39 FR 1924 (January 15, 1974); 39 FR 4466 (February 4, 1974); 39 FR 12353 (April 5, 1974); 40 FR 2795 (January 16, 1975); 41 FR 13896 (April 1, 1976); 41 FR 24516 and 41 FR 24518 (June 16, 1976); 41 FR 34003 (August 12, 1976) [corrected technical ambiguities retroactive to July 1, 1976].

[4]The provisions of the "B" factor which set forth the manner in which a firm computes its increased product costs, have been revised on numerous occasions. See 39 FR 1924 (January 15, 1974); 39 FR 42368 (December 5, 1974); 40 FR 10444 (March 6, 1975); 41 FR 15330 (April 12, 1976) [effective February 1, 1976]; 41 FR 18807 (May 7, 1976); 41 FR 44151 (October 7, 1976) [effective September 1, 1976]; 41 FR 54919 (December 6, 1976). However, throughout the revisions to the calculation of the "B" factor, increased product costs for specific covered products have been permitted to be passed through on a dollar-for-dollar basis.

Footnotes continued from last page
tains regulations administered by the Economic Regulatory Administration of the Department of Energy.

may be composed of a mixture of lubricant base oil stocks, which were classified as a covered product pursuant to § 212.31 prior to September 1, 1976, and other products which have never been subject to regulation under the Mandatory Petroleum Price Regulations. The Mandatory Petroleum Price Regulations do not specifically classify products which are composed of both covered products and other substances, as covered products. However, the Emergency Petroleum Allocation Act of 1973, as amended (P.L. 93-159) (EPAA) provides in § 4(a), that the mandatory allocation and price control program shall extend to "each refined petroleum product." The all-inclusive scope of the products which the EPAA was intended to encompass was emphasized by the Conference Committee when it stated:

"It is the Committee's understanding that an allocation program, if it is to work at all, must be comprehensive in scope and therefore must include the major refined components of a barrel of crude oil." Conference Report 93-628, 1973 U.S. Code Cong. & Admin. News, p. 2697.

Moreover in § 4(b)(1)(F) of the EPAA, Congress provided that:

"The regulation under subsection (a), to the maximum extent practicable, shall provide for—. . . equitable distribution of crude oil, residual fuel oil, and refined petroleum products at equitable prices among all regions and areas of the United States and sectors of the petroleum industry, including independent refiners, small refiners, nonbranded independent refiners, branded independent marketers, and among all users."

In adopting regulations implementing the EPAA, the Federal Energy Office (a predecessor of the FEA and DOE) echoed the language of the Act and provided in 10 CFR 212.2 that:

"This part applies to *each sale* or *purchase of a covered product* in the United States . . ." [Emphasis added.]

Thus, from the language of the EPAA, the Conference Report on the EPAA and the regulations established in accordance with the EPAA, it is apparent that many types of petroleum products, were incorporated within a single, mandatory pricing program.

Such a determination was recently made by the Temporary Emergency Court of Appeals in *Mobil Oil Corporation v. Federal Energy Administration,* 566 F. 2d 87 (Em. App., 1977). In upholding the authority of the Federal Energy Administration to regulate petroleum products not specifically addressed in the EPAA, the Court noted:

In our opinion, however, industry usage does not necessarily erect a jurisdictional bar to the regulatory authority of the FEA or compel the technical construction of the Act for which Mobil contends. We must consider the FEA's assertion of authority to regulate natural gas liquids under the EPAA in light of the Act's broadly worded, comprehensive objectives, for it is well settled that the "width of administrative authority must be measured in part by the purposes for which it was conferred. . . ." *Permian Basin Area Rate Cases,* 390 U.S. 747, 776 (1968). The Supreme Court has made it clear that "in the absence of compelling evidence that such was Congress' intention, [it is] unwilling to prohibit administrative action imperative for the achievement of an agency's ultimate purposes". *Id.* at 780. Agency action taken in pursuit of a legitimate statutory goal enjoys a "presumption of validity", and he who would upset it carries a "heavy burden". *FPC v. Texaco, Inc.,* 417 U.S. 380, 389 (1974). We conclude that Mobil has not carried that heavy burden and we find, as the district court did, that the FEA's arguments based on the general energy policy behind the EPAA are the more compelling.

* * * * *

In *Marathon Oil Co. v. FEA,* 547 F. 2d 1140, 1146, (Em. App. 1976), *cert. denied* 426 U.S. 947 (1976), we held that "[d]etailed powers necessary or convenient to the allocation and pricing authority granted with reference to the petroleum industry *did not have to be spelled out,* for the Congress, as well as judges, was fully cognizant of the doctrine of implied powers. The mandating of regulations to achieve the broad objectives enumerated in the Act essentially entailed selection on the part of the agency of means in its judgment best suited, as to which the rule of deference for administrative decisions should not be departed from or grudgingly applied . . ." *Id.* at 93-94. [Footnotes omitted; emphasis supplied in original.]

See, e.g., National Helium Corporation v. Federal Energy Administration, — F. 2d —— (Em. App. 1977); Federal Energy Guidelines ¶26,088; *Skelly Oil Company v. Federal Energy Administration,* — F. Supp. —— (N.D. Ok., 1977), Federal Energy Guidelines ¶26,084.

As in the *Mobil* decision, a determination that blends, containing covered products and products not covered by the price regulations, are covered by the Mandatory Petroleum Price Regulations, is necessary to achieve the goals of the EPAA, § 4(b)(1)(F). Without this determination, any mechanical blending of a noncovered product with a substantial amount of a covered product would have the effect of exempting that product from regulatory control and would have frustrated both the congressional and regulatory intent of subjecting all covered products to price controls. Such a result was not intended by the Mandatory Petroleum Allocation and Price Regulations or the EPAA, as amended, and would be a clear circumvention of the purpose of the price regulations promulgated pursuant to that Act.

However, it is also necessary to determine the volumetric point at which blends of covered products and noncovered products should not be subject to Mandatory Petroleum Price Regulations. Section 212.31 provides that:

"A blend of two or more particular covered products is considered to be that particular covered product constituting the major portion of the blend."

Since the Mandatory Petroleum Price Regulations have consistently prescribed that a blended covered product must be deemed to be the particular covered product which constitutes the majority of the blended product, in order to maintain consistency with the Price Regulations and advance the purposes of the EPAA, it has been determined that any product which by volume is composed of 50 percent or more of covered products, must be considered to be a covered product for the purposes of the Mandatory Petroleum Price Regulations.[5]

In the present request for interpretation, Pennzoil states that certain of its lubricant additives consist of 50 percent or more lubricating base oil stocks. As noted previously, until September 1, 1976, lubricating base oil stocks and lubricants were covered products pursuant to § 212.31. Thus, since allowable product costs as set forth in § 212.83(c)(2) generally included the cost of a specific product or products which are or were covered products, the lubricant additives, which are or were composed of 50 percent or more lubricant base oil stocks or other covered products by volume, must be treated as a product cost (as defined in the "B" factor) for purposes of calculating allowable price increases for the lubricants in question.

INTERPRETATION 1978-12

To: The Permian Corporation
Date: April 7, 1978
Rules Interpreted: 10 CFR 212.72; 212.131(a)(2)
Code: GCW—PI—Certification of New Crude Oil

FACTS

The Permian Corporation (Permian), a crude oil reseller, purchases crude oil which the Mobil Oil Corporation (Mobil) produces from various properties. In one instance, Mobil commingles production from five properties in one storage facility, from which Permian purchases all of the commingled crude oil. Mobil, in accordance with 10 CFR 212.131(a)(2)(i), has provided Permian with a "one-time" certification of the base production control level (BPCL) for each of the five properties.

In March 1977, Permian purchased 1089.68 barrels of crude oil from Mobil's commingling storage facility. Mobil did not inform Permian of the number of barrels of crude oil which had been produced and sold from each of the properties whose production was commingled, and Permian, deeming the oil to be old crude oil, paid lower tier prices for all of the crude oil it purchased. On July 1, 1977, Permian received an invoice from Mobil which stated the number of barrels of crude oil which had been produced and sold from each property contributing to the commingling facility in March 1977, and which identified 250.50 barrels as new crude oil which had been produced and sold from three of the properties. The invoice billed Permian for an "additional increased value," based upon the difference between the upper and lower tier prices for the amount of crude oil now identified as new crude oil. Permian refused to pay this additional amount on the ground that the July invoice was a retroactive certification barred by the "60-day rule" contained in the definition of new crude oil, 10 CFR 212.72. In its request for interpretation, Permian seeks a determination that identification of the volumes of crude oil produced and sold from properties whose production is then commingled is a necessary part of the certification of volumes of new and old crude oil, and that the Mandatory Petroleum Price

[5] It should be noted that this Interpretation does not address the question of whether a product which is composed of less than 50 percent of a covered product by volume, is a covered product for purposes of the Mandatory Petroleum Price Regulations.

Regulations bar Permian from paying the additional amount billed in Mobil's July invoice.

In its comments on Permian's request for interpretation, Mobil acknowledged that, under the facts presented by Permian, Permian could not determine the volume of new crude oil in the crude oil it had purchased in March 1977 until it received the July invoice. Nonetheless, Mobil argued that its one-time BPCL certification was a complete certification that complied with the 60-day rule, and that the supplemental invoice rendered to Permian more than two months after the month of sale, which stated the volumes of crude oil which had been produced and sold from each property, and which billed Permian for now-identified new crude oil, was a "contractual matter between the parties," and not barred by the 60-day rule.

Mobil also presented a second fact pattern, involving different crude oil-producing properties, which it described as a "more likely situation." Mobil stated that it produces crude oil from three properties whose production is commingled at a different storage facility. Permian purchases all of the crude oil from this facility, and, again, Mobil has provided Permian with a one-time BPCL certification for each of the properties. In March 1976, Permian purchased all of the commingled production, and, based upon a timely statement by Mobil of the volumes of crude oil produced and sold from each property, paid upper tier prices for 4209.83 barrels of new crude oil. By invoice dated August 16, 1976, Mobil altered the volumes of crude oil production attributable to each property to correct clerical errors in the previous statement. That change resulted in a total volume of new crude oil of 4417.38 barrels. Mobil billed Permian for the difference between upper and lower tier prices for the 207.55 additional barrels of new crude oil. Permian, contending that this, too, was a retroactive certification of new crude oil barred by the 60-day rule, refused to pay the additional amount.

Mobil further stated that, for the same properties, it issued Permian a credit on August 16, 1976, based upon a correction of the volumes of crude oil production attributable to the various properties for crude oil Permian had purchased in October 1975. This correction resulted in 148.59 *fewer* barrels of new crude oil. Mobil asserts that Permian has accepted the credit from this correction, while refusing to pay the additional amount for the correction which resulted in more barrels of new crude oil. In both cases, Mobil argues, it should be permitted to correct the clerical errors, because its one-time BPCL certification fully complies with the 60-day rule.

In response to Mobil's comments, Permian again asserted that, for first sales of commingled crude oil production, a statement of the volumes of crude oil attributable to each producing property is necessary to complete the certification of volumes of new and old crude oil, and that the 60-day rule applies to any attempt to change those figures so as to increase the number of barrels of new crude oil. With respect to the change resulting in fewer barrels of new crude oil, Permian argues that the Mandatory Petroleum Price Regulations always require corrections that result in the reduction of volumes of new crude oil, and that it therefore acted properly in accepting the credit offered by Mobil.

ISSUE

1. May Mobil retroactively increase the price of crude oil that it produced, commingled, and sold to Permian, where, more than two months after the month of sale, Mobil states for the first time the volume of crude oil attributable to each property contributing to the commingled production, and thereby determines that a portion of the crude oil was eligible for treatment as new crude oil?

2. May Mobil retroactively increase the price of crude oil that it produced, commingled, and sold to Permian, stating at the time of the sale the volumes of crude oil which were attributable to each property contributing to the commingled production, but where, more than two months after the month of sale, Mobil alters the statement of those volumes to increase the portion of the crude oil which was eligible for treatment as new crude oil?

INTERPRETATION

Mobil may not retroactively increase prices for crude oil it has produced and sold where, more than two months after the month of Permian's purchase of commingled crude oil, Mobil for the first time supplies Permian with a statement of the volumes of the commingled crude oil attributable to the various properties producing the oil. Likewise, Mobil may not retroactively increase prices for crude oil it has produced and sold where, more than two months after the month of Permian's purchase of commingled crude oil, Mobil corrects a previous statement of the volumes of the commingled crude oil attributable to the various properties producing the oil, so as to increase the number of barrels of new crude oil.

Before discussing the rationale underlying this determination, it would be useful to review certain pertinent provisions of the Mandatory Petroleum Price Regulations. The BPCL of a property is derived from a computation which yields the average monthly crude oil production and sale from the property in the base period (which may vary from property to property). 10 CFR 212.72. The concept of a BPCL for crude oil-producing properties originated in the Cost of Living Council price regulations in 38 FR 22536 (August 22, 1973), and was incorporated into the Mandatory Petroleum Price Regulations, 39 FR 1924 (January 15, 1974), as 10 CFR 212.72. By subtracting a property's BPCL (and current cumulative deficiency, if any) from that property's current volume of crude oil production, the producer can calculate the number of barrels of new crude oil in any month.

New crude oil, then, is defined in 10 CFR 212.72 as the total number of barrels of domestic crude oil produced and sold from a property in a specific month, less the property's BPCL for that month (and current cumulative deficiency, if any). In addition, however, new crude oil may not include "any number of barrels not certified as new crude oil pursuant to the provisions of § 212.131(a)(1) within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold, except where such recertification is explicitly required or permitted by FEA order, interpretation, or ruling."[1] This provision is commonly referred to as the "60-day rule."

In proposing the 60-day rule, the Federal Energy Administration (FEA), a predecessor agency of the Department of Energy (DOE), discussed the effect of retroactive increases in the price of crude oil. The FEA noted that one way in which retroactive price increases occur is "through retroactive recertification of volumes of new and released petroleum included in previous transactions . . . ." 40 FR 13522 (March 27, 1975). The FEA further pointed out that:

> . . . [R]etroactive invoicing may tend to have an adverse effect on those refiners, especially small refiners, that rely in large measure upon domestic crude petroleum. Resellers of domestic crude petroleum may also be adversely affected. In either case, if the purchasers to whom refined petroleum products or crude oil have already been sold by refiners or resellers which receive retroactive price increases are unwilling, in turn, to increase retroactively the prices they have paid, the refiners or resellers which receive retroactive price increases are in the position of having increased costs for crude oil which can be recovered, if at all, only in prices charged in subsequent sales. In any event, the retroactively invoiced prices are costs incurred currently with respect to crude petroleum received and refined or resold in preceding months, which costs should more properly have been incurred in the months when the crude oil was purchased or landed and passed through in the following months.
>
> * * * * *
>
> These . . . amendments . . . should operate to bring the incurrence of costs more closely into line with the time of purchase of domestic crude petroleum and should lead to increased price stability and reliability. . . . 40 FR at 13523.

It is apparent that, in incorporating the 60-day rule into the definition of new crude oil, the FEA intended to require producers to promptly charge the higher upper tier prices for eligible crude oil, so that refiners and resellers could market refined petroleum products or crude oil with assurance of price stability.

A third key concept, certification by the producer to the purchaser of the volumes of a property's crude oil production, originated in the Cost of Living Council price regulations in 38 FR 22536 (August 22, 1973). It was incorporated into the Mandatory Petroleum Price Regulations, 39 FR 1924 (January 15, 1974), as 10 CFR 212.74(c), and was later placed in 10 CFR 212.131. 39 FR 31622 (August 30, 1974). The requirements of certification have changed, of course, as the regulations governing the sale of crude oil have been revised.[2] They have always, however, required a statement of either the ceiling price of the crude oil or the posted prices from which the ceiling price is derived, and a statement of the volumes of new, old, or released crude oil.[3]

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[1]Due to an oversight, the reference to § 212.131(a)(1) in the definition of new crude oil has not been corrected to reflect that crude oil produced from non-stripper well properties must now be certified in accordance with § 212.131(a)(2) rather than § 212.131(a)(1).

[2]For a summary of the changes the certification requirement has undergone, see 41 FR at 36182-83 (August 26, 1976).

[3]Presently, for non-stripper well crude oil, a producer must certify the volumes of new

Footnotes continued on next page

Although certification of the volumes of crude oil production was initially required for each sale of crude oil, § 212.131 was later amended to permit this recurrent requirement to be complied with by "a one-time certification by a producer as to the base production control level crude petroleum for each month of 1972 for the particular property." 39 FR 42246 (December 4, 1974).[4] The substitution of a one-time BPCL for the monthly certification of volumes of new and old crude oil sold lessened the certification burden upon the producer while enabling the purchaser to independently determine the volumes of new and old crude oil purchased.

In 41 FR 36172 (August 26, 1976), § 212.131 was further amended to specify that this one-time BPCL certification could only be made where all of the crude oil produced and sold from the property concerned was sold to the same purchaser. This change was necessary to clarify the use of a one-time BPCL certification where the producer sold crude oil produced from a property to two or more purchasers. In the preamble accompanying this amendment, the FEA noted that:

> . . . with respect to a non-stripper well property from which crude oil is sold to more than one purchaser, the one-time certification of the property's BPCL does not accomplish *the purpose of the certification requirement, in that it does not provide the purchasers with sufficient information to determine how much of that purchaser's crude oil purchased each month is properly classified as new crude oil.* Where the property's total monthly production is sold to a single purchaser, of course, that purchaser can easily determine the amount of new crude oil each month by subtracting the property's BPCL from the current monthly production and sale. Where the property's total monthly production is sold to two or more purchasers, however, none of the purchasers is able to determine the amount of new crude oil without knowing how much production was sold to other purchasers. 41 FR at 36183 (August 26, 1976) (emphasis supplied).

Although the efficacy of a one-time BPCL certification where crude oil production from separate properties is commingled before sale to a purchaser has never been addressed, the FEA's discussion of the one-time BPCL certification where crude oil production is sold to two or more purchasers is highly instructive in considering the questions presented by Permian and Mobil. First, it points out that the purpose of the certification is to provide *the purchaser* with enough information to independently determine the volume of new crude oil, if any, in the crude oil purchased. Second, it demonstrates that a one-time certification is ineffective if the purchaser is not given the additional, necessary information which enables it to make that independent, determination. In the case of commingled crude oil production, a one-time BPCL certification fails to achieve the underlying purpose of the certification requirement, and, therefore, such a certification is incomplete and ineffective unless and until the producer supplements the certification with a statement of the actual volumes of crude oil produced and sold from each of the properties contributing to the commingling storage facility.

As noted previously, the definition of new crude oil excludes "any number of barrels not certified as new crude oil . . . within the consecutive two-month period immediately succeeding the month in which the crude oil is produced and sold . . . ." 10 CFR 212.72. Therefore, in the case of commingled crude oil, a one-time BPCL certification must be supplemented within two months of the month of sale by a statement of the volume of crude oil produced and sold from each property in order for the producer to receive upper tier ceiling prices for any new crude oil in the commingled production.

This result is consistent with FEA's long-standing insistence on strict compliance with the 60-day rule. Prior FEA interpretations have concluded that a producer's failure to certify volumes of crude oil production means that the producer may receive only lower tier prices for that crude oil. See *C. R. England Oil & Gas Properties,* Interpretation 1977-33, 42 FR 46274 (September 15, 1977); *Marine contractors & Supply, Inc.,* 5 FEA ¶83,086 (March 4, 1977). Accordingly, for the first fact pattern presented, Mobil's contention that its one-time BPCL certification complies with the 60-day rule is erroneous, and Permian correctly refused to pay the additional amount which Mobil charged in the July 1977 invoice.

Mobil has presented a second instance involving the purchase of commingled crude oil by Permian. In this case, Mobil completed the required § 212.131(a)(2) certification in a timely fashion by supplying Permian with a statement of the volumes of crude oil produced and sold from each property contributing to the storage facility. More than two months after the month of sale, however, Mobil attempted to correct a clerical error in the statement of the volumes, the effect of which was to increase the number of barrels of new crude oil. It is Mobil's position that the 60-day rule does not prevent the correction of "purely mathematical errors," and that Permian must now pay upper tier prices for that new crude oil.

As noted previously, the 60-day rule was adopted to prevent retroactive increases in the price of crude oil so that purchasers would be reasonably assured of stability in the cost of crude oil. If, as Mobil argues, producers were always able to correct mathematical errors so as to increase the price of their crude oil, it is apparent that the policy represented by the 60-day rule would be vitiated. It is for this reason that the FEA has consistently required strict adherence to the 60-day rule. Further, the FEA has taken the position that clerical errors which result in the failure to certify volumes of new crude oil cannot be corrected more than two months after the month of sale if the correction would increase the price paid for the crude oil purchased. *Perrault Production Company,* 5 FEA ¶80,622 (May 6, 1977); *Schkade Brothers Drilling Company,* 4 FEA ¶83,226 (December 10, 1976); *Rancho Co. Company,* 4 FEA ¶83,143 (October 8, 1976). Although these decisions were in the context of certification of stripper well property crude oil, the underlying rationale is equally applicable to the present case.

Accordingly, the DOE has determined that an untimely correction of a clerical error in the statement of the volumes of crude oil attributable to the various properties contributing to a commingling storage facility is barred, for, under the requirements for a complete certification of commingled crude oil, discussed *supra,* it is a "retroactive recertification of volumes of new . . . crude petroleum included in previous transactions," 40 FR at 13522, which the 60-day rule was created to prevent.[5]

Mobil further contends that because it has made a correction of a clerical error which resulted in a *reduction* in the number of barrels of new crude oil sold to Permian, it should likewise be permitted to make a similar correction resulting in an *increase* in the number of barrels of new crude oil. The Mandatory Petroleum Price Regulations, however, *require* a reduction in the volume of new crude oil whenever the original certification overstates that volume, but *forbid* any retroactive increase in the volume of new crude oil where the original certification understates that volume, and the certification was not corrected within the prescribed two month period. This is so because all crude oil produced and sold is deemed to be old crude oil unless it qualifies for treatment as new crude oil under the condition set forth in the definition of new crude oil. See Preamble to Proposed Rulemaking, 40 FR at 13523 (March 27, 1975). Those conditions include certification, and forbid certification (or re-certification) more than two months after the month in which the crude oil is produced. Accordingly, any crude oil which fails to meet all of the criteria for treatment as new crude oil must be treated as old crude oil and sold at lower tier prices. Conversely, however, the failure of a producer to retroactively lower the price charged for crude oil erroneously sold at upper tier prices is a violation of 10 CFR 212.10(a) and 212.73(a).

INTERPRETATION 1978-13

To: Atlantic Richfield Co.
Date: April 7, 1978.
Rules Interpreted: § 212.83(c)(2)(iii)(E).
Code: GCW—PI—Refiner Price Formula, "N" Factor; Non-Product Cost Increases.

FACTS

Atlantic Richfield Co. (ARCO) is a refiner as defined in 10 CFR 212.31 and as such is

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(upper tier) and old (lower tier) crude oil, separately identifying California lower tier crude oil and any crude oil transported through the Trans-Alaska pipeline. In addition, the producer must state the posted prices from which upper and lower tier crude oil prices are derived. 10 CFR 212.131(a)(2).

[4]The "one-time" certification requirement has since been amended to reflect changes in both the base period and the methods of computation of the BPCL. See 41 FR 36172 (August 26, 1976); 41 FR 43393 (October 1, 1976); 42 FR 41565 (August 17, 1977).

[5]The result reached here is not in conflict with the interpretation recently issued to the Shell Oil Company, Interpretation 1978-2, 42 FR 12848 (March 28, 1978). There, pursuant to a written contract, Shell produced and sold new and old crude oil at upper and lower tier prices. Through clerical error, Shell charged less than the contractually agreed upon prices for certain volumes of both new and old crude oil over a period of time. The interpretation determined that Shell could charge the purchaser the full contract price for the crude oil, as the price was not in violation of 10 CFR 212.74(c). It is important to note that Shell had timely and correctly certified the crude oil as new and old crude oil, and there was, therefore, no question of retroactive recertification of volumes of new and old crude oil.

subject to the price regulations set forth in 10 CFR Part 212, Subpart E. ARCO is considering a plan to institute significant changes in its marketing practices which will reduce the company's marketing expenses. The institution of such modifications to its marketing operations will reduce ARCO's cost of marketing covered products below the May 1973 cost of this non-product cost category.

ISSUE

Do the price regulations applicable to refiners set forth at § 212.83(c)(2) require a refiner to use negative values for the increased marketing cost factor when monthly refiner marketing costs are below May 1973 marketing costs?

INTERPRETATION

When monthly marketing costs fall below May 1973 marketing costs, refiners must use negative "marketing cost increase" values to compute total increased refiner nonproduct costs. This computation is clearly required by the language of the refiner non-product cost formula and is indicated by the historical development of the regulations as they presently exist.

The price rules which are applicable to refiners in § 212.83 include calculations of product and non-product cost factors. The marketing cost increase ("F_i^t") factor is an element used to compute the total increased non-product costs (the "N" factor) according to the formula,

$$N_i^t = E^t \frac{R_i^t}{R^t} + F_i^t$$

set forth in § 212.83(c)(2)(iii).

Section 212.83(c)(2)(iii)(E) defines the "marketing cost increase" factor as

"the *difference* between the cost of marketing covered products in the month of measurement and the cost of marketing covered products in the month of May, 1973. . . . The amount of marketing cost increase which may be applied to compute *maximum allowable prices* for covered products is, however, limited" (emphasis added).

Since the "F_i^t" factor is defined as "the *difference* between the cost of marketing covered products in the month of measurement and the cost of marketing products in the month of May 1973," (emphasis added) mathematical computations for marketing costs may result in either positive or negative values for the "F_i^t" factor. The formula used to compute a refiner's total increased non-product costs adds the "F_i^t" factor to the remaining formula elements, consequently, a negative "F_i^t" addend is a mathematically acceptable element in the equation which computes the "N" factor. The definition of "marketing cost increase" and the formula for calculating "increased non-product costs" therefore permit the use of negative refiner "marketing cost increase" values for the purpose of determining a refiner's maximum allowable prices for covered products.

ARCO concedes in its interpretation request that the algebraic formula for calculating non-product cost increases theoretically permits negative cost increases. However, ARCO believes that the refiner price regulations never were intended to permit the addition of negative cost increases when calculating total non-product cost increases. In support of this view, ARCO states that the present regulations continue the regulatory requirements previously imposed under the authority of the Economic Stabilization Act of 1970, P.L. 92-210, *as amended*, (ESA) which provided that the weighted average price charged on the "base date," May 25, 1970, be treated as a "price floor," to which product and certain non-product cost increases could be added.

Section 203 of the ESA provided that the "President is authorized to . . . stabilize prices . . . at levels not less than those prevailing on May 25, 1970." Although prices of refined petroleum products were not permitted to fall below this base level, the regulations issued pursuant to this authority, which specifically addressed the calculation of price reductions by petroleum refiners, permitted individual elements used to compute permissible sale prices to fall below May 25, 1970 costs, as long as the price calculated in accordance with the regulations equalled or exceeded the May 25, 1970 price. Under the ESA, the Cost of Living Council (CLC) was established. The CLC issued general price rules which covered the petroleum industry until it adopted price regulations in Phase IV which controlled the prices of petroleum and petroleum products. See 6 CFR Part 150, Subpart L, 38 FR 22536 (August 22, 1973). Section 150.358(e) specifically addressed the calculation of price reductions by petroleum refiners and provided that—

"[a] price charged in excess of the base price may continue to be charged only as long as the *net* increases in allowable costs which support that price in excess of the base price continue to be incurred." (Emphasis added.)

Thus, as intended by the ESA, all elements of the refiner price calculation, including those elements with a negative net value, were required to be included in price computations.

Under the Emergency Petroleum Allocation Act of 1973, P.L. 93-159, *as amended*, (EPAA) the Federal Energy Office (a predecessor of the Federal Energy Administration (FEA) and Department of Energy (DOE)) initially adopted the CLC Phase IV Regulations (39 FR 1924 (January 15, 1974)) including this "net increase" concept. The adoption of the "net increase" concept was mandated by § 4(b)(2)(A) of the EPAA which specifically provided for regulations that required "a dollar-for-dollar passthrough of *net* increases in the cost of crude oil, residual fuel oil, and *refined petroleum products*." (Emphasis added.)

Section 402 of the Energy Policy and Conservation Act, P.L. 94-163 (1975) (EPCA), amended the EPAA by adding a new § 10 which expressly eliminated the authority previously given to the President under § 203 of the ESA "to prescribe minimum prices for crude oil (or any classification thereof), residual fuel oil, or any refined petroleum product." Subsequent to this amendment, not only the elements of the petroleum price formulas, but the resulting maximum sale prices of petroleum products could be at or below the base period price levels.

The current refiner price regulations have retained this concept of permitting only *net* amounts of allowable costs to be used in the formula for calculating increased refiner costs. Although the formula presently used to compute the amount of marketing costs that may be used to compute maximum allowable prices under § 212.83(c)(2)(iii)(E) does not use the word "net" in reference to the calculation of permissible marketing costs, the regulatory definition of the "F_i^t" factor clearly yields the same result. Therefore, § 212.83(c)(2)(iii)(E) continues the statutory mandates of the ESA, EPAA and EPCA to require price reductions in the event of a negative net cost increase.

Section 212.83(c)(2)(iii)(E) is also fully in accordance with the policy set forth in § 401 of the EPCA which amended the EPAA by adding a new § 9, entitled "passthroughs of price decreases." Section 9 requires the implementation of regulation which provide for a dollar-for-dollar passthrough in prices at all levels of distribution for decreases in costs of crude oil, residual fuel oil, and refined petroleum products.

As required by the EPCA, the FEA amended its regulations, effective February 1, 1976, to reflect the requirements of § 9 of the EPAA (41 FR 5111, February 4, 1976). The preamble to these amendments explained that,

[a]lthough . . . FEA refiner price [regulations] expressly only provide for a dollar-for-dollar passthrough of *increased* product costs, and are silent with respect to *decreased* product costs, increased product costs are generally defined in the regulations as the difference between current costs and May 1973 costs. Thus, *any reduction* in current cost levels from the cost levels of the preceding month automatically results in a reduction in the amount of increased costs available for passthrough and, hence, in a reduction in a firm's maximum lawful prices. In other words, although the term "reduced product cost" does not appear in the refiners' regulations, *any reduction in product costs automatically constitutes a lesser amount of "increased product costs"* (since such increases are measured from May 1973 levels), except in the unlikely event a firm were to incur costs currently that were below May 1973 levels. (Emphasis added.)

Although FEA's February 1, 1976 regulatory preamble does not specifically discuss the dollar-for-dollar passthrough of cost decreases as it applied to non-product costs, it does indicate (in the previously cited portion of the regulatory preamble) that three possible types of product cost variations might occur. There may be an absolute cost increase over the base May 1973 costs; there may be a relative reduction in the amount of increased costs over May 1973 levels in the current month from a previous amount of increased costs over May 1973 levels, or there may be an absolute cost decrease below the base May 1973 cost levels.

Furthermore, on April 6, 1976, the provisions applicable to other (non-marketing) categories of non-product costs were deleted from § 212.87. The deleted section provided that

"non-product cost shall be *subtracted from* the increases in other defined categories of non-product costs, so that only the net increase in non-product costs for a particular month may be used to justify an allowable price" (emphasis added). 10 CFR 212.87(b)(2)(1976).

The new provisions to § 212.83(c)(2)(iii)(E), which regulate the calculations for such categories of non-product costs and which define the "E'" factor, omit any reference to required subtractions. Instead, they refer only to total "increased non-product costs" in conformity with the regulatory definition for marketing cost increase that defines "increased" costs as the *difference* between costs incurred during the month of measurement and those incurred in May 1973.[1]

ARCO also maintains that the use of negative increased marketing cost values for calculating refiner non-product costs creates a disincentive for a refiner to reduce its marketing costs. ARCO states that this process does not permit a refiner to recover funds associated with its more efficient operation or earn a return on its capital investments. ARCO's position is incorrect. The effect of a regulatory policy which requires refiners to use net marketing cost amounts is to permit reductions in marketing costs to be passed through as price reductions for consumers. Prices, thus, remain parallel to costs. The Mandatory Petroleum Price Regulations were not designed to permit refiners to earn a return on capital investments beyond the recovery of costs. However, under the current refiner price regulations, a refiner who invests capital to decrease marketing costs may pass the cost of such investments through to the maximum allowable price by way of the depreciation cost increase, interest cost increase, or other elements of the "E'" factor, included in the computation of total increased non-product costs. Thus, no need exists to recover such costs by means of the marketing cost increase calculation ("F_i" factor).

Accordingly, ARCO must use negative "marketing cost increase" values to compute total increased non-product costs when its monthly marketing costs are below its May 1973 marketing costs. The historical development of petroleum price regulation and the language of the current regulations require this result.

INTERPRETATION 1978-14

To: Amoco Oil Company.
Date: April 14, 1978.
Rule Interpreted: 10 CFR 212.83(c)(2)(iii)(E).

Code: GWC—PI—Refiner Price Formula, "N" factor; Non-product Cost Increases.

FACTS

The Amoco Oil Company (Amoco) has submitted a request for interpretation concerning the computation of its depreciation cost increase under the non-product cost portion of the refiner price rule, 10 CFR 212.83. Under the current provisions of 10 CFR 212.83(c)(2)(iii)(E), which set forth the formulae for computing increased non-product costs, a refiner may elect to compute its depreciation cost increase in one of two ways. The method which the refiner may use, however, depends upon the manner in which the refiner calculates its refinery fuel cost increase.

If the refiner chooses to calculate its refinery fuel cost increase under the general non-product cost increase formula "E_n^t," then it may include in its E_n^t calculation for depreciation cost increase all depreciation costs associated with capital investments, including those which are related to fuel conservation. See 10 CFR 212.83(c)(2)(iii)(E) paragraphs (I)(aa) and (IX)(aa). However, if the refiner elects to calculate its refinery fuel cost increase using the refinery fuel conservation incentive, it then uses a formula based upon the "base refinery fuel usage" per barrel of refinery throughput in May 1973. This method permits the refiner to retain the benefit of any savings it has realized, through fuel conservation efforts since May 1973, in the amount of refinery fuel used per barrel of throughput. If the refiner uses the refinery fuel conservation incentive, then it must exclude from its E_n^t calculation of depreciation cost increase "the depreciation costs associated with capital investments which effect fuel conservation." See 10 CFR 212.83(c)(2)(iii)(E) paragraphs (I)(bb) and (IX)(bb).

In its request for Interpretation, Amoco notes that it is a refiner using the refinery fuel conservation incentive. Amoco recognizes that where it makes a capital investment solely for the purpose of conserving refinery fuel, it is clear that it may not include any depreciation cost associated with that investment in its E_n^t calculation of depreciation cost increase. However, Amoco points out that most capital investments in refinery machinery or equipment will have *some* effect on fuel conservation. Thus, even where new machinery or equipment is not intended to conserve fuel, the mere fact that it is new may mean that it is more fuel-efficient and, therefore, conserves some fuel. Amoco argues that in this instance the refiner price rule was not intended to require that it omit all depreciation costs associated with that capital investment from its E_n^t calculation of depreciation cost increase.

Amoco, therefore, seeks an interpretation of the phrase "capital investments which effect fuel conservation," in order to obtain guidance as to the treatment that is to be accorded the depreciation cost associated with a capital investment that has only a partial or incidential impact on refinery fuel conservation. The interpretation which Amoco seeks would permit the firm to include as depreciation cost in its E_n^t calculation an amount which reflects that portion of the capital investment which does not result in refinery fuel conservation. Amoco has suggested that analysis of either investment records or the fuel conservation benefits actually obtained from a capital investment project will, in most cases, yield sufficient information to permit the firm to identify the portion of the capital investment which is related to fuel conservation. Amoco would then exclude that portion of the depreciation cost associated with the investment from its E_n^t calculation, but would include the remainder.

The Department of Energy (DOE) published a notice describing Amoco's request for interpretation in the FEDERAL REGISTER, and solicited comments from interested parties. 42 FR 3611 (January 26, 1978). The DOE received five comments in response to that notice. All five comments were submitted by major refiners who employ the refinery fuel conservation incentive formula. One firm agreed with Amoco's suggested interpretation, stating that:

> [the firm] has had no difficulty in establishing an acceptable procedure for computing depreciation costs on capital improvements which will have an incidental effect on fuel conservation. For each refining capital project which resulted in fuel savings . . . an estimate, based upon recognized historical engineering practices, is made of the percentage of total capital investment that was required to achieve the fuel savings . . . . [T]hat portion of depreciation associated with fuel conservation is then subtracted from the E_n^t calculation, while the remainder is included.

Comments from the other four firms, however, indicated apprehension that the Amoco approach is unnecessarily complex and burdensome. These firms generally favored a project-by-project analysis, examining each capital investment project to determine whether its primary purpose is to bring about refinery fuel conservation. If so, then all depreciation costs associated with that project would be excluded from the depreciation cost E_n^t calculation. However, if the primary purpose of a capital investment project is something other than fuel conservation, all depreciation costs associated with that project would be included in the depreciation cost E_n^t calculation, even if there were some fuel conservation benefits. In discussing the advantages of this approach over that suggested by Amoco, one firm related its experience in attempting an item-by-item analysis, and concluded that:

> [t]he experience gained in this procedure has indicated to us that [it] results in time-consuming engineering calculations which, though defensible, may not be readily accepted by anyone unskilled in engineering techniques.

Another company commented that "[a]ttempts to evaluate each project and separate out that equipment relating to fuel conservation would be an accounting and engineering nightmare."

The comments also acknowledged the necessity of using a standard that would be reasonably susceptible to auditing by DOE enforcement personnel. Three firms expressed the opinion that the decisions required by Amoco's proposed method would be difficult to audit, as they would depend primarily on engineering judgments and records. The comments submitted have been carefully reviewed and considered, and many of the suggestions offered by the comments have been incorporated into this Interpretation.

ISSUE

How must Amoco, a refiner using the refinery fuel conservation incentive, treat de-

[1]Subpart F of 10 CFR Part 212, which regulates prices charged by resellers and retailers, also conforms to the regulatory policy, dating back to CLC Phase IV price regulations, expressed in the maximum allowable price definition for Subpart E. Indeed, the price rule prescribed by § 212.93(c) specifically requires that decreases in costs since the base period must be used to compute the maximum allowable price by stating that "[a] seller which charges a price in excess of the weighted average price at which the product concerned was lawfully sold by that seller in transactions with the class of purchaser concerned on May 15, 1973, may continue to charge that price only as long as the product cost increases (and, as appropriate, the *net increases in non-product costs* which have been incurred since May 15, 1973, and which support that price, continue to be incurred. *Price reductions shall be made* under this paragraph *as soon as* any computation of increased product costs under § 212.92 (or, as appropriate, *any computation of increased non-product costs* under § 212.93(b)) *reveals a net cost decrease*" (emphasis added).

preciation costs associated with capital investments which have an effect on fuel conservation? Specifically, how should Amoco treat depreciation costs associated with a capital investment project which, although not primarily intended to conserve refinery fuel, results in some refinery fuel conservation benefits?

INTERPRETATION

For the reasons set forth below, it has been determined that Amoco should examine each refinery capital investment project as a whole to determine its primary purpose. If the primary purpose of the project is to conserve refinery fuel, then all depreciation costs associated with that project should be excluded from Amoco's depreciation cost E_n^t calculation. If the primary purpose of the project is other than refinery fuel conservation, Amoco may then include all depreciation costs associated with the project in its E_n^t calculation, even though Amoco may also realize some incidental refinery fuel conservation benefits. However, if within a project the primary purpose of which is other than refinery fuel conservation, there is a readily identifiable and separable capital expenditure which was included in the project for the purpose of conserving refinery fuel, then the depreciation costs associated with that expenditure must be excluded from Amoco's depreciation cost E_n^t calculation.

The depreciation cost category was added to the refiner price rule because the Federal Energy Administration (FEA), a predecessor agency of the DOE, recognized that the failure to permit refiners to recover the costs of capital investment had two deleterious consequences: it tended to discourage refinery capital investment, and, to the extent that refiners did make such investments, it encouraged them to finance the investment from borrowing rather than from internally generated capital, because refiners were able to recover increased interest costs. See Notice of Proposed Rulemaking, 41 FR at 31864 (July 30, 1976).

At the time that the depreciation cost category was created to ameliorate this problem, the FEA decided to retain the refinery fuel conservation incentive which was already in effect.[1] This decision was made primarily because of the high priority attached to refinery fuel conservation, and also because many refiners had instituted numerous energy-saving measures in reliance upon that incentive. See Notice of Final Rule, 42 FR 5023 (January 27, 1977). In order to prevent unwarranted cost recovery, however, the FEA required refiners which used the refinery fuel conservation incentive to exclude from the depreciation cost category those depreciation costs associated with "capital investments which effect fuel conservation." Without this limitation, refiners could "double-dip," or gain cost recovery in two separate ways, for those capital investments which resulted in refinery fuel savings.

As Amoco has suggested, however, if a refiner is required to forego all depreciation cost recovery on an investment where the fuel conservation benefits are minimal, it will be deprived of an economic benefit under the depreciation cost category entirely out of proportion to the refinery fuel conservation benefit obtained. Carried to the extreme (*i.e.*, for a capital investment project that incidentally provides unintentional, *de minimis* fuel conservation benefits), such a view of exclusion of depreciation cost would result in the loss of recovery of depreciation cost for a substantial portion of refinery investment projects. As Amoco points out, newly installed refinery equipment can be expected to be more fuel-efficient because of technological advances and the fact that new machinery may be inherently more efficient than old machinery of the same type. Amoco correctly states that to deny any depreciation cost recovery in such cases would mean that refiners would be deprived of much of the benefit they were intended to receive through the creation of the depreciation cost category. This would simply recreate the disincentives which the depreciation cost category was designed to eliminate. Accordingly, the phrase "capital investments which effect fuel conservation" must be interpreted so as to permit a refiner to recover in its depreciation cost E_n^t calculation depreciation costs which are associated with non-fuel conservation investment projects that incidentally and unintentionally provide minor refinery fuel conservation benefits.

The method proposed by Amoco in its suggested interpretation would accomplish this, but, as was pointed out by several of the firms which commented on Amoco's proposed solution, it would do so in an unnecessarily complex manner. Because the intent of the regulation will be fully satisfied by a simpler, project-by-project approach, under which refiners look to the primary purpose of refinery capital investment projects, the DOE rejects the approach suggested by Amoco.

Under the project-by-project approach adopted herein, a refiner using the refinery fuel conservation incentive must look to each capital investment project to determine the primary purpose of that project. The primary purpose can normally be unambiguously determined from the refiner's investment records. Where a project has two or more major, competing purposes, the refiner must determine from its investment records which of those purposes is the controlling, or leading, purpose. Such a determination will normally be possible from the project description or the schedule of projected benefits contained in the investment records. If the primary purpose of the project is to bring about refinery fuel savings, then all of the depreciation costs associated with the project must be excluded from the depreciation cost E_n^t calculation. If the primary purpose of the project is something other than refinery fuel conservation, then all depreciation costs associated with that project may be included in the E_n^t calculation. In addition, however, for a project which has a primary purpose other than refinery fuel conservation, the depreciation costs associated with any readily identifiable and separable expenditure which is included within that project for the purpose of refinery fuel conservation must be excluded from the depreciation cost E_n^t calculation. This will avoid "double-dipping" on purely fuel conservation items that are included within a larger, non-conservation project.

This approach will bring depreciation costs roughly into the same balance between the E_n^t calculation and the refinery fuel conservation incentive formula that would be achieved through the use of the more complex method proposed by Amoco. This is so because some refinery fuel conservation investments will contain expenditures which do not result in any fuel savings, and some non-conservation investments will result in incidental refinery fuel savings. Across the broad spectrum of refinery capital investment projects, these factors will approximately balance out.[2]

The use of a primary purpose test on a project-by-project basis is supported by a direct analysis of the phrase "capital investments which effect fuel conservation." Webster's Third International Dictionary defines the verb "effect" to mean "to bring about . . . [or to] accomplish . . . ." As a noun, the work also means "purpose, intention, [or] end . . . ." The connotation apparent in these definitions is of an intentional act designed to bring about or create a desired result. Applying this meaning of the word in the phrase "capital investments which effect fuel conservation," it becomes apparent that the phrase refers to those capital investments which are designed and intended to bring about refinery fuel conservation, rather than every refinery investment project, regardless of its purpose, which may happen to provide minor or negligible fuel savings. Accordingly, it is appropriate to look to the main purpose served by a capital investment project to determine whether that project is designed to effect, or to bring about, refinery fuel savings.

The project-by-project analysis has the advantage of being simpler for refiners to use. Rather than having to analyze each refinery investment project on an item-by-item basis, and to refer to engineering, as well as investment, records, a refiner will be able initially to review its investment records for each project to determine the primary purpose of that project. The only further step required will be for non-conservation projects, where the refiner will then have to determine if there are any readily identifiable and separable fuel conservation expenditures within that project.[3] In addition to vastly simplifying the analysis required by the refiner, the project-by-project approach will facilitate auditing by DOE enforcement personnel. Auditors generally will be relieved of the task of evaluating engineering records and decisions, and will not have to review unduly burdensome financial records.[4]

[1] In the Notice of Proposed Rulemaking, 41 FR 31863 (July 30, 1976), the FEA had indicated that it was considering deleting the refinery fuel conservation incentive from the Mandatory Petroleum Price Regulations. See 41 FR at 31866.

[2] One commenting firm calculated that by using a primary purpose test for each investment project, rather than the item-by-item approach suggested by Amoco, there would be a difference in the final computation of maximum allowable prices of less than $0.00003 per gallon. In addition, this refiner did not exclude readily identifiable and separable fuel conservation items from the depreciation costs associated with non-conservation projects, an action that would further reduce the difference between the two methods of computing depreciation cost recovery.

[3] By readily identifiable and separable fuel conservation items, the DOE intends that refiners should select those items which are quite apparently included within the project for the purpose of improving refinery fuel conservation. A straight-forward example would be the addition of a waste heat boiler in a general refitting of an existing refinery unit.

[4] It should be noted that the DOE does not intend that refiners make any change in

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The touchstone for the analysis of the primary purpose of a refinery capital investment project must be the investment records which outline the purpose (or purposes) of the project, along with a projection of the expected costs of and benefits to be derived from the project.[5] In some cases, a project whose primary purpose is to conserve refinery fuel will fail to achieve that objective. In such a case, the refiner must still adhere to the determination it originally made from its investment records. This is so because a post-construction evaluation of a completed project is not always undertaken, and, if one is, it would rely primarily upon engineering and operating records. This type of analysis is of greater complexity and is particularly difficult to audit. Also, a post-construction evaluation may not be undertaken for some time after the expenditures for that investment project are made. Changing the treatment of the depreciation costs associated with a project two or three years after those costs had been factored into the computation of maximum allowable prices would be difficult at best. If an investment project primarily intended to bring about refinery fuel conservation fails to achieve that purpose, however, the refiner may seek exception relief for the treatment of the depreciation costs associated with that project. See 10 CFR Part 205, Subpart D.

INTERPRETATION 1978-15

To: John D. Manley III
Date: April 14, 1978
Rules Interpreted: § 212.72; Rulings 1975-15, 1977-1, and 1977-2
Code: GCW—PI—Definition of Property

FACTS

Under an oil and gas lease executed in 1970, Double U Oil Co. ("Double U") obtained working interest rights pertaining to a tract of land of approximately 3,770 acres ("the tract"). Double U subsequently began to produce crude oil from the San Miguel formation underlying the tract.

In March 1975, Double U released its rights to approximately 2,070 acres of the tract. Double U regained production rights with respect to these 2,070 acres under an oil and gas lease executed in July 1975. Double U once again released its rights to the bulk of this acreage in August 1977. The "released" acreage in this instance consisted of approximately 1,830 acres (the "sub-tract").

John D. Manley III ("Manley") proposes to enter into an oil and gas lease to obtain production rights to this sub-tract. Manley proposes to drill exploratory wells in the San Miguel formation, which extends beneath the sub-tract. There has never been any production from the acreage comprising the sub-tract.

ISSUE

(1) Whether the sub-tract Manley proposes to lease constitutes a separate "property" under 10 CFR 212.72. (2) If the sub-tract is not a separate property how is "new" crude oil (if any) produced and sold from the property allocated among the producers concerned?

INTERPRETATION

For the reasons set forth below, we conclude that the sub-tract in this case does not constitute a separate "property" for purposes of crude oil price controls. Further, the allocation of "new" crude oil among the producers of crude oil from a property subdivided after 1972 is a matter for resolution among the interest holders concerned.

"Property" is defined in 10 CFR 212.72, for purposes relevant to this interpretation, as "the right to produce domestic crude oil, which arises from a lease or from a fee interest. . . ." Ruling 1975-15 (40 FR 40832, September 4, 1975), interpreted the price controls applicable to producers of crude oil in 10 CFR Part 212, Subpart D, as requiring a fixed concept of "property":

"Because of the need to quantify the 1972 monthly production levels for a particular property in order to calculate that property's base production control level for each month, the producer must refer to the right to produce crude oil as it existed in 1972 in order to define the property involved. This is dictated, of course, by the need to compare like quantities, today and in 1972, in order to ensure a meaningful application of the new and released [crude oil] provisions."

Ruling 1975-15 also addressed the issue of post-1972 subdivision of a pre-existing "property" in the following terms (emphasis added):

"Just as a post-972 unitization does not establish a new property, neither does the subdivision after 1972 (*through assignment, creation of new leases, or otherwise*) of a single right to produce crude oil into several rights to produce crude oil establish a new property for purposes of measuring the BPCL and determining whether any new or released crude oil has been produced.

"*Example 3:* A is a firm that produced crude oil from a 650 acre lease in 1972. The lease established in A a single right (assignable in whole or in part) to produce crude oil from the entire 650 acres. In 1974, A assigned 100 acres to B, who drilled for and began producing crude oil. During 1972, there were no producing wells on the 100 acres assigned from A to B.

"The production from B's lease is not necessarily classified as new crude oil.

"The fact that during 1972 there were no producing wells within the geographical boundaries of the lease now operated by B does not establish, *per se*, that all of B's production will qualify as new oil. Only when the total current production from the entire 650 acres is measured against the 1972 production from the comparable area can a determination be made as to the existence of new and released crude oil.

"The result reached in Example 3 is consistent with the policy that underlies the two-tier pricing system. For if instead of assigning a portion of the original lease to B, A developed that portion of the lease himself, the production of new oil would occur only if production from the entire property exceeded 1972 levels for the entire 650 acres. That is, where A's property consisted of a single right to produce crude oil from a 650 acre lease, the drilling of a new well located upon a previously undeveloped portion of the lease would not automatically establish new crude oil. Under no circumstances does the mere drilling of a new well automatically establish the production as new crude oil. Production from a property qualifies as new crude oil only if in excess of the property's 1972 production levels and any current cumulative deficiency. The result in the example above is no different merely because A has assigned to B the right to produce crude oil from a porion of the lease. . . ."

The definition of "property" was amended effective September 1, 1976, to permit separate reservoirs to be treated as separate properties on a prospective basis under certain conditions (see 41 FR 36171, August 26, 1976). In addition, the definition of "property" was subject to further clarification in Rulings 1977-1 (42 FR 3628, January 19, 1977) and 1977-2 (42 FR 4409, January 19, 1977). Interpretations 1977-42 (42 FR 61274, December 22, 1977) and 1977-46 (43 FR 1481, January 10, 1978) make it clear, however, that the portions of Ruling 1975-15 cited above are of continuing validity and applicability.

Ruling 1977-1 made it clear that "property," for purposes of the crude oil price regulations, was synonymous with the "premises" or "tract" described in the underlying lease instrument in existence in 1972. Ruling 1977-1, as clarified by Ruling 1977-2, also provided guidelines for determining certain limited cases in which it would be inequitable to apply the literal "tract" basis of the definition of property, both before and after its amendment effective September 1, 1976. These cases were grouped and described in those rulings as follows:

(1) in cases in which a single lease imposes significantly "differing or special rights or obligations with respect to the development and production from particular portions of the described premises," and the producer "has in good faith relied upon such differences in its exploration and development activities, and . . . has consistently and historically accounted for such portions separately," those portions could be treated as separate "properties" (Ruling 1977-1, Section III.F(1));

(2) in cases in which a single lease conveys "a single undifferentiated right to produce with respect to multiple, non-contiguous tracts . . . [which] were developed and produced separately, and . . . [which] have historically and consistently been accounted for a separate properties," those non-contiguous tracts may be treated as separate "properties" (Ruling 1977-1, Section III.F.(2)(a));

(3) in cases involving "very large tracts which are subject to a single right to produce," separate geological formations which have been developed and produced separate-

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the method by which they calculate depreciation on capital expenditures. The method refiners use should conform with their historical practice, that is, the method used for purposes of annual stockholder reports and reports to the Securities and Exchange Commission. This is not intended, however, to bar refiners from developing a convenient method for identifying the primary purpose of their capital improvement projects from investment records.

[5] Refiners' investment records will normally unambiguously establish the purpose or purposes of a refinery investment project. Should the investment records fail to reveal the purpose of the project, however, the refiner must establish the primary purpose from investment-type records created during the planning stages of the project. This will avoid the difficulties inherent in post-construction analyses of refinery investment projects, discussed *infra*.

ly, and which have historically and consistently been accounted for separately, may be treated as separate "properties" (Ruling 1977-1, Section III.F(2)(b));

(4) in cases in which "less than the total premises subject to a right to produce [is] unitized or otherwise aggregated with [premises] or portions of premises subject to other rights to produce," forming a single "property," the portion of the tract not so unitized or aggregated may be treated as a separate "property" (Ruling 1977-1, Section III.F(2)(c));

(5) in cases in which the producer "is required, under a single oil and gas lease, to account separately to different royalty owners (whose interests are limited to specific identified portions of the premises, as delineated in the oil and gas lease) for production from corresponding identified portions of the premises granted in a single oil and gas lease," and such portions "have consistently and historically been treated as separate properties," those portions may be treated as separate "properties" for purposes of crude oil price regulations (Ruling 1977-1, Section III.F(2)(d); Ruling 1977-2, Section II.B.1); and

(6) in cases in which the producer is required "to account separately for different types of crude oil produced and sold from different specified portions of a tract in order to determine liability for severance taxes" or similar taxes, the rate of which differs according to different types of crude oil produced and sold from different specified portions of the tract concerned, and the producer "since the inception of price regulations consistently treated such distinct portions of the [tract] as separate properties," those portions may be treated as separate "properties" for crude oil price control purposes (Ruling 1977-1, Section III.F(2)(d); Ruling 1977-2, Section II.B.2).

The request for interpretation does not attempt to characterize the present case as falling within any of these categories or within the scope of the "reservoir" amendment to the definition of "property" effective September 1, 1976. Instead, the request for interpretation relies on (1) the fact that the royalty under the Double U leases was or is considerably more than the royalty called for in the lease which Manley proposes to enter into as producer; (2) assertions that the leasing arrangements in this case, past and proposed, do not appear to reflect any intent to circumvent the two-tier price regulation system; and (3) arguments that the purposes of crude oil price regulations would be served by according the subtract separate "property" status, based on the need for upper tier price incentives for exploration and development of the subtract.

None of the six categories summarized above is based on different royalty rates to the lessor in separate leases to two producers. To permit the establishment of separate "properties" merely on this basis would be to establish a regulatory distinction lacking any rational foundation. Moreover, such a rule would invite widespread circumvention of the two-tier crude oil pricing system through execution of new leases which would alter royalty arrangements. For these reasons, the differences in royalty rates in this case do not establish separate "properties."

Lack of bad faith, or absence of intent to circumvent the crude oil price regulations, is not sufficient, by itself, to merit treatment of the sub-tract in this case as a separate "property." DOE generally assumes the presence of good faith dealings in interpretation requests. The applicable rule, with this assumption, is that subdivision of a "property" after 1972 does not create a new "property," as Ruling 1975-15 explains; but that such a subdivision may reflect or formalize "separate property" status permitted in any event (with or without formal subdivision) under one of more of those narrow categories of cases described in Rulings 1977-1 and 1977-2 or under the "reservoir" amendment to the definition of "property" effective September 1, 1976.

In issuing formal interpretations under 10 CFR Part 205, Subpart F, concerning the meaning and applicability of its regulations, DOE may not determine that a particular regulation or ruling applies or does not apply to a particular case solely on the ground that the application or nonapplication might provide, under the particular facts of the case, sufficient price incentives for increased production of crude oil. In cases in which there is no regulatory basis for the upper tier prices and the upper tier price is necessary to cover the risk and cost of new production, the producer is encouraged to submit a request for exception in accordance with procedures set forth in 10 CFR Part 205, Subpart D.

It is not clear from the facts in this case when production first began under the tract concerned. If it occurred after 1972, the base production control level (BPCL) for the property is zero and *all* production, no matter in what amounts and from which portion or sub-tract, qualifies as upper tier crude oil. If the property has a positive BPCL and "new" crude oil is produced and sold from the property, DOE will not normally allocate "new" crude oil among the participating producers. As in the case of production from unitized properties under 10 CFR 212.75, this is "more properly a matter for private resolution among participants" in the production of crude oil from the property concerned (41 FR 4931, February 3, 1976).

INTERPRETATION 1978-16

To: HNG Petrochemicals, Inc.
Date: April 14, 1978
Rules Interpreted: §§ 212.165; 212.167(b), 212.170; 212.83
Code: GCW—PI—Part 212, Subparts K and E

FACTS

HNG Petrochemicals, Inc. (HNG Petrochemicals) and Houston Pipe Line, Inc., Intratex Gas Company, and Valley Pipe Lines, Inc. (collectively referred to as "the pipeline companies") are subsidiaries of Houston Natural Gas Corporation.

HNG Petrochemicals is the sole owner and operator of several gas plants. Additionally, it is the operator and part owner of one gas plant and a part owner, but not operator, of one gas plant. All gas plants in which HNG Petrochemicals has an interest are located in Texas. At these plants, HNG Petrochemicals extracts natural gas liquids (NGL's) and manufactures natural gas liquid products (NGLP's) which it owns. HNG Petrochemicals does not refine crude oil and its pricing of NGL's and NGLP's is governed solely by Part 212, Subpart K. 10 CFR 212.161(b)(1). Thus, HNG Petrochemicals is a "refiner" as defined in 10 CFR 212.31 and a "gas plant owner" and "gas plant operator" as defined in 10 CFR 212.162.

The plants in which HNG Petrochemicals owns an interest are generally located astride the pipeline companies' gathering and transmission systems. These plants are located at strategic intervals to extract liquids from the gas within HNG Pipeline's transmission lines and from "wet" gas prior to the entry of that gas into the transmission lines.

HNG Petrochemicals has elected to aggregate and allocate product costs on a firm-wide basis. HNG Petrochemicals has also historically measured nonproduct costs on a firm-wide basis.

HNG Petrochemicals submits that prior to promulgation of Subpart K, its aggregation and allocation of product and nonproduct costs on a firm-wide basis was permissible under Subpart E. Furthermore, HNG Petrochemicals asserts that subsequent to the promulgation of Subpart K, its aggregation and allocation of product and nonproduct costs on a total plant basis is permissible.

ISSUE

Was HNG Petrochemical permitted to compute and allocate its increased product and nonproduct costs on a total plant basis under the provisions of Part 212, Subpart E prior to the promulgation of Part 212, Subpart K?

Is HNG Petrochemical permitted under 10 CFR 212.167(b) to compute and allocate its increased product and nonproduct costs on a total plant basis?

INTERPRETATION

I. *Subpart E*

For the reasons set forth below, HNG Petrochemicals has properly computed and allocated increased product costs and nonproduct costs on a total plant basis.

Prior to the promulgation of Part 212, Subpart K, prices of NGL's and NGLP's manufactured in gas plants were regulated by Part 212, Subpart E. *Mobil Oil Corp. v. FEA*, 566 F. 2d 87 (Em. App. 1977); *Accord, National Helium Corporation v. FEA*, — F. 2d —— (Em. App. 1977).

The Cost of Living Council (CLC) and Federal Energy Administration (FEA) regulations pertaining to refiners in effect during August 19, 1973, to December 31, 1974, (Subpart E and the CLC Phase IV predecessor regulations), provided for the firm-wide computation and allocation of such increased costs.

A. *Product Costs*

CLC's Phase IV regulations defined increased product costs:

"Increased costs of domestic crude petroleum" means the *difference* between the *total costs* of *domestic crude pe[t]roleum* during the month of measurement and the *total cost* of domestic crude petroleum during the month of May, 1973. Increased costs of domestic crude petroleum also means the *difference* between the *total costs* of a *purchased domestic petroleum product* commingled for accounting purposes during the month of measurement and the *total cost* of that product commingled for accounting purposes during the month of May, 1973.

"Increased costs of imports" means, for an imported product, the *difference* between the *total landed cost* for that product landed during the period of measurement and the *total landed cost* of that product landed during the month of May,

1973. [Emphasis added.] 6 CFR 150.356(b) (November 2, 1973.).

Similar provisions were adopted by the Federal Energy Office (FEO) a predecessor of the Department of Energy (DOE), in 10 CFR 212.83(b) 39 FR 1924, 1954-55 (January 15, 1974). Furthermore, the CLC's Phase IV price regulations, effective November 30, 1973, defined the "cost of crude petroleum" as including:

> . . . the cost of *unfinished oils and natural gas liquids* which are used in refining and are further refined, and which are covered products. [Emphasis added.] 38 FR 33577, 33579 (December 6, 1973).

These CLC regulations also were adopted by the FEO, including the definition of the cost of crude petroleum.* 39 FR 1924 (January 15, 1974). Similarly, the inclusion of NGL's and NGLP's as "covered products" under both CLC and Federal Energy Office (FEO) regulations supports consistent treatment of increased product costs associated with manufacture of NGL's and NGLP's in gas plants. 38 FR 22536 (August 22, 1973); 39 FR 1924 (January 15, 1974).

B. *Nonproduct Costs*

Prior to the promulgation of Subpart K, increased nonproduct costs attributable to refinery operations were referred to as "allowable costs." These "allowable costs" were to be calculated on a firm-wide basis with recovery of only net increases. § 212.82(b)(2); 39 FR at 1952-53. See, *e.g., Sohio-BP Oil, Inc.*, Interpretation 1976-3 (42 FR 7923 (February 8, 1977)). Thus, HNG Petrochemicals properly could have computed and allocated its increased nonproduct costs on a total plant basis before the promulgation of Subpart K.

II. *Subpart K*

Since HNG Petrochemicals is a refiner of oil and gas field gases, but does not refine crude oil, its pricing of NGL's and NGLP's is governed solely by Subpart K. § 212.162(b)(1); see 39 FR 44407 (December 24, 1974); 40 FR 6200 (February 10, 1975).

For the reasons set forth below, HNG Petrochemicals may compute and allocate its increased product and nonproduct costs on a total plant basis from January 1, 1975, to the present. 39 FR 44407 (December 24, 1974).

A. *Increased Product Costs*

Subsection (b) of §212.167 governs the level of computation and allocation of increased product costs. In pertinent part, it states as follows:

> (b) *Aggregation of increased product costs.* Where increased product costs measured with respect to particular volumes of natural gas or natural gas liquids processed *in one or more gas plants* in a month are different, . . . (ii) the *total amount of increased product costs* measured with respect to the total amount of natural gas and natural gas liquids processed *in one or more gas plants under common ownership* in a month *may be allocated to the total sales volume* of natural gas liquid products produced therefrom, provided that once an election in accordance with this paragraph has been made, the elected method of allocating product costs shall continue to be used in the months subsequent to the election. [Emphasis added.]

Thus, the literal language of § 212.167(b) permits computation and allocation of increased product costs on a total plant basis.

Furthermore, when enacting this particular provision of § 212.167 the FEA stated in the preamble to the regulation that:

> [T]he FEA's intention was that aggregation of increased product costs should be permitted with respect to products produced at any number of gas plants under common ownership, at the option of the owner. 40 FR 39850 (August 29, 1975).

Therefore, HNG's election to calculate its increased product costs on an aggregate basis is in accordance with § 212.167(b).

B. *Increased Nonproduct Costs*

Section 212.165 of Subpart K permits the recovery of increased nonproduct costs in the prices charged for NGL's and NGLP's up to a maximum of $.00375 per gallon and $.005 per gallon respectively. This section also requires that records be maintained:

> . . . to show that the increased non-product costs attributable to gas plant operations . . . are sufficient to justify the amount of the price increase permitted under this section . . . .

Maintenance of records to justify a passthrough of increased nonproduct costs are the subject of both §§ 212.165 and 212.170. Section 212.170 generally states that firms will not be allowed to pass through their otherwise allowable increased product and nonproduct costs unless adequate records are maintained. Of particular interest to this issue, that section states in pertinent part that:

> Where one or more gas plants are under common ownership, the records required by this section may be kept in the aggregate for all the gas plants concerned.

Section 212.170 implicitly confirms that increased nonproduct costs may be allocated on either an aggregate or a plant-by-plant basis. See 40 FR 39850 (August 29, 1975). This interpretation is not only indicated by the actual language of these regulations but is also consistent with the treatment afforded increased product costs under § 212.167(b). However, just as is required under § 212.167(b), an election must be made with regard to the basis used for allocating increased nonproduct costs. Consistent treatment of record-keeping requirements for increased nonproduct costs as well as consistency in the allocation of these costs require that such an election be made when nonproduct costs are first recouped.

INTERPRETATION 1978-17

To: Pennzoil Offshore Gas Operators, Inc.
Date: April 21, 1978
Rules Interpreted: § 212.31; § 212.74
Code: GCW—PI—Posted Price; Producers of Crude Oil, Price Rule

FACTS

Pennzoil Offshore Gas Operators, Inc. (POGO), a subsidiary of the Pennzoil Company,[1] produces crude oil from the Eugene Island Block 330 offshore platform located off the coast of Louisiana. The platform constitutes a "property" for purposes of the crude oil price regulations in 10 CFR Part 212, Subpart D.

The property began production of crude oil in April 1973. All crude oil produced and sold from the property was therefore classified as "new" crude oil. As such, amounts produced and sold from the property were not subject to crude oil price ceilings until February 1, 1976, when "new" crude oil became subject to the upper tier ceiling price rule set forth in 10 CFR 212.74.

Until February 1976, POGO sold crude oil from the property concerned at a price which included delivery via pipeline to Ship Shoal Block 28, a crude oil gathering point approximately 70 miles from the Eugene Island Block, where purchasers take delivery of this crude oil.

Delivery is by way of the Bonito Pipeline System, owned by POGO and other offshore crude oil producers. The price set forth in POGO's 1973, 1974, and 1975 contracts was the delivered price, set according to a base price plus a bonus. Costs of transporting the crude oil to Ship Shoal Block 28 were not separately stated.

The Bonito System only transports crude oil produced by its owners, and since it is not a common carrier, has no published tariffs. The Department of Interior approved a transportation rate for measurement of U.S. royalty oil through the Bonito Pipeline System of approximately 16 cents per barrel for 1974 and approximately 4.5 cents per barrel for 1976. According to POGO, the contract "bonus" payments of as much as $2.00 per barrel which it received on crude oil sales prior to February 1, 1976, served, in part, to defray costs of moving that crude oil through the Bonito System.

The price bulletins reflecting the highest posted price on September 30, 1975, applicable under § 212.74 to crude oil produced and sold from the property concerned, stated prices in terms of crude oil delivered into facilities designated by the buyer.[2]

ISSUE

May POGO charge the applicable ceiling price for upper tier crude oil and, in addition, charge the purchaser for delivery services which POGO provided as part of the contract price on the upper tier crude oil base date of September 30, 1975, when the applicable posted price on that date was a delivered price?

INTERPRETATION

For the reasons discussed below, it has been determined that POGO may not, with respect to crude oil produced and sold from the property concerned after January 31, 1976, separately charge the purchaser for delivery of the crude oil to Ship Shoal Block 28 unless POGO makes a corresponding reduction in the price of crude oil below the applicable ceiling price.

The upper tier ceiling price rule set forth at § 212.74(b), initially promulgated on Feb-

* Crude petroleum is now referred to as crude oil in DOE regulations.

[1] Pogo Producing Company and Pennzoil Oil and Gas, Inc. are the successors in interest to the Pennzoil Offshore Gas Operators, Inc. POGO Producing Company an independent entity formed by POGO, and Pennzoil Oil and Gas, Inc., a subsidiary of Pennzoil, were formed subsequent to the filing of this request for interpretation.

[2] See for example the Shell Oil Company supplement which provides the highest posted price for the Eugene Island Block 330 crude oil dated September 29, 1975 which incorporates Crude Oil Price Bulletin No. 56. That Bulletin provides "that any transportation charges from the lease tanks into the facilities designated shall be borne by the seller." Thus, the posted price on September 30, 1975 was a delivered price.

ruary 1, 1976, (41 FR 4931 February 3, 1976) provides as follows:

"*Upper tier ceiling price determination.* The upper tier ceiling price for a particular grade of domestic crude oil in a particular field is (1) the highest posted price on September 30, 1975, for transactions in that grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; less (2) $1.32 per barrel [as adjusted by Section 212.77]."

In the preamble to § 212.74, it was noted that:

"In calculating a lawful upper tier price by reference to a September 30, 1975 posted price in the field from which upper tier crude oil is produced . . . producers are required to provide all services associated with production and sale of the crude oil which were provided on September 30, 1975 to a purchaser paying the referenced September 30, 1975 posted prices."

In the same rulemaking notice, in connection with the base posting date of May 15, 1973, used for lower tier ceiling price determinations, the Federal Energy Administration (FEA) illustrated some of the services associated with production and sale which must be continued. Since the preamble stated that the requirement to continue to provide customary services applies equally to sales of lower and upper tier crude oil, FEA's comments with respect to sales of lower tier crude oil are applicable here. The notice stated that:

". . . while May 1973 posted prices often included such services by the seller as cleaning and measuring of crude oil and its delivery to a common carrier pipeline or truck, a tendency to reduce these historical services accompanying production and sale of crude oil with no downward adjustment of the posted price has become more and more pronounced since the advent of the price regulations. *FEA has discovered, for example, cases in which producers have sought to require purchasers of crude oil to pay transportation charges from the lease to the point at which the crude oil is delivered to a common carrier,* notwithstanding the fact that such services were included as part of the posted price on May 15, 1973. Accordingly, FEA wishes to make clear that in establishing a lower tier ceiling price by reference to a May 15, 1973 posted price, the price currently charged shall include all services that were included in the reference posted price on May 15, 1973. This is consistent with FEA's uniform policy that a reduction in services without a corresponding reduction in price constitutes an unlawful means to obtain a price in excess of that permitted by the price regulations." (Emphasis added.)

As the preamble indicates, although the rule prohibiting reduction in customary services without a corresponding reduction in price is not expressly stated in § 212.74 or elsewhere in 10 CFR Part 212, Subpart D, it was the FEA's understanding and intent that this rule applied to all producers of crude oil. This rule applies by virtue of the fact that the ceiling price for crude oil is established with reference to a historic price bulletin which provides, either expressly or by implication, that price include certain customary services, such as delivery. Thus, if the prices in the applicable bulletin for September 30, 1975, are delivered prices, the delivery services customarily provided by the producer on September 30, 1975, in connection with its sale of crude oil, must continue to be provided to the purchaser if the producer wishes to charge the ceiling price applicable to that sale. Any reduction in such services must be accompanied by a corresponding reduction in the sale price.

POGO's assertion that the "bonus" component of the contract price provided compensation for its delivery costs is not persuasive or relevant. The "bonus" was characterized by POGO in its sales contracts as a "new oil" bonus, intended to reflect the substantial and rapid increases in the price of uncontrolled crude oil which occurred in late 1973 and early 1974. The amount of the "bonus" (as much as $2.00 per barrel) bore no discernable relationship to the amount of transportation costs to the place of delivery (16 cents per barrel in 1974, 4 cents per barrel in 1976). Moreover, in a period in which uncontrolled prices were rising substantially faster than costs, the producer's return was such that it is impossible to state with any certainty whether the producer's delivery costs were defrayed by the "base" price or by the "bonus" price. Such price labels were in any event somewhat arbitrary and were not consistently applied during the period concerned.

In order to impose a coherent and uniform system of controls on upper tier crude oil, effective February 1, 1976, it was necessary to tie ceiling price to base postings and eliminate bonuses or premiums as ceiling price determinants. As Ruling 1977-1 (42 FR 3628, January 19, 1977) explains, the definition of posted price specifically excludes all bonuses or premiums for crude oil:

". . . [T]here should remain no question that posted prices used to establish lower tier ceiling prices, as well as posted prices for upper tier crude oil, do 'not include premiums above posted prices which may have been paid for crude purchased on May 15, 1973 [or September 30, 1975] (38 F.R. 33577 at 33578, December 6, 1973).' This was made clear by CLC [The Cost of Living Council] in November 1973 and should have been understood since that time."

Consequently, any bonus or premium above the posted price which a producer charged for its crude oil on September 30, 1975, may not be a part of the September 30, 1975 posted price for purposes of computing the upper tier ceiling price under § 212.74, regardless of the rationale for the bonus or premium. Section 212.74 does not permit the re-establishment of what would amount to a bonus or premium above the lawful upper tier ceiling price for crude oil to reflect separate charges for delivery services which were included as part of the applicable posted price on September 30, 1975.

The historical transportation assessment paid by the Department of Interior for delivery by POGO of royalty crude oil provides no basis for a different result in this case. The fee charged for delivering crude oil pursuant to a royalty agreement has no bearing on the question of whether POGO may institute a separate delivery fee in connection with the sale of its own crude oil when the applicable posted price on September 30, 1975, included delivery. In the case of the royalty crude oil, POGO merely acts as the transporter of crude oil owned by another party and may charge a transportation fee for such services. The crude oil price regulations do not apply to such activities. In contrast, in the case of sales of its own crude oil, the applicable ceiling price under § 212.74 is the price for crude oil delivered by POGO to Ship Shoal Block 28.

INTERPRETATION 1978-18

To: Transcontinental Gas Pipeline Corp.
Date: April 21, 1978
Rules Interpreted: §§ 212.111(c)(2); 212.72
Code: GCW—PI—Def. of Property; Acquisition rule; Reclamation of Waste Crude Oil

FACTS

Transcontinental Gas Pipeline Corp. ("Transco") is a natural gas pipeline company which transports natural gas from the Gulf Coast to the eastern part of the United States.

Sohio Petroleum Co. and Gulf Oil Corp. produced natural gas and condensate from a certain property ("the property") until April, 1975, when they sold their rights in the property to Transco after concluding that production of natural gas therefrom was no longer economically feasible. Sohio and Gulf had established a base production control level (BPCL) for condensate from this property under the price regulations applicable to crude oil set forth at 10 CFR Part 212, Subpart D.

Transco purchased the property in order to store natural gas in the property's underground reservoirs. Transco began in April, 1975, to inject natural gas suitable for pipeline transportation into these reservoirs. The natural gas is stored in the reservoirs and extracted as necessary for use in Transco's pipelines during the winter and early spring. No other firm or individual currently withdraws natural gas from the reservoirs.

Transco's extraction process releases quantities of condensate that were trapped in the reservoir when natural gas production ceased. The separated condensate is stored and then sold.

ISSUE

Whether Transco is bound by the BPCL established by the prior owners and applicable to the property concerned or whether Transco may consider the property a "new" property and apply the upper tier ceiling price to all condensate which it recovers therefrom.

INTERPRETATION

For the reasons set forth below, the property concerned is not a "new" property and Transco must apply a BPCL based on the previous producers' production of condensate from the property when calculating maximum lawful selling prices.

The condensate produced from the property falls within the definition of "crude oil" in § 212.31 and is therefore subject to the price rules contained in 10 CFR Part 212, Subpart D. Generally "crude oil" must be priced according to the lower tier ceiling price rule, unless it qualifies for treatment as "new crude oil." § 212.73(a).*

"New crude oil" is measured by establishing a BPCL as defined in § 212.72 for each

*Production from the property has never been sold as "stripper well crude oil" and Transco does not assert that such production would qualify for exempt status under § 212.54.

"property," based on that property's total production levels of crude oil in 1972 or "old" crude oil production levels in 1975. The production in the current month from the property which exceeds the related BPCL as adjusted under § 212.76, and after taking into account any current cumulative deficiency, is deemed "new crude oil" and may be priced according to the upper tier price rule in § 212.74.

"Property" is defined in § 212.72, for purposes relevant to this Interpretation, as "the right to produce domestic crude oil, which arises from a lease or from a fee interest." In *Meridian Oil Co.*, Interpretation 1977-46 (43 FR 1479, January 10, 1978) and *Texaco*, Interpretation 1977-42 (42 FR 64104, December 22, 1977) the Office of General Counsel concluded that the definition of "property" for crude oil price control purposes generally contemplates a constant frame of reference unaffected by the substitution of one lessee for another or by the execution of a new instrument of conveyance in place of another. See also Rulings 1977-1 and 1975-15. Transco, having acquired the right to produce crude oil from the property concerned, must continue to determine qualification for "new" crude oil based on the BPCL as determined by previous production levels from that property.

Transco's view that its production of condensate is entitled to be sold as "new" crude oil is based essentially on two arguments. The first is based on § 212.111(c)(2), which provides that:

> If a legal entity or component of a legal entity determines pursuant to this part a base production control level for a property which produces domestic crude oil and the entity or component is subsequently acquired by another firm the domestic crude oil produced from that property does not become new crude oil. The base production control level for that property remains the base production control level determined for it b[y] the acquired entity or component.

Transco argues that, because it did not purchase a "legal entity or component of a legal entity," it is free to calculate its BPCL without reference to the BPCL previously established for the property concerned. However, even if transco did not acquire a legal entity or component thereof, it by no means follows that the acquisition in this case resulted in a "new" property. Section 212.111(c) only applies when a legal entity or component of a legal entity is acquired. See *Norman Wooten, Inc.*, Interpretation 1975-9 (42 FR 23722, 23730, May 10, 1977). If a case is presented which does not fall within the scope of § 212.111(c) one must look elsewhere for the applicable rule. The applicable rule is that enunciated in ruling 1975-15, *Texaco*, and *Meridian* concerning the survival of the "property" as a constant frame of reference despite changes in ownership, changes in leaseholders or leasehold rights, subdivision of the property, etc. It should be noted, furthermore, that the theory advanced by Transco was implicitly rejected in *Texaco*, which took note of § 212.111(c)(2) as further confirmation of the position taken in that Interpretation against the creation of a "new" property solely by the substitution of a new lessee-producer.

Transco's second argument is that it produces "salvage crude oil" to which it is entitled to apply the upper tier price ceiling as a production incentive. Transco relies on two Interpretation, in this respect: *Liquid Waste Disposal Co.*, Interpretation 1974-11 (42 FR 25648, 25653, May 18, 1977; vacated *sub nom. Tesoro Petroleum Corp.*, 2 FEA ¶80,514, January 22, 1975) and *Petro U.S., Inc.*, Interpretation 1974-20 (42 FR 25648, 25658, May 18, 1977). According to Transco, these cases stand for the proposition that "salvaged" crude oil is entitled to be sold at upper tier price levels in order to encourage "salvage" operations.

Contrary to Transco's assertion, these cases merely hold that the rules applicable to producers also apply to reclaimers of crude oil. *Liquid Waste* was vacated on appeal based on error in fact because the request for interpretation erroneously indicated that the property concerned had not produced or sold reclaimed crude oil for 11 months of 1972. Under the then-applicable § 212.72, a property's BPCL was calculated solely with reference to the property's 1972 production. *Tesoro* stated:

> "Under these circumstances, all the crude oil which Texas Liquid produces does not necessarily qualify as new or released petroleum under the provisions of Section 212.72 quoted above. Rather, the ceiling price restrictions of Section 212.71 *et seq.* apply to this situation, and sales of the product are subject to ceiling price restrictions."

It was noted in the factual statement in *Petro U.S.* that the "salvage" crude oil operations in that case were not conducted in 1972 or earlier. It was on this basis that the production and sale of reclaimed crude oil was found not subject to the lower tier price ceiling. As in *Liquid Waste*, Transco must measure its production with reference to the property which existed in 1972.

It is not the function of the interpretations procedures as set forth in 10 CFR Part 205, Subpart F, to provide a forum for examination of the merit of individual cases asserting the need for additional price incentives in order to maintain or extend domestic production of crude oil. You may wish to consider submitting a request for exception under 10 CFR Part 205, Subpart D, in order to permit consideration of this aspect of your request.

INTERPRETATION 1978-19

To: Sun Oil Company of Pennsylvania
Date: April 27, 1978
Rules Interpreted: § 212.31; Ruling 1977-5
Code: GCW—PI—Transaction, def.

FACTS

Sun Oil Company of Pennsylvania (Sun) is a "refiner" as that term is defined in the Mandatory Petroleum Price Regulations, 10 CFR 212.31, and as such must compute its maximum allowable prices for covered petroleum products pursuant to the refiner price rule, 10 CFR Part 212, Subpart E.

In connection with its marketing of motor gasoline, Sun indicates that it has established a number of classes of purchaser for its unbranded jobber purchasers of motor gasoline based upon each jobber's delivery location. On May 15, 1973, Sun made several spot deliveries of motor gasoline to unbranded wholesalers pursuant to oral contracts. Sun treated these sales as "transactions," as that term is defined in 10 CFR 212.31, and included them in calculating weighted average May 15, 1973, prices for the applicable classes of purchaser. However, Sun did not include in its weighted average prices for any unbranded wholesale class of purchaser the prices that it charged to Vickers Petroleum Company (Vickers) for motor gasoline delivered on May 15, 1973. Nevertheless, since the beginning of the Mandatory Petroleum Allocation and Price Control Program, Sun has placed Vickers in the same unbranded wholesale class of purchaser as jobbers that purchase motor gasoline from Sun on a spot basis and take delivery at the same location.

On May 15, 1973 Sun delivered motor gasoline to Vickers at prices which were calculated pursuant to a long-term contract signed by Vickers and a predecessor of Sun on March 19, 1963. The contract specified a range of volumes of motor gasoline to be purchased annually by Vickers from Sun. Under the contract, Sun's prices for motor gasoline delivered to Vickers would either be reduced if Vickers did not realize specified annual margins on its subsequent sales of the gasoline under Vickers' brand names or be increased if Vickers realized more than these margins. The contract did not specify fixed prices for the motor gasoline sold but provided only for interim prices to be billed on the date of delivery. Positive or negative adjustments to these interim prices for all motor gasoline sold in the calendar year were calculated by Vickers and billed by Sun within 30 days after the end of each month, with the final adjustment establishing a fixed price made at the end of the year. No such final adjustment in price for motor gasoline delivered by Sun to Vickers was made on May 15, 1973, and the prices for the motor gasoline delivered on that date where subject to repeated adjustments throughout the latter part of 1973.

Sun states that it sold motor gasoline to Vickers in accordance with the contract at prices that were lower than those Sun charged to other unbranded wholesalers purchasing motor gasoline on a spot basis. After December 31, 1973, when the contract was terminated, Sun continued to sell motor gasoline to Vickers, but at prices equal to those charged to other unbranded wholesalers who purchased on a spot basis.

ISSUE

Did Sun's motor gasoline deliveries to Vickers on May 15, 1973 constitute a "transaction" as defined in 10 CFR 212.31 for purposes of calculating its weighted average May 15, 1973 price for the appropriate class of purchaser?

INTERPRETATION

For the reasons set forth below, it has been concluded that Sun's deliveries of motor gasoline to Vickers on May 15, 1973 pursuant to the March 19, 1963 contract did not constitute a "transaction" within the meaning of 10 CFR 212.31 and Ruling 1977-5, 42 FR 15302 (March 21, 1977).[1]

Under the Mandatory Petroleum Price Regulations, a refiner may not charge prices for covered products to any member of a class of purchaser that exceed the "maximum allowable price," now defined in 10 CFR 212.82 as "the weighted average price at which the covered product was lawfully priced in transactions with the class of purchaser concerned on May 15, 1973 . . . ." Transaction is defined in 10 CFR 212.31 as "an arm's-length sale between unrelated

[1]This interpretation does not address whether Sun properly determined its classes of purchaser or if Vickers was placed in the correct class of purchaser by Sun.

persons which are not members of a controlled group . . . and is considered to occur at the time and place when a binding contract is entered into between the parties."[2]

A determination of the date upon which a transaction occurred is essential for the calculation of maximum allowable prices, as the weighted average May 15, 1973 price for an entire class of purchases is determined solely by reference to prices charged in transactions with member(s) of the class occurring on May 15, 1973 or, if no such transactions took place on that date, by reference to those transactions that occurred on the most recent date preceding May 15, 1973. See 10 CFR 212.83(a)(3) and Ruling 1977-5, § II C.

The definition of "transaction" set forth in § 212.31 was clarified in Ruling 1977-5. That ruling determined that a "transaction" is presumed to occur on the date a contract is executed for written contracts stipulating a single, fixed price. However, for variable-price contracts (contracts in which the price varies over the life of the contract according to a pricing mechanism), a transaction is presumed to occur when the price is fixed for a specific volume of product sold and delivered:

> "[T]he proper interpretation of the 'transaction' definition with respect to a contract without a fixed price term is that such a variable-price contract is merely a general sales agreement which, because of its lack of a fixed price that would reflect market level prices on the date the contract was entered into, cannot be regarded as a 'binding contract' for purposes of the definition of 'transaction' and the computation of May 15, 1973, selling prices. Within the framework of such a general sales agreement, one or more subsidiary contracts occur, and they are presumed to have been entered into on the date the *price becomes fixed with respect to a particular delivery.* At the time a fixed price is specified with respect to a particular delivery pursuant to the terms of a general sales contract, a 'binding contract' arises for purposes of the definition of 'transaction.'" Ruling 1977-5, § III B (emphasis added).

Sun's contract with Vickers did not establish a fixed price for the motor gasoline to be sold. Thus, it was a variable-price contract for which transactions are presumed to occur when the price was fixed for specific quantities of motor gasoline sold and delivered by Sun to Vickers. In the instant case, under the terms of this contract, Sun could not establish a fixed price for its deliveries of motor gasoline to Vickers on May 15, 1973 until Vickers informed Sun of its profitability for the year ending December 31, 1973. This profitability was determined by Vickers' financial condition and market-related events that occurred long after May 15, 1973.[3] Only at the end of 1973 could Sun establish a fixed price for all motor gasoline delivered in that year to Vickers under the contract. Therefore since the sales price for the motor gasoline was not fixed on May 15, 1973 and did not relate to market conditions on that date, a transaction under the Mandatory Petroleum Price Regulations did not occur between Sun and Vickers on that date.

Accordingly, pursuant to 10 CFR 212.31 and Ruling 1977-5, deliveries of motor gasoline by Sun to Vickers on May 15, 1973 did not constitute a May 15, 1973 transaction.

[2]This definition was first adopted by the Cost of Living Council in Phase IV of the Economic Stabilization Program. 6 CFR 150.352, 150.358(g), 38 FR 22536 (August 22, 1973).

[3]The adjustments in the interim prices under the contract between Sun and Vickers are distinguishable from adjustments made after delivery of a product to prices fixed pursuant to a posted price contract of the type specifically discussed in Ruling 1977-5 § III B.

INTERPRETATION 1978-20

To: Collier & Collier, et al.[1]
Date: April 27, 1978
Rules Interpreted: § 212.31, § 212.73, § 212.74
Code: GCW—PI—Posted Price

FACTS

Collier & Collier, *et al.* (Collier) are independent crude oil producers, operating in the Southeastern New Mexico area and as such, are subject to the petroleum price regulations set forth in 10 CFR Part 212, Subpart D. Each firm has sold crude oil to Navajo Refining Company ("Navajo"), a small and independent refiner.[2] On May 15, 1973 (the date specified in 10 CFR 212.73 as the basis for establishing lower tier ceiling prices), Navajo sent letters to various producers. In those letters, the refiner stated in part:

> "Effective 7:00 a.m., May 15, 1973, Navajo Refining Company will begin paying 15¢ per barrel *Competitive Allowance* to certain producers in southeastern New Mexico . . . .
>
> This *Competitive Allowance* increases Navajo's price on sour crude to $3.85 per barrel on a flat rate for certain producers with no reduction for gravities below 40 degrees . . . ."

The May 15, 1973 letters were mailed to substantially all parties operating crude oil wells in Southeastern New Mexico.

On September 30, 1975 (the date specified in 10 CFR 212.74 as the basis for establishing the upper tier ceiling prices), Navajo issued no formal price bulletins applicable to Southeastern New Mexico. Instead, in accordance with a practice instituted during the preceding 12 month period, Navajo telephoned producers with whom it maintained a supplier/purchaser relationship to inform them of price increases. In addition, Navajo wrote individually to firms that had not yet established supplier/purchaser relationships for crude oil produced from new properties in Southeastern New Mexico, and offered to purchase the new crude oil at the highest posted price then prevailing in the area without any adjustments in price for gravity lower than 40 degrees API.

During August and September 1975, Navajo contacted by telephone and individual letters a substantial number of crude oil producers in the Southeastern New Mexico area and informed these producers of its increased price offered for crude oil. The price offered by Navajo during this period was $12.65 per barrel for "sour" crude oil and $13.35 per barrel for "sweet" crude oil and condensate. In addition, during September and October 1975, Navajo mailed written run statements to each producer from whom the firm purchased crude oil in the preceding month. These run statements set forth the prices paid by Navajo to each producer, based upon Navajo's price offers to these producers during August and September 1975.

ISSUES

Did Navajo's May 15, 1973 letters constitute a posted price for the purpose of 10 CFR 212.73 (lower tier ceiling price rule)? Did Navajo's offers to purchase crude oil (at the highest posted price without any adjustment for gravity differentials) made by individual letters and telephone conversations during September 1975, and confirmed by subsequent run statements for September 1975 sent to producers from whom Navajo purchased crude oil in October 1975, constitute a posted price for purposes of 10 CFR 212.74 (the upper tier ceiling price rule)?

INTERPRETATIONS

Neither Navajo's May 15, 1973 letters nor the telephone conversations and letters as confirmed by the run statements applicable to September 30, 1975 constitute posted prices within the terms of 10 CFR 212.73 and 212.74.

The concept of "posted prices" has been understood among buyers and sellers of crude oil as the announced price at which a crude oil buyer will purchase crude oil of a specified quality from a field. The general practice among buyers has been to issue widely circulated price bulletins periodically announcing the price a particular buyer would pay for a particular grade of crude oil in a specific area. The definition of "posted price," presently set forth at § 212.31, was first adopted by the Cost of Living Council pursuant to the Economic Stabilization Act of 1970, as amended, P.L. No. 91-379, on November 30, 1973, in conjunction with its adoption of the two-tier pricing system, and has remained substantially unchanged. That definition provides:

> "'Posted price' means a written statement of crude oil prices circulated publicly among sellers and buyers of crude petroleum in a particular field in accordance with historic practices, and generally known by sellers and buyers within the field."

The definition of "posted price" was elucidated in Ruling 1977-1, 42 FR 3628 (January 19, 1977):

> ". . . other than the published price bulletins of the type traditionally issued by major oil companies, FEA will only recognize as a 'posted price' written offers to purchase only so long as they were bona fide public offers of general applicability to crude oil producers in the field. For example, a letter from a purchaser would to all crude oil producers in a field or in an area constitute a posted price if the letter was understood by producers and the purchaser to be a bona fide offer to purchase from all producers in that field or area. A written contract, of course, would not qualify as a posted price because it repre-

[1]The following parties also joined in the request for interpretation:
Depco, Inc., Elk Oil Company, H & S Oil Company, Harvey E. Yates Company, Kennedy Oil Company, Kersey & Company, Larue & Muncy, Herman J. Ledbetter, McClellan Oil Corporation, Newmont Oil Company, Read & Stevens, Inc., Tom Sivley, Summit Energy, Inc., Tom Boyd Drilling Company, Yates Petroleum Corporation, Windfohr Oil Company.

[2]Navajo operates a 29,930 barrel per day refinery in Artesia, New Mexico.

sents an agreement between a buyer and specific producer, not a bona fide offer to purchase from all producers."

Thus, a widely circulated letter, which was intended to be a bona fide offer to purchase crude oil from all producers in a given area, could be a posted price.

However, the Navajo May 15, 1973 written statement cannot be considered a posted price for purposes of the lower tier ceiling price rule. In that document, Navajo establishes an increase in its price effective 7 a.m. on May 15, 1973. This offer to purchase crude oil does not meet the specific criteria set forth in § 212.73(b). That section provides as follows (emphasis added):

"The lower tier ceiling price for a particular grade of domestic crude oil in a particular field other than in Alaska or California is the sum of: (1) The highest posted price at *6 a.m., local time, May 15, 1973,* for transaction in that grade of crude oil in that field, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; plus (2) $1.35 per barrel [as adjusted pursuant to § 212.77]."

As noted previously, the May 15, 1973 Navajo letter specifically provides that the offered price would be effective at 7 a.m. of that date. Thus, the Navajo letter cannot meet the conditions of § 212.73, which require a posting to be effective at 6 a.m. of May 15, 1973.

In its presentation, Collier argues that such a determination is contrary to the industry practice of establishing a posted price at 7 a.m., rather than 6 a.m., on any given date. Collier further maintains that by ignoring industry practice, the Department of Energy (DOE) has in fact utilized May 14, 1973 as the base date for the establishment of lower tier ceiling prices. The producers therefore assert that the DOE has circumvented the clear mandate of the Emergency Petroleum Allocation Act of 1973 (EPAA), as amended, P.L. No. 93-159, for the use of "the same date in the computation of mark up, margin and posted prices . . . ." EPAA, § 4(b)(2)(c).

These allegations by Collier are erroneous. In selecting May 15, 1973, as the date on which to freeze field postings the DOE (through its predecessor agencies) chose a relatively stable date and time so that posted prices would accurately reflect the transactions on that date. *See, e.g.,* 39 FR 44407 (December 24, 1974). Although an hour other than 6 a.m. that was more convenient for some producers could have been selected as an appropriate time for the establishment of base posted prices, the choice of the 6 a.m. time was certainly within the discretion of the agency in view of the general standards and the broad objectives outlined within the EPAA. *See Mobile Oil Corporation* v. *FEA,* 566 F.2d 87 (TECA 1977); *Marathon Oil Co.* v. *FEA,* 547 F. 2d 1140 (TECA 1976), *cert. denied,* 426 U.S. 947 (1977). As such, the choice of the 6 a.m. time on May 15, 1973 is an administrative determination that established a basis for the entire lower tier crude oil pricing program.

Nevertheless, the DOE recognizes that the establishment of general parameters for a regulatory program may sometimes appear harsh in individual cases, but yet be essential to a workable regulatory scheme. The establishment of such regulatory criteria may unavoidably cause some firms to fall just short of meeting those criteria. However, the interpretations process has never been intended as a vehicle to excuse parties from specific criteria, but rather to interpret the standards as they apply to a specific set of facts. *See Damson Oil Corporation,* Interpretation 1977-38, 42 FR 54268 (October 5, 1977). In this case, § 212.73 is unambiguous in stating 6 a.m. local time as the point for establishing a valid posted price on May 15, 1973. The mere fact that producers, such as Collier, may have relied to their detriment on the Navajo posting or may now incur serious financial hardship or experience an inequitable situation is not a reason for interpreting § 212.73 in a manner that is contrary to its clear intent. Such arguments are more appropriately rasied in an Application for Exception submitted to the DOE pursuant to 10 CFR Part 205, Subpart D.

In its submission, Collier also asserts that Navajo had established a posted price in Southeastern New Mexico on September 30, 1975 for purposes of determining the upper tier ceiling price pursuant to § 212.74. Collier maintains that Navajo's telephone communication of its price increase to producers with whom it maintained a supplier/purchaser relationship, and its written offers to purchase crude oil at the highest price from new lease operators, constitute a posted price when confirmed by the subsequent run statements, which set forth the prices actually paid to each producer.

Collier's assertions are not persuasive. The upper tier ceiling price is set forth in § 212.74(b). That section provides:

"The upper tier ceiling price for a particular grade of domestic crude oil in a particular field is (1) the highest posted price on September 30, 1975, for transactions in that grade of crude oil in that field in September 1975, or if there was no posted price in that field for that grade of domestic crude oil, the related price for that grade of domestic crude oil which is most similar in kind and quality in the nearest field for which prices were posted; less (2) $1.32 per barrel [as adjusted pursuant to § 212.77]."

As discussed previously, a posted price must be a bona fide public *written offer of general applicability* to crude oil producers in a particular field. *See* Ruling 1977-1, *supra.* Thus, from the information presented by Collier, neither the prices established by the telephone communications nor the letters sent to individual producers, even in conjunction with a confirming run statement, can constitute a posted price. Both the telephone conversations and letters sent to new lease operators were individual offers to purchase crude oil. Although many producers in Southeastern New Mexico may have in fact known of Navajo's offers to these producers, these offers were individual offers made to particular producers and therefore did not constitute offers of general applicability for the purchase of crude oil at a particular price. In addition, the telephone communications to producers were verbal offers that were never confirmed by a written general offer, and as such, could never constitute a posted price pursuant to § 212.31.

Moreover, the run statements that Navajo sent to producers from whom it purchased crude oil cannot cure the defects of these offers. Again, these statements were sent to individual producers and reflected prices paid for crude oil that had already been purchased by Navajo. The run statements were not a confirmation of general offers to purchase crude oil. At best, the run statements were confirmations of individual contracts between individual producers and Navajo. Such contracts have never been treated as posted prices. *City of Long Beach, California,* Interpretation 1977-2, 42 FR 10963 (February 25, 1977), *aff'd* 6 FEA ¶80,525 (July 26, 1977). Consequently, Navajo did not establish a posted price on September 30, 1975 that could be used to compute the upper tier ceiling price pursuant to § 212.74.

INTERPRETATION 1978-21

To: Gravcap, Inc.
Date: April 27, 1978
Rules Interpreted: Part 212, Subpart D; § 210.62
Code: GCW-PI-First Sale, def.; Crude Oil Ceiling Price Rules; Normal Business Practices

FACTS

Gravcap, Inc. (Gravcap), a corporation formed by firms producing Louisiana offshore crude oil, acts as a clearinghouse for the calculation of adjustments for differences in the sulfur content of crude oil produced by offshore Louisiana producers using the Ship Shoal pipeline system. Gravcap neither sells the crude oil for producers nor takes title to the crude oil. Its adjustment for the differences of sulfur content in the various crude oils produced by firms using the pipeline system does not effect the price paid by purchasers of the crude oil.

In implementing the sulfur adjustment, Gravcap measures the sulfur content of each crude oil type as it enters the pipeline system at various reception points. The crude oil from the pipeline systems are then further commingled at an offshore facility (Ship Shoal Block 28) and shipped from the offshore facility through the Ship Shoal pipeline to onshore reception points where the sulfur content of the crude oil is again measured. Gravcap then either credits or debits the accounts of the various firms shipping crude oil over the Ship Shoal pipeline system so that producers and shippers of crude oil with a higher than average sulfur content transfer funds through Gravcap to producers and shippers of crude oil with a lower than average sulfur content. In this way, producers and shippers of low sulfur crude oil receive compensation for the commingling of their crude oil with high sulfur crude oil. On September 30, 1975, the date for the establishment of prices for upper tier crude oil, Gravcap assessed a sulfur differential of 20 cents per barrel for a 1 percent sulfur content above a base level of .4 percent sulfur. Gravcap's contracts with users of the Ship Shoal Block 28 facility permitted periodic revisions to the sulfur content differential value tables and the base sulfur percentage. On October 1, 1975, Gravcap established a new sulfur differential adjustment of 50 cents for each 1 percent sulfur content above a new base level sulfur content of 0 percent per barrel of crude oil.

Pennzoil Oil and Gas Inc. and Pogo Producing Company (which are successors in interest to Pennzoil Offshore Gas Operators, Inc.), producers using Ship Shoal Block 28, have submitted comments opposing Gravcap's imposition of an additional sulfur adjustment on October 1, 1975. Placid

Oil Company, another producer using the Ship Shoal Block 28 facilities, has submitted comments supporting the Gravcap submission.

ISSUE

May Gravcap increase the sulfur differential adjustments which were utilized on May 15, 1973 and September 30, 1975, without violating the provisions of 10 CFR Part 212, Subpart D?

INTERPRETATION

For the reasons set forth below, it has been determined that Gravcap's adjustment to the sulfur differentials in existence on May 15, 1973 and September 30, 1975 is permissible.

In its submission, Gravcap states that it does not sell or take title to the crude oil involved, and therefore does not effect the price paid for the crude oil by the purchasers of the crude oil. As a result, Gravcap states that it does not engage in a first sale of the crude oil as that term is defined in § 212.72 and therefore is not subject to the provisions of 10 CFR Part 212, Subpart D.

First sale is defined in § 212.72, in part, as:

"the *first transfer* for value by the producer or royalty owner." (Emphasis added.)

Gravcap does not engage in a "sale" of crude oil, since all "transfers for value" occur between the actual producer of the crude oil and individual purchasers. Gravcap merely acts as a clearinghouse which provides a service by measuring the sulfur content of the crude oils and assessing adjustments for the producers or other shippers using the pipeline facilities. Gravcap's actions do not effect the final price of the crude oil paid by the first purchasers of the crude oil, and thus do not interfere with the maximum upper or lower tier ceiling prices established pursuant to Part 212, Subpart D. Instead, Gravcap assures that producers or shippers of low sulfur crude oil obtain compensation from producers or shippers of high sulfur crude oil for the commingling and consequent lessening in value of their lower sulfur content crude oil.

This situation is comparable to that of a unit operating agreement. In a unit agreement separate leases are voluntarily unitized and through special recovery techniques production patterns of the leases may be significantly altered so that increased "new" crude oil production may result. The Mandatory Petroleum Price Regulations do not prescribe the specific method for dividing the increased production among the participating leases. Instead, in a preamble to revisions to Part 212, Subpart D, it was determined that "this allocation [is] more properly a matter for private resolution among participants of the unit agreement." 41 FR 4931 (February 3, 1976).

Similarly, the assessment of sulfur adjustments among crude oil producers or other shippers using the pipeline facility is a private matter which must be worked out by the users of the system. The sulfur adjustment is clearly intended to protect and reimburse producers and shippers of low sulfur crude oil from the diminution in value which the commingling of high sulfur crude oil with the low sulfur stream may cause. Since the adjustment does not effect the maximum upper or lower tier prices for the crude oil paid by the purchasers of the crude oil, the adjustment is not subject to the provisions of 10 CFR Part 212, Subpart D.

However, the DOE has received comments from Pennzoil Oil and Gas, Inc. and Pogo Producing Company (POGO) that are adverse to this conclusion. In its submission, POGO contends that the increased sulfur differential assessed by Gravcap violates the provisions of § 210.62(c). POGO argues that § 210.62(c) requires that no firm engage in any actions which could result in the circumvention of the Mandatory Petroleum Price Regulations. POGO further alleges that Gravcap's actions are a circumvention of the provisions of Part 212, Subpart D since the adjustment permits one group of a regulated class of firms to avoid regulation at the expense of other members of the same class, therefore resulting in the unequal application of the provisions of Part 212, Subpart D to similarly situated firms.

POGO has failed to address the underlying purpose of § 210.62(c) in its comments. Section 210.62(c) provides in part:

"(c) Any practice which constitutes a means to obtain a price higher than is permitted by the regulations in this chapter or to impose terms or conditions not customarily imposed upon the sale of an allocated product is a violation of these regulations. Such practices include, but are not limited to devices making use of . . . transportation arrangements, premiums, discounts, special privileges, . . . or failure to provide the same services and equipment previously sold."

The provisions of § 210.62(c) were elucidated in *National Airlines, Inc.*, Interpretation 1977-11, 42 FR 31143 (June 20, 1977):

"Under § 210.62(c), it is unlawful to impose terms or conditions not customarily imposed upon the sale of a covered product . . . or to engage in other practices which constitute a means to obtain a price higher than is permitted by FEA price or allocation controls. . . ."

As is clearly pointed out in the *National Airlines* Interpretation, § 210.62(c) permits the regulation of those activities of a firm which are means to charge a price in excess of that permitted by the Mandatory Petroleum Price Regulations. However, in the instant case, Gravcap is not acting in a way which would permit producers to circumvent the price regulations. Rather, Gravcap is performing an equalization function, by adjusting crude oil value so that dissimilar low and high sulfur crude oils can use the same pipeline facilities without unduly reducing the value of the low sulfur crude oil. No producer of crude oil charges a price in excess of the ceiling price by receiving compensation from other producers or shippers pursuant to Gravcap's computations.[1]

In its comments, POGO also asserts that the imposition of a revised sulfur adjustment to crude oil shipped to Ship Shoal Block 28 is not justified by any ascertainable difference in the posted prices for low and high sulfur crude oils. POGO notes that postings applicable to this offshore crude oil production (South-Louisiana or Louisiana Gulf Coast) are not established with reference to sulfur content of the crude oil. Thus, POGO maintains that the imposition of a new sulfur adjustment to equalize the "value" of low and high sulfur crude oils is unjustified by the actual practices and needs of the purchasers of that crude oil and consequently is an unacceptable change in the normal business practices of Gravcap and users of the Gravcap system.

POGO's allegations are not persuasive. The Gravcap adjustment formula is a contractual matter between private parties which is not the subject of regulation under the Mandatory Petroleum Price Regulations. If POGO believes that Gravcap's adjustments are unwarranted based on actual postings, it should renegotiate its understanding with Gravcap. Moreover, as noted previously, POGO commingles a high sulfur crude oil with lower sulfur crude oils. In any such mixture, the high sulfur crude oil will of course raise the previous sulfur levels of the other crude oils in the pipeline system. As POGO is aware, the percentage of sulfur in crude oil is an important factor in the refining process. Since the amount of sulfur present in refined petroleum products is directly related to the percentage of sulfur in the parent crude oil, the lower the sulfur content in a crude oil, the less desulfurization of either the crude oil or the finished petroleum product is required. Consequently, the cost to the refiner of processing low sulfur crude oil will be less.

Thus, the loss of a low sulfur source of crude oil, through its mixture in a pipeline system with higher sulfur materials, clearly affects the value to a refiner of the crude oil. The transfer of funds between shippers in the Ship Shoal system is the means by which the different intrinsic values of the low and high sulfur crude oils are reestablished after all crude oils are commingled.

[FR Doc. 78-12579 Filed 5-8-78; 8:45 am]

[1]This Interpretation does not, however, condone or approve of the organization of new producer-owned clearinghouses, formed only to implement transfers of funds between producers for alleged value differences in their crude oils. Such actions, unless justified by circumstances similar to those set forth by Gravcap, could be in circumvention of the provisions of 10 CFR Part 212, Subpart D and § 210.62(c).

[4810-33]

Title 12—Banks and Banking

CHAPTER I—COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

PART 7—INTERPRETIVE RULINGS

Charitable Contributions

AGENCY: Comptroller of the Currency.

ACTION: Final rule.

SUMMARY: This document amends two interpretive rulings of the Comptroller of the Currency which place a limitation on the charitable contributions national banks may make pursuant to federal statute. The amendment is an attempt to provide a less restrictive guideline for national banks to follow in making charitable contributions, to permit greater certainty in computing allowable contributions, and to clarify the relationship of these rulings to the provisions of the Internal Revenue Code regarding carryovers.

EFFECTIVE DATE: May 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Margaret Cameron Tessier, Attorney, Legal Advisory Services Division, Comptroller of the Currency, Washington, D.C. 20219, 202-447-1880.

SUPPLEMENTARY INFORMATION: On December 14, 1976, a document was published for comment in the FEDERAL REGISTER (41 FR 54600) proposing to amend 12 CFR 7.7479, an interpretive ruling which places a limitation on the amount of charitable contributions that a national bank is authorized to make pursuant to paragraph Eighth of 12 U.S.C. 24. The proposal also requested comments on 12 CFR 7.7445(c), an interpretive ruling governing charitable foundations established by national banks which contains language similar to that found in 12 CFR 7.7479.

The former ruling contained the limitation that the amount of charitable contributions must not "exceed that which is allowed by the Internal Revenue Service as a deduction from income." The limitation was originally designed to prevent management of closely held banks from contributing excessive sums to charities or foundations in which the bank's controlling stockholders had a personal interest. However, experience has shown that tying the limitation to taxable income tends to produce whimsical and even illogical results. For example, a bank in a particular year may have a low taxable income due to high investment in tax-exempt securites, thus possibly inhibiting its charitable contribution capacity unnecessarily. Another problem relating to the former ruling was the difficulty of forecasting the permissible amount that can be contributed. Although contributions are made throughout the course of a calendar year, the net taxable income of a bank may not be known until some time after the year is ended.

In order to address these problems, the December 14, 1976, document proposed to tie the 5 percent limitation to income before taxes registered during the preceding calendar half-year, rather than to the current year's estimated taxable income.

Twenty-seven comments were received in response to the proposed amendment. Virtually all of the comments approved of the relaxation of the ruling. Twenty-three commenters agreed with the proposed change, although some suggested alterations in the method of computing the amount of allowable contributions. Three of the commenters questioned the use of a calendar half-year (the period from January 1 through June 30 or from July 1 through December 31) as the time period on which a bank must base its computation, suggesting that the preceding full calendar year be used. Because this revision of the interpretive ruling represents a liberalization of the prior policy, the Comptroller has concluded that banks should compute the amount of their allowable contributions and make those contributions on a half-yearly basis to help avoid miscalculations. While he recognizes that many banks, because of their tax planning, would not fall prey to the danger of miscalculation, the Comptroller nevertheless believes that sound regulatory practice requires these calendar half-yearly computations.

Six commenters proposed some form of "carryover" provision. National banks, like other corporations, are subject to the provisions of the Internal Revenue Code and regulations issued thereunder. The proposed amendment raised questions as to whether the current ruling incorporated Internal Revenue Code provisions for tax carry forwards. There is nothing in the proposed or final ruling which would restrict contributions to only that amount which could be deducted for tax purposes. Under the ruling as adopted, a bank may make contributions in excess of the amount which could be deducted for tax purposes, and any excess may be carried forward to subsequent years, as permitted by the Internal Revenue Code. The ruling could not, and in no way is intended to, alter tax consequences under the Internal Revenue Code. One commenter suggested that an exception to the ruling be created for new banks, which typically show a net operating loss during their first several years in business. The Comptroller acknowledges the problem faced by new banks with regard to making charitable contributions. Banks view their obligations as corporate citizens seriously; they are looked upon as readily available and obvious donors. Nevertheless, the very fact that banking is highly competitive and that new banks are usually not profitable for several years has led the Comptroller to reject the above suggestion to create an exception to the ruling.

Finally, several commenters agreed that any revision to 12 CFR 7.7479 should be accompanied by a similar revision to 12 CFR 7.7445(c) which governs charitable foundations established by national banks and contains similar language to that presently found in § 7.7479. Accordingly, the final amendment includes a revision to 12 CFR 7.7445(c).

DRAFTING INFORMATION

The principal drafter of this document was Margaret Cameron Tessier, Attorney.

ADOPTION OF AMENDMENT

Accordingly, 12 CFR Part 7 is amended by revising §§ 7.7479 and 7.7445(c) to read as follows:

§ 7.7479 Charitable Contributions.

(a) Under the conditions specified in 12 U.S.C. 24, paragraph Eighth, a national bank may make such charitable contributions as its board of directors shall authorize, except that the amount of charitable contributions in any calendar half-year shall not exceed 5 percent of the sum of "income before income taxes and securities gains or losses" and "Securities gains (losses), Gross" registered during the preceding calendar half-year.

(b) "Income before income taxes and securities gains or losses" and "Securities gains (losses), Gross" shall be computed in accordance with the most recently issued Instructions for Preparation of Consolidated Reports of Condition and Reports of Income by National Banking Associations.

(c) National banks making charitable contributions shall maintain documentation for review by national bank examiners to demonstrate compliance with this Interpretive Ruling.

§ 7.7445 Charitable Foundations.

(a) * * *

(b) * * *

(c) Contributions by the bank to the foundation in any calendar half-year do not exceed 5 percent of the sum of "income before income taxes and securities gains or losses" and "Securities gains (losses), Gross" registered during the preceding calendar half-year.

Dated: April 25, 1978.

JOHN G. HEIMANN,
Comptroller of the Currency.

[FR Doc. 78-12573 Filed 5-8-78; 8:45 am]

[4810-22]

Title 19—Customs Duties

[T.D. 78-130]

CHAPTER I—U.S. CUSTOMS SERVICE, DEPARTMENT OF THE TREASURY

PART 101—GENERAL PROVISIONS

Ports of Entry and Customs

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service: (1) by transferring jurisdiction over Morris County N.J., from Baltimore, Md., region to New York, N.Y., region; (2) by transferring supervisory authority over the Customs stations at Crane Lake and Ely, Minn., from the ports of International Falls/

Ranier and Grand Portage, Minn., respectively, to the consolidated port of Duluth, Minn./Superior, Wis.; and (3) by extending the limits of the Customs ports of entry of Corpus Christi, Tex., Los Angeles, Calif., and Bar Harbor, Maine. These changes are part of Custom's continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public.

EFFECTIVE DATE: June 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, 202-566-8151.

SUPPLEMENTARY INFORMATION:

BACKGROUND

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, the Customs Service determined that it would be desirable to make several changes in its field organization.

Accordingly, on November 15, 1977, a notice published in the FEDERAL REGISTER (42 FR 59090) proposed:

1. To transfer jurisdiction over Morris County, N.J., from the Baltimore, Md., region (region III) to the New York, N.Y., region (region II);

2. To transfer supervisory authority over the Customs stations at Crane Lake and Ely, Minn., from the ports of International Falls/Ranier, and Grand Portage, Minn., respectively, to the consolidated port of entry of Duluth, Minn./Superior, Wis. (region IX); and

3. To extend the limits of the ports of entry of Corpus Christi, Tex., in the Galveston, Tex., district (region VI) and Los Angeles-Long Beach, Calif., in the Los Angeles, Calif., district (region VII).

On November 28, 1977, a notice published in the FEDERAL REGISTER (42 FR 60571) proposed to extend the limits of the port of entry of Bar Harbor, Maine, in the Portland, Maine, district (region I).

DISCUSSION OF COMMENTS

One comment was received in response to the notice published on November 15, 1977. The commenter opposed the proposed transfer of supervisory authority over the Customs stations at Crane Lake and Ely, Minn., stating that the proposal was designed solely to preserve a supervisory inspector's position in the Duluth, Minn., district. The transfer was requested by the Regional Commissioner of Customs, region IX, to provide better overall district management, to strengthen supervision over the two Customs stations, and to provide better service to the public.

After consideration of the comment and further review, the changes in organization proposed in both FEDERAL REGISTER notices are adopted.

CHANGES IN THE CUSTOMS FIELD ORGANIZATION

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., ch. II), and pursuant to the authority in Treasury Department Order No. 190, Rev. 15 (43 FR 11884), the following changes are adopted:

1. Region II (New York, N.Y.), and region III (Baltimore, Md.), are realigned by transferring jurisdiction over Morris County, N.J., from region III to region II.

2. In region IX (Chicago, Ill.), supervisory authority over the Customs stations at Crane Lake and Ely, Minn., is transferred from the Customs ports of entry of International Falls/Ranier and Grand Portage, Minn., respectively, to the consolidated Customs port of entry of Duluth, Minn./Superior, Wis.

3. The geographical boundaries of the Customs port of entry at Corpus Christi, Tex., in the Galveston, Tex., district (region VI, Houston, Tex.) are extended to include the territory described as follows:

Beginning on the north at the intersection of the northwest city limits of Corpus Christi and the Nueces River and proceeding in a northerly, then easterly, then southeasterly direction along the Nueces River to the western city limits of Corpus Christi on Nueces Bay, then proceeding in a northerly direction along the western city limits of Corpus Christi to White Point Road and continuing in a northerly direction on White Point Road to its intersection with Farm to Market Road (FM) No. 1074, then proceeding in an easterly direction on Farm to Market Road (FM) No. 1074 to its intersection with Farm to Market Road (FM) No. 893, then continuing in an easterly direction on Farm to Market Road (FM) No. 893 to its intersection with U.S. Highway No. 181, then proceeding in a northeasterly direction on U.S. Highway No. 181 to its intersection with Texas State Highway No. 35, then proceeding in an easterly direction on Texas State Highway No. 35 to its intersection with the boundaries of San Patricio and Aransas Counties, then proceeding in a southeasterly direction along the boundary line between Aransas and San Patricio Counties to the Intracoastal Waterway, where the boundary between Aransas, San Patricio, and Nueces Counties intersect, then proceeding in a northeasterly direction along that portion of the Intracoastal Waterway which is the boundary between Aransas and Nueces Counties, then proceeding in a southeasterly direction along the boundary line between Aransas and Nueces Counties to the lighthouse on Harbor Island, then proceeding due east from the lighthouse on Harbor Island to the Gulf of Mexico shoreline of San Jose Island, then proceeding in a southwesterly direction along the Gulf of Mexico shoreline on San Jose Island and continuing in a southwesterly direction along the Gulf of Mexico shoreline of Mustang Island to Access Road No. 1A, then proceeding in a northwesterly direction on Access Road No. 1A to Mustang Island Road (Park Road No. 53), then proceeding in a southwesterly direction on Mustang Island Road (Park Road No. 53), to its intersection with Park Road No. 22, then proceeding in a northwesterly direction on Park Road No. 22 to its intersection with the city limits of Corpus Christi, then following the city limits of Corpus Christi in a generally southwesterly, then westerly, then northerly, then northwesterly direction to the place of beginning, all being in Texas.

4. The geographical boundaries of the Customs port of entry at Los Angeles-Long Beach, Calif., in the Los Angeles, Calif., district (region VII, Los Angeles, Calif.), are extended to include the territory described as follows:

All territory within Los Angeles County bounded on the west by Topanga Canyon Boulevard, north to the intersection of the Simi Valley—San Fernando Valley Freeway, and from the intersection of the Antelope Valley Freeway and the Golden State Freeway along the corporate limits of Los Angeles to the intersection of the Foothill Freeway on the west boundary of Glendale, southeast to the San Gabriel River Freeway, south to the Orange County border to the southeast corporate limit of Long Beach.

5. The geographical boundaries of the Customs port of entry at Bar Harbor, Maine, in the Portland, Maine, district (region I, Boston, Mass.), are extended to include Mt. Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, Winter Harbor, and Trenton, all in the State of Maine.

AMENDMENTS TO THE REGULATIONS

PART 101—GENERAL PROVISIONS

§ 101.3 [Amended]

The table in § 101.3(b) of the Customs Regulations (19 CFR 101.3(b)) is amended by inserting the words "; including the territory described in T.D. 78-130" following "4 FR 4691" in the parenthetical expression which appears after "Corpus Christi" in the column headed "Ports of entry" in the Galveston, Tex., district (region VI); by deleting the language "including territory described in T.D. 55341; T.D. 56383." which appears after "Los Angeles-Long Beach" in the column headed "Ports of entry" in the Los Angeles, Calif., district (region VII) and inserting in lieu thereof the language "including the territory described in T.D. 78-130."; and by revising the listing for Bar Harbor, Maine, in the

column headed "Ports of entry" in the Portland, Maine, district (region I) to read as follows:

"Bar Harbor, Maine, including Mt. Desert Island, the city of Ellsworth, and the townships of Hancock, Sullivan, Sorrento, Gouldsboro, Winter Harbor, and Trenton (E.O. 4572, Jan. 27, 1927; T.D. 78-130)."

§ 101.4 [Amended]

The table in § 101.4(c) of the Customs Regulations (19 CFR 101.4(c)) is amended by deleting "International Falls/Ranier." and "Grand Portage." which appear opposite "Crane Lake, Minn.—" and "Ely Minn.—", respectively, in the column headed "Port of entry having supervision" in the Duluth, Minn., district (region IX) and inserting in lieu thereof, in each case, "Duluth, Minn./Superior, Wis."

DRAFTING INFORMATION

The principal author of this document was Suellen Ferguson, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: April 27, 1978.

BETTE B. ANDERSON,
Under Secretary of the Treasury.

[FR Doc. 78-12572 Filed 5-8-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77N-0119]

PART 131—MILK AND CREAM

Nonfat Dry Milk, Lowfat Dry Milk, Dry Whole Milk, and Dry Cream; Standards of Identity

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document establishes standards of identity for lowfat dry milk, dry whole milk, and dry cream and revises the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D, based on consideration of the international standards developed by the Codex Alimentarius Commission for these foods. This action will promote honesty and fair dealing in the interest of consumers and will facilitate international trade by conforming U.S. standards more closely to international standards.

DATES: Effective July 1, 1979 for all products intially introduced into interstate commerce on or after this date. Voluntary compliance July 10, 1978. Objections by June 8, 1978.

ADDRESS: Written objections to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Eugene T. McGarrahan, Bureau of Foods (HFF-415), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1155.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued a proposal in the FEDERAL REGISTER of July 19, 1977 (42 FR 37006) to amend the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D in §§ 131.125 and 131.127 (21 CFR 131.125 and 131.127), respectively, and to establish new standards of identity for lowfat dry milk, dry whole milk, and dry cream in §§ 131.123, 131.147, and 131.149 (21 CFR 131.123, 131.147, and 131.149), respectively. The proposed standards were based on the recommended international standards for whole milk powder, partly skimmed milk powder, and skimmed milk powder (Codex Standard No. A-5 (1971))[1] and the recommended international standards for cream powder, half cream powder, and high-fat milk powder (Codex Standard No. A-10 (1971))[1] which were submitted to the United States for consideration of acceptance by the Joint Food and Agriculture Organization/World Health Organization's Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, and auxiliary body of the Codex Alimentarius Commission.

The standards of identity for lowfat dry milk, dry whole milk, and dry cream set out below are being adopted as part of a program in which the United States is participating along with approximately 100 other countries to establish regional and/or worldwide food standards. The new standards of identity include: (1) requirements for mandatory ingredients, (2) provisions for optional ingredients, such as safe and suitable carriers for vitamins A and D, stabilizers, emulsifiers, anticaking agents, antioxidants, and characterizing flavoring ingredients, with or without coloring, and (3) requirements for label declaration of all optional ingredients except carriers for vitamins which are exempted by § 101.100(a)(3)(i) (21 CFR 101.100(a)(3)(i)). In addition, the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D are amended to provide for the use of nutritive carbohydrate sweeteners in the optional characterizing flavoring ingredients.

The comments received in response to the proposal and the Commissioner's responses to them are as follows:

1. Comments from the American Dry Milk Institute (ADMI) and a firm that manufactures and distributes lowfat dry milk requested modification of the processing provisions for lowfat dry milk. ADMI stated that the standard should permit use of the readily available and accepted techniques for manufacturing lowfat dry milk by dry blending nonfat dry milk with dry whole milk and/or dry cream. ADMI asserted that approval of these techniques would allow greater flexibility and more economical and efficient use of these dry milk products.

The manufacturing firm suggested deleting the processing restrictions other than pasteurization because the proposed standard would exclude the use of the established commercial practice of the independent heat treatment of cream (to develop natural antioxidant properties of milk) before blending with pasteurized condensed skim milk and drying the product. Further, the comment stated, the firm's process for the manufacture of "instant" fat-containing dry milk products would be prohibited because the process involves a blending of fluid and dry ingredients. More specifically, the process consists of blending pasteurized, homogenized cream with nonfat dry milk in the instantizing process to produce an instant lowfat dry milk which, the comment stated, is equal in all respects to the product produced by other processes. The comment further requested that processing restrictions be deleted also from the description of dry whole milk.

The Commissioner recognizes that alternate processing techniques may be used to obtain dry milk products comparable to those obtained by simply concentrating and drying the fluid milk counterparts. He did not intend to exclude alternate acceptable processes that produce products equivalent in identity and composition to those derived from the proposed process. He is therefore, revising the proposed standards of identity for lowfat dry milk and dry whole milk to allow alternate methods of processing as suggested, provided the process results in a finished food of the required composition.

[1] Code of Principles Concerning Milk and Milk Products, International Standards and Standards Methods of Sampling and Analysis for Milk Products, 7th Ed., FAO/WHO Document No. CAC/M 1-1973.

2. The comment from the manufacturing firm also requested that, for the sake of consistency with the standards of identity for lowfat milk and milk, homogenization of the fluid milk be optional in the manufacture of lowfat dry milk and dry whole milk.

In view of the alternate processing techniques which may be used in the manufacture of these products, the Commissioner agrees that homogenization should be optional and is revising the standards accordingly.

3. A comment from a State department of agriculture stated that to facilitate uniformity among standards, the composition of reduced-moisture milks should be consistent with that of fluid whole milk. Further, it explained, given the milkfat to milk solids not fat (mf/msnf) ratio for fluid milks, desiccated equivalents should maintain similar ratios, allowing for moisture reduction.

The Commissioner acknowledges that there is a slight difference in the mf/msnf ratio for fluid whole milk and dry whole milk; 1:2.54 for milk and 1:2.71 for dry whole milk, when dry whole milk is made to contain 26 percent by weight of milkfat and 5 percent by weight of moisture on a milk solids not fat basis. The 3.25 percent minimum milkfat and 8.25 percent minimum milk solids not fat requirements for milk in final package form for beverage use, as specified in § 131.110(a) (21 CFR 131.110(a)), are based on the average minima determined for the composition of cow's milk. The requirement of 26 percent milkfat was proposed for consistency with the Codex requirement for dry whole milk and is consistent with the requirement in the U.S. Grade Standards and State laws or regulations for dry whole milk. As he stated in the proposal, the Commissioner believes the proposed requirements are reasonable, will benefit international trade, and are not in conflict with the need to promote honesty and fair dealing in the interest of consumers. The Commissioner concludes that the minimum milkfat and milk solids not fat requirements for dry whole milk should not be changed from those in the proposal.

4. The comment from ADMI stated that, based on industry experience, the proposed maximum moisture content of 5 percent by weight of the food is too high for dry milk products containing higher levels of milkfat (e.g., lowfat dry milk, dry whole milk, and dry cream). Compared to nonfat dry milk containing 5 percent moisture, the higher fat-containing dry milk products are likely to have a shortened shelf life and decreased flavor stability if manufactured to contain 5 percent by weight of total moisture. The comment suggested that since the moisture is associated mainly with the milk solids not fat portion of these products, the maximum moisture level for these foods should be expressed on a milk solids not fat basis. As a result, the total moisture content would vary directly with the milk solids not fat content, and the dry milk products would exhibit more uniform, stable storage characteristics.

The Commissioner agrees with this recommendation and has revised the standards of identity for lowfat dry milk, dry whole milk, and dry cream to provide for a maximum moisture content of 5 percent by weight on a milk solids not fat basis.

In the preamble of the proposal for this final regulation (42 FR 37010), the Commissioner proposed to amend the standard of identity for nonfat dry milk fortified with vitamins A and D in § 131.127(d) to provide for the determination of vitamin D, but the proposed reference to the method of analysis was inadvertently omitted from the proposed regulation. This error has been corrected in the regulation set out below.

In consideration of the comments received, the Commissioner concludes that to establish standards of identity for lowfat dry milk, dry whole milk, and dry cream based on the recommended international standards and to revise the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D, as set forth in this document, will promote honesty and fair dealing in the interest of consumers.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner amends Part 131 as follows:

1. By adding § 131.123 to read as follows:

§ 131.123 Lowfat dry milk.

(a) *Description.* Lowfat dry milk is the product obtained by removal of water only from pasteurized lowfat milk, as defined in § 131.135(a), which may have been homogenized. Alternatively, lowfat dry milk may be obtained by blending fluid, condensed, or dried nonfat milk with liquid or dried cream or with fluid, condensed, or dried milk, as appropriate: *Provided,* The resulting lowfat dry milk is equivalent in composition to that obtained by the method described in the first sentence of this paragraph. It contains not less than 5 percent but less than 20 percent by weight of milkfat on an as is basis. It contains not more than 5 percent by weight of moisture on a milk solids not fat basis. Lowfat dry milk contains added vitamin A as prescribed by paragraph (b) of this section.

(b) *Vitamin addition.* (1) Vitamin A shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product contains not less than 2,000 International Units thereof.

(2) Addition of vitamin D is optional. If added, vitamin D shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product contains 400 International Units thereof.

(3) The requirements of this paragraph will be met if reasonable overages, within limits of good manufacturing practice, are present to ensure that the required levels of vitamins are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) Carriers for vitamins A and D.

(2) Emulsifiers.

(3) Stabilizers.

(4) Anticaking agents.

(5) Antioxidants.

(6) Characterizing flavoring ingredients, with or without coloring and nutritive carbohydrate sweeteners, as follows:

(i) Fruit and fruit juice, including concentrated fruit and fruit juice.

(ii) Natural and artificial food flavoring.

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975.[2]

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.131–16.182.[2]

(2) Moisture content—"Moisture—Official Final Action," section 16.174.[2]

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.166–43.179.[2]

(e) *Nomenclature.* The name of the food is "Lowfat dry milk." The name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring, as specified in § 101.22 of this chapter. The following phrases in type size not less than one-half the height of the type size used in such name shall accompany the name of the food wherever it appears on the principal display panel or panels:

(1) The phrase "Contains — percent milkfat", the blank to be filled in with the whole number closest to the actual fat content of the food.

(2) The phrase "vitamin A" or "vitamin A added", and if vitamin D is added, the phrase "vitamins A and D"

[2]Copies may be obtained from: The Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

or "vitamins A and D added", as appropriate. The word "vitamin" may be abbreviated "vit."

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

2. By revising paragraphs (b) and (c) and adding new paragraph (e) to § 131.125, to read as follows:

§ 131.125 Nonfat dry milk.

* * * * *

(b) *Optional ingredients.* Safe and suitable characterizing flavoring ingredients (with or without coloring and nutritive carbohydrate sweetener) as follows:

(1) Fruit and fruit juice, including concentrated fruit and fruit juice.

(2) Natural and artificial food flavorings.

(c) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. 1975.[2]

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.181-16.182.[2]

(2) Moisture content—"Moisture—Official Final Action," section 16.174.[2]

* * * * *

(e) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

3. By revising paragraphs (c)(2) and (d) and adding new paragraph (f) to § 131.127, to read as follows:

§ 131.127 Nonfat dry milk fortified with vitamins A and D.

* * * * *

(c) * * *

(2) Characterizing flavoring ingredients, with or without coloring and nutritive carbohydrate sweetener, as follows:

(i) Fruit and fruit juice, including concentrated fruit and fruit juice.

(ii) Natural and artificial food flavorings.

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. 1975.[2]

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.131-16.182.[2]

(2) Moisture content—"Moisture—Official Final Action," section 16.174.[2]

(3) Vitamin D content—"Vitamin D—Official Final Action," sections 43.166-43.179.[2]

* * * * *

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

4. By adding new §§ 131.147 and 131.149 to read as follows:

§ 131.147 Dry whole milk.

(a) *Description.* Dry whole milk is the product obtained by removal of water only from pasteurized milk, as defined in § 131.110(a), which may have been homogenized. Alternatively, dry whole milk may be obtained by blending fluid, condensed, or dried nonfat milk with liquid or dried cream or with fluid, condensed, or dried milk, as appropriate, provided the resulting dry whole milk is equivalent in composition to that obtained by the method described in the first sentence of this paragraph. It contains the lactose, milk proteins, milkfat, and milk minerals in the same relative proportions as the milk from which it was made. It contains not less than 26 percent but less than 40 percent by weight of milkfat on an as is basis. It contains not more than 5 percent by weight of moisture on a milk solids not fat basis.

(b) *Vitamin addition.* (1) Addition of vitamin A is optional. If added, vitamin A shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product shall contain not less than 2,000 International Units thereof.

(2) Addition of vitamin D is optional. If added, vitamin D shall be present in such quantity that, when prepared according to label directions, each quart of the reconstituted product shall contain 400 International Units thereof.

(3) The requirements of this paragraph will be met if reasonable overages, within limits of good manufacturing practice, are present to ensure that the required levels of vitamins are maintained throughout the expected shelf life of the food under customary conditions of distribution.

(c) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) Carriers for vitamins A and D.

(2) Emulsifiers.

(3) Stabilizers.

(4) Anticaking agents.

(5) Antioxidants.

(6) Characterizing flavoring ingredients (with or without coloring and nutritive carbohydrate sweetener) as follows:

(i) Fruit and fruit juice, including concentrated fruit and fruit juice.

(ii) Natural and artificial food flavoring.

(d) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975.[2]

Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.181-16.182.[2]

(2) Moisture content—"Moisture—Official Final Action," section 16.174.[2]

(3) Vitamin D content—"Vitamin D—Official Action," sections 43.166-43.179.[2]

(e) *Nomenclature.* The name of the food is "Dry whole milk." The name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in § 101.22 of this chapter. The following phrases in type size not less than one-half the height of the type size used in such name shall accompany the name of the food wherever it appears on the principal display panel or panels.

(1) The phrase "Contains — percent milkfat", the blank to be filled in with the whole number closest to the actual fat content of the food.

(2) If vitamins are added", the phrase "vitamin A", or "vitamin A added", or "vitamin D", or "vitamin D added', or "vitamins A and D", or "vitamins A and D added", as appropriate. The word "vitamin" may be abreviated "vit."

(f) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

§ 131.149 Dry cream.

(a) *Description.* Dry cream is the product obtained by removal of water only from pasteurized milk or cream, or a mixture thereof, which may have been homogenized. It contains not less than 40 percent but less than 75 percent by weight of milkfat on an as is basis. It contains not more than 5 percent by weight of moisture on a milk solids not fat basis.

(b) *Optional ingredients.* The following safe and suitable optional ingredients may be used:

(1) Emulsifiers.

(2) Stabilizers.

(3) Anticaking agents.

(4) Antioxidants.

(5) Nutritive carbohydrate sweeteners.

(6) Characterizing flavoring ingredients, with or without coloring, as follows:

(i) Fruit and fruit juice, including concentrated fruit and fruit juice.

(ii) Natural and artificial food flavoring.

(c) *Methods of analysis.* The following referenced methods of analysis are from "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed., 1975.[2]

(1) Milkfat content—"Fat in Dried Milk—Official Final Action," sections 16.181-16.182.[2]

(2) Moisture content—"Moisture—Official Final Action," section 16.174.[2]

(d) *Nomenclature.* The name of the food is "Dry cream." The name of the food shall appear on the principal display panel of the label in type of uniform size, style, and color. The name of the food shall be accompanied by a declaration indicating the presence of any characterizing flavoring as specified in § 101.22 of this chapter. The following terms shall accompany the name of the food wherever it appears on the principal display panel or panels of the label, in letters not less than one-half of the height of the letters used in such name:

(1) The phrase "Contains — percent milkfat", the blank to be filled in with the whole number closest to the actual fat content of the food.

(2) The word "sweetened" if no characterizing flavoring ingredients are used but nutritive carbohydrate sweetener is added.

(e) *Label declaration.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 8, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitue a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin July 10, 1978, and all products initially introduced into interstate commerce on or after July 1, 1979 shall fully comply. Notice of the filing of objections or lack thereof will be published in the FEDERAL REGISTER.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)).)

Dated: April 28, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

NOTE.—Incorporation by reference approved by the Director of the Office of the Federal Register on March 11, 1976 and is on file in the Federal Register Library.

[FR Doc. 78-12513 Filed 5-8-78; 8:45 am]

[4110-03]

[Docket No. 75P-0104]

PART 161—FISH AND SHELLFISH

Standard of Identity, Fill of Container Standard for Canned Shrimp

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document establishes a standard of identity and revises the fill of container standard for canned shrimp. In response to petitions filed by the American Shrimp Canners Association (ASCA), this action is taken to comply, to the extent practicable, with the provisions of the Codex Alimentarius.

EFFECTIVE DATE: July 1, 1979 for all products initially introduced into interstate commerce on or after this date. Voluntary compliance: July 10, 1978. Objections by: June 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Harold Salwin, Bureau of Foods (HFF-416), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-8531.

SUPPLEMENTARY INFORMATION: In response to two petitions filed by the American Shrimp Canners Association (ASCA), P.O. Box 50774, New Orleans, La. 70150, the Food and Drug Administration (FDA) published in the FEDERAL REGISTER of April 19, 1976 (41 FR 16470) a proposed standard of identity for canned shrimp (21 CFR 161.173(a)) and revision of the fill of container standard (21 CFR 161.173(c), previously codified as § 36.3, and recodified at 42 FR 14464, Mar. 15, 1977) for the purpose of adopting, to the extent practicable, the provisions of the Codex standard for canned shrimp or prawns. The preamble to the proposal included the Codex standard, the regulations proposed by ASCA, and the Commissioner's comments.

In response to the proposed standard of identity, the Commissioner received 12 letters, each containing 1 or more comments, from Pacific Northwest canned shrimp packers, ASCA, and the National Food Processors Association (NFPA) (formerly the National Canners Association). No comments were received on the proposed revision of the fill of container standard. After the 90-day comment period, ASCA requested a meeting with FDA. FDA personnel and representatives of ASCA met on September 22, 1976. Subsequently, the Commissioner received a number of comments from ASCA and NFPA proposing amendments to the Commissioner's April 19, 1976 proposal. The amendments pertained to definitions of styles of shrimp, size designations, and tolerances for improperly cleaned shrimp.

Copies of all comments and memorandums of meetings and telephone conversations are on file with the Hearing Clerk (HFC-20), Food and Drug Administration. The following regulations adopt to the extent practicable the provisions of Codex since the Commissioner concludes that to do so will benefit consumers and facilitate international trade.

DISCUSSION OF COMMENTS

DEFINITIONS

1. Several comments stated that the proposed requirement that the packing medium be added in sufficient volume to cover the shrimp was too stringent. One comment suggested that rather than using the proposed wording to accomplish an adequate liquid fill, a minimum net weight for each can size would suffice. Two comments stated that it is almost impossible to cover the smaller North Pacific shrimp in an aqueous packing medium and still achieve the desired drained weight and proper vacuum. The NFPA stated that obtaining a proper drained weight and providing necessary head space will often result in portions of one or more shrimp extending above the surface of the liquid in the container. The NFPA suggested that the wording in this provision be changed to require packing medium "in sufficient volume to fill the interstices and permit proper processing in accordance with good manufacturing practice."

The Commissioner believes that NFPA's suggested language better defines his intent and adequately addresses the concerns expressed in other comments. Therefore, § 161.173(a)(1) is revised accordingly.

2. Two comments objected to the words ". . . under good manufacturing practice . . ." in connection with processing to remove shells, legs, and antennae. They suggested "commercial"

in place of "manufacturing." One of the comments stated that the requirement "is not specific as to who is to determine and by what standards such determination would be made as to the extent practicable under good practices of production."

The Commissioner concludes that the word "manufacturing" is consistent in language with other food regulations promulgated by FDA and the intent expressed in the Codex standard 3.3.4. The Commissioner considers the standards of good manufacturing practice, as defined in 21 CFR Part 110, sufficient criteria, and that compliance with such standards is determined by what is normal good manufacturing practice in the industry. Therefore, he is retaining the original language in § 161.173(a)(1).

3. Three comments claimed that since the proposed definition for cleaned style shrimp explicitly states that the back of the shrimp must be deliberately cut open and the dorsal tract removed, Pacific Northwest shrimp could only be considered as regular style. It was stated that shrimp canned in the Pacific Northwest have a vein near the surface which is "cleaned" during the peeling process without cutting the back open. The comments stated that shrimp species canned in the Pacific Northwest may not exhibit visible dark veins even though the shrimp are not deveined in the manner which was proposed for "cleaned" style shrimp. The comments indicated that Pacific Northwest canners did not believe they could differentiate by labeling their canned shrimp from other canned shrimp that contain dark veins because of the definition proposed. The comments also suggested that the words "deveined" and "cleaned" are not synonymous as was stated in the proposal. It was further suggested that the word "cleaned" could be removed from the standard. The comments recommended three styles of canned shrimp characterized by the presence or absence of visible dark veins. The comments suggested that the following three styles be provided and designated on the label:

(a) "Visible dark veins" or "dark veined" when the shrimp contain dark veins.

(b) "No dark veins" when the shrimp do not exhibit dark veins.

(c) "Deveined" or, when appropriate, "mechanically deveined" when the shrimp have been split open and the dorsal tract removed.

In a letter dated March 9, 1977, the NFPA, claiming to represent a consensus of the entire shrimp canning industry, proposed that the following three specific optional styles of whole canned shrimp be incorporated in the proposed regulations: "(1) 'regular' style shrimp are those that have been peeled and subsequently canned without intentional removal of the dorsal tract; (2) 'cleaned' style shrimp are those that have been peeled and subsequently canned and for which the dorsal tract is not readily visible; (3) 'deveined' style shrimp are those that have been peeled and subsequently canned and have had the dark dorsal tract removed by deliberate cutting action." Although not specifically stated in the March 9 letter, the Commissioner assumes that NFPA intended the first word or name of the last two styles to be available for use on the label.

The Commissioner does not agree that shrimp which contain dark veins need to be labeled as "dark veined" or "visible dark veins" since this style has historically been called "shrimp." Moreover, such shrimp can be differentiated from the canned shrimp which do not contain dark veins by label identification of the latter as "deveined" if the shrimp have, in fact, been deveined, or with such words as "contains no dark veins," or some other such truthful statement. With regard to whether the word "mechanically" should be declared in conjunction with "deveined", the Commissioner concludes that "deveined" is sufficient, but he would not object to packers including the word "mechanically" if the shrimp have, in fact, been deveined by machine. He also does not agree that the word "cleaned" needs to be deleted from the standard. Through long usage in both the frozen and canned shrimp industries, the words "cleaned" and "deveined" have become synonymous and are used interchangeably to describe shrimp which have had the back split open and the dorsal tract removed. Furthermore, the Commissioner believes that consumers of canned shrimp also recognize "cleaned" as meaning "deveined". The Commissioner concludes that it would be improper to follow the NCA suggestion which would allow products that have not been deveined by deliberate cutting action to be called "cleaned." Therefore, he is retaining in the final regulation the optional designations of style as originally proposed. To alleviate possible confusion, he has added to the regulation provisions which recognize a style of shrimp which have no readily visible dark vein, even though the shrimp have not been deveined by deliberate cutting action. In paragraph (a)(5)(iii) the regulation provides for the optional labeling of this style with the words "contains no dark veins" or their equivalent. He believes that these provisions allow packers of canned shrimp to differentiate their products adequately without consumer confusion. He points out that the language defining styles has been modified by deleting references to canning and peeling. The Commissioner states that these aspects belong more appropriately in the definition paragraph (a)(1). He has also deleted, as superfluous, the sentence "By long usage, the terms, 'cleaned' and 'deveined' are synonymous." The Commissioner also notes that the proposed requirement that canned shrimp be of similar size has been deleted, because it is his opinion that the standard should provide for packs of mixed, as well as similar, size.

TOLERANCES

4. Two comments stated that the requirement in § 161.173(a)(1) that products be free of heads is absolute and does not take into account the unavoidable possibility that, particularly with small shrimp, an occasional head will find its way into the final product even when the best manufacturing practices are followed. One of the comments suggested that the wording be revised to require the product to be free "to the extent practicable under good manufacturing practice, from heads, shells, legs, and antennae." The second comment suggested similar language and stated that all exoskeleton components, including heads, should be treated equally.

The Commissioner concludes that the comments, if accepted, would sanction the possibility and likelihood of heads in the product. That is not his intent. The Commissioner's opinion is that in most instances the head comprises almost one half of the animal and can be easily removed from the product flow when passed by an inspection line. Further, since the provision adopts the Codex standard, the Commissioner considers the provision reflective of world-wide practice and the language adequate, since it expresses what is technologically feasible. Therefore, he is retaining the original language.

5. One comment objected to the 5 percent by weight tolerance for improperly cleaned shrimp and stated that the standard should incorporate the schedule of tolerances which ASCA proposed in its original petition, namely, 5 percent for extra large (jumbo) and large sizes, 10 percent for medium and small shrimp, and 15 percent for tiny and broken shrimp. ASCA claims that such allowances are necessary because they more realistically represent the cleaning effectiveness of mechanical deveining equipment that is essential for economical processing of the smaller sized shrimp. A second comment described the 5 percent tolerance for improperly cleaned shrimp as unrealistic for tiny shrimp. It also stated that the 5 percent tolerance "is confusing, especially when related to table II allowance of 15 percent for tiny shrimp."

The Commissioner is retaining the 5 percent tolerance for improperly pre-

pared shrimp for all sizes, since that tolerance is required in Codex and therefore represents the reasonable conclusion of experts world wide. The Commissioner points out that table II in § 161.173(a)(5)(iv) lists tolerances for broken shrimp in canned whole shrimp rather than tolerances for improperly prepared shrimp.

6. One comment on the proposed definition and tolerances for broken shrimp suggested that the rules be applied to sizes "small" and larger but not "tiny." The comment stated that the west coast tiny shrimp pack consists of a mixture of 1-year old, 2-year old, 3-year old, and in some areas 4-year old shrimp. Also, the comment stated that it is almost impossible for an expert to spot the difference between a 1-year old whole shrimp and a broken shrimp or to determine the number of segments. The comment suggested that the regulation state that 1-year old and 2-year old tiny Pacific pink shrimp should not be considered as broken shrimp.

The Commissioner does not see any reason to change the regulation and points out that whole shrimp, regardless of size, would not be considered as broken shrimp.

The Commissioner notes that when size of shrimp is not identified on the label, it would be necessary in each instance to determine the size in order to enforce the labeling provisions for broken shrimp. He has therefore defined in § 161.173(a)(5) the conditions which require such labeling for tiny shrimp and for all other shrimp whether of similar or mixed sizes.

SIZE DESIGNATIONS

7. ASCA proposed amending the size designations in a manner which ASCA claims will reduce consumer confusion. It should be noted that the size designations proposed in the April 19, 1976 FEDERAL REGISTER are identical with those in Codex and in the identity standard originally proposed by ASCA. The ASCA comments compared tiny size shrimp from the Gulf Coast, which number in count from 17 to 27 shrimp per ounce to tiny shrimp from the Pacific Northwest which number 22 to 56 per ounce. It was stated that the consumer, when using these variants of "tiny," must be confused by the wide spread in count within the same size designation. ASCA also stated that competition from the fresh, frozen, and breaded shrimp industries for the larger sizes of shrimp has left only the medium, small, and tiny sizes available in any quantity to canners in the warm water areas, and that these sizes represent over 90 percent of the Gulf Coast pack. ASCA recommended changing the lower limit for "tiny" from 17.0 to 22.2 shrimp per ounce. As a result of this proposed size change, ASCA recommended that the limits of the "small" classification change from the range 9.0 to 17.0 per ounce to 13.0 to 22.2 per ounce. ASCA also stated that the "medium" classification, in order to keep its proper place in the size spectrum and give consumers a real choice of the sizes actually produced, should be changed to reflect its proper midposition in the total pack—namely, from the range 5.0 to 9.0 per ounce to 7.0 to 13.0 per ounce. ASCA pointed out that slight modifications of the larger size designations would be necessary based on the same reasoning; ASCA also stated that very few of these sizes are packed as canned shrimp. ASCA claimed that the realignment of sizes resulting from the adoption of these proposed changes would make the size designations more useful to consumers in purchasing the kinds of shrimp they prefer, would encourage uniformity and consistency in commercial practice, and would allow the canned shrimp industry to remain viable and competitive.

In a related matter, ASCA also commented on the proposed size designations for deveined shrimp. The comment explained that the greater number of shrimp per ounce reflects an 8 percent tolerance to allow for loss in weight when the shrimp are deveined. ASCA claims that the 8 percent tolerance is no longer appropriate because it was adopted as a portion of the industry grade standards in 1954 when deveining was done by hand. Mechanical deveining came into widespread use in the 1960's. According to ASCA, industrial experience and experimental work carried out under commercial operating conditions demonstrate that the loss is greater with mechanical deveining, and that it increases as the size of the shrimp decreases. ASCA submitted data purporting to demonstrate these losses for four sizes of shrimp, and stated that the minimum loss factors are 10 percent for jumbo and large sizes, 11 percent for medium, and 12 percent for small and tiny size shrimp.

ASCA presently proposes the following size designations which reflect the considerations in the preceding paragraphs. These size designations were endorsed in the March 9, 1977 comment from NFPA, which claimed to represent the views of the entire shrimp canning industry.

SIZE DESIGNATIONS OF CANNED SHRIMP

Size	Number of shrimp per 1 oz (28.4 g) of drained product		Number of shrimp per 100 g (3.5 oz) of drained product	
	Regular	Deveined	Regular	Deveined
Jumbo	Less than 5	Less than 5.5	Less than 17.5	Less than 19.3.
Large	5 or more but less than 7.	5.5 or more but less than 7.8.	17.5 or more but less than 24.5.	19.3 or more but less than 27.3.
Medium	7 or more but less than 13.	7.8 or more but less than 14.4.	24.5 or more but less than 45.5.	27.3 or more but less than 50.4.
Small	13 or more but less than 22.2.	14.4 or more but less than 24.9.	45.5 or more but less than 77.7.	50.4 or more but less than 87.2.
Tiny or cocktail	22.2 or more	24.9 or more	77.7 or more	87.2 or more.

As stated in ASCA's comments, two separate issues of concern are:

(a) An inconsistency in the number of shrimp constituting the size designation "tiny" which ASCA proposes to correct by restructuring all of the size designations as displayed vertically in the foregoing table in the columns headed "regular."

(b) The allowance for loss of shrimp flesh during the deveining process as displayed by the differences horizontally between the counts for "regular" and deveined" for any given size designation.

First, the Commissioner recognizes that variance exists in counts per ounce of canned shrimp labeled as "tiny," primarily because of the species utilized. However, he has no evidence that consumers are "confused" as ASCA claims, since no substantiating data were submitted to support such a contention. Furthermore, the Commissioner maintains that ASCA's proposed restructuring of the entire size designation table to alleviate the differences stemming from variances within counts for "tiny" canned shrimp is inappropriate. The effect of the suggested change would be that "medium" shrimp would be smaller, for example, than what a consumer receives today. Second, the Commissioner considers the data submitted as insufficient to determine whether weight loss factors should be increased to account for mechanical deveining. Therefore, he is retaining the size designation table as proposed. The Commissioner advises that this decision regarding the above proposal by ASCA is without prejudice to the filing of future petitions to amend the standard. Such petitions should be substantiated by sound, scientifically determined findings and facts.

ASCA, in commenting on its proposed amendments to the size designations, stated that if more clarification is needed, 'the label could show the count per ounce in conjunction with adjective descriptions." Even though the Commissioner is not adopting ASCA's recommended size designations, a declaration of count per ounce may have merit. If later information indicates that a label declaration of count per ounce will benefit consumers, the Commissioner, at that time, will take appropriate action to propose such a requirement. The Commissioner will give careful consideration to any petition proposing such a requirement. In any event, he does not consider it appropriate to provide for such a requirement in this final regulation, since to do so now would not provide other interested persons an opportunity for comment.

LABELING

8. Two comments took exception to the mandatory labeling of shrimp which number more than 17 per ounce as "tiny" or "tiny cocktail." They contended that the term "tiny" or "tiny cocktail" should be treated as an optional size requirement in a manner similar to the other size designations. One of the comments stated that it could not agree with the view cited in FDA Compliance Policy Guide 7108.3 in support of the mandatory requirement. The comment gave the following reason: "The size designations, 'jumbo,' 'large,' 'medium,' and 'small' were defined in about 1935 when FDA was operating a continuous seafood inspection service. Very small or tiny shrimp began to be packed with the development of mechanical peelers in the 1940's, and that size designation was used on labels very early. In the intervening years, the consumer has become equally familiar with all of the size designations currently in use."

In the absence of any supporting data, the Commissioner is of the opinion that his view on the mandatory label declaration of the size "tiny" is still valid. Therefore, he is not making the suggested change. Upon further examination of the table of proposed size designations, the Commissioner notes that the smallest size shrimp were identified as "tiny or cocktail." Although that designation was consistent with ASCA's proposal, it did not represent the Commissioner's intent. The Commissioner considers the word "cocktail" as descriptive of a use for the food and applicable to various sizes of shrimp, not just "tiny." Moreover, Codex does not recognize "cocktail" as an alternative for "tiny." Since the term "cocktail" as applied to shrimp is not an acceptable substitute for the word "tiny," the Commissioner has deleted the word "cocktail" from the table of size designations in the regulation set out below. There is no objection to the use of the word "cocktail" in the labeling of canned tiny shrimp, provided the label bears the word "tiny" as required by § 161.173(a)(5)(v) of the regulation.

9. One comment suggested that the word "prawns" as provided for in Codex be incorporated into the standard as an optional name for the food.

The Commissioner concludes that the food may appropriately be labeled with the word "prawns" in conjunction with the name "shrimp" when the size is large or extra large as defined in § 161.173(a)(5)(iv). He has provided for such labeling in § 161.173(a)(5)(i). The Commissioner advises that he is limiting the use of the word "prawns" to maintain consistency between this regulation and a similar provision in the standard of identity for frozen raw breaded shrimp (21 CFR 161.175).

10. One comment requested that the standard include a provision to require label declaration if canned shrimp are prepared from frozen shrimp. The comment also stated that if frozen shrimp are imported for canning, the label cite the country of origin. The comment stated that these types of pack are of poorer quality than fresh packed shrimp.

The Commissioner is not incorporating the suggested provision, since he has no supporting data indicating that shrimp canned from frozen raw stock are inferior in quality. Moreover, the regulation below is intended to establish a standard of identity and not quality. The Commissioner would not object to label declarations which identify raw material as fresh or frozen or as to country of origin if such declarations are factual and not misleading.

OPTIONAL INGREDIENTS

11. Comments suggested that citric acid should be included among the permitted optional ingredients.

The Commissioner advises that the provision for organic acids includes citric acid.

12. One comment stated that since the proposed standard permits the use of spices or spice oils or spice extracts, the standard should also permit the capture and adding back of natural shrimp oil that leaches out during preliminary stages of processing. The comment requested that natural shrimp oil be included as an optional ingredient.

The Commissioner has made inquiries regarding this request, and he understands that the capture and adding back of shrimp oil is not regular industry practice. Further, he is not aware of consumer or industry interest in providing for the addition of shrimp oil to canned shrimp, and has not made the provision in the regulation set out below. Any interested persons who have information demonstrating a need for the addition of shrimp oil to canned shrimp may submit a petition documenting the fact that such use would promote honesty and fair dealing in the interest of consumers.

13. One comment stated that sodium tripolyphosphate (STP) should be allowed as an acceptable additive to canned shrimp. The comment stated that industry studies have failed to reveal any discernible weight change in canned shrimp treated with STP.

The Commissioner reiterates his viewpoint, as expressed in the preambel to the April 19, 1976 proposal, that STP is generally known to cause water uptake and retention in various protein foods. In the absence of data demonstrating that the use of STP in canned shrimp does not result in water uptake and retention, the Commissioner does not consider STP to be a suitable ingredient for this food and is not providing for its use in the regulation set out below.

The Commissioner also points out that the standard of identity set forth below is organized in a format different from that which was proposed. He is of the opinion that the revision, which conforms with other food standards recently promulgated by FDA, improves the clarity of the regulation. He has also made editorial changes in the provisions relating to sample unit and defective samples in paragraph (a)(6)(i) (*d*) and (*e*) of the identity standard and paragraph (c)(2) of the fill of container standard. The principal effect of these changes is to extend the application of the sampling and acceptance procedure to sample units that fail to meet the labeling requirements for broken shrimp.

After condidering the comments received and other relevant information, the Commissioner concludes that it will promote honesty and fair dealing in the interest of consumers to establish a definition and standard of identity for canned shrimp and to revise the fill of container standard for canned shrimp as set forth below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, as amended, 70 Stat. 919 (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), 21 CFR 161.173 is amended by revising the section heading, adding a new paragraph (a) *Identity,* and revising paragraph (c) *Fill of container* as follows:

§ 161.173 Canned wet pack shrimp in transparent or nontransparent containers.

(a) *Identity.* (1) Canned wet pack shrimp is the food consisting of the processed meat of peeled shrimp, free of heads and, to the extent practicable under good manufacturing practice,

free of shells, legs, and antennae; in one or any combination of species enumerated in paragraph (a)(2) of this section; prepared in one of the styles specified in paragraph (a)(3) of this section, in sufficient water or other suitable aqueous packing medium to fill the interstices and permit proper processing in accordance with good manufacturing practice. Canned shrimp may contain one or more of the optional ingredients specified in paragraph (a)(4) of this section. It is packed in hermetically sealed transparent or nontransparent containers and so processed by heat as to prevent spoilage.

(2) The species of shrimp that may be used in the food are of the families: Penaeidae, Pandalidae, Crangonidae, and Palaemonidae.

(3) Styles. Canned shrimp is prepared in one of the following styles:

(i) Shrimp with readily visible dark vein (dorsal tract, back vein, or sand vein).

(ii) Deveined shrimp containing not less than 95 percent by weight of shrimp prepared by removing the dark vein from the first five segments by deliberate cutting action.

(iii) Shrimp, other than "deveined" as described in paragraph (a)(3)(ii) of this section, containing not less than 95 percent by weight of shrimp with no readily visible dark vein within the first five segments.

(iv) Broken shrimp, consisting of less than four segments and otherwise conforming to one of the styles described in paragraph (a)(3)(i), (ii), or (iii) of this section.

(4) Optional ingredients. The following safe and suitable optional ingredients may be used:

(i) Salt.

(ii) Lemon juice.

(iii) Organic acids.

(iv) Nutritive carbohydrate sweeteners.

(v) Spices or spice oils or spice extracts.

(vi) Flavorings.

(vii) Sodium bisulfite.

(viii) Calcium disodium EDTA (calcium disodium ethylene-diaminetetraacetate), complying with the provisions of § 172.120 of this chapter.

(5) Labeling. (i) The name of the food is "shrimp" or "shrimps." The word "prawns" may appear on the label in parentheses immediately after the word "shrimp" or "shrimps" if the shrimp are of large or extra large size as designated in paragraph (a)(5)(iv) of this section.

(ii) When the food is of the style described in paragraph (a)(3)(ii) of this section, the words "cleaned," "cleaned (deveined)," or "deveined" may be declared on the label.

(iii) When the food is of the style described in paragraph (a)(3)(iii) of this section, the words "contain no dark veins" or their equivalent may be declared on the label.

(iv) When the food is whole shrimp within a size range designated in Table I as "extra large," "large," "medium," or "small" and does not contain broken shrimp as defined in paragraph (a)(3)(iv) of this section in excess of the amount listed in Table II for the applicable size, the appropriate size designation may be declared on the label.

TABLE I

Size	Number of shrimp per 28.4 g (1 oz) of drained product		Number of shrimp per 100 g (3.5 oz) of drained product	
	Other than deveined style	Deveined style	Other than deveined style	Deveined style
Extra large or jumbo.	Less than 3.5	Less than 3.8	Less than 12.3	Less than 13.4.
Large	3.5 to 5 inclusive	3.8 to 5.4 inclusive	12.3 to 17.7 inclusive.	13.4 to 19.1 inclusive.
Medium	More than 5 but not more than 9.	More than 5.4 but not more than 9.8.	More than 17.7 but not more than 31.8.	More than 19.1 but not more than 34.6.
Small	More than 9 but not more than 17.	More than 9.8 but not more than 18.4.	More than 31.8 but not more than 60.	More than 34.6 but not more than 65.3.
Tiny	More than 17	More than 18.4	More than 60	More than 65.3.

TABLE II

Size	Maximum percent by weight of broken shrimp*
Extra large or jumbo	5
Large	5
Medium	5
Small	10
Tiny	15

*Grams of broken shrimp per 100 g of cutout weight as determined in § 161.173(c) of this section.

(v) When the food consists of tiny shrimp, as designated in Table I in paragraph (a)(5)(iv) of this section and does not contain broken shrimp as defined in paragraph (a)(3)(iv) of this section in excess of 15 percent by weight, the name of the food on the label shall be accompanied by the work "tiny" in type size equal to that used in the name of the food.

(vi) When the food consists of tiny shrimp, as designated in Table I in paragraph (a)(5)(iv) of this section and contains more than 15 percent by weight of broken shrimp as defined in paragraph (a)(3)(iv) of this section, the name of the food on the label shall be accompanied by the word "broken" or "pieces" rather than the work "tiny," in type size equal to that used in the name of the food.

(vii) When the food consists wholly or in part of sizes other than tiny, as designated in Table I in paragraph (a)(5)(iv) of this section and contains more than 10 percent by weight of broken shrimp as defined in paragraph (a)(3)(iv) of this section, the name of the food on the label shall be accompanied by the word "broken" or "pieces" in type size equal to that used in the name of the food.

(viii) The name of the food shall include a declaration of any flavoring that characterizes the food, as specified in § 101.22 of this chapter, and the term "spiced" if spice characterizes the food.

(ix) Each of the ingredients used shall be declared on the label as required by the applicable sections of part 101 of this chapter.

(6) Sampling and acceptance procedure. A lot is to be considered acceptable when the number of defectives does not exceed the acceptance number in the sampling plans given in paragraph (a)(6)(ii) of this section.

(i) Definitions of terms to be used in the sampling plans in paragraph (a)(6)(ii) of this section are as follows:

(*a*) *Lot.* A collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade.

(*b*) *Lot size.* The number of primary containers or units in the lot.

(*c*) *Sample size* (*n*). The total number of sample units drawn for examination from a lot.

(*d*) *Sample unit.* A container, the entire contents of a container, a portion of the contents of a container, or a composite mixture of product from small containers that is sufficient for the examination or testing as a single unit.

(*e*) *Defective.* Any sample unit shall be regarded as defective when it fails to meet the minimum requirements in paragraph (a)(3) (ii) or (iii) of this section for the applicable style, when it exceeds the tolerances in paragraph (a)(5)(iv) of this section for the applicable size, or when the labeling fails to meet the requirements of paragraph (a)(5) (v), (vi), or (vii) of this section of the applicable size.

(*f*) *Acceptance number* (*c*). The maximum number of defective sample units

permitted in the sample in order to consider the lot as meeting the specified requirements.

(g) *Acceptable quality level (AQL).* The maximum percent of defective sample units permitted in a lot that will be accepted approximately 95 percent of the time.

(ii) Sampling plans:

Acceptable quality level 6.5

Lot size (primary containers)	Size of container	
	Net weight equal to or less than 1 kg (2.2 lb)	
	n	*c*
4,800 or less	13	2
4,801 to 24,000	21	3
24,001 to 48,000	29	4
48,001 to 84,000	48	6
84,001 to 144,000	84	9
144,001 to 240,000	126	13
Over 240,000	200	19
	Net weight greater than 1 kg (2.2 lb) but not more than 4.5 kg (10 lb)	
	n	*c*
2,400 or less	13	2
2,401 to 15,000	21	3
15,001 to 24,000	29	4
24,001 to 42,000	48	6
42,001 to 72,000	84	9
72,001 to 120,000	126	13
Over 120,000	200	19

n=Number of primary containers in sample.
c=Acceptance number.

(b) [Reserved]

(c) *Fill of container.* (1) The standard of fill of transparent or nontransparent containers for canned wet pack shrimp is a fill such that the cut-out weight of shrimp taken from each container is not less than 60 percent of the weight of the water required to fill the container. The weight of the water required to fill the container is determined by the general method provided in § 130.12(a) of this chapter. Cut-out weight is determined by the following method: Keep the unopened canned shrimp container at a temperature of not less than 68° nor more than 75° Fahrenheit for at least 12 hours immediately preceding the determination. After opening, distribute the shrimp evenly over the meshes of a circular sieve that has been previously weighed. The diameter of the sieve is 20.3 centimeters (8 inches) if the quantity of the contents of the container is less than 1.36 kilograms (3 pounds), and 30.5 centimeters (12 inches), if such quantity is 1.36 kilograms (3 pounds) or more. The bottom of the sieve is woven-wire cloth that complies with the specifications for such cloth set forth as a 2.36-millimeter (No. 8) sieve in the "Definitions of Terms and Explanatory Notes," p. XVI of the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th ed., 1975.[1] Without shifting the material on the sieve, incline the sieve at an angle of approximately 17° to 20° to facilitate drainage. Allow the shrimp to drain for 2 minutes, measured from the moment the product is poured onto the sieve. Weigh the sieve and the drained shrimp. The weight so found, less the weight of the sieve, shall be considered to be the cut-out weight of the shrimp.

(2) Sampling and acceptance procedure: A container that falls below the requirement for minimum fill prescribed in paragraph (c)(1) of this section is considered a "defective." Determine compliance with paragraph (c)(1) of this section as specified in paragraph (a)(6) of this section except that the sample unit shall be the entire contents of the container.

(3) If canned wet pack shrimp in transparent or nontransparent containers falls below the applicable standard of fill of container prescribed in paragraph (c)(1) of this section, the label shall bear the general statement of substandard fill provided in § 130.14(b) of this chapter, in the manner and form therein specified.

Any person who will be adversely affected by the foregoing regulation may at any time on or before June 8, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

[1]Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

Effective date. Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin July 10, 1978, and all products initially introduced into interstate commerce on or after July 1, 1979, shall fully comply. Notice of the filing of objections or lack thereof will be published in the FEDERAL REGISTER.

NOTE.—FDA has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Orders 11821 and 11949 and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk at FDA.

(Secs. 401, 701, 52 Stat. 1046, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371).)

Dated: April 28, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-12391 Filed 5-8-78; 8:45 am]

[4110-03]

[Docket No. 77N-0038]

FOOD ADDITIVES AND SUBSTANCES GENERALLY RECOGNIZED AS SAFE
CAPRYLIC ACID

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming that caprylic acid is generally recognized as safe (GRAS) as a direct and indirect human food ingredient. The safety of this ingredient has been evaluated under the comprehensive safety review being conducted by this agency.

EFFECTIVE DATE: June 8, 1978.

ADDRESS: Written objections may be sent to the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of June 14, 1977 (42 FR 30390), a proposal was published to affirm that caprylic acid is generally recognized as safe for use as a direct and indirect human food ingredient. The proposal was published in accordance with the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

In accordance with § 170.35 (21 CFR 170.35), copies of the scientific literature review on caprylic acid, a report of the mutagenic test for the ingredient, and the report of the Select Committee on GRAS Substances (hereafter referred to as the Select Committee) have been made available for public review in the office of the Hearing Clerk, Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Copies of these documents have also been made available for public purchase from the National Technical Information Service as announced in the proposal.

In addition to proposing to affirm the GRAS status of caprylic acid, the Commissioner gave public notice that he was unaware of any prior-sanctioned food ingredient use for this ingredient other than for the proposed conditions of use. He advised that persons asserting additional or extended uses in accordance with approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, shall submit proof of those sanctions so that the safety of the prior-sanctioned uses could be determined, and he proposed to approve prior-sanctioned uses of caprylic acid in appropriate regulations under part 181 (21 CFR Part 181), provided the prior-sanctioned use could be affirmed as safe on the basis of information and data now available to him. He also gave notice that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned use for caprylic acid were submitted in response to the proposal. Therefore, in accordance with that proposal, any right to assert a prior sanction for a use of caprylic acid under conditions different from those set forth in this regulation has been waived.

One comment was received in response to the proposal. The comment criticized the proposal for affirming the GRAS status of caprylic acid as an indirect food substance for a single specific use (i.e., in cheese wraps), while affirming the GRAS status of the substance for direct food use as a flavoring ingredient. The comment concluded that consumer exposure through other possible indirect food uses could not possibly match exposure from use as a direct food ingredient, and that the regulation for a specific indirect food use implied that caprylic acid is not GRAS for other indirect food uses.

The Commissioner agrees that this rule is intended to limit the indirect GRAS food use of caprylic acid to the specifically stated use in cheese wraps. This is the case primarily because its use for this purpose is the only historically known or reported indirect food use of the substance. Although the Commissioner does not necessarily disagree with this comment's general comparative analysis of consumer exposure to food additives through direct and indirect food uses, new indirect food uses of caprylic acid may substantially increase consumer exposure beyond the 2,500-pound total annual poundage evaluated in connection with this regulation. Such potential uses cannot be determined to be safe without greater knowledge of potential human exposure. This rule is not intended, however, to exclude any future petitions for other indirect uses of caprylic acid.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to him (21 CFR 5.1), the Commissioner amends parts 172, 182, 184, and 186 as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

§ 172.515 [Amended]

1. In § 172.515 *Synthetic flavoring substances and adjuvants* by deleting the entry for "Octanoic acid; caprylic acid" from the list of substances in paragraph (b).

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.3025 [Deleted]

2. By deleting § 182.3025 *Caprylic acid.*

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

3. By adding new § 184.1025 to read as follows:

§ 184.1025 Caprylic acid.

(a) Caprylic acid [$CH_3(CH_2)_6COOH$, CAS Reg. No. 124-07-2] is the chemical name for octanoic acid. It is considered to be a short or medium chain fatty acid. It occurs normally in various foods and is commercially prepared by oxidation of *n*-octanol or by fermentation and fractional distillation of the volatile fatty acids present in coconut oil.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972).[1]

(c) The ingredient is used as a flavoring agent and adjuvant as defined in § 170.3(o)(12) of this chapter.

(d) The ingredient is used in foods in accordance with § 184.1(b)(1), at levels not to exceed good manufacturing practice. Current good manufacturing practices result in maximum levels, as served, of: 0.013 percent for baked goods as defined in § 170.3(n)(1) of this chapter; 0.04 percent for cheeses as defined in § 170.3(n)(5) of this chapter; 0.005 percent for fats and oils as defined in § 170.3(n)(12) of this chapter, for frozen dairy desserts as defined in § 170.3(n)(20) of this chapter, for gelatins and puddings as defined in § 170.3(n)(22) of this chapter, for meat products as defined in § 170.3(n)(29) of this chapter, and for soft candy as defined in § 170.3(n)(38) of this chapter; 0.016 percent for snack foods as defined in § 170.3(n)(37) of this chapter; and 0.001 percent or less for all other food categories.

(e) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived.

PART 186—INDIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

4. By adding new § 186.1025 to read as follows:

§ 186.1025 Caprylic acid.

(a) Caprylic acid [$CH_3(CH_2)_6COOH$, CAS Reg. No. 124-07-2] is the chemical name for octanoic acid. It is considered to be a short or medium chain fatty acid. It occurs normally in various foods and is commercially prepared by oxidation of *n*-octanol or by fermentation and fractional distillation of the volatile fatty acids present in coconut oil.

(b) The ingredient meets the specifications of the Food Chemicals Codex, 2d Ed. (1972).[1]

(c) The ingredient is used as an antimicrobial (preservative) in cheese wraps as defined in § 170.3(o)(2) at levels not to exceed good manufacturing practice.

(d) Prior sanctions for this ingredient different from the uses established in this section do not exist or have been waived

Effective date: This regulation is effective on June 8, 1978.

(Secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a)).)

Dated: April 28, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

NOTE.—Incorporation by reference was approved by the Director of the Office of the

[1]Copies may be obtained from: National Academy of Sciences, 2101 Constitution Avenue NW., Washington, D.C. 20037.

Federal Register on July 10, 1973, and is on file at the Federal Register Library.

[FR Doc. 78-12390 Filed 5-8-78; 8:45 am]

[4110-03]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

Lasalocid With Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a supplemental new animal drug application (NADA) filed by Hoffmann-La Roche, Inc., providing for the use of lasalocid in combination with roxarsone in complete chicken feeds, at a concentration of 68 to 113 grams of lasalocid per ton. This application also adds Hess and Clark as an additional sponsor for the roxarsone used in the combination and revises the labeling to delete the claim for the reduction of oocysts.

EFFECTIVE DATE: May 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Adriano R. Gabuten, Bureau of Veterinary Medicine (HFV-149), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: Hoffmann-La Roche, Inc., Nutley, N.J. 07110, filed a supplemental NADA (102-485V) providing that use of lasalocid sodium in combination with roxarsone in the feed of broiler and fryer chickens be permitted in the range of 68 to 113 grams per ton (0.0075 to 0.0125 percent), that Hess and Clark, Division of Rhodia, Inc., Ashland, Ohio 44805, be an added sponsor of roxarsone for use in this combination, and that the labeling be revised to delete the claim for the reduction of oocysts due to *E. tenella*.

The provisions of this supplement will not not result in expanded use of roxarsone. Accordingly, the underlying human safety data were not reevaluated. Therefore, approval of this supplement does not constitute reaffirmation of the underlying human safety data for use of roxarsone in broiler or fryer feed.

In accordance with the freedom of information regulations and § 514.11(e)(2)(ii) of the animal drug regulations (21 CFR 514.11(e)(2)(ii), a summary of the safety and effectiveness data and information submitted to support approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFC-20), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, Monday through Friday, 9 a.m. to 4 p.m.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), part 558 is amended in § 558.311(e) by revising the second entry in the table to read as follows:

§ 558.311 Lasalocid sodium.

* * * * *

(e) *Conditions of use.* * * *

Lasalocid sodium activity in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
*	*	*	*	*
(2) 68 (0.0075 pct) to 113 (0.0125 pct).	Roxarsone 45.4 (0.005 pct).	Broiler or fryer chickens; for the prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima* and as an aid in the reduction of lesions due to *E. tenella.*	For broiler or fryer chickens only; feed continuously as the sole ration; as sole source of organic arsenic; withdraw 5 d before slaughter; roxarsone provided by Nos. 017210 and 011801 in sec. 510.600(c) of this chapter.	000004
*	*	*	*	*

Effective date: May 9, 1978.

(Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: May 1, 1978.

C. D. VAN HOUWELING,
Director, Bureau of Veterinary Medicine.

[FR Doc. 78-12385 Filed 5-8-78; 8:45 am]

[4110-03]

SUBCHAPTER F—BIOLOGICS

[Docket No. 78N-0101]

PART 660—ADDITIONAL STANDARDS FOR DIAGNOSTIC SUBSTANCES FOR LABORATORY TESTS

Color Coding for Blood Grouping Serum; Correction

AGENCY: Food and Drug Administration.

ACTION: Final rule; correction.

SUMMARY: This rule corrects the biologics regulations to delete reference to the Standard Ink Book and provide that final container labels of blood grouping serum may be color coded with a visual match to a specific color sample designated by the Director, Bureau of Biologics. The Standard Ink Book, which was published by the Government Printing Office, is out of print, and the Commissioner of Food and Drugs is therefore approving, upon request, other coloring systems.

EFFECTIVE DATE: This document corrects regulations that become effective August 7, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Al Rothschild, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-1306.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of October 7, 1977 (42 FR 54534), the Commissioner of Food and Drugs published additional standards for the manufacture of blood grouping serum (21 CFR 660.20 through 660.29). Section 660.28(a)(1) of these standards requires that the final container label of all blood grouping sera be completely white, except that all or a portion of the final container label of certain specified antisera may be color coded with a visual match of the specific color samples identifed in § 60.28(a)(1) and

contained in the Standard Ink Book sold by the Superintendent of Documents, U.S. Government Printing Office. The additional standards became effective April 6, 1978, except that the effective date for the labeling regulation is August 7, 1978.

It has come to the attention of the Commissioner that the U.S. Government Printing Office has discontinued publication of the Standard Ink Book. Consequently, the book is unavailable for manufacturers to match visually the color for final container labels with the color designated in the regulation.

The Director, Bureau of Biologics, has selected, from another coloring system readily available to printers, colors that are visual matches or similar to the colors designated in the Standard Ink Book. A memorandum identifying the coloring system and the colors has been sent to all licensed manufacturers of blood grouping serum. It is available to all other interested persons upon request from the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Colors in other coloring systems will be visually matched and identified upon request and submission of the coloring system to the Director, Bureau of Biologics.

Accordingly, the Commissioner is amending § 660.28 in paragraph (a)(1) to delete reference to the Standard Ink Book and to provide that final container labels of the antisera specified in § 660.28(a)(1) may be color coded with a visual match to specific colors designated by the Director, Bureau of Biologics.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner (21 CFR 5.1), § 660.28(a)(1) is revised to read as follows:

§ 660.28 Labeling.

* * * * *

(a) *Final container label*—(1) *Color coding.* The final container label of all Blood Grouping Sera shall be completely white, except that all or a portion of the final container label of the following antisera may be color coded with a visual match to a specific color sample designated by the Director, Bureau of Biologics. Printing on all final container labels shall be in solid black.

COLOR OF LABEL PAPER

Blood grouping serum:	
Anti-A	Blue.
Anti-B	Yellow.
Slide and rapid tube test sera only:	
Anti-C	Pink.
Anti-D	Grey.
Anti-E	Brown.
Anti-CDE	Orange.
Anti-c	Lavender.
Anti-e	Green.

* * * * *

(Sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262).)

Dated: May 2, 1978.

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

[FR Doc. 78-12512 Filed 5-8-78; 8:45 am]

[4210-01]

Title 24—Housing and Urban Development

CHAPTER II—OFFICE OF ASSISTANT SECRETARY FOR HOUSING—FEDERAL HOUSING COMMISSIONER, HUD

[Docket No. R-78-439]

PART 203—MUTUAL MORTGAGE INSURANCE AND INSURED HOME IMPROVEMENT LOANS

Interest Charges, Fees or Discount; Date

AGENCY: Office of Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule prescribes the date from which a mortgagee may charge interest prior to the date of amortization. Current program regulations are silent as to the date from which interest may be charged. As a result, lenders arbitrarily determine a date from which interest will accrue and charge borrowers interest from that date. The date chosen, in some instances, is not the date on which the funds are actually disbursed. In such instances, the borrower's costs are increased unjustifiably. This amendment is intended to clarify the allowable time period for which interest may be charged in order to protect borrowers from being overcharged.

EFFECTIVE DATE: June 8, 1978.

FOR FURTHER INFORMATION CONTACT:

William A. Rolfe, Director, Single Family Mortgage Insurance Division, Office of Insured and Direct Loan Origination, Housing, Department of Housing and Urban Development, Washington, D.C. 20410, 202-426-8914.

SUPPLEMENTARY INFORMATION: On January 31, 1977, at 42 FR 5704, the Department of Housing and Urban Development published a proposed amendment to 24 CFR 203.27 (a), "Maximum charges, fees or discounts," adding a new paragraph (a)(5) which established the date from which the mortgagee may collect interest. Numerous public comments have been received and considered and, with the changes noted, the proposed rule is now being made final.

The greatest number of comments concerned the effect the proposed amendment would have on closing and disbursement procedures in different localities as a result of differences in law, custom, the requirements of the local title industry, etc. Several commentors stated that the requirement that no interest could be collected until *all* disbursements were made would either result in additional burdens to the mortgagee, require alterations in the usual closing procedures, or result in loss of interest on funds actually disbursed by the mortgagee.

A number of comments pointed out that in many cases disbursement of all the mortgage funds does not occur until after closing. For example, it was indicated that it is a common practice to have recordation of the closing instruments and disbursement of the required proceeds occur several days after closing. A related problem stems from the practice of placing the loan proceeds under the control of a third party such as an attorney or a title company for later disbursement. In such circumstances, actual control of the funds involved has been relinquished by the mortgagee. However, the requirement in the proposed regulation that all funds be disbursed would have prevented the mortgagee from charging interest from the date of relinquishment of those funds.

In response to these comments, the proposed regulation has been amended to permit the collection of interest from the date of the later of two occurrences: The actual closing date or the date on which the mortgagee disburses the mortgage proceeds to the account of the mortgagor or the mortgagor's creditors. Disbursement of the mortgage proceeds, as the term is used in the amendment, would include such events as the transfer of funds by the mortgagee to an attorney or title company for the benefit of the mortgagor. It is not intended to require actual disbursement of all the mortgage proceeds to the intended recipients. However, it is intended that the mortgagee relinquish control of the mortgage proceeds.

A number of comments raised the question as to whether the mortgagee could collect additional interest under this regulation up to the date of the first mortgage payment. One comment suggested that this would result in the doubling of the amount of interest the mortgagor would pay for the month preceding the first payment. Section 203.440(d) of 24 CFR defines "Beginning of amortization" as the date one month prior to the date of the first

monthly payment of principal and interest so there would be no duplication of interest payment.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410.

Accordingly, the Secretary of Housing and Urban Development amends Part 203 of Chapter II of 24 CFR by adding § 203.27(a)(5) as follows:

§ 203.27 Maximum charges, fees or discounts.

(a) The mortgagee may collect from the mortgagor the following charges, fees or discounts:

* * * * *

(5) Interest from the date of closing or the date on which the mortgagee disburses the mortgage proceeds to the account of the mortgagor or the mortgagor's creditors, whichever is later, to the date of the beginning of amortization.

* * * * *

Issued at Washington, D.C., on May 1, 1978.

LAWRENCE B. SIMONS,
Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 78-12534 Filed 5-8-78; 8:45 am]

[4210-01]

SUBCHAPTER D—PUBLICLY FINANCED HOUSING PROGRAMS

[Docket No. R-78-534]

PART 280—MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

Welding Procedures

AGENCY: Department of Housing and Urban Development.

ACTION: Enforcement Bulletin—Notice of Extension.

SUMMARY: This Notice announces an extension, to July 15, 1978, of the effective date for enforcement of the requirement of 24 CFR 280.304(b) and § 1.24.1 of the AISC standard that welding slag be removed from mobile home frames. This extension is being granted because of a prior misunderstanding by the mobile home industry, which may have been promoted in various discussions with the Department, that reference standards are guidelines and not mandatory requirements. The Department previously issued an Advanced Notice of Rulemaking in the FEDERAL REGISTER on December 7, 1977, at 42 FR 61967 which stipulated that manufacturers, upon receipt of the Notice, could no longer continue to produce mobile homes without removing weld slag or other foreign matter and certify those homes as being constructed in conformance with the standard. That stipulation will now take effect on July 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Richard A. Mendlen, Chief, Standards Branch, Mobile Home Standards Division, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4224, Washington, D.C. 20410 202-472-4710.

SUPPLEMENTARY INFORMATION: This Notice is being issued to inform the mobile home industry and concerned enforcement agencies that the requirement to remove weld slag and other foreign matter from mobile home frames is being deferred until July 15, 1978. The Department is presently reviewing comments received in response to the Advance Notice of Rulemaking to determine the future status of this requirement.

A Finding of Inapplicability of section 102(2) of the National Environmental Policy Act of 1969 has been made in accordance with HUD Handbook 1390.1. It is available for public inspection in the Office of the Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410, during normal business hours.

(Secs. 604, 625, National Mobile Home Construction and Safety Standards Act of 1974 (42 U.S.C. 5403 and 5424), and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)))

Issued at Washington, D.C., April 12, 1978.

GENO C. BARONI,
Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection.

[FR Doc. 78-12516 Filed 5-8-78; 8:45 am]

[4810-31]

Title 27—Alcohol, Tobacco Products and Firearms

CHAPTER 1—BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, DEPARTMENT OF THE TREASURY

[T.D. ATF 49; Ref. No. 310]

PART 4—LABELING AND ADVERTISING OF WINE

Standards of Fill for Wine

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Final rule.

SUMMARY: These regulations permit the use of wine containers larger than 3 liters if they are filled and labeled in even liter quantities. Additionally, these regulations: (1) Exempt containers of 18 liters and larger from the standards of fill; (2) change the reference temperature of a liter of wine to 20° Celsius (68° F.); (3) provide an exemption to the bottles per case requirement; (4) change the requirement for statement of equivalent fluid ounces to the nearest whole ounce when the U.S. equivalent volume is 100 ounces or larger; and (5) redefine "packer" as any person placing wine in containers larger than 4 liters. The Director is making these changes in response to industry and consumer requests for larger wine container sizes, and to make the metric standard of fill requirements less restrictive with respect to case packaging.

EFFECTIVE DATE: June 8, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles N. Bacon, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226, telephone, 202-566-7626.

SUPPLEMENTARY INFORMATION:

THE PROPOSED REGULATIONS

ATF published a notice of proposed rulemaking in the FEDERAL REGISTER on August 22, 1977 [42 FR 42230]. This notice proposed the following specific changes to the metric standard of fill regulations for wine:

1. Authorize the use of wine containers which are larger than the largest standard of fill size of 3 liters. The notice further proposed two ways in which to do this:

A. Proposal "A". Add either a 4 or 5 liter size to the metric standards of fill and exempt all sizes of 10 liters or larger from the standard of fill requirements; or

B. Proposal "B". Allow use of wine containers larger than 3 liters as long as they are in even-liter increments, for example 4, 5, 6, 7 liters.

2. Change the temperature at which the liter of wine is defined from 4° Celsius to 20° Celsius (68° F.).

3. Allow exemptions to the bottles per case requirements when, upon application to the Director, the bottler or importer demonstrates good cause (for example: bottles of unusual design or shape).

4. Allow the importation of foreign wine in nonstandard cases after December 31, 1978, if the importer has received an exemption for those bottles from the case packing requirement.

5. Change the U.S. equivalent fluid ounce statement for volumes over 100 fluid ounces. The notice proposed that these statements be accurate to the nearest full ounce; i.e., 4 liters (135 fl. oz.), rather than the nearest one-tenth ounce.

6. Change the definition of "packer" to anyone placing wine in containers larger than 4 liters. Currently 1 gallon is the division between "bottlers" and "packers".

Discussion of Comments

In response to the notice of proposed rulemaking, ATF received 89 written comments, most of which were written by individual consumers. On the basis of the comments, ATF has adopted all of the proposed items, and selected Proposal "B", authorization of any even-liter container larger than 3 liters, as the means of authorizing large wine container sizes. A discussion of those comments follows.

Large Wine Sizes

Demand for large containers. The largest metric standard of fill is 3 liters (101 fl. oz.). Larger U.S. standards of fill, 1.0, 3.0, and 4.9 gallons, will be phased-out after the mandatory metric conversion date of January 1, 1979. The notice of proposed rulemaking was issued to provide sizes larger than 3 liters to replace the popular gallon "jug" and to provide new large economy sizes.

Consumer and industry response favored allowing new large sizes. Out of 74 comments addressed to the size issue, 70 favored allowing one or more sizes larger than 3 liters; every consumer response to this issue [57] favored at least one large size. Because of the near unanimous response on the part of consumers, metric associations, industry, and Governments, ATF is authorizing use of wine containers larger than 3 liters.

4 liters versus 5 liters. Proposal "A" would have added either a 4 or 5 liter size to the standards of fill to replace the gallon; it also would have exempted containers of 10 liters or larger from the standard wine container regulations, including standards of fill, design, and headspace requirements.

Public response favored adopting a 4 liter (135 fl. oz.) container. This size is closer to 1 gallon (128 fl. oz.) than is 5 liters (169 fl. oz.), and consumers would be more familiar with it. One glass company pointed out that 4 liter glass bottles may be produced by many more manufacturers than a 5 liter glass bottle. A few consumers expressed a desire to have either the 4 or 5 liter size.

Although the 5 liter size was not generally supported by the comments, it was pointed out that the European Economic Community (EEC) authorizes 5 liters for trade among member nations. Neither the 4 nor the 5 liter size can be easily compared in volume to the 750 ml, 1.5 liter, and 3.0 liter standards of fill.

Even-liter sizes over 3 liters. Proposal "B" would have authorized sizes larger than 3 liters as long as they were even-liter amounts (4, 5, 6, 7, 8 liters, etc.). This proposal would include both the 4 and 5 liter sizes found in Proposal "A", and would allow a wide range of other large economy sizes.

A large number of consumers and industry members favored this proposal. Its primary advantage was seen as its flexibility since it would not only allow use of both the 4 and 5 liter sizes, but would allow introduction of other economy sizes like 10 or 12 liters. Several comments mentioned this proposal would authorize the continued importation of the French Imperiale which is 6 liters, the equivalent of 8 bottles. Finally, a number of wineries currently filling bulk wine dispensers of 3.0 and 4.9 gallons favored the proposal since they could continue filling these dispensers and labeling them as 12 and 18 liters, respectively.

A few comments pointed out that authorizing all even-liter sizes over 3 liters might cause a proliferation of container sizes, thus defeating one original aim of metrication.

Conclusion. In view of the evidence presented for Proposal "B", even-liter sizes over 3 liters, ATF is adopting that proposal. This will allow for a greater range of consumer containers; however, the even-liter requirement will make the sizes different enough in size to avoid the consumer deception which might otherwise occur with the addition of several new sizes. Section 4.73 is amended by adding a new paragraph (b). ATF is not adding any case packing requirements for these new container sizes.

In addition, ATF is amending § 4.70(b) by exempting containers of 18 liters and larger from the standard wine container regulations (fill, design, headspace). This change is conforming in nature, since this exclusion previously applied to containers of 5 gallons (18.93 liters) or larger.

Definition of Liter

As proposed, the definition of the liter would be changed by raising the reference temperature from 4° Celsius (39.4° F.) to 20° Celsius (68° F.). This proposal would conform the United States' definition of the liter with world-wide accepted usage, and would define wine at room temperature at which it is customarily bottled.

All comments on this issue supported changing the liter's reference temperature to 20° Celsius. However, two comments noted that strict metric usage does not define liter with respect to any reference temperature since the liter is a unit of volume derived from a linear measurement, the meter.

ATF agrees with these comments. To conform with proper metric usage we have changed the definition of liter in § 4.10 by removing the temperature reference in the definition, but adding 20° Celsius as a reference for regulatory purposes.

Case Packing Requirements

The notice proposed allowing an exemption from the bottles per case requirements when the bottler or importer demonstrates good cause, in writing, to the Director, Bureau of Alcohol, Tobacco and Firearms. This proposal was intended to give relief to persons bottling or importing wine in bottles which are of unusual shape or size and which cannot easily be packed with the required number per case.

There were no comments addressed to this issue and it is adopted by adding a new paragraph to § 4.74. A provision for submitting diagrams or photographs to the Director is added to the section in cases when this would help demonstrate why the bottles cannot be packed with the required number per case. A cross-reference to this exemption is added to § 4.46, nonstandard bottles and cases, to allow release of these nonstandard cases from customs custody upon presentation to Customs of the application approved by the Director.

Equivalent Fluid Ounce Statement

When bottles are now labeled in metric measure, § 4.37, net contents, requires the label to contain an equivalent U.S. fluid ounce statement, accurate to the nearest one-tenth ounce. Thus, a 750 ml bottle is labeled "750 ml (25.4 fl. oz.)".

The proposed regulations would amend this by requiring the equivalent fluid ounces be accurate to the nearest whole ounce when the equivalent volume statement is 100 fluid ounces or larger. For example, the equivalent statement for the 3-liter standard of fill is "101 fl. oz." rather than "101.4 fl. oz.".

Only one comment addressed the issue, and that supported the proposal. Therefore, the proposal for the equivalent fluid ounce statement is adopted by amending § 4.37(b).

DEFINITION OF PACKER

The notice proposed to amend § 4.10 by defining a "bottler" as anyone who places wine in containers of 4 liters or less, and a "packer" as anyone who places wine in containers larger than 4 liters. This change would update these definitions which now use 1 gallon as the distinction. There were no comments addressed to this issue, and the definitions are changed to reflect the 4-liter cutoff point between a bottler and a packer.

OTHER ISSUES

The metric issue. Several persons commenting on the notice of proposed rulemaking expressed their disapproval of the metric system being used for wine bottles. However, ATF adopted metric fill standards over 3 years ago; these comments are, therefore, not addressed to the issues raised by this notice of proposed rulemaking.

Smaller case sizes. Two comments requested that ATF permit smaller cases for some of the existing metric standards of fill; for example, allow 750 ml bottles to be packed six per case rather than the required 12. We are not adopting this suggestion. However, certain exemptions from the bottles per case requirements may be permitted when good cause is shown (see above).

DRAFTING INFORMATION

The principal author of this regulation is Charles N. Bacon of the Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms. However, personnel from other offices of the Bureau and from the Treasury Department participated in developing the regulation, both on matters of substance and style.

AUTHORITY AND ISSUANCE

These regulations are issued under the authority contained in Section 5 of the Federal Alcohol Administration Act (49 Stat. 981, as amended (27 U.S.C. 205)).

In view of the above, the Director is amending 27 CFR Part 4 as follows:

PARAGRAPH 1. Amend § 4.10 by: (1) changing in the definition of "container", the term "1 gallon" wherever it appears to read "4 liters"; and (2) rewriting the definition of "liter" to change the reference temperature of 20° Celsius. As amended, § 4.10 reads as follows:

§ 4.10 Meaning of terms.

* * * * *

Container. Any bottle, barrel, cask or other closed receptacle irrespective of size or of the material from which made for use for the sale of wine at retail. "Bottler" means any person who places wine in containers of 4 liters or less; and "packer" means any person who places wine in containers in excess of 4 liters.

* * * * *

Liter or litre. (1) A metric unit of capacity equal to 1000 cubic centimeters and equivalent to 33.814 U.S. fluid ounces. For purposes of this part, a liter is subdivided into 1000 milliliters (ml).

(2) For the purpose of regulation, one liter of wine is defined as that quantity (mass) of wine occupying a one-liter volume at 20° Celsius (68° F.).

* * * * *

PAR. 2. Amend § 4.37 by: (1) adding subtitles to each of the lettered paragraphs; and (2) requiring that equivalent net volume statements for containers of 100 U.S. fluid ounces or larger be expressed to the nearest whole ounce. As amended, § 4.37 reads as follows:

§ 4.37 Net contents.

(a) *Statement of metric net contents* * * *

(b) *Statement of U.S. equivalent net contents* * * *

(1) For the metric standards of fill: 3 liters (101 fl. oz.); 1.5 liters (50.7 fl. oz.); 1 liter (33.8 fl. oz.); 750 milliliters (25.4 fl. oz.); 375 milliliters (12.7 fl. oz); 187 milliliters (6.3. fl. oz); and 100 milliliters (3.4. fl. oz).

(2) Equivalent volumes of less than 100 fluid ounces will be stated in fluid ounces only, accurate to the nearest one-tenth of a fluid ounce; for example, 700 ml (23.7 fl. oz.).

(3) Equivalent volumes of 100 fluid ounces or more will be stated in fluid ounces only, accurate to the nearest whole fluid ounce; for example, 6 liters (203 fl. oz.).

(c) *Exceptions.* * * *

(d) *Net contents marked in bottle.* * * *

(e) *Tolerances.* * * *

(f) *Unreasonable shortages.* * * *

Par. 3. Revise § 4.46 by: (1) adding a paragraph permitting the release from customs custody of metric bottles of wine in nonstandard cases if the Director has granted an exemption; (2) cross referencing the exemption from standards of fill granted by § 4.70(b)(1) and (b)(2); and (3) dividing the section into paragraphs and retitling the section. As revised, § 4.46 reads as follows:

§ 4.46 Nonstandard bottles and cases.

(a) *Exemptions from standards of fill.* After December 31, 1978, a person may import wine in containers not conforming to the metric standards of fill prescribed at § 4.73 if the wine is—

(1) Accompanied by a statement signed by a duly authorized official of the appropriate foreign country, stating that the wine was bottled or packed before January 1, 1979;

(2) Being withdrawn from a Customs bonded warehouse into which it was entered before January 1, 1979; or

(3) Exempt from the standard of fill requirements as provided by § 4.70 (b)(1) or (b)(2).

(b) *Exemption from standard cases.* After December 31, 1978, a person may import wine in containers conforming to the metric standards of fill and in cases not conforming to the bottles per case requirements of § 4.74 if the wine is—

(1) Accompanied by a copy of the application approved by the Director as provided in § 4.74(b);

(2) Being withdrawn from a Customs bonded warehouse into which it was entered before January 1, 1979; or

(3) Exempt from the standard wine container regulations as provided by § 4.70 (b)(1) or (b)(2).

Par. 4. Amend § 4.70 by lowering the exemption from standard wine container regulations from 5 wine gallons to 18 liters and by making certain editorial changes to improve the clarity of the section. As amended, § 4.70 reads as follows:

§ 4.70 Application.

(a) * * *

(b) Sections 4.70–4.74 do not apply to—

(1) Sake;

(2) Wine packed in containers of 18 liters or more;

(3) Imported wine in the original containers in which entered customs custody if the wine was bottled or packed before January 1, 1979; or

(4) Wine domestically bottled or packed, either in or out of customs custody, before October 24, 1943, if the container, or the label on the container, bears a conspicuous statement of the net contents, and if the actual capacity of the container is not substantially less than the apparent capacity upon visual examination under ordinary conditions of purchase or use.

(c) Sections 4.73–4.74 do not apply to wine domestically bottled or packed, either in or out of customs custody, before January 1, 1979, if the wine was bottled or packed according to the standards of fill prescribed by § 4.72.

PAR. 5. Amend § 4.73 by: (1) Adding a paragraph permitting use of any container larger than 3 liters if it is an even liter amount; (2) adding subtitles to each of the lettered paragraphs; and (3) making editorial changes to improve the clarity of the section. As amended, § 4.73 reads as follows:

§ 4.73 Metric standards of fill.

(a) *Authorized standards of fill.* The standards of fill for wine are the following:

* * * * *

(b) *Sizes larger than 3 liters.* Wine may be bottled or packed in containers

of 4 liters or larger if the containers are filled and labeled in quantities of even liters (4 liters, 5 liters, 6 liters, etc.).

(c) *Tolerances.* The tolerances in fill are the same as are allowed by § 4.37 in respect to statement of net contents on labels.

(d) *Completeness of conversion.* Once a bottler has discontinued bottling in a given type or style of bottle (for example: burgundy bottle, champagne bottle, etc.) corresponding to a standard of fill prescribed by § 4.72, and has begun bottling in a replacement standard of fill prescribed by this section, the bottler may not revert back for that particular type or style of bottle, to the standard of fill prescribed by § 4.72.

(e) *Effective date.* The effective date of paragraphs (a) through (c) of this section is January 1, 1979, except that, the standards of fill prescribed by this section may be applied in lieu of those listed at § 4.72 on or after January 1, 1975. When the metric standards of fill are applied prior to January 1, 1979, the equivalent volume in U.S. measure will also be stated as specified in § 4.37(b).

PAR. 6. Amend § 4.74 by adding a paragraph providing an exception to the bottles per case requirement in instances when the bottler or importer can demonstrate good cause. As amended, § 4.74 reads as follows:

§ 4.74 Bottles per shipping case.

(a) *General.* Wines bottled subject to the standards of fill prescribed by § 4.73 will be packed with the following number of bottles per shipping case or shipping container—

Bottle sizes	Bottles per case
3 liters	4
1.5 liters	6
1 liter	12
750 milliliters	12
375 milliliters	24
187 milliliters	48
100 milliliters	60

(b) *Exception.* The Director may waive the bottles per case requirement set forth in paragraph (a) of this section if the bottler or importer can prove good cause. The bottler or importer shall make written application to the Director, and may include diagrams or photographs which demonstrate why the bottles cannot be packed with the prescribed number per case. The bottler or importer may not introduce wine in nonstandard cases into interstate or foreign commerce or remove the wine from customs custody until the Director approves the application.

Signed: March 27, 1978.

REX D. DAVIS,
Director.

Approved: April 26, 1978.

RICHARD J. DAVIS,
Assistant Secretary of the Treasury.

[FR Doc. 78-12545 Filed 5-8-78; 8:45 am]

[4410-01]

Title 28—Judicial Administration

CHAPTER I—DEPARTMENT OF JUSTICE

[Order No. 780-78]

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Subpart B—Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities

DELEGATION OF AUTHORITY TO THE DIRECTOR, U.S. MARSHALS SERVICE, TO APPROVE PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: Existing Department regulations concerning production of material or disclosure of information of the Department by employees or former employees, in response to a subpoena or other demand of a court or other authority, authorize certain Department officials to approve release of material or information. With respect to material and information of the U.S. Marshals Service, the present regulations provide that release must be approved by the Deputy Attorney General. This order authorizes the Director of the U.S. Marshals Service to release information and materials from files under his jurisdiction and will relieve the Deputy Attorney General of the administrative burden of approving release of materials. The authority to *refuse* disclosure remains with the Deputy Attorney General for all units of the Department.

EFFECTIVE DATE: April 27, 1978.

FOR FURTHER INFORMATION CONTACT:

William E. Hall, Director, United States Marshals Service, U.S. Department of Justice, Washington, D.C. 20530 202-739-5345.

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, § 16.23 of Subpart B of Part 16 of Chapter I of Title 28, Code of Federal Regulations, is amended by deleting the word "and" at the end of paragraph (b)(2)(iv), by adding the word "and" at the end of paragraph (b)(2)(v), and by adding the following new paragraph (b)(2)(vi):

§ 16.23 Procedure in the event of a demand for production or disclosure.

* * * * *

(b) * * *

(2) * * *

(vi) The Director of the United States Marshals Service, if the demand is one made on an employee or former employee of the Service for information or if the demand calls for the production of material from the files of the Service.

Dated: April 27, 1978.

MICHAEL J. EGAN,
Acting Attorney General.

[FR Doc. 78-12581 Filed 5-8-78; 8:45 am]

[4510-26]

Title 29—Labor

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

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Certification of Completion of Developmental Steps for Hawaii Plan

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule.

SUMMARY: This Amendment officially recognizes that the State of Hawaii has completed all of the developmental steps specified in its occupational safety and health plan as approved on January 4, 1974 (39 FR 1012), and commencing with this completion, operations under the plan will be subject to extensive evaluation to determine whether Federal occupational safety and health standards development and enforcement authority will be relinquished within the State pursuant to section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(e)).

EFFECTIVE DATE: April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Marjorie N. Sauber, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-653-5377.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Subpart D of part 1902 of title 29, Code of Federal Regulations (40 FR 54780), sets out procedures under which the Assistant Secretary of

Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) will make a determination under section 18(e) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter referred to as the Act) whether, on the basis of actual operations under a State plan, the criteria of section 18(c) of the Act are being met by the plan. This determination may not be made until at least 3 years after commencement of operations under the plan and, in the case of a developmental plan, until the State has satisfactorily completed all developmental steps and the Assistant Secretary has had additional time after such completion to evaluate the plan on the basis of actual operations. Upon making a determination under section 18(e) that the requirements of section 18(c) are being met, Federal enforcement of standards and Federal standards (except with regard to on-going cases) cease to apply in the State with respect to any occupational safety and health issue covered under the determination.

A certification that a State has completed its developmental steps must list these steps, including approved amendments, and the dates their approval was published in the FEDERAL REGISTER; approved substantive changes in the State plan and dates published in the FEDERAL REGISTER; documentation that the State merit system has been approved and found acceptable; and a description of the occupational safety and health issues covered by the certification. If the Assistant Secretary finds that the State has completed all the developmental steps specified in the plan, she shall give notice of same by publishing the certification in the FEDERAL REGISTER and amending the appropriate subpart of part 1952 to reflect this finding. Certification that a State has completed its developmental steps does not mean that the Assistant Secretary has determined that the State has a fully effective occupational safety and health program in actual operation. Under regulations at 29 CFR 1902.33 through 1902.35, this certification is a preliminary action by the Assistant Secretary acknowledging that certain basic elements of the State plan have been adopted in accordance with assurances made by the State at the time its plan was initially approved under section 18(c) of the Act. Certification that a State has completed these developmental steps initiates a thorough evaluation of the State plan under section 18(e) of the Act to determine, on the basis of actual operations, whether the plan adequately protects the safety and health of the State's workers. In making this evaluation under section 18(e) the Assistant Secretary must monitor the continuing development of the State program, applying criteria which assure that the State will have a fully effective program for achieving the goals of the Act. (See: *American Federation of Labor and Congress of Industrial Organizations, AFL-CIO* v. *Ray Marshall, Secretary of Labor, et. al.* C.A.D.C. No. 75-1506, January 20, 1978.)

On January 4, 1974, a notice was published in the FEDERAL REGISTER (39 FR 1010) of the approval of the Hawaii plan as a developmental and the adoption of subpart Y of part 1952 describing the plan and containing the approval decision. During the 3-year period ending December 31, 1976, following commencement of State operations (3 years from the date of the State's first 23(g) grant award), Joshua Agsalud, Director, Hawaii Department of Labor and Industrial relations, submitted documentation attesting to the completion of each State developmental commitment for review and approval as provided in 29 CFR Part 1953. Following Departmental review, opportunity for public comment, and subsequent modification of the State's submissions, as deemed appropriate, the Assistant Secretary has approved the completion of all individual Hawaii developmental steps.

CONTENTS OF CERTIFICATION OF COMPLETION OF DEVELOPMENTAL STEPS UNDER THE HAWAII PLAN

In accordance with the provisions of 29 CFR 1902.34, notice is given that the Hawaii occupational safety and health plan is hereby certified, effective April 26, 1978, as having completed all the developmental steps specified in the plan as approved December 28, 1973, on or before December 31, 1976 (see Subpart Y of 29 CFR Part 1952) as follows:

1. All developmental steps specified in the plan and amendments thereto have been completed:

(a) Legislative amendments required to bring the Hawaii occupational safety and health law (Chapter 396 of the Hawaii Revised Statutes) into conformity with Federal requirements were enacted effective June 4, 1974, and approved by the Assistant Secretary on December 13, 1974 (39 FR 41202, December 23, 1974). Additional legislative amendments were enacted effective May 6, 1975, and May 13, 1976, and were approved by the Assistant Secretary on June 18, 1976 (41 FR 26217, June 25, 1976); and January 31, 1978 (43 FR 5819 February 10, 1978). The most recent legislative amendments, which include a provision excluding from State coverage those working conditions with respect to which a Federal agency exercises statutory authority over occupational safety and health, were enacted in June, 1977.

(b) Occupational safety and health standards have been promulgated and subsequently amended to reflect changes in the Federal standards and were found to be at least as effective as the corresponding Federal standards and were approved by the Regional Administrator for Occupational Safety and Health on December 3, 1974 (39 FR 44823, December 27, 1974). The adoption of standards was approved as a completed developmental step on February 4, 1975 (40 FR 6335, February 11, 1975). In addition, State standards comparable to Federal standards promulgated through July 22, 1977 were adopted on December 28, 1977.

(c) A description of the State's occupational health program was submitted on January 9, 1974, and approved by the Assistant Secretary on December 20, 1974 (39 FR 44752, December 27, 1974). The occupational health program was implemented on July 1, 1975, and approved as a completed developmental step by the Assistant Secretary on June 18, 1976 (41 FR 26217, June 25, 1976).

(d) Rules of practice and procedure for the Hawaii Labor and Industrial Relations Appeals Board were submitted on May 2, 1974, and were approved by the Assistant Secretary on October 11, 1974 (39 FR 37440, October 21, 1974).

(e) Regulations concerning inspections, citations and proposed penalties were submitted on June 18, 1976, and were approved by the Assistant Secretary on January 31, 1978 (43 FR 5819, February 10, 1978).

(f) Regulations concerning recording and reporting of occupational injuries and illnesses were submitted on June 18, 1976, and were approved by the Assistant Secretary on January 31, 1978 (43 FR 5819, February 10, 1978).

(g) Regulations concerning variances were submitted on June 18, 1976, and were approved by the Assistant Secretary on January 31, 1978 (43 FR 5819, February 10, 1978).

(h) Regulations concerning administration witnesses and documents in private litigation were submitted on June 18, 1976, and were approved by the Assistant Secretary on January 31, 1978 (43 FR 5819, February 10, 1978).

(i) Regulations concerning the promulgation, modification, or revocation of occupational safety and health standards were submitted on June 18, 1976, and were approved by the Assistant Secretary on January 31, 1978 (43 FR 5819, February 10, 1978).

(j) Revisions to the State's Compliance Manual to reflect changes in the Federal Field Operational Manual and the Hawaii program were submitted on April 21, 1975, and were approved by the Assistant Secretary on June 18, 1976 (41 FR 26217, June 25, 1976).

(k) A management information system has been developed. Documen-

tation of completion of this developmental step was submitted on June 18, 1976, and approved by the Assistant Secretary on January 31, 1978 (43 FR 5819, February 10, 1978).

(1) The State poster notifying public and private employers and employees of their protections and obligations under the Hawaii plan was submitted on November 25, 1974, and approved by the Assistant Secretary on February 4, 1975 (40 FR 6335, February 11, 1975).

(2) The personnel operations of the Hawaii Department of Labor and Industrial Relations have been found to be in substantial conformity with the Standards for a Merit System of Personnel Administration by the U.S. Civil Service Commission by letter dated October 18, 1976. The State also has an affirmative action plan which has been found acceptable by the Civil Service Commission.

(3) This certification covers all occupational safety and health issues covered under the Federal program except for the longshoring and maritime standards found in 29 CFR Parts 1915, 1916, 1917, and 1918 (longshoring, ship repairing, shipbuilding, and shipbreaking), which are excluded from coverage under the plan. This certification also covers the State's program covering State and local government employees.

LOCATION OF THE PLAN AND ITS SUPPLEMENTS FOR INSPECTION AND COPYING

A copy of the approved supplements along with the approved plan may be inspected and copied during normal business hours at the following locations: Technical Data Center, Occupational Safety and Health Administration, Room S-6212, 200 Constitution Avenue NW., Washington, D.C. 20210; Office of the Regional Administrator, Occupational Safety and Health Administration, Room 9470, Federal Office Building, 450 Golden Gate Avenue, San Francisco, Calif. 94210; and the Department of Labor and Industrial Relations, Room 308, 825 Mililani Street, Honolulu, Hawaii 96813.

The operation of the Hawaii occupational safety and health program will be monitored and evaluated after publication of this certification to determine whether the State program in operation is at least as effective as operations under the Federal program and meets the requirements for an effective program under *AFL-CIO* v. *Marshall* cited above. The Assistant Secretary will then determine whether Federal enforcement authority and standards should cease with respect to issues covered by the plan. (29 U.S.C. § 667(e).)

In accordance with 29 CFR 1902.35, Federal enforcement authority under sections 5(a)(2), 8, 9, 10, 13, and 17 of the Act (29 U.S.C. 654(a)(2), 657, 658, 659, 662) and Federal standards authority under section 6 of the act (29 U.S.C. 655) will not be relinquished during this evaluation period. An operational agreement was signed with Hawaii on May 9, 1976 (41 FR 34251, August 13, 1976). Among other things, the authority of the U.S. Department of Labor will be limited to: Complaints filed with the U.S. Department of Labor about violations of the discrimination provisions of section 11(c) of the act; enforcement of new Federal standards, such as emergency temporary standards promulgated under section 6 of the act where necessary to protect employees until such time as the State shall have promulgated equivalent standards; enforcement of Federal standards in the maritime and longshoring issues of 29 CFR Parts 1915, 1916, 1917, and 1918, which issues have been specifically excluded from coverage under the Hawaii plan under sections 18 (e) and (f) of the Act.

In accordance with this certification, 29 CFR 1952.314 is hereby amended to reflect successful completion of the developmental period by changing the title of the section and by adding a paragraph (h) as follows:

§ 1952.314 Completion of developmental steps and certification.

* * * * *

(h) In accordance with § 1902.34 of this chapter, the Hawaii occupational safety and health plan was certified, effective April 26, 1978 as having completed all developmental steps specified in the plan as approved on December 28, 1973, on or before December 31, 1976.

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

Signed at Washington, D.C., this 26 day of April 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-12650 Filed 5-8-78; 8:45 am]

[4810-25]

Title 31—Money and Finance: Treasury

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Transactions Incident to U.S. Travel by Cuban Nationals

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending the Cuban Assets Control Regulations by the addition of Sections 515.564 and 515.565. The purpose of Section 515.564 is to authorize by general license certain transactions ordinarily incident to travel to, from and within the United States by certain Cuban nationals holding U.S. visas. The need for the amendment is to remove the prohibitions on such transactions, with the effect that U.S. travel by those Cuban nationals will be permitted. The purpose of § 515.565 is to announce the availability of specific licenses for transactions involving participation by certain Cuban nationals in public exhibitions or performances in the United States (such as athletic or cultural events). Similarly, it announces that licenses are available for transactions by U.S. nationals when they are participating in events of this type in Cuba. The need for this amendment is to announce the applicable licensing policy, with the effect that specific licenses will be available in appropriate cases.

EFFECTIVE DATE: May 4, 1978.

FOR FURTHER INFORMATION CONTACT:

George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202-376-0428.

SUPPLEMENTARY INFORMATION: The new general license (Section 515.564) is being added to authorize transactions incident to U.S. travel by Cuban nationals holding U.S. visas. It authorizes transactions incident to travel between the United States and points outside of Cuba, travel within the United States, and maintenance of Cuban nationals while in the United States. It also permits U.S. nationals (such as travel agents or sponsors of exhibitions or performances) to arrange or assist in transactions by or on behalf of Cuban nationals incident to their travel to, from and within the United States. A similar general license for travel by U.S nationals to, from and within Cuba was issued on March 29, 1977, 42 FR 16621 and amended on May 18, 1977, 42 FR 25499.

The new statement of licensing policy (Section 515.565) will facilitate cultural exchanges between the United States and Cuba. Specific licenses will be issued to cover transactions involving Cuban performances in the United States and performances by U.S. persons in Cuba. While travel for cultural exchanges is covered by Section 515.560 and 515.564, other transactions involving public exhibitions or performances require individual licensing, such as performance contracts, importation of props and

equipment, hiring of local employees, and the like.

The statement of licensing policy announces that licenses will be denied for such payments to Cubans as payments for television rights, appearance fees, royalties, or for preperformance expenses in Cuba of Cubans coming to the United States for a public performance. Similarly, payments to persons in Cuba for these purposes in connection with performances or exhibitions of U.S. persons in Cuba will not be licensed. However, as stated in Section 515.546, specific licenses are issued to bona fide U.S. news-gathering organizations for payments in Cuba for news coverage or such events, as distinguished from payments for performance rights, royalties, etc.

These amendments do not authorize any debits to blocked accounts.

Since these amendments relax existing restrictions and involve a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation and a delay in effective date are inapplicable.

The Cuban Assets Control Regulations are amended to read as follows:

1. Section 515.564 is added to read as follows:

§ 515.564 Certain transactions incident to travel to, from and within the United States by certain Cuban Nationals.

(a) Except as provided in paragraph (b), the following transactions by or on behalf of a Cuban national who enters the United States on a visa issued by the State Department are authorized:

(1) All transactions ordinarily incident to travel between the United States and points outside of Cuba, including the importation into the United States of accompanied baggage for personal use only;

(2) All transactions ordinarily incident to travel and maintenance within the United States, including payment of living expenses and the acquisition of goods for personal consumption in the United States;

(3) All transactions on behalf of aircraft or vessels incident to non-scheduled flights or voyages between the United States and Cuba. This paragraph does not authorize the carriage of any merchandise into the United States except accompanied baggage;

(4) Normal banking transactions involving foreign currency drafts, traveler's checks or other instruments negotiated incident to travel in the United States by any person under the authority of this section.

(b) This section does not authorize any transfer of property to Cuba, or any debit to a blocked account.

2. Section 515.565 is added to read as follows:

§ 515.565 Transactions in connection with public exhibitions or performances.

(a) Specific licenses will be issued in appropriate cases for certain transactions, not otherwise authorized by Section 515.564, incident to participation in a public exhibition or performance in the United States by a Cuban national who enters the United States, for the purpose of such participation, on a visa issued by the Department of State.

(b) Specific licenses will be issued in appropriate cases for certain transactions, not otherwise authorized by Section 515.560, incident to participation by a U.S. national in a public exhibition or performance in Cuba.

(c) Any payment to a Cuban national in connection with transactions licensed under the authority of paragraph (a) or (b) of this section shall be limited to expenses incurred in connection therewith. Specific licenses will not be issued authorizing any:

(1) Payment to Cuba or any national thereof for television rights, appearance fees, royalties, pre-performance expenses, or other such payments in connection with or resulting from any public exhibition or performance in the United States or in Cuba; or

(2) Debit to a blocked account.

1. The general license concerning bunkering of Cuban vessels and fueling of Cuban aircraft published on November 10, 1977 and appearing at 42 FR 58518 should be renumbered as follows:

§ 515.562 Bunkering of Cuban vessels and fueling of Cuban aircraft by American-owned or controlled foreign firms.

2. The citation of authorities set forth immediately following the above renumbered section should be corrected to read as follows:

(50 U.S.C. App. 5(b); 22 U.S.C. 2370(a); Executive Order 9193, 31 CFR 1943 Cum. Supp.; Treasury Department Order No. 128, 32 FR 3472.)

Dated: April 25, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-12514 Filed 5-8-78; 8:45 am]

[6820-24]

Title 41—Public Contracts and Property Management

CHAPTER 101—FEDERAL PROPERTY MANAGEMENT REGULATIONS

SUBCHAPTER E—SUPPLY AND PROCUREMENT

[FPMR Amdt. E-220]

PART 101-26—PROCUREMENT SOURCES AND PROGRAMS

Federal Standard Requisitioning and Issue Procedures (FEDSTRIP)

AGENCY: General Services Administration

ACTION: Final rule.

SUMMARY: Subchapter E of the Federal Property Management Regulations contains general and procedural information concerning the Federal Standard Requisitioning and Issue Procedures (FEDSTRIP) system which is provided in the GSA Handbook, FEDSTRIP Operating Guide (FPMR 101-26.2). This amendment takes the necessary action to eliminate duplicate information and to amend the FPMR appropriately.

EFFECTIVE DATE: May 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

The table of contents for Part 101-26 is amended to reserve §§ 101-26.203 and 101-26.205 and to delete §§ 101-26.203-1, 101-26.203-2, 101-26.205-1, and 101-26.205-2 as follows:

Sec.
101-26.203 [Reserved]
101-26.203-1 [Deleted]
101-26.203-2 [Deleted]
101-26.205 [Reserved]
101-26.205-1 [Deleted]
101-26.205-2 [Deleted]

Subpart 101-26.2—Federal Requisitioning System

1. Section 101-26.200 is revised as follows:

§ 101-26.200 Scope of subpart.

This subpart prescribes a uniform requisitioning and issue system for use in obtaining supplies and equipment from GSA, Department of Defense, and Veterans Administration sources.

2. Section 101-26.201 is revised as follows:

§ 101-26.201 General.

This requisitioning and issue system is identified as the Federal Standard

Requisitioning and Issue Procedures (FEDSTRIP) and is similar to and compatible with the Military Standard Requisitioning and Issue Procedures (MILSTRIP). The FEDSTRIP system provides GSA and other supply sources the means to automate the processing of requisitions. Detailed instructions required to implement FEDSTRIP are contained in the GSA Handbook, FEDSTRIP Operating Guide (FPMR 101-26.2), which is issued and maintained by the Commissioner, Federal Supply Service, GSA.

3. Section 101-26.202 is revised as follows:

§ 101-26.202 Applicability.

The FEDSTRIP system shall be used by civilian agencies to requisition any item from GSA or to requisition any specifically authorized item from Department of Defense (DOD). Requisitions to the Veterans Administration (VA) should be submitted on punched cards in FEDSTRIP format or typed on Standard Form 147, Order for Supplies or Services.

4. Section 101-26.203 is reserved and §§ 101-26.203-1 and 101-26.203-2 are deleted as follows:

§ 101-26.203 [Reserved]

§ 101-26.203-1 [Deleted]

§ 101-26.203-2 [Deleted]

5. Section 101-26.205 is reserved and §§ 101-26.205-1 and 101-26.205-2 are deleted as follows:

§ 101-26.205 [Reserved]

§ 101-26.205-1 [Deleted]

§ 101-26.205-2 [Deleted]

6. Section 101-26.206 is revised as folows:

§ 101-26.206 GSA assistance.

The Federal Supply Service at each GSA regional office will advise and assist an agency's field activities with questions concerning FEDSTRIP procedures. Agency headquarters activities requiring assistance may contact General Services Administration (FF), Washington, D.C. 20406.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Dated: April 25, 1978.

JAY SOLOMON,
Administrator of General Services.

[FR Doc. 78-12562 Filed 5-8-78; 8:45 am]

[6325-01]

Title 45—Public Welfare

CHAPTER VIII—UNITED STATES CIVIL SERVICE COMMISSION

PART 801—VOTING RIGHTS PROGRAM

Appendix A: Texas

AGENCY: Voting Rights Office, U.S. Civil Service Commission.

ACTION: Final rule.

SUMMARY: This Notice identifies the location of a new office for the filing of applications or complaints under the Voting Rights Act of 1965 as amended.

EFFECTIVE DATE: May 6, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles Dullea, Coordinator, Voting Rights Program, U.S. Civil Service Commission, Washington, D.C. 20415, telephone 202-632-4604.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Reeves County, Tex., as coming under the provisions of the Voting Rights Act of 1965, as amended.

Appendix A to Part 801 is amended as set out below to show under the heading "Dates, Times, and Places for Filing," an additional place for filing in Texas:

TEXAS

County; place for filing; beginning date.

* * * * *

Reeves; Pecos—U.S. Post Office, U.S. Attorneys Office, Room 301; May 6, 1978.

* * * * *

(Secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973e, 1973g).)

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

[FR Doc. 78-12722 Filed 5-8-78; 8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[Docket No. 21349; FCC 78-294]

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Implementing Changes in the Frequencies, Operating Procedures and Other Criteria Relating to Radio-Telephony in the Band 4000 to 27500 kHz in the Maritime Mobile Services Adopted at the ITU World Maritime Administrative Radio Conference, Geneva, 1974.

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Prohibition of the use of those frequencies between 4000-27500 kHz contained in Parts 81 and 83, which are not in accordance with the International Telecommunications Union (ITU) Allotment Plan. Licensees were permitted to operate on both the old and new frequencies for a transition period. Ample time has now been allowed to procure crystals and make the necessary frequency changes so that United States operations in the maritime mobile service are in accordance with the ITU.

EFFECTIVE DATE: June 1, 1978 (concerning frequencies available for use).

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Nicholas G. Bagnato, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION:

Adopted: April 26, 1978.

Released: May 3, 1978.

Amendment of Parts 81 and 83 to implement changes in frequencies, operating procedures and other criteria relating to radio-telephony in the band 4000 to 27500 kHz in the maritime mobile services adopted at the ITU World Maritime Administrative Radio Conference, Geneva, 1974, Docket No. 21349.[1]

1. A Notice of Inquiry (NOI) in the above entitled matter was released on August 5, 1977, and was published in

[1] See 43 FR 2395, Jan. 17, 1978.

the FEDERAL REGISTER on August 9, 1977 (42 FR 40224). An Order in this matter was released on November 16, 1977, and was published in the FEDERAL REGISTER on November 26, 1977 (42 FR 60145).

2. Several problem areas were raised in the NOI which could not be resolved by following normal administrative procedures and permit implementation of the new Appendix 25 MAR2 frequencies on January 1, 1978, as required by our treaty obligations. Therefore, the Order containing a temporary assignment plan was adopted in order to minimize disruption to the maritime mobile service while the Notice of Proposed Rule Making was pending.

3. The Commission recognized that some licensees would experience some difficulties in converting their equipment by January 1, 1978. These difficulties were delays in procuring of crystals, installation of the crystals and availability of the vessels in ports where the modifications could be effected. Therefore, no date was established in the Order for deleting authorization of the existing frequencies. We believe that ample time has been allowed for procurement and installation of the crystals. We are, therefore, requiring that all HF radiotelephone communications in the maritime mobile service be conducted on the frequencies contained in Appendix 25 MAR2 by June 1, 1978. The frequency assignment plan contained in the Appendix to the Commission Order, released November 16, 1977, is in accordance with the Appendix 25 MAR2. Therefore, the frequencies between 4000 and 27500 kHz listed in the following rule sections, will not be used after June 1, 1978.

Sections 81.306(a), 81.306(b), 81.306(c), 81.308, 83.351, 83.354(b), 83.354(c), 83.355, and 83.372(a) Table 2.

4. It is imperative that United States stations become operational on the Appendix 25 MAR2 frequencies as soon as possible, in order to eliminate interference to stations of other Administrations operating in accordance with the ITU Allotment Plan and to make communications possible with foreign stations which only accept traffic on the new frequencies.

5. In order to expedite conversion to the ITU frequency plan, this Second Order will be limited to the deletion of the existing radiotelephone frequencies from the rules. A Notice of Proposed Rule Making will be issued soon which will address problems of classes of stations, utilization of frequencies, permanent assignment of frequencies and other matters.

6. In view of the foregoing: *It is ordered,* That, pursuant to the authority contained in Sections 4(i), and 303 (c) and (r) of the Communications Act of 1934, as amended, the frequencies between 4000-27500 kHz listed in the rule sections set forth in paragraph 3 above are not available for use, effective June 1, 1978.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-12543 Filed 5-8-78; 8:45 am]

[6712-01]

[FCC 78-269]

PART 97—AMATEUR RADIO SERVICE

Increase in the Frequencies Available for Use by General Class Amateur Radio Operators

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: The FCC is amending its amateur radio rules to permit General Class operators to operate their stations between 50.0 MHz and 50.1 MHz. We are taking this action in order to give General Class operators the same privileges as Technician Class operators in the very high and ultra high frequency bands.

EFFECTIVE DATE: May 15, 1978.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mr. Gregory M. Jones, Personal Radio Division, 202-634-6619 (Not a toll-free telephone number).

SUPPLEMENTARY INFORMATION:

ADOPTED: April 20, 1978.

RELEASED: May 3, 1978.

Order. In the matter of increase in the frequencies available for use by General Class amateur radio operators.

1. This Order makes all authorized amateur operating privileges available to General Class amateur radio operators between 50.0 MHz and 50.1 MHz.

2. On March 22, 1978 the Commission adopted a Second Report and Order in Docket 20282. The Second Report and Order (1) Made the Novice Class amateur operator license valid for a period of five years and renewable[1] and (2) extended full amateur operating privileges to Technician Class amateur operators above 50.0 MHz. The new rule amendments were given an effective date of May 15, 1978.

3. It has come to our attention that in making 50.0 MHz to 50.1 MHz available to Technician Class licensees, we may have acted unfairly towards General Class licensees, who are prohibited from operating their amateur stations between 50.0 MHz and 50.1 MHz.[2] Since the General Class license is more difficult to obtain than the Technician Class license, it does not appear reasonable to afford Technician Class licensees greater operating privileges than General Class licensees. Indeed, one of the principles upon which the current amateur licensing system is based is that each successively "higher" amateur operator license conveys all operating privileges of all "lower" class operator licenses. The Rules as amended by the Second Report and Order in Docket 20282, are anomalous: a licensee "upgrading" the class of his operator license from Technician to General would lose the privilege of operating between 50.0 MHz and 50.1 MHz.

4. We believe General Class licensees should have all privileges afforded Technician Class licensees. Accordingly, we are amending Section 97.7 of the rules to make 50.0 MHz to 50.1 MHz available to General Class licensees.

5. Authority for this action, which we believe to be in the public interest, is contained in sections 4(i) and 303 of the Communications Act of 1934, as amended. Because the amendment we are adopting is minor in character, merely increasing slightly the frequencies available for the use of General Class amateur radio operators, we find, for good cause, that the prior notice and public procedure provisions of the Administrative Procedures Act, 5 U.S.C. 553, are unnecessary.

6. For the foregoing reasons, the Commission orders amendment of Part 97 of its rules, as such attached below effective May 15, 1978.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

The FCC is amending Part 97 of Chapter 1 of Title 47 of the Code of Federal Regulations, as follows:

1. Section 97.7(a) is amended to read, as follows:

§ 97.7 Privileges of operator licenses.

(a) *Amateur Extra Class and Advanced Class.* All authorized amateur privileges including exclusive frequency operating authority in accordance with the following table:

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[1]The Novice Class operator license had been valid for a period of two years and was not renewable.

[2]Section 97.7(a) of the Commission's Rules limits operation between 50.0 MHz and 50.1 MHz to Amateur Extra Class and Advanced Class operators.

Frequencies	Class of license authorized
3500-3525 kHz	Amateur extra only.
3775-3800 kHz	Do.
7000-7025	Do.
14,000-14,025 kHz	Do.
21,000-21,025 kHz	Do.
21,250-21,270 kHz	Do.
3800-3830 kHz	Do.
7150-7225 kHz	Amateur extra and advanced.
14,200-14,275 kHz	Do.
21,270-21,350 kHz	Do.

* * * * * *

[FR Doc. 78-12575 Filed 5-8-78; 8:45 am]

proposed rules

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

[3410-05]

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

[7 CFR Part 724]

CIGAR-BINDER TOBACCO

Termination of Marketing Quotas on Cigar-Binder (Types 51 and 52) Tobacco for the 1978-79 Marketing Year

AGENCY: Agricultural Stabilization and Conservation Service.

ACTION: Proposed rule.

SUMMARY: The Secretary of Agriculture is investigating whether the operation of marketing quotas for cigar-binder tobacco will cause this kind of tobacco to be in short supply for the 1978-79 marketing year. Presently, the total supply of cigar-binder is below the normal supply which was determined February 1, 1978. Interested persons are invited to submit written comments, views and recommendations concerning the possible suspension of marketing quotas for cigar-binder (types 51 and 52) tobacco for the 1978-79 marketing year. Also, requests for a hearing will be granted if timely submitted.

DATES: Written comments and requests for a hearing must be received by June 8, 1978 in order to be sure of consideration.

ADDRESSES: Send comments and hearing requests to the Acting Director, Price Support and Loan Division, ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT:

Robert L. Tarczy, 202-447-6695.

SUPPLEMENTARY INFORMATION: Pursuant to and in accordance with Section 371(a) of the Agricultural Adjustment Act of 1938, as amended (referred to hereinafter as the "Act"), an investigation is being made to determine whether the operation of farm marketing quotas in effect on cigar-binder (types 51 and 52) tobacco for the 1978-79 marketing year will cause the amount of such kind of tobacco which will be free of marketing restrictions to be less than the normal supply for such kind of tobacco for such marketing year.

If upon the basis of such investigation the Secretary finds the existence of such fact, he will proclaim the same and specify such increase in, or termination of, existing quotas as he finds, on the basis of such investigation, is necessary to make the amount of such kind of tobacco which will be free of marketing restrictions for the 1978-79 marketing year equal to the normal supply.

Marketing quotas were proclaimed for cigar-binder (types 51 and 52) tobacco for the 1978-79, 1979-80 and 1980-81 marketing years (43 FR 4966). Farmers approved marketing quotas for such 3 marketing years (43 FR 11610).

Under present legislation the termination of marketing quotas for any marketing year would be limited in application and effect to that year only.

Under Sections 101 and 106 of the Agricultural Act of 1949, as amended, price support will be made available on the 1978 crop of cigar-binder (types 51 and 52) tobacco even if marketing quotas are terminated because producers did not disapprove marketing quotas for such tobacco.

Data shows that total disappearance (domestic use plus exports) of cigar-binder (types 51 and 52) tobacco has decreased from 26 million pounds during the 1955-56 marketing year, prior to the advent of reconstituted binder sheet, to 2.3 million pounds during the 1976-77 marketing year. Disappearance is expected to increase only slightly to 2.4 million pounds during the 1977-78 marketing year. This has necessitated drastic adjustments in production. Producers used the Soil Bank and the Cropland Adjustment Programs extensively in making these adjustments. In addition, the allotted acreage has been reduced from 16,643 acres in the 1955-56 marketing year to about 4,813 acres in 1978.

Total disappearance (domestic use plus exports) has exceeded production in 18 of the 22 years from 1955 to 1976. This has caused stocks of this kind of tobacco to decline from 62.2 million pounds on October 1, 1955, to 4.3 million pounds at the beginning of the current marketing year (October 1, 1977).

With production during the 1977-78 year estimated at 2.6 million pounds, the total supply of cigar-binder tobacco is 6.9 million pounds. Normal supply as determined under the provisions of section 301 of the Act for the 1978-79 marketing year for cigar-binder tobacco is 10.7 million pounds. Thus, the total supply of cigar-binder is below normal.

Quotas for cigar-binder tobacco have been annually terminated since the 1970 marketing year began.

Section 371(a) of the Act provides that in the course of the investigation conducted by the Secretary, due notice and opportunity for hearing shall be given to interested persons.

PROPOSED RULE

It is proposed that an investigation be conducted to determine whether the operation of marketing quotas for cigar-binder tobacco will cause this kind of tobacco to be in short supply for the 1978-79 marketing year. It is proposed further that interested persons be invited to submit written comments, views and recommendations or request a hearing concerning the possible suspension of marketing quotas for cigar-binder (types 51 and 52) tobacco for the 1978-79 marketing year.

Prior to making any determination, the Department will consider comments, views and recommendations submitted in writing to the Acting Director, Price Support and Loan Division.

Agricultural Stabilization and Conservation Service has determined that this document contains a major proposal requiring preparation of an Inflation Impact Statement. Under Executive Order 11821 and OMB Circular A-107, and certifies that an Economic Impact Statement has been prepared.

Signed at Washington, D.C. on May 4, 1978.

STEWART N. SMITH,
Acting Administrator Agricultural Stabilization and Conservation Service.

[FR Doc. 78-12700 Filed 5-8-78; 8:45 am]

[3410-15]

Rural Electrification Administration

[7 CFR Part 1701]

RURAL ELECTRIC PROGRAM

AC Transmission Line Clearances

AGENCY: Rural Electrification Administration.

ACTION: Proposed revisions of vertical clearances for REA AC transmission line designs.

SUMMARY: The Rural Electrification Administration proposes to issue a

File-With to REA Bulletin 62-1 which revises the vertical clearances of REA ac transmission line designs and the conditions under which they apply. The revision is necessary to reflect changes in the 1977 edition of the National Electrical Safety Code which has already been adopted by the Rural Electrification Administration. This action updates the transmission line clearance section of Bulletin 62-1, thereby making the publication more responsive and useful.

DATE: Public comments must be received by REA no later than June 8, 1978.

ADDRESS: Interested persons may obtain copies of the File-With from Mr. Rowland C. Hand, Sr., Director, Power Supply and Engineering Standards Division, Rural Electrification Administration, Room 3304, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-4413. All data, views, or comments should also be directed to Mr. Hand. All written submissions made pursuant to this notice will be made available for public inspection in the Office of the Director, Power Supply and Engineering Standards Division, during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. Rowland C. Hand, Sr., 202-447-4413.

Dated: May 1, 1978.

THOMAS R. MCDONALD,
Acting Assistant Administrator, Electric.

[FR Doc. 78-12416 Filed 5-8-78; 8:45 am]

[3410-15]

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Proposed Revision of REA Bulletin 384-3 to Announce Issuance of Proposed Addendum No. 1 to REA Form 525, Central Office Equipment Contract

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletin 384-3 to announce the issuance of Addendum No. 1 to REA Form 525, Central Office Equipment Contract (Including Installation), to include a provision for liquidated damages. This action is being taken for reasons of providing improved protection to REA telephone borrowers against damages resulting from the failure of a Bidder to complete the installation of equipment on time as scheduled. The effect of this action will be to achieve more timely response to promised delivery and installation completion dates. On issuance of REA Bulletin 384-3, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than June 8, 1978.

ADDRESS: Persons interested in the proposed Addendum No. 1 to REA Form 525 may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. M. Wilson Magruder, Engineering Management and Standards Engineer, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-4561.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue REA Bulletin 384-3. A copy of the proposed revision of REA Bulletin 384-3 and the proposed Addendum to REA Form 525 may be secured in person or by written request from the Director, Telephone Operations and Standards Division.

Dated: May 2, 1978.

C. R. BALLARD,
Assistant Administrator.

[FR Doc. 78-12479 Filed 5-8-78; 8:45 am]

[3410-15]

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAMS

Proposed Revision of REA Bulletin 385-4 to Announce Issuance of Proposed Addendum No. 1 to REA Form 397, Special Equipment Contract

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletin 385-4 to announce the issuance of Addendum No. 1 to REA Form 397, Special Equipment Contract (Including Installation), to include a provision for liquidated damages. This action is being taken for reasons of providing improved protection to REA telephone borrowers against damages resulting from the failure of a Bidder to complete the installation of equipment on time as scheduled. The effect of this action will be to achieve more timely response to promised delivery and installation completion dates. On issuance of REA Bulletin 385-4, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than June 8, 1978.

ADDRESS: Persons interested in the proposed Addendum No. 1 to REA Form 397 may submit written data, views or comments to the Director, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Telephone Operations and Standards Division during regular business hours.

FOR FURTHER INFORMATION CONTACT:

Mr. M. Wilson Magruder, Engineering Management and Standards Engineer, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1355, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-4561.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.), REA proposes to issue REA Bulletin 385-4. A copy of the proposed revision of REA Bulletin 385-4 and the proposed Addendum to REA Form 397 may be secured in person or by written request from the Director, Telephone Operations and Standards Division.

Dated: May 2, 1978.

C. R. BALLARD,
Assistant Administrator.

[FR Doc. 78-12480 Filed 5-8-78; 8:45 am]

[3410-37]

Food Safety and Quality Service

[7 CFR Part 2851]

UNITED STATES STANDARDS FOR GRADES OF GLADIOLUS CORMS (BULBS)

Revised Study Draft

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Fruit and Vegetable Quality Division of the Food Safety and Quality Service, U.S. Department

of Agriculture has revised study drafts available for review and comments in its consideration of proposed U.S. Standards for Grades of Gladiolus Corms (Bulbs).

DATE: Comments must be received by November 30, 1978.

ADDRESS: Send requests for study drafts and comments to: Michael A. Castille, Chief, Fresh Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Same as under ADDRESS.

SUPPLEMENTARY INFORMATION: The preliminary study draft to consider the issuance of grades of gladiolus corms was developed in 1975 at the request of the Standards Committee of the North American Gladiolus Council (NAGC) to provide guidelines for grading, sizing and preparation for market of gladiolus corms; to provide a basis for international trading using common language; and a basis for uniformly advertising graded products. There were only three comments submitted, each recommending further revisions.

In the developing of these revised draft standards, the Department conferred with members of the NAGC Standards Committee to obtain expert advise. The gladiolus industry has for many years used the grading procedures and terms defined in the study draft except for the circumference measurement using the metric system. This is a world-wide trading practice and meets guidelines set forth in Pub. L. 94-168, the Metric Conversion Act of 1975, signed by the President December 23, 1975.

The Standards would be implemented on a voluntary basis and a charge made for the Department's Services.

This advance notice of proposed rulemaking is issued under the authority of the Agricultural Marketing Act of 1946 (60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622-1624).

Done at Washington, D.C., this 17th day of April 1978.

JOSEPH A. POWERS,
Acting administrator.

[FR Doc. 78-12483 Filed 5-8-78; 8:45 am]

[3410-37]

[9 CFR Parts 318 and 381]

SUBSTANCES FOR USE IN MEAT AND POULTRY PRODUCTS

Notice of Proposed Rulemaking

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the Federal meat and poultry inspection regulations to permit the use of TBHQ (tertiary butylhydroquinone) as an antioxidant in the preparation of certain meat food products and various poultry food products. Official establishments have requested that the Administrator approve this substance for use, because it is not on the list of approved substances in the Federal meat and poultry inspection regulations. This substance is now generally recognized as safe (GRAS) for use in other foods by the Food and Drug Administration. The Administrator has examined the basis for the Food and Drug Administration's approval of TBHQ and has found it to be suitable for use in meat and poultry food products and found that it will not cause the products to be adulterated within the meaning of section 601(m) of the Meat Inspection Act (21 U.S.C. 601(m)) and section 453(g) of the Poultry Products Inspection Act (21 U.S.C. 453(g)).

DATE: Comments must be received on or before July 8, 1978.

ADDRESSES: Written comments to: Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Agriculture Building, Washington, D.C. 20250. Oral comments on poultry regulations to: Mr. Irwin Fried, 202-447-6042.

FOR ADDITIONAL INFORMATION ON COMMENTS, SEE SUPPLEMENTARY INFORMATION.

FOR FURTHER INFORMATION CONTACT:

Mr. Irwin Fried, Acting Director, Product Labels and Standards Staff, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-6042.

SUPPLEMENTARY INFORMATION: Interested persons are invited to submit comments concerning this proposal. Written comments must be sent in duplicate to the Hearing Clerk. Comments should bear a reference to the date and page number of this issue of the FEDERAL REGISTER. Any person desiring opportunity for oral presentation of views concerning the proposed amendment to the poultry products inspection regulations must make such request to Mr. Fried so that arrangements may be made for such views to be presented. A transcript shall be made of all views orally presented. All comments submitted pursuant to this notice will be made available for public inspection in the Office of the Hearing Clerk during regular hours of business.

BACKGROUND

TBHQ (TERTIARY BUTYLHYDROQUINONE)

The Administrator has been requested to approve TBHQ (tertiary butylhydroquinone) as an approved substance for use in official establishments which prepare meat food products under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*) and poultry food products under the Federal Poultry Products Inspection Act (21 U.S.C. 451 *et seq.*). At the present time Section 318.7 of the Federal meat inspection regulations (9 CFR 318.7) and Section 381.147 of the Federal poultry products inspection regulations (9 CFR 381.147) list those ingredients which can be used in official establishments in the preparation of meat and poultry food products.

TBHQ is currently used as an antioxidant in food products under Section 172.185 of the federal food and drug regulations under three conditions. First, the TBHQ must have a melting point of 126.5° C-128.5° C. Second, the TBHQ must be used as an antioxidant alone or in combination with BHA and/or BHT. Third, the total antioxidant content (either TBHQ alone or in combination with BHA and/or BHT) of a food cannot exceed 0.02 percent of the oil or fat content of the food, including the essential (volatile) oil content of the food.

The Administrator has examined the basis of the Food and Drug Administration's approval of the use of TBHQ and has determined that TBHQ is suitable for use as an antioxidant to retard rancidity in the preparation of certain meat food and poultry food products. In addition, the Administrator has determined that the use of TBHQ will not cause those

meat food and poultry food products to be adulterated within the meaning of Section 601(m) of the Federal Meat Inspection Act (21 U.S.C. 601(m)) and Section 453(g) of the Federal Poultry Products Inspection Act (21 U.S.C. 453(g)). However, the Administrator has determined, after reviewing the basis for the Food and Drug Administration's approval, that the amount of TBHQ used should be limited to smaller percentages in certain meat and poultry food products. The Administrator has determined that larger amounts of TBHQ in meat and poultry food products are not necessary in order to achieve the desired approved purpose for the use of the TBHQ.

The proposed amendment contained herein would permit the use of TBHQ under certain prescribed conditions in the preparation of certain meat food products and certain poultry food products.

Therefore, the Federal meat inspection regulations would be amended as follows:

§ 318.7 [Amended]

In § 318.7(c)(4), in that portion of the chart dealing with the "Class of substance," "Antioxidants and oxygen interceptors," the following information is added to the approrpiate columns in alphabetical order and the revised table is as shown:

Class of substance	Substance	Purpose	Products	Amount	
Antioxidants and oxygen interceptors.	BHA (butylated hydroxyanisole)	To retard rancidity.	Dry sausage	0.003 pct based on total weight	0.006 pct in combination.
	BHT (butylated hydroxytolune)	do	do	do	Do.
	Propyl	do	do	do	Do.
	TBHQ (tertiary butylhydroquinone)	do	do	do	Do.
	BHA (butylated hydroxyanisole)	do	Rendered animal fat or a combination of such fat and vegetable fat.	0.01 pct	Do.
	BTH (butylated hydroxytoluene)	do	do	do	0.02 pct in combination.
	Glycine	do	do	do	Do.
	Propyl gallate	do	do	do	Do.
	TBHQ (tertiary butylhydroquinone)	do	do	do	Do.
	Tocopherols	do	do	0.03 pct. A 30 pct concentration of tocopherols in vegetable oils shall be used when added as an antioxidant to products designated as lard or rendered pork fat.	
	BHA (butylated hydroxyanisole)	do	Fresh pork sausage, precooked uncured sausages, Italian sausage products, pregrilled beef patties, and fresh sausage made from beef or beef and pork.	0.01 pct based on fat content	0.02 pct combination based on fat content.
	BHT (butylated hydroxytolune)	do	do	do	Do.
	Propyl gallate	do	do	do	Do.
	TBHQ (tertiary butylhydroquinone)	do	do	do	Do.
	BHA (butylated hydroxyanisole)	do	Dried meats	0.01pct based on total weight	0.1 pct in combination.
	BHT (butylated hydroxytolune)	do	do	do	Do.
	Propyl gallate	do	do	do	Do.
	TBHQ (tertiary butylhydroquinone)	do	do	do	Do.

Further, the Federal poultry products inspection regulations would be amended as follows:

§381.147 [Amended]

Section 381.147(f)(3), in that portion of the chart dealing with the "Class of substance," "Antioxidants and oxygen interceptors," the following information would be added in the appropriate columns in alphabetical order:

Class of substance	Substance	Purpose	Products	Amount	
Antioxidants and oxygen interceptors.	BHA (butylated hydroxyanisole)	To retard rancidity.	Various	0.01 pct based on fat content	0.02 pct combination based on fat content.
	BHT (butylated hydroxytoluene)	do	do	do	Do.
	Propyl gallate	do	do	do	Do.
	TBHQ (tertiary butylhydroquinone)	do	do	do	Do.
	Tocopherols	do	do	0.03 pct based on fat content	0.02 pct combination with any other antioxidant based on fat content.

NOTE.—The Food Safety and Quality 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 April 27, 1978.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc. 78-12481 Filed 5-8-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[10 CFR Parts 50 and 70]

LICENSING OF PRODUCTION AND UTILIZATION FACILITIES SPECIAL NUCLEAR MATERIAL

Facilities and Access for Resident Inspection

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is proposing to amend its regulations to require power reactor licensees and construction permit holders and selected fuel facility licensees to provide: (1) on-site rent free, exclusive use office space, and (2) prompt licensee facility access to Commission inspection personnel. The proposed rule is needed in order to implement a resident inspection program which the Commission intends to initiate in early 1978. Initially the Commission will place resident inspectors on-site at selected nuclear power reactor construction sites and at selected power reactor sites in test and routine operations to observe and review licensee construction, operations, radiological safety, safeguards, and environmental protection activities. Eventually the Commission expects to place full time resident inspectors at all operating power reactors, at power reactors in latter stage of construction and at selected fuel cycle facilities where nuclear reactor fuel is fabricated or processed.

DATE: Comment period expires June 23, 1978.

ADDRESS: Written comments or suggestions for consideration in connection with the proposed amendments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT:

Mr. Edward L. Jordan, Executive Officer for Operations Support, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, phone 301-492-8487.

SUPPLEMENTARY INFORMATION: In early 1978, the Commission will initiate an on-site resident inspection program. Pursuant to section 161(o) of the Atomic Energy Act of 1954, as amended, the Commission intends to place NRC resident inspectors on-site at selected nuclear power reactor construction sites and at selected power reactor sites in test and in routine operation. Eventually the Commission expects to place full time resident inspectors at all operating power reactors, at power reactors in latter stage of construction and at selected fuel cycle facilities where nuclear reactor fuel is fabricated or processed. The resident inspector will observe and review licensee operations, construction, safety, safeguards, and environmental protection activities to determine whether they are adequate, conducted properly, and at the required frequency. Other regionally or headquarters based NRC personnel will continue to provide technical support and management review as required for the inspection program.

In order to facilitate the performance of the resident inspection program it is necessary that office space be provided to selected Commission personnel. The proposed regulation requires, among other things, that the licensee provide on-site, rent free, exclusive office space upon the request of the Director, Office of Inspection and Enforcement. This requirement is not unique in that other Federal departments and agencies have continuous inspection programs that require those subject to their regulations to furnish appropriate facilities to the inspectors.

The minimum specified space will accommodate a full time inspector, a part time secretary, and transient NRC personnel. For sites with more than one power reactor unit or fuel facility it may be necessary to assign more than one resident inspector. If additional resident inspectors are assigned to a site, additional space will be requested. The additional space required for each additional inspector will not exceed the minimum space dimensions provided for the initial inspector.

In order to assure that the resident inspector or regionally based inspectors are afforded the opportunity to conduct unfettered reviews of work in progress it is necessary and the proposed regulation requires, that properly identified inspectors be provided immediate access to the facility (the same as licensee employees). The inspectors afforded such access will be required to complete that site-specific radiological safety and security training necessary for their safety and will conform to all facility safety and security requirements.

A briefing on site specific radiological protection practices, security and emergency response actions is appropriate and sufficient for unescorted access to other than vital areas, radiation areas, and areas contaminated with radioactive material, for those NRC personnel who infrequently visit a site.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and section 553 of title 5 of the United States Code, notice is hereby given that adoption of the following additions to 10 CFR parts 50 and 70 are contemplated. All interested persons who desire to submit written comments or suggestions for consideration in connection with the proposed regulation should send them to the Secretary of the Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments on the proposed rule may be examined at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Sections 50.70 and 70.55 are amended as follows:

1. In § 50.70 of 10 CFR part 50, an "(a)" is added preceding the present paragraph and paragraph (b) is added as follows:

§ 50.70 Inspections.

* * * * *

(b) (1) Each licensee and each holder of a construction permit shall upon request by the Director, Office of Inspection and Enforcement, provide rent free office space including heat, air conditioning, light, electrical outlets, and janitorial service for the exclusive use of Commission inspection personnel. The office shall be convenient to and have full access to the facility and shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single power reactor or fuel facility licensed pursuant to this section, the space provided shall (i) be within that site's office complex and be a minimum of 250 square feet; or (ii) be an office trailer or module or equivalent located separate from that site's office complex but on-site and be a minimum of 300 square feet. If (ii) above is chosen, then in addtion to the above required

utilities, such space shall be equipped with sanitary facilities and any necessary emergency alarms. For sites containing more than one power reactor unit or fuel facility, any additional space required shall be specified in the request for space and for each additional inspector required, shall not exceed the minimum space dimensions provided for the initial inspector. The office space that is provided shall be subject to the approval of the Director, Office of Inspection and Enforcement. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) The licensee or permittee shall afford any NRC resident inspector or other NRC inspectors identified by the Regional Director as likely to inspect the facility, immediate access following proper identification and compliance with applicable access control measures. Access may be limited only to the extent required for the inspector's safety.

2. In § 70.55 of 10 CFR part 70, paragraph (c) is added as follows:

§ 70.55 Inspections.

* * * * *

(c) (1) In the case of fuel cycle facilities where nuclear reactor fuel is fabricated or processed each licensee shall upon request by the Director, Office of Inspection and Enforcement, provide rent free office space including heat, air conditioning, light, electrical outlets, and janitorial service for the exclusive use of Commission inspection personnel. The office shall be convenient to and have full access to the facility and, shall provide the inspector both visual and acoustic privacy.

(2) For a site with a single fuel facility, the space provided shall (i) be within that site's office complex and be a minimum of 250 square feet; or (ii) be an office trailer or module or equivalent located separate from that site's office complex but on-site and be a minimum of 300 square feet. If (ii) above is chosen, then in addition to the above required utilities, such space shall be equipped with sanitary facilities and any necessary emergency alarms. For sites containing more than one fuel facility, any additional space required shall be specified in the request for space and for each additional inspector required shall not exceed the minimum space dimensions provided for the initial inspector. The office space that is provided shall be subject to the approval of the Director, Office of Inspection and Enforcement. All furniture, supplies, and communication equipment will be furnished by the Commission.

(3) The licensee or permittee shall afford any NRC resident inspector or other NRC inspectors identified by the Regional Director as likely to inspect the facility, immediate access following proper identification and compliance with applicable access control measures. Access may be limited only to the extent required for the inspectors safely.

(Sec. 161, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201), sec. 201, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 5841).)

Dated at Washington, D.C., this 3d day of May 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-12614 Filed 5-8-78; 8:45 am]

[7590-01]

[10 CFR Part 110]

EXPORT OF CERTAIN MINOR QUANTITIES OF NUCLEAR MATERIAL

Proposed Licensing Provisions

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission is considering amending its regulations concerning the export of certain minor quantities of nuclear material which do not have significance from a nuclear proliferation perspective. The proposed amendments would establish or expand general and specific licensing provisions for the export of (a) gram quantities of special nuclear material (SNM), (b) certain classes of source material, and (c) certain classes of byproduct material. Existing general licenses for the byproduct material polonium-210 and americium-241 would be revoked or restricted. The proposed amendments are the result of extensive review of existing criteria and procedures to update the regulations to permit the expedited export of such materials without imposing any national security risk.

DATE: Comment period expires June 23, 1978.

ADDRESSES: Written comments should be addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT:

Marvin R. Peterson, Office of International Programs, U.S. Nuclear regulatory Commission, Washington, D.C. 20555, telephone 301-492-8155.

SUPPLEMENTARY INFORMATION: In recent months, the Nuclear Regulatory Commission has been giving particular attention to the development of improved criteria and regulations for the export of nuclear facilities and material. On February 17, 1978 the Commission issued new 10 CFR Part 110, which consolidates ts export and import licensing regulations into one part of the Commission's regulations (43 FR 691T).

As a related matter, the Commission, in coordination with the Executive Branch, has undertaken an extensive review of existing criteria and procedures for the export of certain minor quantities of nuclear material with the aim of updating and streamlining the regulations to permit the expedited export of such material without imposing any national security risk. This review has resulted in proposed revisions which will not, in our judgment, be inimical to the common defense and security, constitute an unreasonable risk to the public health and safety, or result in any activity that effects the environment. Furthermore, the proposals will not conflict with the safeguards criteria of the International Atomic Energy Agency (IAEA) and have the benefit of conforming U.S. export control requirements to a greater degree with international control requirements with respect to exports to communist countries.

The proposed changes will also have a beneficial impact on the administration of the nuclear export program. The most significant proposal would eliminate the requirement that exports of minor quantities of SNM always be pursuant to an agreement for cooperation. This change would not only remove one of the major reasons for administrative delays in export license processing, but also conform U.S. export licensing requirements with international export criteria. The proposed new or expanded general licenses for SNM, source and byproduct material would have similar benefits. A significant number of NRC's export applications would be subject to expedited licensing treatment or eliminated entirely if the proposed revisions were adopted. Such a workload reduction would enable NRC and the Executive Branch agencies reviewing proposed exports to devote additional time to reviewing major export applications.

DISCUSSION OF PROPOSED REGULATIONS

Special Nuclear Material. A new general license would be established permitting the export of up to 3 grams of SNM when contained in sensing components installed in instruments, or plutonium-238 when contained in heart pacemakers.

In addition, the export under a specific license of plutonium-238 and up to 3 grams of any other SNM would be authorized without a requirement that the export be subject to the terms of an agreement for cooperation with another nation.

The new SNM general license would not pose any significant national security risk, since (1) the SNM would be required to be contained in instruments which, excepting heart pacemakers, would remain under separate Commerce Department specific licensing requirements and (2) extracting significant quantities of SNM from the containing instruments would be prohibitively expensive, practically very difficult, and therefore highly unlikely.

The relaxed requirements for specific licenses involving small amounts of SNM would expedite licensing action while retaining the opportunity for case-by-case review. Case-by-case review is necessary because of the concern over certain sensitive end-uses for such material.

The proposed changes are consistent with the provisions of section 54b. of the Atomic Energy Act as promulgated by Pub. L. 93-377 in 1974 (88 Stat. 475, 42 U.S.C. 2077). As the legislative history of Pub. L. 93-377 states, a large percentage of the Commission's SNM export licenses involve less than 3 grams of material intended for a wide variety of peaceful nuclear end-uses. Such end-uses are expected to increase and section 54b. was enacted specifically to authorize the export of these minor quantities of SNM under other than an agreement for cooperation where such exports would not be inconsistent with the international obligations of the U.S.

Source Material: Source material general license would be revised slightly to (1) conform to the metric system (3 pound limit changed to 1 kilogram) and (2) eliminate, where possible, the more restrictive application of general licenses with respect to exports to communist countries.

Byproduct Material: Because of the national security concern over the possible use of americium-241 and polonium-210 as neutron sources, the existing general licenses for these materials would be revoked. It is recognized that there are a broad range of commercial applications for americium-241 and polonium-210 neutron sources and for americium-241 in general, and the Commission will consider possible revisions of the general licenses to limit the export of these byproduct materials to these forms having no utility for nuclear explosive-related applications. The public is encouraged to comment on the impact of the proposed revocations and to suggest possible revisions of the general license.

The existing general license for byproduct material with an atomic number between 3 and 83 would be broadened to encompass exports to most communist countries. These materials have essentially no national security significance, a view shared by the Executive Branch. By broadening the 3-83 byproduct general license, the existing licensing exemptions for commodities containing byproduct material may be eliminated, since these exemptions would no longer be needed to permit exports to those communist countries not allowed to receive exports under the existing 3-83 byproduct general license. Elimination of the byproduct material exemption would also preclude the export of exempted material to countries to which the United States has a comprehensive trade embargo (Cuba, Vietnam, Cambodia, North Korea, and Southern Rhodesia).

Finally, the cumulative limits on the export under general license of certain forms of tritium and polonium-210 would be eliminated. In addition to the difficulties in administering this provision, the limits are unnecessary in view of the strictly limited forms permitted to be exported and the restriction to 100 curies per shipment.

With respect to the impacts of the proposed amendments on the public health and safety of citizens of the United States, the impacts of U.S. nuclear power export activities were examined in the Final Environmental Statement: U.S. Nuclear Power Export Activities (ERDA-1542, April 1976).

That Statement concluded that the impact on U.S. public health and safety of U.S. nuclear power exports is negligible. The Commission does not foresee circumstances in which the export of material covered by the proposed amendments would affect the health and safety of the U.S. population.

The proposed amendments simplify present practices and procedures of the Commission. The promulgation of these amendments would not result in any activity that affects the environment. Accordingly, the Commission has determined under the National Environmental Policy Act of 1969, the Council of Environmental Quality Guidelines and the criteria of 10 CFR Part 51.5(d)(3), that neither an environmental impact statement nor an environmental impact appraisal to support a negative declaration for the proposed amendments is required.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 533 of Title 5 of the United States Code, notice is hereby given that adoption of the following amendments to 10 CFR Part 110 is contemplated.

1. Sections 110.21 and 110.22 are revised as follows:

§ 110.21 Export of byproduct material.

General licenses are hereby issued authorizing any person to export to any country, except those listed in § 110.25, the following:

(a) Byproduct material with an atomic number from 3 to 83.

(b) Tritium and polonium-210 in individual shipments of 100 curies or less, provided it is contained in:

(1) Tritium activated luminous paint;

(2) Tritium labeled organic compounds;

(3) Tritiated accelerator targets;

(4) Polonium-210 static eliminators;

(5) Calibration standards;

(6) Luminescent light sources;

(7) Tritium sources for chromatography instuments;

(8) Electron tubes;

(9) Gas and aerosol detectors; or

(10) Tritium in helium-3 in a concentration of 2.5 millicuries or less per liter of helium-3.

§ 110.22 Export of source material.

(a) General licenses are hereby issued authorizing any person to export to any country, except those listed in § 110.25, the following:

(1) 1 kilogram or less of source material in individual shipments, provided that no more than 100 kilograms per year may be exported by any person to a single country;

(2) Thorium in incandescent gas mantles; and

(3) Depleted uranium in the form of shielding contained in radiographic exposure or teletherapy devices, or radioactive thermoelectric generators, provided individual shipments do not exceed 1,000 kilograms.

(b) General licenses are hereby issued authorizing any person to export to any country, except those listed in §§ 110.24 and 110.25, the following:

(1) Depleted uranium in the form of counterweights installed in aircraft, rockets, projectiles, or missiles, provided the counterweights have been manufactured under a specific Commission license;

(2) Thorium in finished aircraft engine parts, provided the thorium is (i) dispersed, in concentrations of 4 percent or less by weight, in nickel-thoria alloy and (ii) in the form of finely divided thoria (thorium dioxide); and

(3) Depleted uranium in the form of shielding contained in X-ray units or packaging for the transportation of radioactive materials.

2. Section 110.23, formerly reserved, is added as follows:

In the title of § 110.23 the word ("reserved") is deleted and the following paragraph is added:

§ 110.23 Export of special nuclear material.

A general license is hereby issued authorizing any person to export to any country, except those listed in § 110.25, up to 3 grams of special nuclear material, when contained in sensing components installed in instruments, or plutonium containing 80 percent or more

by weight of plutonium-238 when contained in heart pacemakers.

3. Section 110.25 is redesignated § 110.27.

4. A new § 110.25 is added as follows:

§ 110.25 Schedule B.

(a) Cambodia.
(b) Cuba.
(c) North Korea.
(d) Southern Rhodesia.
(e) Viet Nam.

5. A new § 110.26 is added as follows:

§ 110.26 Reporting requirements.

Each person exporting tritium or source material, pursuant to § 110.21 (b)(1) and (b)(2) and § 110.22 (a)(1) and (a)(3), shall submit 1 copy of each Shippers' Export Declaration covering such exports to the Assistant Director for Export/Import and International Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

6. Section 110.42 is amended by revising paragraph (a)(2) as follows:

§ 110.42 Standards and procedures for issuing a license.

(a) * * *

(2) That the proposed export of a utilization facility or of special nuclear material would be under the terms of an agreement for cooperation, except for proposed exports of:

(i) Plutonium containing 80 percent or more by weight of plutonium-238 and 3 grams or less of other special nuclear material; and

(ii) 100 grams or less of special nuclear material which is diluted so that it is no longer usable for any nuclear activity relevant from the point of view of safeguards and is practicably irrecoverable.

* * * * *

(Sec. 57, as amended, Pub. L. 93-377, 88 Stat. 475 (42 U.S.C. 2077); sec. 161, as amended, Pub. L. 83-703, 68 Stat. 948 (42 U.S.C. 2201); sec. 201, as amended, Pub. L. 93-438, 88 Stat. 1243 (42 U.S.C. 5841).)

Dated at Washington, D.C. this 3rd day of May 1978.

For the Nuclear Regulatory Commission.

SAMUEL J. CHILK,
Secretary of the Commission.

[FR Doc. 78-12638 Filed 5-8-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 404]

RETIREMENT, SURVIVORS AND DISABILITY INSURANCE

International Social Security Agreements—Totalization

AGENCY: Social Security Administration, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Social Security Administration plans to publish regulations to carry out Section 317 of the Social Security Amendments of 1977 (Pub. L. 95-216), which authorizes bilateral social security agreements between the United States and other countries. These agreements will permit individuals who have credits under the social security system of both countries to become entitled to benefits on the basis of their combined (totalized) credits, with each country paying its pro rata share of the benefit amounts based on the proportion of total covered work that was completed in that country. The agreements also eliminate dual coverage and dual taxation of the same work.

FOR FURTHER INFORMATION CONTACT:

Barbara C. Motley, room 4G10, West High Rise Building, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-5588.

Dated: May 1, 1978.

Approved:

DON WORTMAN,
Acting Commissioner of Social Security.

[FR Doc. 78-12542 Filed 5-8-78; 8:45 am]

[4510-27]

DEPARTMENT OF LABOR

Employment Standards Administration

[20 CFR Part 718]

Federal Mine Safety and Health Act of 1977, As Amended

STANDARDS FOR DETERMINING COAL MINER'S TOTAL DISABILITY OR DEATH DUE TO PNEUMOCONIOSIS

AGENCY: Employment Standards Administration, Labor.

ACTION: Correction of proposed rule.

SUMMARY: This notice announces corrections of the proposed Standards for Determining Coal Miner's Total Disability or Death due to Pneumonoconiosis published as Federal Register Document No. 78-11086 in the April 25, 1978 issue of the FEDERAL REGISTER (43 FR 17722).

FOR FURTHER INFORMATION CONTACT:

Robert B. Dorsey, Chief, Branch of Claims Determination, Division of Coal Mine Workers' Compensation, Office of Workers' Compensation Programs, Employment Standards Administration, U.S. Department of Labor, Room C-3526, NDOL Building, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-6727.

SUPPLEMENTARY INFORMATION: On April 25, 1978 the proposed standards for determining whether a coal miner is or was totally disabled due to pneumoconiosis or died due to pneumoconiosis was published in the FEDERAL REGISTER as proposed 20 CFR Part 718. Because there were errors in appendix B of that document, it is necessary that corrections be made.

Table B-3 found at 43 FR 17731 is being corrected to accurately reflect 60 percent of the predicted normal Maximum Voluntary Ventilation (MVV) for males. In addition table B-2 (43 FR 17730) is being corrected by changing the tenth value listed under ages 59-60 from 2.99 to 1.99.

Accordingly, Federal Register Document No. 78-11086 is corrected as set forth in the attachment hereto.

Signed this 3d day of May 1978, at Washington, D.C.

RAY MARSHALL,
Secretary of Labor.

The proposal published on April 25, 1978, is amended as follows:

1. On page 17730, the tenth value listed under the column for ages 59-60 of table B-2, is corrected to read "1.99" rather than "2.99".

2. On page 17731, table B-3 is corrected to read:

TABLE B.—3. *MVV/MALES (L/M)*

Der. source: The MVV values are derived from Knudson et. al. American Review of Respiratory Disease, 1976, 113,587, by multiplying $FEV_{1.0}$ by a factor of 40.

MT in CM	MT in IN	Age (years) 0-26	27-28	29-30	31-32	33-34	35-36	37-38	39-40	41-42	43-44	45-46	47-48	49-50	51-52	53-54	55-56	57-58	59-60	61-62	63-64	65-66	67-68	69-70	71-72	73 and over
152	60	73	72	70	69	68	67	65	64	63	61	60	59	58	56	55	54	52	51	50	48	47	46	45	43	42
155	61	76	75	74	72	71	70	69	67	66	65	63	62	61	60	58	57	56	54	53	52	50	49	48	47	45
157	62	79	78	77	76	74	73	72	70	69	68	66	65	64	63	62	60	59	57	56	55	54	52	51	50	48
160	63	82	81	80	79	78	76	75	74	72	71	70	68	67	66	64	63	62	61	59	58	57	56	54	53	52
163	64	86	84	83	82	81	80	78	77	75	74	73	72	70	69	68	66	65	64	62	61	60	58	57	56	55
165	65	89	88	86	85	84	82	81	80	79	77	76	75	74	72	71	70	68	67	66	64	63	62	60	59	58
168	66	92	91	90	88	87	86	84	83	82	80	79	78	76	75	74	73	72	70	69	68	66	65	64	62	61
170	67	95	94	93	91	90	89	88	86	85	84	82	81	80	78	77	76	75	73	72	71	69	68	67	66	64
173	68	98	97	96	95	93	92	91	90	88	87	86	84	83	82	80	79	78	76	75	74	72	71	70	69	67
175	69	102	100	99	98	96	95	94	93	91	90	89	87	86	85	84	82	81	80	78	77	76	74	73	72	71
178	70	105	104	102	101	100	98	97	96	94	93	92	91	89	88	87	86	84	83	82	80	79	78	76	75	74
180	71	108	107	105	104	103	102	100	99	98	96	95	94	92	91	90	88	87	86	85	84	82	81	80	78	77
183	72	111	110	109	107	106	105	103	102	101	100	98	97	96	94	93	92	90	89	88	87	85	84	83	81	80
185	73	114	113	112	110	109	108	106	105	104	103	102	100	99	98	96	95	94	92	91	90	88	87	86	84	83
187	74	118	116	115	114	112	111	110	108	107	106	105	103	102	101	99	98	97	96	94	93	92	90	89	88	86
190	75	121	120	118	117	116	114	113	112	110	109	108	106	105	104	102	101	100	99	98	96	95	94	92	91	90
193	76	124	123	121	120	119	117	116	115	114	112	111	110	108	107	106	104	103	102	100	99	98	97	95	94	93

[FR Doc. 78-12621 Filed 5-8-78; 8:45 am]

[1505-01]

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration

[21 CFR Part 148]

[Docket No. 78N-0063]

FROZEN STRAWBERRIES

Revised Proposal To Establish Standards of Identity and Quality

Correction

In FR Doc. 78-10533, appearing at page 16991 in the issue for Friday, April 21, 1978, make the following corrections:

1. On page 16992, second column, eleventh line of the second full paragraph, the word "nitritive" should read "nutritive".

2. On page 16993, second column, twelfth line of the second full paragraph, the word "clamps" should read "clumps".

3. On page 16995, third column, in the table at the top, delete the first "greater" and insert the following: "equal to or less"; and in the second line from the bottom of § 148.170 (a)(1), the word "food" should read "good".

[4110-03]

Food and Drug Administration

[21 CFR Parts 155 and 156]

[Docket No. 77P-0090]

TOMATO JUICE, TOMATO CONCENTRATES, AND CATSUP

Amendments to Standards

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend standards of identity for tomato juice, tomato concentrates, and catsup and to amend the definition section for canned vegetables. It also proposes to establish standards of quality and fill of container for tomato juice, tomato concentrates, and catsup and, insofar as practicable, to adopt for concentrated tomato juice the standard developed by the Codex Alimentarius Commission and a proposal by the Campbell Soup Co.

DATES: Comments by July 10, 1978. Proposed compliance for products initially introduced into interstate commerce: July 1, 1979.

FOR FURTHER INFORMATION CONTACT:

Benjamin M. Gutterman, Bureau of Foods (HFF-402), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1231.

ADDRESS: Written comments, data, or information to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

SUPPLEMENTARY INFORMATION: The document proposes to amend certain existing standards and to establish others. The most significant features of the Commissioner's proposal are:

TOMATO JUICE

1. Permit the use of concentrated tomato juice to prepare a single strength tomato juice product.

2. Require the name "tomato juice from concentrate" when concentrated tomato juice is used in the preparation of the canned juice.

3. Establish in the identity standard a minimum tomato soluble solids requirement of 5.5 percent, by weight, for the product made from concentrate.

4. Revoke § 156.147 *Yellow tomato juice* (21 CFR 156.147).

5. Propose a standard of quality based in part on USDA standards and certain of its administrative guidelines. Copies of these documents are

on file with the Hearing Clerk, Food and Drug Administration.

6. Permit the use of safe and suitable organic acids.

TOMATO CONCENTRATES

1. Propose a single standard for tomato concentrates, which will include those foods customarily known as tomato puree, tomato paste, and concentrated tomato juice, but will retain certain distinctions among these foods.

2. Propose that concentrated tomato juice may be prepared from water and tomato concentrate that is made solely from the liquid obtained from mature red tomatoes, and shall have a concentration such that when further diluted according to label directions the final diluted article contains not less than 5.5 percent tomato soluble solids, but in no case shall the concentrated tomato juice contain less than 20 percent tomato soluble solids.

3. Propose a standard of quality based largely on the USDA standards.

CATSUP

1. Permit the use of tomato concentrates as an optional ingredient.

2. Expand the list of optional sweetening ingredients to include any safe and suitable nutritive carbohydrate sweetner without limitation on the level of use.

3. Permit the use of safe and suitable organic acids, as well as vinegar, as optional ingredients.

4. Establish a minimum total soluble solids content of 25 percent.

5. Establish a quality standard for catsup to provide for a minimum consistency requirement.

FOR ALL THE STANDARDS

1. Establish a standard of fill of container requiring a fill of not less than 90 percent of the total capacity of the container.

2. Provide for a statistical sampling plan as a basis for determining compliance with certain requirements as may be specified in the respective standard.

3. Amend proposed § 155.3 *Definitions* (21 CFR 155.3) to include terms and nomenclature common to all the tomato product standards.

4. Reference the Munsell color system as a basis for determining the strength and redness of color of the respective tomato products, using the following discs for comparison purposes: red (5R 2.6/13), yellow (2.5YR2/12), Black (N1), and grey (N4). The Commissioner is aware, however, of the progress being made in the use of reflectance color instruments as an alternate to the Munsell system and invites comment on such an alternate method of color measurement that can be supported with data.

5. Require the label declaration of all optional ingredients.

A more detailed comparison of the U.S. standards, the USDA standards, and the respective Codex standards is set forth in subsequent sections of this proposal. The Commissioner particularly requests comments and supporting data on the principal changes proposed for consideration and any modification deemed appropriate.

The Food and Agriculture Organization/World Health Organization Codex Alimentarius Commission has submitted to the United States for consideration for acceptance a "Recommended International Standard for Tomate Juice Preserved Exclusively by Physical Means" (CAC/RS 49-1971) and a "Recommended International Standard for Processed Tomato Concentrates" (CAC/RS 57-1972). These documents are hereinafter referred to as the Codex standards.

The Campbell Soup Co. has filed a petition to amend the tomato puree standard (21 CFR 155.192) to provide for the preparation of concentrated tomato juice from tomato paste and water and to permit the restoration of the level of vitamin C in the concentrated tomato juice when diluted in accordance with label directions to that naturally found in tomato juice. Before submitting the petition, the Campbell Soup Co. was issued a temporary permit to market test the concentrated tomato juice. In support of its petition, the Campbell Soup Co. stated that its market test survey indicated consumer acceptance of the product. In addition, the petitioner pointed out that the proposed amendment would permit regular production of the juice throughout the year instead of only during the tomato-harvesting season. The petitioner stated that the manufacturing economies "plus the inherent cost savings in transporting and storing tomato juice in the concentrated form, therefore, will serve the interest of the consumer."

As a member of the Food and Agriculture Organization of the United Nations and the World Health Organization, the United States is under a treaty obligation to consider all Codex standards. The rules of procedure of the Codex Alimentarius Commission state that a Codex standard may be accepted by a participating country in one of three ways: Full acceptance, target acceptance, or acceptance with specified deviations. Acceptance by a country of a Codex standard signifies that, except as provided for by specified deviations, a product that complies with the Codex standard may be distributed freely within the accepting country, insofar as features dealt with by the Codex standard are concerned; and products not complying, whether domestic or imported, will not be permitted to be distributed without restrictions under the name and description laid down in the standard. The restrictions that may be imposed are not incoporated in the Codex standards, but are left to the legislation and regulations of the individual countries. A participating country that concludes that it cannot accept the Codex standard in any of the three ways is requested to indicate, with the reasons therefore, the manner in which its requirements differ from the Codex standard, and whether products complying with the Codex standard will be permitted to move freely in the commerce of that country. Members of the Commission are requested to notify the secretariat of the Codex Alimentarius Commission—Join FAO/WHO Food Standards Programme, FAO, Rome, Italy, of their decision.

For many years, the United States has had standards of identity for tomato juice (21 CFR 156.145), tomato paste (21 CFR 155.191), tomato puree (21 CFR 155.192), and catsup (21 CFR 155.194), all established under the authority of the Federal Food, Drug, and Cosmetic Act. There are also voluntary grade standards for marketing developed by the U.S. Department of Agriculture (hereinafter referred to as USDA standards).

In carrying out the program of drafting international food standards, which is jointly sponsored by the Food and Agriculture Organization of the United Nations and the World Health Organization, the Codex Alimentarius Commission has developed a number of recommended international standards for individual food products. Among these are standards for canned tomatoes, tomato juice, and tomato concentrates, all of which have been submitted to the U.S. Government for consideration and possible adoption. Tomato catsup, however, has not yet been considered by any of the Codex subsidiary committees. The United States has participated actively in the development of the other tomato product standards through its representation on the Codex Alimentarius Commission and in the subsidiary bodies composed of experts for the respective food products.

There are a number of significant differences between the Codex standards and the corresponding U.S. and USDA standards. The Commissioner has made a careful comparison of such differences and is proposing to make certain modifications and amendments in the U.S. standards. In his opinion it will promote honesty and fair dealing in the interest of consumers and facilitate international trade to adopt, insofar as practicable, the applicable Codex standards.

A final regulation ruling on a proposal to revise the U.S. standards of identity and quality for canned tomatoes in consideration of the Codex standard was published in the FEDERAL

REGISTER of June 16, 1976 (41 FR 24342). Therefore, the Commissioner does not now propose any further changes in the standards for canned tomatoes.

Certain differences exist in the composition and format of the Codex standard as contrasted to the U.S. standards. The units of measurements in the U.S. standards are stated sometimes in pounds and in inches, and sometimes in units of the metric system, or both, whereas the Codex standard uses only the metric system. The international (metric) system is commonly used throughout most of the world, and in the United States for technical purposes, and it may eventually be adopted by this country for common usage. Therefore, the international (metric) system is used in this proposal for tomato products, with the equivalent units of the U.S. customary system shown parenthetically.

The Codex standards also include hygiene requirements, certain basic labeling requirements, and other factors that are not considered a part of food standards under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341, the legal basis for the promulgation of food standards), but are dealt with under other sections of the act, and therefore are not discussed further in this proposal. However, the Codex standard for tomato juice (CAC/RS 49-1971) establishes a guide for mold filaments at a maximum of 30 percent positive fields as determined by the AOAC method. Also, the Codex standard for processed tomato concentrates (CAC/RS 51-1972) sets a mold guide of 50 percent positive fields when determined with the product diluted to approximately 8 percent tomato soluble solids. These Codex guides are higher than current action levels for the corresponding product as referred to in § 110.99 (21 CFR 110.99) for natural and unavoidable defects in human foods. These levels are set at 20 percent for tomato juice and 40 percent for tomato puree and tomato paste. The Commissioner advises that regulatory action on tomato products containing mold filaments will continue to be based on U.S. guidelines.

The Codex standards sometimes use subjective terms in stating their requirements, which cannot be expressed in finite objectively reproducible or numerical terms. When such subjective terms are not sufficiently precise or specific to be legally enforceable, they will be omitted from the proposal, except where the USDA standards provide more objective criteria that are established and recognized by the trade.

I. TOMATO JUICE

Amendment of the U.S. standard of identity and promulgation of standards of quality and fill of container for tomato juice will be based on consideration of the current U.S. and USDA standards and the following codex standard, together with comments and supporting data received and other available information.

A. RECOMMENDED INTERNATIONAL STANDARD FOR TOMATO JUICE PRESERVED EXCLUSIVELY BY PHYSICAL MEANS

RECOMMENDED INTERNATIONAL STANDARD FOR TOMATO JUICE PRESERVED EXCLUSIVELY BY PHYSICAL MEANS

1. *Description.* Unfermented but fermentable juice, intended for direct consumption, obtained by a mechanical process from sound, ripe, red or reddish tomatoes (*Lycopersicum esculentum* L.) preserved exclusively by physical means, the juice being strained free from skins, seeds and other coarse parts of tomatoes, and from other hard substances and impurities.[1] The juice may have been concentrated and later reconstituted with water suitable for the purpose of maintaining the essential composition and quality factors of the juice.

2. *Essential composition and quality factors.*

2.1 *Soluble tomato solids.* The soluble tomato solids content of tomato juice, exclusive of added salt, shall be not less than 4.5 percent m/m determined by refractometer at 20° C, uncorrected for acidity and read as °Brix on the International Sucrose Scales.

2.2 *Salt.* The addition of salt is permitted.

2.3 *Organoleptic properties.* The product shall have the characteristics colour, aroma and flavour of tomato juice.

2.4 *Use of concentrate.* The addition of concentrate to juice is permitted. Only concentrate from tomato (*Lycopersicum esculentum* L.) may be used.

3. *Contaminants.*

Maximum Level

3.1 Arsenic (As)—0.2 mg/kg.

3.2 Lead (Pb)—0.3 mg/kg (temporarily endorsed).[2]

3.3 Copper (Cu)—5 mg/kg.

3.4 Zinc (Zn)—5 mg/kg.

3.5 Iron (Fe)—15 mg/kg.

3.6 Tin (Sn)—250 mg/kg (temporarily endorsed).[3]

3.7 Total metal content precipitable by potassium hexacyanoferrate (II)—17 mg/kg expressed as Fe.

3.8 Mineral impurities insoluble in 10 percent hydrochloric acid shall not exceed 25 mg/kg.

[1]For the purpose of this standard preservation by physical means does not include ionizing radiation.

[2]Subject to review in the light of further analytical data.

[3]The provisional limit of 250 mg/kg for tin is currently under review and will be reexamined in 1973.

4. *Hygiene.*

4.1 It is recommended that the products covered by the provisions of this standard be prepared in accordance with the Recommended International Code of Hygienic Practice for Canned Fruit and Vegetable Products (Ref. No. CAC/RCP 2-1969) and the Recommended International Code of Hygienic Practice for Quick Frozen Fruits, Vegetables and their Juices (Ref. ALINORM 71/13, Appendix IV).

4.2 When tested by appropriate methods of sampling and examination, the product:

(a) shall be free from microorganisms capable of development under normal conditions of storage; and

(b) shall not contain any substances originating from microorganisms in amounts which may be toxic.

4.3 The product shall not contain mold filaments in a quantity indicative of unsuitable raw materials or unsanitary processing lines. A guide for determining compliance with these requirements would be a mold count, as determined by the Howard Method (see AOAC (1970) 40.085—Molds (25). Official Final Action, and 40.002 (m)), not in excess of 30 percent positive fields.

5. *Weights and measures.*

5.1 *Fill of container.*

5.1.1 Minimum fill.—The tomato juice shall occupy not less than 90 percent v/v of the water capacity of the container. The water capacity of the container is the volume of distilled water at 20° C which the sealed container will hold when completely filled.

6. *Labelling.* In addition to Sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1-1969) the following specific provisions apply:

6.1 *The name of the food.* The name of the product shall be "tomato juice".

6.2 *List of ingredients.*

6.2.1 A complete list of ingredients shall be declared on the label in descending order of proportion, except that added water need not be declared.

6.2.2 In the case of tomato juice made from concentrate, the fact of reconstitution shall be declared in the list of ingredients as the first ingredient as follows: "tomato juice made from concentrate" or "reconstituted tomato juice" or "tomato juice made from concentrated tomato juice".

6.3 *Net contents.* The net contents shall be declared by volume in one or more of the following systems of measurement: Metric ("Systeme International"), U.S. or British units as required by the country in which the product is sold.

6.4 *Name and address.* The name and address of the manufacturer, packer, distributor, importer, exporter or vendor of the product shall be declared.

6.5 *Country of origin.*

6.5.1 The country of origin of the product shall be declared.

6.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purposes of labelling.

6.6 *Additional requirements.* The following additional specific provisions shall apply:

6.6.1 No fruit or fruit juice may be represented pictorially on the label except tomatoes or tomato juice.

6.6.2 Where tomato juice requires to be kept under conditions of refrigeration, there shall be information for keeping and, if necessary, thawing of the product.

6.7 *Bulk packs.* In the case of tomato juice in bulk, the information required in 6.1 to 6.6.2 shall either be placed on the container or be given in accompanying documents.

7. *Methods of analysis and sampling.* The methods of analysis and sampling referred to hereunder are international referee methods.

7.1 *Taking of sample and expressed of results as m/m.* According to the IFJU method No. 1: Determination of relative density and the IFJU General Sheet: Conversion of analytical results from g/l (mg/l) to g/kg (mg/kg) and the reverse.

7.2 *Test for fermentability.* (To be elaborated.)

7.3 *Determination of soluble solids.* According to the IFJU method No. 8B, 1968: Estimation of soluble solids (indirect determination). Results are expressed as percent m/m sucrose ("degrees Brix") with correction for temperature to the equivalent at 20° C, after deduction of added salt expressed as percent m/m NaCl.

7.4 *Determination of added salt.* According to the IFJU method No. 37, 1968: Determination of chloride (potentiometric micro-method). The determination of sodium is not necessary. Results are expressed as percent m/m NaCl.

7.5 *Determination of arsenic.* According to the method of the "Office International de la Vigne et du Vin".[4,5] Results are expressed as mg arsenic/kg.

7.6 *Determination of lead.* According to the IFJU method No. 14, 1964: Determination of lead (photometric method).[5] Results are expressed as mg lead/kg.

7.7 *Determination of copper.* According to the IFJU method No. 13, 1964: Determination of copper (photometric method).[5] Results are expressed as mg copper/kg.

7.8 *Determination of zinc.* According to the AOAC (1970) method (Official Methods of Analysis of the AOAC, 1970, 25.077-25.082: Zinc—Official First Action, Colorimetric Method (*15*).[5] Results are expressed as mg zinc/kg.

7.9 *Determination of iron.* According to the IFJU method No. 15, 1964: Determination of iron (photometric method).[5] The determination shall be made after dry ashing as described in section 5—Remark (b). Results are expressed as mg iron/kg.

7.10 *Determination of tin.* According to the Draft of ISO Recommendation No. 2447: Fruit and Vegetable Products—Determination of Tin.[5,6] Results are expressed as mg tin/kg.

7.11 *Determination of total metal content precipitable by potassium hexacyanoferrate (II).* According to the Method 30/22/23 of Schweitzerisches Lebensmittelbuch, Chapter 30, Wein.[4,5] Results are expressed as mg total metal content precipitable by potassium hexacyanoferrate (II)/kg.

7.12 *Determination of sulphur dioxide (checking absence of SO_2).* According to the IFJU method No. 7, 1968: Determination of total sulphur dioxide. Results are expressed as mg SO_2/kg.

7.13 *Determination of mineral impurities insoluble in hydrochloric acid.* According to the AOAC (1970) method (Official Methods of Analysis of the AOAC, 1970, 30.005: Ash insoluble in Acid. Official Final Action).[7] The exact concentration of HCl to be used is not critical. Results are expressed as mg mineral impurities insoluble in hydrochloric acid/kg.

7.14 *Determination of water capacity and fill of containers.* According to the method published in the Almanac of the Canning, Freezing, Preserving Industries, 55th Edition, 1970, p. 131-132, E. E. Judge and Sons, Westminster, Md. (USA).[4,8]

The following is a comparison of the principal differences among the U.S. and, in some instances, the USDA standards and the Codex standard on which the Commissioner particularly invites comments with available supporting data. Following each item of comparison is the action the Commissioner proposes to take:

B. COMPARISON OF IDENTITY ASPECTS FOR TOMATO JUICE AND PROPOSED COURSES OF ACTION

1. *Description of juice.* Codex (1.) describes the juice as "unfermented but fermentable juice." The U.S. standard (21 CFR 156.145) does not refer to the juice in such terms.

No need exists to qualify the juice as being fermentable since the basic source of the juice is from fresh tomatoes, which would in fact be fermentable, particularly since no chemical preservatives are permitted.

2. *Botanical name.* Codex (1.) identifies the botanical designation of tomatoes used in preparing tomato juice as being *Lycopersicum esculentum L.* In the Codex standards for processed tomato concentrates and canned tomatoes the botanical designation for tomatoes is *Lycopersicum esculentum P. Mill.* The U.S. standard for tomato juice (21 CFR 156.145) does not identify the tomato by its botanical name, but the U.S. standard for canned tomatoes (21 CFR 155.190) identifies the tomato by the latter designation.

The proposed standard of identity provides for the use of the species of tomato *Lycopersicum esculentum P. Mill.* to be consistent with other codex standards and the U.S. standard for canned tomatoes.

3. *Use of concentrates.* Codex (1.) permits the use of concentrated tomato juice that later may be reconstituted with water suitable for the purpose of maintaining the essential composition and quality factors of the juice. The U.S. standard (21 CFR 156.145) states that tomato juice is prepared from the unconcentrated liquid extracted from mature tomatoes. It does not provide for the use of concentrated tomato juice as does Codex.

The Commissioner is proposing to amend the current U.S. standard for tomato juice to provide for the use of concentrated tomato juice as discussed below.

4. *Homogenization.* Codex (1.) does not provide for homogenization of the juice. The U.S. standard (21 CFR 156.145) states that the extracted liquid may be homogenized.

No change from the current U.S. standard is being proposed.

5. *Preservation.* Codex (1.) states that the juice is "preserved exclusively by physical means." This would include refrigeration or freezing as well as the customary method of heat sterilization. The U.S. standard (21 CFR 156.145) states that the extracted juice is so processed by heat, before or after sealing, as to prevent spoilage.

The Commissioner proposes no change in the U.S. standard, but invites comment on the need to expand the provision for the method of preservation to include other than heat sterilization procedures.

6. *Soluble tomato solids.* Codex (2.1) specifies that the soluble tomato solids, exclusive of added salt, shall be not less than 4.5 percent m/m. The U.S. standard (21 CFR 156.145) does not contain a minimum tomato soluble solids requirement.

[4]To be included in the IFJU Manual at a later stage.

[5]Temporarily endorsed.

[6]To be finalized by 1972.

[7]Preparation of sample to be elaborated.

[8]Reproduced in ALINORM 71/23, Appendix V.

The commissioner believes that "the unconcentrated liquid extracted from mature tomatoes of red or reddish varieties with or without scalding followed by draining" should continue to be recognized as tomato juice. Therefore, he is not proposing a minimum soluble solids requirement for "tomato juice."

But the Commissioner believes that tomato juice prepared from concentrate should be standardized to a minimum soluble solids to prevent over dilution with water. The Commissioner recognizes that tomatoes vary in composition and soluble solids for a number of reasons and that the 4.5 percent minimum proposed by Codex is low for domestically grown tomatoes used in preparing tomato juice. The average soluble solids of tomatoes grown in the U.S. is closer to 5.5 percent. The 5.5 percent figure is reflected in a number of temporary permits FDA issued to tomato processors over the past year to market test tomato juice from concentrate. Therefore, a minimum soluble solids requirement of 5.5 percent for tomato juice prepared from concentrate is being proposed to be consistent with the soluble solids normally found in tomatoes grown in the United States.

7. *Salt.* Codex (2.2) provides for the addition of salt as a seasoning agent. The U.S. standard (21 CFR 156.145) also states that the juice may be seasoned with salt.

No change is being made in the U.S. standard.

8. *Organic acids.* Neither the Codex nor the U.S. standards provide for the use of organic acids in tomato juice. But the acid content of some varieties of tomatoes developed in the U.S. in recent years has decreased, and the Commissioner believes that organic acids should be permitted as optional ingredients to provide processors the means with which to maintain the pH at a safe level and to assist in preventing spoilage. Therefore, the Commissioner proposes to provide for the optional use of safe and suitable organic acids.

9. *Vitamin C in tomato juice.* Codex does not provide for the use of vitamin C. The U.S. standard (21 CFR 156.145) was revised on June 14, 1974 (39 FR 20884) to provide for the addition of vitamin C in a quantity such that each fluid ounce may contain 10 milligrams. In response to objections, however, the effective date of the vitamin C provision was stayed (see the FEDERAL REGISTER of September 3, 1974 (39 FR 31898)) pending a public hearing.

The Commissioner expects soon to issue a regulation setting nutritional guidelines for this and similar beverages that may resolve the issue of use of vitamin C in tomato juice, thus making a public hearing unnecessary. In the meantime, as announced in the September 3, 1974 stay, tomato juice that is prominently designated as "enriched with vitamin C" in accordance with 21 CFR 104.5 or "with added vitamin C" or a similar statement on the principal display panel as permitted in the stayed standard would not purport to be the standardized product and thus may lawfully be marketed outside the standard of identity as a nonstandardized food. As a nonstandardized food, all ingredients, not just optional ingredients, must be declared on the label.

10. *Mineral impurities.* Codex (3.8) provides a limit of 25 mg/kg for mineral impurities, such as sand, silt, and similar inorganic matter. The U.S. standard (21 CFR 156.145) does not have a requirement for mineral impurities.

Mineral impurities are not a subject to be dealt with in food standards under section 401 of the act. The presence of material of this type in foods in amounts that cause the foods to become adulterated would be dealt with under section 402 of the act (21 U.S.C. 342) as an adulterated food. Therefore, no requirement on mineral impurities is proposed.

11. *Labeling.*

a. *Name of food.* Codex (6.1) states that the name of the food is "tomato juice" and, in the case of tomato juice made from concentrate (6.2.2), the fact of reconstitution shall be declared in the list of ingredients as "tomato juice made from concentrate" or "reconstituted tomato juice" or "tomato juice made from concentrated tomato juice". The U.S. standard (21 CFR 156.145) provides for the name "tomato juice" only when the food is prepared from the unconcentrated liquid extracted from mature tomatoes of the reddish varieties. The U.S. standard does not currently provide for the "tomato juice from concentrate."

The Commissioner proposes to continue to provide for the name "tomato juice" without qualification only when the food is prepared from freshly extracted tomato juice. And because the proposal will provide for "tomato juice from concentrate," he believes that reconstitution should be more prominently identified than by merely listing it in the ingredient statement. Therefore, he is proposing that when the food is prepared from concentrate the name shall be "tomato juice from concentrate".

b. *List of ingredients.* Codex (6.2) requires a complete listing of ingredients in descending order of proportion, except that water need not be declared. The U.S. standard (21 CFR 156.145(b)) requires that each of the optional ingredients be declared as required by the applicable sections of 21 CFR Part 101.

The Commissioner is proposing no change in the U.S. standard. Since manufacturers would have the option of preparing the food from either single strength tomato juice or concentrated tomato juice and water, both the water and the concentrated tomato juice used are optional ingredients and should be declared on the label.

12. *Analytical methods.* Codex (7.) provides methods of analysis for the analytical requirements on the standard; such methods generally are those of the International Federation of Fruit Juice Producers (IFJU). The U.S. standard (21 CFR 156.145) provides for the use of methods of analysis prescried by the Association of Official Analytical Chemists (AOAC). Although certain IFJU methods of analysis differ from those of the AOAC, the Commissioner proposes to continue to follow the customary practice of referencing AOAC procedures when such a procedure exists for a particular analytical requirement.

C. COMPARISON OF QUALITY CRITERIA FOR TOMATO JUICE AND PROPOSED COURSES OF ACTION

1. *Organoleptic properties.*

a. *Aroma and flavor.* Codex (2.3) states that the product shall have the characteristic aroma and flavor of tomato juice. The U.S. standard (21CFR 156.145) does not have such a requirement.

Foods with abnormal aroma and flavor are currently considered as adulterated foods under section 402 of the act (21 U.S.C. 342).

b. *Color.* Codex (2.3) states that the product shall have the characteristic color of tomato juice. The U.S. standard (21 CFR 156.146) does not have such a requirement.

The Codex provision for color is not objective enough for enforcement purposes. The USDA standards on tomato products are in 7 CFR Part 2852.

NOTE.—CFR Part 2582 was formerly 7 CFR Part 52 before recodification in the FEDERAL REGISTER of June 27, 1977 (42 FR 32514).

The USDA standards (7 CFR 2852.3626) provide objective criteria for the color classification of juice in terms of the Munsell color system. Therefore, this proposal would adopt the Munsell color system and set the color limits based on the USDA Grade C criteria. The proposal for establishing the minimum color for tomato juice is contained in two separate sections of the standard; namely, (a) definitions and procedures, which decribes the characteristics of the four Munsell color discs and the spectral light source; and (b) quality provisions, which specify the combination (the percent of area exposed) for each of the four respective discs, such combination representing minimum acceptable color.

c. *Other defects.* The Codex standard (1.) states that the juice is strained free from skins, seeds and other coarse parts of tomatoes, and from other hard substances and impurities. The U.S. standard (21 CFR 156.145) does not have such requirements. The USDA standards (7 CFR 2852.3627) indentify certain common defects such as dark specks, seeds, core material, and tomato peel, but do not provide specific allowances for such defects. USDA administrative guidelines do, however, provide limits for these defects.

The Commissioner is proposing to use the USDA criteria, with minor modifications, for allowances of dark specks, seeds, and peel. His proposal would allow not more than two of the following defects per 500 ml of juice, either singly or in combination (for example, two pieces of peel or one piece of peel and one seed). The specific defect specifications would be:

i. Pieces of peel 3 mm (0.125 inch) or greater in length;

ii. Seeds, or pieces of seed, 3 mm (0.125 inch), or greater, in length; and

iii. Blemishes, such as dark brown or black particles, greater than 2 mm (0.08 inch) in length.

2. *Compliance.* The Codex standard does not provide a formal procedure for lot acceptance for determining compliance with the requirements of the standard. The USDA standards (7 CFR 2852.3629) provide a statistical acceptance procedure for determining the quality of the lot based on the characteristics of the sample.

The Commissioner is proposing a procedure for determining compliance with the quality requirements of the standard that is comparable to Inspection Level II of the Codex Sampling Plans for Prepackaged Foods—AQL 6.5. Such a sampling plan currently appears in a number of food standards and was proposed as an inclusion in a new "Definitions and Procedures" section (21 CFR 155.3), published in the FEDERAL REGISTER of June 7, 1977 (42 FR 29014).

3. *Labeling for substandard quality.* The Codex standard does not provide for substandard labeling of tomato juice that fails to meet the quality standard requirements. The U.S. standard (21 CFR 156.145) does not provide for quality factors and consequently does not have a provision for substandard labeling. Because the Commissioner is proposing a standard of quality for tomato juice in this document, however, he is also proposing that a product that fails to meet the requirements of the quality standard be labeled as substandard in accordance with 21 CFR 130.14(a).

D. COMPARISON OF FILL OF CONTAINER ASPECTS FOR TOMATO JUICE AND PROPOSED COURSE OF ACTION

Codex (5.1.1) requires that the tomato juice occupy not less than 90 percent v/v of the water capacity of the container. The U.S. standard (21 CFR 156.145) does not provide for fill of container requirements. However, the USDA standards (7 CFR 2852.3623) have a recommended fill based on 90 percent of the capacity of the container. This is comparable to the Codex requirement.

The Commissioner proposed to adopt in substance the Codex requirement by requiring a fill in which the food shall occupy not less than 90 percent of the total capacity of the container as determined by the general method prescribed in 21 CFR 130.12(b). The Commissioner also proposes a compliance procedure for minimum fill of container based on the sampling plans specified in proposed § 155.3(e)(2) below.

1. *Labeling for substandard fill.* Codex (5.1.1) does not provide for substandard labeling of tomato juice that fails to meet the fill of container requirement. The U.S. standard (21 CFR 156.145) does not provide for a fill of container standard and consequently does not have a provision for substandard labeling.

Since the Commissioner is proposing a standard of fill of container for tomato juice in this document, he is of the opinion that it is reasonable to require that the label of a product that fails to meet the minimum fill of container requirement contain a declaration of substandard fill. Therefore, he proposes that such a product be labeled in accordance with 21 CFR 130.14(b).

II. TOMATO CONCENTRATES

Amendment of the U.S. Standards of Identity for tomato puree and tomato paste and promulgation of standards of identity, quality, and fill of container for tomato concentrates will be based on consideration of the current U.S. and USDA standards, several proposed amendments submitted by the Campbell Soup Co., and the following Codex standard, together with comments and supporting data received and other available information.

A. RECOMMENDED INTERNATIONAL STANDARD FOR PROCESSED TOMATO CONCENTRATES

RECOMMENDED INTERNATIONAL STANDARD FOR PROCESSED TOMATO CONCENTRATES

1. *Scope.* This standard for Processed Tomato Concentrates does not include the products commonly known as tomato sauce, chili sauce, and ketchup, or similar products which are highly seasoned products of varying concentrations containing characterizing ingredients, such as pepper, onions, vinegar, sugar, etc., in quantities that materially alter the flavour, aroma, and taste of the tomato component.

2. *Description.*

2.1 *Product Definition.*

2.1.1 Processed tomato concentrate is the product prepared by concentrating the liquid obtained from substantially sound, mature red tomatoes (*Lycopersicum esculentum P. Mill*). Such liquid is strained or otherwise prepared to exclude skins, seeds, and other coarse or hard substances in the finished product.

2.1.2 Salt and other suitable seasoning ingredients may be added.

2.1.3 The product is preserved by physical means.

2.1.4 The concentration shall be 8 or more percent natural tomato soluble solids but not dehydrated to a dry powder or flake form.

2.2 *Product Designation.* Tomato concentrate may be considered "Tomato Puree" or "Tomato Paste" when the concentrate meets these requirements:

2.2.1 Tomato Puree—Tomato concentrate that contains not less than 8 percent, but less than 24 percent, of natural tomato soluble solids.

2.2.2 Tomate Paste—Tomato concentrate that contains 24 percent or more of natural tomato soluble solids.

2.3 *Acceptance—For Natural Tomato Soluble Solids.* A lot will be considered as meeting the applicable minimum natural tomato soluble solids requirement when:

(a) the average of the values from all containers or sub-samples tested meets at least the minimum percentage requirement for the concentration as declared, or as required for the product name or description; and

(b) no individual test value is more than 7.5 percent below such minimum declared or required percentage of concentration.

Examples

[Figures in percent]

Declarations or requirements	Average must be not less than—	No individual test value may be less than—
(1) Minimum solids 20 pct	20	18.5
(2) Solids—26 to 28 pct	26	24.0
(3) Triple concentrate; for example, if lawfully at 45 pct minimum	45	41.6
(4) Tomato puree	8	7.4
(5) Tomato paste	24	22.2
(6) Concentrated tomato puree; for example, if lawfully at 18 pct minimum	18	16.6
(7) Concentrated tomato puree; if lawfully requires a higher minimum than 18 pct, for example 21 pct	21	19.4

3. *Essential Composition and Quality Factors.*

3.1 *Permitted Ingredients.—Seasoning or Flavourings.* Salt, spices, natural vegetable products (basil leaf, onions, etc.) but not sugars or other sweeteners; lemon juice (single

strength or concentrated) used as an acidulant.

3.2 *Quality Criteria.*

3.2.1 Colour. The product when diluted with water to reach approximately 8 percent natural tomato soluble solids shall have a fairly good red colour, free from abnormal colours for the product.

3.2.2 Texture. The concentrated product shall have a homogeneous, evenly divided texture indicative of good manufacturing practices.

3.2.3 Flavour. The product when diluted with water to reach approximately 8 percent natural tomato soluble solids shall have a good flavour characteristic of properly processed tomato concentrates without any objectionable flavour foreign to the product.

3.2.4 Defects. Processed tomato concentrates shall be prepared from such materials and under such practices that the product is substantially free from extraneous plant materials or similar objectionable substances and shall not contain excessive defects (whether or not specifically mentioned in this standard).

Certain common defects, when so large or numerous or of such contrasting colour or nature as to affect noticeably the appearance or usability of the product, include:

(a) Dark specks or scale-like particles;

(b) Seeds or objectionable particles of seeds;

(c) Objectionable tomato peel because of colour and/or size;

(d) Harmless plant materials other than those used as seasonings;

(e) Mineral impurities—60 mg/kg based on diluted product of 8 percent solids;

(f) Other similar and objectionable defects.

3.2.5 Classification of "defectives." A container that fails to meet one or more of the applicable quality requirements, as set out in subsections 3.2.1 through 3.2.4, shall be considered a "defective."

3.2.6 Acceptance. A lot will be considered as meeting the applicable quality requirements referred to in subsection 3.2.5 when the number of "defectives," as defined in subsection 3.2.5, does not exceed the acceptance number (c) of the appropriate sampling plan in the Sampling Plans for Prepackaged Foods (1969) (AQL-6.5) (Ref. CAC/RM 42-1969).

4. *Food additives.*

pH Regulating Agents and Maximum Level of Use

Sodium hydrogen carbonate—to raise the pH to a level not above 4.3.

Citric acid, Malic acid, L-Tartaric acid, and Lactic acid—to maintain the pH at a level not above 4.3

5. *Contaminants.*

Maximun level[9]

Tin—250 mg-kg calculated as Sn, in final concentrated product.

6. *Hygiene.*

6.1 It is recommended that the product covered by the provisions of this standard be prepared in accordance with the International Code of Hygienic Practice for Canned Fruit and Vegetable Products recommended by the Codex Alimentarius Commission (Ref. CAC/RCP 2-1969).

6.2 To the extent possible in good manufacturing practice the product shall be free from objectionable matter.

6.3 When tested by appropriate methods of sampling and examination, the product:

(a) shall be free from microorganisms capable of development under normal conditions of storage, and

(b) shall not contain any substances originating from microorganisms in amounts which may be toxic.

6.4 The diluted product (at approximately 8 percent natural tomato soluble solids) shall not contain mould filaments in a quantity indicative of unsuitable raw materials or unsanitary processing lines. A guide in determining compliance with these requirements would be a mould count, as determined by the Howard Method (AOAC(1970), 40.085), not in excess of 50 percent positive fields, based on the diluted product (at approximately 8 percent natural tomato soluble solids).

7. *Weights and measures.*

7.1 *Fill of container.*

7.1.1 Minimum fill.—Containers shall be filled as full as commercially practicable having regard for the concentration of the product. When packed in rigid containers, the product shall occupy not less than 90 percent of the water capacity of the container. The water capacity of the container is the volume of distilled water at 20°C which the sealed contaner will hold when completely filled.

7.1.2 Classification of "Defectives".—A container that fails to meet the requirement for minimum fill (90 parcent container capacity) of subsection 7.1.1 shall be considered a "defective".

7.1.3 Acceptance.—A lot will be considered as meeting the requirement of 7.1.1 when the number of "defectives", as defined in subsection 7.1.2, does not exceed the acceptable number (c) of the appropriate sampling plan in the Sampling Plans for Prepackaged Foods (1969) (AQL-6.5) (Ref. CAC/RM 42-1969).

8. *Labelling.* In addition to Sections 1, 2, 4 and 6 of the General Standard for the Labelling of Prepackaged Foods (Ref. No. CAC/RS 1-1969), the following specific provisions apply:

[9]This is a provisional limit which is subject to review.

8.1 *The mane of the food.*

8.1.1 The name of the product shall be "Tomato Concentrate" and shall be accompanied by a declaration (as described in sub-section 8.6) of the percentage of natural tomato soluble solids.

8.1.2 The name and declaration of soluble solids may be accompanied or replaced by any name or description customarily and lawfully applied in the country in which the product is sold, except that:

(a) the descriptions "Tomato Puree" and "Tomato Paste" may only be applied to products complying with the requirement for "Tomato Puree" and and "Tomato Paste", respectively, and

(b) the description "Concentrated Tomato Puree" may only be applied to products with not less than 18 percent natural tomato soluble solids.

8.1.3 A declaration, as part of the name or in close proximity to the name, shall be made of any seasoning or flavouring which characterizes this product; e.g. "With X", when appropriate.

8.2 *List of ingredients.* A complete list of ingredients shall be declared on the label in descending order of proportion in accordance with sub-section 3.2(c) of the General Standard for the Labelling of Prepackaged Foods.

8.3 *Net contents.* The net contents shall be declared by weight in either the metric ("Systeme International" units) or avoirdupois or both systems of measurement as required by the country in which the product is sold.

8.4 *Name and address.* The name and address of the manufacturer, packer, distributor, importer, exporter, or vendor of the product shall be declared.

8.5 *Country of origin.*

8.5.1 The country of origin of the product shall be declared if its omission would mislead or deceive the consumer.

8.5.2 When the product undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be considered to be the country of origin for the purpose of labelling.

8.6 *Declaration of the percentage of natural tomato soluble solids* (see 8.1.1). The percentage solids may be included on the label in either of the following manners:

(i) The mimimum percentage of natural tomato soluble solids: (Example: Minimum Solids—20 percent.

(ii) A range within 2 percent of the natural tomato soluble solids: (Example: Solids—20 percent to 22 percent.)

9 *Methods of analysis and sampling.*[10] The methods of analysis and

[10]The method (mould count) referred to in sub-section 6.4 of this standard serves as a guide and is not an international referee method to be used in cases of dispute.

sampling referred to hereunder are international referee methods.

9.1 *Method of sampling.* Sampling shall be in accordance with the FAO/WHO Codex Alimentarius Sampling Plans for Prepackaged Foods (1969) (AQL-6.5) (Ref. CAC/RM 42-1969).

9.2 *Determination of natural tomato soluble solids.* According to the AOAC (1970) method (Official Methods of Analysis of the AOAC, 1970, 32,008-32.010. Soluble Solids—Official Final Action).

Results are expressed as percent m/m total soluble solids as sucrose exclusive of salt (NaCl).

9.3 *Determination of salt (NaCl).* According to the AOAC method (Revised version of the AOAC method (1965) 6.103-6.105) as published in the Journal of the AOAC, *54*, No. 2, March 1971, 32.A01-32.A05).

Results are expressed as percent m/m total chlorides as NaCl.

9.4 *Determination of mineral impurities.* According to the AOAC method (Revised version of the AOAC method (1965) 6.005, as published in the Journal of the AOAC, *54*, No. 3, May 1971, 40.A07: Determination of Acid-Insoluble Residue (Soil), except using a sample size of 250 g at 8 percent m/m soluble solids). Results are expressed as mg/kg mineral impurities on diluted product of 8 percent solids.

9.5 *Determination of water capacity of containers.* According to the FAO/WEO Codex Alimentarius Method (FAO/WHO Codex Alimentarius Methods of Analysis for Processed Fruits and Vegetables, 2nd Series—*Determination of Water Capacity of Containers*, CAC/RM 46-1972).

Results are expressed as volume of distilled water that the container holds.

B. COMPARISON OF IDENTITY ASPECTS FOR CONCENTRATES AND PROPOSED COURSES OF ACTION

Current U.S. regulations provide for separate standards of identity for tomato paste (21 CFR 155.191) and tomato puree (21 CFR 155.192) as well as an optional designation of "concentrated tomato juice" for tomato puree in the range of 20.0 to 24.0 percent tomato soluble solids. Except for concentrated tomato juice, Codex provides for comparable standards of identity as well as quality and fill of container requirements in a single standard for processed tomato concentrates. Although there are differences, in addition to the degree of concentration, in the U.S. standards for these products, such differences are not considered sufficiently significant to preclude the establishment of a single standard for these foods. There are, however, a number of other differences between Codex and the U.S. standards which are brought out in the comparison of the respective standards. Following each item of comparison is the action the Commissioner proposes to take.

1. *Botanical name.* Codex (2.1.1) identifies the tomato ingredient by the botanical designation of *Lycopersicum esculentum P. Mill.* Neither of the current U.S. standards (21 CFR 155.191 and 155.192) identifies the tomato ingredient by a botanical name.

The Commissioner proposes to adopt the Codex botanical designation, to be consistent with Codex as well as other U.S. standards for tomato products.

2. *Residual tomato material.* Codex (2.1.1) states that procesed tomato concentrate is the product prepared by concentrating the liquid obtained from substantially sound, mature red tomatoes. The U.S. standards (21 CFR 155.191 and 155.192) provide for the same optional tomato ingredient, but also include two additional optional tomato ingredient sources; namely, (1) the liquid obtained from the residue from preparing such tomatoes for canning (peelings, cores, and pieces of tomato) and (2) the liquid obtained from the residue from partial extraction of juice from such tomatoes.

The Commissioner proposes to retain the provision for the use of all three optional tomato ingredient sources. He also proposes to retain the provision that "concentrated tomato juice" shall be prepared only from the liquid obtained from mature red tomatoes.

3. *Exclusion of peel (skins) and seeds.* Both Codex (2.1.1) and the U.S. standards (21 CFR 155.191 and 155.192) state that the extracted tomato liquid is strained so as to exclude skins, seeds, and other coarse or hard substances. The USDA standards (7 CFR 2852.3622) state that the juice is fairly free from dark specks, seeds, particles of seed, tomato peel, core material, or other similar substances.

The Commissioner recognizes that complete elimination of these substances is not attainable; yet, under good manufacturing practices the number and size of such defects should be reduced to the extent practicable so as not to affect the usability or appearance of the finished food. Therefore, he is proposing no change in the requirements for removal of these substances.

4. *Acid-break process.* Codex does not provide for the acid-break process. The U.S. standards (21 CFR 155.191 and 155.192) provide for the acid-break process as an optional preparatory step in the processing of concentrated tomato products.

The acid-break process involves a temporary adjustment of the pH of the tomato tissue during or following pulping of the tomatoes. Food-grade hydrochloric acid is added to the tomato material to reduce the pH to no lower than 2.0. Such acid is then neutralized with food-grade sodium hydroxide to restore the pH of the treated tomato material to 4.2±0.2 prior to straining. This process yields a concentrate that is more viscous in character and with a minimum of separation of serum. Since the acid-break process is widely used in the United States, the Commissioner proposes to retain the provision for its use in the standards for concentrated tomato products.

The Commissioner notes that the current U.S. standards for both tomato paste (21 CFR 155.191(a)(3)) and tomato puree (21 CFR 155.192(a)(3)) state: "* * * Prior to straining, food-grade hydrochloric acid may be added to the tomato material at a rate to obtain a pH no lower than 2.0±0.2 * * *." He is concerned that the statement may be confusing and proposes that it be amended to be more meaningful: "* * * a pH no lower than 2.0 * * *." Comment concerning this matter is particularly invited.

5. *Concentration level.* Both Codex (2.1.4) and the U.S. standard for tomato puree (21 CFR 155.192) require a minimum of 8 percent tomato soluble solids. Codex further stipulates that the product may not be so concentrated as to be a dry powder or flake form.

The Commissioner proposes no change in the minimum soluble solids requirement. He sees no need to establish a maximum level of concentration for tomato concentrates, but at the same time recognizes that the product in dry or flake form is a different article of trade and is therefore adopting the Codex terminology to differentiate between tomato concentrates and dehydrated tomato products.

6. *Preservation.* Codex (2.1.3) states that the product is preserved by physical means. This would include refrigeration and freezing, as well as heat processing. The U.S. standards (21 CFR 155.191 and 155.192) provide for heat treatment when the product is sealed in a container.

The Commissioner proposes no change from the current U.S. standard, but invites comments on the need to expand the method of preservation to include procedures other than heat sterilization.

7. *Salt.* Both Codex (2.1.2) and the U.S. standards (21 CFR 155.191 and 155.192) provide for the addition of salt as an optional ingredient.

The Commissioner proposes no change.

8. *Other seasoning ingredients.* Codex (3.1) allows for the optional use of spices and natural vegetable products. The U.S. standard for tomato puree (21 CFR 155.192) does not provide for the use of optional ingredients other than salt. However, the standard for tomato paste (21 CFR 155.191) pro-

vides for spice in paragraph (a)(5) and flavoring in paragraph (a)(6), but not vegetable ingredients such as onions or peppers.

The Commissioner believes it reasonable to retain the provision to permit the use of spice and flavoring in tomato paste. He also believes it reasonable and consistent with Codex to provide for the use of vegetable ingredients in tomato paste and is so proposing. However, since tomato puree has been known and marketed in the U.S. for years as an unspiced tomato concentrate, he does not propose to provide for the use of optional seasoning ingredients other than salt in tomato puree.

9. *pH regulating agents.* Codex (3.1 and 4.) permits the use of lemon juice as an acidulant as well as sodium hydrogen carbonate to raise the pH to a level of not more than 4.3 and certain organic acids (citric, malic, L-tartaric and lactic) to maintain the pH at a level of not more than 4.3. The U.S. standard for tomato puree (21 CFR 155.192) does not provide for buffering and acidifying agents. The U.S. standard for tomato paste (21 CFR 155.191(a)(7)) states that baking soda (sodium hydrogen carbonate) may be used as an optional ingredient to neutralize, in part, the tomato acids.

Since the acid content of some varieties of tomatoes developed in the U.S. in recent years has decreased, the use of pH adjusters in tomato concentrates is desirable to provide processors a means with which to maintain the pH at a safe level. Therefore, the proposal adopts the Codex provisions that permit the use of lemon juice and concentrated lemon juice. The choice of acidulants has been broadened to include any safe and suitable organic acid. Further, the provision for the use of sodium hydrogen carbonate has been retained.

10. *Vitmain C in concentrated tomato juice.* Neither Codex nor the U.S. standards for tomato products provide for the addition of vitamin C. But the petition submitted by the Campbell Soup Co. proposes to amend the tomato puree standard (21 CFR 155.192) to provide for the restoration of vitamin C in concentrated tomato juice to the level found naturally in tomato juice.

The Commissioner is of the opinion that the Campbell Soup Co. has furnished reasonable grounds in support of its petition. But in view of the issue raised in regard to the addition of vitamin C in tomato juice, as discussed earlier in the preamble under "vitamin C in tomato juice," the Commissioner is delaying action on the Campbell Soup Co.'s proposal to provide for the restoration of the level of vitamin C in concentrated tomato juice to that naturally found in tomato juice. The Campbell Soup Co.'s proposal to amend the tomato puree standard to provide for the preparation of concentrated tomato juice with tomato paste and water is discussed below under the paragraph concerning concentrated tomato juice.

11. *Compliance with tomato soluble solids.* Codex (2.3) includes an acceptance procedure whereby (a) the average of the values of all the containers or subsamples tested must at least meet the minimum for the concentration declared or required by the product name or description; and (b) no individual test value may be more than 7.5 percent below such minimum declared or required. The U.S. standards (21 CFR 155.191 and 155.192) do not have a compliance procedure since such matters are left to the discretion of regulatory administrative procedures. The USDA standards for tomato puree (7 CFR 2852.5082) and tomato paste (7 CFR 2852.5042) provide for various concentration designations, but do not have a compliance procedure to allow for variations normally expected under good commercial practice. The USDA administrative guidelines state, however, that for a given concentration the average tomato soluble solids must meet at least the minimum required by the standard or specification and no individual test value may be more than 1 percent soluble solids below the required minimum.

The Commissioner believes there is merit in providing a formalized and objective guide for determining compliance with tomato soluble solids limits and is proposing the following:

a. The sample average must meet at least the minimum required by the standard;

b. The number of test values that are more than 1 percent soluble solids below the minimum required shall not exceed the acceptance number in the sampling plans (AQL 6.5), § 155.3(f) below.

12. *Concentrated tomato juice.* The U.S. standard for tomato puree (21 CFR 155.192(b)(2)) provides that tomato puree having a concentration of not less than 20.0 percent (but less than 24.0 percent) tomato soluble solids may be designated as "concentrated tomato juice" if the tomato ingredient is derived solely from the liquid of mature tomatoes of red or reddish varieties. Codex does not have a similar provision.

Since concentrated tomato juice is marketed as such in the United States, the Commissioner proposes to retain this optional designation. In addition, the Campbell Soup Co.'s petition contained a proposal to amend the standard to provide for the preparation of concentrated tomato juice by adjusting tomato paste with water to a concentration of not less than 20.0 percent, but less than 24.0 percent tomato soluble solids. The Commissioner is of the opinion that it would allow processors more flexibility if a ceiling is not placed on the concentration level. This would permit the concentration also to fall into the range applicable to tomato paste. At the same time, he believes that the label should contain directions for diluting the product to the solids level equivalent to single strength tomato juice. Therefore, he proposes that the concentration of concentrated tomato juice be such that upon diluting the food according to label directions the diluted article shall contain not less than 5.5 percent tomato soluble solids, but in no case shall the concentrate contain less than 20.0 percent tomato soluble solids.

13. *Labeling.*

a. *Name of food.* Codex (8.1.1) states that the name of the food shall be "tomato concentrate" and shall be accompanied by a declaration of the percentage of natural tomato soluble solids. Codex further provides (8.1.2) that the name and declaration of soluble solids may be accompanied or replaced by any name or description customarily and lawfully applied in the country in which the product is sold, except that: (1) the descriptions "tomato puree" and "tomato paste" may only be applied to products complying with the requirements for "tomato puree" and "tomato paste," respectively, and (2) the description "concentrated tomato puree" may only be applied to products with not less than 18 percent natural tomato soluble solids. The U.S. has no standard for "tomato concentrate" nor "concentrated tomato puree," but has separate standards for products named "tomato puree" or "tomato pulp" and "tomato paste" and a provision for the name "concentrated tomato juice" in the tomato puree standard. These U.S. standards do not require a label declaration of the percentage of tomato soluble solids.

The Commissioner is proposing to retain the following names currently provided for in the U.S. standards:

(1) "Tomato puree" or "tomato pulp" for the food that contains not less than 8.0 percent but less than 24.0 percent tomato soluble solids.

(2) "Tomato paste" for the food that contains not less than 24.0 percent tomato soluble solids.

(3) "Concentrated tomato juice" if the food is prepared only from the liquid obtained from mature red tomatoes and is of such concentration that when diluted according to label direction, the diluted article will contain not less than 5.5 percent tomato soluble solids, but in no case shall the concentrate contain less than 20.0 percent tomato soluble solids. In addition, he is proposing that "tomato concentrate" may be used as an alternative name for either tomato puree or

tomato paste if the container in which the concentrate is packed indicates that the food is for use for remanufacturing purposes only.

b. *Characterizing ingredients.* Codex (8.1.3) requires a declaration, as part of the name or in close proximity to the name, of any seasoning or flavoring that characterizes the product, e.g., "With ——", when appropriate. The U.S. standards (21 CFR 155.191 and 155.192) do not contain such a requirement. The Commissioner is of the opinion, however, that if a seasoning or flavoring is added to a product in quantities that produce a significantly different taste or flavor from what consumers would normally expect, they should be alerted to this change. Therefore, he proposes that flavorings that characterize the products be declared on the label as part of the name of the food or in close proximity to the name as specified in 21 CFR 101.22 and that a spice or a vegetable ingredient that characterizes the product be declared on the label with the statement "with added ——" or "with ——", the blank to be filled in with the name(s) of the vegetable ingredient(s) used or with the words "added spice" or, in lieu of the word "spice", the common name of the spice.

c. *List of ingredients.* Codex (8.2) requires a declaration of each of the optional ingredients in order of decreasing proportion. The U.S. standards (21 CFR 155.191 and 155.192) require that statements specified in the the standards showing the optional ingredients present shall immediately precede or follow the name of the food.

To be consistent with other U.S. standards recently revised, the Commissioner proposes that each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101. This proposed provision is also consistent with Codex.

d. *Declaration of percent tomato soluble solids.* Codex (8.6) states that the percentage of solids may be included on the label either as a minimum percentage or a range within 2 percent of the natural tomato soluble solids. The U.S. standards (21 CFR 155.191 and 155.192) do not provide for the optional declaration of solids.

The Commissioner does not propose to require the declaration of tomato soluble solids either as a minimum percentage or as a range when the product is labeled "tomato concentrate." He is of the opinion that manufacturers of "tomato concentrates" should have the option to declare the tomato soluble solids on labels, invoices, or by other means in a manner usable by those who purchase the concentrate for remanufacturing.

C. COMPARISON OF QUALITY ASPECTS FOR TOMATO CONCENTRATES AND PROPOSED COURSES OF ACTION.

The Codex standard for tomato concentrates does not provide for the food "concentrated tomato juice." The U.S. standard for tomato puree (21 CFR 155.192) provides for the name "concentrated tomato juice," but does not establish quality criteria for the food. The USDA standards for concentrated tomato juice (7 CFR 2852.5201) provide for the same quality factors and requirements as for single strength tomato juice.

Therefore, the Commissioner proposes that concentrated tomato juice shall conform to the quality standard for tomato juice rather than the quality standard for concentrated tomato products.

1. *Color.* Codex (3.2.1) states that the product, when diluted with water to reach approximately 8 percent natural tomato soluble solids, shall have a fairly good red color, free from abnormal colors for the product. The U.S. standards (21 CFR 155.191 and 155.192) do not have color or other quality requirements. The USDA standards (7 CFR 2852.5048 and 2852.5088) provide for color classification using the Munsell spinning discs in the following combination:

53 percent of area of Disc 1—(Red (5R 2.6/13 (glossy finish)));
28 percent of area of Disc 2—(Yellow (2.5 YR 5/12 (glossy finish)));
19 percent of area of either Disc 3—(Black, N1, glossy finish) or
Disc 4 (Grey, N4, mat finish); or, alternatively, 9½ percent of Disc 3 and 9½ percent of Disc 4.

The Commissioner proposes to adopt the USDA color requirement, using the Munsell color discs, because the USDA requirement provides an objective means of measurement.

2. *Texture.* Codex (3.2.2) states that the product shall have a homogeneous, evenly divided texture. The USDA standards (7 CFR 2852.5043 and 2852.5083) provide for "fine" and "coarse" texture, but lack an objective method for determining such characteristics.

It is the Commissioner's view that the preparatory steps of straining the pulped tomato ingredient so as to exclude peel and seeds will assure a uniform texture. It is also his view that the degree of fineness of coarseness of texture is not a factor of quality. Therefore, he does not propose to adopt the Codex provision on texture.

3. *Flavor.* Codex (3.2.3) states that the product, when diluted with water to approximately 8 percent tomato soluble solids, shall have a good flavor, without any objectionable flavor foreign to the product. The USDA standards (7 CFR 2852.5046 and 2852.5086) describe flavor in subjective terms with an extensive listing of materials and conditions that might adversely affect flavor, such as stems, sepals, leaves, crushed seeds, immature or sour tomatoes, improper processing, and storage conditions.

The Commissioner does not propose to include a flavor requirement in the U.S. standards because of the lack of a reasonably precise means of measuring "good flavor." Furthermore, if the flavor of the tomato concentrate is "objectionable" other provisions of the act may be invoked against the food so affected.

4. *Defects.* Codex (3.2.4) states that the tomato concentrate shall not contain excessive devects such as:

a. Dark specks or scalelike particles;
b. Seeds or objectionable particles of seeds;
c. Objectionable tomato peel;
d. Harmless plant materials;
e. Other similar objectionable defects.

The USDA standards for tomato paste (7 CFR 2852.5049) and for tomato puree (7 CFR 2852.5089) assign score points to the factor of "defects," describing such defects in terminology similar to Codex and stating that the product shall be "fairly free" from defects. However, the USDA standards are supplemented by administrative guidelines which interpret the standards more precisely and provide a measure of objectivity in evaluating defects. These administrative guidelines indentify scoreable defects as:

a. Pieces of skin (peel) exceeding 3/16 inch (measured without unrolling);
b. Black or dark brown specks which approximate 1/32 inch or more in length;
c. Whole seeds;
d. Particles of seed exceeding 1/32 inch in length.

Examination of the product is made on a 100-gram sample diluted to 8.0 to 9.0 percent natural tomato soluble solids. An allowance is set for each class of defect as well as a total for combined defects.

The Commissioner believes that provision should be made for control of the number and type of defects permitted in tomato concentrates. He agrees with the types of defects listed in the codex standard; but since it fails to set limits on the number that the food may contain, he is proposing requirements which are similar to those applied by USDA in the implementation of its grade standards, as follows:

There are present not more than one whole seed per 600 grams (21 ounces) and not more than 36 of the following defects, either singly or in combination per 100 grams (3.5 ounces) of the product:

a. Pieces of peel 5 mm (0.20 in) or greater in length.
b. Pieces of seed 3 mm (0.125 in) or greater in length.

c. Blemishes, such as dark brown or balck particles, greater than 2 mm (0.08 in) in length of which not more than four in the combined total of 36 may exceed 1.6 mm (0.063 in).

5. *Mineral impurities.* Codex (3.2.4(e)) states that mineral impurities may not exceed 60 mg/kg of the product diluted to 8 percent soluble solids. Neither the U.S. standards (21 CFR 155.191 and 155.192) nor the USDA standards set limitations on mineral impurities such as sand, grit, and silt.

The Commissioner does not consider mineral impurities as a subject to be dealt with in food standards under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). He is of the opinion that the presence of material of this type in foods in amounts to cause the foods to become adulterated would be dealt with under section 402 (21 U.S.C. 342) of the act as adulterated foods. Therefore, he does not proposed to adopt the Codex limitation on mineral impurities.

6. *Compliance.* Codex (3.2.5 and 3.2.6) provides a procedure for determining compliance with the quality requirements by using statistical sampling plans for prepackaged foods (AQL 6.5). The USDA standards have similar procedures for determining compliance.

The Commissioner is proposing a compliance procedure similar to that of the Codex standard as proposed in § 155.3 *Definitions* (21 CFR 155.3), published in the FEDERAL REGISTER of June 7, 1977 (42 FR 29014).

7. *Labeling for substandard quality.* The Codex standard does not provide for substandard labeling of tomato concentrates that fail to meet the requirements of the quality standard. Neither of the U.S. standards (21 CFR 155.191 and 155.192) currently provides for quality factors. However, since the Commissioner is proposing a quality standard for tomato concentrates in this document, he is also proposing that a product that fails to meet the requirements of the quality standard be labeled in accordance with 21 CFR 130.14(a).

8. *Fill of container.* Codex (7.1.1) requires that, when packed in rigid containers, the product shall occupy not less than 90 percent of the water capacity of the container. Codex also states that any container of less than 90 percent fill is a "defective," and lot acceptance is based upon the Codex sampling plans (AQL 6.5), reference CAC/RM 42-1969. The U.S. standards (21 CFR Part 155) do not provide for fill of container requirements. The USDA standards (7 CFR 2852.5045 and 2852.5085) recommend that the containers be filled as full as practical without impairment of quality.

The Commissioner believes that the Codex provisions are reasonable. Therefore, he proposes to adopt the Codex provisions of 90 percent minimum fill, but is proposing that compliance be based on § 155.3, as proposed in the FEDERAL REGISTER of June 7, 1977 (42 CFR 29014).

9. *Labeling for substandard fill.* Codex (7.1.1) does not provide for substandard labeling of tomato concentrates that fail to meet the fill of container requirements. The U.S. standards (21 CFR 155.191 and 155.192) do not contain fill of container requirements and consequently do not provide for substandard labeling.

Since the Commissioner is proposing a standard of fill of container for tomato concentrates in this document, he is of the opinion that it is reasonable to require that the label of a product that fails to meet the minimum fill of container requirements contain a declaration of substandard fill. Therefore, he proposes that such a product be labeled in accordance with 21 CFR 130.14(b).

10. *Methods of analysis.* Codex (9.2 and 9.3) includes methods for the determination of tomato soluble solids and salt in accordance with American Association of Analytical Chemists (AOAC) procedures.

These methods are the same as those referenced in the U.S. standards. Consequently, the Commissioner proposes no change, except to update the reference to cite the latest edition of the publication.

III. TOMATO CATSUP

A. *Discussion of the Commissioner's Proposed Courses of Action.*

The Codex Alimentarius Commission has not proposed a Codex standard for catsup. Therefore, no comparison can be made with a Codex document for this food. There is, however, a U.S. standard of identity (21 CFR 155.194) and USDA standards (7 CFR 2852.2101 through 2852.2111) for tomato catsup.

The Commissioner is not proposing a major revision of the catsup standard. Rather, his proposal is directed toward an updating of the standard, which has been in effect since July 1939, to broaden the choice of optional tomato ingredients and other optional ingredients, principally nutritive carbohydrate sweeteners and organic acids and to establish minimum total soluble solids and consistency requirements. The main points of these proposed amendments to the U.S. standards for tomato catsup are as follows:

1. *Optional tomato ingredients:* The current U.S. standard (21 CFR 155.194) provides that catsup may be prepared from one or any combination of three optional tomato ingredients.

The Commissioner proposes that the U.S. standard also provide for tomato concentrates as defined in the proposed § 155.191(a)(1) to prepare catsup. This will permit the manufacture of catsup, using tomato concentrates, at those times of the year when fresh tomatoes for processing are not available. The Commissioner is of the opinion that this provision will benefit both the consumer and the processor.

2. *Sweeteners.* The U.S. standard (21 CFR 155.194) states that when the solids of corn sirup, or dried corn sirup, or glucose sirup, or dried glucose sirup (or any combination of these) used contain less than 58 percent by weight of reducing sugars, calculated as anhydrous dextrose, then such corn sirup or glucose sirup shall be mixed with sugar or dextrose, or both, in such quantity that the weight of the solids of such corn sirup, or dried corn sirup or both, or glucose sirup, or dried glucose sirup or both, is not more than one-third of the weight of the solids of such mixture.

It is the Commissioner's view that technological improvements in the manufacture of sweeteners other than sucrose no longer support the need to place restrictions on their use, and he is therefore proposing to broaden the choice to any safe and suitable nutritive carbohydrate sweeteners, including those standardized in 21 CFR Part 168. In addition, he is of the opinion that providing for a class of sweeteners is less restrictive and will permit greater flexibility in the choice of suitable sweeteners that can be used.

3. *Acidulants.* The U.S. standard (21 CFR 155.194) provides only for a vinegar or vinegars as an acidifying ingredient.

The Commissioners believes this is unnecessarily restrictive, and he proposes to broaden the choice also to include lemon juice, concentrated lemon juice, and any safe and suitable organic acid.

4. *Solids requirement.* The U.S. standard (21 CFR 155.194) does not require a minimum total soluble solids content. However, the USDA standards (7 CFR 2852.2102(c)) state that for Grade C the total solids content shall be not less than 25 percent by weight.

The Commissioner considered the establishment of a minimum tomato soluble solids requirement for catsup, but does not have data available to support a figure. However, he is of the opinion that a minimum total soluble solids requirement will to some extent control the amount of tomato solids used in catsup. Therefore, he proposes to provide for the USDA figure of 25 percent as the minimum total soluble solids requirement for catsup.

5. *Solids determination.* The USDA standard (7 CFR 2852.2110) defines "total solids" as the refractometric sucrose value plus 1 percent.

The Commissioner understands that by adding 1 percent, the refractometric sucrose value will more nearly

agree with the total solids as determined by the oven-drying method. The Commissioner is aware that there is a difference between soluble solids as determined by refractometer and total solids as determined by the oven-drying method. However, the latest edition of the "National Canners Association Bulletin 27L" (January 1977, pages 129 to 131) indicates that the 1 percent correction is not consistent for the entire concentration range of catsup. Therefore, the Commissioner is proposing to express the total soluble in terms of the sucrose value as read directly from the refractometer without correction. He is of the opinion that this procedure will give more correct and consistent results.

6. *Labeling.* The current catsup standard does not require that all optional ingredients used in the food be declared on the lable. It requires only that certain statements specified in the standard precede or follow the name of the food wherever it appears on the label to show the presence of the optional tomato ingredients.

The Commissioner is proposing that the labeling requirements of the catsup standards be revised to be consistent with other recently revised U.S. standards. Therefore, he proposes that the statements showing the presence of the two optional tomato ingredients be declared as part of the name or in close proximity to the name of the food and that each of the optional ingredients used shall be declared on the label as required by the applicable sections of 21 CFR Part 101.

7. *Quality.* The U.S. standard (21 CFR 155.194) does not provide for quality criteria. But the USDA standards (7 CFR 2852.2105 through 2852.2109) have provisions for classifying catsup into four levels of quality; namely, Grade A, Grade B, Grade C, and Substandard.

The USDA standards have objective procedures for classifying "color" and "consistency." But the scoring of "defects" and "flavor" is largely a matter of judgment.

The Commissioner proposes to establish a standard of quality for catsup to provide for a minimum consistency requirement. He does not propose to provide for requirements for color or defects at this time, but he particularly invites comments on this point.

8. *Fill of container.* The U.S. standard (21 CFR 155.194) does not provide for fill of container requirements. But the USDA standard (7 CFR 2852.2103) has recommendations that the container be filled as full as practicable without impairment of quality and that the product occupy not less than 90 percent of the capacity of the container.

The Commissioner views a minimum fill of container as desirable and is therefore proposing a standard of fill based on a minimum of 90 percent of total capacity of the container. He is also proposing that compliance be in accordance with the proposed § 155.3(e)(2) below.

9. *Substandard labeling.* The U.S. does not have standards of quality or for fill of container for catsup and thus no provision for the labeling of a product that is below standard in quality or fill.

Since the Commissioner is proposing to establish standards of quality and fill of container for catsup in this document, he is of the opinion that it is reasonable to require that the label of a product that fails to meet the minimum quality and/or minimum fill of container requirements contain a declaration of substandard quality and/or fill. Therefore, he proposes that such products be labeled in accordance with 21 CFR 130.14(a) and/or (b).

IV. Proposed Effective Date

The Commissioner proposes that all products initially introduced into interstate commerce on or after July 1, 1979, shall comply with the regulation except as to any provisions that may be stayed by the filing of proper objections.

V. Environmental Impact Statement

The Commissioner has considered the environmental effects of the issuance or amendment of food standards and has concluded in § 25.1(d)(4) (21 CFR 25.1(d)(4)) that food standards are not major agency actions significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required for this proposal.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner proposes that Parts 155 and 156 be amended as follows:

PART 155—CANNED VEGETABLES

1. Part 155 is amended:

a. By adding Subpart A, consisting at this time of new § 155.3, to read as follows:

Subpart A—General Provisions

§ 155.3 Definitions and procedures.

For the purpose of this part:

(a) "Strength and redness of color" means at least as much red as is obtained by comparison of the prepared product, with the blended color produced by spinning a combination of the following concentric Munsell color discs of equal diameter, or the color equivalent of such discs:

Disc 1—Red (5R 2.6/13) (glossy finish).
Disc 2—Yellow (2.5 YR 5/12) (glossy finish).
Disc 3—Black (N1) (glossy finish).
Disc 4—Grey (N4) (mat finish).

Such comparison is to be made in full diffused daylight or under a diffused light source of approximately 250 foot-candle intensity and having a spectral quality approximating that of daylight under a moderately overcast sky, and a color temperature of 7,500 degrees Kelvin ±200 degrees. With the light source directly over the disc and product, observation is made at an angle of 45 degrees from a distance of about 24 inches from the product.

(b) "Tomato soluble solids" means the sucrose value as determined by the following method: Determine the refractive index of the clear serum obtained from the product, corrected for temperature to 20° C., converting the resultant index to "Percent Sucrose" in accordance with the "International Scale of Refractive Indices of Sucrose at 20° C." Reference: "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), sections 32.008, 32.009, 32.010 and section 52.012, "Table of Refractive Indices (Percent Sucrose) at 20° C."[11] If no salt has been added, the sucrose value obtained from the referenced tables shall be considered the percent of tomato soluble solids. If salt has been added, either intentionally or through the application of the acidified break, determine the percent of such added sodium chloride as specified in paragraph (c) of this section. Subtract the percentage so found from the percentage of total soluble solids found (sucrose value from the refractive index tables) and multiply the difference by 1.016. The resultant value is considered the percent of "tomato soluble solids."

(c) "Salt" means sodium chloride as determined by the potentiometric method. Reference: "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 32.019.[11]

(d) The procedure for determining drained weight is set forth in the "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 32.001.[11]

(e) "Compliance" means the following: Unless otherwise provided in a standard, a lot of canned vegetables shall be deemed in compliance for the following factors, to be determined by the sampling and acceptance procedure as provided in paragraph (f) of this section, namely:

(1) *Quality.* The quality of a lot shall be considered acceptable when the number of defectives does not

[11] Copies may be obtained from: Association of Official Analytical Chemists, P.O. Box 540, Benjamin Franklin Station, Washington, D.C. 20044.

exceed the applicable acceptance number (c) in the sampling plans.

(2) *Fill of container.* A lot shall be deemed to be in compliance for fill of container (total tomato product including, where appropriate, any packing medium) when the number of defectives does not exceed the applicable number (c) in the sampling plans.

(3) *Drained weight.* A lot shall be deemed to be in compliance for drained weight based on the average value of all samples analyzed according to the sampling plans.

(f) "Sampling and acceptance procedure" means the following:

(1) *Definitions*—(i) *Lot.* A collection of primary containers or units of the same size, type, and style manufactured or packed under similar conditions and handled as a single unit of trade.

(ii) *Lot size.* The number of primary containers or units in the lot.

(iii) *Sample size.* The total number of sample units drawn for examination from a lot.

(iv) *Sample unit.* A container, a portion of the contents of a container, or a composite mixture of product from small containers that is sufficient for the examination or testing as a single unit. For fill of container, the sample unit shall be the entire contents of the container.

(v) *Defective.* Any sample unit shall be regarded as defective when the sample unit does not meet the criteria set forth in the standards.

(vi) *Acceptance number (c).* The maximum number of defective sample units permitted in the sample in order to consider the lot as meeting the specified requirements.

(vii) *Acceptable quality level (AQL).* The maximum percent of defective sample units permitted in a lot that will be accepted approximately 95 percent of the time.

(2) *Sampling plans:*

Lot size (primary containers)	Size of container	
	Net weight equal to or less than 1 kg (2.2 lb)	
	n	c
4,800 or less	13	2
4,801 to 24,000	21	3
24,001 to 48,000	29	4
48,001 to 84,000	48	6
84,001 to 144,000	84	9
144,001 to 240,000	126	13
Over 240,000	200	19
	Net weight greater than 1 kg (2.2 lb) but not more than 4.5 kg (10 lb)	
	n	c
2,400 or less	13	2
2,401 to 15,000	21	3
15,001 to 24,000	29	4
24,001 to 42,000	48	6
42,001 to 72,000	84	9
72,001 to 120,000	126	13
Over 120,000	200	19
	Net weight greater than 4.5 kg (10 lb)	
	n	c
600 or less	13	2
601 to 2,000	21	3
2,001 to 7,200	29	4
7,201 to 15,000	48	6
15,001 to 24,000	84	9
24,001 to 42,000	126	13
Over 42,000	200	19

n=number of primary containers in sample,

C=acceptance number.

2. By revising § 155.191 to read as follows:

§ 155.191 Tomato concentrates.

(a) *Identity*—(1) *Definition.* Tomato concentrates are the class of foods each of which is prepared by concentrating one or any combination of two or more of the following optional tomato ingredients:

(i) The liquid obtained from mature tomatoes of the red or reddish varieties (*Lycopersicum esculentum P. Mill*).

(ii) The liquid obtained from the residue from preparing such tomatoes for canning, consisting of peelings and cores with or without such tomatoes or pieces thereof.

(iii) The liquid obtained from the residue from partial extraction of juice from such tomatoes.

Such liquid is obtained by so straining the tomatoes, with or without heating, as to exclude skins (peel), seeds, and other coarse or hard substances in accordance with good manufacturing practice. Prior to straining, food-grade hydrochloric acid may be added to the tomato material in an amount to obtain a pH no lower than 2.0. Such acid is then neutralized with food-grade sodium hydroxide so that the treated tomato material is restored to a pH of 4.2±0.2 prior to straining. Water may be added to adjust the final composition. The food contains not less than 8.0 percent tomato soluble solids as defined in § 155.3. When sealed in a container the foods are so processed by heat, before or after sealing, as to prevent spoilage.

(2) *Optional ingredients.* Safe and suitable ingredients may be used in the foods as follows:

(i) In all tomato concentrates:

(*a*) Salt (sodium chloride formed during acid neutralization shall be considered added salt).

(*b*) Organic acids, lemon juice, or concentrated lemon juice.

(*c*) Sodium hydrogen carbonate.

(ii) In tomato paste:

(*a*) Spices.

(*b*) Flavoring.

(*c*) Vegetable ingredients, such as onions and peppers, that may be fresh or preserved by physical means.

(3) *Labeling.* (*i*) *The names of the foods are:*

(*a*) "Tomato puree" or "tomato pulp" if the food contains not less than 8.0 percent but less than 24.0 percent tomato soluble solids.

(*b*) "Tomato paste" if the food contains not less than 24.0 percent tomato soluble solids.

(*c*) The name "tomato concentrate" may be used in lieu of the names "tomato puree", "tomato pulp", or "tomato paste" whenever the concentrate complies with the requirements of such foods and the statement "for remanufacturing purposes only" is declared on the container.

(*d*) "Concentrated tomato juice" if the food is prepared from the optional tomato ingredient described in paragraph (a)(1)(i) of this section and is of such concentration that upon diluting the food according to label directions the diluted article will contain not less than 5.5 percent tomato soluble solids, but in no case shall the concentrate contain less than 20.0 percent tomato soluble solids.

(ii) The following shall be included as part of the name or in close proximity to the name of the food:

(*a*) The statement "made from" (or "made in part from" as the case may be) "residual tomato material from canning" if the optional tomato ingredient specified in paragraph (a)(1)(ii) of this section is present.

(*b*) The statement "made from" (or "made in part from" as the case may be) "Residual tomato material from partial extraction of juice" if the optional tomato ingredient specified in paragraph (a)(1)(iii) of this section is present.

(*c*) A declaration of any flavoring that characterizes the product as specified in § 101.22 of this chapter.

(*d*) A declaration of any spice or vegetable ingredient that characterize the product, e.g., "seasoned with ——", the blank to be filled in with the common name of the vegetable ingredient(s) used or with the words "added spice" or, in lieu of the word "spice", the common name of the spice.

(4) *ingredient statement.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(5) *Compliance with tomato soluble solids.* Compliance with the tomato soluble solids requirement of this section shall be as follows:

(i) The sample average must meet at least the minimum required;

(ii) The number of test values that are more than 1 percent soluble solids below the minimum required shall not exceed the acceptance number in the

sampling plans (AQL 6.5) set forth in § 155.3(f)(2).

(b) *Quality.* (1) The standard of quality for tomato concentrate except for concentrated tomato juice, which when diluted to 5.5 percent tomato soluble solids shall conform to the standard of quality for tomato juice set forth in § 156.145 of this chapter, is as follows:

(i) The strength and redness of color of the food, when diluted with water (if necessary) to between 8 and 9 percent soluble solids and then compared with the Munsell color discs as described in § 155.3(a) are not less than the composite color produced by the following combination:

53 percent of the area of Disc 1;
28 percent of the area of Disc 2; and
19 percent of the area of either Disc 3 or Disc 4; or
9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the appearance of the diluted sample.

(ii) There are present not more than one whole seed per 600 grams (21 ounces) and not more than 36 of the following defects, either singly or in combination, per 100 grams (3.5 ounces) of the product when diluted with water to between 8 and 9 percent tomato soluble solids:

(*a*) Pieces of peel 5 mm (0.20 in) or greater in length (without unrolling).

(*b*) Pieces of seed 3 mm (0.125 in) or greater in length.

(*c*) Blemishes, such as dark brown or black particles greater than 2 mm (0.80 in) in length of which not more than four in the combined total of 36 may exceed 1.6 mm (0.063 in).

(iii) Examination of the diluted concentrate (8 to 9 soluble solids) for the foregoing defects is accomplished as follows:

(*a*) Peel, pieces of seed, and blemishes—spread the prepared concentrate evenly on a large white tray and remove the individual defects for classification and measurement.

(*b*) Whole seeds—weigh out 600 grams (21 ounces) of the well-mixed, diluted concentrate; place a No. 12 screen (1.68 mm openings) over the sink drain; transfer the product sample onto the screen; rinse container thoroughly with water and pour through screen; flush sample through screen by using an adequate spray of water; check screen for whole seeds; apply the appropriate allowance.

(2) Determine compliance with quality criteria as specified in § 155.3(e)(1).

(3) If the quality of the tomato concentrate falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality specified in § 130.14(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality when the quality of the tomato concentrate falls below the standard in only one respect, the label may bear the alternative statement "Below Standard in Quality ——", the blank to be filled in with the words specified after the corresponding paragraph under paragraph (b)(1) of this section which such tomato concentrate fails to meet, as follows:

(i) "Poor color".
(ii) "Excessive seeds".
(iii) "Excessive pieces of peel".
(iv) "Excessive blemishes".
(v) "Excessive pieces of seed".

(c) *Fill of container.* (1) The standard of fill of container of tomato concentrate intended for direct sale to consumers is as follows: The contents of the container occupy not less than 90 percent of the total capacity of the container as determined by the general method for fill of containers as prescribed in § 130.12(b) of this chapter.

(2) Determine compliance with fill of container requirements as specified in § 155.3(e)(2).

(3) If the tomato concentrate fails to meet the standard of fill of container as prescribed in paragraph (c)(1) and (2) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter, in the manner and form therein prescribed.

§ 155.192 [Deleted]

b. Section 155.192 is deleted (material formerly in § 155.192 is included in revised § 155.191).

c. By revising § 155.194 to read as follows:

§ 155.194 Catsup.

(a) *Identity*—(1) *Definition.* Catsup, ketchup, or catchup is the food prepared from one or any combination of two or more of the following optional tomato ingredients:

(i) Tomato concentrate as defined in § 155.191(a)(1).

(ii) The liquid derived from mature tomatoes of the red or reddish varieties *Lycopersicum esculentum P. Mill.*

(iii) The liquid obtained from the residue from such tomatoes for canning, consisting of peelings and cores with or without such tomatoes or pieces thereof.

(iv) The liquid obtained from the residue from partial extraction of juice from such tomatoes.

Such liquid being strained so as to exclude skins, seeds, and other coarse or hard substances in accordance with good manufacturing practice. Prior to straining, food-grade hydrochloric acid may be added to the tomato material at a rate to obtain a pH no lower than 2.0. Such acid is then neutralized with food-grade sodium hydroxide so that the treated tomato material is restored to a pH of 4.2±0.2 prior to straining. The liquid is then concentrated. The tomato ingredients provided for in paragraph (a)(1) of this section may contain salt (sodium chloride formed during acid neutralization shall be considered added salt) and are seasoned with ingredients as specified in paragraph (a)(2) of this section. The finished food shall have not less than 25 percent soluble solids as determined by the refractometric method, as specified in paragraph (a)(3) of this section. When sealed in a container, it is so processed by heat, before or after sealing, as to prevent spoilage.

(2) *Optional ingredients.* One or more of the optional ingredients In each of the following categories is added to the tomato ingredients specified in paragraph (a)(1) of this section:

(i) Lemon juice or concentrated lemon juice, a vinegar or vinegars, any organic acid as defined in § 145.3(g) of this chapter;

(ii) A nutritive carbohydrate sweetener;

(iii) Spices, flavoring, onions, or garlic.

(3) *"Soluble solids"* as used in paragraph (a)(1) of this section is the refractometric sucrose value (of the filtrate), corrected to 20° C, but uncorrected for acidity, in accordance with the "International Scale of Refractive Indices of Sucrose Solutions." Reference: "Official Methods of Analysis of the Association of Official Analytical Chemists," 12th Ed. (1975), section 52.012.[1]

(4) *Labeling.* (i) The name of the food is "Catsup", "Ketchup", or "Catchup".

(ii) The following shall be included as part of the name or in close proximity to the name of the food:

(*a*) The statement "made from" (or "made in part from" as the case may be) "Residual tomato material from canning" if the optional tomato ingredient specified in paragraph (a)(1)(iii) of this section is present.

(*b*) The statement "made from" (or "made in part from" as the case may be) "Residual tomato material from partial extraction of juice" if the optional tomato ingredient specified in paragraph (a)(1)(iv) of this section is present.

(5) *Ingredient statement.* Each of the optional ingredients used shall be declared on the label as required by applicable sections of Part 101 of this chapter.

(b) *Quality.* (1) The standard of quality for catsup is as follows: The consistency of the finished food is such that its flow is not more than 14 centimeters in 30 seconds at 20° C when tested in a Bostwick Consistometer in the following manner: Check temperature of mixture and adjust to 20±1° C. The trough must also be at a temperature close to 20° C. Adjust end-to-end level of Bostwick Consisto-

meter by means of the spirit level placed in trough of instrument. Side-to-side level may be adjusted by means of the built-in spirit level. Mix sample by stirring without incorporating air bubble, and immediately transfer to the sample chamber of the Bostwick Consistometer. Fill the chamber slightly more than level full, avoiding air bubbles as far as possible. Pass a straight edge across top of chamber starting from the gate end to remove excess product. Release gate of instrument by gradual pressure on lever, holding the instrument down at the same time to prevent its movement as the gate is released. Immediately start the stop watch or interval timer, and after 30 seconds read the maximum distance of flow to the nearest 0.1 cm. Clean and dry the instrument and repeat the reading on another portion of sample. Always remix sample before transferring to instrument. Do not wash instrument with hot water if it is to be used immediately for the next determination, as this may result in an increase in temperature of the sample. For highest accuracy, the instrument should be maintained at a temperature of 20±1° C. If readings vary more than 0.2 cm, repeat a third time or until satisfactory agreement is obtained. Report the average of two or more readings, excluding any that appear to be abnormal.

(2) Determine compliance with the quality criteria as specified in § 155.3(e)(1).

(3) If the quality of catsup falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality specified in § 130.14(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality when the quality of the catsup falls below the standard, the label may bear the alternative statement, "Below Standard in Quality-Low Consistency".

(c) *Fill of container.* The standard of fill of container for tomato catsup is as follows:

(1) The contents of the container occupy not less than 90 percent of the total capacity of the container as determined by the general method for fill of containers as prescribed in § 130.12(b) of this chapter.

(2) Determine compliance with fill of container requirements as specified in § 155.3(e)(2).

(3) If the catsup falls below the standard of fill prescribed in paragraph (c) (1) and (2) of this section, the label shall bear the general statement of substandard fill as specified in § 130.14(b) of this chapter, in the manner and form therein specified.

PART 156—VEGETABLE JUICES

2. Part 156 is amended:

a. By revising § 156.145 to read as follows:

§ 156.145 Tomato juice.

(a) *Identity*—(1) *Definition.* Tomato juice is the food intended for direct consumption, obtained from the unfermented liquid extracted from mature tomatoes of the red or reddish varieties of *Lycopersicum esculentum P. Mill.*, with or without scalding following by draining. In the extraction of such liquid, heat may be applied by any method which does not add water thereto. Such juice is strained free from peel, seeds, and other coarse or hard substances, but contains finely divided insoluble solids from the flesh of the tomato in accordance with good manufacturing practice. Such juice may be homogenized, may be seasoned with salt, and may be acidified with any safe and suitable organic acid. The juice may have been concentrated and later reconstituted with water to a tomato soluble solids content of not less than 5.5 percent by weight as determined by the method prescribed in § 155.3(b). When sealed in a container, it is so processed by heat, before or after sealing, as to prevent spoilage.

(2) *Labeling.* (i) The name of the food is "tomato juice" if it is prepared from unconcentrated, undiluted liquid extracted from mature tomatoes of reddish varieties.

(ii) The name of the food is "tomato juice from concentrate" if the finished juice has been prepared from concentrated tomato juice as specified in paragraph (a)(1) of this section.

(3) *Ingredient statement.* Each of the optional ingredients used shall be declared on the label as required by the applicable sections of Part 101 of this chapter.

(b) *Quality.* (1) The standard of quality for tomato juice is as follows:

(i) The strength and redness of color of the food, as determined by the method prescribed in § 155.3(a) of this chapter, are not less than the composite color produced by spinning the specified Munsell color discs in the following combinations:

53 percent of the area of Disc 1;
28 percent of the area of Disc 2; and
19 percent of the area of either Disc 3 or Disc 4; or
9½ percent of the area of Disc 3 and 9½ percent of the area of Disc 4, whichever most nearly matches the appearance of the tomato juice.

(ii) There are present not more than two of the following defects, either singly or in combination, per 500 ml (16.9 fluid ounces) of juice:

(*a*) Pieces of peel 3 mm (0.125 in) or greater, in length;

(*b*) Seeds, or pieces of seed 3 mm (0.125 in) or greater in length;

(*c*) Blemishes such as dark brown or black particles greater then 2 mm (0.08 in) in length.

(iii) Examination of the juice for the foregoing defects is accomplished by pouring the juice over a slightly inclined white tray and removing the individual defects for identity and measurement.

(2) Determine compliance with quality criteria as specified in § 155.3(e)(1).

(3) If the quality of the tomato juice falls below the standard prescribed in paragraph (b)(1) of this section, the label shall bear the general statement of substandard quality specified in § 130.14(a) of this chapter, in the manner and form therein specified; but in lieu of such general statement of substandard quality when the the quality of the tomato juice falls below the standard in only one respect, the label may bear the alternative statement "Below Standard in Quality——", the blank to be filled in with the words specified after the corresponding paragraph under paragraph (b)(1) of this section which such tomato juice fails to meet, as follows:

(i) "Poor color".

(ii) "Excessive pieces of peel".

(iii) "Excessive seeds" or "excessive pieces of seed".

(iv) "Excessive blemishes".

(c) *Fill of container.* (1) The standard of fill of container for tomato juice is as follows: The contents of the container occupy not less than 90 percent of the total capacity of the container as determined by the general method for fill of containers as prescribed in § 130.12(b) of this chapter.

(2) Determine compliance as specified in § 155.33(e)(2).

(3) If the tomato juice fails to meet the standard of fill of container as prescribed in paragraph (c)(1) and (2) of this section, the label shall bear the general statement of substandard fill specified in § 130.14(b) of this chapter, in the manner and form therein prescribed.

§ 156.147 [Revoked]

b. By revoking § 156.147 *Yellow tomato juice; identity.*

Interested persons may, on or before July 10, 1978 submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executuve Order 11821 (amended by Executive Order 11949)

and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

NOTE.—Incorporation by reference approved by the Director, Office of the Federal Register, March 11, 1976. Referenced material is on file in the Federal Register Library.

Dated: April 28, 1978.

HOWARD R. ROBERTS,
Acting Director of Bureau of Foods.

[FR Doc. 78-12392 Filed 5-8-78; 8:45 am]

[4110-03]

[21 CFR Part 1020]

[Docket No. 77N-0061]

DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

X-Ray Beam Limitation Devices for Radiographic and Fluoroscopic X-Ray Systems

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes amendments to: (1) clarify the X-ray beam limitation requirements for stationary, general-purpose X-ray systems; (2) incorporate interpretations that have been made about the performance of these systems; (3) relax certain requirements for field size adjustments; and (4) permit a capability for overriding the automatic X-ray field size adjustment on spot film and fluoroscopic X-ray systems, if appropriate labeling is provided. This document follows from a previous notice of intent.

DATE: Comments by July 10, 1978.

ADDRESS: Written comments to Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Harvey Rudolph, Bureau of Radiological Health (HFX-460), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1960.

SUPPLEMENTARY INFORMATION: Under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (Pub. L. 90-602, 42 U.S.C. 263b et seq.), the Commissioner of Food and Drugs proposes to amend the performance standard for diagnostic X-ray systems and their major components (21 CFR 1020.30, 1020.31, and 1020.32). The amendments would modify the requirements of § 1020.31(e)(2) concerning the manner in which means to limit the X-ray field are provided for stationary, general-purpose radiographic systems. The amendments also address §§ 1020.31(g) and 1020.32(b), by permitting a capability for overriding the automatic X-ray field size adjustment on spot film and fluoroscopic X-ray systems and requiring appropriate labels for these override controls when such a capability is provided.

The development of these amendments was announced in a notice of intent published in the FEDERAL REGISTER of April 1, 1977 (42 FR 17494), and drafts of the proposed amendments have been made available for review and comment by interested parties. Under section 358(f) of the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f(f)), these proposals have been reviewed by the Technical Electronic Product Radiation Safety Standards Committee, a permanent statutory advisory committee to the Secretary, Department of Health, Education, and Welfare, which must be consulted before establishment or amendment of performance standards for electronic products. The committee concurred with issuing the proposals for public comment. A discussion of the proposed amendments follows.

REVISION OF REQUIREMENT FOR POSITIVE BEAM LIMITATION

The positive beam limitation (PBL) requirements of the diagnostic X-ray equipment performance standard are currently in § 1020.31(e)(2) (21 CFR 1020.31(e)(2)). It states that all stationary, general-purpose radiographic systems must have means to prevent X-ray exposure until the operator or the system causes the X-ray field to be adjusted to the size of the image receptor. The meaning and intent of this requirement and the methods of complying with it have been subject to misinterpretation; therefore, the agency has issued advisory opinions and compliance policy statements to clarify the PBL requirement for manufacturers and to assist in determining compliance with the standard. Since promulgation of the standard, experience indicates that modifications and additions to the regulations on PBL are necessary for full benefit of this feature and for permitting simplification of the design of these systems. The proposed amendments would revise § 1020.31(e)(2) and establish new § 1020.31(e) (3), (4), and (5). The changes to these requirements are as follows:

1. *Requirement for field size adjustment.* Under the proposed amendments, revised § 1020.31(e)(2) would continue to state the requirement for PBL, but would require adjustment of the size of the X-ray field to the size of the image receptor only if the X-ray field is larger than the image receptor. The current standard requires that the X-ray field be adjusted to the same size as the image receptor each time the image receptor is changed, including when the X-ray field is smaller than the image receptor.

The PBL requirement was established as a means of fostering good radiologic practice and preventing the use, during routine examinations, of X-ray fields that exceed the size of the image receptor and subject the patient to unnecessary radiation exposure. The current provisions of § 1020.31(e)(2) permit adjustment of the X-ray field to a size smaller than the image receptor; however, during routine operation of the X-ray system, the X-ray field is first required to be adjusted to the same size as the image receptor to within the tolerances specified in § 1020.31(e)(2)(ii). This requirement was established to prevent the loss of needed diagnostic information, which could lead to repeat examinations if the X-ray field were left at a size significantly smaller than the selected image receptor. During the development of the standard, it was also thought that the lack of a minimum tolerance on the X-ray field size might lead to X-ray films with excessive unexposed margins because of careless or improper adjustment of beam-limiting devices. It was expected that such large unexposed margins could lead to loss of diagnostic information and could result in the use of the next larger film size to avoid the loss of information. The use of larger film sizes would result in increased patient exposure.

The agency has received both formal and informal criticisms from radiologists, radiologic technologists, and others concerning the impact of the requirement that the X-ray field be increased to the full size of the image receptor upon each change of the image receptor. These criticisms cite the inconvenience resulting from this requirement in two cirumstances.

The current requirement for agreement of the X-ray field and image receptor dimensions to within 3 percent of the source-to-image-receptor distance (SID) makes it difficult for beam-limiting devices providing PBL to be adjusted so that they provide an unexposed border on the image receptor and also remain in compliance with the performance standard. An increasing number of institutions, as well as radiation control agencies, are adopting requirements that evidence of proper X-ray field limitation shall appear on each radiograph. This is a method of controlling unnecessary exposure resulting from the use of X-ray fields that exceed the size necessary to fully expose the image receptor.

An additional criticism of the current requirement is that this provision inconveniences the user who wishes to make a series of radiographs with the X-ray field smaller than the film. Cur-

rently, when such a series of radiographs is being made, the operator often needs to manually adjust the beam limitation device to obtain the smaller field before each exposure instead of adjusting the X-ray field size to the area of interest initially and leaving it unchanged. Thus, one of the attractive features of automatic beam limitation, the elimination of the need for manual adjustment, is lost in this instance. Some systems have incorporated a feature to permit this reduction automatically, but the fact that this performance is acceptable is not clear from the present wording of § 1020.31(e)(2). Even these systems cause the reduced X-ray field to be enlarged to the size of the image receptor and then reduced again upon each change of the image receptor. Such performance is unnecessarily complicated, and the proposed amendment would permit a simplification of these systems.

These problems would be eliminated by revising § 1020.31(e)(2) to require that the dimensions of the X-ray field not exceed those of the image receptor by more than 3 percent of the SID. The PBL system would be required to meet this criterion for any SID for which it is designed. In addition, any amount of undersizing of the X-ray field in comparison with the image receptor would be permitted, thus making the requirement for beam limitation devices providing PBL more consistent with the requirement for spot-film collimation devices. (See FEDERAL REGISTER of June 11, 1975 (40 FR 24909) and February 25, 1977 (42 FR 10983) concerning the spot-film device performance requirements.) If the PBL device permits preselection of a size less than the full image receptor, means to align the X-ray field with the preselected portion of the image receptor would be required.

In addition, such a change would permit PBL to be adjusted to provide an unexposed border on the image receptor and still comply with the performance standard. With the current requirement of § 1020.31(e)(2)(ii), it is difficult to provide such an unexposed margin at all SID's and maintain compliance with the standard. The current situation thus makes enforcement of such a policy or regulation difficult in institutions having both certified and uncertified X-ray systems. The proposed amendment would assist this effort to reduce unnecessary exposure.

This proposal has one disadvantage in that some retakes may be necessary if the system is designed so that the operator needs to manually adjust the beam-limiting device to obtain a larger field when changing to a larger image receptor size and the operator neglects to do so. But this situation should rarely occur once the operator is familiar with the function of the system.

During the development of this proposal, a comment suggested that the inside tolerance on the X-ray field size be maintained, but that it be increased to 6 percent of the SID so that an unexposed border on the image receptor would be possible. It also suggested that adjustment of the X-ray field to the size of the image receptor continue to be required when the X-ray field is smaller than the image receptor size. The arguments in support of this suggestion were similar to those used to support the original PBL requirements.

The Commissioner acknowledges that this suggestion would eliminate the problem facing some X-ray facilities, i.e., providing unexposed borders while still maintaining their equipment in compliance with the performance standard. But, he notes that most users would still be unable to take a series of radiographs with the X-ray beam collimated to the area of interest without manually adjusting the beam-limiting device before each exposure. He also notes that the removal of the inner tolerance would allow manufacturers the option of designing less complex beam-limiting devices. Such devices could be less expensive to buy and maintain. Therefore, the Commissioner has not accepted the suggestion in proposing these amendments, but invites comments on this alternate approach, as well as on the proposed amendment.

2. *Conditions for positive beam limitation.* It is proposed to provide, in a new § 1020.31(e)(3), a list of the conditions under which a stationary, general-purpose radiographic system is required to provide PBL. This list would replace the present § 1020.31(e)(2)(iv), which describes those circumstances when PBL may be bypassed. The system would be required to provide PBL when all the conditions proposed in § 1020.31(e)(3) are met. The conditions are described below.

(a) PBL would be required if the image receptor is placed in a permanently mounted cassette holder. This provision is not a change from the current standard, which states that PBL may be bypassed when the cassette holder is not used. In this context, cassette trays mounted under stationary X-ray tables are considered to be permanently mounted cassette holders.

(b) PBL would be required when the image receptor length and width are each less than 20 inches. Imposition of this condition would relax the current requirement of the standard, which requires that PBL be provided for any image receptor size that may be used with the system. This condition would eliminate the requirement for PBL for image receptors having any dimensions greater than 20 inches, such as the 14- by 36-inch film size used for radiography of the full spine.

Currently, only a few beam limitation systems offer PBL capabilities for image receptors with dimensions as large as 36 inches. These systems are operable only at a few image receptor sizes, including 14 to 36 inches. Because of the small size of the potential market for PBL systems with the capability to accept these larger cassette sizes as well as a variety of other image receptor sizes, manufacturers have been reluctant to develop more versatile PBL systems capable of accepting a variety of image receptor sizes, including the larger sizes needed by some practitioners. The proposed amendment would permit these practitioners to use cassette holders that provide PBL at image receptor sizes smaller than 20 inches, and PBL would not be required for larger image receptors.

The Commissioner concludes that the benefit to be derived from this change outweighs any potential for increased exposure as a result of not requiring PBL for the large image receptor sizes. The 1970 X-ray Exposure Study conducted by the U.S. Public Health Service indicated that only approximately 0.2 percent of all radiographic examinations in 1970 were examinations of the full spine, the principal use of 14- by 36-inch film.

(c) PBL would be required if the X-ray beam axis is oriented either horizontally or vertically and the SID is within the specified range during the entire exposure. A range of SID's for which PBL is required to be provided would be specified in proposed § 1020.31(e)(3)(iii). Specification of such a range is necessary to clarify the requirements of the standard and to minimize the complexity and cost of the PBL feature.

The current standard requires that PBL be provided at any SID at which the system is capable of functioning. Owing to technical problems associated with providing PBL for larger film sizes, such as 14 by 17 inches, at SID's less than 36 inches, the agency issued interpretations that stated that PBL would not be required for SID's less than 36 inches. The Commissioner proposes to incorporate this interpretation into the regulations by establishing a lower limit of 36 inches for the SID's at which PBL is required. The Commissioner notes that unpublished data from the Nationwide Evaluation of X-ray Trends survey show that less than 3.5 percent of all medical radiographic examinations are performed at SID's less than 36 inches. Thus, the reduction in unnecessary radiation exposure that might be realized from requiring PBL for SID's less than 36 inches would be small and is not judged to be warranted in view of the added expense such a requirement would entail.

Because the SID-sensing mechanism must have a physical upper limit, the

Commissioner considers it reasonable to establish an upper limit for the PBL region. For a vertical beam direction, it is proposed that PBL not be required for SID's greater than 50 inches. This limitation would include the most commonly used SID's for which PBL is required. For a horizontal beam direction, an upper limit of 80 inches is proposed for the SID's for which PBL would be required.

PBL is currently required when the beam axis or table angulation is within 10 degrees of the horizontal or vertical during the entire exposure. During the development of the diagnostic X-ray standard, it was expected that PBL could be provided for angulations of up to 10 degrees from the horizontal or vertical without difficulty. The choice of 10 degrees as the demarcation between the region where PBL is required and the region where bypass is allowed is somewhat arbitrary. The intent was to have PBL for those orientations when the beam axis was perpendicular or nearly perpendicular to the plane of the image receptor and to avoid the technical complexities and costs necessary to provide PBL throughout the full range of beam axis and image receptor orientations. This decision also recognized that the majority of examinations are made with the beam axis either horizontal or vertical.

Problems have been described that result from the requirement for PBL at angles less than 10 degrees when the X-ray table is rotated about an axis that is not coincident with the center of the cassette tray or bucky. Under certain conditions the PBL requirement results in the inability to obtain exposure of the entire area of the X-ray film; in other cases it may result in X-ray fields that are larger than the image receptor. Consideration of this problem and current table designs demonstrates that PBL can be provided if the angular range is reduced to plus or minus 3 degrees. This smaller angular range will ensure that PBL is provided when the X-ray beam axis is approximately perpendicular to the image receptor, yet it will allow those special procedures that have proved troublesome in the past. Therefore, the Commissioner proposes that PBL be required only if the X-ray beam axis is within 3 degrees of the horizontal or vertical and is perpendicular to the plane of the image receptor to within plus or minus 3 degrees.

(d) PBL would not be required during stereoscopic radiography if the X-ray system is designed to provide this capability. This condition is not a change from the current standard, which provides that PBL may be bypassed during stereoscopic radiography.

The conditions for PBL that would be contained in proposed § 1020.31(e)(3) would define when the beam-limiting device must provide PBL. The statement of the requirement for PBL in this manner eliminates the need for reference to bypass of PBL or to automatic return to the PBL mode upon change of image receptor or return from a non-PBL mode of operation. Whenever the conditions contained in proposed § 1020.31(e)(3) are satisfied, the system would be required to provide PBL.

3. *Measuring compliance.* The method of determining compliance with the requirements for PBL would be contained in proposed § 1020.31(e)(4). These methods are the same as in the current standard. Compliance with the requirements of proposed § 1020.31(e)(2) would be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor. Compliance with the requirement that the X-ray field be limited to the size of the image receptor or production of X-rays be prevented would not be tested during the first 5 seconds after insertion of the image receptor to permit automatic systems to complete the adjustment. This requirement is currently contained in § 1020.31(e)(2)(i).

4. *Override of positive beam limitation.* The capability to override the means for limitation of the X-ray field specified in proposed § 1020.31(e)(2) would be described in proposed § 1020.31(e)(5). In addition to the current provision of the standard that permits override of PBL by means of a captured key switch, the proposed amendment would permit the provision of override switches that do not require a key, provided these switches are not accessible to the user and are not referenced as operator controls in the information provided to users. This amendment would recognize the need for such controls for use by servicemen or repairmen. Although not specifically addressed in the current standard, such a service or repair override capability has been provided on some systems. To discourage inappropriate use by unqualified personnel it is necessary that such controls not requiring a captured key be separated from the normal operator controls.

It is also proposed to require labeling of the override key switches accessible to the operator to indicate the proper function of these switches and to discourage their inappropriate use. The potential for radiation exposure reduction provided by PBL is not realized if these systems are improperly used. The proper purpose of the override capability that is accessible to the operator should be to permit continued use of the X-ray system as a manual system without PBL in the event of a failure of the PBL system. Information received by the agency from its personnel conducting inspections of X-ray systems in user facilities and from State and local radiation control authorities indicates that the override capability is sometimes improperly used, resulting in the loss of the exposure reduction potential provided by the PBL system.

The improper use of the override capability seems to result from two principal reasons. Users of the PBL system are unfamiliar with the functioning of the system and use the override when its use is not necessary, or users lack confidence in the reliability of the PBL system and use the override in an attempt to reduce or prevent malfunctioning of the X-ray system. The Commissioner proposes to reduce the inappropriate use of the override capability due to the first reason by requiring that the override switch be clearly labeled to indicate its intended purpose. Although the agency is concerned about the use of the override as a result of poor system reliability, the competition between manufacturers producing these systems should result in improved reliability as purchasers become more sophisticated concerning the performance of various systems.

It is proposed to require in § 1020.31(e)(5) that the override key switch accessible to the user be labeled as follows: "FOR X-RAY FIELD LIMITATION SYSTEM FAILURE." The current standard in § 1020.31(e)(2)(v) describes an override capability that may be provided in the event of system failure or to perform special procedures that cannot be performed in the positive mode. Reference to use of the override capability to perform special procedures is being omitted in the revision of the requirements for PBL. The Commissioner is aware of no special procedure in which the conditions for PBL as contained in proposed § 1020.31(e)(3) would be met and which would also necessitate that the PBL feature be overridden.

The revisions of the requirement for positive beam limitation, except for the requirement that the keyed override switch be labeled, will not mandate design changes for beam-limiting devices that meet the current requirements for PBL. Systems that comply with the current standard will, except for the labeling requirement, comply with the proposed amendments. The amendments will, however, permit additional flexibility in future designs of these systems to provide performance features desired by users. Because the only additional requirement imposed by these amendments is the requirement that the override switch be labeled to indicate its function, it is proposed that the amendments to § 1020.31(e) become effective 60 days after their publication as a final rule.

OVERRIDE OF AUTOMATIC BEAM LIMITATION FOR FLUOROSCOPIC AND SPOT-FILM SYSTEMS

The Commissioner proposes to recognize in the performance standard the provision of a capability to override the automatic beam limitation devices of fluoroscopic and spot-film X-ray systems. Although override of automatic beam limitation devices has been addressed in the standard for radiographic systems, no such provisions have applied to fluoroscopic or spot-film systems. Because these systems are also susceptible to malfunction, it is proposed that in case of failure of the automatic beam limitation system, override of these devices be permited to allow their operation in the manual mode, with adjustment of the X-ray field accomplished by the user.

It is proposed that the switch for such an override feature be clearly labeled; however, a captured key switch is not proposed. If the automatic beam limitation system fails during a critical procedure, the fluoroscopist should not have to search for a key. The fluoroscopist should be aware, however, that the automatic beam limitation system has been disabled. Therefore, it is proposed that a signal, visible at the fluoroscopist's position, be provided to indicate when the automatic beam limitation feature is overridden. The override feature would only apply to the X-ray field size adjustment. The other requirements concerning centering the X-ray field on the image receptor, providing capability to adjust the X-ray field smaller than the image receptor, and containing the X-ray field by the primary protective barrier would remain applicable when the automatic beam limitation feature is overridden. This override capability would be addressed in new §§ 1020.31(g)(5) and 1020.32(b)(3).

Because the provision of visual indication at the operator's position could necessitate redesign for systems that do not have such a feature, it is proposed to make the requirement for visual indication when an override switch is provided on spot-film or fluoroscopic beam limitations systems effective 1 year after the date of publication of the final rule based on this proposal.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment and other pertinent background data on which the Commissioner relies in promulgating these amendments are on file with the Hearing Clerk, Food and Drug Administration, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the Public Health Service Act as amended by the Radiation Control for Health and Safety Act of 1968 (sec. 358, 82 Stat. 1177-1179 (42 U.S.C. 263f)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that part 1020 be amended as follows:

1. In § 1020.30 by revising paragraph (b)(19), to read as follows:

§1020.30 Diagnostic X-ray systems and their major components.

(a) * * *

(b) * * *

(19) "Image receptor" means any device, such as a fluorescent screen or radiographic film, which transforms incident X-ray photons either into a visible image or into another form which can be made into a visible image by further transformations. In those cases where means are provided to preselect portions of the image receptor, the term "image receptor" shall mean the preselected portion of the device.

* * * * *

2. In § 1020.31 by revising paragraph (e)(2) and by adding paragraphs (e)(3), (4), and (5) and (g)(5) to read as follows:

§ 1020.31 Radiographic equipment.

* * * * *

(e) * * *

(2) *Positive beam limitation.* The requirements of this paragraph shall apply to stationary, general-purpose X-ray systems which contain a tube-housing assembly, an X-ray control, and, for those systems so equipped, a table, all certified in accordance with § 1020.30(c) of this chapter. Means shall be provided for positive beam limitation such that X-ray production is prevented when:

(i) Either the length or width of the X-ray field in the plane of the image receptor exceeds the corresponding image receptor dimension by more than 3 percent of the SID, or

(ii) The sum of the X-ray field length and width exceeds the sum of the image receptor length and width by more than 4 percent of the SID.

(3) *Conditions for positive beam limitation.* Positive beam limitation shall be provided whenever all the following conditions are met:

(i) The image receptor is inserted in a permanently mounted cassett holder;

(ii) The image receptor length and width are each less than 20 inches.

(iii) The X-ray axis is within ±3 degrees of vertical and the SID is 36 inches to 50 inches inclusive; or the X-ray beam axis is within ±3 degrees of horizontal and the SID is 36 inches to 80 inches inclusive.

(iv) The X-ray beam axis is perpendicular to the plane of the image receptor to within ±3 degrees.

(v) Stereoscopic radiography is not being performed.

(4) *Measuring compliance.* Compliance with the requirements of paragraph (e)(2) of this section shall be determined when the equipment indicates that the beam axis is perpendicular to the plane of the image receptor. Compliance shall be determined no sooner than 5 seconds after insertion of the image receptor.

(5) *Override of positive beam limitation.* A capability may be provided for overriding positive beam limitation in case of system failure and for servicing the system. This override may be for all SID's and image receptor sizes. A key shall be required for any override capability that is accessible to the operator. It shall be impossible to remove the key while the positive beam limitation is overridden. Each such key switch shall be clearly labeled as follows:

FOR X-RAY FIELD LIMITATION SYSTEM FAILURE

The override capability is considered accessible to the operator if it is referenced in the operator's manual or in other material intended for the operator or if its location is such that the operator would consider it part of the operational controls.

* * * * *

(g) * * *

(5) A capability may be provided for overriding the automatic X-ray field size adjustment in case of system failure. If so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic X-ray field size adjustment override is engaged. Each such system failure override switch shall be clearly labeled as follows:

FOR X-RAY FIELD LIMITATION SYSTEM FAILURE

* * * * *

3. In § 1020.32 by adding paragraph (b)(3) to read as follows:

§ 1020.32 Fluoroscopic equipment.

* * * * *

(b) * * *

(3) If the fluoroscopic X-ray field size is adjusted automatically as the SID or image receptor size is changed, a capability may be provided for overriding the automatic adjustment in case of system failure. If so provided, a signal visible at the fluoroscopist's position shall indicate whenever the automatic field adjustment is overridden. Each such system failure override switch shall be clearly labeled as follows:

FOR X-RAY FIELD LIMITATION SYSTEM FAILURE

* * * * *

Interested persons may, on or before July 10, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: May 1, 1978.

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

[FR Doc. 78-12386 Filed 5-8-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[28 CFR Part 16]

[Order No. 779-78]

PRIVACY ACT OF 1974

Exemption of Records Systems

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: In the Notice Section of today's FEDERAL REGISTER, the Department of Justice proposes to exempt the LEAA Civil Rights Investigative System, JUSTICE/LEAA-008, from the access provisions of the Privacy Act, 5 U.S.C. 552a(d). This exemption is proposed in those cases where a request for access to a complaint file is made prior to administrative resolution of the complaint. It is needed to ensure unhampered conciliation and compliance efforts during the complaint and compliance process and to protect the identity of confidential sources.

DATES: All comments must be received on or before June 8, 1978.

ADDRESS: All comments should be addressed to the Administrative Counsel, Office of Management and Finance, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

EFFECTIVE DATE: April 27, 1978.

FOR FURTHER INFORMATION CONTACT:

Bronson E. Clayton, 202-739-2232.

The authority for this proposed rule is 5 U.S.C. 552a. Accordingly, it is proposed that 28 CFR 16.100 be amended by adding paragraphs (d) and (e) as follows:

§ 16.100 Exemption of Law Enforcement Assistance Administration System—Limited Access.

* * * * *

(d) The following system of records is exempt from 5 U.S.C. 552a(d):

(1) The Civil Rights Investigative System (JUSTICE/LEAA-008). This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

(e) Exemption from subsection (d) is claimed since access to information in the Civil Rights Investigative System prior to final administrative resolution will deter conciliation and compliance efforts. Consistent with the legislative purpose of the Privacy Act of 1974, decisions to release information from the system will be made on a case-by-case basis and information will be made available where it does not compromise the complaint and compliance process. In addition, where explicit promises of confidentiality must be made to a source during an investigation, disclosure will be limited to the extent that the identity of such confidential sources will not be compromised.

Dated: April 27, 1978.

MICHAEL J. EGAN,
Acting Attorney General.

[FR Doc. 78-12641 Filed 5-8-78; 8:45 am]

[6050-01]

ACTION

[45 CFR Part 1232]

NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

AGENCY: Action.

ACTION: Proposed rule.

SUMMARY: Action issues a proposed rule which sets forth policies and procedures to assure nondiscrimination based on handicap in programs and activities to which Action provides financial assistance. The proposed rule is needed to comply with section 504 of the Rehabilitation Act of 1973 as amended, and Executive Order 11914, which relate to nondiscrimination against handicapped persons. This proposed rule follows guidelines contained in the Department of Health, Education, and Welfare regulation (43 FR 2132, January 13, 1978) for carrying out the provisions of Executive Order 11914. This proposed rule extends the protection of section 504 to volunteers serving in programs receiving financial assistance from Action.

Action will be issuing a separate proposed rule at a later date concerning its policies and procedures for nondiscrimination against handicapped persons in the recruitment, selection and placement of volunteers by the agency.

DATE: Comments must be received on or before July 10, 1978.

ADDRESS: Submit comments to: Harry N. MacLean, General Counsel, ACTION, 806 Connecticut Avenue NW., Room 607, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT:

Ms. Ellen W. Reath, Assistant General Counsel, 202-632-8812.

SUPPLEMENTARY INFORMATION: The proposed rule is based on the regulation issued by the Department of Health, Education and Welfare, on January 13, 1978. (45 CFR 85, 43 F.R. 2132). The regulation requires ACTION to promulgate regulations implementing section 504 with respect to the programs and activities to which it provides financial assistance. The proposed rule follows the guidelines contained in the HEW regulation, and extends the protection of section 504 to volunteers serving in programs receiving financial assistance from ACTION.

ACTION is preparing a separate regulation, to be published in the FEDERAL REGISTER for public comment, which will address its policy of nondiscrimination against the handicapped in the recruitment, selection and placement of volunteers by the agency.

This proposed rule implements section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 706, with regard to federal financial assistance administered by ACTION. Section 504 prohibits qualified handicapped persons from being denied the benefits of, or participation in, any federally assisted program. The proposed rule applies to all recipients of financial assistance from ACTION. This includes the volunteer programs such as VISTA, University Year for ACTION, Foster Grandparent Program, Retired Senior Volunteer Program and Senior Companion Program, as well as any other programs under which recipients receive financial assistance, such as special demonstration grants. The proposed rule does not apply to organizations overseas which receive assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87-293, as amended.

The proposed rule forbids discrimination against qualified handicapped persons in employment and in the operation of programs receiving assistance from ACTION, including the recruitment, selection and placement of volunteers. Recipients must make reasonable accommodation to the handicaps of employees and participants in volunteer programs, unless the accommodations would cause the recipient undue hardship. As providers of services, recipients are required to make programs operated in existing facilities accessible to handicapped persons, and to operate their programs in a non-discriminatory manner.

The proposed rule does not apply to recruitment, selection and placement of volunteers by ACTION. This subject will be covered by an additional proposed rule to be issued in the near future.

Title 45, Chapter XII is proposed to be amended by adding a new part 1232 to read as follows:

PART 1232—NON-DISCRIMINATION ON BASIS OF HANDICAP IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM ACTION

Subpart A—General Provisions

1232.1 Purpose.
1232.2 Application.
1232.3 Definitions.
1232.4 Discrimination prohibited.
1232.5 Participation of volunteers.
1232.6 Assurances required.
1232.7 Notice.
1232.8 Self evaluation.

Subpart B—Employment Practices

1232.9 Discrimination prohibited.
1232.10 Reasonable accomodation.
1232.11 Employment criteria.
1232.12 Preemployment inquiries.

Subpart C—Program Accessibility

1232.13 Discrimination prohibited.
1232.14 Existing facilities.
1232.15 New construction.

Subpart D—Procedures

1232.16 Procedures.

AUTHORITIES: Sec. 504, Rehabilitation Act of 1973, Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794); Sec. 111(a), Rehabilitation Act Amendments of 1974, Pub. L. 93-516, 88 Stat. 1619 (29 U.S.C. 706)

Subpart A—General Provisions

§ 1232.1 Purpose.

The purpose of this part is to effectuate section 504 of the Rehabilitation Act of 1973, which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving Federal financial assistance.

§ 1232.2 Application.

This part applies to each recipient of Federal financial assistance from ACTION and to each program or activity that receives or benefits from such assistance, including volunteer programs such as VISTA, University Year for ACTION (UYA), Senior Companion Program (SCP), Foster Grandparent Program (FGP) and Retired Senior Volunteer Program (RSVP). This part does not apply to recipients outside the United States which receive financial assistance under the Peace Corps Act, 22 U.S.C. 2501, Pub. L. 87-293, as amended. This part does not apply to recruitment, selection and placement of volunteers by ACTION.

§ 1232.3 Definitions.

As used in this part the term:

(a) "The Act" means the Rehabilitation Act of 1973. Pub. L. 93-112, as amended by the Rehabilitation Act Amendments of 1974, Pub. L. 93-517, 29 U.S.C. 794.

(b) "Section 504" means section 504 of the Act.

(c) "Director" means the Director of ACTION.

(d) "Recipient" means any state or its political subdivision, any instrumentality of a state or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended directly or through another recipient, including any successor, assignee, or transferee of a recipient, but excluding the ultimate beneficiary of the assistance.

(e) "Applicant for assistance" means one who submits an application, request, or plan required to be approved by an ACTION official or by a recipient as a condition to becoming a recipient.

(f) "Federal financial assistance" means any grant, loan, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel;

(3) Real and personal property or any interest in or use of such property; or

(4) A federal agreement, arrangement or other contract which has as one of its purposes the provision of assistance, including the provision of volunteers.

(g) "Facility" means all or any portion of buildings, structures, equipment, roads, walks, parking lots, or other real or personal property or interest in such property.

(h) Handicapped Person.

(1) "Handicapped person" means any person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

(2) As used in paragraph (h)(1) of this section, the phrase:

(i) "Physical or mental impairment" means (A) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (B) any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

(ii) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(iii) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

(iv) "Is regarded as having an impairment" means (A) has a physical or mental impairment that does not substantially limit major life activities but is treated by a recipient as constituting such a limitation; (B) has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or (C) has none of the impairments defined in paragraph (h)(2)(i) of this section but is treated by a recipient as having such an impairment.

(j) *"Qualified handicapped person"* means (1) with respect to employment or volunteer service, a handicapped person who, with reasonable accommodation, can perform the essential functions of the job or assignment in question; and (2) with respect to services, a handicapped person who meets the essential eligibility requirements for the receipt of such services.

(k) "Handicap" means any condition or characteristic that renders a person a handicapped person as defined in paragraph (h) of this section.

§ 1232.4 General prohibitions against discrimination.

(a) No qualified handicapped person, shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

(b)(1) A recipient, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of handicap:

(i) Deny a qualified handicapped person the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified handicapped person an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified handicapped person with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to handicapped persons or to any class of handicapped persons unless such action is necessary to provide qualified handicapped persons with aid, benefits, or services that are as effective as those provided to others;

(v) Aid or perpetuate discrimination against a qualified handicapped person by providing significant assistance to an agency, organization, or person that discriminates on the basis of handicap in providing any aid, benefit, or service to beneficiaries of the recipient's program;

(vi) Deny a qualified handicapped person the opportunity to participate as a member of planning or advisory boards; or

(vii) Otherwise limit a qualified handicapped person in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) A recipient may not deny a qualified handicapped person the opportunity to participate in programs or activities that are not separate or different, despite the existence of permissibly separate or different programs or activities.

(3) A recipient may not, directly or through contractual or other arrangements, utilize criteria or methods of administration (i) that have the effect of subjecting qualified handicapped persons to discrimination on the basis of handicap, (ii) that have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the recipient's program with respect to handicapped persons, or (iii) that perpetuate the discrimination of another recipient if both recipients are subject to common administrative control or are agencies of the same state.

(4) A recipient may not, in determining the site or location of a facilit, make selections (i) that have the effect of excluding handicapped persons from, denying them the benefits of, or otherwise subjecting them to discrimination under any program or activity that receives or benefits from Federal financial assistance or (ii) that have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the program or activity with respect to handicapped persons.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by federal statute or executive order to handicapped persons or the exclusion of a specific class of handicapped persons from a program limited by federal statute or executive order to a different class of handicapped persons is not prohibited by this part.

(d) Recipients shall administer programs and activities in the most integrated setting appropriate to the needs of qualified handicapped persons.

(e) Recipients shall take appropriate steps to ensure that communications with their applicants, employees, and beneficiaries are available to persons with impaired vision and hearing.

§ 1232.5 Participation of volunteers.

(a) Recipients shall extend the opportunity to serve in a volunteer program receiving federal financial assistance to all handicapped persons who can perform the essential duties of a volunteer assignment with reasonable accommodation, unless the accommodation would cause undue hardship on the operation of the program. Reasonable accommodation shall include good faith efforts to locate a volunteer assignment involving duties which a handicapped applicant is capable of performing.

(b) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipient's program, factors to be considered include:

(1) The overall size of the recipient's program with respect to number of volunteers, number and type of volunteer work stations, and size of budget.

(2) The nature and cost of the accommodation needed.

(c) Recipients shall conduct any medical clearance of volunteer applicant in accordance with the requirements of § 1232.12.

§ 1232.6 Assurances required.

(a) An applicant for Federal financial assistance for a program or activity to which this part applies shall submit an assurance, or a form specified by the Director, that the program will be operated in compliance with this part. An applicant may incorporate these assurances by reference in subsequent application to ACTION. The assurance will obligate the recipient for the period during which Federal financial assistance is extended.

(b) A recipient operating a volunteer program under which volunteers are assigned to a number of work stations shall obtain an assurance from each work station that neither volunteers nor the beneficiaries they serve will be discriminated against on the basis of handicap.

§ 1232.7 Notice.

Recipients shall take appropriate initial and continuing steps to notify participants, beneficiaries, applicants, and employees, including those with impaired vision or hearing, that it does not discriminate on the basis of handicap in violation of Section 504 and this part.

§ 1232.8 Self-evaluation.

Each recipient shall, within one year of the effective date of this part, conduct a self-evaluation of its compliance with Section 504, with the assistance of interested persons, including handicapped persons or organizations representing handicapped persons. Each recipient shall evaluate its current policies, practices and effects thereof, and modify any that do not meet the requirements of this part.

Subpart B—Employment Practices

§ 1232.9 General prohibitions against employment discrimination.

(a) No qualified handicapped person shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity that receives or benefits from federal financial assistance.

(b) A recipient shall make all decisions concerning employment under any program or activity to which this part applies in a manner which ensures that discrimination on the basis of handicap does not occur and may not limit, segregate, or classify applicants or employees in any way that adversely affects their opportunities or status because of handicap.

(c) The prohibition against discrimination in employment applies to the following activities:

(1) Recruitment, advertising, and the processing of applications for employment;

(2) Hiring, upgrading, promotion, award of tenure, demotion, transfer, layoff, termination, right of return from layoff, and rehiring;

(3) Rates of pay or any other form of compensation and changes in compensation;

(4) Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists;

(5) Leaves of absence, sick leave, or any other leave;

(6) Fringe benefits available by virtue of employment, whether or not administered by the recipient;

(7) Selection and financial support for training, including apprenticeship, professional meetings, conferences, and other related activities, and selection for leaves of absence to pursue training;

(8) Employer sponsored activities, including social or recreational programs; and

(9) Any other term, condition, or privilege of employment.

(d) A recipient may not participate in a contractual or other relationship that has the effect of subjecting qualified handicapped applicants or employees to discrimination prohibited by this subpart. The relationships referred to in this paragraph include relationships with employment and referral agencies, with labor unions, with organizations providing or administering fringe benefits to employees of the recipient, and with organizations providing training and apprenticeship programs.

§ 1232.10 Reasonable accommodation.

(a) A recipient shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified handicapped applicant or employee unless the recipient can demonstrate that the accommodation would impose an undue hardship on the operation of its program.

(b) In determining pursuant to paragraph (a) of this section whether an accommodation would impose an undue hardship on the operation of a recipicent's program, factors to be considered include:

(1) the overall size of the recipient's program with respect to number of employees, number and type of facilities, and size of budget;

(2) The type of the recipient's operation, including the composition and structure of the recipient's workforce; and

(3) The nature and cost of the accommodation needed.

§ 1232.11 Employment criteria.

A recipient may not use non-job-related employment tests or criteria that discriminate against handicapped persons and shall ensure that employment tests are adapted for use by persons who have handicaps that impair sensory, manual, or speaking skills.

§ 1232.12 Preemployment inquiries.

(a) Except as provided in paragraph (b) of this section, a recipient may not conduct a preemployment medical examination or may not make pre-employment inquiry of an applicant as to whether the applicant is a handicapped person or as to the nature of severity of a handicap. A recipient may, however, make preemployment inquiry into an applicant's ability to perform job-related functions.

(b) Nothing in this section shall prohibit a recipient from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty. *Provided*, That: (1) All entering employees are subjected to such an examination regardless of handicap, and (2) the results of such an examination are used only in accordance with the requirements of this part.

(c) Information obtained in accordance with this section as to the medical condition or history of the applicant shall be collected and maintained on separate forms that shall be accorded confidentiality as medical records, except that:

(1) Supervisors and managers may be informed regarding restrictions on the work or duties of handicapped persons and regarding necessary accommodations;

(2) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment; and

(3) Government officers investigating compliance with the Act shall be provided relevant information upon request.

Subpart C—Program Accessibility

§ 1232.13 General requirement concerning program accessibility.

No qualified handicapped person shall, because a recipient's facilities are inaccessible to our unusable by handicapped persons, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity that receives or benefits from federal financial assistance.

§ 1232.14 Existing facilities.

(a) A recipient shall operate each program or activity to which this part applies so that the program or activity, when viewed in its entirety, is readily accessible to handicapped persons. This paragraph does not require a recipient to make each of its existing facilities or every part of a facility accessible to and usable by handicapped persons.

(b) Recipients operating a volunteer program under which volunteers are assigned to work in a number of different work stations will assure that a representative sample of work stations are accessible to handicapped persons.

(c) A recipient is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. Where structural changes are necessary to make programs or activities in existing facilities accessible, such changes shall be made as soon as practicable, but in no event later than three years after the effective date of the regulation.

§ 1232.15 New construction.

New facilities shall be designed and constructed to be readily accessible to and usable by handicapped persons. Alterations to existing facilities shall, to the maximum extent feasible, be designed and constructed to be readily accessible to and usable by handicapped persons.

Subpart D—Procedures

§ 1232.16 Procedures.

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to this part. These procedures are found in § 1203.6-1203.11 of this Title.

Issued in Washington, D.C. on April 28, 1978.

JIM DUKE,
Executive Officer, ACTION.

[FR Doc. 78-12546 Filed 5-8-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 0 and 1]

[CC Docket No. 78-144; FCC 78-290]

CABLE TELEVISION POLE ATTACHMENTS

Proposed Procedural Rules and Substantive Guidelines for Regulation; Inquiry

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: This item seeks comments on proposed procedural rules and substantive guidelines for the regulation of cable television pole attachments. The Commission is required by section 224 of the Communications Act, enacted February 21, 1978, to regulate the rates, terms, and conditions for pole attachments where such attachments are not regulated by a state.

DATES: Comments must be filed on or before June 9, 1978, and reply comments must be filed on or before June 29, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Daniel F. Grosh, Common Carrier Bureau, 202-632-5550.

SUPPLEMENTARY INFORMATION:

Adopted: April 25, 1978.

Released: May 9, 1978.

In the matter of adoption of rules for the regulation of cable television pole attachments, CC Docket No. 78-144.

1. On Feb. 21, 1978, the President signed Pub. L. No. 95-234, the Communications Act Amendments of 1978,

providing, inter alia, for FCC regulation of cable television pole attachments where such attachments are not regulated by a State. Section 224(b)(2), as enacted in this legislation, requires that "Within 180 days from the date of enactment of this section the Commission shall prescribe by rule regulations to carry out the provisions of this section." The present Notice of Proposed Rulemaking begins the process of prescribing appropriate regulations to carry out this statutory mandate.

BACKGROUND

2. It is the general practice of the cable television industry to lease space on existing utility poles or in ducts or conduits for their cables and associated equipment. Typically, these poles, ducts, and conduits are owned by telephone and electric power utility companies, often under a joint use or ownership agreement. Frequently, there is no practical alternative for a CATV system operator except to use available space on existing poles, ducts or conduits and conflict sometimes has arisen over the charges which should be borne by CATV systems for the use of these facilities. Section 224, as enacted, directs that the Commission regulate the rates, terms, and conditions for pole attachments to provide that such rates, terms, and conditions are just and reasonable. "Pole attachment" is defined to include attachments by a CATV system not only to poles, but also to ducts, conduits, or rights-of-way owned or controlled by a utility. The legislation does not, however, give the Commission jurisdiction to hear pole attachment complaints when a regulatory agency within the state or any political subdivision where the dispute arises regulates the rates, terms, and conditions for pole attachments and, in so regulating, has the authority to consider and does consider the interests of the subscribers of cable television service as well as the interests of the consumers of the utility services. At the time this legislation was being considered in Congress, according to the Senate Committee Report, only one state, Connecticut, actually regulated pole attachment arrangements, while in another 8 States regulatory authority apparently existed but had not been exercised.

3. The Act requires this Commission to "adopt procedures necessary and appropriate to hear and resolve complaints concerning (pole attachment) rates, terms, and conditions," and this Notice sets for public comment the proposed procedural rules contained in Attachment A. Interested persons are requested to comment on the general structure and the specific provisions of these rules, as well as upon the usefulness of adopting any additional rules. We are also requesting comment upon the adoption of substantive guidelines which might provide direction to utilities and cable television system operators, encourage settlements, and help to resolve complaints fairly and expeditiously. Although this Commission has in the past acted informally to assist interested persons in settling pole attachment disputes, there are many aspects of this newly-enacted regulatory responsibility in which the Commission lacks basic information. Certainly many issues will need to be resolved on a case-by-case basis, but we would hope that interested persons will provide us with information and comments useful for the adoption of guidelines to resolve as many significant issues as possible.

PROPOSED PROCEDURAL RULES

4. While Pub. L. No. 95-234 directs that the Commission adopt appropriate procedures, it does not itself set out any specific procedures to govern this new regulatory activity. The legislative history is more instructive, particularly the Senate Committee Report. The Report makes clear the committee's belief that the matter of CATV pole attachments is essentially local in nature and ideally a matter for state or local regulation. "It is only because such state or local regulation does not widely exist that Federal supplemental regulation is justified." Senate Committee Report, pp. 16-17. The supplemental regulation envisioned by the Report is to be simple and expeditious, necessitating a minimum of staff, paperwork and procedures consistent with fair and efficient regulation. That regulation could be uniquely applicable to pole attachment matters and would operate only when the parties are unable to reach an agreement and a complainant has brought a matter to the Commission's attention. Senate Committee Report, p. 22. Tariff filings and other aspects of the full panoply of Title II common carrier regulation need not apply, and the Commission is afforded discretion to select regulatory tools appropriate to the simple complaint procedure specified in the bill. Some of these discretionary tools are mentioned in the Report. For example, the Commission may:

(a) Establish regulations governing form and content of complaints.

(b) Require complainant to establish a prima facie case, to show that the parties are unable to resolve the matter themselves, and to exhaust state or local administrative remedies.

(c) Prescribe rules for such matters as assigning the burden of proof or determining the documentation required of a party.

(d) Direct any remedy it deems appropriate, including ordering the parties to undertake further negotiations or issuing a show cause order.

(e) Publish guidelines for determining whether a particular rate, term, or condition is just and reasonable.

5. The rules proposed in this Notice have been drafted to carry out the Congressional intent and provide simple and expeditious procedures to adjudicate pole attachment disputes. Pleadings are limited to a complaint, a response, and a reply. The complaint must satisfy our jurisdictional requirements, namely, (a) that the State within which the pole attachment complaint arises does not regulate pole attachments; (b) that the utility is not owned by any railroad, any person who is cooperatively organized, or any person owned by the Federal government or any State; and (c) that the utility uses or controls poles, ducts, or conduits used, in whole or in part, for wire communications. If the rate, term, or condition is regulated by the State, as demonstrated by a State-filed certificate, we would dismiss the petition. If the State has not provided certification, the Commission would presume, rebuttably, that the State is not regulating pole attachments. Next, we would require the complainant to serve a copy of the complaint on the respondent and the agencies regulating the respondent and the complainant. The complaint would be assigned a file number for administrative purposes. The complainant would be required to submit a copy of the pole attachment agreement, if any, and to identify specifically the rate, term, or condition which is claimed to be unjust or unreasonable. Further, the complainant would be required to provide data and information in support of such claim. Insofar as possible, this supporting information should use data reported on FCC Form M. Data and information filed with the Federal Power Commission or with State regulatory agencies may also be used if necessary. It is anticipated that complainants will almost invariably be cable television system operators for whom the necessary cost data is likely to be less familiar and more difficult to obtain than for a utility. Accordingly, we believe that a complainant cable television system operator should be able to obtain the necessary data from a utility upon request. We would not dismiss a complaint for lack of adequate supporting data where the utility has failed to provide the necessary information after reasonable request, and would retain the option of requiring that additional filings or information be provided by either party. Generally, we would expect that the parties will make reasonable efforts to resolve potential disputes before filing complaints, and the proposed rules require, in particular, that the complaint indicate the steps taken to obtain necessary information from a utility, where the complainant claims the in-

formation was not provided upon request. If a complainant CATV system operator has not provided the required information but has made reasonable efforts to obtain the information from the utility we would consider that the complainant has made out his prima facie case in this regard, and the utility would then be required to provide the needed information as part of its burden of proving that the rate, term, or condition is just and reasonable. If the utility failed to meet this burden, the Commission would allow the complaint and direct an appropriate remedy.

6. The data and information required of the complainant under proposed § 1.1403(f) encompasses data which will be needed to determine whether the rate is no higher than the cost standard established by Congress. This includes data on gross investment for pole lines and cross arms, the depreciation reserves for these investments, the number of poles, the annual carrying charges attributable to the cost of maintaining a pole, the rate of return authorized for the utility, the number of pole attachments, the average amount of usable space per pole for those poles used for the pole attachment, and the average amount of usable space occupied by the pole attachment. The annual carrying charge would typically include the return upon pole investment, maintenance, depreciation, administration costs, and taxes. The total costs may be expressed as a percentage of the net pole investment. Similar data would be required for ducts and conduits as appropriate. The parties may also submit any other relevant data, information, or argument. We anticipate that the question of properly allocating common costs will be a troublesome one, as will be the problems of possible adjustments to gross pole line investment and the determination of average usable space. These matters are discussed below in the section on substantive guidelines.

7. The respondent would have 30 days from the date the complaint was filed within which to file a response, and the complainant a further 10 days to file a reply. The respondent would be required to demonstrate that the rate, term, or condition complained of is just and reasonable. Failure to respond would be deemed an admission of the facts provided by the complainant from publicly available records. No other filings and no motions other than for extension of time would be considered unless requested by the Commission.

8. After examining the pleadings, and using any guidelines, formulas, and methodologies developed by the Commission, we would make a determination of whether the rate, term, or condition complained of was just and reasonable. The complainant would be held to the burden of establishing a prima facie case, and the ultimate burden of proof would be placed upon the utility. We believe that whether a utility is complainant or respondent, it should generally have greater expertise in this area, will likely have drafted and proposed the rate, term, or condition, and will have greater access to relevant studies and information; it is because of these factors that the ultimate burden of proof is placed upon the utility. If a rate is at issue, the Commission would determine if it fell within the definition of just and reasonable rates contained in the Act. If the Commission determined that such rate, term, or condition is not just and reasonable, it could order: (1) Suspension of such provision; (2) Substitution by the Commission of a just and reasonable rate, term, or condition; and (3) Refund or payment, as appropriate.

9. It is clear from Section 224 and the Senate Committee Report that expeditious consideration should be given to complaints and that the Commission should have broad discretion to establish a simple procedure for evaluating complaints. Typically, we would expect that these complaints can be resolved on the basis of the filings. If the complainant has failed to establish a prima facie case, we would deny the complaint. If the utility has failed to satisfy its burden of providing that the rate, term or condition is just and reasonable, we would allow the complaint and direct an appropriate remedy. Where the complaint cannot be resolved on the basis of the filings, additional information or informal conferences with the Commission staff may be requested. Evidentiary hearings would be contemplated only in very exceptional cases where other simpler procedures would not be appropriate. The rules anticipate that the Commission would use the simplest and most expeditious procedures appropriate to each case, consistent with the complexity of the case and the importance of the issues involved. Further, Congress has given the Commission authority to establish guidelines for just and reasonable rates, terms and conditions for pole attachments. Once the Commission has established such guidelines, it can apply them on a case by case basis without formal proceedings. The rules also follow the suggestion of the Senate Committee Report in allowing the Commission the discretion to estimate costs, where necessary, without requiring full hearings or special studies. The questions of what cost estimates can be made, and what those estimates should be, is addressed below in the sections on substantive guidelines.

10. If the respondent fails to obey the Commission order, the Commission could institute show cause proceedings against the respondent pursuant to Section 312(b) of the Act. Proceedings pursuant to the forfeiture provisions of Section 503(b)(1)(B) of the Act and the penal provisions of Section 502 are also available against any person who fails to comply with a Commission order.

11. Rule 0.310 delegates authority to act upon these complaints to the Chief of the Common Carrier Bureau, except where such complaints raise novel or unusual issues. Reconsideration and review of action taken pursuant to delegated authority would be subject to § 1.101 et seq., of the Commission's rules.

PROPOSED SUBSTANTIVE GUIDELINES AND QUESTIONS

12. While Pub. L. No. 95-234 does not contemplate subjecting pole attachments to regulation as a tariffed common carrier activity, the Senate Committee report indicates at p. 15 that the Commission does have discretion to "issue guidelines to be used in determining whether the rates, terms, and conditions for CATV poles attachments are just and reasonable in any particular case." Appropriate guidelines should assist parties in reaching mutually satisfactory rental agreements and should help simplify and expedite the Commission's consideration of pole attachment complaints in a manner consistent with fair regulation. The drafting and adoption of such regulation does, however, present a number of difficulties. This legislation extends the Commission's jurisdiction over new concerns and new parties by means of new regulatory methods. The Commission has some familiarity with pole attachments through past complaints and its efforts to help the parties to pole attachment disputes resolve their difficulties. But we have relatively little information about the rates, terms, and conditions contained in the thousands of existing pole attachment agreements, or about the practices and needs of cable television systems operators and utilities in this regard. For example, we have little data on of how much usable space actually exists on the different types and sizes of poles in different regions of the country, or on the costs and practices of power companies, entities which we have not previously regulated. We request information and comments by interested parties on the various matters discussed in this notice, even though we may not be in a position to adopt specific guidelines on many of these matters until we have acquired more experience in handling pole attachment complaints.

A. DETERMINING JUST AND REASONABLE RATES

13. Section 224(d)(1) defines a pole attachment rate to be just and reasonable if the rate:

assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

14. The essence of this allocation formula appears clear. For a period of five years it permits contracting parties and the Commission to find as just and reasonable pole attachment rates anywhere within the range bounded by additional costs and costs which we shall refer to as fuly allocated costs.[1] This Congressional expression of intent as to the meaning of the term "just and reasonable rate" as it relates to pole attachments appears to grant the Commission and the parties considerable discretion in determining the justness and reasonableness of such rates. Congress apparently sought to save the Commission from lengthy initial proceedings to determine the justness and reasonableness or particular CATV pole attachment rates while the Commission gains experience regulating pole attachment rates, terms, and conditions.[2] In an effort to frame a regulatory program consistent with this Congressional intent, we propose for the first five years after enactment of this legislation to find just and reasonable any rate for pole attachments which does not exceed the fully allocated cost of providing pole attachments, and is greater than the additional costs. A complaint concerning a rate within these bounds would be dismissed.

B. COST DETERMINATION PROBLEMS

15. While Pub. L. No. 95-234, defines just and reasonable rates in relation to costs and provides a formula for allocating certain costs, some cost determination problems remain. The Senate Report recognized that difficulties will surface in determining some cost components associated with erecting and maintaining pole line plant, and allocating those costs to the pole attachment activity. Indeed, similar problems could occur in identifying additional costs. Nevertheless, the Report concluded that special accounting measures or studies should not be necessary.[3] This conclusion rests in some degree on the belief that the majority of cost and expense items attributable to utility pole plant are known and reflected in publicly available accounts filed by the utilities with regulatory authorities. Nor does the Congress seem to want the Commission to look behind these accounts. The Senate report states that,

the Commission may accept in whole or in part the depreciation rates, property valuation, systems of accounts, rates or return and the like established or determined by any State or local agency or any agency of the Federal Government. It is not the intent of S. 1547, as reported, to require the Commission to embark upon a large-scale ratemaking proceeding in each case brought before it, or by general order.

Id., at 22.

Absent such accounts the Senate Committee expects that the Commission will have to make its "best estimate" of some of the less readily identifiable actual costs.[4] Such estimates may well be necessary to maintain the simplicity and flexibility which Congress intended, and to avoid prolonged proceedings and the need for special studies and accounting measures. Our proposed procedural rules are drafted to make use of this option.

16. Before focusing on cost determination problems, we emphasize that Pub. L. No. 95-234 is largely silent on the meaning of "additional" costs and "operating expenses and actual capital costs of the utility". Moreover, we view the legislative history's explanation of the components of these costs as not necessarily complete. (See footnotes 1 and 2 above). Thus, we invite interested persons to identify the components of these "costs" and to offer their reasons for including or excluding each of the components in the "costs" to be allocated to the pole attachment activity. Our proposed procedural rules set out certain cost data requirements, but other cost information may be useful and available. We will consider development of a Commission-sanctioned list of such cost components which we believe would be most helpful to parties to pole attachment agreements. It would in many instances decide a matter that might otherwise be controverted; and if a pole attachment dispute arises, it would provide the Commission with a basis for resolving this part of the dispute.

17. As previously indicated, the legislative history of Pub. L. No. 95-234 assumes that accounts already exist containing most of the cost and expense items correctly attributable to pole attachments. It is nonetheless possible that in some instances such accounts do not exist, or are not sufficiently differentiated for pole attachment rate setting purposes. In such instances we are not inclined, given the clear congressional intent that our regulatory program for pole attachments be simple and flexible, to prescribe a system or systems of accounts. Nor are we inclined to conduct special studies to detemine the values to be assigned to the cost components.

18. At least two approaches to dealing with such cases seem possible, approaches which are not necessarily mutually exclusive. If during the negotiation process, the cable television entity is not satisfied with the cost justification supplied by the utility to support the proposed rates for pole attachments, it may ask for the necessary accounting information. If the cable system believes that this information, as well, is not sufficiently detailed and differentiated, or is incorrect, it seemingly could ask the utility to conduct a special cost study, through an independent person or organization acceptable to both parties, to produce such information. We of course would not anticipate evaluation the validity of such cost studies unless an adequate complaint were filed with this Commission. If the relationships of parties to pole attachment disputes degenerates to this level of litigiousness, we also must anticipate a possible dispute over which party should

[1]See S. Rept. No. 95-580, p. 19-21. The Senate Report explains "additional costs" as: "those costs which would not be incurred by the pole owner or controller 'but for' the CATV attachment," and "operating expenses and actual capital costs of the utility," as: "The costs to the utilities, irrespective of the CATV attachment, of owning and maintaining poles." "Additional costs" are generally equivalent to what is referred to as incremental cost, and the proportional part of "Operating expenses and actual capital costs" are generally equivalent to fully allocated costs.

[2]Id., at 19. The Report proceeds to describe the components of additional costs. It then explains operating expenses and actual capital costs of the utility as the "costs to the utilities, irrespective of the CATV attachment, of owning and maintaining poles. Such costs include interest on debt, return on equity (profit), depreciation, taxes, administrative and maintenance expenses."

[3]Id., at 20.

[4]Id.

pay for such studies. We urge all interested persons to give us the benefits of their reasoned comments on this problem. Absent special studies, we would be compelled to rely on the information derived from a system of accounts used by the utility and sanctioned by a regulatory authority.

19. A second approach to assigning values to the cost components also seems to be available given the express congressional intent that we may make our best estimate of the less readily identifiable costs. For instance, with respect to determining the value of actual pole line plant, we could estimate the historical cost per pole, less depreciation, for pole line plant in particular states or regions by using information obtained from FCC Form M's filed by subject carriers. These estimates could be applied where other data is incomplete or unavailable, or used to gauge the reliability and reasonableness of submitting cost data, especially where such data is disputed. Although this approach initially seems not to be helpful in determining the value of electric power companies' pole line plant, the existence of joint use agreements between telephone and electric power companies in most communities generally support application of estimates derived from FCC Form M's to electric power companies as well. The Senate Committee Report indicates that about 70 percent of all utility poles owned by either telephone or electric utilities are jointly used. Under these agreements, both the electric utilities and telephone companies erect and maintain pole line plant, but avoid erecting duplicative plant.[5] A portion of each pole is reserved for communications services. The telephone companies which are parties to the joint use agreements usually control this space. Given the widespread existence of joint use agreements, it seems unlikely that there would be a significant difference in the characteristics or costs of the poles in most cases and the cost factors applicable to communications space would seem to be the appropriate factors for determining the costs of pole attachment.

20. If these general observations are inaccurate, it is incumbent upon interested persons to submit comments to correct them. We also realize that although the foregoing observations generally may be true, there may be instances in which they are not. In such cases the burden of proof would be on any party differing with this estimation approach to prove that costs associated with particular pole line plant are different from the costs derived from generalized sources. We recognize that this second approach to assigning values to the cost components of the pole attachment activity is novel. Novelty, however, is not reason enough to find an approach incompatible with determining just and reasonable rates. In this regard, we also note that the considerable flexibility which Congress intended to give us in determining just and reasonable pole attachment rates also carries with it an element of imprecision. Moreover, the difinitional range of reasonableness for rates set forth in Pub. L. No. 95-234 and the language in the Senate Report revealing the Senate Committee's conviction that the Commission may be forced to make its "best estimate" of some costs seem to suggest that such an element of imprecision would be consistent with the just and reasonable standard Congress intends to be used to evaluate pole attachment rates. We urge all interested parties to consider this approach in their comments.

C. ALLOCATION OF COMMON COSTS

21. A difficulty lurking beneath both of the cost determination approaches which we have discussed above is that of allocating to pole attachments operating expenses which are common to at least some of the utilities' other activities. For example, maintenance, administrative and general overhead expenses are common to pole attachments as well as to other activities. In our experience regulating communications common carriers, allocating common costs to various services has been a very troublesome problem. Since existing accounting systems may not be sufficiently differentiated to reflect the allocation of common costs and because special studies seem to be very expensive and often disputed, we urge interested persons to offer their views on what principles should guide allocation of such common costs to the pole attachment activity. It may be possible to estimate with reasonable accuracy and on a general basis the appropriate maintainance, depreciation, administration, and other common costs, and to use this as a benchmark for determining whether a rate is just and reasonable, while allowing a particularized showing of factors which would justify a different rate.

D. USE OF HISTORICAL DATA

22. Traditionally, this agency has used historical costs and variations thereof in its ratemaking role. The legislative history, however, quite clearly states that the Commission need not rely on historical costs when considering pole attachment rates. Rather, we may consider future or replacement costs in evaluating particular pole attachment complaints, at least where a future or replacement cost methodology is sanctioned by the regulatory body with jurisdiction over the utility.[6] The use of historical costs nevertheless appears to be consistent with the reference in Pub. L. No. 95-234 to the "actual capital costs of the utility"; historical costs are more likely to be generally available, from existing accounting records, and they are currently used for decision purposes by CATV's and utilities alike. If a utility chooses to allocate costs to the pole attachment activity pursuant to the FDC-7 methodology we prescribed for the Bell system in Docket 18128, our approach would not foreclose consideration of costs so determined in evaluating the justness and reasonableness, of a pole attachment rate. Refusal to allow such an approach could result in the anomalous situation of a telephone company allocating costs pursuant to differing standards prescribed by this Commission. Duplicative cost allocations could be more expensive and not in the best interest of cable television subscribers or the utilities' customers. We propose to deviate from this approach only when historical costs or FDC Method 7 costs are not available.

E. ADDITIONAL COSTS

23. Additional costs, as that term is used in the legislation, means those costs which would not be incurred "but for" the CATV pole attachment. They include both the non-recurring costs of the initial attachment (e.g., make-ready costs) and other costs which arise solely because of CATV use of communication space on the pole. We have little information on whether the determination of these costs presents significant problems, or whether guidelines for such costs would be practicable or useful. Information and comment by interested parties are requested.

F. USABLE SPACE

24. As already noted, Pub. L. No. 95-234, establishes for five years the uppermost boundary for the range of just and reasonable pole attachment rates as generally being:

> an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit or right-of-way.

To this point in our discussion of substantive guidelines and questions we have focused on cost problems because

[5]The Senate Report notes that: "Of the more than 10 million poles on which cable operators lease space, fewer than half are controlled by telephone companies, while 53 percent are controlled by power utilities, public and private."

[6]See Cong. Rec. S967 (daily ed. Jan. 31, 1978).

we think that those problems will be the most troublesome. However, determining the percentage of the total usable space on the pole or in the conduit or duct is also obviously important. This factor clearly can be verified to an extent not realistically possible for costs. Obviously the space can be measured for each pole conduit, and duct. We would hope, however, that a method can be developed whereby we can accurately estimate that CATV cables occupy certain percentages of usable space on poles of varying heights. These estimates would be applied in cases in which the parties choose not to actually measure the usable space occupied by the CATV cable on each pole and in each conduit or duct. Interested persons are invited to file comments on the advisability and feasibility of this approach to the usable space problem, and to submit studies estimating the amount and percentage of usable space occupied by CATV cables on and in poles, conduits, and ducts of various sizes, in different service areas. These studies must clearly and completely explain the methodology used to reach any estimates, and must also include the work papers and underlying data supporting any proposed estimates.

G. TEMPORARY ORDERS

25. The proposed procedural rules permit the granting of refunds or orders for payment in particular cases, but do not provide specific authority for ordering the stay of rate increases or service terminations, or for other temporary orders. We expect that such orders will not generally be necessary, since refunds and other remedies will be available and the simplicity of the complaint procedure should lead to relatively quick resolution of disputes. We invite comments upon whether some authority to order stays or other temporary orders might nevertheless be necessary in exceptional cases to prevent irreparable harm to a party, and, if so, in what circumstances the order should issue and what remedies should be used to give it effect. Although we do no expect that some form of automatic stay will be necessary, we will consider comments concerning our authority to adopt such a rule and the usefulness of doing so. We wish to emphasize, however, that the regulation of pole attachments is not regulation of common carriage subject to the provisions for suspension contained in section 204 of the Act.

H. ACCESS

26. The legislative history clearly indicates that Pub. L. No. 95-234 does not grant a right of access to utility poles, although discontinuance of the provision of CATV pole attachment space to avoid FCC regulation could constitute an unjust or unreasonable practice. Comment is requested on whether guidelines dealing with CATV access to utility poles might be useful in order to clarify the Commission's role.

I. OTHER SUBSTANTIVE GUIDELINES

27. There may be other areas or specific rates, terms, or conditions for which substantive guidelines can usefully be adopted, such as terms relating to inspections, insurance, and lease revocation. The Commission will receive and consider any useful comments in this regard from interested parties.

DISCUSSION AND CONCLUSION

28. The proposed procedural rules and the foregoing discussion of substantive guidelines and questions clearly set pole attachment regulation apart from the regulation of common carriage under Title II of the Communications Act of 1934, as amended. We envision a regulatory program for pole attachment matters far simpler than that used to regulate common carriage, and urge parties who comment in this proceeding to keep that goal in mind to the extent it is compatible with effective and fair regulation. The public and interested persons in this proceeding should not view this proceeding as having precedential effect for our other ratemaking activities, or vice versa.

29. The terms and conditions of pole attachment agreements could be quite detailed and varied, and this fact, coupled with our lack of experience in this field, lead us to believe that it may well be premature to propose specific substantive guidelines for many of these matters until after we have had some experience in evaluating complaints on an ad hoc basis. In time our decisions should offer substantial guidance to parties to pole attachment agreements, and should also provide an informed basis for further substantive guidelines.

30. Inasmuch as Pub. No. L. 95-234 requires that we prescribe within 180 days from the date of its enactment, February 21, 1978, procedures necessary and appropriate to hear and resolve complaints regarding pole attachment rates, terms, and conditions, the time for filing comments in this proceeding must be brief. Accordingly, interested persons have until June 8, 1978, to file comments on the proposed procedural rules contained in Attachment A and on the substantive guidelines and questions. Reply comments will be due twenty (20) days from the date comments must be filed with this Commission. Extensions of these pleading periods are not anticipated. In this regard we note that the development of rules and guidelines may be an evolutionary one as interested persons and the Commission gain experience in regulating pole attachment rates, terms, and conditions. We shall hold this docket open for further filings if events suggest the need for rules or guidelines not adopted within the 180 days window.

31. *Accordingly, it is ordered,* That this rulemaking is instituted pursuant to Sections 1, 4(a), 4(j), 224, and 403 of the Communications Act of 1934, as amended (47 U.S.C. 151, 154(i), 154(9), 224, and 403).

32. Interested persons may file comments on or before June 9, 1978, and reply comments on or before June 29, 1978. The appropriate provision of § 1.51 of the Commission's rules (47 CFR 1.51) govern the number of copies of all comments filed in this proceeding. All comments received in this proceeding will be available for public inspection in the Docket Reference Room in the Commission's Offices in Washington, D.C.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

1. A new § 0.310 is added to read as follows:

§ 0.310 Authority delegated to Chief of Common Carrier Bureau.

Authority is delegated to the Chief of the Common Carrier Bureau to act upon complaints involving cable television pole attachments, except where such complaints raise novel or unusual issues.

2. A new Subpart J is added to Part 1 to read as follows:

Subpart J—Pole Attachment Complaint Procedures

Sec.
1.1401 Purpose.
1.1402 Definitions.
1.1403 Complaint.
1.1404 File Number.
1.1405 Dismissal of Complaints.
1.1406 Response and Reply.
1.1407 Number of Copies and Form of Pleadings.
1.1408 Commission consideration of the complaint.
1.1409 Remedies.
1.1410 Meetings and Hearings.
1.1411 Enforcement.
1.1412 Forfeiture.
1.1413 State Certification.
1.1414 Other Orders.

AUTHORITY: Secs. 1, 4(a), 4(j), 224, and 403, Communications Act of 1934, as amended (47 U.S.C. 151, 154(i), 154(9), 224 and 403).

Subpart J-Pole Attachment Complaint Procedures

§ 1.1401 Purpose.

The rules and regulations contained in this Subpart J provide complaint and enforcement procedures to ensure that rates, terms and conditions for cable television pole attachments are just and reasonable.

§ 1.1402 Definitions.

(a) The term "utility" means any person whose rates or charges are regulated by the Federal Government or a State and who owns or controls poles, ducts, conduits, or rights-of-way used, in whole or in part, for wire communications. Such term does not include any railroad, any person who is cooperatively organized, or any person owned by the Federal Government or any State.

(b) The term "pole attachment" means any attachment by a cable television system to a pole, duct, conduit, or right-of-way owned or controlled by a utility.

(c) The term "usable space" means the space above the minimum grade level which can be used for the attachment of wires, cables, and associated equipment.

(d) The term "complaint" means a filing by a cable television system operator or a utility alleging that a rate, term, or condition for a pole attachment is not just and reasonable.

(e) The term "complainant" means a cable television system operator or a utility who files a complaint alleging a rate, term, or condition for a pole attachment is not just and reasonable.

(f) The term "respondent" means a cable television system operator or a utility against whom a complaint is filed with the Commission pursuant to Subpart J of this part.

(g) The term "State" means any State, territory, or possession of the United States, the District of Columbia, or any political subdivision, agency, or instrumentality thereof.

§ 1.1403 Complaint

(a) The complaint shall contain the name and address of the complainant, the name and address of the respondent, and shall be signed and verified by the complainant. Two or more cable television operators may file a joint complaint against a single utility, raising either similar or dissimilar issues.

(b) The complaint shall be accompanied by a certification of service on the named respondent and any State, federal, or local agency which regulates a utility or cable television system named as either complainant or respondent. No service is required to be made upon this Commission.

(c) The complaint shall contain a statement that the State has not certifed to the Commission that it regulates the rates, terms and conditions for pole attachments, and that the utility is not owned by any railroad, any person who is cooperatively organized or any person owned by the Federal Government or any State.

(d) The complaint shall be accompanied by a copy of the pole attachment agreement, if any, between the cable system operator and the utility. If there is no present pole attachment agreement, the complaint shall contain a statement that the utility uses or controls poles, ducts, or conduits used, in whole or in part, for wire communication and shall be accompanied by evidence of such use or by an explanation of why such evidence cannot be provided.

(e) The complaint shall state with specificity the rate, term, or condition which is claimed to be unjust or unreasonable.

(f) In any case where it is claimed that a rate is unjust or unreasonable, the complainant shall provide data and information in support of such claim. The data and information shall include, where applicable:

(1) The gross investment by the utility for pole lines;

(2) Cross-arm investment for pole lines, if available;

(3) The depreciation reserve from the gross pole line investment;

(4) The depreciation reserve from the cross-arm investment, if available;

(5) Total number of poles used or owned by the utility;

(6) The annual carrying charge attributable to the cost of maintaining a pole. This charge can be expressed as a percentage of the net pole investment;

(7) Rate of return authorized for the utility;

(8) The number of pole attachments;

(9) The average amount of usable space per pole for those poles used for the pole attachment; and

(10) The average amount of usable space occupied by the pole attachment.

Data and information should be based upon historical cost or the FDC-7 methodology and should use data reported on FCC Form M where available and applicable. Where the poles are used jointly by telephone and electric power utility companies, Form M data or its equivalent, showing costs to the telephone company shall be provided. Data and information derived from forms filed with State regulatory agencies may also be used, but should be in the form stated above and based upon historical costs, insofar as possible. Where the attachments are to ducts, conduits, or rights of way, in whole or in part, appropriate and equivalent data and information shoud be filed. The complaint shall also specify any other information and argument relied upon to show that a rate, term, or condition is not just and reasonable.

(g) If any of the information required in (f) of this section is not provided to a complainant cable television system operator by the utility upon request, the complaint shall contain a statement indicating the steps taken to obtain the information from the utility. No such complaint shall be dismissed where the utility has failed to provide the information in paragraph (f) of this section after reasonable request. The complaint shall set forth briefly all steps taken to resolve the problem prior to filing. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

§ 1.1404 File number.

Each complaint which meets the requirements of § 1.1403 will be given a file number.

§ 1.1405 Dismissal of Complaints.

(a) The complaint shall be dismissed for lack of jurisdiction in any case where the rate, term, or condition is regulated by a State. An applicable certificate filed by a State pursuant to § 1.1412 of these rules will be conclusive proof of lack of jurisdiction. The complaint shall also be dismissed if the utility does not use or control poles, ducts, or conduits used, in whole or in part, for wire communication.

(b) If the complaint does not contain substantially all the information required under § 1.1403 the Commission may dismiss the complaint or may require the complainant to file additional information. The complaint shall not be dismissed if the information is not available from public records or from a respondent utility.

(c) Failure by the complainant to respond to official correspondence or a request for additional information will be cause for dismissal.

(d) Dismissal under the provisions of paragraph (b) of this section without prejudice unless the complaint has been dismissed previously. Dismissal under paragraph (a) or (c) of this section is with prejudice.

§ 1.1406 Response and Reply.

Respondent shall have 30 days from the date the complaint was filed within which to file a response. Complainant shall have 10 days from the date the response was filed within which to file a reply. Extensions of time to file are not contemplated unless justification is shown pursuant to § 1.46. No other filings and no motions other than for extension of time will be considered unless requested by the Commission. The response should set forth justification for the rate, term, or condition alleged in the complaint not to be just and reasonable. Factual allegations shall be supported by affidavit of a person or persons with actual knowledge of the facts.

(b) The response shall be served on the complainant and all parties listed in complainant's certificate of service.

(c) The reply shall be served on the respondent and all parties listed in respondent's certificate of service.

(d) Failure to respond may be deemed an admission of the material factual allegations contained in the complaint.

§ 1.1407 Number of copies and form of pleadings.

(a) An original and three copies of the complaint, response, and reply shall be filed with the Commission.

(b) All papers filed in the complaint proceeding must be drawn in conformity with the requirements of §§ 1.49, 1.50 and 1.52.

§ 1.1408 Commission consideration of the complaint.

(a) In its consideration of the complaint, response, and reply, the Commission may take official notice of any information contained in publicly available filings made by the parties and of studies that it has conducted. The Commission may also request that one or more of the parties make additional filings or provide additional information. Where one of the parties has failed to provide information required to be provided by these rules or requested by the Commission, or where the value of costs are disputed, the Commission may estimate the amounts it considers reasonable, or may decide adversely to a party who has failed to supply requested information which is readily available to it.

(b) The complainant shall have the burden of establishing a prima facie case that the rate, term, or condition is not just and reasonable. The burden of proof shall be upon the utility.

(c) The Commission shall determine whether the rate, term or condition complained of is just and reasonable. For the purposes of this subparagraph, a rate is just and reasonable if it assures a utility the recovery of not less than the additional costs of providing pole attachments, nor more than an amount determined by multiplying the percentage of the total usable space, or the percentage of the total duct or conduit capacity, which is occupied by the pole attachment by the sum of the operating expenses and actual capital costs of the utility attributable to the entire pole, duct, conduit, or right-of-way.

(d) If the Commission determines that the complainant has not established a prima facie case or that the rate, term, or condition complained of is just and reasonable, it shall deny the complaint.

§1.1409 Remedies.

If the Commission determines that the rate, term, or condition complained of is not just and reasonable, it may prescribe a just and reasonable rate, term, or condition and may order the following:

(a) Termination of the unjust and unreasonable rate, term or condition;

(b) Substitution in the pole attachment agreement of the just and reasonable rate, term, or condition established by the Commission; and

(c) Refund, or payment, if appropriate. The refund or payment will be the difference between the amount paid under the unjust and/or unreasonable rate, term, or condition and the amount that would have been paid under the rate, term, or condition established by the Commission, from the date that the complaint was filed, plus interest.

§1.1410 Meetings and Hearings.

The Commission may decide each complaint upon the filings and information before it, or may require one or more informal meetings with the parties to clarify the issues or to consider settlement of the dispute, or it may, in its discretion, order a hearing upon any issues it finds to have been raised by the filings.

§1.1411 Enforcement.

If the respondent fails to obey any order imposed under this subpart, the Commission on its own motion or by motion of the complainant shall order the respondent to show cause why it should not cease and desist from violating the Commission's order.

§1.1412 Forfeiture.

(a) If any person fails to obey any order imposed under this subpart, or any Commission rule, or

(b) If any person shall in any written response to Commission correspondence or inquiry or in any application, pleading, report, or any other written statement submitted to the Commission pursuant to this subpart make any misrepresentation bearing on any matter within the jurisdiction of the Commission, the Commission may, in addition to any other remedies, including criminal penalties under Section 1001 of Title 18 of the United States Code, impose a forfeiture pursuant to section 503(b)(B) of the Communications Act of 1934, as amended.

§1.1413 State Certification.

(a) If the Commission does not receive certification from a State that:

(1) It regulates rates, terms, and conditions for pole attachments, and

(2) In so regulating such rates, terms, and conditions, the State has the authority to consider and does consider the interests of the subscribers of cable television services, as well as the interests of the consumers of the utility services, it will be rebuttably presumed that the State is not regulating pole attachments.

(b) Upon receipt of such certification, the Commission shall give public notice. In addition, the Commission shall compile and publish from time to time, a listing of States which have provided certification.

§1.1414 Other orders.

The Commission may issue such other orders and so conduct its proceedings as will best conduce to the proper dispatch of business and the ends of justice.

[FR Doc. 78-12580 Filed 5-8-78; 8:45 am]

[6712-01]

[47 CFR Part 15]

[Docket No. 21010; RM-2577; FCC 78-285]

UHF TELEVISION RECEIVER NOISE FIGURES

AGENCY: Federal Communications Commission.

ACTION: Procedure for panel presentation on Docket No. 21010.

SUMMARY: This document announces the names of the technical experts and non-technical speakers (or groups) that have been selected to serve on panels to discuss UHF noise figures for television receivers. This decision implements the Commission's earlier decision (43 FR 15744, April 14, 1978) to obtain more information about whether, and how far, the maximum UHF noise figure should be lowered.

DATES: All written comments must be filed by May 5, 1978, and reply comments by May 15, 1978. Panel sessions will be held on May 10, 1978 at 9:30 a.m.

ADDRESSES: Send comments to: Federal Communications Commission, 1919 M Street NW., Washington, D.C. 20554. Panel sessions will be held in the Commission's Meeting Room, room 856.

FOR FURTHER INFORMATION CONTACT:

Paul J. Fox, Office of Plans and Policy, Federal Communications Commission, Washington, D.C. 20554, 202-632-6312.

SUPPLEMENTARY INFORMATION:

Adopted: April 25, 1978.

Released: April 25, 1978.

Procedure for panel presentation, May 10, 1978 (43 CFR 15744).

1. Two panels of experts, selected by the Commission, will appear at a public session on May 10, 1978, to present views and data on various technical matters affecting the UHF television receiver noise figure. The presentation will begin at 9:30 a.m. in the Commission Meeting Room (856), 1919 M Street NW., Washington, D.C.

2. The Commission earlier requested those who wished to be panel members to submit letters by April 14, 1978. *Notice of Panel Presentation*, FCC 78-243, released April 6, 1978. In addition to the 12 who responded, we have selected one additional participant.

3. The panelists are listed in Appendix A divided into two groups. Each panel member is asked to submit an original and 11 copies of written responses to the *Notice* questions (see Appendix C) by May 5, 1978. Any measurements, tests, or other bases for quantitative relationships should be fully described and referenced.

4. Panelists will each have 3 minutes at the beginning of the session to briefly summarize their views. During the remainder of each session, the panelists will be encouraged to interact with one another and to respond to questions from individual Commissioners. In responding to other panelists or questions from Commissioners, panel members will be free to provide additional views and data not contained in their written responses to the *Notice* questions. Commission staff will be available to the Commission throughout the presentation for consultation and questioning of panel members.

5. We expect that the first morning session will conclude by 10:45 a.m. and the second will run from 11 a.m. until 12:15 p.m.

6. In response to our earlier notice, a number of groups and individuals expressed an interest in presenting oral statements. This portion of the presentation will begin at 2 p.m. and will deal with other matters not specifically addressed by the Commission's earlier set of questions; this will also provide an opportunity for nontechnical interests to present their views. A tentative schedule for these speakers is attached as Appendix B. We were able to schedule all who wished to speak, although we were not able to provide all of the time requested in every case. We urge those with similar points of view to combine their presentations.

7. As stated in the *Notice*, the Commission will also accept written statements in response to the *Notice* questions and brief comments concerning related matters, including the draft report and order which accompanied the *Notice*. Parties wishing to comment briefly on matters not addressed in pars. 32-49 of that draft report and order should specifically label those comments under the heading "Other Matters." Such filings must be made no later than May 5, 1978. Following the panel and oral presentations, the Commission will allow reply comments until May 15, 1978.

8. In accordance with the provisions of § 1.419 of the Commission's Rules and Regulations, an original and five copies of all comments and replies should be filed. Parties are strongly urged to submit an additional six copies to allow for distribution to each of the Commissioners. Parties who have previously filed comments in Docket No. 21010 may simply refer to their earlier filings. We emphasize, as we did earlier, that the purpose of this procedure is to obtain new information.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

APPENDIX A

PANELISTS

Panel 1

Dr. Jay J Brandinger, vice president, TV engineering, Consumer Electronics Division, RCA Corp

Douglass D. Crombie, director, Institute for Telecommunication Sciences, National Telecommunications and Information Administration.

William Detweiler president, Helper Instruments Co.

Clinton S. Hartmann, manager, Surface Wave Device Technology Branch, Advanced Technology Laboratory, Texas Instruments, Inc.

Sarkes Tarzian, chairman of the board, Sarkes Tarzian, Inc.

Daniel R. Wells, senior vice president, Engineering and Operations, Public Broadcasting Service.

Walter S. Wydro, Cable Television Engineering Consultant.

Panel 2

Isaac S. Blonder, chairman of the board, Blonder-Tongue Laboratories, Inc.

Leonard Dietch, vice president, Product Development, Zenith Radio Corp.

Clinton S. Hartmann, manager, Surface Wave Device Technology Branch, Advanced Technology Laboratory, Texas Instruments, Inc.

Norman Parker, Paul Galvin Fellow, Motorola, Inc.

William E. Pastore, product line manager of noise products, AILTECH.

Dr. Philip A. Rubin, director of engineering research and development, the Corporation for Public Broadcasting.

Alfred Sfreddo, vice president, Tuner Engineering, F W Sicles Division, General Instrument Corp.

NOTE.—Clinton Hartmann is on both panels in order to answer questions about the High Performance Television Receiver developed under FCC Contract 0206-6TQ (see Footnote 1 in Appendix C). The Commission through its staff may make changes in the composition of these panels.

APPENDIX B

TENTATIVE AFTERNOON SPEAKERS

UHF Station Interests (10 min.)

Harold L. Green, Vice President for Operations and Engineering, Field Communications—5 minutes.

Council for UHF Broadcasting—5 minutes.

Citizens Groups (10 min.)

Citizens Communications Center—5 minutes.

District of Columbia Media Task Force—5 minutes.

Land Mobile Interests (10 min.)

Utilities Telecommunications Council—2½ min.

Land Mobile Communications Council—2½ min.

National Association of Business and Educational Radio—2½ min.

Land Mobile Communications Section, Communications Division, Electronic Industries Association—2½ min.

Government (10 min.)

Council on Wage and Price Stability—10 min.

APPENDIX C

PANEL QUESTIONS

I. *Technical Trade-offs*

Provide any available data that you (or your organization) have that shows

A. How far the maximum UHF noise figure of production line receivers can be lowered without:

1. Imperiling (through increased interference susceptibility or increased receiver radiation) the Commission's ability to reduce the UHF taboos.

2. Significantly degrading picture quality resulting from impairments other than internal noise (in the context of the present taboos).

3. Imperiling the increased adoption of electronic tuners.

B. The amount of variation in the maximum noise figure that occurs on a production line between units of the same design.

II. *Cost Trade-offs*

A. How does the consumer cost of a production line receiver increase at various levels of reduction of the maximum UHF noise figure?

B. How much, and at what cost, can the maximum UHF noise figure of production line receivers be lowered by improved quality control alone? By use of new components? By a major redesign? Recognizing that a significant reduction in the maximum noise figure and new receiver performance standards[1] may both entail substantial costs, what interval between these two possible Commission actions is necessary to avoid incurring significant additional costs to consumers?

III. *Effects on Viewers of Reduced Noise Figure*

Can you quantify the effects produced by an additional 2 and 4 dB reduction below 14 dB in the maximum noise figure in terms of:

A. Number of viewers affected?

B. Improvements or impairments seen by a viewer?

IV. *Timing of Reduction(s)*

A. Is there any reason why a 14 dB maximum cannot be achieved by October 1, 1979, or sooner?

B. If the Commission should decide to adopt a 12 dB or 10 dB in lieu of 14 dB maximum noise figure, how much additional time is needed? Should this be done in stages, or is it advantageous to only specify a date for the ultimate level?

[FR Doc. 78-12623 Filed 5-8-78; 8:45 am]

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[1] *See e.g., Final Report, High Performance TV Receiver*, D. L. Ash and C. S. Hartmann, Texas Instruments, Inc.: FCC/OCE:CE 78-01 (March 1978) NTIS #PB 277186: *A Study of the Characteristics of the FCC Prototype TV Receiver Relative to Conventional Receiver UHF Taboos*, L. C. MiddleKamp, *et al*; FCC/OCE LAB 78-01 (February 1978) NTIS #PB 277187.

[6712-01]

[47 CFR—Part 73]

[BC Docket No. 78-147; RM-3012]

FM BROADCAST STATION IN OTTUMWA, IOWA

Proposed changes in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Notice of Proposed Rule Making.

SUMMARY: Action taken herein proposes the substitution of a class A FM channel for a class C FM channel at Ottumwa, Iowa, in response to a petition filed by KBIZ, Inc. Petitioner states that the Class C channel can no longer be activated in Ottumwa because of technical limitations and that a substitute channel could be used to provide a second local FM service to the community.

DATES: Comments must be received on or before June 27, 1978, Reply comments must be received on or before July 17, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 28, 1978.

Released: May 3, 1978.

In the matter of amendment of § 73.202(b), table of assignments, FM Broadcast Stations. (Ottumwa, Iowa.)

1. *Petitioner, Proposal, Comments:*

(a) *Notice of Proposed Rule Making* is hereby given concerning amendment to the FM Table of Assignments, section 73.202(b) of the Commission's Rules, regarding the deletion of class C Channel 223 from Ottumwa, Iowa, and the assignment of Channel 224A instead.

(b) The petition[1] was filed by KBIZ, Inc. ("petitioner"), licensee of full-time AM Station KBIZ, Ottumwa, Iowa. An opposition was filed by Ray L. Sherwood, applicant for Channel 223 at Ottumwa.[2]

(c) Petitioner states that it intends to file an application for a construction permit for an FM broadcast station if the substitute channel is assigned.

2. *Demographic Data:*

(a) *Location:* Ottumwa, seat of Wapello County, is located in southeastern Iowa, approximately 112 kilometers (70 miles) southeast of Des Moines, Iowa, and 320 kilometers (200 miles) northwest of St. Louis, Mo.

(b) *Population:* Ottumwa—29,610; Wapello County—42,149.[3]

(c) *Local Aural Broadcast Service:* Ottumwa is presently served by full-time AM Station KBIZ, daytime-only AM Station KLEE, and Station KLEE-FM, Channel 249A.

3. *Preclusion Study:* No new preclusion would be caused by the substitution of Channel 224A for Channel 223 in Ottumwa.

4. *Comments:* Petitioner states that Channel 223 was assigned to Ottumwa on the basis that it would provide the potential for wide area coverage. It asserts that because of a combination of factors, including mileage separation requirements for a Channel 223 operation, recent changes in the Commission's FM signal propagation curves used for predicting field strength contours, and antenna height restrictions imposed by the existence of an FAA airway over the only area available for tower sites, the potential for wide area coverage has now disappeared. In fact, petitioner asserts that no transmitter site is available from which a station on Channel 223 could serve Ottumwa. It notes, however, that a transmitter for Channel 224A could be located at Ottumwa consistent with all minimum distance separation requirements. Petitioner has submitted sufficient demographic data which demonstrates a continuing need for a second FM channel in the community.

5. Since petitioner alleges that Channel 223 can no longer be utilized in Ottumwa and an interest has been shown in assigning Channel 224A, thereby eliminating a present intermixture of classes of FM channels, we believe that consideration of the proposal is warranted. Accordingly, the Commission proposes to amend the FM Table of Assignments (Section 73.202(b) of the Commission's Rules) with regard to the city listed below:

City and Channel No.
Ottumwa, Iowa, Present: 223, 249A; Proposed: 224A, 249A.

6. The Commission's authority to institute rule making proceedings; showings required; cut-off procedures; and filing requirements are contained in the attached Appendix and are incorporated herein.

NOTE.—A showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be assigned.

7. Interested parties may file comments on or before June 27, 1978, and reply comments on or before July 17, 1978.

FEDERAL COMMUNICATIONS COMMISSION
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

APPENDIX

1. Pursuant to authority found in sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and section 0.281(b)(6) of the Commission's Rules, it is proposed to amend the FM Table of Assignments, section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's

[1] Public Notice of the petition was given on December 14, 1977, Report No. 1093.

[2] The basis for the opposition was that it had filed an application for the use of Channel 223 which complied with the Commission's minimum mileage requirements. However, the application was returned April 12, 1978, because it was in violation of section 73.207 of the Rules. Thus the Sherwood opposition is no longer pertinent to this proceeding and will not be considered.

[3] Population figures were taken from the 1970 U.S. Census.

Public Reference Room at its headquarters, 1919 M Street, NW., Washington, D.C.

[FR Doc. 78-12544 Filed 5-8-78; 8:45 am]

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-25; RM-2920]

FM BROADCAST STATION IN LEWISTON, IDAHO

Proposed Table of Assignments; Order Extending Time For Filing Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding concerning changes in FM channel assignments in Lewiston, Idaho. Petitioner, 4-K Radio, Inc., states that the additional time is needed so that it can make a proper response to comments.

DATE: Reply comments must be received on or before May 19, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 28, 1978.

Released: May 3, 1978.

In the matter of Amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Lewiston, Idaho), BC Docket No. 78-25, RM-2920.

1. The Commission has before it a request for extension of time for filing reply comments regarding the Notice of Proposed Rule Making in the above-entitled proceeding, 43 FR 4076. The date for filing comments has expired and the date for filing reply comments is presently May 1, 1978.[1]

2. The request was filed by 4-K Radio, Inc. ("4-K") in which it requests that the date for filing reply comments be extended to and including May 19, 1978.

3. 4-K indicates that since it did not receive a copy of the comments filed by KRLC, Inc., it contacted the Commission to have a copy mailed to it. 4-K states that since these comments were not received (the Commission's records show that a copy was mailed to 4-K) it contacted KRLC's consulting engineer in order to obtain the material. 4-K notes that because of the lapse of time in trying to obtain the copies an extension of time is necessary so that it can make a proper response.

4. Under the circumstances we are granting the extension in order to give 4-K an opportunity to make a response. *Accordingly, It is ordered,* That the request for extension of time for filing reply comments submitted by 4-K Radio, Inc., is granted to and including May 19, 1978.

5. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1), and Section 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-12577 Filed 5-8-78; 8:45 am]

[1]See 43 FR 16355, April 18, 1978.

[6712-01]

[47 CFR Part 73]

[BC Docket No. 78-49; RM-2921]

FM BROADCAST STATION IN BOCA CHICA KEY, FLA.

Proposed Table of Assignments; Order extending time for filing reply comments

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Action taken herein extends the time for filing reply comments in a proceeding concerning a proposed FM channel assignment in Boca Chica Key, Fla.

DATE: Reply comments must be received on or before May 5, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau 202-632-7792.

SUPPLEMENTARY INFORMATION:

Adopted: April 28, 1978.

Released: May 3, 1978.

In the matter of amendment of § 73.202(b), *Table of Assignments*, FM Broadcast Stations. (Boca Chica Key, Florida), BC Docket No. 78-49, RM-2921.

1. The Commission has before it a request for extension of time for filing reply comments regarding the Notice of Proposed Rule Making in the above-entitled proceeding, 43 FR 6633. The date for filing comments has expired and the date for filing reply comments is presently April 27, 1978.

2. The request was filed by counsel for Florida Keys Broadcasting Corporation, licensee of Station WFYN(FM), Key West, Florida, in which it requests a 10-day extension for filing reply comments.

3. Counsel states that due to a conflict with another proceeding before the Commission, one which has just occurred, it makes it impossible for him to devote sufficient time for the preparation of comments in this matter.

4. We are of the view that the additional time is warranted in order to assure development of a sound and comprehensive record on which to base a decision in this proceeding. However, an extension until May 5, 1978, appears to be adequate for this purpose.

5. *Accordingly, it is ordered,* That the date for filing reply comments in BC Docket 78-49 is extended to and including May 5, 1978.

6. This action is taken pursuant to authority found in Sections 4(i), 5(d)(1) and 303(r) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-12576 Filed 5-8-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[3410-07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation Number A604]

TEXAS

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Haskell County, Tex., as a result of drought July 1, 1977, through March 20, 1978.

Therefore, the Secretary has designated this area as eligible for emergency loans pursuant to the provisions of the Consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor Dolph Briscoe that such designation be made.

Applications for emergency loans must be received by this Department no later than October 25, 1978, for physical losses and April 30, 1979, for production lossed, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C., this 2nd day of May, 1978.

DENTON E. SPRAGUE,
Acting Administrator,
Farmers Home Administration.

[FR Doc. 78-12622 Filed 5-8-78; 8:45 am]

[3410-37]

Food Safety and Quality Service

PUBLICIZING NAMES OF CHRONIC PROBLEM MEAT AND POULTRY PLANTS

Supplementary Policy Statement

The Food Safety and Quality Service (FSQS) published a notice in the FEDERAL REGISTER on March 17, 1978, which set forth a new policy for identifying, reviewing, and making known the names of chronically deficient federally inspected meat and poultry establishments, in order to provide the public with further information on meat and poultry. In that notice, a "problem plant" was defined as a plant found to have serious deficiencies upon two consecutive compliance reviews and rated under the procedures of the inplant compliance program in the sequence of categories 1-1 or 2-1, or found to have serious deficiencies upon three consecutive compliance reviews and rated under the procedures of the inplant compliance program in the sequence of categories of 1-2-2 or 2-2-2. A "chronic problem plant" was defined as any previously designated "problem plant" which on either of its next two reviews is assigned to category 1 or 2. It was further stated in that notice that names of all future "chronic problem plants" that show deficiencies in areas of plant responsibility will be announced to the public as they are identified.

Although it is the intention of FSQS to identify to the public names of future "chronic problem plants" in accordance with categories of ratings based upon inplant compliance reviews conducted subsequent to the notice of March 17, 1978, it is, nevertheless, deemed necessary and in the public interest to accelerate the scheduling of inplant compliance reviews with respect to those plants which were formerly identified as former "chronic problem plants" under the inplant compliance program as of that date. In this regard, FSQS will initially conduct inplant compliance reviews of such "chronic problem plants" on a monthly basis, rather than on a semiannual basis as set forth in the procedures for inplant compliance program reviews.[1] Individual written notice will be given to those former "chronic problem plants" which have been identified for the accelerated inplant compliance reviews.

Done at Washington, D.C., on May 4, 1978.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc. 78-12625 Filed 5-8-78; 8:45 am]

[1]These procedures for inplant compliance program reviews, including the basis for the categories and ratings, are set forth in MPI Directive 921.2. Interested parties may request and obtain a free copy of this directive by contacting Administrative Services Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 0157, South Building, Washington, D.C. 20250.

[6320-01]

CIVIL AERONAUTICS BOARD

AEROLINEAS DOMINICANAS, S.A.,

[Docket No. 31654]

Postponement of Prehearing Conference and Hearing

At the request of the applicant, and with the concurrence of the Bureau of International Aviation, the prehearing conference scheduled for May 18, 1978, is hereby postponed to May 31, 1978, in Hearing Room B, Room 1003, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C.

The Bureau will submit its prehearing conference requests on or before May 12, 1978. Comments from other parties will be submitted no later than May 26, 1978.

This notice supersedes the Notice of Prehearing Conference and Hearing dated April 25, 1978. (43 FR 18595, May 1, 1978.)

Dated at Washington, D.C., May 3, 1978.

RICHARD V. BACKLEY,
Administrative Law Judge.

[FR Doc. 78-12617 Filed 5-8-78; 8:45 am]

[6320-01]

[Order No. 78-5-1; Dockets Nos. 30833 and 31402]

ALOHA AIRLINES, INC. AND HAWAIIAN AIRLINES, INC.

Order Fixing Final Service Mail Rates

Issued under delegated authority May 1, 1978.

By Order 78-4-75, dated April 14, 1978, the Board directed all interested persons, particularly the Postmaster General, Aloha Airlines, Inc., and Hawaiian Airlines, Inc., To show cause why the Board should not adopt the proposed findings and conclusions and fix, determine, and publish the final rates proposed therein.

The time designated for filing notice of objection has elapsed and no notice of objection or answer to the order has been filed by any person. All persons have therefore waived the right to a hearing and all other procedural steps short of fixing a final rate.

Upon consideration of the record, the findings and conclusions set forth

in said order are reaffirmed and adopted.

Accordingly, pursuant to the Federal Aviation Act of 1958, as amended, and particularly sections 204(a) and 406 thereof, the Board's Procedural Regulations, 14 CFR Part 302, and the authority delegated by the Board in its Organization Regulations, 14 CFR 385.16(g),

It is ordered, That:

1. The fair and reasonable rates of compensation to be paid on and after May 21, 1977, to Hawaiian Airlines, Inc., and on and after May 23, 1977, to Aloha Airlines, Inc., by the Postmaster General pursuant to the provisions of section 406 of the Federal Aviation Act of 1958, as amended, for the transportation of priority and nonpriority mail by aircraft over their intra-Hawaii routes are:

a. A final priority service mail rate of $1.67 per mail ton-mile;

b. A final nonpriority service mail rate of 50 cents per mail ton-mile;

2. The mail ton-miles used in computing the service mail payment at the foregoing rates shall be based upon the nonstop great-circle mileage between the points of origin and destination of each shipment of priority and nonpriority mail;

3. the "priority mail" for which the rate is established in paragraph a above, is defined as first-class mail, priority mail, and express mail;

4. The "nonpriority mail" for which the rate is established in paragraph b above, is defined as all classes of mail—except first class mail, priority mail, and express mail—carried on a space-available basis;

5. The final service mail rates fixed and determined herein are to be paid in their entirety by the Postmaster General; and,

6. This order shall be served upon Aloha Airlines, Inc., Hawaiian Airlines, Inc., and the Postmaster General.

Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within 10 days after the date of service of this order.

This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless within such period a petition for review is filed or the Board gives notice that it will review this order on its own motion.

This order will be published in the FEDERAL REGISTER.

JAMES L. DEEGAN,
Associate Director, Pricing, Bureau of Pricing and Domestic Aviation.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-12618 Filed 5-8-78; 8:45 am]

[6320-01]

[Order No. 78-5-3; Dockets Nos. 31232, 31234, 31235, 31246, 31247, 31285, 31305, 31534, 31538, 31555, 32193, 32206, 32207, 32210, 32211, 32212]

TRANSATLANTIC PASSENGER FARES FILED BY VARIOUS CARRIERS BETWEEN THE UNITED STATES AND EUROPE

Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 2nd day of May, 1978.

By tariff revisions generally filed for effect April 1, 1978, Pan American World Airways, Inc. (Pan American), Trans World Airlines, Inc. (TWA), Campagnie Nationale Air France (Air France), Swissair-Swiss Air Transport Co. Ltd. (Swissair), and Deutsche Lufthansa Aktiengesellschaft (Lufthansa) propose new North Atlantic fares for the upcoming 1978 peak season and for the 1978-1979 basic season. The tariff proposals would make few changes in most existing fares, but would add peak-season levels for low, promotional fares such as the advance-purchase excursion (APEX). Pan American proposes to extend its budget fares to additional points, Air France proposes a new "Special midweek" fare, and Lufthansa proposes a new "Holiday" fare.

Several complaints requesting suspension pending investigation of the low fares have been filed.

The National Air Carrier Association (NACA) has complained against Air France's APEX and special midweek fares, Swissair's APEX, and Lufthansa's Holiday fares. NACA contends that the fares will be predatory against charters and the supplemental carriers; but recognizing the President's policy of not suspending allegedly predatory fares, it requests that the Board suspend them pending extension of the so-called ad hoc agreements with the foreign governments involved which would allow the United States to suspend the fares if they are proved predatory.[1] NACA also urges that the Lufthansa fares be suspended pending acceptance by Germany of U.S.-origin charters based on the Board's more liberal rules.[2]

The Air Charter Tour Operators of American (ACTOA) has filed a complaint against Pan American's and TWA's new APEX, budget and standby fares to London, Lufthansa's Holiday fares, and Air France's special midweek fares. ACTOA alleges that the scheduled carriers are esentially seeking to extend the low winter-season fares into the peak season with proportional increases in level; the anticipated liberalization of European charter rules, which the President and the Board hoped would compensate for the competitive impact of reduced scheduled fares, has not materialized;[3] given the failure of the United States' expectations, the Board should suspend all charter-competitive fares to countries which have not liberalized their charter rules; ACTOA members have reported catastrophic declines in 1978 peak-season bookings for U.S.-Europe charters; and low fairs premised on marginal cost to fill empty seats in the winter should not be extended into the peak season, when load factors are high and the low fares would displace many higher-fare passengers.[4]

Charter Travel Corporation (CTC) has complained against Lufthansa's Holiday fares and Swissair's basic-season APEX fares, contending that CTC is the largest ABC operator to Germany and Switzerland (except for U.S. west-coast originations) and its 1978 bookings are off considerably from 1977 due to the availability of low scheduled fares;[5] the Holiday fares by Lufthansa's own admission are intended to make the benefits of scheduled service available at charter levels, and CTC would be unable to compete at the same price with the greater attractions of scheduled service; and the fares should be suspended at least until France and Germany accept current U.S. ABC and OTC rules, and Lufthansa, Swissair and their charter subsidiaries agree to waive charter-cancellation penalties.

Pan American has filed a complaint against Lufthansa's Holiday fare, requesting that it be suspended until it is clear that the German Government will accept Pan American's recently filed budget fare.

Air France has filed an answer to NACA's complaint against its APEX

[1]The reduced U.S.-U.K. APEX fares introduced last autumn, which later spread to other European destinations, were accepted by the U.S. Government after conclusion of intergovernmental agreements that either party could, after appropriate notice, suspend the fares after they became effective. The agreements were found necessary at that time in cases where the bilateral Air Transport Agreement did not provide for suspension of existing fares.

[2]NACA states that the German Government now imposes severe restrictions on U.S.-origin charters, including minimum selling prices, and these practices must be liberalized before Lufthansa's "Holiday" fare is permitted to take effect. The French Government has stated its intention of enforcing minimum rates on U.S.-origin charters. Switzerland accepts country-of-origin charter rules.

[3]ACTOA contends that only the United Kingdom has budged from the ECAD (European Civil Aviation Conference) block position.

[4]Here ACTOA cites the Board's decision in Docket 28096, Category Y Fare Investigation (Order 78-1-101, January 11, 1978).

[5]CTC states that through the end of February it has received only 4,500 transatlantic bookings compared to 12,000 last year.

and special midweek fares, stating that these are a response to U.S. Government policy favoring lower, innovative fares; the midweek fare is intended to increase non-peak travel; and neither fare is predatory; and NACA would have the Board suspend every reduced fare pending new intergovernmental arrangements, which would be both unnecessary and unfair to the scheduled carriers.

Braniff has complained against Pan American's common-faring of Houston and Dallas, contending that it is contrary to the Board's decision in Docket 27330, Domestic Common Fares Investigation (Order 77-6-21, June 6, 1977); Braniff filed Houston-London fares based on the combination of mileages over Dallas to provide Houston-London passengers with the benefits of lower per-mile fares via the route actually flown, while disturbing British Caledonian's Houston-London fares as little as possible; and the principle of common-faring the two cities may result in pressure on Braniff to raise its Dallas-London fares at some later date.

In answer to Braniff, Pan American states that the London-Houston great-circle mileage is only 2.2 percent greater than the London-Dallas; Braniff itself has common-fared a number of southwest U.S. points which are considerably further apart than Dallas and Houston; and the decision in Docket 27330 applied to domestic fares only and, in fact, the Board is currently investigating common-faring in international Pacific markets. The City of Houston and the Houston Chamber of Commerce have also answered in opposition to Braniff's complaint; in addition to the same general arguments made by Pan American, the Houston parties question whether, in light of the evolving price competition in both domestic and international markets, the notion that fares should be uniform for all markets of the same mileage is not outdated.

The Board has decided to dismiss the complaints, which focus primarily on the APEX and similar Holiday fares, and Air France's special midweek fare, and permit all of them to become effective.

The fundamental premise of the policy we have been following is that loosening the regulatory constraints on one class of competitors is a means of maintaining lively competition preferable to restricting the low fare offerings of another class.[6] To suspend the low scheduled fares pending ad hoc arrangements for subsequent review and possible suspension or for further liberalization of charter rules would, first of all, deny the public the immediate, tangible benefits of these fares during the peak summer season, as well as the value of innovative travel options represented by such filings as Air France's off-peak midweek fare. Many passengers have undoubtedly made reservations on the APEX fares, and suspension would cause disruptions of their travel plans.[7] NACA does not allege that the APEX and other low fares are so clearly predatory as to threaten the survival of the charter industry. They do not attempt to demonstrate that the similar fares subject to ad hoc agreements last season affected them adversely. The tour operators, on the other hand, essentially seek unconditional suspension of the new fares for the duration of the entire peak season.

The potential benefits of such an action to the tour operators is not, in our view, a sufficiently strong consideration to offset the immediate advantage of the new fares to consumers and the absence of a firm demonstration that suitable competitive responses are unavailable.

We are now convinced that charter carriers will be permitted to compete with the low scheduled fares to Germany and France. The German Government's minimum charter rates have been set at levels 25-33 percent below the Holiday fare, and charter prices filed thus far for the summer season are generally above the minimum. The Board has received assurances from the French Government that it will permit charter filings sufficiently below its current minimum prices to enable charters to compete with the new midweek fare. Whether the charter carriers can in fact operate at these prices will be determined in the market-place; the artifical barriers to their competitive response have been removed.

We are sensitive to the dislocations that increased price competition can cause. This consideration gave us great concern in deciding whether to permit various deeply discounted domestic charter-competitive fares. However, as we concluded there[8] and now conclude here, such competition will work to the ultimate benefit of the traveling public. Moreover, we are not convinced that the tour-operator industry as a whole cannot adapt to the changing environment. We have taken a number of steps to ease the transition by removing many of the restrictions formerly placed on charter service, which should make this type of air transportation easier to operate and to merchandise. Additional proposals have been made to ease the plight of tour operators, and we are giving them prompt and sympathetic consideration. For example, several days ago we approved a 90-day waiver of certain charter rules which will enable tour operators to, among other things, book one-way charters and allow discount fares for advance bookings. We will not, however, deprive consumers of low fare proposals merely to preserve past industry relationships and divisions of the market. Rather, we will strive to make the air transportation environment fully competitive, as circumstances and policies change, by relaxing restrictive rules, thus enabling all air transport enterprises to adapt their activities to changing public needs. As we have permitted more and more low scheduled fares, we have relaxed the rules on operation of charters. These changes benefit charter carriers and tour operators by making charter service more easily available to consumers.

Finally, although Pan American has made no compelling demonstration that Houston and Dallas should be common-fared, in view of the rather minute difference in mileages, we are not prepared to hold the benefit of the new low fares hostage to this minor imperfection, if indeed it is one.[9]

Accordingly, pursuant to sections 102, 204(a), 403, and 1002(j) of the Federal Aviation Act of 1958: *It is ordered*, That: 1. The complaints of the National Air Carrier Association, in Dockets 31232, 31305, 31555, 32206, and 32207, of Air Charter Tour Operators of America in Docket 32211, of Charter Travel Corp. in Docket 32212, of Pan American World Airways, Inc. in Docket 32210, of Braniff Airways, Inc. in Docket 32192, of Trans World Airlines, Inc. in Dockets 31534 and 31538, of Laker Airways Ltd. in Docket 31285, of Brendan Tours, Inc. in Dockets 31235 and 31246, and of The Educational Cooperative in Dockets 31234 and 31247, are dismissed; and

2. Copies of this order shall be served on Compagnie Nationale Air France, Swissair-Swiss Air Transport Co. Ltd., Deutsche Lufthansa Aktiengesellschaft, KLM Royal Airlines, the City of Houston and the Houston Chamber of Commerce, the National Air Carrier Association, Air Charter Tour Operators of America, Charter Travel Corp., Pan American World Airways, Inc., Braniff Airways, Inc., Trans World Airlines, Inc., Laker Airways Ltd., Brendan Tours, Inc., and the Educational Cooperative.

This order will be published in the FEDERAL REGISTER.

[6]See Order 77-9-55, September 16, 1977, page 11.

[7]We do not agree with ACTOA's contention that the low fares would displace many higher fare passengers. It is simply not in the carriers' interest to permit this to occur to any great extent.

[8]Order 78-3-70 dismissing complaints against TWA's "Super Jackpot" fares.

[9]In this order we will also dismiss outstanding complaints against the initial, winter-season low fare tariffs of last autumn, which have largely been superseded by the new tariff filings now before us.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-12619 Filed 5-8-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

EXPORT MONITORING REPORT FOR COAL AND COKE OF COAL

Week Ending April 7, 1978

Total bituminous coal exports for this week were 111,837 short tons compared with 214,163 short tons exported the preceding week. All exports for the week were of metallurgical grade. The weighted average price of coal exports for this week was $47 per short ton with a high and low price of $58.46 and $34.50 per short ton, respectively. With this low level of export activity, only a small number of firms reported coal shipments during the week. A breakdown of these exports by volatility and area of destination is, therefore, withheld from this report to prevent disclosure of information deemed to be confidential pursuant to section 7(c) of the Export Administration Act of 1969, as amended.

Exports of coke manufactured from coal for this week were 4,136 short tons compared with 4,317 short tons exported the preceding week and a weekly average of 5,000 short tons for the preceding six weeks. The weighted average price of this commodity for the week was $132.30 per short ton with a reported high and low price of $142.79 and $124.53 per short ton, respectively. Coke of coal export prices for the week indicate no price changes.

Domestic coal production for the week was estimated to be 14,220,000 short tons, an increase from the 11,945,000 short tons produced the preceding week. On March 24, 1978, the United Mine Workers of America and the Bituminous Coal Operators Association approved a new labor contract which officially ended the coal strike that started on December 6, 1977. With the resumption of mining operations and the resulting increase in coal production, the Department of Energy discontinued its weekly reporting of domestic coal consumption and stocks following release of the report for April 1, 1978. Concurrently, the Department of Commerce terminated the coal export monitoring program as of the week ending April 7, 1978.

This is the final weekly coal monitoring report to be release by the Department of Commerce. A summary of the effects of the coal strike on coal exports as evidenced in the Department's coal export monitoring program will be published in the semiannual "Export Administration Report" for the period October 1977-March 1978.

TABLE 1.—*U.S. exports of Bituminous coal and coke of coal, in short tons*

[For week ending Apr. 7, 1978]

Commodity	Weekly average			Week ending			
	Dec. 1975	Dec. 1976	Nov. 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Low volatile metallurgical coal [1]	NA	NA	***133,677	199,136	96,895	[4]	[4]
Medium volatile metallurgical coal [2]	NA	NA	NA	283,420	118,632	[4]	[4]
High volatile metallurgical coal [3]	NA	NA	NA	47,055	176,827	[4]	[4]
Total metallurgical coal	NA	NA	889,125	*550,459	**436,605	521,109	128,822
Other bituminous coal	NA	NA	158,326	129,424	351,669	59,500	0
Total bituminous coal	1,023,827	1,044,281	1,047,451	679,883	788,274	580,609	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922
	Average			Week ending			
		Jan. 1976	Jan. 1977	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978
Low volatile metallurgical coal [1]		NA	NA	[4]	[4]	[4]	[4]
Medium volatile metallurgical coal [2]		NA	NA	[4]	[4]	[4]	[4]
High volatile metallurgical coal [3]		NA	NA	[4]	[4]	[4]	[4]
Total metallurgical coal		NA	NA	174,709	311,331	97,800	262,585
Other bituminous coal		NA	NA	0	0	0	0
Total bituminous coal		834,857	483,983	174,709	311,331	97,800	262,585
Coke of coal		12,326	20,514	4,466	5,062	29,143	30,634
	Weekly average			Week ending			
		February 1976	February 1977	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978	Feb. 24, 1978
Low volatile metallurgical coal [1]		NA	NA	[4]	[4]	[4]	[4]
Medium volatile metallurgical coal [2]		NA	NA	[4]	[4]	[4]	[4]
High volatile metallurgical coal [3]		NA	NA	[4]	[4]	0	[4]
Total metallurgical coal		NA	NA	251,327	72,569	139,143	200,762
Other bituminous coal		NA	NA	0	[4]*	0	0
Total bituminous coal		736,138	769,840	251,327	72,569	139,143	200,762
Coke of coal		22,185	12,805	3,998	75,173	43,315	8,595
	Weekly average			Week ending			
	Mar. 1976	Mar. 1977	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Low volatile metallurgical coal [1]	NA	NA	[4]	[4]	[4]	0	[4]
Medium volatile metallurgical coal [2]	NA	NA	[4]	[4]	[4]	0	[4]
High volatile metallurgical coal [3]	NA	NA	[4]	[4]	[4]	0	[4]
Total metallurgical coal	NA	NA	162,451	102,698	*24,182	0	214,163
Other bituminous coal	NA	NA	[4]*	0	0	550	0
Total bituminous coal	898,473	765,515	162,451	102,698	24,182	550	214,163

TABLE 1.—Continued *U.S. exports of Bituminous coal and coke of coal, in short tons*

[For week ending Apr. 7, 1978]

Commodity	Weekly average		Week ending				
	April 1976	April 1977	April 7, 1978				
Coke of coal	19,541	24,320	4,998	4,651	3,359	4,488	4,317

	Weekly average		Week ending
	April 1976	April 1977	April 7, 1978
Low volatile metallurgical coal [1]	NA	NA	[4]
Medium volatile metallurgical coal [2]	NA	NA	[4]
High volatile metallurgical coal [3]	NA	NA	[4]
Total metallurgical coal	NA	NA	111,837
Other bituminous coal	NA	NA	0
Total bituminous coal	1,348,649	1,315,684	111,837
Coke of coal	27,027	25,130	4,136

[1] 22 pct or less volatile matter.
[2] 31 pct or less and more than 22 pct volatile matter.
[3] More than 31 pct volatile matter.
[4] Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[5] Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported, the Department of Commerce is seeking to verify this information.
* Includes 20,848 short tons of metallurgical grade coal not identified as to volatility.
** Includes 44,251 short tons of metallurgical grade coal not identified by volatility.
*** Partial, in content tons.

NA—Not available.

Sources: Office of Export Administration, and Bureau of the Census.

TABLE 2.—*Contracts for export of bituminous coal and coke of coal, in short tons*

[For week ending Apr. 7, 1978]

Commodity	Week ending						Next 6 weeks	Total for 12 weeks
	Apr. 14, 1978	Apr. 21, 1978	Apr. 28, 1978	May. 5, 1978	May 13, 1978	May 19, 1978		
Low volatile metallurgical coal [1]	232,796	130,995	195,098	143,353	132,953	133,273	1,005,791	1,974,259
Medium volatile metallurgical coal [2]	175,058	317,768	366,871	303,196	290,148	230,788	2,300,239	3,984,068
High volatile metallurgical coal [3]	23,202	52,656	197,360	108,336	53,230	31,510	462,583	928,867
Total metallurgical coal	431,056	501,419	759,319	554,885	476,331	395,571	3,768,613	6,887,194
Other bituminous coal	([4])	([4])	([4])	([4])	([4])	([4])	([4])	([4])
Coke of coal	3,200	2,860	2,750	2,690	2,630	2,690	38,307	55,127

[1] 22 pct or less volatile matter.
[2] 31 pct or less and more than 22 pct volatile matter.
[3] More than 31 pct volatile matter.
[4] Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 3.—*U.S. exports by commodity and area of destination, in short tons*

[For week ending Apr. 7, 1978]

Commodity and area of destination	Weekly average			Week ending			
	Dec. 1975	Dec. 1976	Nov. 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Low volatile metallurgical coal: [1]							
Asia			7,458	111,525	24,808	([4])	([4])
Europe			43,463	40,893	69,440	([4])	([4])
Western Hemisphere			82,956	46,718	2,647	([4])	([4])
Total	NA	NA	**133,877	199,136	96,895	([4])	([4])
Medium volatile metallurgical coal: [2]							
Asia				102,906	93,291	([4])	([4])
Europe				173,711	15,958	([4])	([4])
Western Hemisphere				6,803	9,383	([4])	([4])
Total	NA	NA	NA	283,420	118,632	([4])	([4])
High volatile metallurgical coal: [3]							
Asia				11,331	0	([4])	([4])

TABLE 3.—Continued *U.S. exports by commodity and area of destination, in short tons*

[For week ending Apr. 7, 1978]

Commodity and area of destination	Week ending						
	Jan. 6, 1978	Jan. 13, 1973	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978
Europe				0	76,532	(4)	(4)
Western Hemisphere				35,724	100,295	(4)	(4)
Total	NA	NA	NA	47,055	176,827	(4)	(4)
Total metallurgical coal:							
Asia			377,151	225,762	118,099	134,389	(4)
Europe			269,606	214,604	161,930	206,831	(4)
Western Hemisphere			224,411	*110,093	*112,325	136,928	(4)
Total	NA	NA	***889,125	550,459	*436,605	521,109	128,822
	Week ending						
	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978
Low volatile metallurgical coal:[2]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Medium volatile metallurgical coal:[2]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
High volatile metallurgical coal:[2]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total metallurgical coal:							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	174,709	311,331	97,800	262,585	251,327	72,569	130,143
	Feb. 24, 1978	Mar. 3, 1973	Mar. 10, 1978	Mar. 17, 1978	Mar.24, 1978	Mar. 31, 1978	Apr. 7, 1978
Low volatile metallurgical coal:[1]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Medium volatile metallurgical coal:[2]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
High volatile metallurgical coal:[2]							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total metallurgical coal:							
Asia	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Europe	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Western Hemisphere	(4)	(4)	(4)	(4)	(4)	(4)	(4)
Total	206,762	162,451	102,698	*24,182	0	214,163	111,837
	Weekly average			Week ending			
	Dec. 1975	Dec. 1976	Nov. 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Other bituminous coal	NA	NA	158,326	129,424	351,669	59,500	0
Total bituminous coal	1,023,827	1,044,281	1,047,451	679,883	788,274	580,509	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922

TABLE 3.—Continued *U.S. exports by commodity and area of destination, in short tons*

[For week ending Apr. 7, 1978]

Commodity and area of destination	Week ending						
	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978
Other bituminous coal	0	0	0	0	0	0	0
Total bituminous coal	174,709	311,331	97,800	262,585	251,327	72,569	139,143
Coke of coal	4,466	5,062	29,143	30,634	3,996	75,173	43,315
	Feb. 24, 1978	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978	Apr. 7, 1978
Other bituminous coal	0	0	0	0	550	0	0
Total bituminous coal	206,762	162,451	102,698	(5)	550	214,163	111,837
Coke of coal	8,595	4,998	4,651	3,359	4,488	4,317	4,136

[1]22 pct or less volatile matter.
[2]31 pct or less and more than 22 pct volatile matter.
[3]More than 31 pct volatile matter.
[4]Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[5]Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.
*Includes 44,251 short tons of metallurgical grade coal not identified by volatility.
**Partial, in content tons.
***Includes 17,957 short tons of metallurgical grade coal to destinations not listed above.
NA—Not available.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 4.—*Anticipated exports by commodity and area of destination, in short tons*

[For week ending Apr. 7, 1978]

Commodity and area of destination	CONTRACTS							
	Week ending							
	Apr. 14, 1978	Apr. 21, 1978	Apr. 28, 1978	May 5, 1978	May 12, 1978	May 19, 1978	Next 6 weeks	Total for 12 weeks
Total metallurgical:[1]								
Asia	169,822	171,662	432,088	172,597	184,855	206,375	1,546,001	2,886,000
Europe	232,447	278,516	239,241	259,045	223,661	141,101	1,228,152	2,602,163
Western Hemisphere	28,787	51,241	87,390	123,243	67,815	46,095	707,460	1,112,031
Total	431,056	501,419	759,319	554,885	476,331	395,571	*3,768,613	*6,887,194
Other bituminous	(2)	(2)	(2)	(2)	(2)	(2)	(2)	(2)
Total bituminous coal[3]								
Coke of coal	3,200	2,860	2,750	2,690	2,630	2,690	38,307	55,127

[1]Volatility data by destination have been withheld to prevent disclosure of information deemed to be confidential pursuant to sec. 7(c) of the Export Administration Act of 1969, as amended.
[2]Less than 100,000 tons. Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to section 7(c) of the Export Administration Act of 1969, as amended.
[3]Data withheld to avoid disclosure of data withheld above. See footnote 2.
*Includes 287,000 tons to destinations not listed above.

Sources: Office of Export Administration and Bureau of the Census.

TABLE 5.—*Export prices of bituminous coal and coke of coal, in dollars per short ton*

[For week ending Apr. 7, 1978]

Commodity		Average					
		Mar. 1976	Mar. 1977	Nov. 1977	Weighted	High	Low
Low volatile metallurgical coal[1]		NA	NA	NA	(4)	(4)	(4)
Medium volatile metallurgical coal[2]		NA	NA	NA	(4)	(4)	(4)
High volatile metallurgical coal[3]		NA	NA	NA	(4)	(4)	(4)
Total metallurgical coal		NA	NA	53.84	47.00	58.46	34.50
Other bituminous coal		NA	NA	35.01	0	0	0
Total bituminous coal		50.79	50.64	50.99	47.00	58.46	34.50
Coke of coal		62.97	57.19	79.70	132.30	142.79	124.53

[1]22 pct or less volatile matter.
[2]31 pct or less and more than 22 pct volatile matter.
[3]More than 31 pct volatile matter.
[4]Due to a limited number of firms reporting this data, precise figures have been withheld to prevent disclosure of information deemed to be confidential pursuant to Sec. 7(c) of the Export Administration Act of 1969, as amended.

NA—Not available.

TABLE 6.—*U.S. trade in bituminous coal and coke of coal, in short tons*

[For week ending Apr. 7, 1978]

	Weekly average			Week ending			
	Dec. 1975	Dec. 1976	Nov. 1977	Dec. 9, 1977	Dec. 16, 1977	Dec. 23, 1977	Dec. 30, 1977
Imports:							
Bituminous coal[1]	20,097	21,452	31,158	NA	NA	NA	NA
Coke of coal	20,774	28,903	41,267	NA	NA	NA	NA
Exports:							
Bituminous coal[1]	1,023,827	1,044,281	1,047,451	679,883	788,274	580,609	128,822
Coke of coal	16,646	7,287	33,179	3,922	9,624	2,843	3,922

	Average		Week ending			
	Jan. 1976	Jan. 1977	Jan. 6, 1978	Jan. 13, 1978	Jan. 20, 1978	Jan. 27, 1978
Imports:						
Bituminous coal[1]	16,346	27,198	NA	NA	NA	NA
Coke of coal	3,483	5,987	NA	NA	NA	NA
Exports:						
Bituminous coal[1]	834,857	483,983	174,709	311,331	97,800	262,585
Coke of coal	12,326	20,514	4,466	5,062	29,143	30,634

	Weekly average		Week ending			
	Feb. 1976	Feb. 1977	Feb. 3, 1978	Feb. 10, 1978	Feb. 17, 1978	Feb. 24, 1978
Imports:						
Bituminous coal[1]	NA	NA	NA	NA	NA	NA
Coke of coal	NA	NA	NA	NA	NA	NA
Exports:						
Bituminous coal[1]	736,138	769,840	251,327	72,569	139,143	206,762
Coke of coal	22,185	12,805	3,998	75,173	43,315	8,595

	Weekly average		Week ending				
	Mar. 1976	Mar. 1977	Mar. 3, 1978	Mar. 10, 1978	Mar. 17, 1978	Mar. 24, 1978	Mar. 31, 1978
Imports:							
Bituminous coal[1]	NA	NA	NA	NA	NA	NA	NA
Coke of coal	NA	NA	NA	NA	NA	NA	NA
Exports:							
Bituminous coal[1]	898,473	765,515	162,451	102,698	[2]24,182	550	214,163
Coke of coal	19,541	24,320	4,998	4,651	3,359	4,488	4,317

	Weekly average		Week ending
	Apr. 1976	Apr. 1977	Apr. 7, 1978
Imports:			
Bituminous coal[1]	NA	NA	NA
Coke of coal	NA	NA	NA
Exports:			
Bituminous coal[1]	1,348,649	1,315,064	111,837
Coke of coal	27,027	25,130	4,136

[1]Includes both metallurgical grade and steam coal.
[2]Subject to revision. Less than 10,000 short tons of additional bituminous coal may have been exported; the Department of Commerce is seeking to verify this information.

Sources: Office of Export Administration and Bureau of the Census.

[FR Doc. 78-12450 Filed 5-8-78; 8:45 am]

[3510-25]

Industry and Trade Administration

SUBCOMMITTEE ON EXPORT ADMINISTRATION OF THE PRESIDENT'S EXPORT COUNCIL

Partially Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. (1976 ed.)), notice is hereby given that a meeting of the Subcommittee on Export Administration of the President's Export Council will be held on Thursday, May 25, 1978, at 9 a.m., in Room 3708 of the Department of Commerce, Washington, D.C.

The Subcommittee on Export Administration was initially established on June 1, 1976. On January 6, 1977, the Assistant Secretary of Administration approved the recharter and extension through December 31, 1978, of the Subcommittee, pursuant to the provisions of Section 3 of Executive Order 11753 (December 20, 1973), as extended by Section 1 (k) of Executive Order 11948 (Dec. 20, 1976), and the Federal Advisory Committee Act.

The Subcommittee advises the Secretary of Commerce on matters pertinent to those portions of the Export Administration Act of 1969, as amended (50 U.S.C. App. 2401 et seq.) that deal with United States policy of encouraging trade with all countries with which the United States has diplomatic or trading relations and of controlling trade for national security and foreign policy reasons.

The Subcommittee meeting agenda has nine parts:

GENERAL SESSION

1. Unfinished business:
   (a) Service Supply License,
   (b) Export Licensing Policy for Demonstration,
   (c) Implementation of 1977 Amendments,
   (d) Reorganization of Domestic and International Business Administration.
2. Foreign policy considerations in export controls—Recent changes in human rights area.
3. Department of Defense's efforts in defining critical technologies.
4. Return of technical data licenses.
5. Disclosure of information—Recent court decision on section 7(c) of the Export

Administration Act of 1969, as amended, and coverage of Exemption 4 of the Freedom of Information Act for export licensing information.
6. Environmental Impact Statement requirement re Export license applications.
7. Reexport licensing policies.

EXECUTIVE SESSION

8. Presidential Review Memorandum-31 Status and conclusions.
9. CoCom list review status.

The General Session is open to the public. To the extent time permits, members of the public may present oral statements to the Subcommittee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda items 8 and 9, the Assistant Secretary for administration, with the concurrence of the delegate of the General Counsel, formally determined on January 11, 1977, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended by Section 5(c) of the Government in the Sunshine Act (Pub. L. 94-409), that the matters to be discussed in the Executive Session should by exempt from the provisions of the Federal Advisory Committee Act relating to open meetings and public participation therein, because the Executive Session will be concerned with matters listed in 5 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by Executive Order 11652 to be kept secret in the interest of the national defense or foreign policy. Materials to be reviewed and discussed by the Subcommittee during the Executive Session of the meeting have been properly classified under the Executive Order. All Subcommittee members have appropriate security clearances.

The complete Notice of Determination to close portions of the series of meetings of the Subcommittee on Export Administration of the President's Export Council is printed at 42 FR 3011 (Jan. 14, 1977).

Copies of the minutes of the General Session will be available by calling Mr. Lawrence J. Brady, Deputy Director, Office of Export Administration, U.S. Department of Commerce, Washington, D.C. 20230, phone 202-377-4188.

For further information, contact Mr. Brady, either in writing or by phone, at the address or number shown above.

Dated: May 4, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation.

[FR Doc. 78-12709 Filed 5-8-78; 8:45 am]

[3510-22]

National Oceanic and Atmospheric Administration

S.E.E. OKEANSKY RIBOLOV

Issuance of a General permit

On May 3, 1978, a general permit was issued to S.E.E. Okeansky Ribolov, Bourgas, Peoples Republic of Bulgaria, to take marine mammals incidental to commerical fishing operations within the U.S. fishery conservation zone pursuant to 50 CFR 216.24 (42 FR 64552-64560), as amended. The general permit is available for public inspection in the Office of the Assistant Administrator, National Marine Fisheries Service, 3300 Whitehaven Street NW., Washington, D.C.

Dated: May 3, 1978.

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

[FR Doc. 78-12578 Filed 5-8-78; 8:45 am]

[6355-01]

CONSUMER PRODUCT SAFETY COMMISSION

CELLULOSE HOME INSULATION

Extension of the Time for Evaluating and Accepting Offers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of time.

SUMMARY: In this notice, the Commission extends from May 12, 1978, until August 31, 1978, the period of time for it to evaluate and take action on submissions the Commission has received in response to its request for offers to develop a consumer product safety standard for cellulose home insulation. The reason for extending this time period is that pending legislation may, if it becomes law, make the Commission's proceeding unnecessary. This FEDERAL REGISTER notice does not extend the time for persons to submit an existing standard or an offer to develop a standard. That deadline expired April 12, 1978.

DATES: The deadline for the Commission to evaluate and accept an offer to develop a recommended standard is extended to August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip Bechtel, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, 202-634-7770.

SUPPLEMENTARY INFORMATION: The Commission began a proceeding to develop a consumer product safety standard for cellulose home insulation under section 7 of the Consumer Product Safety Act (CPSA) (15 U.S.C. 20560) by a notice in the FEDERAL REGISTER of March 13, 1978 (43 FR 10427), in which the Commission invited any interested person to submit by April 12, 1978, either (1) an offer to develop a recommended consumer product safety standard or (2) an existing standard to serve as a recommended consumer product safety standard. The Commission began this proceeding after it preliminarily determined that fire hazards associated with cellulose home insulation constitute unreasonable risks of death or injury and that a consumer product safety standard is necessary to eliminate or reduce those unreasonable risks. In response to the notice of proceeding, the Commission received nine submissions from interested persons by the due date of April 12, 1978, and two submissions after that date. These submissions may be examined in the Office of the Secretary of the Commission, Third Floor, 1111 18th Street NW., Washington, D.C. 20207. (The period of time for interested persons to submit existing standards or an offer to develop a standard has expired and is not extended by this notice.)

Section 7 of the CPSA (15 U.S.C. 2056) provides that the Commission has 60 days from the publication of the notice of proceeding to decide whether to accept an offer to develop a standard, publish an existing standard as a recommended standard, develop a proposed standard itself, or terminate the proceeding. The Commission may extend this 60-day period by publishing a notice in the FEDERAL REGISTER stating good cause for the extension.

On January 23, 1978, the Senate passed a bill, S. 2401. This bill, the "Emergency Interim Consumer Product Safety Rule Act of 1978," would, among other things, establish an interim consumer product safety standard for the flame-resistance and corrosiveness of cellulose home insulation. Similar legislation is now pending in the House of Representatives (H.R. 11998). The legislation that is currently in the House, like the bill that passed the Senate, would require the Commission to publish within a short period of time an interim consumer product safety standard consisting of the requirements for flame-resistance and corrosiveness set forth in the General Services Administration's specificiation for cellulose insulation, HH-I-515C (as of Dec. 1, 1977) plus any technical non-substantive changes as the Commission deems appropriate. Under both bills the Commission would enforce the interim standard in the same manner as it enforces any other consumer product safety rule.

If the pending legislation becomes law, the Commission believes that it may not be necessary for the Commis-

sion to continue its own proceeding under section 7 of the CPSA, since the interim standard may adequately protect the public from the risk of injury from fires associated with cellulose home insulation. The pending legislation requires the Commission to incorporate into the interim consumer product safety rule within a short time period each revision to the requirements for flame-resistance and corrosiveness issued by the General Services Administration. These revisions, after being incorporated into the interim rule, may provide additional protection to the public, so that it may not be necessary for the Commission to continue the present proceeding under section 7 to develop a new consumer product safety standard.

In view of the possibility that the pending legislation will be enacted and establish an interim consumer product safety standard for cellulose home insulation, thus possibly making it unnecessary for the Commission to continue its own standard development proceeding, the Commission believes it should delay any evaluation of the submissions and acceptance of an offer to develop a recommended standard in its Consumer Product Safety Act proceeding until a decision has been made concerning the pending legislation or until it becomes clear that the Commission should continue its own proceeding in order to adequately protect the public. Such a delay will permit the Commission to conserve its limited resources until it is known with more certainty whether it will be proceeding to develop a standard under the offeror process of the Consumer Product Safety Act, or whether it will be acting to implement the legislation, or both.

The Commission believes that an extension of the period for accepting offers until August 31, 1978, will provide sufficient time for the outcome of the legislation to be resolved and for the Commission to determine whether it will be necessary to continue its own proceeding. If, before August 31, 1978, it appears unlikely that the legislation will be enacted, the Commission will take appropriate action in respect to its own proceeding.

Therefore, in accordance with the provisions of section 7 of the CPSA, the Commission extends until August 31, 1978, the period of time for it to evaluate and accept a satisfactory offer to develop a recommended standard for cellulose home insulation or for it to withdraw the proceeding. This period may be further extended by a notice published in the FEDERAL REGISTER stating good cause.

Dated: May 4, 1978.

SADYE DUNN,
Acting Secretary, Consumer Product Safety Commission.

[FR Doc. 78-12714 Filed 5-8-78; 8:45 am]

[3810-70]

DEPARTMENT OF DEFENSE

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON COUNTER-COMMUNICATIONS, COMMAND AND CONTROL (C^3)

Advisory Committee Meeting

The Defense Science Board Task Force on Counter-Communications, Command and Control (C^3) will meet in closed session on June 1 and 2, 1978, in National Center Building No. 1.

The mission of the Defense Science Board Task Force is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering and to provide long-range guidance in these areas to the Department of Defense.

The Task Force will provide an analysis of the communications, command and control (C^3) employed by potentially hostile forces and identify countermeasures that might be of significant help if the Department of Defense were required to counter those forces.

In accordance with section 10(d) of Appendix I, Title 5, United States Code, it has been determined that this Task Force meeting concerns matters listed in section 552b(c) of Title 5 of the United States Code, specifically subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: May 4, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

[FR Doc. 78-12583 Filed 5-8-78; 8:45 am]

[3810-70]

Office of the Secretary

PRIVACY ACT OF 1974

System of Records

AGENCY: Office of the Secretary of Defense.

ACTION: Notice of a deletion and an addition of a new system of records.

SUMMARY: The Office of the Secretary of Defense (OSD) is deleting and adding a new system of records to its inventory of record systems subject to the Privacy Act. The new system is identified as DAS 01, entitled: "Defense Audit Service Management Information System (DAS/MIS)." It replaces DCOMP 01, "Personel Roster" which is deleted.

DATE: This system shall be effective as proposed without further notice on June 8, 1978, unless comments are received on or before June 8, 1978, which would result in a contrary determination and require republication for further comments.

ADDRESS: Send comments to the System Manager identified in the record system below.

FOR FURTHER INFORMATION CONTACT:

Mr. James S. Nash, Chief, Records Management Branch, Washington Headquarters Services, The Pentagon, Washington, D.C. 20301, telephone 202-695-0970.

SUPPLEMENTARY INFORMATION: The Office of the Secretary of Defense (OSD) record system notices as prescribed by the Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 552a) have been published in the FEDERAL REGISTER as follows:

FR Doc. 77-28255 (42 FR 50730) September 28, 1977.
FR Doc. 77-36255 (42 FR 64334) December 22, 1977
FR Doc. 78-1465 (43 FR 2751) January 19, 1978
FR Doc. 78-5170 (43 FR 8002) February 27, 1978
FR Doc. 78-8197 (43 FR 13090) March 29, 1978.

OSD has submitted a new system report on April 7, 1978, on this system of records under the provisions of 5 U.S.C. 552a(o) of the Privacy Act.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Service, Department of Defense.

MAY 4, 1978.

DELETION

DCOMP 01

System name:

Personnel Roster (42 FR 50725) September 28, 1977.

Reason:

This system is replaced by DAS 01 Defense Audit Service Management Information System (DAS/MIS) appearing in the added system below.

ADDITION

DAS 01

System name:

Defense Audit Service Management Information System (DAS/MIS).

System location:

Defense Audit Service, Audit Management Division (DAS-AM), Arlington, Va. The system utilizes the Computer Science Corp.'s INFONET System, 1616 North Fort Myer Drive, Arlington, Va. 22209.

Categories of individuals covered by the system:

All active personnel employed by the Defense Audit Service with history data including previous employees maintained for 2 years.

Categories of records in the system:

Data on the individual's current position, current employment status, travel, audit experience, training, and the following specific personal data: name, Social Security Account Number (SSAN), date of birth (DOB), service computation date (SCD), career status, experience, address, assigned station, job series, clearance, education, and evaluation due date.

Authiority for maintenance of the system:

Title 10, United States Code, section 136(b), and Department of Defense Directive 5105.48, "Defense Audit Service," October 14, 1976, conveys the authority for maintenance of a system of records to the Director of the defense Audit Service in support of the DAS mission.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

There are no external uses. Internally, information is used as follows:

Security Clearance notification alert; provided to all audited activities in advance of visits by DAS audit personnel. Information provided in Alert is name, SSAN, Office of Assignment, and the security clearance for each auditor.

(2) Time and Attendance Reporting; provided to DAS Main Office by 9 CONUS Regional Offices and 3 Overseas Regional Offices. Time and Attendance Reports are used by various managers to track Temporary Duty Travel frequency and duration, to accrue manhour data on assigned audit projects, to categorize indirect time for end of year reporting, to provide time and attendance data to the centralized payroll system at the Main Office. Information included in Time and Attendance Reports are SSAN, Name, Grade, Assigned Office, Hours Present for Duty, Annual Leave Hours, Sick Leave Hours, Other Leave Hours and Type, TDY Location, and TDY Duration.

(3) Planned Annual Leave Reporting; utilized by various managers for workload planning and travel scheduling. Information included is Name, Assigned Office, and dates of planned annual leave.

(4) Audit Status and Auditor Assignment Reporting; used by managers to control audits and auditors, and to maximize effectiveness of manpower resources. Included information is Audit Number, Audit Requestor Code, Title, Milestone Dates, Audit Cost Summary, Personnel Assigned/Release Dates, and Personnel Manhours Expended.

(5) As Required Personnel Reporting; used by the Staff Manager to determine training needs, promotional eligibility, education and background, professional organization participation, and performance evaluation. Information included is Name, Assigned Office, Education, Professional Activities Training History (Course Title, Dates Attended), Performance Evaluation, Date of Birth, and Service Computation Date.

(6) Travel Reporting; used by managers to control Temporary Duty Travel, travel costs, and issuances of Blanket Travel Orders.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Active Records are stored on immediate access disk and magnetic tape maintained within the computer center. Inactive records are maintained on magnetic tape within the computer center. Hard copy records are stored in file cabinets under the control of functional users.

Retrievability:

Records are internally stored by employee SSAN and are selectively retrievable by all data elements as specified in the Categories of Records in the System.

Safeguards:

All records reside in a "private library" which is not accessible by any other user. All system files are backed up upon creation and upon any update action. A "Master ID" with unrestricted access to all records in the private library is available only to Main Office MIS Management Personnel. A "Subordinate ID" which has restricted access, only to pertinent records, is used by field offices. Password protection is afforded at the session and file level. All user ID's are protected by separate password validation. Any attempt to circumvent the password validation initiates immediate "log-off". Physical control includes limiting password to only authorized personnel. Master ID is located in a secure environment, within the Main Office, and access to the terminal facility is restricted to MIS Management employees who work within the area. Access to records containing personal data is restricted to those who require the records in the performance of their official duties and to the individual who is the subject of the record (or his authorized representative). Tape files are maintained in an environmentally secure vault area when not in use. Computer Science Corporation has been cleared to process personal data for Government Agencies by General Services Administration on December 11, 1975.

Retention and disposal:

Machine resident records are maintained for 2 years after they become inactive. All inactive records are afforded the same safeguards as active records and are maintained on magnetic tape within the computer center. Machine resident records are destroyed at the end of the 2 year period. Hard copy records are retained until the records are replaced or become obsolete.

System manager and address:

Director, Defense Audit Service, Suite 1200, Commonwealth Building, 1300 Wilson Boulevard, Arlington, Va. 22209, telephone 202-697-9108.

Notification procedure:

Written or personal requests for information should be addressed to the System Manager.

Record access procedures:

Procedures for gaining access by an employee/previous employee to his/her records may be obtained from the System Manager. Written request for information should contain the full name of the employee/past employee and Social Security Account Number. For personal visits, the employee should be able to identify himself/herself with Defense Audit Service Identification Card. Past employees should be able to identify himself/herself with Social Security Card and one other corroborating personal identification.

Contesting record procedures:

The Agency's rules for contesting contents and appealing initial determination by the individual concerned are contained in 32 CFR 286b and OSD Administrative Instruction No. 81.

Record source categories:

Official Personnel Folder and other pesonnel documents, activity supervisors, applications and forms completed by the individual.

System exempted from certain provisions of the act:

None.

[FR Doc. 78-12640 Filed 5-8-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

REQUESTS FOR INTERPRETATION FILED WITH THE OFFICE OF GENERAL COUNSEL

Month of April 1978

Notice is hereby given that during the month of April 1978, the Requests

for Interpretation listed in the Appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F with the Office of General Counsel, Department of Energy (DOE). Copies of the Requests for Interpretation listed herein are on file in DOE's Public Reading Room, Information Access Office, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461.

Interested parties may submit written comments on the listed interpretation requests within 30 days of the publication of this notice. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Office of General Counsel, Department of Energy, Room 5134, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Attention: Diane Stubbs. Aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

For further information, contact Diane Stubbs, Office of General Counsel, 12th and Pennsylvania Avenue NW., Room 5138, Washington, D.C. 20461, 202-566-9070.

WILLIAM S. HEFFELFINGER,
Director of Administration, Department of Energy.

MAY 3, 1978.

APPENDIX.—*List of requests for interpretation received by the Office of General Counsel*

[Month of April 1978]

Date received	Name and location of requestor	File No.
Apr. 4	Chevron U.S.A., Inc., Dudley A. Zinke, Pillsbury, Madison & Sutro, 225 Bush St., P.O. Box 7880, San Francisco, Calif. 94120. Issue: Whether Chevron is required to report as exports for the purposes of the entitlements program domestically refined Bunker C, Navy Special, or No. 4 diesel oils that are sold as marine fuels on voyages departing ports of the Panama Canal Zone.	A-299
Apr. 5	Hawaiian Independent Refinery, Inc., Mario A. Roberti, P.O. Box 3379, Honolulu, Hawaii 96842. Issue: Whether an exchange of crude oil with a foreign buyer requires a domestic refiner to deduct such crude oil from its volume of runs to stills under the entitlement program, § 211.67(d)(2).	A-300
Apr. 14	Henry Petroleum Corp., James C. Henry, 801 Petroleum Bldg., Midland, Tex. 79701. Issue: Does the phrase "consistently and historically applied" as it is used in rulings 1977-1 and 1977-2 apply to a firm's crude oil production activities undertaken subsequent to 1977 for purposes of 10 CFR Pt. 212, subpt. D.	A-301
Apr. 17	Pasco Petroleum Co., Inc., James P. Tierney, Lathrop, Koontz, Righter, Clagett, Parker & Norquist, 1500 Tenmain Center, P.O. Box 1300b, Kansas City, Mo. 64199. Issue: Is the refusal of a prime supplier to provide a wholesale purchaser reseller with product for service stations from a regional terminal contrary to the requirements of §§ 211.12(e), 211.13(c), and 210.62.	A-302
Apr. 18	E. E. Ryall (Texaco consignee), 10th St. and U.S. Highway 1, P.O. Box 729, Vero Beach, Fla. 32900. Issue: Is a consignee servicing retail service stations a wholesale purchaser-reseller of motor gasoline as defined in 10 CFR 211.51.	A-303
Apr. 19	Maclaskey Vacuum Transport, Thomas E. King, 2420 Pershing Rd., Suite 400, Kansas City, Mo. Issue: If a purchaser of crude oil tenders a check not covered by sufficient funds and therefore does not pay the producer on a timely basis for crude oil already supplied, does a reseller's written offer to pay the same price for the crude oil constitute a "lawful price above the price paid by the present purchaser" which terminates the existing supplier/purchaser relationship under 10 CFR 211.63(d)(1)(iii).	A-304
Apr. 24	G. W. Tinnin (Texaco consignee), Richard M. Wiggins, McCorp, Weaver, Wiggins, Cleveland & Raper, P.O. Box 2129, Fayetteville, N.C. 28302. Issue: Is a consignee servicing retail service stations a wholesale purchaser-reseller of motor gasoline as defined in 10 CFR 211.51.	A-305

[FR Doc. 78-12499 Filed 5-8-78; 8:45 am]

[3128-01]

Economic Regulatory Administration

[ERA Docket No. IE-78-3; FERC Docket No. ER-78-145]

ARIZONA PUBLIC SERVICE CO.

Filing

On March 3, 1978, the Arizona Public Service Co. (APS) tendered for filing proposed rate increases in its electric service rate schedules, in connection with the export of electricity to Mexico:

Comision Federal de Electricidad Division Baja, California (Sonoyta).

Compania de Servicios Publicos de Auga Prieta, S.A.

APS originally filed these proposed rate increases with the Federal Energy Regulatory Commission (FERC), on December 22, 1977, as part of a broader application that included purely domestic rates. (FERC docket No. ER-78-145). In an order issued on January 30, 1978, the FERC rejected these particular rate increases on grounds of lack of jurisdiction to approve them.

In support of its filing, APS states that the rates proposed to be charged are the same as those filed with the Federal Energy Regulatory Commission for the city of Wickenburg, Ariz., and that the sales account for only about one-third of 1 percent of the APS gross revenues.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Director, Division of Power Supply and Reliability, Economic Regulatory Administration, 1111 20th Street NW., Room 4070, Washington, D.C. 20545, in accordance with §§ 1.8 and 1.10 of the rules of practice and procedure (18 CFR 1.8, 1.10).

All such petitions and protests should be filed on or before May 15, 1978. Protests will be considered by ERA 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 Economic Regulatory Administration and will, upon request, be made available for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street NW., Washington, D.C., and at the Division of Power Supply and Reliability, Room 4070, 1111 20th Street NW., Washington, D.C.

Dated: May 3, 1978.

DOUGLAS C. BAUER,
Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 78-12500 Filed 5-8-78; 8:45 a.m.]

[3128-01]

[ERA Docket No. IE-77-6; FERC Docket No. ER-78-12]

NEW YORK POWER POOL

Filing

On October 7, 1977, the New York Power Pool (the Pool), consisting of Central Hudson Gas & Electric Corp., Consolidated Edison Co. of New York, Inc., Long Island Lighting Co., New York State Electric & and Gas Corp., Niagara Mohawk Power Corp., Orange & Rockland Utilities, Inc., and Rochester Gas & Electric Corp. tendered for filing[1] an interconnection agree-

[1]The filing was addressed to the Federal Power Commission, and was received by its successor, the Federal Energy Regulatory Commission, on October 7, 1977. The Commission published its own notice in the FEDERAL REGISTER. Subsequently, pursuant to the Department of Energy Organization Act, including applicable delegations thereunder, the filing was transferred to the Economic Regulatory Administration.

ment between the Pool and Ontario Hydro (Hydro), dated April 4, 1977.

The Pool indicates that the proposed agreement provides for the purchase and sale of several classifications of operating capability and energy over electrical interconnections, including emergency and economy transactions.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Director, Division of Power Supply and Reliability, Economic Regulatory Administration, 1111 20th Street NW., Room 4070, Washington, D.C. 20545, in accordance with §§ 1.8 and 1.10 of the rules of practice and procedure (18 CFR 1.8, 1.10).

All such petitions and protests should be filed on or before May 15, 1978. Protests will be considered by ERA 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 Economic Regulatory Administration and will, upon request, be made available for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street NW., Washington, D.C., and at the Division of Power Supply and Reliability, Room 4070, 1111 20th Street NW., Washington, D.C.

Dated: May 3, 1978.

DOUGLAS C. BAUER,
Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 78-12501 Filed 5-8-78; 8:45 am]

[3128-01]

[ERA Docket No. IE-78-2; FERC Docket No. ER-78-93]

NORTHERN STATES POWER CO.

Filing

On December 5, 1977, Northern States Power Co. (Northern States) tendered for filing[1] supplement No. 1, dated October 11, 1977, to the Manitoba-United States Winnipeg-Grand Forks 230 kV interconnection agreement, dated January 16, 1969, between the Manitoba Hydro-Electric Board and Northern States. Northern States indicates that the supplement No. 1 amends exhibits A and B of the interconnection agreement providing for a tap of the interconnection at the Letellier station in Manitoba.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Director, Division of Power Supply and Reliability, Economic Regulatory Administration, 1111 20th Street NW., Room 4070, Washington, D.C. 20545, in accordance with §§ 1.8 and 1.10 of the rules of practice and procedure (18 CFR 1.8, 1.10).

All such petitions and protests should be filed on or before May 15, 1978. Protests will be considered by ERA 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 Economic Regulatory Administration and will, upon request, be made available for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street NW., Washington, D.C. and at the Division of Power Supply and Reliability, Room 4070, 1111 20th Street NW., Washington, D.C.

Dated: May 3, 1978.

DOUGLAS C. BAUER,
Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 78-12502 Filed 5-8-78; 8:45 am]

[3128-01]

[ERA Docket No. IE-78-4; FPC Docket No. E-6489]

WEST TEXAS UTILITIES

Filing

On March 24, 1978, the West Texas Utilities Co. (WTU) tendered for filing an application for modification of its permit authorizing the exportation of electric energy to Mexico, and a letter agreement between WTU and the Comision Federal de Electricidad, Division Norte, submitted as a supplemental rate schedule amending its export rate schedule No. 17.

Specifically, the applicant requests authorization to increase the amount of electric energy to be exported annually to 24,000,000 kilowatt-hours at a rate not to exceed 3,000 kilowatts. The supplemental rate schedule provides that if the Company's generating plant at Presidio is operated for the sole purpose of providing capacity to supply power and energy to Comision Federal de Electricidad, the operating costs, including fuel, labor, start-up costs, oil and any other out-of-pocket expense will be billed for the energy so supplied from the Presidio plant. The fuel clause adjustment contained in paragraph (a) of article 2 will not be applied to the energy so supplied from the Presidio plant. The sixth paragraph of article 3 of the contract between WTU and the Comision Federal is to be deleted in its entirety.

In support of its filing, WTU states that the present authorized 16,000,000 kilowatt-hours and 2,000 kilowatts are not adequate to take care of the present anticipated load requirements of the Comision Federal de Electricidad. WTU represents that the proposed increased transmission is a small percentage of its total electrical capacity and will not act to impair the sufficiency of electric supply within the United States.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Director, Division of Power Supply and Reliability, Economic Regulatory Administration, 1111 20th Street NW., Room 4070, Washington, D.C. 20545, in accordance with sections 1.8 and 1.10 of the rules of practice and procedure (18 CFR 1.8, 1.10).

All such petitions and protests should be filed on or before May 15, 1978. Protests will be considered by ERA 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 Economic Regulatory Administration and will be available upon request for public inspection and copying at the ERA Docket Room, Room B-210, 2000 M Street NW., Washington, D.C., and at the Division of Power Supply and Reliability, Room 4070, 1111 20th Street NW., Washington, D.C.

Dated: May 3, 1978.

DOUGLAS C. BAUER,
Assistant Administrator for Utility Systems, Economic Regulatory Administration.

[FR Doc. 78-12503 Filed 5-8-78; 8:45 am]

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[1]The filing was addressed to the Federal Power Commission, and was received by its successor, the Federal Energy Regulatory Commission, on December 5, 1977. The Commission published its own notice in the FEDERAL REGISTER. Subsequently, pursuant to the Department of Energy Organization Act, including applicable delegations thereunder, the filing was transferred to the Economic Regulatory Administration.

[3128-01]

ENERGY SUPPLY AND ENVIRONMENTAL COORDINATION ACT

Amendment to Notices of Intention to Issue Prohibition Orders to Certain Major Fuel Burning Installations

On April 25 and April 27, 1978, the Department of Energy issued Notices of Intention to issue Prohibition Orders to the following Major Fuel Burning Installations:

Docket No.	Owner	Installation	Unit No.	Location
OCU-0647	Scott Paper, Co.	Winslow	3	Winslow, Maine.
OCU-0514-1	Martin Marietta, Corp.	Martin Marietta Cement.	1	Atlanta, Ga.
OCU-0514-2	do	do	2	Do.
OCU-1112-1	Ash Grove Cement, Co.	Chanute Plant	1	Chanute, Kans.
OCU-1112-2	do	do	2	Do.

Notice of the Issuance of these Notices of Intention to issue Prohibition Orders was published in the FEDERAL REGISTER on April 28, 1978 and May 3, 1978 (43 FR 18233-18244 and 19064-19077). The two FEDERAL REGISTER Notices stated in the section entitled "MFBI Prohibition Order Candidate Identification and Selection Methodology" that "DOE has determined that MFBI's to which the following criteria are applicable are appropriately deferred from consideration as Prohibition Order candidates at this time: * * * (e) compliance with a Prohibition Order by the MFBI would result in the use of less than 60,000 tons of coal per year". This statement was in partial error and should have read as follows: "(e) compliance with a Prohibition Order by the MFBI could be expected to result in total fuel use of less than the equivalent of 60,000 tons of coal per year, assuming all coal burned by the MFBI contained an average BTU content of 20 million BTU's per ton." Therefore, the Department of Energy hereby amends the pertinent April 28, 1978 and May 3, 1978 Notices, 43 FR 18233-18244 and 43 FR 19064-19077, to substitute the foregoing revised text in lieu of that previously stated in each Notice of Intention.

Issued in Washington, D.C., May 5, 1978.

DORIS J. DEWTON,
Acting Assistant Administrator, Fuels Regulation, Economic Regulatory Administration.

[FR Doc. 78-12762 Filed 5-8-78; 8:45 am]

[6740-02]

Federal Energy Regulatory Commission

[Docket No. CP77-104]

COLUMBIA GAS TRANSMISSION CORP.

Petition To Amend

APRIL 27, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "savings provisions" of section 705(b) of the DOE Act provided that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ——, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above-mentioned authorities.

Take notice that on April 11, 1978, Columbia Gas Transmission Corp. (petitioner), P.O. Box 1273, Charleston, W. Va. 25325, filed in docket No. CP77-104 a petition to amend the order of February 3, 1977, issued by the Federal Power Commission (FPC) in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to authorize additional points of receipt of natural gas on applicant's lines 0-880, 0, FO-1775, and FO-1791 in Cambridge, Valley, Madison, and Wills Townships, Gernsey County, Ohio, for Johns-Manville Sales Corp. (Johns-Manville), an industrial customer of Columbia Gas of Ohio, Inc., and Waterville Gas & Oil Co., all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the order of February 3, 1977, petitioner was authorized to transport natural gas in interstate commerce for Johns-Manville, which gas was to be delivered to applicant at a mutually agreeable point on applicant's line FO-1633 in Gernsey County, Ohio. Applicant states that Johns-Manville has requested it to establish additional points of receipt on applicant's lines 0-880, 0, FO-1775, and FO-1791.

Applicant indicates that it is willing to receive gas at the additional points for Johns-Manville. Applicant states that for all volumes of gas delivered into its line 0-880 and line 0, applicant would make a transportation charge reflecting its average systemwide unit storage and transmission costs, exclusive of company-use and unaccounted-for gas, this being 20.56 cents per Mcf. Applicant further states that for all volumes delivered into its line FO-1633, FO-1775, and FO-1791, Applicant would make a transportation charge reflecting its average systemwide unit gathering, storage, and transmission costs, exclusive of company-use and unaccounted-for gas, this being 23.06 cents per Mcf. Applicant indicates that it would also retain for company-use and unaccounted-for gas a percentage of the total volume of natural gas delivered into its system for the account of Johns-Manville, which percentage is currently 4 percent.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 18, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12521 Filed 5-8-78; 8:45 am]

[6740-02]

[Docket No. CP77-465]

COLUMBIA GAS TRANSMISSION CORP. AND NATIONAL FUEL GAS SUPPLY CORP.

Petition To Amend

APRIL 27, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.

The "saving provisions" of section 705(b) of the DOE Act provided that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) or 402(a)(2) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR ——, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above-mentioned authorities.

Take notice that on April 18, 1978, Columbia Gas Transmission Corp. (Columbia), P.O. Box 1273, Charleston, W. Va. 25325, and National Fuel Gas Supply Corp. (National Supply), 10 Lafayette Square, Buffalo, N.Y. 14203 (petitioners), filed in docket No. CP77-465 a petition to amend the order of September 9, 1977 (57 FPC ——) issued by the Federal Power Commission (FPC) in the instant docket pursuant to section 7(c) of the Natural Gas Act so as to authorize petitioners to continue the exchange of natural gas for an extended period (May 1, 1978 through May 31, 1979) and to authorize Columbia to continue to transport the natural gas so exchanged for UGI Corp. (UGI) for the same extended period, all as more fully set forth in the petition to amend on file with the Commission and open to public inspection.

It is indicated that pursuant to the FPC order of September 9, 1977, petitioners were authorized inter alia, to exchange natural gas and Columbia was authorized to transport the gas so exchanged from October 1, 1977, through April 30, 1978. It is further indicated that the FPC limited the total volume of gas delivered by Columbia to National Supply for storage for the account of UGI to 2,000,000 Mcf.

It is stated that on February 28, 1978, National Supply filed in Docket No. CP78-209 an application requesting authorization to render underground gas storage service for UGI inter alia for the period April 1, 1978, through March 31, 1979, and that National Supply proposed in said docket to continue for an additional year the limited term storage service which it has provided to UGI and others since the storage year of 1975-1976. Petitioners state that continuation of this service is requested in lieu of the long-term storage service for which authorization was requested in docket No. CP76-492 filed on August 1976, which service has not received Commission authorization. In docket No. CP78-209 National Supply has indicated a top storage capacity for UGI of 2,431,000 Mcf, it is asserted.

Consequently, petitioners request herein the extension from May 1, 1978, through March 31, 1979, of the authorization previously granted to exchange natural gas and for Columbia to transport the gas so exchanged for delivery to UGI. Petitioners state that the maximum volume to be transported hereunder by Columbia for UGI is 2,431,000 Mcf.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before May 18, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to particiate 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. 78-12522 Filed 5-8-78; 8:45 am]

[6740-02]

[Docket No. ER78-325]

FLORIDA POWER & LIGHT CO.

Notice of Filing

APRIL 28, 1978.

Take notice that Florida Power & Light Co. (FP&L), on April 20, 1978, 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 City of Homestead." FP&L states that under the agreement, FP&L will transmit power and energy for the city of Homestead (city) as is required by the city in the implementation of its interchange agreements with the Orlando Utilities Commission, Tampa Electric Co., Florida Power Corp., Fort Pierce Utilities Authority and the Utilities Commission of the city of New Smyrna Beach, Fla.

FP&L requests an effective date for this agreement of no later than 30 days after the date of filing. FP&L indicates that copies of the filing were served on the utilities director of the city of Homestead, Fla.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 8, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-12523 Filed 5-8-78; 8:45 am]

[6740-02]

[Project No. 2634]

GREAT NORTHERN NEKOOSA CORP.

Application for License

APRIL 27, 1978.

Public notice is hereby given that an application for license was filed under the Federal Power Act, 16 U.S.C. §§ 791a-825r, on January 3, 1967, and supplemented on December 16, 1968, February 5, 1971, and February 8, 1971, by Great Northern Paper Co.,

now known as Great Northern Nekoosa Corp. (correspondence to: Mr. Ronald D. Jones, LeBoeuf, Lamb, Leiby & McRae, 140 Broadway, New York, N. Y. 10005) for the constructed Canada Falls headwater storage project, FERC No. 2634, located on the south branch of the west branch of the Penobscot River in Somerset County, Maine. The Penobscot River is a navigable waterway of the United States.

The existing Canada Falls headwater storage project consists of: (1) a concrete dam about 760 feet long (maximum height about 30 feet), made of a gravity section about 170 feet long, tied to the right abutment by a concrete wing wall about 320 feet long and to the left abutment by a concrete wing wall about 270 feet long; (2) a reservoir with surface area of 2,521 acres at an elevation of 1,235 feet, and usable storage capacity of 23,400 acre-feet at a drawdown of 26 feet; (3) three waste gates 9 by 10 feet and a log sluice gate 14 by 11 feet; (4) a fish passage section 18 feet wide; and (5) a spillway section 87 feet long with 3-foot flashboards.

Any person desiring to be heard or to make protest with reference to said application should, on or before June 30, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 a 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.

The application is on file with the Commission and is available for public inspection.

The public should take further notice that on October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. The functions which are the subject of these proceedings were specifically transferred to the FERC.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12524 Filed 5-8-78; 8:45 am]

[6740-02]

[Project No. 2627]

GREAT NORTHERN NEKOOSA CORP.

Application for License

APRIL 27, 1978.

Public notice is hereby given that an application for license was filed under the Federal Power Act, 16 U.S.C. §§ 791a-825r, on January 3, 1967, and supplemented on August 4, 1967, December 16, 1968, February 5, 1971, and February 8, 1971, by Great Northern Paper Co., Now known as Great Northern Nekoosa Corp. (correspondence to: Mr. Ronald D. Jones, LeBoeuf, Lamb, Leiby & McRae, 140 Broadway, New York, N.Y. 10005) for the constructed Ragged Lake storage project, FERC No. 2637, located on the Ragged Stream, west branch of the Penobscot River in Piscataquis County, Maine. The Penobscot River is a navigable waterway of the United States.

The existing project consists of: (1) a composite dam about 1,230 feet long and about 30 feet high, made of a concrete gravity spillway section about 50 feet long which is tied to the right abutment by an earthfill dike 930 feet long and to the left abutment by a similar dike 250 feet long; (2) a reservoir with surface area of 2,786 acres at an elevation of 1,136 feet, and usable storage capacity of 33,200 acre-feet at a drawdown of 20 feet; and (3) three 8- by 14-foot steel gates at the spillway section.

Any person desiring to be heard or to make protest with reference to said application should, on or before June 30, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 a 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.

The application is on file with the Commission and is available for public inspection.

The public should take further notice that on October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (Setember 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. The functions which are the subject of these proceedings were specifically transferred to the FERC.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12525 Filed 5-8-78; 8:45 am]

[6740-02]

[Project No. 2638]

GREAT NORTHERN NEKOOSA CORP.

Application for License

APRIL 27, 1978.

Public notice is hereby given that an application for license was filed under the Federal Power Act, 16 U.S.C. §§ 791a-825r, on January 3, 1967, and supplemented on August 9, 1967, December 16, 1968, February 5, 1971, and February 8, 1971, by Great Northern Paper Co., now known as Great Northern Nekoosa Corp., (correspondence to: Mr. Ronald D. Jones, LeBoeuf, Lamb, Leiby & McRae, 140 Broadway, New York, N.Y. 10005) for the constructed Seboomook Headwater Storage Project, FERC No. 2638, located on the West Branch of the Penobscot River in Seboomook Township, Somerset County, Maine. The Penobscot River is a navigable waterway of the United States.

The existing Seboomook Headwater Storage Project consists of: (1) a composite dam about 700 feet long (maximum height about 60 feet) made of a concrete gravity section 426 feet long, tied to the abutments by earth dikes; (2) a reservoir with surface area of 6,838 acres at an elevation of 1,072 feet, and usable storage capacity of 157,000 acre-feet at a drawdown of 16 feet; (3) a spillway section with five 20 by 15-foot flood gates and one 20 by 10-foot sluice gate; and (4) four small sluice gates at nonoverflow section.

Any person desiring to be heard or to make protest with reference to said application should, on or before June 30, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., 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 a 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.

The application is on file with the Commission and is available for public inspection.

The public should take further notice that on October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977), and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977. The functions which are the subject of these proceedings were specifically transferred to the ERC.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12526 Filed 5-8-78; 8:45 am]

[6740-02]

[Docket No. CP77-560]

KENTUCKY GAS STORAGE CO.

Notice of Amendment to Application

APRIL 27, 1978.

Take notice that on April 20, 1978, Kentucky Gas Storage Co. (Applicant), 100 St. Ann Building, Owensboro, Ky. 43201, filed in Docket No. CP77-560 an amendment to its application filed in said docket for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, by which amendment Applicant modifies its application by seeking authority to render natural gas storage service to persons and in volumes other than as initially proposed, all as more fully set forth in the amendment of file with the Commission and open to public inspection.

Applicant proposes in the instant proceeding to render a natural gas storage service in the White Plains Field in Hopkins and Muhlenburg Counties, Ky. Applicant states that one of the buyers of its service, The Southern Connecticut Gas Co., has relinquished its entitlement to 450,000 Mcf of storage capacity in the White Plains Field and that Applicant has replaced said buyer with other buyers. Further, Applicant states, Bay State Gas Co., the parent of Bay State Gas Supply, Inc., the original contracting party for 1,625,000 Mcf of storage service, has elected to contract directly with Applicant for this service and to modify the maximum quantity stored to 1,580,000 Mcf.

Applicant now proposes to render service on the following basis:

	Amended maximum storage [1]	Best efforts daily quantity [2]	Amended maximum daily quantity [2]
Bay State Gas Co	1,580.0	13.079	10.463
Chattanooga Gas Co	550.0	5.000	3.642
Colonial Natural Gas Co	200.0	1.818	1.325
Fayetteville Gas System	15.0	0.136	0.099
Knoxville Utilities Board	200.0	1.818	1.325
Lewisburg Gas Dept	20.0	0.182	0.133
Middle Tennessee Natural Gas Utility District	30.0	0.273	0.197
Nashville Gas Co	1,200.0	10.909	7.947
Natural Gas Utility, District of Hawkins County	20.0	0.182	0.133
United Cities Gas Co	400.0	3.636	2.649
Volunteer Natural Gas Co	200.0	1.818	1.325
Subtotal	4,415.0	38.851	29.238
Uncommitted	185.0	1.682	1.225
Total	4,600.0	40.533	30.463

[1] 1,000 Mcf.
[2] Withdrawal, 1,000 Mcf per day.

Applicant states in the instant amendment that its design basis for maximum daily quantity is calculated through division of the maximum quantity stored by 151 days which is said to require up to 3,800 compressor horsepower to deliver 30,463 Mcf of gas on the 151st day of continuous withdrawal from storage. These design conditions are said to enable Applicant to provide substantially higher withdrawal deliverability in the earlier part of the withdrawal season. Under Applicant's proposed tariff its customers are entitled to higher deliverability on a best efforts basis.

In the instant amendment Applicant states that as a result of its modified proposal it does not propose any change in its request for authorization to construct and operate facilities for the development of the White Plains Field as a gas storage facility. Average design withdrawal capacity remains at 30,463 Mcf per day and 4,600,000 Mcf per year. Applicant states further that it is able and willing to proceed with the original design and cost of the project without change in its proposed rates for rendering storage service even though 185,000 Mcf of annual storage capacity are presently uncommitted.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before May 17, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any persons 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. Persons who have heretofore filed in the instant docket need not file again.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12527 Filed 5-8-78; 8:45 am]

[6740-02]

[Docket No. ER78-324]

MONTAUP ELECTRIC CO.

Proposed Tariff Change

APRIL 28, 1978.

Take notice that Montaup Electric Co. (Montaup) on April 20, 1978, tendered for filing an amended Exhibit A to Supplement No. 8 to Montaup's Rate Schedule FPC No. 36 for service to the Middleboro Municipal Gas and Electric Department (Middleboro). Montaup states that the amendment will, on an annual basis, increase by $14,700 the charge paid by Middleboro for non-firm transmission service over the 115 kV radial line connecting Montaup and Middleboro.

Montaup further states that the existing charge to Middleboro is based on 1976 costs. Montaup indicates that the amended Exhibit A is based on 1977 costs. Montaup has requested a January 1, 1978, effective date for the new rate, and therefore requests waiver of the Commission's notice requirements.

According to Montaup copies of this filing have been served on Middleboro and the Massachusetts Department of Public Utilities.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 8, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Com-

mission and are available for public inspection.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-12529 Filed 5-8-78; 8:45 am].

[6740-02]

[Docket No. CP78-290]

MOUNTAIN FUEL SUPPLY CO.

Application

APRIL 27, 1978.

Take notice that on April 17, 1978, Mountain Fuel Supply Co. (Applicant), 180 East First South Street, Salt Lake City, Utah 84139, filed in Docket No. CP78-290 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of natural gas to Mountain Fuel Resources, Inc. (Resources), all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to sell natural gas to Resources pursuant to a gas purchase agreement dated February 14, 1977, between the two companies. Applicant states that it has developed a supply of natural gas in the Lower Horse Draw area of Western Colorado, and that this field is remote from its own gathering and transmission facilities, but is in close proximity to those of Resources. Pursuant to the gas purchase agreement dated February 14, 1977, Applicant would sell to Resources the gas which may be produced from Applicant's interests in acreage located in the Lower Horse Draw area of Blanco County, Colo., at a price which is the current national rate as established by Opinion 770-A for all gas sold.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 18, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12528 Filed 5-8-78; 8:45 am]

[6740-02]

[Docket No. ER78-320]

PUBLIC SERVICE CO. OF INDIANA, INC.

Proposed Tariff Change

APRIL 28, 1978.

Take notice that Public Service Co. of Indiana, Inc. on April 19, 1978, tendered for filing pursuant to the Interconnection Agreement between Public Service Co. of Indiana, Inc., Southern Indiana Gas and Electric Co., United States of America and Indiana Statewide Rural Electric Cooperative, Inc. a Third Supplemental Agreement proposed to become effective June 1, 1978.

The Applicant indicates that said Supplemental Agreement provides for an increase in the demand charge for Short Term Power from 30 cents per kilowatt per week to 60 cents per kilowatt per week, for an increase in the rate for Wheeling Services from 1 mill per kilowatt hour to 2 mills per kilowatt hour, and for an increase in the facility charge for joint use substations from 15 cents per kilowatt to 25 cents per kilowatt.

Copies of the filing were served upon Southern Indiana Gas and Electric Co., Indiana Statewide Rural Electric Cooperative, Inc. and the Public Service Commission of Indiana.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 12, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of the filing are available for public inspection at the Federal Energy Regulatory Commission.

LOIS D. CASHELL,
Acting Secretary.

[FR Doc. 78-12530 Filed 5-8-78; 8:45 am]

6740-02]

[Docket No. RP71-11, (PGA78-4)]

TENNESSEE NATURAL GAS LINES, INC.

PGA Rate Increase

APRIL 28, 1978.

Take notice that, on April 24, 1978, Tennessee Natural Gas Lines, Inc. ("TNGL") tendered for filing a rate change pursuant to the purchased gas cost adjustment ("PGA") provisions of its tariff, consisting of the following tariff sheets:

Twenty-Sixth Rivised Sheet No. PGA-1.
Twenty-First Revised Sheet No. PGA-2.

TNGL states that the sole purpose of said PGA filing is to reflect in its rates the changed rates of its sole supplier, Tennessee Gas Pipeline Co., a Division of Tenneco, Inc., ("TGP"), which will become effective on June 1, 1978. The change in TGP's rates results from the reflection of a Gas Research Institute ("GRI") Rate Adjustment thereunder. TNGL requests the same effective date, June 1, 1978, for the tariff sheets filed by it.

TNGL states that copies of the filing were served upon its jurisdictional customer and the interested state regulatory commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 12, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

LOIS D. CASHELL
Acting Secretary.

[FR Doc. 78-12531 Filed 5-8-78; 8:45 am]

[6740-02]

[Docket No. RP77-139]

TEXAS GAS TRANSMISSION CORP.

Settlement Conference

APRIL 27, 1978.

Take notice that on May 16, 1978, at 10 a.m. an informal conference will be convened of all interested persons with a view towards settling the issues in the captioned proceeding. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C.

Customers and other interested persons will be permitted to attend, but if such persons have not previously been permitted to intervene by order of the Commission, attendance will not be deemed to authorize intervention as a party in this proceeding.

All parties will be expected to come fully prepared to discuss the merits of all issues arising in this proceeding and any procedural matters preparatory to a full evidentiary hearing or to make commitments with respect to such issues and any offers of settlement or stipulations discussed at the conference.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12532 Filed 5-8-78; 8:45 am]

[6740-02]

[Docket No. CP78-296]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

APRIL 27, 1978.

Take notice that on April 18, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP78-296 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the transportation of up to 21,500 dekatherms (dt) equivalent of natural gas per day for United Gas Pipe Line Co. (United) and authorizing the construction and operation of certain facilities to redeliver such gas, all as more fully set forth in the application on file with the Commission and open to public inspection.

Applicant requests authorization to transport the subject gas for United pursuant to a transportation agreement dated March 15, 1978, between the two companies. Applicant indicates that it would (1) receive up to 18,000 dt of gas per day at the point of interconnection between United and Applicant at the outlet side of Mobil Oil Corp.'s Cameron Plant, Cameron Parish, La. (Cameron), and redeliver equivalent quantities to an existing point of interconnection between Applicant's and United's systems located in Victoria County, Tex. (Victoria), and at an existing point of interconnection between the systems of Applicant and Tennessee Gas Pipeline Co., a Division of Tenneco, Inc. (Tennessee), located near Starks in Calcasieu Parish, La. (Starks), where United has constructed measuring and compression facilities, and would (2) receive up to 3,500 dt of gas per day at the existing point of interconnection between Applicant and United at Applicant's Compression Station 062, Terrebonne Parish, La. (Gibson), and redeliver equivalent quantities to the area of Township 12 South, Range 19 East on the west side of the Mississippi River in St. John the Baptist Parish, La. (St. John).

The application states that all such transportation would be on an interruptible basis initially, for which United would pay Applicant an initial charge of 3.5 cents per dt transported. However, at such time as Applicant constructs and places in service compression and loop facilities on its Southwest Louisiana Gathering System which are pending certification in Docket No. CP78-17 and which are required to transport United's gas effectively from Cameron to Victoria and Starks, that transportation would be converted to firm service, for which United would pay Applicant initially a monthly demand charge of $23,040, it is stated. Applicant indicates that transportation from Gibson to St. John would remain on an interruptible basis unless United elects to convert to firm service.

Applicant states that in order to redeliver gas to or for the account of United at St. John, it will install and operate a 2-inch side tap valve assembly on its 10-inch Lucy Lateral at that location, and that United would reimburse Applicant for the cost of such facility, estimated at $9,500. An application of United to construct and operate metering and regulating facilities at St. John is pending in Docket No. CP78-167, it is stated.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 18, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-12533 Filed 5-8-78; 8:45 am]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

AM BROADCAST SERVICE WORKING GROUP 1079 WORLD ADMINISTRATIVE RADIO CONFERENCE

Schedule of Meeting

MAY 3, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of the following meeting for May 1978.

WARC-79 AM BROADCASTING SERVICE GROUP

Wednesday, May 24, 1978, 10 a.m. to 12:30 p.m. Room 8210, 2025 M Street NW., Washington, D.C.

Chairperson: D. C. Everist.
FCC Liaison: Dennis Williams.

The Agenda for the meeting is as follows:

1. Call to order by the Chairperson
2. Approval of Minutes of the previous meeting
3. Review and prepare comments on 8th Notice of the Inquiry, Docket 20271
4. Setting next meeting date and adjournment.

The above meeting is open to broadcast industry representatives and interested members of the Public.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-12539 Filed 5-8-78; 8:45 am]

[6712-01]

[Docket No. 20667; FCC 78-270]

DOMESTIC PRIVATE LINE SERVICE

Preferential Rates for Press Use; Memorandum Opinion and Order

Adopted: April 20, 1978.

Released: May 5, 1978.

In the matter of preferential rates for press use of Domestic Private Line Service.

BACKGROUND

1. Recently, we denied petitions to suspend a proposed revision of AT&T's private line tariff (Tariff F.C.C. No. 260) eliminating multipoint use of Series 5000, TELPAK end links. See *TELPAK End Link Revision*, F.C.C. 78-35, released January 27, 1978. The newswire service petitioners in that matter were extensive users of multipoint voice grade, private line circuits available under the then effective TELPAK end link tariff provision. As a result of the tariff change, the newswire services can no longer obtain AT&T private line service extending individual TELPAK channels to multiple points under the Series 5000 tariff, but must purchase equivalent AT&T extension circuits under AT&T's Series 2000/3000 MPL tariff. In their suspension petitions the newswire services alleged that the applicability of MPL rates, in lieu of lower TELPAK end link rates, would substantially increase total charges for identical multipoint service, and therefore would impair the dissemination of news, particularly in hinterland regions. See *TELPAK End Link Revision*, supra at para. 4. While we did not suspend the TELPAK end link tariff revision, which substantially eliminated an unlawful discrimination vis a vis Series 2000/3000 rates, solely on the basis of a consequent increase in customer charges, we indicated in our Order that we were reactivating Docket No. 20667 to assess the need for preferential press rates for private line services. We stated that a procedural order refining the issues we wish addressed at hearing and providing further guidance to the Administrative Law Judge would follow. See *TELPAK End Link Revision supra* at fn. 4.

2. In 1975, we instituted Docket No. 20667, 56 FCC 2d 796 (*Designation Order*), in response to similar economic hardship arguments by the newswire services and their subscribers in the Docket No. 19919 investigation of AT&T's revised rate structure (Hi-Lo tariff) for domestic voice grade private line service (Series 2000/3000 of the AT&T Tariff FCC No. 260). See *Hi-Lo Interim Decision*, 55 FCC 2d 224 (1975) *Memorandum Opinion and Order* (*Hi-Lo Decision*) 58 FCC 2d 362 (1976). Claiming that the applicability of Hi-Lo rates would cause many small subscribers to cancel newswire service due to increased charges, these parties had asked the Commission to retain the TELPAK multipoint end link exception, which permitted newswire services to avoid the impact of Hi-Lo rates, or to prescribe retention of these rates as a separate class of press service. However, the Commission found in the Hi-Lo Interim Decision that Series 5000, TELPAK end links, as utilized by the newswire services, and Series 2000/3000 service were like communications service under 202(a) of the Act and that the then existing rate differential had not been justified. Noting that the record did not support a finding that nondiscriminatory rate treatment would impair the dissemination of news, the Commission in the "Hi-Lo Interim Decision" ordered AT&T to file a revised tariff removing the unlawful discrimination and authorized the Docket No. 20667 proceeding.[1a]

3. We stated in our Docket No. 20667 *Designation Order* that we would investigate the advisability of preferential press rates for "all" domestic private line service. We defined the term "press" as associations, services, and other entities whose principal business is the collection and dissemination of general news for the public at large. The term "general news" was defined as an account of current events, public announcements; information relating to finance, science, commerce, religion, civic or public organizations and all information of general public interest. In accordance with *Copley Press, Inc.* v. *FCC*, 444 F2d 984 (D.C. Cir. 1971), we placed the burden of proof in this proceeding on the parties advocating preferential press rates, as they are in possession of the relevant data.

4. The *Designation Order* limited the investigation to the following issues:

(a) The extent, if any, to which AT&T's rates in its Tariff FCC No. 260, which will be revised pursuant to paragraph 79 of the Hi-Lo decision, for domestic private line voice grade service, as utilized by the press will impair the widespread dissemination of news;

(b) The extent to which any existing non-preferential rates for private line service as utilized by the press impair the widespread dissemination of news;

(c) Whether, in light of the evidence adduced on the foregoing issues, preferential press rates are just and reasonable within the meaning of section 201(b) of the Communications Act of 1934, as amended, or whether they are unjustly discriminatory within the meaning of section 202(a) of such Act;

(d) Whether in light of the findings on issues (a) through (c) the Commission should prescribe maximum rates to be applied to press users of domestic voice grade private line services, and if so, what rates should be prescribed.[2]

5. Following a prehearing conference in Docket No. 20667, several of the newswire service parties petitioned for modification of designated issue (a) to take into account the *Hi-Lo Decision* finding that Hi-Lo rates were unlawful and the then impendent filing of revised Series 2000/3000 rates. Rather than rule on the merits of the petition, we determined that due to the occurrence of supervening events, such as the suspension and investigation of MPL rates in Docket No. 20814, supra., we would temporarily hold the proceeding in abeyance until Docket No. 18128 had been decided and greater stability achieved in the area of private line rate levels and rate structures. See 60 FCC 2d 638 (1976). We stated in our *TELPAK End Link Revision* Order that we have reevaluated this deferral decision in light of our Docket No. 18128 Decision, AT&T's private line rate filings pursuant to our Docket No. 18128 Decision, and the allegations of economic harm by petitioners opposing revision of the TELPAK end link tariff provision, and are therefore reactivating Docket No. 20667.

DISCUSSION

6. Although we are now reopening Docket No. 20667, many issues remain

[1] See 41 FR 1625, January 9, 1976.

[1a] The Hi-Lo Decision affirmed the TELPAK end link discrimination finding in the "Hi-Lo Interim Decision" and additionally found the Hi-Lo tariff in violation of Sections 201(b) and 202(a) of the Act. AT&T subsequently replaced Series 2000/3000 Hi-Lo rates with the MPL schedule, which is presently under investigation in Docket No. 20814. See "AT&T (MPL)" 59 FCC 2d 428 (1976). MPL rates became effective following the expiration of the suspension period. Thus MPL, rather than Hi-Lo rates, were the applicable rates for Series 2000/3000 service when the TELPAK end link tariff revision became effective on January 23, 1978. An earlier TELPAK end link tariff revision, filed purportedly in compliance with our "Hi-Lo Interim Decision" Order, was deferred by AT&T when the U.S. Court of Appeals for the District of Columbia stayed that Order in part pending judicial review. See "AT&T Transmittal No. 12443", 56 FCC 2d 727 (1975). Following the affirmance of the "Hi-Lo Interim Decision" Order in *"Commodity News Services* v. *FCC,"* No. 75-2057 (D.C. Cir.), entered August 5, 1977, the identical revision was refiled by AT&T and allowed to go into effect in our "TELPAK End Link Revision" Order, supra.

[2] We note an inconsistency between the language of issue (d), which limits any prescription in this proceeding to AT&T's "voice grade" private line services, and the Commission's earlier stated intention to consider press use of "all" private line services in this inquiry. This inconsistency is reconciled below in paragraph 8.

unresolved concerning the lawfulness of private line rate levels and rate structures provided by AT&T and other carriers. The array of competing communication services and sources also is unlikely to be static over time. The ultimate dispositions of the Docket No. 20814 *MPL* hearing and AT&T's Series 5000 (TELPAK) service[3] as well as other changes in rates, technologies, and service offerings by AT&T and other carriers, will undoubtedly influence the communications expenses of the newswire services, and may or may not affect the ability of various news sources to disseminate news.[4] Consequently, at this time there appears to be no way to determine with certainty the long range effects of non-preferential press rates upon the availability of news information in different parts of the country. Given this dynamic, evolving state of private line communications, we believe our investigation should not look toward the establishment of a general principle or policy that the public interest requires separate or maximum press rates on a permanent basis for all private line communication services. Perhaps when more certainty exists with respect to the long term course of competitive and technological forces, a general inquiry into any singularities of press private line use which might justify treating this class of users differently from other users may be appropriate.[5]

7. As additional support for our decision to narrow the focus on this investigation, we note that the petitioners' allegations of news curtailment in the "Hi-Lo" and TELPAK end link proceedings came specifically in response to the anticipated tariff change eliminating multipoint use of TELPAK end links, and the consequent cost increases to newswire services, and presumably, to their subscribers. These parties claimed they would experience immediate, staggering increases, which could not be absorbed, but would result in the cancellation of numerous subscriptions. If the parties seeking preferential press rates can substantiate these allegations and otherwise meet their burden of proof as set forth below, we would better serve the public interest by concentrating on these specific circumstances, with the likelihood of expeditious results, instead of presently pursuing an investigation which might encompass numerous existing private line rates and services, as was originally contemplated. See para. 4, supra, issue (b). This is particularly true in light of the prevailing uncertainties in the private line communications field, discussed above.

8. We shall therefore reopen the proceeding for the specific purpose of determining whether the recent TELPAK end link tariff revision and the possible termination of other Series 5000 (TELPAK) service will have a significant, adverse effect upon the dissemination of news. We expect that the investigation of these narrow issues can be concluded within a reasonably short time, and remedial action taken if warranted. We shall defer consideration of the more general issues raised by the Designation Order pending futher Commission Order. Thus, this present investigation will be limited to the following issues:

(a) The extent, if any, to which AT&T's revision of its Tariff FCC No. 260, eliminating multipoint use of Series 5000, TELPAK end links, effective January 23, 1978 and the possible termination of AT&T Series 5000 (TELPAK) service, and the consequent applicability of other private line rates and services as they may be revised, will result in an impairment of the widespread dissemination of news; and

(b) Whether in light of the evidence adduced on the foregoing issue, the Commission should authorize or prescribe such reasonable, separate press rates as are necessary to restore the ability of the press generally to accomplish the widespread dissemination of news, and if so, what rates should be prescribed or authorized for what time periods?

9. The newswire services assert they will experience the full impact of AT&T Series 2000/3000 MPL rates as a result of the elimination of TELPAK end link multipoint service.[6] We anticipate therefore that these parties will analyze the effects of the current MPL schedule upon their internal business operations in an effort to show that news dissemination will be impaired. Their presentations should, of course, take into account any relevant revisions of AT&T Series 2000/3000 schedules during the course of this investigation. It also appears that in the event AT&T Series 5000 (TELPAK) service is terminated, the newswire services may further increase their reliance on AT&T Series 2000/3000 service. The parties may wish to demonstrate the implications of such changes, by providing an additional analysis in which the demise of TELPAK is assumed.[7]

10. This inquiry will give parties an opportunity to show the existence of circumstances which may justify according press users lower rates than are available generally. The Communications Act clearly permits differential rate treatment of certain user classes, provided that the charges and classifications are just, reasonable, and not unduly prejudicial under Sections 201(b) and 202(a). Although rates and rate relationships usually are judged on the basis of their conformance to the underlying costs of providing the particular service, we recognize that other public policy considerations may

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[3]By order of the U.S. Court of Appeals for the District of Columbia in Case No. 77-1251 et al, entered July 21, 1977, the termination of TELPAK has been stayed pending further action by the court. See 64 FCC 2d 959 (1977).

[4]For example, we note a recent resolution of the UPI Newspaper Advisory Board calling for the development and approval of one-way receive only communications facilities and tariffs of the type required for delivery of news to America's newspaper and media outlets at fair and reasonable rates. In response to Common Carrier Bureau inquiries, AT&T has stated that it is presently studying the feasibility of a one-way multipoint communications system, and Western Union has described its current development and testing program involving the use of domestic satellites and small aperture receive only earth stations for the provisions of services designed to meet the specific needs of press associations and other customers with similar one-way communications requirements. See UPI letter to the Chairman, November 2, 1977; Western Union letter to the Chief, Tariff Division, December 12, 1977; AT&T letter to the Chief, Tariff Division, December 13, 1977. Moreover, Western Union has filed in connection with its establishment of Low Speed Channel Service under Transmittal No. 7329, dated October 14, 1977, a broadcast, one-way channel service for transmission speeds up to 300 baud. This service offering, which became effective on March 10, 1978, may prove a viable alternative in meeting the stated requirements of press users.

[5]We have had occasion to address virtually identical issues in the past in our Docket No. 15094 Decision, 24 FCC 2d 565 (1970), aff'd *Copley Press Inc.* v. *FCC*, 444 F2d 984 (D.C. Cir., 1971). There the Commission investigated whether current AT&T and Western Union charges and classifications generaly applicable to users of private line telegraph, telephotograph, and any other private line services used by the press, tended to impair the widespread dissemination of news. From the evidentiary record developed, the Commission concluded that application of these rates to press users would not diminish, limit, or impair the widespread dissemination of news, and consequently, that no basis existed for prescribing or authorizing a specific tariff classification for press users. The Commission pointed out that in the four-year period following the inception of that proceeding in 1963, the communications facilities available for press use and the rates applicable thereto had changed to such an extent that the record made at the outset had been completely outdated, and that subsequent technological change was likely to occur at a similar rate.

[6]See, e.g., Petitions to Suspend AT&T Transmittal No. 12841: United Press International, Inc., p. 4; Associated Press, p. 5; Commodity News Services, Inc., p. 3.

[7]AT&T has previously filed alternate Series 2000/3000 rates intended, according to AT&T, to mitigate some of the customer impact resulting from the elimination of TELPAK service. See 65 FCC 2d 295 (1977). These proposed rates have been withdrawn by AT&T pending further court action on the demise of TELPAK. See fn. 3, supra. Supplement No. 1 to Tariff FCC No. 260, 64 FCC 2d 959 (1977).

in some instances be determinative of a rate's reasonableness. However, any exception from cost-based rates implies that the favored users are to be subsidized by users of other services or other users of the same services. Therefore, the burden of demonstrating an overriding public interest is necessarily heavy, and speculative or inconclusive evidence would not justify a departure from established policy objectives.

11. The parties seeking preferential rates might only partially satisfy their burden of proof by showing through reliable studies that communications cost increases, if passed on to subscribers, would result in a substantial number of service cancellations. These parties should also demonstrate that increased private line charges effectively eliminate newswire service incentive, economic or otherwise, to retain present customers, i.e., that newswire services cannot ameliorate the impact of MPL rates on subscribers by adjusting their own internal rate structures, absorbing cost increases, or operating irrespective of profit where incentives exist to maintain network size, such as for the convenience of an affiliated organization.[8] Additionally, the parties should establish that increases due to the applicability of AT&T MPL rates cannot be avoided, i.e., that affordable communications services, which can be integrated into newswire systems and used to provide subscribers with satisfactory service, are not available from competing service offerings, carriers, or technologies.[9]

12. Newswire services, as businesses, seemingly are in no different a position than going concerns in other industries whose economic posture may be extremely sensitive to changes in the cost of meeting communications requirements and who might also assert the right to preferential rate treatment on the basis that they perform some public interest function. The public interest considerations which prompted us to institute this investigation relate to our concern that appropriate vehicles exist for the dissemination of news, rather than a desire to ensure the profitability of individual organizations whose customers can be served equally well by some other news source. Whereas in our discussion above we emphasized the burden on the newswire services of showing that they could no longer accommodate their subscribers, whether through alteration of their own business practices or reliance on other communications services and sources we think the primary focus of this investigation should be on the needs and alternatives of the subscribers themselves and other news recipients. Therefore, we shall require as justification for preferential press rates a showing that as a result of these tariff revisions a substantial number of newswire service subscribers or other news recipients can no longer obtain adequate news reporting from either the newswire services or other sources at reasonable economic cost.[10] Only when circumstances affecting the news services pose a threat to the continuing availability of news in various parts of the country may the public interest require separate or maximum rates for press users. Finally, in the event some impairment of news dissemination were established, we would have to weigh the benefits which may derive from preferential press rates against the corresponding burden on other communications ratepayers due to subsidization, prior to any authorization or prescription.

13. *Accordingly, it is ordered,* That Docket No. 20667 is hereby reactivated for the purpose of resolving the issues specified in accordance with the directives stated herein, and the procedures designated in our "Designation Order," 56 FCC 2d 796 (1975).

14. *It is further ordered,* That all parties to Docket No. 20667 and other entities previously filing notices shall indicate their intention to participate in this proceeding by filing a notice of intention to appear and participate within 20 days of the release date of this Order, and any other carrier, user of press facilities and interested person shall have leave to intervene upon meeting this same filing requirement.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-12536 Filed 5-8-78; 8:45 am]

[8]We note our finding in the *Docket No. 10594 Decision,* supra that the newswire service parties in that proceeding other than AP and UPI were owned by publishing companies which maintained the news services, despite operations at a loss in some instances, because certain benefits and advantages accrued to the corporate parents. We also determined therein that in order to properly assess the need for preferential press rates we should view newswire service communications costs in relation to the overall corporate budget.

[9]Our primary reason for characterizing the press parties' burden of proof is to guide the presiding Judge in building an appropriate evidentiary record for resolution of the issues in this investigation. Our statements should not be regarded as a definitive pronouncement of the legal standards against which we shall ultimately judge the need for preferential press rates.

[10]We note that the bare fact that cost increases cause subscription cancellations might indicate no more than that cancelling subscribers of newswire services have alternative news sources which can satisfy their information needs.

[6712-01]

[Docket Nos. 20930, 20932; File Nos. BPH-9318, BPH-9405; FCC 78R-35]

J. A. BAXTER, JR., ET AL

Memorandum Opinion and Order; Enlarging Issues

Adopted: April 28, 1978.

Released: May 3, 1978.

By the Review Board: Kessler, Zias and Ohlbaum. Board Member Kessler dissenting with statement.

In re applications of J. A. Baxter, Jr., Gordon L. Bostic and Gerald Wayne Hunt d.b.a. Madison County Broadcasting, Jackson, Tenn., Docket No. 20930, File No. BPH-9318; Community Service Broadcasting, Inc., Jackson, Tenn., Docket No. 20932, File No. BPH-9405; for contruction permits.

1. In this comparative proceeding between competing applicants for a construction permit for a new FM broadcast station in Jackson, Tenn., the losing party, Community Service Broadcasting, Inc. (Community), does not challenge the comparative treatment given to it and its competitor Madison County Broadcasting (Madison County) in the Initial Decision released January 30, 1978 (FCC 78D-4), but rather challenges the refusal by the Administrative Law Judge in a Memorandum Opinion and Order released October 17, 1977 (FCC 77M-1765) to reopen the record and add additional issues. Community and a former third party in the proceeding, Charles C. Allen (Allen), jointly asked to reopen the record and requested issues going to the character qualifications of Madison County, primarily upon the basis of an affidavit by Allen relating to conversations between Allen, and J. A. Baxter, Jr. and Gerald Hunt, principals of Madison County, in which Baxter and Hunt were alleged to have told Allen that if he were willing to drop out of the hearing in return for reimburement of his expenses by Madison County, the full amount of the reimbursement could be kept from the Commission.[1] The Administrative Law Judge denied the petitions to reopen the record and to enlarge the issues, which were supported by the Broadcast Bureau. Upon the appeal of Community,[2] which is

[1]The moving parties, Allen and Community, also submitted an affidavit by James D. Glassman, a principal of Community, in which he gave his version of what Allen allegedly told him of the offer made by Baxter and Hunt.

[2]Allen has since dismissed his application without reimbursement. The appeal by Community was filed on February 28, 1978. Madison County and the Broadcast Bureau filed opposing pleadings on March 15, 1978, and Community replied on March 29, 1978. Oral argument was held on April 26, 1978.

now opposed by the Broadcast Bureau, we reverse and remand for further proceedings.

2. While the relevant affidavits of Allen, Hunt, and Baxter recite other details of what appear to have been additional negotiations by the parties, the essential charge by Allen relates to a dinner meeting between himself, Baxter and Hunt, and is contained in the following two paragraphs of the Allen affidavit:

At that point I asked if they would consider letting me reimburse them for expenses and Baxter said that Mr. Bostic would not agree to that. I asked if we could consider a merger between Allen and Madison and he said Bostic would not agree to that either saying "Gordon also told us not to make any promises". He said he and Hunt were authorized to negotiate for Madison and I asked if they were willing to reimburse me for my expenses. They said that they might do that. I asked them to tell me how they would do it, and how to best get the situation resolved. Baxter then began to outline a plan saying "there is one way to do this". Baxter said "Let's say for example that your expenses are six thousand dollars * * * all you do is send in expenses for a thousand dollars and sometime later, maybe six months later, or whenever we can, we give you the rest." Baxter continued "you get the commission to approve the thousand and we give you the rest later" (at this point Baxter gestured with his hand under the table in a cupped fashion). I said that I did not understand what he wanted me to do, that my expenses are not six thousand dollars but eighteen thousand dollars, at which point Hunt said "Charley you don't understand, that is just an example * * * six thousand is just a figure we are using". I then asked to go to my car and get my briefcase which contained a list of expenses at which point I rose and left the room.

Upon returning to the dining area before sitting down I asked them if I did not have to report the five thousand to the commission and the IRS. Baxter said "well if you are going to report it, its all off." Hunt immediately said "yeah, its all off if you are going to report it". I then told them that I would have to report it to both the commission and the IRS. I then sat down and said "its wrong". At that point I still did not know why they wanted to reimburse me in that manner. Baxter said "its done all the time, that is the way that it is done". Hunt said "I'll tell you what, you are going to learn that you have to do a lot of things, you are now in the retail business, you are going to have to do a lot of things to keep from paying taxes". I said "fellas but can't we do this legally". Baxter said "its done all the time". Hunt said "yeah all the time". Baxter said "everybody does it, most applications are settled this way, if you don't the IRS will get all your profit in taxes". Again I said "I don't want to do it that way" Baxter said "well if you don't want to do it that way * * * ."

The opposing affidavits of Baxter and Hunt deny that any offer was made to Allen that Madison County would join with him in withholding from the Commission or the Internal Revenue Service the actual amount of any reimbursement to be given Allen.

3. We hold that the Allen affidavit raises a substantial question of whether Baxter and Hunt proposed to Allen that Madison County would join with him in deceiving the Commission and the Internal Revenue Service, that such conduct, if it occurred, calls into question Madison County's basic qualifications, and that the conflict in the affidavits can only properly be resolved upon a hearing record affording cross examination by counsel and observation of the witnesses by the Judge. We are reluctant to reopen the proceeding at this stage, and we recognize that there is no certainty that an evidentiary hearing will produce a definitive resolution. Nevertheless, such a hearing is the only method we have of attempting to resolve the serious question presented here.

4. We note first, as did the Administrative Law Judge, that the petition to enlarge was late, since the alleged conversation took place on June 6, 1977 and the petition was not filed until July 13, 1977. Section 1.229 of the Commission's rules, 47 CFR 1.229 requires that motions for modification of issues based upon new facts be filed within fifteen days after the facts are discovered by the moving party. However, the rule also provides that late-filed motions may be considered on their merits if "initial examination of the motion demonstrates that it raises a question of probable decisional significance and such substantial public interest importance as to warrant consideration in spite of its untimely filing." The motion in this case meets that test. It is also of some significance that the motion was filed approximately six months prior to the release of an Initial Decision.

5. In holding that the motion before him did not meet the standard of § 1.229, the Judge noted initially that there was no allegation that Madison County had offered to reimburse Allen in excess of his legitimate expenses in order to procure his withdrawal from the proceeding. The Judge did not attempt to explain the relevance of this fact, and we see none. The Broadcast Bureau suggests that in the absence of an offer of excessive reimbursement, there was no motive for the Madison County principals to make the offer alleged by Allen, and that the absence of motive should be given substantial weight in determining whether the alleged offer was actually made. However, an offer to help Allen conceal the full amount of reimbursement could have the same purpose as an offer of excessive reimbursement, i.e., to induce Allen to withdraw from the proceeding, albeit by offering him a possible tax benefit rather than a directly increased payment.[3]

6. The Judge also said that Allen's affidavit repeatedly recites that Allen did not understand why Baxter and Hunt would want to reimburse him in the manner alleged and that he did not understand what they wanted him to do. But Allen's failure immediately to understand the import of the suggestion, a failure his affidavit acknowledges, does not indicate a lack of capacity to hear and remember what was said to him.

7. More significant to the Judge was the fact that on June 20, 1977, two weeks after the allegedly improper offer was made, the Madison principals, by Allen's own account, offered to reimburse him for his expenses in the proper manner. The Judge therefore concluded that even if there was initially some impropriety in the reimbursement offer, it was quickly rectified; for this reason, and because (as noted above) there was no allegation of an offer of excessive reimbursement, the Judge concluded that the allegations raised by Allen, even if accepted at face value, did not raise a matter of probable decisional significance and substantial public interest importance warranting consideration of the late pleading. The Broadcast Bureau now joins the Judge in asserting that a hearing is not warranted because, even if an improper offer was made by Baxter and Hunt, the impropriety was never acted upon and was short-lived. We cannot accept this evaluation of the public interest in the conduct of broadcast applicants.

8. First of all, such reliance upon a subsequent withdrawal of an improper proposition fails to take account of the consideration that if the offer had been accepted when made, the full intended harm would have taken place. It also fails to recognize that an attempt to negotiate an illegal agreement seriously reflects upon character whether or not the offer is accepted and the agreement comes to fruition. We have previously rejected the contention that a short-lived improper proposal is not to be taken seriously. *James C. Sliger*, — FCC 2d —, 41 RR 2d 1541 (1977).[4] We reject it again. Fi-

[3]Thus, in taking a loss under section 165 of the Internal Revenue Code, Allen could have claimed not to have been reimbursed by Madison County for the full amount of his expenses in attempting to obtain a license. It is also conceivable, in determining whether Madison County could have had any motive for the alleged improper offer, that it had no intention, once Allen was inveigled into the scheme, of giving him the full agreed upon (but undisclosed) amount. He would then have been in no position to make a public complaint. We need not resolve these possibilities. Their existence refutes the contention that there could be no motive.

[4]The Broadcast Bureau and Madison County also mistakenly rely for support upon our statement in *Sliger* that "allegations of mere intent to engage in misconduct are not sufficient to warrant the addition of issues, * * *" *Sliger* involved an alleged threat to file a competing application

Footnotes continued on next page

nally, as Madison County and the Broadcast Bureau urge, it is true that not every conflict in affidavits necessitates an evidentiary hearing, but a conflict on material and significant matters does necessitate a hearing, and it is such a conflict which is presented here. In our view the affidavits are plainly in conflict, although that is not determinative. What is determinative is the nature of the allegations in the Allen affidavit, and we are at a loss to see how the Bureau can conclude that nothing more was involved than a proposal for installment payments, in light of Allen's allegation that Baxter told him "you get the Commission to approve the thousand and we give you the rest later." [5] The issues raised must be explored in the evidentiary hearing process, rather than being summarily disposed of upon the affidavits.

9. *Accordingly, it is ordered,* That the issues in this proceeding are enlarged by the addition of the following issue:

To determine whether principals of Madison County Broadcasting proposed to Charles C. Allen a reimbursement of Allen's expenses which would not be fully and accurately reported to the Commission or the Internal Revenue Service and, if so, to determine the effect upon Madison County Broadcasting's basic or comparative qualifications to receive a broadcast station construction permit.

10. *It is further ordered,* That the Initial Decision released herein on January 30, 1978 IS VACATED and this matter is remanded for further proceedings in accordance with this opinion.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Footnotes continued from last page

against a party's AM renewal application unless that party withdrew another application it had filed for an FM station. The Board said that while mere intent to engage in misconduct would not warrant an issue, it was alleged that the intent had developed into an actual threat. The situation here is similar. We are not adding an issue on the basis of Madison County's mental state, but rather upon the basis of the applicant's alleged conduct.

[5] It need hardly be said that a holding in some other case, e.g., *RKO General, Inc.,* 25 FCC 2d 633, 19 RR 2d 1079 (Rev. Bd. 1970), that counteraffidavits dispelled all doubts in that case, cannot be authority for the same proposition in the context of a different factual situation in this case. And, in *Radio Augusta, Inc.,* 16 FCC 2d 604, 15 RR 2d 765 (1969), the Commission declined to add an issue where there was a hearsay report of unreported consideration on the sale of a station, because the report was not only denied by the person alleged to have told the informant about it, but also by other persons with knowledge of the facts, and where, in addition, no apparent motive could be seen for not reporting the consideration accurately.

DISSENTING OPINION OF BOARD MEMBER SYLVIA D. KESSLER

The Board's remand here is but another example of the new permissiveness of allowing exploitation of the hearing process when there is no reasonable likelihood that it will serve a useful purpose, contrary to the *Edgefield-saluda* doctrine. See, for example, *J. B. Broadcasting of Baltimore, Ltd.,* FCC 77-852, — FCC 2d —, released December 28, 1977. See also the well analyzed and well reasoned position of the Broadcast Bureau detailed in its opposition to exceptions in the instant case and in its counsel's oral argument before the Board.

[FR Doc. 78-12537 Filed 5-8-78; 8:45 am]

[6712-01]

RADIO TECHNICAL COMMISSION FOR MARINE SERVICES

Meetings

In accordance with Pub. L. 92-463, "Federal Advisory Committee Act," the schedule of future Radio Technical Commission for Marine Services (RTCM) meetings is as follows:

[RTCM SC 69]

FCC WARC-79 ADVISORY COMMITTEE FOR MARITIME MOBILE SERVICE, 15, MEETING

COMSAT Building, 950 L'Enfant Plaza SW., Washington, D.C., COMSAT Auditorium, 9:30 a.m. to 12:30 p.m., Wednesday, May 24, 1978.

AGENDA

1. Administrative Items.
2. Consideration of FCC Notices of Inquiry in Docket No. 20271 (6th, 7th, and 8th).

Charles Dorian, Chairman SC 69, COMSAT General, 950 L'Enfant Plaza SW., Washington, D.C. 20024, phone 202-554-6756.

The RTCM has acted as a coordinator for maritime telecommunications since its establishment in 1947. All RTCM meetings are open to the public. Written statements are preferred, but by previous arrangement, oral presentations will be permitted within time and space limitations.

Those desiring additional information concerning the above meeting(s) may contact either the designated chairman or the RTCM Secretariat, phone 202-632-6490.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRCIARICO,
Secretary.

[FR Doc. 78-12538 Filed 5-8-78; 8:45 am]

[6712-01]

2SATELLITE BROADCASTING SERVICE GROUP 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

Schedule of Meeting

MAY 4, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of the following meeting.

WARC-79 SATELLITE BROADCASTING SERVICE GROUP

Tuesday, May 23, 1978, 9:30 a.m. to 4 p.m., Room 8210, 2025 M Street NW., Washington, D.C.

Chairman: Edward E. Reinhart.
Liaison: Charles H. Breig.

The Agenda will be as follows:

1. Call to order and approval of agenda.
2. Approval of minutes.
3. Announcements.
4. Report on SPM documents.
5. Review of 6th and 7th NOI (Doc. 20271).
6. Review of 8th NOI (Doc. 20271).
7. Discussion of proposals of the Fixed Satellite Service Working Group.
8. Uplinks for the Broadcast Satellite Service.
9. Policy issues at 1979 WARC.
10. Report of TF Chairman.
11. Other business.
12. Adjournment.

The above meeting is open to broadcast industry representatives and interested members of the general public.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-12568 Filed 5-8-78; 8:45 am]

[6712-01]

BROADCAST SERVICE WORKING GROUPS 1979 WORLD ADMINISTRATIVE RADIO CONFERENCE

Schedule of Meeting

MAY 4, 1978.

Pursuant to Pub. L. 92-463, notice is hereby given of the following meetings.

WARC-79 TV BROADCASTING SERVICE GROUP

Thursday, May 25, 1978, 9:30 a.m. to 12 noon, Room 8210, 2025 M Street NW., Washington, D.C.

Chairman: James D. Parker.
FCC Liaison: Charles H. Breig.

WARC-79 AUXILIARY BROADCASTING SERVICE GROUP

Thursday, May 25, 1978, 1:30 p.m. to 4 p.m., Room 8210, 2025 M Street NW., Washington, D.C.

Chairman: John Serafin.

FCC Liaison: Al Jarratt.

The agendas will be as follows:

1. Call to order and announcements.
2. Approval of minutes of previous meeting.
3. Discussion of 8th NOI (Doc. 20271).
4. Other business.
5. Adjournment.

The above meetings are open to broadcast industry representatives and interested members of the general public.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 78-12569 Filed 5-8-78; 8:45 am]

[6730-01]

FEDERAL MARITIME COMMISSION

AGREEMENTS FILED

The Federal Maritime Commission hereby gives notice that the following agreements have been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and obtain a copy of each of the agreements and the justifications offered therefor at the Washington Office of the Federal Maritime Commission, 1100 L Street NW., Room 10218, or may inspect the agreements at the Field Offices located at New York, N.Y., New Orleans, La., San Francisco, Calif., Chicago, Ill., and San Juan, P.R. Interested parties may submit comments on each agreement, including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C., 20573, on or before May 29, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed agreement. Comments shall discuss with particularity allegations that the agreement is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the Act.

A copy of any comments should also be forwarded to the party filing the agreements and the statement should indicate that this has been done.

Agreement No. T-2196-4.

Filing party: Mr. B. J. Barker, Rental Management Specialist, Port of Seattle, P.O. Box 1209, Seattle, Wash. 98111.

Summary: Agreement No. T-2196-4, between Port of Seattle, (Port) and Puget Sound Tug & Barge Co. (PST), modifies the parties' basic agreement which provides for the lease of certain premises at Pier 17 which will be used for the docking, repairing and provisioning of tug boats and barges. The purpose of the modification is to provide for the Port's purchase of a portion of PST's leasehold interest comprising an office building and a parking area. In consideration of this purchase, Port will pay $225,000 as payment for PST's surrender of its leasehold interest. The premises have been revised to include 294,880 square feet of harbor area. After all revisions are accomplished total monthly rental will be $2,105.80.

Agreement No. T-3642.

Filing party: Mr. J. Robert Bray, Acting Executive Director, Virginia Port Authority, 234 Monticello Avenue, 1600 Maritime Tower, Norfolk, Va. 23510.

Summary: Agreement No. T-3642, between Virginia Port Authority (Port) and Tidewater Stevedoring Corp. (TSC), provides for the two-year lease of certain property known as Pier 8, located at Newport News, Va. The premises are to be operated as a public marine terminal. Rates, charges, regulations, practices and requirements shall be established by TSC with due consideration given to the cost to TSC of providing the use of the facilities and services and comparable rates and charges prevailing at other marine terminals competitive with the Virginia ports. However, Port will establish the rates and charges for dockage, wharfage, wharf demurrage, and lay berth rental. As compensation, TSC will pay Port $24,000 per year as basic rental. In addition, Port will receive portions of certain operating revenue as further provided by the basic agreement.

Agreement No. T-3644.

Filing party: Mr. B. J. Barker, Rental Management Specialist, Port of Seattle, P.O. Box 1209, Seattle, Wash. 98111.

Summary: Agreement No. T-3644, between Port of Seattle (Port) and Puget Sound Tug & Barge Co. (PST), provides for the lease of 2,900 square feet of ground floor office space to be used for dispatch offices for tugboats. As compensation, PST will pay $761.25 per month plus utilities. This agreement provides for the leaseback of a portion of a leasehold interest purchased by Port under agreement No. T-2196-4.

Agreement No. T-3645.

Filing party: Richard L. Landes, Deputy, Offices of the City Attorney of Long Beach, City Hall, 333 West Ocean Boulevard, Long Beach, Calif. 90802.

Summary: Agreement No. T-3645, between the City of Long Beach (City) and West Coast Warehouse Corp. (West Coast) provides for the one-year lease of certain premises located on Pier A in the Harbor District of the City of Long Beach, to be used solely for the storage of commodities, pedestrian, and vehicular access to the said warehouse facilities, repair, maintenance and storage of West Coast's vehicles and warehouse handling equipment, and for offices in connection with West Coast's warehouse and trucking facilities. As compensation, City will receive from West Coast, $6,335 a month as rental.

Agreement No. 10261-3.

Filing party: John R. Attanasio, Esq., Billig, Sher & Jones, P. C., 2033 K Street, NW., Washington, D.C. 20006.

Summary: Agreement No. 10261-3 would amend Article 2 of the U.S. South Atlantic/Spanish, Portuguese, Moroccan and Mediterranean Rate Agreement to permit any party thereto to give notice of, and with the other parties being obliged to respond to, independent action proposals by telephone rather than by telex as currently provided in the agreement.

Agreement No. 10332.

Filing party: Charles F. Warren, Esq., Warren & Associates, P.C., 1100 Connecticut Avenue NW., Washington, D.C. 20036.

Summary: Agreement 10332 is a cooperative working arrangement between the Korea Marine Transport Co., Ltd. (KMTC) and the Nippon Yusen Kaisha (NYK) applicable to the trade between Korea and the United States Pacific Coast including Alaska and Hawaii. It is their intention, at the outset, to establish a two-containerships service in that trade to be scheduled as agreed upon with revenues to be shared equally upon terms to be agreed upon. Further, the "* * * parties will ship their loaded and empty containers * * * on their own vessels and on each other's vessel, and shall charter space to and from each other on terms as they may agree."

By Order of the Federal Maritime Commission.

Dated: May 4, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-12606 Filed 5-8-78; 8:45 am]

[6730-01]

[Docket No. 78-14]

CELANESE CORP., ON BEHALF OF ITS AFFILIATED COLOMBIAN CORP., CELANESE COLOMBIANA, S.A. OF BOGOTA, COLOMBIA v. THE PRUDENTIAL STEAMSHIP CO.

Filing of Complaint

Notice is hereby given that a complaint filed by Celanese Corp. against Prudential Steamship Co. was served May 1, 1978. The complaint alleges that respondent overcharged complainant for ocean freight in violation of section 18 of the Shipping Act, 1916.

Hearing in this matter, if any is held, shall commence on or before November 1, 1978. The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statement, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-12604 Filed 5-8-78; 8:45 am]

[6730-01]

PETITIONS FILED

The Federal Maritime Commission hereby gives notice that the following

petition(s) have been filed with the Commission for approval pursuant to section 14b of the Shipping Act, 1916, as amended (75 Stat. 762, 46 U.S.C. 813a).

Interested parties may inspect and obtain a copy of the petition(s) and the justification(s) offered therefor at the Washington office of the Federal Maritime Commission, 1100 L Street NW., Room 10218; or may inspect the petition(s) at the field offices located at New York, N.Y.; New Orleans, La.; San Francisco, Calif.; Chicago, Ill.; and San Juan, P.R. Interested parties may submit comments on the petition(s), including requests for hearing, to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, on or before May 29, 1978. Comments should include facts and arguments concerning the approval, modification, or disapproval of the proposed petition(s). Comments shall discuss with particularity allegations that the petition is unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or operates to the detriment of the commerce of the United States, or is contrary to the public interest, or is in violation of the act.

A copy of any comments should also be forwarded to the party filing the petition(s) and the statement should indicate that this has been done.

Agreement No. 9615-DR-5.

Filing party: David C. Jordan, Esq., Billig, Sher & Jones, P.C., Suite 300, 2033 K Street NW., Washington, D.C. 20006.

Summary: Agreement No. 9615-DR-5 is a clarification of the Iberian/U.S. North Atlantic W/B Conference's dual rate contract to assure that only contract signers receive contract rates.

By order of the Federal Maritime Commission.

Dated: May 4, 1978.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 78-12605 Filed 5-8-78; 8:45 am]

[1610-01]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Approval of a Report Proposal

A request for clearance of a proposed report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 22, 1977 (see 44 U.S.C. 3512 (c) and (d)). The purpose of publishing this notice is to inform the public of GAO's approval of this report proposal.

INTERSTATE COMMERCE COMMISSION

On December 2, 1977, GAO published a notice in the FEDERAL REGISTER (42 FR 61305) stating that ICC requested clearance of the new Annual Report Supplement—Corporate Disclosure Regulations, decided May 13, 1977. In that notice, GAO stated that the effective date for the reporting requirement is contingent upon ICC's compliance with 44 U.S.C. 3512 and GAO requested public comments on the requirement

On January 13, 1978, GAO published another notice in the FEDERAL REGISTER (43 FR 1995) stating that it had suspended its review of this reporting requirement because ICC had not fully complied with the GAO rules and regulations and that, therefore, GAO was unable to make a clearance decision within the statutory time period.

At this time, ICC has provided the necessary supplemental information and the clearance problems presented by this reporting requirement have been resolved. To minimize compliance burden, ICC increased the threshold reporting level in section IID from $600 to $50,000. In addition, in section III, ICC will require that a complete set of the various documents be filed with the first annual report to which the regulations apply. Thereafter, if no changes are made in the filed documents, respondents need only file a statement to that effect. If changes are made, the entire document, including the changes, must be filed. The ICC also revised the instructions to eliminate duplicative requirements of information already available from Federal sources. Finally, the filing deadline for these schedules will be 30 days after respondents have received the schedules from ICC.

In view of these changes, GAO granted approval of ICC's Annual Report Supplement—Corporate Disclosure on April 14, 1978, under No. B-180230 (R0490). The GAO clearance of this reporting requirement expires on November 30, 1979.

NORMAN F. HEYL,
Regulatory Reports Review Officer.

[FR Doc. 78-12517 Filed 5-8-78; 8:45 am]

[4110-88]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

MINORITY ADVISORY COMMITTEE

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix I), announcement is made of the following National Advisory body scheduled to assemble during the month of May 1978:

MINORITY ADVISORY COMMITTEE, ADAMHA

May 25-26—Open meeting, May 25, 9 a.m., Federal Office Building, Room 1430, 1961 Stout Street, Denver, Colo. 80202.

Contact—Mr. Ernest Hurst, Room 13C-15, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3838.

Purpose—The Minority Advisory Committee, ADAMAH, advises the Secretary, Department of Health, Education, and Welfare, and the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, on needs, programs, and activities regarding minority alcohol, drug abuse, and mental health matters, and makes recommendations for possible solutions which meet the needs and concerns of minority groups throughout the United States. The Committee functions in an advisory capacity to the Administrator, ADAMHA, on these matters which relate to the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, and the National Institute of Mental Health.

Agenda—This 2-day meeting will be open to the public. Agenda items include the 1978-79 work plan, a report by committee members on alcohol, drug abuse, and mental health in Hawaii and a discussion of the National Conference on Alcohol, Drug Abuse, and Mental Health Issues.

Mr. James C. Helsing, Acting Director, Office of Public Affairs, ADAMHA, will furnish, on request, summaries of the meeting and a roster of the Committee members. Mr. Helsing is located in Room 16-95, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3783.

Dated: May 3, 1978.

CAROLYN T. EVANS,
Committee Management Officer Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-12511 Filed 5-8-78; 8:45 am]

[4110-03]

Food and Drug Administration

[Docket No. 77N-0166]

POISONOUS AND DELETERIOUS SUBSTANCES

Availability of Action Levels

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs is announcing the availability of a list of action levels for poisonous and deleterious substances in human food or animal feed. The list defines the levels of contamination at which a food is considered adulterated.

ADDRESS: Requests for copies of the list should be addressed to the Food and Drug Administration, Industry Guidance Branch, Bureau of Foods (HFF-342), 200 C Street SW., Washington, D.C. 20204.

FOR FURTHER INFORMATION CONTACT:

Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: An added poisonous or deleterious substance is a poisonous or deleterious substance that does not occur naturally in foods or feeds. A naturally occurring poisonous or deleterious substance is one that is an inherent natural constituent of a food or feed and is not the result of environmental, agricultural, industrial or other contamination.

Tolerances and action levels for added poisonous or deleterious substances are established by the Commissioner according to criteria set forth in §§ 109.4 and 509.4 of the food and drug regulations (21 CFR 109.4, 509.4). A tolerance may be established by regulation under the provisions of sections 406 and 701(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346, 371(e)) when an added poisonous or deleterious substance cannot be avoided by good manufacturing practices and when no technological or other changes are foreseeable in the near future that might affect the appropriateness of the tolerance. Regulations establishing tolerances are published in the FEDERAL REGISTER and codified in Title 21 of the Code of Federal Regulations.

Action levels may be established when an added poisonous or deleterious substance cannot be avoided by good manufacturing practices and when technological or other changes that might affect the appropriateness of a tolerance are foreseeable in the near future. When an action level for a specific poisonous or deleterious substance is established, revised, or revoked, the Food and Drug Administration files pertinent data and information with the Hearing Clerk and publishes in the FEDERAL REGISTER a notice announcing the action.

Both tolerances and action levels are established to protect public health, taking into account the extent to which presence of the substance cannot be avoided and other ways in which the consumer may be affected by the same or related poisonous or deleterious substances. An action level is revoked whenever a tolerance for the same substance and use becomes effective.

A list of current action levels for poisonous and deleterious substances in human food and animal feeds is now available. This list will be periodically revised to reflect the establishment of new action levels and changes in existing action levels. Requests for copies of the list should be submitted to Food and Drug Administration, Industry Guidance Branch, Bureau of Foods (HFF-342), 200 C Street SW., Washington, D.C. 20204; telephone 202-245-1523.

Dated: April 27, 1978.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner for Compliance.

[FR Doc. 78-12368 Filed 5-8-78; 8:45 am]

[4110-03]

PANEL ON REVIEW OF DENTIFRICES AND DENTAL CARE AGENTS

Meeting Change

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document gives notice that the Panel on Review of Dentifrices and Dental Care Agents meeting announced by a notice published in the FEDERAL REGISTER of April 25, 1978 (43 FR 17541), for May 31 and June 1, 1978, has been changed to meet on May 30, 31, and June 1, 1978. The meeting will be held at the Holiday Inn, Chevy Chase, Md., from 7:30 p.m. to 10:30 p.m. on May 30, with the open session beginning at 7:30 p.m., and in Conference Room K, Parklawn Building, 5600 Fishers Lane, Rockville, Md., on May 31 and June 1, 1978, with the open session beginning at 9 a.m. on May 31.

FOR FURTHER INFORMATION CONTACT:

Thomas D. DeCillis, Bureau of Drugs (HFD-510), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

Dated: May 2, 1978.

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

[FR Doc. 78-12510 Filed 5-8-78; 8:45 am]

[4110-83]

Health Resources Administration

NATIONAL ADVISORY COUNCIL ON NURSE TRAINING

Meeting Cancellation

In FEDERAL REGISTER Document 78-9844 appearing at page 15780 in the issue for Friday, April 14, 1978, the May 22-24, 1978, meeting of the "National Advisory Council on Nurse Training" has been cancelled. A meeting will be scheduled in June, and announcement made in the FEDERAL REGISTER accordingly.

Dated: May 4, 1978.

JAMES A. WALSH,
Associate Administrator for Operations and Management.

[FR Doc. 78-12518 Filed 5-8-78; 8:45 am]

[4110-08]

National Institutes of Health

REPORT ON 13-WEEK SUBCHRONIC TOXICITY STUDIES OF DIRECT BLUE 6, DIRECT BLACK 38, AND DIRECT BROWN 95 DYES

Availability

Direct blue 6 (CAS 2602-46-2), direct black 38 (CAS 1937-37-7), and direct brown 95 (CAS 16071-86-6) have been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: Thirteen-week subchronic toxicity studies of direct blue 6, direct black 38, and direct brown 95 dyes were conducted by administering the test chemicals in feed to Fischer 344 rats and B6C3F1 mice.

Groups of 10 rats and 10 mice of each sex were administered one of the three dyes at one of five concentrations for 13 weeks and then necropsied, beginning the second day after the end of the dosing periods. The concentrations used for the rats were 190, 375, 750, 1,500, and 3,000 ppm. The concentrations used for the mice were 750, 1,5000, 3,000, 6,000, and 12,500 ppm, except for the female mice administerred direct brown 95 dye, which were given concentrations of 375, 750, 1,500, 3,000, and 6,000 ppm. Matched controls consisted of groups of 10 untreated rats and 10 untreated mice of each sex.

Mean body weights of the male and female rats administered the two or three highest doses of any one of the test dyes were lower than mean body weights of the corresponding controls, and the depressions in mean body weight were dose related. Mean body weights of the male and female mice administered the highest dose of anyone of the test dyes were slightly lower than mean body weights of the corresponding controls; mean body weights of mice administered lower doses were generally unaffected.

All male and female rats administered 3,000 ppm of any one of the dyes or 1,500 ppm of direct brown 95 dye died before the end of the studies. One male administered 1,500 ppm direct blue 6 dye, six males administered 1,500 ppm direct black 38 dye, and two males administered 750 ppm direct brown 95 dye also died by the end of the studies. No deaths occurred in any other dosed group or in any control group of rats. All male and female

mice administered the test dyes survived to the end of the studies, except for one male whose death was attributed to bacterial infection.

It is concluded that under the conditions of these 13-week subchronic toxicity studies, direct blue 6 and direct black 38 dyes were carcinogenic in male and female Fischer 344 rats and direct brown 95 was carcinogenic in female rats; all three dyes induced hepatocellular carcinomas and neoplastic nodules in the liver. The test dyes were not carcinogenic for B6C3F1 mice in the 13-week subchronic toxicity studies.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20014.

(Catalogue of Federal Domestic Assistance Program No. 13.393, Cancer Cause and Prevention Research)

Dated: May 3, 1978.

DONALD S. FREDRICKSON,
Director,
National Institutes of Health.

[FR Doc. 78-12704 Filed 5-8-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-78-831; Docket No. 78-32-(b)(3); OILSR No. 0-2378-09-720]

QUAIL HOLLOW PINES F/K/A TAMPA HIGHLANDS, QUAIL HOLLOW PINES, INC. F/K/A TAMPA DEVELOPMENT CORP.

Notice of Hearing

Pursuant to 15 U.S.C. 1706(b) and 24 CFR 1710.45(a) and 1720.120, Notice is hereby given that:

1. Quail Hollow Pines f/k/a Tampa Highlands, Quail Hollow Pines, Inc. f/k/a Tampa Development Corp., its officers and agents, 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. 1701 et seq.) received a Notice of Suspension dated March 23, 1978, which was sent to the developer pursuant to 15 U.S.C. 1706(b), 24 CFR 1710.45(a) and 1720.120 based on information obtained by the Office of Interstate Land Sales Registration showing that the statement of Record and Property Report for Quail Hollow Pines located in Lutz, Fla. 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 April 21, 1978, in response to the Order of Suspension.

3. In said Answer the Respondent requested a hearing on the allegations contained in the Order of Suspension.

4. Therefore, pursuant to the provisions of 15 U.S.C. 1706(b) and 24 CFR 1710.45(a) and 1720.120: *It is hereby ordered,* That a public hearing for the purpose of taking evidence on the questions set forth in the Order of Suspension will be held before Judge James W. Mast, Room 7143, HUD Building, 451 Seventh Street SW., Washington, D.C., at 10 a.m., on May 10, 1978.

5. The following time and procedure is applicable to such hearing: The parties are directed to file all affidavits and a list of all witnesses with the Hearing Clerk, HUD Building, Room 10278, Washington, D.C. 20410, on or before April 26, 1978. Copies of all documents filed should be served at the same time on all parties of record.

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(a).

This Notice shall be served upon the Respondent forthwith pursuant to 24 CFR § 1720.120.

By the Secretary.

Dated: April 24, 1978.

JAMES W. MAST,
Chief, Administrative Law Judge.

[FR Doc. 78-12519 Filed 5-8-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 33318]

NEW MEXICO

Application

MAY 1, 1978.

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), Transwestern Pipeline Co. has applied for three 4-inch natural gas pipelines right-of-way across the following land:

NEW MEXICO PRINCIPAL MERIDIAN, NEW MEXICO

T. 23 S., R. 25 E.,
Sec. 24, SW¼NE¼, NE¼SW¼, and NW¼SE¼;
Sec. 26, SE¼SW¼;
Sec. 34, SE¼NE¼, NE¼SW¼, and N½SE¼;
Sec. 35, N½NW¼.

These pipelines will convey natural gas across 1.93 miles of public land in Eddy County, N. Mex.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, N. Mex. 88201.

FRED E. PADILLA,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-12565 Filed 5-8-78; 8:45 am]

[4310-31]

Geological Survey

KNOWN RECOVERABLE COAL RESOURCE AREA

Rock Island, Okla.

Pursuant to authority contained in the Act of March 3, 1879 (43 U.S.C. 31), as supplemented by Reorganization Plan No. 3 of 1950 (43 U.S.C. 1451, note), 220 Departmental Manual 2, Secretary's Order No. 2948, and section 8A of the Mineral Leasing Act of February 25, 1920, as added by section 7 of the Federal Coal Leasing Amendments Act of 1975 (Pub. L. 94-377, August 4, 1976), Federal lands within the State of Oklahoma have been classified as subject to the coal leasing provisions of the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 201). The name of the area, effective date, and total acreage involved are as follows:

(36) OKLAHOMA

Rock Island (Oklahoma) Known Recoverable Coal Resource Area; June 14, 1977; 6,776 acres.

A diagram showing the boundaries of the area classified has been filed with the appropriate land office of the Bureau of Land Management. Copies of the diagram and the land description may be obtained from the Conservation Manager, Central Region, U.S. Geological Survey, Stop 609, Box 25046, Federal Center, Denver, Colo.

Dated: May 2, 1978.

W. A. RADLINSKI,
Acting Director.

[FR Doc. 78-12566 Filed 5-8-78; 8:45 am]

[4310-03]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the Heritage Conservation and Recreation Service before April 28, 1978.

Pursuant to section 60.13(a) of 36 CFR part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the Keeper of the National Register, Office of Archeology and Historic Preservation, U.S. Department of the Interior, Washington, D.C. 20240. Written comments or a request for additional time to prepare comments should be submitted by May 19, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALABAMA

Wilcox County

Camden vicinity, *Liddell Archeological Site*, E of Camden

ALASKA

Kenai-Cook Inlet Division

Sterling vicinity, *Moose River Site*, E of Sterling

Matanuska-Susitna Division

Palmer vicinity, *Cunningham-Hall PT-6, NC-692W*, S of Palmer at Mile 40, Glenn Highway

Prince of Wales Division

Klawock, *Klawock Totem Park*, N. Park and Church Sts.

Delaware

Sussex County

Millsboro vicinity, *Indian River Archeological Complex*, E of Middleboro

GEORGIA

Putnam County

Eatonton vicinity, *Tompkins Inn*, N of Eatonton on U.S. 441

HAWAII

Hawaii County

Kailua, *Mokuaikaua Church*, off HI 11

Honolulu County

Honolulu, *Kakaako Pumping Station*, 653 Ala Moana Blvd.

LOUISIANA

Caddo Parish

Shreveport, *Herold, Sidney, Mansion*, 840 Jordan St.

Ouachita Parish

Monroe, *Mulberry Grove*, 1133 S. Grand St.

MICHIGAN

Calhoun County

Battle Creek, *Battle Creek Sanitarium*, 197 N. Washington Ave.

Genesee County

Flint, *Elks Lodge Building*, 142 W. 2nd St.

Grand Traverse County

Traverse City, *Boardman Neighborhood Historic District*, roughly bounded by Railroad and Boardman Aves., State and Webster Sts.

Traverse City, *Northern Michigan Asylum*, bounded by C&O RR tracks, Division and 11th Sts., Elmwood Ave., Orange and Red Drs.

Lenawee County

Hudson, *Hall, Dr. Leonard, House*, 334 W. Main St.

Marquette County

Ishpeming, *Mather Inn*, 107 Canda St.

Marquette, *Savings Bank Building*, 125 W. Washington St.

Oakland County

Rochester vicinity, *Meadow Brook Farms*, 480 S. Adams Rd.

Sanilac County

Lexington, *Fead, John L., House*, 5349 Washington St.

Washtenaw County

Ann Arbor, *Unitarian Universalist Church*, 100 N. State St.

Wayne County

Detroit, *Corktown Historic District*, roughly bounded by Lodge Freeway, Porter and Bagley Sts., Rosa Parks Blvd., Trumbull and Michigan Aves.

Detroit, *Wayne State University Building*, 4735-4841 Cass Ave.

MISSOURI

Buchanan County

St. Joseph, *Buchanan County Courthouse*, Courthouse Sq. (boundary revision).

NEW MEXICO

Bernalillo County

Albuquerque, *Rosewald Building*, 320 Central Ave., SW..

Rio Arriba County

Embudo, *Embudo Historic District*, U.S. 64.

NEW YORK

Greene County

Coxsackie vicinity, *Flint Mine Hill Archeological District*, eastern Greene County.

Monroe County

Honeoye Falls vicinity, *Totiakton Site*, N of Honeoye Falls.

New York County

New York, *Southgate*, Pier 17, foot of Fulton St.

Putnam County

Brewster, *Brewster, Walter, House*, Oak St.

OKLAHOMA

Custer County

Hammon vicinity, *Hodge Site*, NE of Hammon.

Ellis County

Arnett vicinity, *Eggleston Springs*, SW of Arnett.

McCurtain County

Idabel vicinity, *Harkey Site*, S of Idabel.

Oklahoma County

Oklahoma City, *Oklahoma Publishing Company Building*, 500 N. Broadway.

Rogers Mills County

Cheyenne vicinity, *Chalfant Site*, N. of Cheyenne.

Durham vicinity, *Antelope Hills*, N of Durham.

Tulsa County

Tulsa, *Clinton-Hardy House*, 1322 S. Guthrie St.

OREGON

Jackson County

Butte Falls vicinity, *Jacksonville-Fort Klamath Military Wagon Road*, S of Butte Falls (also in Klamath County).

PENNSYLVANIA

Philadelphia County

Philadelphia, *Arch Street Opera House*, 1003-1005 Arch St.

TENNESSEE

Shelby County

Memphis, *Lee, James, House*, 239 Adams Ave.

TEXAS

Wichita County

Wichita Falls, *Wichita Falls Route Building*, 503 8th St.

UTAH

Summit County

Park City, *Silver King Ore Loading Station*, Park Ave.

VERMONT

Washington Conty

Waterbury, *Waterbury Village Historic District*, U.S. 2.

WASHINGTON

King County

Seattle, *Chittenden Locks and Lake Washington Ship Canal Historic District*, Salmon Bay.

[FR Doc. 78-12260 Filed 5-8-78; 8:45 am]

[4310-70]

Office of the Secretary

[INT DES 78-14]

GULF ISLANDS NATIONAL SEASHORE (FLA. AND MISS.)

Availability of Draft Environmental Statement on General Management Plan and Development Concept Plans

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 on the proposed General

Management Plan and Development Concept Plans for Gulf Islands National Seashore (Fla. and Miss.).

The statement considers the future management and development of Gulf Islands National Seashore.

Written comments on the Environmental Statement are invited and will be accepted until June 23, 1978. Comments should be addressed to the Regional Director, Southeast Region, or to the Superintendent, Gulf Islands National Seashore, at the address given below.

Copies are available from or for inspection at the following locations.

Southeast Regional Office, National Park Service, 1895 Phoenix Boulevard, Atlanta, Ga. 30349.

Assistant Superintendent, Gulf Islands National Seashore, 4000 Hanley Road, Ocean Springs, Miss. 39564.

Superintendent, Gulf Islands National Seashore, P.O. Box 100, Gulf Breeze, Fla. 32561.

NOTE.—The U.S. Department of the Interior has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: May 2, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-12564 Filed 5-8-78; 8:45 am]

[4410-01]

DEPARTMENT OF JUSTICE

Attorney General

[Order No. 778-78]

PRIVACY ACT OF 1974

System of Records (Amended)

On Friday, September 30, 1977, notice was published in the FEDERAL REGISTER (42 FR 53409) announcing the existence of the Civil Rights Investigative System, JUSTICE/LEAA-008.

Notice is hereby given that in the Proposed Rules Section of today's FEDERAL REGISTER the Department of Justice proposes to promulgate rules pursuant to 5 U.S.C. 552a(k) and, in accordance with the requirements (including general notice) of 5 U.S.C. 553(b) (1), (2), and (3), (c), and (e), to exempt this system from the access requirements of 5 U.S.C. 552a(d).

Exemption from the Privacy Act access provisions is proposed in those cases where a request for access to a complaint file is made prior to administrative resolution of the civil rights complaint. It is needed to ensure unhampered conciliation and compliance efforts during the complaint and compliance process and to protect the identity of confidential sources.

The system notice, as amended, is reprinted in its entirety below.

Comments may be submitted in writing to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, Washington, D.C. 20530. All comments must be received on or before June 8, 1978. No oral hearings are contemplated.

Dated: April 27, 1978.

MICHAEL J. EGAN,
Acting Attorney General.

JUSTICE/LEAA-008

System name:

Civil Rights Investigative System.

System location:

Law Enforcement Assistance Administration; 633 Indiana Avenue, N.W.; Washington, D.C. 20531.

Categories of individuals covered by the system:

Complaints of discrimination by individuals affected by the agency program for which the agency has compliance responsibility, grantees, subgrantees, contractors, subcontractors, employees, and applicants.

Categories of records in the system:

Civil Rights Complaint Control Logs; Civil Rights Litigation Reference Files.

Authority for maintenance of the system:

42 U.S.C. 3766(c); E.O. 11246 (3 C.F.R. 173) as amended by E.O. 11375.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Investigation of complaints and to obtain compliance with Civil Rights laws. Users of the data are State Planning Agencies, State Governors and Attorneys General, Criminal Justice Agencies, Office of Federal Contract Compliance, Equal Employment Opportunity Commission, Office of Federal Revenue Sharing, and a United States Commission on Civil Rights.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 C.F.R. 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

Information in the system is stored in file folders and on index cards.

Retrievability:

Information is retrieved by name of respondent and complainant.

Safeguards:

Information is kept in locked file cabinets and combination safe. Access is limited to investigative personnel.

Retention and disposal:

Complaint control logs are destroyed upon completion of action on the inquiry or complaint. Complaint case files thereafter are not retrievable by name, number, or other information identifiable to the individual. Other investigative information is destroyed four years after the investigation is completed.

System manager(s) and address:

Office of Civil Rights Compliance; Law Enforcement Assistance Administration; 633 Indiana Avenue, N.W.; Washington, D.C. 20531.

Notification procedure:

Same as the above.

Record access procedures:

A request for access to a record containing civil rights investigatory material shall be made in writing with the envelope and letter clearly marked 'Privacy Access Request' to the Civil Rights System Manager listed above.

Contesting record procedures:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

Record source categories:

The information contained in this system was received from individual complainants, witnesses, grant files, respondents, official State and Federal records.

Systems exempted from certain provisions of the act:

The system is exempt from 5 U.S.C. 552a(d).

This exemption applies only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(k).

Exemption from subsection (d) is claimed since access to information in the Civil Rights Investigative System prior to final administrative resolution will deter conciliation and compliance efforts. Consistent with the legislative purpose of the Privacy Act of 1974, decisions to release information from the system will be made on a case-by-case basis and information will be made available where it does not compromise the complaint and compliance process. In addition, where explicit promises of confidentiality must be made to a source during an investigation, disclosure will be limited to the extent that the identity of such confidential sources will not be compromised.

[FR Doc. 78-12642 Filed 5-8-78; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

ECONOMIC STIMULUS PACKAGE REALLOCATIONS UNDER TITLE VI OF THE COMPREHENSIVE EMPLOYMENT AND TRAINING ACT ("CETA")

Reallocation of Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice lists reallocation of funds under Title VI of the Comprehensive Employment and Training Act. The purpose of this notice is to advise all interested parties of these reallocations of funds.

FOR FURTHER INFORMATION CONTACT:

Roberts T. Jones, Director, Office of Community Employment Programs, Room 5402, 601 D Street, NW, Washington, D.C. 20213, telephone 202-376-6366.

SUPPLEMENTARY INFORMATION: The Secretary of Labor is authorized to reallocate funds in accordance with the provisions of section 606 of Pub. L. 93-567 and pursuant to the regulation at 29 CFR 99.73.

Section 606 of the CETA provides that:

The Secretary is authorized to make such reallocations as he deems appropriate of any amount of any allocation under this title to the extent that the Secretary determines that an eligible aplicant will not be able to use such amount within a reasonable period of time. Any such amount may be reallocated only if the Secretary has provided 30 days advance notice to the prime sponsor for such an area and to the Governor of the State of the proposed reallocation, during which period of time the prime sponsor and the Governor may submit comments to the Secretary. After considering any comments submitted during such period of time, the Secretary shall notify the Governor and affected prime sponsor of any decision to reallocate funds, and shall publish any such decision in the FEDERAL REGISTER. In reallocating any such funds, the Secretary shall give priority first to other areas within the same State and then to areas within other States, taking into account the number of eligible unemployed individuals (as described in section 608) in such areas.

Prime sponsors under title VI had been notified last summer that failure to achieve at least 70 percent of the minimum planned net increase in enrollment by July 31, 1977, would result in a determination by the Secretary that they were not able to use the funds within a reasonable period of time. The 70-percent minimum planned net increase in enrollment was increased to 80 percent for the month of October 1977 in field memorandum 487-77 dated September 30, 1977. Reallocation actions were to be initiated for prime sponsors failing to make at least a 10-percent improvement in each subsequent month of the PSE buildup.

The following prime sponsors were performing below an acceptable level in either December 31, 1977, notified by letter in early January 1978; January 31, 1978, notified by letter in early February or February 28, 1978, and notified by letter in early March 1978, that if performance did not improve funds would be reallocated. Since these prime sponsors did not improve their performance, it has therefore been determined by the Secretary that they were not able to use all their funds within a reasonable period of time. The Secretary is reallocating these funds in accordance with the authority of section 606.

The reallocations are as follows:

From	Amount	To	Amount
REGION II			
New York:			
Schenectady County	$390,000	BOS New York	$390,000
REGION V			
Indiana:			
Indianapolis	1,100,000	Vigo County	366,000
		Delaware/Blackford	319,000
		South Bend	300,000
		Elkhart	105,000
		Lake County	10,000
Tippecanoe County	177,000	Indiana Southwest Consortium	175,000
		Vigo County	2,000
Balance of State	754,000	Lake County	490,000
		LaPorte County	264,000
Illinois:			
Kane-DeKalb	500,000	Will Grundy	100,000
		Shawnee Consortium	300,000
		Madison County Consortium	100,000
DuPage County	1,857,600	BOS Illinois	1,250,357
		St. Claire	207,129
		Shawnee	111,340
		Will Grundy	196,676
		Rock Island	92,089
Michigan:			
Berrier County	200,000	BOS Michigan	200,000
Ohio:			
Allen County	500,000	Cincinnati	350,000
		Portage County	150,000
REGION VI			
Louisiana:			
Shreveport	200,000	Rapides Parish	100,000
		Jefferson Parish	100,000

In addition to the above reallocations the following sponsors voluntarily surrendered portions of their allocations which they were unable to expend in the specific period of time, in order that the funds could be more effectively used in other prime sponsor areas.

From	Amount	To	Amount
REGION III			
Pennsylvania:			
Bucks County	$143,000	Schuylkill-Carbon Consortium	$136,000
Montgomery County	628,810	Tri-County Consortium	300,000
Lawrence County	403,000	Leigh Valley Consortium	447,000

From	Amount	To	Amount
REGION III			
Westmoreland County	300,000	Chester County	240,000
		Lackawanna County	150,000
Virginia:			
Balance of Virginia	2,000,000	District of Columbia	1,000,000
Beaver County	147,000	State of West Virginia	1,000,000
REGION IX			
Nevada:			
Washoe County	900,000	Los Angeles County, Calif.	500,000
		Tuscon-Pine, Ariz.	500,000
		Honolulu, Hawaii	100,000

Signed in Washington, D.C., May 3, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training

[FR Doc. 78-12582 Filed 5-8-78; 8:45 am]

[4510-43]

Mine Safety and Health Administration

[Docket No. M-78-63-C]

BURNSIDE MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Burnside Mining Co., 583 North Oak Street, Shamokin, Pa. 17872, has filed a petition to modify the application of 30 CFR 75.301 (air quantity), to its Slope No. 1 mine, located in Northumberland County, Pa., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) There is no history of harmful quantities of carbon dioxide and other poisonous gases, harmful quantities of methane are nonexistent and there has never been an ignition, explosion, or fire at the mine.

(2) Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

(3) High velocities and large air quantities in small cross sectional airways and manways present dangerous flying object hazards to miners and cause extremely uncomfortable damp and cold conditions, thus causing a difficulty in keeping miners on the job.

(4) For the reasons set forth above, the petitioner requests that the requirements of 30 CFR 75.301 be modified for the above mine so that the minimum quantity of air reaching the working face be reduced to 1,500 cubic feet a minute; the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be reduced to 5,500 cubic feet a minute; and the minimum quantity of air reaching the intake end of a pillar line be reduced to 5,000 cubic feet a minute.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before June 8, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: April 28, 1978.

ECKEHARD MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-12484 Filed 5-8-78; 8:45 am]

[4510-43]

[Docket No. M-78-61-C]

EASTERN ASSOCIATED COAL CORP.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Eastern Associated Coal Corp., Star Route No. 2, Bald, Knob. W. Va. 25010, has filed a petition to modify the application of 30 CFR 75.1105 (underground transformer stations), to its Harris No. 2 mine, located in Boone County, W. Va., in accordance with section 101(c)

of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) A pump station, necessary to maintain the area free of water, is located in an intake entry of the east main heading. This area of the mine in which the pump station is located was developed prior to the enactment of the Federal Coal Mine Health and Safety Act of 1969 (Pub. L. 93-173) and petitioner is unable to course air directly from this installation to a return because a return entry is not available.

(2) For the reasons listed above, the petitioner requests that as an alterative to coursing the air currents directly to the return, be permitted to install dry chemical fire suppression devices currently on each installation. The fire suppression devices will be approved and maintained in accordance with 30 CFR 75.1107, and will be in addition to the fire extinguishing materials and devices required under the regulations. Also, 240 pounds of rock dust will be provided at each installation.

(3) The proposed alternative will at all times guarantee no less than the same measure of protection afforded the miners by application of the provisions of 30 CFR 75.1105.

(4) A similar petition for modification was granted with respect to petitioner's Harris No. 2 mine (docket No. M-78-72-2) on January 12978.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before June 8, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: April 28, 1978.

ECKEHARD MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc.78-12485 Filed 5-8-78; 3:45 p.m.]

[4510-43]

[Docket No. M-78-23-M]

HECLA MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Hecla Mining Co., P.O. Box 320, Wallace, Idaho 83873, has filed a petition to modify the application of 30 CFR 57.9-88 (roll-over protective structures), to its Lucky Friday mine, located in Mullen County, Idaho, in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of petitioner's statement is as follows:

(1) The piece of equipment covered by this petition is a front end loader used in the surface area of the above mine, including the mill, concentrate storage area, parking lot, and tailings pond.

(2) The loader, operated by one man on each of two shifts, is used primarily to load concentrates into railroad cars, load waste rock into dump trucks, and clear snow.

(3) The entrance of the concentrate loading area of the mill lacks sufficient clearance to accommodate the loads with roll-over protective structures (ROPS) installed.

(4) The safety of the loader operator will not be adversely affected by the failure to install a ROPS because the loader is operated on a level surface.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before June 8, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: April 28, 1978.

ECKEHARD MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-12486 Filed 5-8-78; 8:45 am]

[4510-43]

[Docket No. M-78-64-C]

KWY COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that KWY Coal Co., 1576 Pulaskie Avenue, Shamokin, Pa. 17872, has filed a petition to modify the application of 30 CFR 75.301 (air quantity), to its 9½ Vein Mine, located in Northumberland County, Pa., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is as follows:

(1) There is no history of harmful quantities of carbon dioxide and other poisonous gases, harmful quantities of methane are nonexistent and there has never been an ignition, explosion or fire at the mine.

(2) Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

(3) High velocities and large air quantities in small cross sectional airways and manways present dangerous flying object hazards to miners and cause extremely uncomfortable damp and cold conditions, thus causing a difficulty in keeping miners on the job.

(4) For the reasons set forth above, the petitioner requests that the requirements of 30 CFR 75.301 be modified for the above mine so that the minimum quantity of air reaching the working face be reduced to 1,500 cubic feet a minute; the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be reduced to 5,500 cubic feet a minute; and the minimum quantity of air reaching the intake end of a pillar line be reduced to 5,000 cubic feet a minute.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before June 8, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: April 28, 1978.

ECKEHARD MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-12487 Filed 5-8-78; 8:45 am]

[4510-43]

[Docket No. M-78-65-C]

NORTH MT. COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that North Mt. Coal Co., 130 East Independent Street, Shamokin, Pa. 17872, has filed a petition to modify the application of 30 CFR 75.301 (air quantity), to its North Mt. Slope Mine, located in Northumberland County, Pa., in accordance with section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of Petitioner's statement is as follows:

(1) There is no history of harmful quantities of carbon dioxide and other poisonous gases, harmful quantities of methane are non-existent and there has never been an ignition, explosion or fire at the mine.

(2) Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

(3) High velocities and large air quantities in small cross sectional airways and manways present dangerous flying object hazards to miners and cause extremely uncomfortable damp and cold conditions, thus causing a difficulty in keeping miners on the job.

(4) For the reasons set forth above, the petitioner requests that the requirements of 30 CFR 75.301 be modified for the above mine so that the

minimum quantity of air reaching the working face be reduced to 1,500 cubic feet a minute; the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be reduced to 5,500 cubic feet a minute; and the minimum quantity of air reaching the intake end of a pillar line be reduced to 5,000 cubic feet a minute.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before June 8, 1978. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: April 28, 1978.

ECKEHARD MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-12488 Filed 5-8-78; 8:45 am]

[4510-28]

Office of the Secretary

[TA-W-2564]

BOOTMAKERS OF STURGEON BAY, INC., STURGEON BAY, WIS.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2564: 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 7, 1977 in response to a worker petition received on October 31, 1977, which was filed by the Retail Clerks of America, Footwear Division on behalf of workers and former workers producing men's work and sport shoes and boots at Bootmakers of Sturgeon Bay, Inc., Sturgeon Bay, Wis.

The notice of investigaton was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59584). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bootmakers of Sturgeon Bay, its customers, the American Footwear Industries Association, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

INCREASED IMPORTS

United States imports of work footwear increased 80.8 percent to 4.7 million pairs in 1976 compared to 2.6 million pairs in 1975. The ratio of imports to domestic production increased to 18.0 percent in 1976 from 10.5 percent in 1975, and increased to 21.3 percent in the first 9 months of 1977 from 18.8 percent in the same period of 1976.

CONTRIBUTED IMPORTANTLY

Customers surveyed representing a substantial proportion of Bootmaker's 1976 quantity of sales increased imports of men's work and sport boots and shoes while decreasing purchases from the subject firm in 1976 and 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's work and sport boots and shoes produced by Bootmakers of Sturgeon Bay, Incorporated, Sturgeon Bay, Wisconsin contributed importantly to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certificaton:

All workers at Bootmakers of Sturgeon Bay, Inc., Sturgeon Bay, Wis. who became totally or partially separated from employment on or after November 1, 1976 and before August 6, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-12585 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2796]

ETHAN INDUSTRIES, INC., BROOKLYN, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2796: 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 21, 1977 in response to a worker petition received on December 8, 1977 which was filed on behalf of former workers producing ladies' vinyl handbags at Ethan Industries, Inc., Brooklyn, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Ethan Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of handbags increased from 57.9 million units in 1975 to 90.2 million units in 1976 and rose to 92.8 million units in 1977. The ratio of imports to domestic production increased from 73.5 percent in 1975 to 111.1 percent in 1976 and 119.7 percent in 1977.

Customers surveyed who decreased purchases from Ethan Industries, Inc., in 1976 and 1977, increased purchases of imported handbags during the same period.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' vinyl handbags produced at Ethan Industries, Inc., Brooklyn, N.Y. contributed importantly to the decline in sales or production and to the total or partial separations of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at Ethan Industries, Inc., Brooklyn, N.Y. who became totally or partially separated from employment on or after December 4, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12586 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-3077]

HERCULES TROUSER CO., COLUMBUS, OHIO

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-3077: investigation regarding certification of eligibility to apply for

worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 7, 1978, in response to a worker petition received on January 31, 1978, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers shipping pants at the Columbus, Ohio, warehouse of the Hercules Trouser Co. During the course of the investigation, the Department determined that the Columbus, Ohio, warehouse ships pants, jackets and suits.

The Notice of Investigation was published in the FEDERAL REGISTER on February 26, 1978 (43 FR 7744). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Hercules Trouser Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision, thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

Pursuant to the requirements of 29 CFR 90.2, total or partial separations must be the equivalent to a total unemployment of five percent or 50 workers, whichever is less or a reduction in hours worked to 80 percent or less of average weekly hours.

The average number of production workers in 1977 was 5 percent higher than in 1976. In the first 2 months of 1978, the average number of workers was unchanged from the same period a year earlier. The average hours worked by production workers declined by only 13 percent in 1977 compared to 1976 and by 17 percent in the first two months of 1978 compared to the same period in 1977. No layoffs occurred in 1977.

There is no immediate threat to employment for the workers at the Columbus warehouse.

CONCLUSION

After careful review, I conclude that all workers at the Columbus, Ohio warehouse of the Hercules Trouser Company are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of April 1978.

HARRY GILLMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12587 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2832]

JO-MARS SPORTSWEAR, INC., EAST BOSTON, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2832: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 3, 1978, in response to a worker petition received on December 13, 1977, which was filed on behalf of workers and former workers producing women's sportswear at Jo-Mars Sportswear, Inc., East Boston, Mass. The investigation revealed that women's slacks, shorts and culottes were produced.

The Notice of Investigation was published in the FEDERAL REGISTER on January 17, 1978 (43 FR 2459). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jo-Mars Sportswear, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, industry analysis and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

Imports of women's, misses' and children's slacks and shorts increased 9.7 percent from 1975 to 1976 and increased 6.2 percent in the first three quarters of 1977 compared to the same period in 1976. The ratios of imports to domestic production and consumption increased from 35.2 percent and 26.0 percent, respectively, in 1975 to 36.4 percent and 26.7 percent, respectively, in 1976.

Jo-Mars performs contract sewing operations on women's sportswear for apparel manufacturers. The Department surveyed apparel manufacturers doing business with Jo-Mars. Respondents to the survey did not purchase imported women's sportswear. One manufacturer reported an increase in its business with Jo-Mars. Another manufacturer that decreased its business with Jo-Mars in 1977 compared to 1976 reported that its sales increased from 1975 to 1976 and from 1976 to 1977.

Income earned by Jo-Mars, in adjusted 1975 dollars, increased from 1975 to 1976 and from 1976 to 1977. Employment at Jo-Mars also increased from 1975 to 1976 and declined only marginally from 1976 to 1977.

CONCLUSION

After careful review, I conclude that all workers at Jo-Mars Sportswear, Inc., East Boston, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-12588 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2693]

MACHINE DESIGN SERVICE, INC., YOUNGSTOWN, OHIO

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-2693: 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, 1977 in response to a worker petition received on November 21, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers engineering and building steel mill and material handling equipment at Machine Design Service, Inc. of Youngstown, Ohio.

The notice of investigation was published in the FEDERAL REGISTER on December 12, 1977 (42 FR 63485). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Machine Design Service, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Machine Design Service, Incorporated provides engineering services and operates a small machine shop fabrication Department. Consulting engineering and custom fabrication are separate functions of the firm, with the engineering department giving the fabrication department very little work. The engineering department plans, designs and drafts blueprints for small capital equipment for steel companies, consultant engineers, and manufacturers. The fabrication department machines equipment parts and assembles some machines for steel companies, utilities, and manufacturers. Projects for both engineering and fabrication are performed on a custom basis, with each project being unique.

With respect to workers in the engineering department, the Department has determined that services are not "articles" within the meaning of section 222 of the Act, and that independent firms for which the subject provides services cannot be considered to be the "workers' firm".

The engineering department of Machine Design Service, Incorporated does not produce an article within the meaning of section 222 (3) of the Act and this Department has already determined that the performance of services is not covered by the adjustment assistance program. See Notice of Determination in *Pan American World Airways, Inc.* (TA-W-153, 40 FR 54639). The only question in this case is whether steelproducing customers, i.e., firms which produce an article, namely steel products, and for whom the services are provided, can be considered the "workers' firm." See Notice of Determination in *Nu-Car Driveway, Inc.* (TA-W-393, 41 FR 12749).

Machine Design Service, Incorporated conducts business with several steel companies, utilities, engineers, and small manufacturers. There is no contractual relationship between Machine Design Service, Incorporated and any customer. All work is performed on a custom basis.

Machine Design Service, Incorporated has no capital or financial investment in any customer and no customer has a capital or financial investment in Machine Design Service, Inc. All facilities and equipment of Machine Design Service, Incorporated are are owned by Machine Design Service, Inc.

All workers of Machine Design Service, Inc. are employed, controlled, and paid by Machine Design Service, Inc. Workers are not at any time under employment or supervision of any customer.

A Department survey revealed that customers that reduced purchases of steel mill and material handling equipment from the fabrication department of Machine Design Service, Incorporated either did not purchase such equipment from foreign sources or reduced imports.

CONCLUSION

After careful review, I determine that all workers in both the fabrication and engineering departments of Machine Design Service, Inc., Youngstown, Ohio, be denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 3rd day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12589 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2834]

MISTER DINO, LOS ANGELES, CALIF.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2834: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 3, 1978, in response to a worker petition received on December 12, 1977, which was filed on behalf of workers formerly producing ladies' coats at Mister Dino, Los Angeles, Calif.

The notice of investigation was published in the FEDERAL REGISTER on January 17, 1978 (43 FR 2459). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Mister Dino, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the International Ladies' Garment Workers' Union, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of women's, misses', and children's coats and jackets increased from 1,517,000 dozen in 1975 to 2,252,000 dozen in 1976, representing an increase of 48.5 percent. In the first 9 months of 1977, imports were recorded at 2,081,000 dozen, representing an increase of 23.9 percent compared to 1,680,000 dozen in the first 9 months of 1976. The ratio of imports to domestic production increased from 38.9 percent in 1975 to 57.5 percent in 1976.

The sole manufacturer of Mister Dino decreased orders for women's coats from Mister Dino in 1976 compared to 1975. Imports of women's coats by the manufacturer increased in the first half of 1977 compared to the first half of 1976. Since imported women's coats are ordered nearly 6 months prior to the time they are delivered, the impact of increased imports by the sole manufacturer of Mister Dino during the first half of 1977 was reflected in reduced orders to its domestic suppliers of women's coats during the second half of 1976.

A survey of the manufacturer's customers indicated that most customers either increased imports of women's coats or increased purchases of foreign-made women's coats from other domestic suppliers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with ladies' coats produced at Mister Dino, Los Angeles, Calif., contributed importantly to the decline in sales or production and to the total or partial separation of workers at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Mister Dino, Los Angeles, Calif., who became totally or partially separated from employment on or after November 30, 1976, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12590 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2682]

NEWARK TEXTILES PRINTING, INC., EAST NEWARK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department

of Labor herein presents the results of TA-W-2682: 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, 1977, in response to a worker petition received on November 21, 1977, which was filed on behalf of workers and former workers engaged in textile printing on fabrics at Newark Textiles Printing, Inc., East Newark, N.J. The petition was filed by the Machine Printers & Engravers Association.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (43 FR 63488). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Newark Textile Printing, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that imports of finished fabric (bleached, dyed, and printed) increased 14 percent from 1975 to 1976 and then declined 2 percent from 1976 to 1977. The ratios of imports to domestic production and consumption increased from 1.6 percent for both ratios in 1975 to 1.8 percent for both ratios in 1976. Imports of finished fabric can not be considered like or directly competitive with finished garments.

A survey of customers of Newark Textile Printing was conducted by the Department. None of the respondents reported purchasing any imported fabric in 1975, 1976, or 1977.

CONCLUSION

After careful review I conclude that all workers at Newark Textile Printing, Inc., East Newark, N.J. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3d day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research

[FR Doc. 78-12591 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-3122]

NOYMER MANUFACTURING CO., BOSTON, MASS.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3122: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 13, 1978, in response to a worker petition received on January 26, 1978, which was filed on behalf of workers and former workers producing leather goods at Noymer Manufacturing Co., Boston, Mass.

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8207). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Noymer Manufacturing Co., industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

The average number of workers at Noymer Manufacturing increased yearly from 1975 through 1977. Employment increased in the first quarter of 1978 compared with the same quarter of 1977. There is no indication that current workers are threatened with any involuntary separations.

Sales and production at Noymer Manufacturing increased in 1977 compared to 1976.

CONCLUSION

After careful review, I conclude that workers at Noymer Manufacturing Co., Boston, Mass., are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic research.

[FR Doc. 78-12592 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2694]

OHIO FERRO-ALLOYS CORP., PHILO, OHIO

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2694: 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, 1977, in response to a worker petition received on November 17, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing ferromanganese, ferrosilicon, and silicomanganese at the Philo, Ohio, plant of Ohio Ferro-Alloys Corp.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63485). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from the Ohio Ferro-Alloys Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, U.S. Department of Interior, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of ferrosilicon, ferromanganese (high carbon), and silicomanganese increased absolutely and relative to domestic production in 1976 compared to 1975. The ratio of imported ferromanganese and silicomanganese to the domestic production of each metal increased from 86.6 percent and 46.4 percent, respectively in the first 9 months of 1976 to 175.0 percent and 60.9 percent, resectively, in the same period of 1977. The ratio of imported ferrosilicon to domestic production increased from 15.1 percent in the first 11 months of 1976 to 18.0 percent in the same period of 1977.

A survey by the Department of customers of the Ohio Ferro-Alloys Corp. revealed that customers had decreased purchases of ferrosilicon, ferromanganese and silicomanganese from Ohio Ferro-Alloys and increased purchases of imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ferromanganese (high carbon), ferrosilicon, and silicomanganese produced at the Philo, Ohio, plant of the Ohio Ferro-Alloys Corp. contributed importantly to the decline in sales or production and to the total or partial separation of the workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Philo, Ohio, plant of the Ohio Ferro-Alloys Corp. who became totally or partially separated from employment on or after February 26, 1977, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Admininstration, and Planning.

[FR Doc. 78-12593 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2704]

REPUBLIC STEEL CORP., BERGER DIVISION, CLEVELAND, OHIO

Termination of Investigation; Correction

In FR Doc. 78-8150, appearing at pages 12968 and 12969 in the FEDERAL REGISTER of March 28, 1978, the Berger Division was omitted from the title block and the Strip Mill Division was erroneously cited in the text due to a clerical error. Therefore, the following changes should be made:

1. The 3rd column, the title block FR Doc. 78-8150, on page 12968, is corrected by inserting "Berger Division," after "Republic Steel Corp.," and before "Cleveland, Ohio," and
2. The 3rd column, 3rd paragraph, 8th line on page 12968 is corrected by deleting "Strip Mill Division and at the."

Signed at Washington, D.C., this 27th day of April 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-12594 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2586]

SAN FRANCISCO WILDFLOWERS, LTD., SAN FRANCISCO, CALIF.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2586: 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 9, 1977, in response to a worker petition received on October 18, 1977, which was filed on behalf of former workers producing women's and misses' blouses, shirts and dresses at San Francisco Wildflowers, Ltd., San Francisco, Calif.

The notice of investigation was published in the FEDERAL REGISTER on November 18, 1977 (42 FR 59565). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of San Francisco Wildflowers, Ltd., its customers, the San Francisco Board of Trade, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. The investigation has revealed that all four of the criteria have been met.

Women's and misses' blouses and shirts accounted for 75 percent of production by San Francisco Wildflowers. Imports of women's and misses' blouses and shirts increased 16 percent from 26,113 thousand dozen in 1975 to 30, 273 thousand dozen in 1976 and increased from 24,016 thousand dozen during January-September 1976 to 24,036 thousand dozen during January-September 1977. The ratio of imports to domestic production amounted to 74.8 percent in 1976, increasing from 70.4 percent in 1975.

Customers surveyed who decreased purchases from San Francisco Wildflowers, Ltd., in 1976 and 1977 increased purchases of imported women's and misses' blouses and shirts during the same period. Customers indicated that a large proportion of their purchases were imported blouses and shirts purchased from domestic suppliers.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's and misses' blouses and shirts produced at San Francisco Wildflowers, Ltd., San Francisco, Calif., contributed importantly to declines in sales and production and to the separation of workers at that firm. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers at San Francisco Wildflowers, Ltd., San Francisco, Calif., and its retail facility in Los Angeles, Calif., who became totally or partially separated from employment on or after October 4, 1976, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of April 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-12595 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-3001]

SHARON STEEL CO., DEARBORN DIVISION, DEARBORN, MICH.

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-3001: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 31, 1978, in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing all steel products at the Dearborn, Mich., plant of the Dearborn Division of the Sharon Steel Co. The investigation revealed that cold rolled alloy and carbon steel sheet and strip are produced at the plant.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7067). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Sharon Steel Co. and the United Steelworkers of America.

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. Without regard to whether any of the other criteria have been met the following criterion has not been met.

that a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated or are threatened to become totally or partially separated;

There have not been any significant separations, either total or partial, at the Dearborn, Mich., plant of the Dearborn Division of Sharon Steel Co. from January 5, 1977; 1 year prior to

the date of the petition, to the present. In addition, no threat of total or partial separations appears evident.

CONCLUSION

After careful review I conclude that all workers at the Dearborn, Mich., plant of the Dearborn Division of Sharon Steel Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12596 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-3002]

SHARON STEEL CO., BRAINARD STRAPPING DIVISION, WARREN, OHIO

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-3002: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on January 31, 1978, in response to a worker petition received on January 10, 1978, which was filed by the United Steelworkers of America on behalf of workers and former workers producing all steel products at the Warren, Ohio, plant of the Brainard Strapping Division of the Sharon Steel Co. The investigation revealed that steel strapping is produced at the plant.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7070). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Sharon Steel Co. and the United Steelworkers of America.

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. Without regard to whether any of the other criteria have been met the following criterion has not been met.

that a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

Average employment at the Warren plant increased in 1977 compared to 1976. there have not been any significant total or partial separations of employment from the Warren plant from January 5, 1977, 1 year prior to the petition date, to the present. In addition, no threat of total or partial separation appears evident.

CONCLUSION

After careful review I conclude that all workers at the Warren, Ohio, plant of the Brainard Strapping Division of Sharon Steel Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12597 Filed 5-8-78; 8:45 am]

[4510-29]

[TA—W—3021]

SOUTHWESTERN BELL TELEPHONE CO., NEWPORT, ARK.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In acordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3021: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 2, 1978, in response to a worker petition received on January 17, 1978, which was filed on behalf of operators formerly engaged in providing long distance dialing assistance to the customers of Southwestern Bell Telephone Co. at the Newport facility, Newport, Ark.

The notice of investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7066). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Southwestern Bell Telephone Co. and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. The Department has determined that services are not "articles" within the meaning of section 222 of the act, and that firms for which the subject firm provides services cannot be considered to be the "workers' firm."

The Department's investigation has revealed that operators at the Newport facility of Southwestern Bell Telephone—one of the 22 associated Bell Telephone companies—were engaged in providing long distance dialing assistance to customers of Southwestern Bell. Operators employed at the Newport facility were engaged solely in service functions and performed no production operations.

CONCLUSION

After careful review I determine that operators at the Newport, Ark., facility of Southwestern Bell Telephone Co. are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 28th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12598 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2805]

TENNESSEE FORGING STEEL, HARRIMAN, TENN., DIVISION

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-2805: 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 21, 1977, in response to a worker petition received on December 8, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing carbon steel bar-size light shapes at the Harriman, Tenn., Division of Tennessee Forging Steel Corp.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1556). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tennessee Forging Steel Corp., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the act must be met. It is concluded that all of the requirements have been met.

Imports of carbon steel bar-size light shapes increased from 164 thousand tons in 1976 to 263 thousand tons in

1977. Imports of carbon steel bar-size light shapes relative to domestic production increased from 19.5 percent in 1976 to 26.5 percent in 1977.

A major customer of the Harriman, Tenn., Division of Tennessee Forging Steel Corp., increased purchases of carbon steel bar-size light shapes from foreign suppliers in 1977 while reducing purchases from Tennessee Forging Steel Corp.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with carbon steel bar-size light shapes produced by the Harriman, Tenn., division of Tennessee Forging Steel Corp., contributed importantly to the decline in sales and production and to the separation of workers at that facility. In accordance with the provisions of the act, I make the following certification:

All workers at the Harriman, Tenn., Division of Tennessee Forging Steel Corp., who became totally or partially separated from employment on or after September 25, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 21st day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12599 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2698]

TORNETTA'S MOTOR TRUCKS, INC., CONSHOHOCKEN, PA.

Negative Determination Regarding Application for Reconsideration

On April 5, 1978, the petitioner, International Brotherhood of Teamsters, Chauffeurs, Warehousemen, and Helpers of America, Local No. 384, requested administrative consideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Tornetta's Motor Trucks, Inc., of Conshohocken, Pa. The determination was published in the FEDERAL REGISTER on March 7, 1978 (43 FR 9392).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

In its application, the petitioner raises one issue of substance contesting the denial. The issue presented is whether the company performs a service as the Department maintained in its denial or whether it produces an article within the meaning of the Trade Act of 1974. The petitioner claims that although the employees were not engaged in the production of an "article", without the steel and iron being delivered for the manufacture of the article, there would have been nothing to manufacture. Tornetta provided transport services for Alan Wood Steel Co. whose workers were certified eligible to apply for adjustment assistance (43 FR 9380). Alan Wood Steel Co. does not own or control or have any financial interest in the business of Tornetta.

The Department has earlier determined that services, such as transportation services, are not "articles" within the meaning of section 222(3) of the Act (see Notice of Negative Determination, Pan American World Airways, Inc., TA-W-153, 40 FR 54639). Further, the Department has determined that a firm for which such services are provided and which is independent of the petitioners' firm cannot be considered to be the "workers' firm" within the meaning of section 222 (see Notice of Negative Determination, Nu-Car Driveaway, Inc., TA-W-393, 41 FR 12749).

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact of misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 24th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12600 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2961]

UNION CARBIDE CORP. LINDE DIVISION, TONAWANDA, N.Y.

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-2961: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on January 25, 1978 in response to a worker petition received on January 10, 1978 which was filed by the Oil, Chemical and Atomic Worker's International Union on behalf of workers and former workers producing cryogenic processing equipment, storage equipment, and distribution systems for air separation units at the Tonawanda, N.Y., plant of Union Carbide Corp. Linde Division.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7068). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Union Carbide Corporation, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met for air separation equipment produced for industrial uses, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that the Tonawanda, New York plant of Union Carbide Corp. Linde Division produces air separation equipment for use by Union Carbide primarily for the production of industrial gases used by the steel industry, and air separation equipment for use with Union Carbide UNOX Wastewater Treatment Systems which are primarily sold to municipalities.

For the period from 1975 to date, with the exception of air separation equipment sold for waste water treatment, all air separation equipment manufactured at the Tonawanda, New York factory has been for the use of Union Carbide in the United States or its affiliated companies in other countries. Union Carbide has not imported any equipment of the type manufactured at its Tonawanda factory during the time period in question.

For air separation equipment produced for wastewater treatment systems, the following criterion has not been met.

That sales or production, or both, of the firm or subdivision have decreased absolutely.

With regard to air separation equipment manufactured at the Tonawanda plant and sold for waste water treatment, the number of units placed in operation increased in 1977 from 1976 and the man-hours at the plant used in their production increased in the same period.

Further, the bulk of the air separation equipment sold by Union Carbide for waste water treatment is sold to municipalities and is partially financed by the U.S. Environmental Protection Agency, which requires that the municipalities purchase equipment manufactured in the United States. Thus, there cannot be import competition for that business. Moreover, the waste water treatment process for which these plants are used is patented by Union Carbide, and the other major supplier of air separation equipment for Union Carbide's patented municipal waste water treatment process is a licensee under Union Carbide patents and manufacturers this air separation equipment exclusively in the United States.

CONCLUSION

After careful review I conclude that all workers producing air separation equipment at the Tonawanda, New York plant of Union Carbide Corporation Linde Division are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Singed at Washington, D.C. this 28th day of April 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12601 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-2679]

UNION CARBIDE CORP. CHEMICALS AND PLASTICS DIVISION, BOUND BROOK, N.J.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-2679: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on November 29, 1977, in response to a worker petition received on November 17, 1977, which was filed by the Oil, Chemical and Atomic Workers International Union on behalf of workers and former workers producing polystyrene, hexa formaldahyde, resins, standard moldings and polyethylene at the Bound Brook, N.J. plant of Union Carbide Corp. Chemicals and Plastics Division. The investigation revealed that products produced at the plant fell into three basic families of plastics: polystyrene, polyethylene and phenolics.

The Notice of Investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63486). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Union Carbide Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The investigation revealed that the Bound Brook plant is a major chemicals and plastics manufacturing facility. Hundreds of different kinds of several basic families of plastics are produced. No finished products are produced at this plant. Products produced at this plant fall into three basic families of plastics, polyethylenes, phenolics, and polystyrenes.

In June 1977, Union Carbide closed down polystyrene production at the Bound Brook plant and transferred all production of polystyrenes to its Marietta, Ohio plant, the only other domestic plant of Union Carbide that produces polystyrenes.

The investigation revealed that there have been no layoffs at the Bound Brook plant due to reduced operations or work contractions in either the phenolics or polyethylene operating areas of the plant in the period from November 1, 1976 to date, which includes the entire potential impact year. There is also no immediate threat of any layoffs in those areas.

While some workers employed in the phenolics and polyethylene operating areas were laid off, those layoffs were a direct result of bumping and job placement procedures from displaced workers in the polystyrene operating area as defined by the collective bargaining agreement in effect at the plant.

All layoffs at the Bound Brook plant during the potential impact period were due to the shutdown and subsequent transfer of polystyrene production from the Bound Brook plant to the Marietta, Ohio plant of Union Carbide Corp. Chemicals and Plastics Division.

Imports of styrene plastics materials decreased in absolute terms, from 1973 to 1974, decreased from 1974 to 1975, and increased from 1975 to 1976. Imports decreased 8 percent from 1976 to 1977. The ratios of imports to domestic production and consumption decreased from 0.43 percent and 0.50 percent, respectively, in 1975 to 0.36 percent and 0.37 percent, respectively, in 1976.

In each year 1973-1977, the ratio of imports to domestic production of styrene plastics materials was less than one percent.

In each year 1974-1977, U.S. exports of styrene plastics materials exceeded imports by more than 1,000 percent.

CONCLUSION

After careful review, I conclude that all workers at the Bound Brook, N.J. plant of Union Carbide Corp. Chemicals and Plastics Division are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 3rd day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-12602 Filed 5-8-78; 8:45 am]

[4510-28]

[TA-W-3418]

WAKEFIELD ENGINEERING INC., IMPERIAL BEACH, CALIF.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3418: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on March 27, 1978, in response to a worker petition received on March 20, 1978, which was filed by three workers on behalf of employees of Wakefield Engineering Inc., Imperial Beach, Calif.

The notice of investigation was published in the FEDERAL REGISTER on April 11, 1978 (42 FR 15205). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Wakefield Engineering Inc., industry analysts, and department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

As a consequence of the establishment in Mexico of production facilities to produce heat sinks and the subsequent transfer of heat sink production activities at the Imperial Beach plant of Wakefield Engineering Inc. to Mexico, the value of imports of heat

sinks identical to the heat sinks that were produced at the Imperial Beach facility increased from 1976 to 1977 and will further increase in 1978.

Employment and production declines associated with the transfer of production to Mexico and increased shipments from Mexico began in April 1978. All production activity and associated employment is expected to terminate at the Imperial Beach plant of Wakefield Engineering Inc., by the end of May, 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with heat sinks produced by the Wakefield Engineering Inc., Imperial Beach, Calif. plant contributed importantly to the decline in production and to the separation of workes at that facility. In accordance with the provision of the Act, I make the following certification:

All workers at the Wakefield Engineering Inc., Imperial Beach, Calif. plant who became totally or partially separated from employment on or after April 10, 1978, and before June 17, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 27th day of April 1978.

James F. Taylor,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-12603 Filed 5-8-78; 8:45 am]

[4510-26]

Occupational Safety and Health Administration

[V-78-6]

EASTERN EQUIPMENT AND ENGINEERING CO.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTIONS: (1) Notice of application for variance and interim order. (2) Grant of interim order.

SUMMARY: This notice announces the application of Eastern Equipment & Engineering Co. for a variance and interim order pending a decision on the application for a variance from the standard prescribed in 29 CFR 1926.451(a) (4) and (5) concerning scaffolding. It also announces the granting of an interim order until a decision is rendered on the application for variance.

DATES: The effective date of the interim order is May 9, 1978. The last date for interested persons to submit comments is June 8, 1978. The last date for affected employers and employees to request a hearing on the application is June 8, 1978.

ADDRESSES: Send comments or requests for a hearing to: Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N-3668, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT:

James J. Concannon, Director, Office of Variance Determination at the above address, telephone 202-523-7121;

or the following regional and area offices:

U.S. Department of Labor, Occupational Safety and Health Administration, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

U.S. Department of Labor, Occupational Safety and Health Administration, Federal Building, Room 1110, Charles Center, 31 Hopkins Plaza, Baltimore, Md. 21201.

I. NOTICE OF APPLICATION

Notice is hereby given that Eastern Equipment & Engineering Co., Route 13, R.D. 4, Box 100, Seaford, Del. 19973 has made application pursuant to section 6(d) of the Occupational Safety and Health Act of 1970 (84 Stat. 1596; 29 U.S.C. 655) and 29 CFR 1905.11 for a variance, and interim order pending a decision on the application for a variance, from the standards prescribed in 29 CFR 1926.451(a) (4) and (5) dealing with scaffolding.

The addresses of the places of employment that will be affected by the application are construction projects where the applicant is engaged in construction operations.

The applicant certifies that employees who would be affected by the variance have been notified of the application by giving a copy of it to their authorized employee representative, and by posting a copy at all places where notices to employees are normally posted. Employees have also been informed of their right to petition the Assistant Secretary for a hearing.

Regarding the merits of the application, the applicant contends that it is providing a place of employment as safe as that required by § 1926.451(a) (4) and (5). Section 1926.451(a) (4) and (5) reads as follows:

(4) Guardrails and toeboards shall be installed on all open sides and ends of platforms more than 10 feet above the ground or floor, except needle beams scaffolding and floats (see paragraphs (p) and (w) of this section). Scaffolds 4 to 10 feet in height having a minimum horizontal dimension in either direction of less than 45 inches, shall have standard guardrails installed on all open sides and ends of the platform.

(5) Guardrails shall be 2 x 4 inches, or the equivalent, approximately 42 inches high, with a midrail, when required. Supports shall be at intervals not to exceed 8 feet. Toeboards shall be minimum of 4 inches in height.

The applicant's business, which is part of the tank building industry, involves the erection of steel plate segments bolted into circumferential rings. Due to the unique nature of the construction, special procedures (including special scaffolds) have been developed. For instance, as opposed to more conventional scaffolding, tank scaffolds must be highly portable and have a relatively low density of occupancy by workmen. These scaffolds are raised up the shell of the tank as new rings of steel are added and work is completed at the level below.

Most plate structures are fabricated from standard length plates obtained from steel mills. These plates (each approximately 5 feet wide and 8 feet high) are preprepared by tank manufacturers with holes punched and normally painted. The scaffolding brackets are bolted on each succeeding ring at the vertical seam after the ring is assembled.

The tank scaffolds are not equipped with toeboards as required by § 1926.451(a) (4) and (5). Instead, the applicant has stated that most tools are placed in well-designed "loose tool" containers provided for that purpose. The area directly below and far enough away from the base of the scaffold to contain anything that falls from above is roped off. Because the contour of the steel plates of the tank face is curved and the adjacent edge of the scaffold platform is straight, a post is affixed to the outer edge of the bracket through which a ⅝ inch steel cable is pulled hand taut to form hand and midrails.

The applicant contends that its scaffold planking meets the maximum permissible span (distance between planking supports) and scaffold grade requirements contained in § 1926.451(a) (10).

The scaffolds are normally occupied by two employees. The employees carry their tools and equipment from one location to the next as work progresses. Scaffolds are moved approximately three times daily.

II. GRANT OF INTERIM ORDER

It appears from the application for a variance and interim order that the proposed scaffolding described in the application, with certain variations, will provide to the affected employees a place of employment as safe as that which would be provided if the applicant complied with 29 CFR 1926.451(a) (4) and (5).

It further appears that an interim order is necessary to prevent undue hardship to the applicant and its employees pending a decision on the variance. Therefore it is ordered, pursuant

to the authority in section 6(d) of the Occupational Safety and Health Act of 1970, in 29 CFR 1905.11(c) and in Secretary of Labor's Order No. 8-76 (41 FR 25059) that Eastern Equipment & Engineering Co. be, and it is hereby, authorized to use scaffolds in accordance with the following conditions in lieu of complying with the requirements of § 1926.451(a) (4) and (5):

(a) The applicant's loose tools and equipment shall be kept in well-designed tool containers. This does not include fitup bars, key plates, key channels, or long-handled maul which may be placed on the scaffold plank during the time they are required for work. The loose tool containers shall be secured to prevent their upset or dislodgement from the scaffold area.

(b) Areas beneath and far enough away from the base of the scaffold to contain anything that falls from above shall be roped off and posted with clearly visible signs stating: "Danger Overhead Work."

(c) The space between the innermost edge of the scaffold platform and the curved plate structure of the tank shell shall not exceed 12 inches without protective measures. A taut wire rope supported on scaffold brackets at plank level may be used to divide any space exceeding 12 inches in lieu of using a guardrail or tie-off system.

(d) All planking shall be secured from movement or overlapped in accordance with § 1926.451(a)(12).

(e) Guardrails shall be constructed of taut wire rope, and shall be supported by pipes fitted over a peg welded to the outer edge of the bracket. These guardrails shall be at least of equivalent strength, stability, and height as those required for the 8-foot span of 2 inch x 4 inch wood rails by 29 CFR 1926.451(a)(5). Guardrail supports shall be located at no greater than 8-foot intervals.

(f) The maximum distance between brackets to which scaffolding and guardrail supports are attached shall be 10 feet. These brackets shall be bolted to the steel plates.

(g) No more than three employees shall be working on a 10 foot span of scaffold planking at any time.

Eastern Equipment & Engineering Co. shall give notice of this interim order to employees affected thereby by the same means required to be used to inform them of the application for a variance.

This interim order shall remain in effect until a decision is rendered on the application for a variance.

Signed at Washington, D.C., this 3rd day of May 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-12584 Filed 5-8-78; 8:45 am]

[3510-12]

NATIONAL ADVISORY COMMITTEE ON OCEANS AND ATMOSPHERE

MEETING

MAY 5, 1978.

Pursuant to Sec. 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. I (Supp. V, 1975), notice is hereby given that the National Advisory Committee on Oceans and Atmosphere (NACOA) will hold a meeting Thursday and Friday, May 25-26, 1978. These sessions will be open to the public and will begin at 9 a.m. on both days. The Thursday session will be held in the Woodrow Wilson Seminar Room of the Congressional Research Library of Congress, First and Independence Avenue SE., Washington, D.C. Friday's session will take place in the Penthouse of Page Building No. 1, 2001 Wisconsin Avenue NW., Washington, D.C.

The Committee, consisting of 18 non-Federal members, appointed by the President from State and local governments, industry, science, and other appropriate areas, was established by the Congress by Pub. L. 95-63, on July 5, 1977. Its duties are to: (1) undertake a continuing review, on a selective basis, of national ocean policy, coastal zone management, and the status of the marine and atmospheric science and service programs of the United States; (2) advise the Secretary of Commerce with respect to the carrying out of the programs administered by the National Oceanic and Atmospheric Administration; and (3) submit an annual report to the President and to the Congress setting forth an assessment, on a selective basis, of the status of the Nation's marine and atmospheric activities, and submit such other reports as may from time to time be requested by the President or the Congress.

The agenda will include the following topics:

May 25, 1978—Woodrow Wilson Seminar Room, Congressional Research Service, Library of Congress:
- 0900—Opening Remarks—Chairman, NACOA.
  - Welcome and Overview of Current Significant Congressional Research Service (CRS) Activities on Ocean and Atmospheric Matters—Mr. Gilbert Gude, Director, CRS.
- 0930—Discussion with Members of the Congress on Marine and Atmospheric Policies and Programs—Chairman, NACOA.
- 1130—Office of Technology Assessment (OTA) Ocean Activities—Mr. Robert Niblock, Program Manager.
- 1200—Lunch.
- 1330—Discussions with Members of the Congress (continued)—Chairman, NACOA.
- 1700—Adjourn.

May 26, 1978—Penthouse, 5th floor, Page Building No. 1:
- 0900—Opening Remarks—Chairman, NACOA.
  - NACOA activity since last meeting—Members.
  - Plans for work sessions—Panel chairmen.
- 1030—Work sessions:
  - Ocean Use Panel (Penthouse)—Dr. Evelyn Murphy, Panel chairman.
    - Status of Coastal Zone Management (CZM) program and prospects—Mr. Robert Knecht, Assistant Administrator for CZM, NOAA.
  - R. & D. Panel (Room 401, Page No. 2)—Dr. John Knauss, Panel chairman.
    - Economics of Ocean Use—Mr. Otto Klima, Member.
    - Arctic Policy and Research Facilities—Dr. John Knauss.
- 1230—Lunch.
- 1330—Work sessions (continued):
  - Ocean Use Panel (Penthouse)—Dr. Evelyn Murphy, Panel chairman.
    - Oil Spill Contingency Plans and Clean Up Operations.
  - R. & D. Panel (Room 401, Page No. 2)—Dr. John Knauss, Panel chairman.
    - NOAA's R. & D. Program—Dr. Ferris Webster, Assistant Administrator for R. & D., NOAA.
- 1500—Plenary session (Penthouse)—Chairman, NACOA.
  - Reports of Panel chairmen.
  - Annual Report.
  - Future Meeting Plans.
- 1700—Adjourn.

The public is welcome at these sessions and will be admittted to the extent of the seating available. Persons wishing to make formal statements should notify the Chairman in advance of the meeting. The Chairman retains the perogative to place limits on the duration of oral statements and discussions. Written statements may be submitted before or after each session.

Additional information concerning this meeting may be obtained through the committee's Executive Director, Dr. Douglas L. Brooks, whose mailing address is: National Advisory Committee on Oceans and Atmosphere, 3300 Whitehaven Street NW. (Room 434, Page No. 1), Washington, D.C. 20235. The telephone number is 254-8418.

DOUGLAS L. BROOKS,
Executive Director.

[FR Doc. 78-12745 Filed 5-8-78; 8:45 am]

[7510-01]

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[78-12]

SPACE SCIENCE STEERING COMMITTEE, GAMMA RAY OBSERVATORY (GRO),

Meeting

The above mentioned advisory Subcommittee will meet at NASA Headquarters, 400 Maryland Avenue SW., Washington, D.C., on May 25 through May 27, 1978, in room 5026 from 8:30 a.m. until 9 p.m. on May 25, 8:30 a.m. until 5 p.m. on May 26, and 8:30 a.m. until 12 noon on May 27, if required.

The Subcommittee will discuss, evaluate and categorize proposals submitted for participation in flight investigations of the proposed Gamma Ray Observatory mission.

Throughout the Subcommittee sessions, the professional qualifications of the proposers, and their potential

scientific contributions to the detailed feasibility study of the GRO mission, will be candidly discussed and appraised. Discussions of these matters in a public session would invade the privacy of the proposers, and the other individuals involved, therefore, the meeting will be closed to members of the public.

Since the Subcommittee sessions will be concerned throughout with matters listed in 5 U.S.C. 552b(c)(6), it has been determined that the sessions will be closed to the public.

For further information, please contact Dr. Albert G. Opp, NASA Headquarters, Washington, D.C. 20546, telephone 202-755-8493.

Dated: May 8, 1978.

KENNETH R. CHAPMAN,
Associate Administrator for External Relations.

[FR Doc. 78-12541 Filed 5-8-78; 8:45 am]

[6820-26]

GENERAL SERVICES ADMINISTRATION

National Archives and Records Service

SIXTH ANNUAL REPORT OF THE PRESIDENT ON FEDERAL ADVISORY COMMITTEES COVERING CALENDAR YEAR 1977

Availability of Publication

The above report is available to Federal government sources by contacting the General Services Administraion, Committee Management Secretariat (AL/CMS), Washington, D.C. 20408, telephone 202-566-1642.

Purchase of the report by the general public is available through the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The price is $3.50, the stock number is 052-003-00521-2, and the catalog number is PR-39.10:977.

The Compilation of Agency Submissions for the Sixth Annual Report of the President on Federal Advisory Committees Covering Calendar Year 1977 will be available on microfilm for viewing and/or purchase through the National Archives and Records Service at a later date which will be announced in the FEDERAL REGISTER.

Dated: April 28, 1978.

JAMES B. RHOADS,
Archivist of the United States.

[FR Doc. 78-12497 Filed 5-8-78; 8:45 am]

[4510-23]

NATIONAL COMMISSION ON EMPLOYMENT AND UNEMPLOYMENT STATISTICS

PUBLIC MEETING

Notice is hereby given that the National Commission on Employment and Unemployment Statistics will hold a public meeting on June 7 and 8, 1978, in room 6510, 2020 K Street NW., Washington, D.C. 20006.

The National Commission on Employment and Unemployment Statistics was established under section 13 of the Emergency Jobs Program Extensions Act of 1975, Pub. L. 94-444. Its purpose is to advise the President and the Congress on reliable and comprehensive measurements of employment and unemployment by examining the procedures, concepts, and methodology involved in employment and unemployment statistics, and suggesting ways and means of improving them.

The meetings will begin each day at 9:30 a.m. to discuss alternative labor force measures and appraise the concepts and definitions underlying the counting of special groups in the labor force. The public is invited to attend. Official records of the meetings will be available for public inspection by contacting:

Mr. Wesley H. Lacey, Administrative Officer, National Commission on Employment and Unemployment Statistics, Suite 550, 2000 K Street NW., Washington, D.C. 20006.

Signed at Washington, D.C., this 5th day of May 1978.

SAR A. LEVITAN,
Chairman.

[FR Doc. 78-12508 Filed 5-8-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

SUBCOMMITTEE ON ANTHROPOLOGY OF THE ADVISORY COMMITTEE FOR BEHAVIORAL AND NEURAL SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Subcommittee on Anthropology of the Advisory Committee for Behavioral and Neural Sciences.
Date and time: May 25, 26, and 27, 1978—9 a.m. to 6 p.m.
Place: Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. John Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4208.
Purpose of subcommittee: To provide advice and recommendations concerning support for anthropology.
Agenda: To review and evaluate proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

MAY 4, 1978.

[FR Doc. 78-12571 Filed 5-8-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON CELL BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Cell Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.
Date and time: May 25, 26, and 27, 1978—9 a.m. to 6 p.m.
Place: Room 338, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Closed.
Contact person: Dr. Gertrude Kasbekar, Assistant Program Director for Cell Biology, Room 334-C, National Science Foundation, Washington, D.C. 20550, telephone 202-634-4117.
Purpose of subcommittee: To provide advise and recommendations concerning support for research in cell biology.
Agenda: To review and evaluate research proposals as part of the selection process for awards.
Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determina-

tions by the Acting Director, NSF, on February 19, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

MAY 4, 1978.

[FR Doc. 78-12570 Filed 5-8-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-313]

ARKANSAS POWER & LIGHT CO., ARKANSAS NUCLEAR ONE—UNIT NO. 1

Order for Modification of License

I. The Arkansas Power & Light Co. (the licensee), is the holder of Facility Operating License No. DPR-51 which authorizes the operation of the nuclear power reactor known as Arkansas Nuclear One—Unit No. 1, (the facility or ANO-1) at steady reactor power levels not in excess of 2,568 megawatts thermal (rated power). The facility consists of a Babcock & Wilcox Co. designed pressurized reactor (PWR) located at the licensee's site in Pope County, Ark.

II. On April 21, 1978, the Commission issued an order, modifying license No. DPR-51, to require a limitation on operating power level and to require certain operating procedures. This order was the result of the identification of certain errors in the Emergency Core Cooling System (ECCS) performance calculations submitted by the licensee in accordance with the requirements of the Commission's regulations, 10 CFR 50.46.

As noted in our order of April 21, 1978, Babcock & Wilcox (B&W) the designer of the Nuclear Steam Supply System (NSSS) for this facility had performed certain calculations demonstrating that with the operating procedures required by our order of April 21, 1978, ECCS performance would remain within the limits of 10 CFR 50.46(b), with operation at full power, 2,568 Mwt.

However, since the NRC staff had not had the opportunity to review these calculations, the NRC staff had recommended and the licensee agreed to limit power to 2,311 Mwt.

The staff has now had the opportunity to review the B&W calculations which are contained in a document entitled "Analysis of Small Breaks in the Reactor Coolant Pump Discharge Piping for the B&W Lowered Loop 177 FA Plants," April 24, 1978 (the B&W Summary), which describes the methods used and the results obtained in the above analysis. The analysis models operator action by assuming a step increase in flow to the reactor vessel (with balanced flow in the three intact loops) 10 minutes after the LOCA reactor protection system trip signal occurs.

By letter dated April 25, 1978, the licensee submitted by reference the B&W Summary for our review. In their submittal the licensee stated that based on the B&W Summary, they were convinced that ANO-1 can operate at 100 percent full power (2,568 Mwt) and maintain a substantial margin to the 10 CFR 50.46 limits. Accordingly, based on the above discussion, the licensee requested an amendment to facility operating license No. DPR-51 to authorize the facility to operate at steady state core power levels not in excess of 2,568 Mwt.

By letter dated April 21, 1978, supplemented by letter dated April 27, 1978, the licensee stated that they have incorporated in their procedures necessary operator actions on a time scale consistent with that assumed in the analysis, and that they have verified from tests that the assumed operator response time was achievable. The licensee also committed to submit as appropriate a request for an amendment of the ANO-1 Technical Specifications to reflect adoption of these procedures and committed to submit a proposal for a permanent solution to this problem by July 21, 1978.

We have completed a preliminary review of the B&W Summary and as a result requested that B&W analyze additional breaks. B&W states that a 0.13 ft.^{2} discharge line break, with operator actions consistent with that modeled in the analysis, is the most limiting case. To arrive at this conclusion, B&W has performed analyses at break sizes of 0.3, 0.2, 0.17, 0.15, 0.13, 0.1, and 0.04 ft.^{2}. (The 0.3 and 0.2 breaks were analyzed for 2,772 Mwt, the others for 2,568 Mwt.) The results, which were obtained using an approved appendix K model for blowdown, indicate core uncovery for about 300 seconds for the 0.13 ft.^{2} break. For this break size B&W has conservatively calculated the peak clad temperature to be approximately 1,551 F; well below the limits of 10 CFR 50.46(b).

Based on review of the B&W Summary and subsequent analyses which were submitted by the licensee by letter dated April 28, 1978, we find that the calculations support the conclusion that a 0.13 ft.^{2} discharge line break is the most limiting case. However, the summary does not demonstrate that the assumptions employed in supplying heat inputs to the FOAM portion of the calculations were conservative. We are also reviewing whether use of simplified input in the FOAM calculations satisfies the requirement for calculation using an approved model. Accordingly, we cannot conclude at this time that operation of ANO-1 at 100 percent of licensed power would be fully in conformance with 10 CFR 50.46. On the other hand, the range of calculations now available shows that for operation of this facility at power levels up to 100 percent of full power (2,568 Mwt), ECCS performance calculations for the limiting small break indicate that this break has a very substantial margin on peak clad temperature below the limits of 10 CFR 50.46(b) if appropriate operator action is properly taken (as described above).

Therefore, until we have had the opportunity to fully assess the B&W calculations, supplemented by license letter dated April 28, 1978, the staff cannot determine that operation of ANO-1 at full power under the conditions of the revised calculations by B&W applicable to this facility conforms fully to the requirements of 10 CFR 50.46. However, operation of ANO-1 at power levels of up to 2,568 Mwt and in accordance with appropriate operating procedures will ensure that the ECCS will conform to the performance criteria of 10 CFR 50.46. Therefore, while B&W calculations applicable to this facility are completed to achieve full compliance with 10 CFR 50.46, operation of the facility at the full power level up to 2,568 Mwt with appropriate operating procedures specified herein will not endanger life or property or the common defense and security and the limitations imposed by order of April 21, 1978, may be modified accordingly.

III. Copies of the following documents are available for inspection at the Commission's Public Document Room at 1717 H Street, Washington, D.C. 20555, and are being placed in the Commission's local public document room at the Arkansas Polytechnic College, Russellville, Ark.

1. Letter from Mr. Daniel H. Williams to Mr. R. W. Reid, Chief, Operating Reactors Branch No. 4, dated April 17, 1978.

2. Letter from Mr. William Cavanaugh, III to Mr. R. W. Reid, Chief, Operating Reactors Branch No. 4, dated April 25, 1978.

3. Letters from Mr. Donald A. Rueter to Mr. R. W. Reid, Chief, Operating Reactors Branch No. 4, dated April 21, 27, and 28, 1978.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations in 10 CFR parts 2 and 50: *It is ordered,* That facility operating license No. DPR-51 is hereby amended by adding the following provisions in lieu of the provisions of our order of April 21, 1978:

(1) As soon as possible, the licensee shall submit a reevaluation wholly in conformance with 10 CFR 50.46 of ECCS cooling performance calculated in accordance with the B&W Evaluation Model for operations with operat-

ing procedures described in its letters of April 17, April 21, and April 28, 1978,

(2) The power level shall not exceed 2,568 Mwt, and

(3) Until further authorization by the Commission, the licensee shall operate in accordance with the procedures described in its letter of April 21, 1978, supplemented by letters dated April 27, 1978.

Dated at Bethesda, Md., this 28th day of April 1978.

For the Nuclear Regulatory Commission.

VICTOR STELLO, Jr.,
Director, Division of Operating Reactors, Office of Nuclear Reactor Regulation.

[FR Doc. 78-12550 Filed 5-8-78; 8:45 am]

[7590-01]

[Docket No. 50-316]

INDIANA & MICHIGAN ELECTRIC CO. AND INDIANA & MICHIGAN POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 5 to facility operating license No. DPR-74, issued to Indiana & Michigan Electric Co. and Indiana Michigan Power Co. which authorizes power operation not to exceed 3,391 megawatts thermal (100 percent of the rated core power level) for the Donald C. Cook nuclear plant, unit No. 2 (the facility) located in Berrien County, Mich. The amendment is effective as of its date of issuance. This action is a part of the licensing action encompassed in the "notice of consideration of issuance of facility operating licenses and notice of opportunity for hearing pursuant to 10 CFR part 50, appendix D, section C."

Facility operating license No. DPR-74 contained condition 2.C(3)(e) requiring staff approval prior to power operation in excess of 50 percent of rated power. This condition relates to the approval by the Commission of the WRB-1 correlation and the improved thermal design procedure (Westinghouse topical reports WCAP-8762 "New Westinghouse correlation WRB-1 for predicting critical heat flux in rod bundles with mixing vane grids" and WCAP-8567 "improved thermal design procedure") for use in the analysis of the Donald C. Cook nuclear plant, unit No. 2. License condition 2.C(3)(e) has been resolved to the satisfaction of the Commission and the appropriate restriction has been removed in amendment No. 5

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR part 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) amendment No. 5 to license No. DPR-74, and (2) the Commission's related safety evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Mich. A copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Md., this 28th day of April 1978

For the Nuclear Regulatory Commission.

KARL KNIEL,
Chief, Light Water Reactors Branch No. 2, Division of Project Management.

[FR Doc. 78-12551 Filed 5-8-78; 8:45 am]

[7590-01]

[Docket No. 50-309]

MAINE YANKEE ATOMIC POWER CO.

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued amendment No. 37 to facility operating license No. DPR-36 issued to Maine Yankee Atomic Power Co., which revised the license and its appended technical specifications for operation of the Maine Yankee atomic power station, located in Lincoln County, Maine. The amendment is effective as of its date of issuance.

The Commission requested that the licensee provide his fire protection program. The licensee submitted a number of documents setting forth the fire protection program proposed for continued facility operation. These materials serve to modify the facility description and the facility technical specification provisions. These submittals are the licensee's application to operate his facility in accordance with the fire protection program he has proposed. This amendment authorizes certain of the modifications, upon specified implementation schedules; specifies schedules for completion of certain additional items; revises the technical specifications to add requirements regarding additional existing fire proctection systems, specifically sprinkler systems and hose stations in the turbine building; and clarifies the fire hose hydrostatic test requirements.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) The licensee's submittals dated January 31, July 12, September 28, and December 16, 1977, and March 14 and 24, 1978, (2) amendment No. 37 to license No. DPR-36, and (3) the Commission's related safety evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Wiscasset Public Library Association, High Street, Wiscasset, Maine. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director Division of Operating Reactors.

Dated at Bethesda, Md., this 24th day of April 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-12552 Filed 5-8-78; 8:45 am]

[7590-01]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued

amendment No. 45 to facility operating license No. DPR-46, issued to the Nebraska Public Power District (the licensee), which revised the technical specifications for operation of the Cooper nuclear station (the facility) located in Nemaha County, Nebr. The amendment is effective as of the date of issuance.

This amendment revises technical specifications related to undervoltage protection equipment in order that the same technical specifications exist as were in effect prior to the issuance of amendment No. 43 on April 11, 1978. We have modified the requirements of amendment No. 43 to require that installation of new equipment be complete by the end of the next cold shutdown of more than 5 days duration after equipment becomes available. The change is necessary because of the unavailability of equipment for installation during the present refueling outage. The existing plant equipment and the corresponding technical specifications contained in this amendment provide an acceptable level of undervoltage protection until new undervoltage protection relays can be obtained and there is an opportunity for their installation during a scheduled outage.

The Commission has made appropriate findings as required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see: (1) amendment No. 45 to license No. DPR-46, and (2) the Commission's related letter to the licensee dated May 2, 1978. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Auburn Public Library, 118 15th Street, Auburn, Nebr. 68305. A single copy of items (1) and (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 2d day of May 1978.

For the Nuclear Regulatory Commission.

DAVID M. VERRELLI,
Acting Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-12553 Filed 5-8-78; 8:45 am]

[7590-01]

[Docket No. 50-298]

NEBRASKA PUBLIC POWER DISTRICT

Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 46 to Facility Operating License No. DPR-46, issued to the Nebraska Public Power District (the Licensee), which revised the Technical Specifications for operation of the Cooper Nuclear Station (the facility) located in Nemaha County, Nebr. The amendment is effective as of the date of issuance.

The amendment modifies the Technical Specifications to: (1) permit operation of the facility during Cycle 4 with 100 improved two water rod 8x8R reload fuel bundles, designed and fabricated by the General Electric Co. (GE) and having average enrichments of 2.74 and 2.83 weight/percent U-235, and (2) revise limits based on transient and accident analysis for the Cycle 4 core loading.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Notice of Proposed Issuance of Amendment to Facility Operating License in connection with this action was published in the FEDERAL REGISTER on March 31, 1978 (43 FR 13650). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated February 6, 1978, as supplemented March 3, April 11, 14, 26, and 27, 1978, (2) Amendment No. 46 to License No. DPR-46, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. and at the Auburn Public Library, 118 15th Street, Auburn, Nebr. 68305. A single copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Md., this 2nd day of May 1978.

For the Nuclear Regulatory Commission.

BRIAN K. GRIMES,
Assistant Director for Engineering and Projects, Division of Operating Reactors.

[FR Doc. 78-12554 Filed 5-8-78; 8:45 am]

[7590-01]

[Docket No. 50-272]

PUBLIC SERVICE ELECTRIC AND GAS CO., ET AL. (SALEM NUCLEAR GENERATING PLANT, UNIT 1)

Order Regarding Prehearing Conference

Notice is hereby given that, pursuant to 10 CFR 2.751a, a prehearing conference in the above-referenced proceeding will be held on Thursday, May 18, 1978, at 2:30 p.m. at the Salem County Courthouse, Courtroom 3, Salem, N.J.

All parties to this proceeding and all persons desiring to intervene as parties to this proceeding shall attend this prehearing conference and be prepared to discuss the issues raised by all the contentions which will have been filed pursuant to this Board's Memorandum and Order of April 26, 1978.

So ordered.

Dated at Madison, Wis., this 2d day of May 1978.

For the Atomic Safety and Licensing Board.

GARY L. MILHOLLIN,
Chairman.

[FR Doc. 78-12549 Filed 5-8-78; 8:45 am]

[7590-01]

REGULATORY GUIDE

Issuance and Availability

The Nuclear Regulatory Commission has issued a guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public methods acceptable to the NRC staff of implementing specific parts of the Commission's regulations and, in some cases, to delineate techniques used by the staff in evaluating specific problems or postulated accidents and to provide guidance to

applicants concerning certain of the information needed by the staff in its review of applications for permits and licenses.

Regulatory Guide 1.31, Revision 3, "Control of Ferrite Content in Stainless Steel Weld Metal," describes a method acceptable to the NRC staff for implementing certain requirements with regard to the control of welding in fabricating and joining safety-related austenitic stainless steel components and systems in light-water-cooled nuclear power plants. This guide was revised as the result of public comment and additional staff review.

Comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time. Comments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

Regulatory guides are available for inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. Requests for single copies of issued guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Technical Information and Document Control. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a).)

Dated at Rockville, Md., this 1st day of May 1978.

For the Nuclear Regulatory Commission.

ROBERT B. MINOGUE,
Director,
Office of Standards Development.

[FR Doc. 78-12560 Filed 5-8-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 2.4.7 (Ice Effects) of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 2.4.7 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md., this 28th day of April 1978.

For the U.S. Nuclear Regulatory Commission.

DANIEL R. MULLER,
Deputy Director, Division of Site Safety and Environmental Analysis, Office of Nuclear Reactor Regulation.

[FR Doc. 78-12555 Filed 5-8-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-5/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 6.2.1.1.C (Pressure-Suppression Type BWR Containments) of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 6.2.1.1.C is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 2055 (5 U.S.C. 552(a)).

Dated at Bethesda, Md. this 28th day of April 1978.

For the U.S. Nuclear Regulatory Commission.

R. J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 12556 Filed 5-8-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 8.31 (A-C Power Systems (Onsite)) of the SRP for the NRC staff's safety review of applications to build and operate light-water cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the

updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 8.3.1 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552(a)).

Dated at Bethesda, Md. this 28th day of April 1978.

For the U.S. Nuclear Regulatory Commission.

ROGER J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-12557 Filed 5-8-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 6.2.5 (Combustible Gas Control in Containment) of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communications and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements alone are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 6.2.5 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552 (a)).

Dated at Bethesda, Md., this 28th day of April, 1978.

For the U.S. Nuclear Regulatory Commission.

R. J. MATTSON,
Director, Division of Systems Safety Office of Nuclear Reactor Regulation.

[FR Doc. 78-12558 Filed 5-8-78; 8:45 am]

[7590-01]

REVISION TO THE STANDARD REVIEW PLAN (NUREG-75/087)

Issuance and Availability

As a continuation of the updating program for the Standard Review Plan (SRP) previously announced (FEDERAL REGISTER notice dated December 8, 1977), the Nuclear Regulatory Commission's (NRC's) Office of Nuclear Reactor Regulation has published Revision No. 1 to Section No. 6.2.4 (Containment Isolation System) of the SRP for the NRC staff's safety review of applications to build and operate light-water-cooled nuclear power reactors. The purpose of the plan, which is composed of 224 sections, is to improve both the quality and uniformity of the NRC staff's review of applications to build new nuclear power plants, and to make information about regulatory matters widely available, including the improvement of communication and understanding of the staff review process by interested members of the public and the nuclear power industry. The purpose of the updating program is to revise sections of the SRP for which changes in the review plan have been developed since the original issuance in September 1975 to reflect current practice.

Copies of the Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, which has been identified as NUREG-75/087, are available from the National Technical Information Service, Springfield, Va. 22161. The domestic price is $70, including first-year supplements. Annual subscriptions for supplements along are $30. Individual sections are available at current prices. The domestic price for Revision No. 1 to Section No. 6.2.4 is $4. Foreign price information is available from NTIS. A copy of the Standard Review Plan including all revisions published to date is available for public inspection at the NRC's Public Document Room at 1717 H Street NW., Washington, D.C. 20555 (5 U.S.C. 552 (a)).

Dated at Bethesda, Md., this 28th day of April 1978.

For the U.S. Nuclear Regulatory Commission.

R. J. MATTSON,
Director, Division of Systems Safety, Office of Nuclear Reactor Regulation.

[FR Doc. 78-12559 Filed 5-8-78; 8:45 am]

[8010-01]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10230; 811-765; 811-1588; 811-1404; 811-658]

ADMIRALTY FUND ET AL.

Filing of Application for an Order Declaring That Companies Have Ceased To Be Investment Companies

MAY 2, 1978.

In the Matter of Admiralty Fund, Competitive Capital Fund, Seaboard Leverage Fund, and the Income Fund of Boston, Inc., One New York Plaza, New York, N.Y. 10004.

Notice is hereby given that Oppenheimer A.I.M. Fund, Inc. ("AIM") and Oppenheimer Income Fund of Boston, Inc., ("Income") filed an application on behalf of Admiralty Fund ("Admiralty"), Competitive Capital Fund ("Competitive"), Seaboard Leverage Fund ("Seaboard"), and the Income Fund of Boston, Inc. ("IFOB") (hereinafter referred to with Admiralty, Competitive, and Seaboard as the "Applicants"), registered under the Investment Company Act of 1940 (the "Act") as diversified, open-end management investment companies, on May 20, 1977, and an amendment thereto on October 18, 1977, for an order of the Commission pursuant to Section 8(f) of the Act, declaring that Applicants have ceased to be investment companies as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Subsidiaries of The Seaboard Corp. ("TSC") formerly served as the investment adviser and principal underwriter for Applicants. On March 5, 1974, the Commission filed a complaint in the United States District Court for

the Central District of California against TSC and other defendants. The complaint alleged numerous violations of the federal securities laws, including violations of the Act. Pursuant to a stipulation between the Commission, Admiralty, and other defendants, the Court entered an order on October 1, 1974, dismissing the Commission's complaint. As a result of the Commission's action against TSC, the independent directors of each of the Applicants terminated the contracts with their respective advisors and underwriters, effective December 10, 1973.

Applicants stated that on May 14, 1976, the Boards of Directors of Admiralty, Competitive, and Seaboard adopted resolutions recommending a merger with AIM and that on March 30, 1976, the Board of Directors of IFOB adopted a resolution recommending a merger with Income. The proposed mergers were approved by the respective shareholders of the Applicants on October 27, 1976 and by the shareholders of AIM and Income on November 8, 1976.

On December 7, 1976, Admiralty, Competitive, and Seaboard merged into AIM and IFOB merged into Income. As a result of the mergers, AIM acquired marketable securities with an aggregate market value of $35,361,670 and net cash and receivables aggregating $1,855,015 and assumed the liabilities of Admiralty, Competitive, and Seaboard. Income acquired marketable securities with an aggregate market value of $21,632,019, and cash and cash items aggregating $377,660 and assumed the liabiliies of IFOB. In return, 4,010,419 shares of AIM were issued to the respective shareholders of Admiralty, Competitive, and Seaboard, and 2,547,417 shares of Income were issued to the shareholders of IFOB, such shares being equivalent in value to shares of the respective Applicants held at the time of the merger.

Prior to the merger, litigation based on the violations alleged in the Commission's complaint and certain additional claims against TSC and other parties was commenced on Applicant's behalf. The Boards of Directors of Applicants believed it was inappropriate for other shareholders to have either the burden or the possible benefits of the litigation in which Applicants were involved. Therefore, the application states that the claims of Applicants in the litigation were transferred to a Litigation Trust ("Trust") together with cash to support the prosecution of the claims. An order of the Commission (Investment Company Act Release No. 9543) under section 6(c) of the Act exempting the Trust from all provisions of the Act and rules and regulations thereunder other than sections 9, 17, 31, 34, 36, and 37 and related rules was issued on November 29, 1976.

The application states that the Beneficiaries (the "Beneficiaries") of the Trust are the prior shareholders of Applicants. The Trust assets shall be distributed to the Beneficiaries on the basis of each Beneficiary's beneficial interest in the Trust in such manner and at such time as the Trustees shall deem necessary or appropriate; provided, however, that a final distribution of all remaining assets in the Trust shall be made promptly after the determination or settlement of all the litigation. Applicants state that they have no assets or liabilities.

Section 8(f) of the Act provides, in part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given, That any interested person may, not later than May 29, 1978, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12504 Filed 5-8-78; 8:45 am]

[8010-01]

[Release No. 14735; SR-Amex-78-4]

AMERICAN STOCK EXCHANGE, INC.

Order Approving Proposed Rule Change

MAY 3, 1978.

On March 2, 1978, the American Stock Exchange, Inc., 86 Trinity Place, New York, N.Y. 10006, filed with the Comission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to eliminate the initial and maintenance capital requirements of $75,000 and $52,000, respectively, applicable to registered traders in equity securities.[1]

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 14539, March 7, 1978) and by publication in the FEDERAL REGISTER (43 FR 10660, March 14, 1978). All written statements with respect to the proposed rule change which were filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person were considered and (with the exception of those statements or communications which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552) were made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchanges, and in particular, the requirements of section 6, and the rules and regulations thereunder. While the Amex would no longer impose a specific capital requirement on a member who maintains the status of a registered trader in stocks after May 1, 1978,[2] the member would be subject to the Commission's Uniform Net Capital Rule [17 CFR 240.15c3-1].

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[1]On May 1, 1978, the Commission approved another Amex proposal, File No. SR-Amex-78-10, which would allow members, including floor traders, to act as Registered Equity Market Makers ("REMM's") in a limited number of listed issues selected by the registrant; the minimum capital for a REMM would be that prescribed by Exchange Act Rule 15c3-1 [17 CFR 240.15c3-1]. For further information on File No. SR-Amex-78-10. See Secutities Exchange Act Release No. 14718 (May 1, 1978).

[2]An Amex registered trader may effect on-floor proprietary transactions in stocks after May 1, 1978, if the member meets the "business mix" test in section 11(a)(1)(G)(i) of the Act and effects any such transaction in accordance with subparagraph (ii) of that section and Temporary Rule 11a1-1(T) under the Act [17 CFR 240.11a1-1(T)].

It is therefore ordered, pursuant to section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and it is hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12505 Filed 5-8-78; 8:45 am]

[8010-01]

[Release No. 14728]

ESTABLISHMENT OF NATIONAL CLEARANCE AND SETTLEMENT SYSTEM

Extension of the Period for the Submission of Written Comments on the Hearings

MAY 2, 1978.

On March 7, 8, 9, and 10, 1978,[1] and April 19 and 20, 1978,[2] the Commission held public hearings into the establishment of a national clearance and settlement system. In Release No. 14648, the Commission indicated that written comments in this proceeding would be accepted until April 30, 1978.

The Commission has extended the period for submission of written comments to May 19, 1978. Six copies of each comment letter should be submitted to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Reference should be made to File No. 600-15. All communications will be placed in that file and will be available for public inspection.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12507 Filed 5-8-78; 8:45 am]

[8010-01]

[Release No. 14726; SR-MSBR-78-6]

MUNICIPAL SECURITIES RULEMAKING BOARD

Order Approving Proposed Rule Change

MAY 2, 1978.

On March 9, 1978, the Municipal Securities Rulemaking Board (the "MSRB"), Suite 507, 1150 Connecticut Avenue NW., Washington, D.C. 20036, filed with the Commission, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78(s)(b)(1) (the "Act") and Rule 19b-4 thereunder, copies of a proposed rule change to amend its interdealer uniform practice rule (1) to extend the time period for the completion of all close-out procedures from 30 business day following settlement date to 90 business days following such date; (2) to require a purchaser to specify in a close-out notice no more than 5 business days during which a close-out may be executed pursuant to such notice; (3) to limit to the initial close-out notice for a transaction the availability of an extension of the time for execution of a close-out based on an "adequate explanation" by the seller; and (4) to provide that completion of a transaction at any point in time cancels all outstanding close-out notices with respect to that transaction.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by publication of a Commission Release (Securities Exchange Act Release No. 14584 (Mar. 21, 1978)) and by publication in the FEDERAL REGISTER (43 FR 12977 (Mar. 28, 1978)). The Commission received one written statement which favored the proposed rule change. That statement was considered and made available to the public at the Commission's Public Reference Room.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB, and in particular, the requirements of section 15B of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, That the above-mentioned proposed rule change be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 78-12506 Filed 5-8-78; 8:45 am]

[4710-01]

DEPARTMENT OF STATE

[CM-8/54]

OVERSEAS SCHOOLS ADVISORY COUNCIL

Meeting

The Executive Committee of the Overseas Schools Advisory Council, Department of State, will meet Thursday, June 8, 1978, 9:30 a.m. in the Twelfth Floor Conference Room of Pfizer International Inc., 235 East 42nd Street, New York, N.Y.

Agenda items scheduled for discussion are as follows:

I. Welcome to Council Members

II. Message from Assistant Secretary John M. Thomas

III. Report on Study Committee Meeting of March 14, 1978 and Its Recommendations for Future Council Activities

IV. Progress Report Relating to Local Fund-Raising Activities Conducted by the schools and Assistance Extended by Regional Associations

V. Status Report of 1977/1978 Program

VI. Council Letter to 1,300 U.S. Business and Foundation Executives with Fact Sheets, List of Overseas Schools and List of U.S. Firms Represented on School Boards

VII. Participation of U.S. Business and Foundation Executives on School Boards and in Local School Programs

VIII. Report on *Fund-Raising Handbook*, Its Distribution and Financing

IX. Selection of Date for Full Council Meeting

Anyone wishing to attend the meeting should call Ms. Judy Knott, Office of Overseas Schools, Department of State, Washington, D.C., Area Code 703-235-9600, prior to June 8. The public may participate in discussions at the Chariman's discretion.

Dated: April 26, 1978.

ERNEST N. MANNINO,
Executive Secretary,
Overseas Schools Advisory Council.

[FR Doc. 78-12493 Filed 5-8-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Office of the Secretary

CARBON STEEL WIRE ROD FROM FRANCE

Antidumping; Extension of Investigatory Period

AGENCY: U.S. Customs Service, Treasury Department.

ACTION: Extension of Antidumping Investigatory Period.

SUMMARY: This notice is to advise the public that the Secretary of the Treasury has determined that a tentative determination as to whether sales at less than fair value of carbon steel wire rod from France have occurred cannot reasonably be made in six months. This decision will be made in not longer than nine months from the date of the initiation of the investigation.

EFFECTIVE DATE: May 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. David P. Mueller, Operations Officer, Duty Assessment Division, United States Customs Service, 1301

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[1] Securities Exchange Act Release No. 14411 (January 25, 1978), 43FR 4295 (February 1, 1978). Transcripts of the March hearings are available at the Commission's Public Reference Room, 1100 L Street, NW., Washington, D.C., and, upon request, at the Commission's regional offices.

[2] Securities Exchange Act Release No. 14648 (April 11, 1978), 43 FR 16231 (April 17, 1978). Transcripts of the April hearings are available at the Commission's Public Reference Room, 1100 L Street NW., Washington, D.C., and upon request, at the Commission's regional offices.

Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On September 12, 1977, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26 and 153.27), indicating that carbon steel wire rod from France is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.) (referred to in this notice as "the Act"). This information was submitted by counsel acting on behalf of the Georgetown Steel Corp. and Georgetown Texas Steel Corp. On the basis of this information and subsequent preliminary investigation by the Customs Service, an "Antidumping Proceeding Notice" was published in the FEDERAL REGISTER of October 19, 1977 (42 FR 55858).

For purposes of this notice, the term "carbon steel wire rod" refers to such wire rods which are not tempered, not treated and not partly manufactured.

Pursuant to section 201(b)(2) of the Act (19 U.S.C. 160(b)(2)), notice is hereby given that the Secretary concludes that the determination provided for in section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)), cannot reasonably be made within six months. The determination under section 201(b)(1) of the Act (19 U.S.C. 160(b)(1)) will, therefore, be made within no more than nine months.

This determination is based upon the need to collect and analyze further information, particularly with respect to (1) sales of merchandise produced by Sacilor to purchasers in the home market rather than to purchasers located in other countries within the European Communities and (2) the cost of production of wire rod produced by at least two producers of that product in France. Information presented by counsel for Petitioner based upon information recently made available, indicates that sales of wire rod in the home market by Chatillon and Sacilor may have been made in substantial quantities over an extended period of time at less than the cost of production and at prices that do not permit recovery of all costs within a reasonable period of time through sales in the ordinary course of trade. Accordingly, pursuant to § 205(b) of the Act (19 U.S.C. § 164(b), information concerning the cost of production of this merchandise produced by Chatillon and Sacilor is being requested.

This notice is published pursuant to section 201(b)(2) of the Act (19 U.S.C. 160(b)(2)).

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

MAY 2, 1978.

[FR Doc. 78-12515 Filed 5-8-78; 8:45 am]

[4810-40]

Office of the Secretary

[Supplement to Dpt. Circular—Public Debt Series—No. 10-78]

TREASURY NOTES, SERIES A-1988

Interest Rate

MAY 4, 1978.

The Secretary of the Treasury announced on May 2, 1978, that the interest rate on the notes designated series A-1988, described in Department Circular—Public Debt Series—No. 10-78, dated April 27, 1978, will be 8¼ percent. Interest on the notes will be payable at the rate of 8¼ percent per annum.

PAUL H. TAYLOR,
Acting Fiscal Assistant Secretary.

[FR Doc. 78-12574 Filed 5-8-78; 8:45 am]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[AB 36 (SDM)]

OREGON SHORT LINE RAILROAD CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Oregon Short Line Railroad Co., has filed with the Commission its amended color-coded system diagram map in Docket No. AB 36 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on March 29, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railroad operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 36 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

SYSTEM DIAGRAM MAP of the OREGON SHORT LINE RAILROAD CO. AB No. 36 prepared in conjunction with I.C.C. Order Ex Parte No. 274 (Sub-No. 2) and Title 49 of the code of Federal Regulation 1121.

* L E G E N D *

Lines or portions of lines anticipated to be the subject of an abandonment or discontinuance application within three years shown ---------- (1)

Lines or portions of lines potentially subject to abandonment which are under study and which may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs, as compared to potential revenues shown -- (2)

Lines or portions of lines for which an abandonment or discontinuance application is pending before the Interstate Commerce Commission shown ---------- (3)

Lines or portions of lines which are being operated under rail service continuance provisions shown ---------- (4)

All other Oregon Short Line Railroad Co. lines shown --

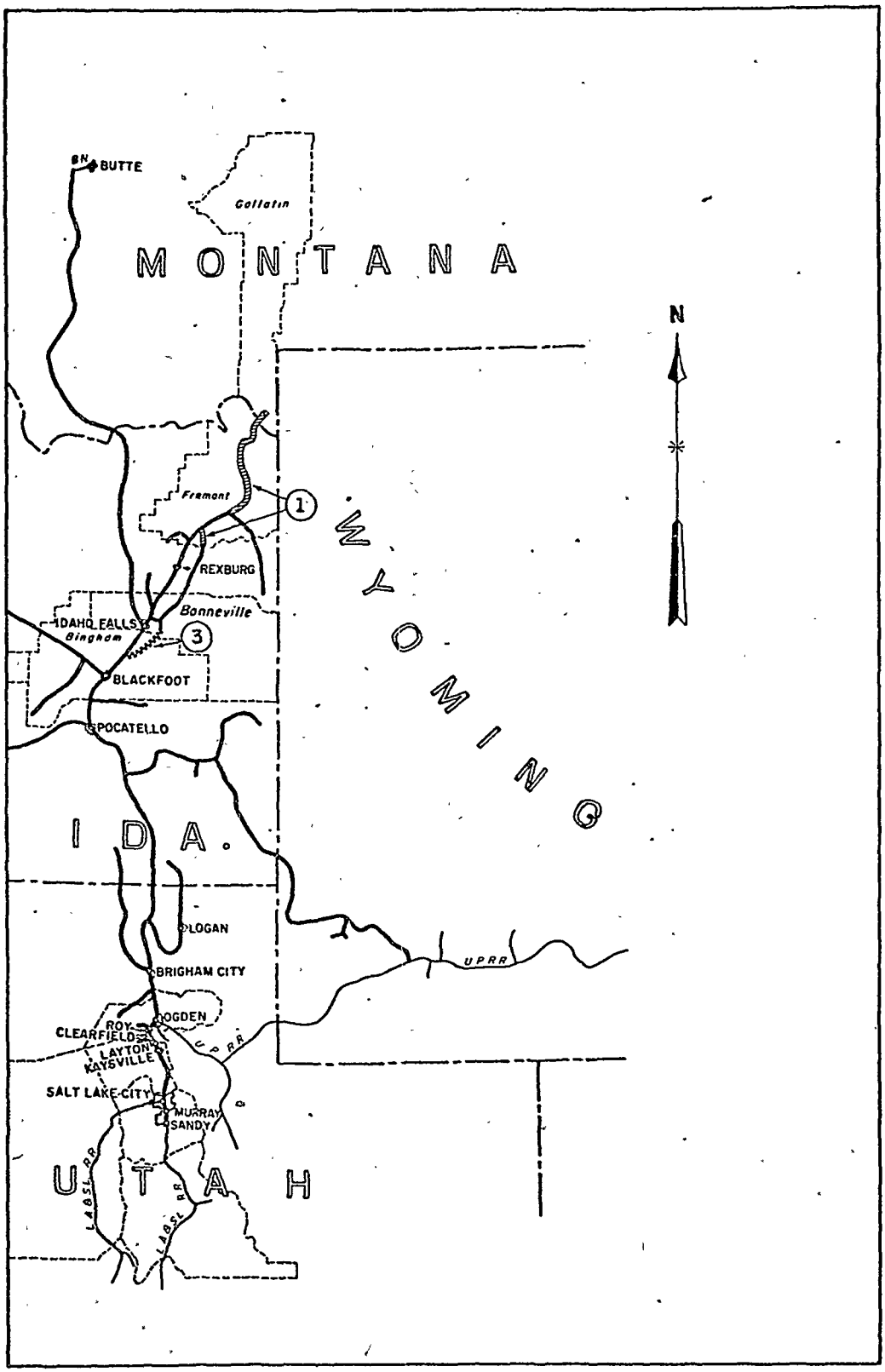
0 50 100
SCALE IN MILES

Standard Metropolitan Statistical Area (SMSA) shown ----

City outside of an (SMSA) with a population of 5,000 or more persons according to 1970 U.S. Census reports shown ----------

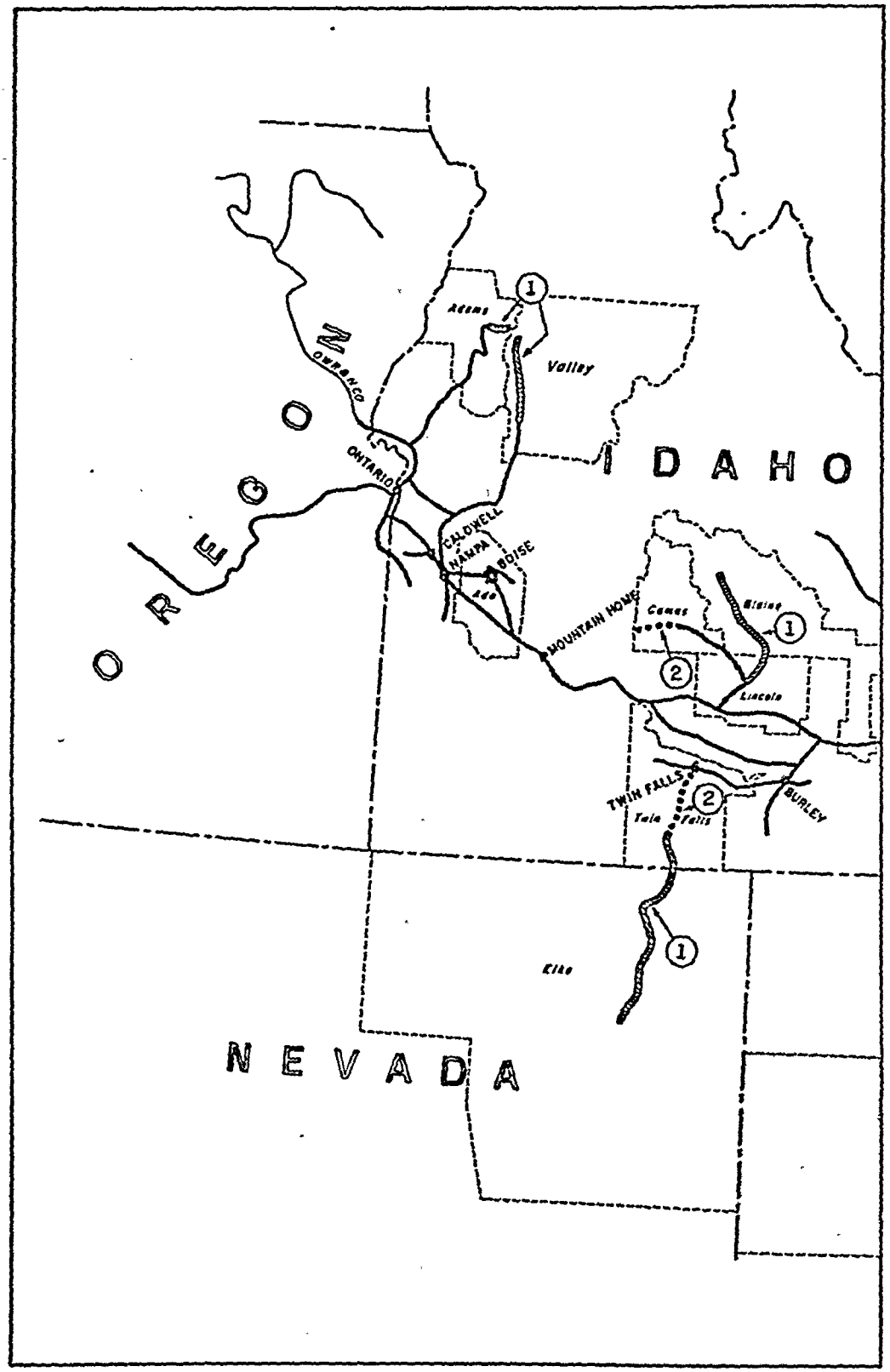
State boundaries shown ----------

Boundaries of counties in which proposed abandonments are located shown ---------- County



Certified to be a true copy
of the original document

G. M. Tabor



Certified to be a true copy
of the original document

G. M. Tabor

OREGON SHORT LINE RAILROAD CO. SYSTEM DIAGRAM (AB-36)

DESCRIPTION OF LINES

Pursuant to regulations of the Interstate Commerce Commission (49 CFR § 1121.23), following is an amended and updated description of lines of Oregon Short Line Railroad Co. as shown on the System Diagram Map.

Category 1—Lines anticipated to be the subject of abandonment applications within three years.

Idaho

(a) Designation of Line: Ketchum Branch.
(b) State(s) in which located: Idaho.
(c) County(ies) in which located: Blaine and Lincoln.
(d) Milepost locations: M.P. 15.65 near Richfield to M.P. 69.84 near Ketchum.
(e) There are no agency or terminal stations located on this line.
(a) Designation of line: East Belt Branch.
(b) State(s) in which located: Idaho.
(c) County(ies) in which located: Fremont.
(d) Milepost locations: M.P. 38.56 near Newdale to M.P. 44.28 near Belt.
(e) Newdale at Milepost 38.08 is an agency station on this line.
(a) Designation of Line: New Meadows Branch.
(b) State(s) in which located: Idaho.
(c) County(ies) in which located: Adams.
(d) Milepost locations: M.P. 84.52 near Rubicon to M.P. 89.91 near New Meadows.
(e) There are no agency or terminal stations located on this line.
(a) Designation of Line: Idaho Northern Branch.
(b) State(s) in which located: Idaho.
(c) County(ies) in which located: Valley.
(d) Milepost locations: M.P. 99.73 near Cascade to M.P. 133.61 near McCall.
(e) Cascade at M.P. 99.11 is an agency station on this line.

Idaho and Montana

(a) Designation of Line: Yellowstone Branch.
(b) State(s) in which located: Idaho and Montana.
(c) County(ies) in which located: Fremont and Gallatin.
(d) Milepost locations: M.P. 52.00 near Ashton to M.P. 107.2 near West Yellowstone.
(e) Ashton at M.P. 50.99 is an agency station on this line.

Idaho and Nevada

(a) Designation of Line: Wells Branch.
(b) State(s) in which located: Idaho and Nevada.
(c) County(ies) in which located: Twin Falls and Elko.
(d) Milepost locations: M.P. 29.35 near Rogerson to M.P. 123.46 near Wells.
(e) There are no agency or terminal stations located on this line.

Category 2—Lines which are potentially subject to abandonment and which the carrier has under study and believes may be the subject of a future abandonment application because of either anticipated operating losses or excessive rehabilitation costs as compared to potential revenues.

Idaho

(a) Designation of Line: Hill City Branch.
(b) State(s) in which located: Idaho.
(c) County(ies) in which located: Camas.
(d) Milepost locations: M.P. 44.46 near Fairfield to M.P. 58.34 near Hill City.
(e) There are no agency or terminal stations located on this line.
(a) Designation of Line: Wells Branch.
(b) State(s) in which located: Idaho.
(c) County(ies) in which located: Twin Falls.
(d) Milepost locations: M.P. 0.00 near Twin Falls to M.P. 29.35 near Rogerson.
(e) Twin Falls at M.P. 0.00 is an agency station on this line.

Category 3—Applications pending before the Interstate Commerce Commission.

Idaho

(a) Designation of Line: Goshen Branch.
(b) State(s) in which located: Idaho.
(c) County(ies) in which located: Bingham and Bonneville.
(d) Milepost locations: M.P. 0.06 near Firth to M.P. 17.53 near Ammon.
(e) Firth at M.P. 169.45 is an agency station on this line.

[FR Doc. 78-12476 Filed 5-8-78; 8:45 am]

[7035-01]

[AB 26 (SDM)[1]] I68

SOUTHERN RAILWAY CO.

Amended System Diagram Map

Notice is hereby given that, pursuant to the requirements contained in Title 49 of the Code of Federal Regulations, Part 1121.23, that the Southern Railway Co. and its consolidated subsidiaries, has filed with the Commission its amended color-coded system diagram map in Docket No. AB 26 (SDM). The maps reproduced here in black and white are reasonable reproductions of that amended system diagram map and the Commission on April 21, 1978, received a certificate of publication as required by said regulation which is considered the effective date on which the amended system diagram map was filed.

Color-coded copies of the map have been served on the Governor of each State in which the railraod operates and the Public Service Commission or similar agency and the State designated agency. Copies of the map may also be requested from the railroad at a nominal charge. The maps also may be examined at the office of the Commission, Section of Dockets, by requesting docket No. AB 26 (SDM).

H. G. HOMME, Jr.,
Acting Secretary.

[1]AB 26 (SDM) includes its consolidated subsidiaries: AB 27 (SDM), The Alabama Great Southern Railroad Co.; AB 28 (SDM), Central of Georgia Railroad Co.; AB 29 (SDM), The Cincinnati, New Orleans and Texas Pacific Railway Co.; AB 30 (SDM), Georgia Southern and Florida Railway Co.; AB 64 (SDM) Chattanooga Station Co.; AB 118 (SDM), (Albany Passenger Terminal Co.; and AB 125 (SDM), Norfolk Southern Railway Co.

MAP OF

Southern Railway Company & Consolidated Subsidiaries*

(AB-26, AB-27, AB-28, AB-29, AB-30, AB-64, AB-118, AB-125)

SYSTEM DIAGRAM MAP

49 C.F.R. 1121.20
April 1, 1978.

SCALE: 25 0 25 50 75 100 MILES

LEGEND

Designation of Carriers and AB Numbers:

AB-26	Southern Railway Company (SOU)
AB-27	The Alabama Great Southern Railroad Company (AGS)
AB-28	Central of Georgia Railroad Company (C of G)
AB-29	The Cincinnati, New Orleans and Texas Pacific Railway Company (CNO&TP)
AB-30	Georgia Southern and Florida Railway Company (GS&F)
AB-64	Chattanooga Station Company (CHT. S)
AB-118	Albany Passenger Terminal Company (APT)
AB-125	Norfolk Southern Railway Company (NS)

*APT is an affiliated company owned jointly by C of G and SCL RR.

Category 1:	Lines likely to be the subject of an ICC abandonment or discontinuance application within three years.
Category 2:	Lines which are under study and may be the subject of a future ICC abandonment or discontinuance application.
Category 3:	Lines for which abandonment or discontinuance applications are pending before the ICC.
None at this time Category 4:	Lines operated under rail service continuation assistance provisions of 49 USC 1a (6) (a). (None in this category at this time.)
Category 5:	All other lines, owned and operated
	Lines (Categories 1-4) too short to designate clearly at this scale.
	Standard Metropolitan Statistical Area -SMSA. (County or counties with at least one city of 50,000 inhabitants. These shown here are within 5 air miles of a rail line.)
o	Cities. (Showing those with 5,000 population or greater located within 5 air miles of a rail line but outside of an SMSA, in addition to other selected points on the line.)
———	State boundaries.
- - - -	County boundaries. (Only counties in which a line in Category 1,2,3 or 4 is located are named.)

The System Diagram Map is segmented as follows:

1	2	3	4	5	6
7	8	9	10	11	12
13	14	15	16	17	

9a

Segmented System Diagram Map certified to be a true copy of the original document.

E. G. Kreyling, Jr.
Vice President - Marketing
Southern Railway Company

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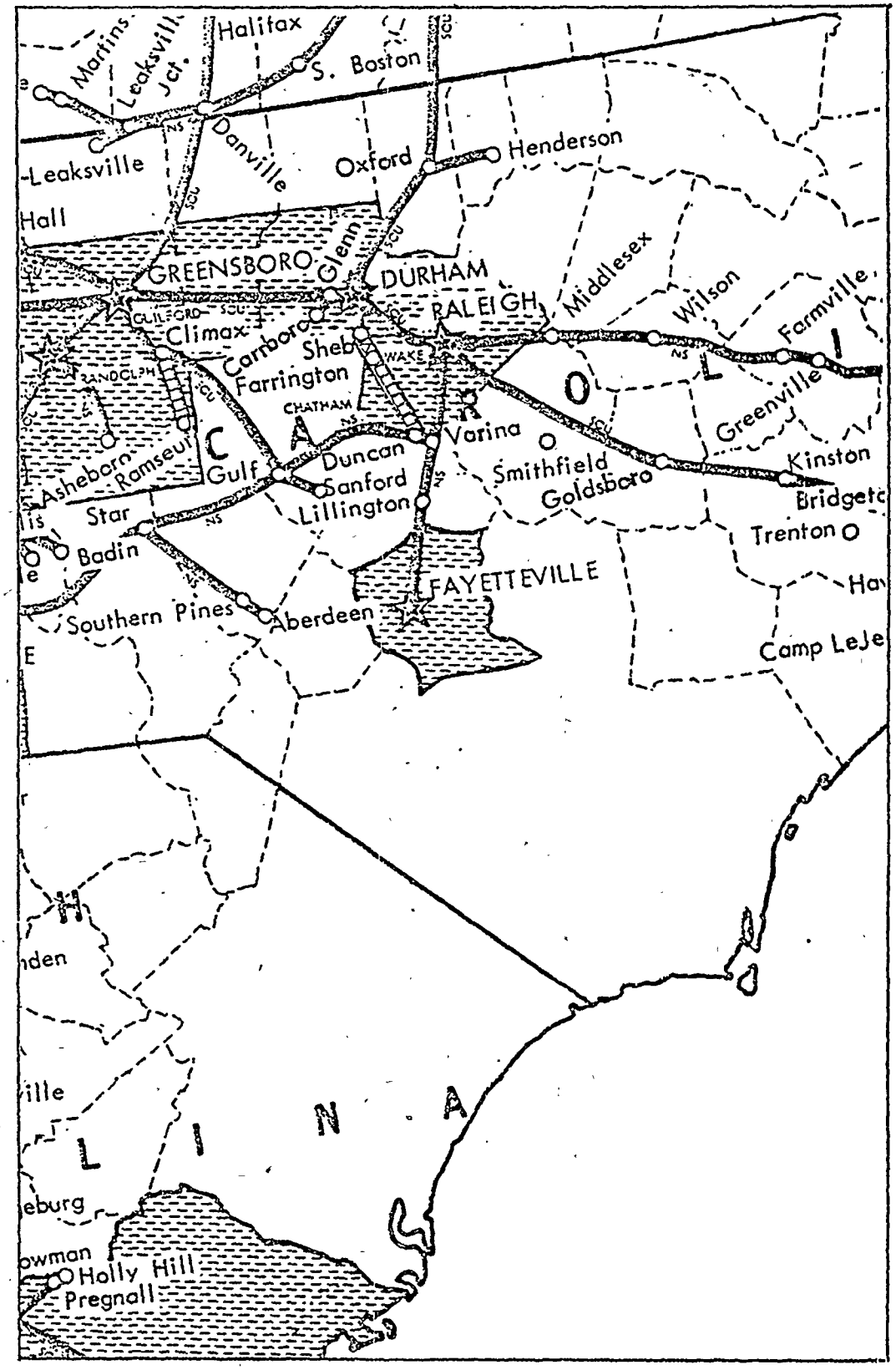
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Halitax
S. Boston
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Danville
Oxford
Henderson
Hall
GREENSBORO
Glenn
DURHAM
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Middlesex
Wilson
Farmville
Climax
Carrboro
Sheb
Farrington
Greenville
Varina
Smithfield
Goldsboro
Kinston
Bridgeto
Asheboro
Ramseur
Gulf
Duncan
Sanford
Lillington
Star
Badin
Trenton
FAYETTEVILLE
Southern Pines
Aberdeen
Camp LeJe
Holly Hill
Pregnall

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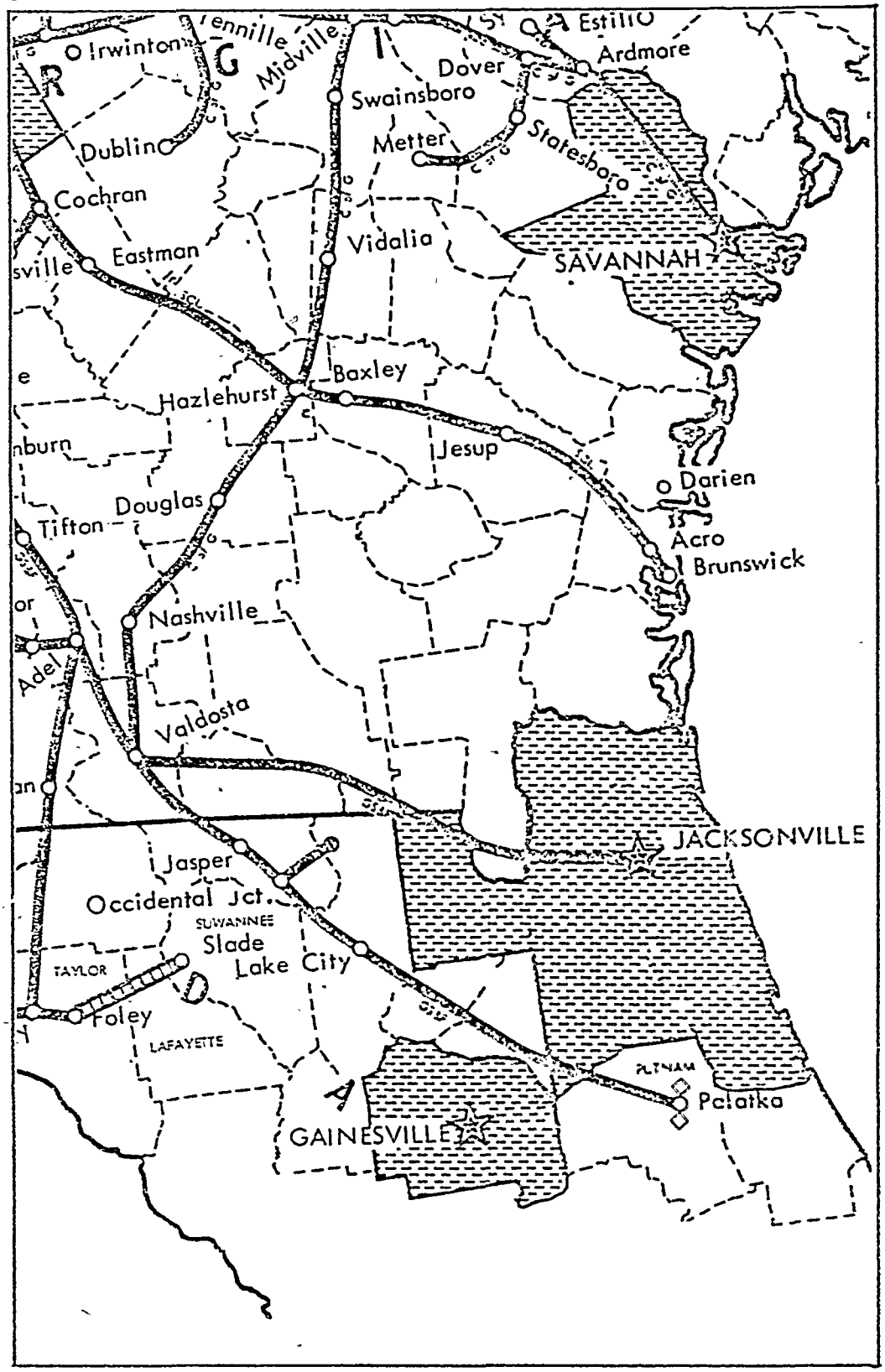
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Dover
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Metter
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Dublin
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Eastman
Vidalia
SAVANNAH
Baxley
Hazlehurst
Jesup
Darien
Douglas
Tifton
Acro
Brunswick
Nashville
Adel
Valdosta
JACKSONVILLE
Jasper
Occidental Jct.
SUWANNEE
Slade
Lake City
TAYLOR
Foley
LAFAYETTE
PUTNAM
Palatka
GAINESVILLE

SOUTHERN RAILWAY CO. AND CONSOLIDATED SUBSIDIARIES

LINE DESCRIPTIONS TO ACCOMPANY SYSTEM DIAGRAM MAP (APRIL 1, 1978)*

Category No. 1—Lines likely to be the subject of an ICC abandonment or discontinuance application within three (3) years.

Allendale-Furman, S.C.

(a) Carrier's Designation—Southern Railway—Carolina Division and Southern Railway Company's Allendale-Furman line on former Columbia-Savannah Line, Piedmont Division.
(b) State—South Carolina.
(c) Counties—Allendale, Hampton.
Mileposts—M.P. C-186.8 to M.P. C-211.0.
(e) Agency or Terminal Station—none on line; traffic on line received and forwarded through Blackville—M.P. C-161.2.

Bristol-Moccasin Gap, Va.

(a) Carrier's Designation—Virginia and Southwestern Railway Co. and Southern Railway Co.'s Bristol-Moccasin Gap line on Bristol-St. Charles Line, Appalachia and Tennessee Divisions.
(b) States—Virginia, Tennessee.
(c) Counties—Washington and Scott in Virginia; Sullivan in Tennessee.
(d) Mileposts—M.P. 72.5T to M.P. 39.9T.
(e) Agency or Terminal Stations—Bristol—M.P. 69.9T; Moccasin Gap—M.P. 39.9T.

*Climax-Ramseur, N.C.**

(a) Carrier's designation—Southern Railway Co.'s Ramseur Branch, Carolina Division.
(b) State—North Carolina.
(c) Counties—Gulford, Randolph.
(d) Mileposts—M.P. CR-0.0 to M.P. CR-18.7.
(e) Agency or Terminal Stations—none on Branch; traffic on Branch received and forwarded through Liberty—M.P. CF-97.2.

Duncan—King Scott Siding (Farrington), N.C.

(a) Carrier's Designation—Durham and South Carolina Railroad Co. and Norfolk Southern Railway Co.'s Durham Branch, Carolina Division.
(b) State—North Carolina.
(c) Counties—Wake, Chatham.
(d) Mileposts—M.P. DD-0.0 to M.P. DD-26.5.
(e) Agency or Terminal Stations—none on Branch; traffic on Branch received and forwarded through Varina—M.P. VF-0.0 and Durham—M.P. DD-40.3.

Foley Junction-Slade, Fla.

(a) Carrier's Designation—Live Oak, Perry and South Georgia Railway Co.'s former Foley Junction—Live Oak Line, Coastal Division.
(b) State—Florida.
(c) Counties—Taylor, Lafayette, and Suwannee.
(d) Milepost—M.P. MB-40.0 to M.P. MB-1.2.
(e) Agency or Terminal Stations—none on Line; traffic on Line formerly received and forwarded through Live Oak—M.P. M.B.-0.0 and Foley Junction—M.P. MB-40.0.
(f) Comment—Operations terminated January 31, 1977, pursuant to authority granted in Docket No. AB 26 (Sub-No. 8).

Greenwood, S.C.

(a) Carrier's Designation—Southern Railway Co.'s Greenwood line on Columbia-Belton-Greenville Line, Piedmont Division.
(b) State—South Carolina.
(c) County—Greenwood.
(d) Mileposts—M.P. V-80.1 to M.P. V-89.1.
(e) Agency or Terminal Stations—Greenwood—M.P. V-82.4.
(f) Comment—Line to be relocated in rail-highway crossing elimination project.

Greenwood—Piedmont, S.C.

(a) Carrier's Designation—Southern Railway Co.'s Greenwood—Piedmont line on Columbia-Belton-Greenville Line, Piedmont Division.
(b) State—South Carolina.
(c) Counties—Greenwood, Abbeville, Anderson, and Greenville.
(d) Mileposts—M.P. V-85 to M.P. V-132.
(e) Agency or Terminal Station—Greenwood—M.P. V-82.4.
(f) Comment—Operating coordination project; service will be continued via trackage rights over parallel Seaboard Coast Line track.

McDonough-Griffin, Ga.

(a) Carrier's Designation—Southern Railway Co.'s McDonough-Griffin line on McDonough-Columbus Line, Georgia Division.
(b) State—Georgia.
(c) Counties—Henry and Spaulding.
(d) Mileposts—M.P. 3.0M to M.P. 15.0M.
(e) Agency or Terminal Stations—McDonough—M.P. 181.0H; Griffin (Spaulding Co.)—M.P. 18.5M.
(f) Comment—Service to be preserved to industries on line near McDonough and Griffin, respectively.

Metarie, La.

(a) Carrier's Designation—New Orleans Terminal Co.'s Long Siding.
(b) State—Louisiana.
(c) County—Jefferson Parish.
(d) Mileposts—M.P. 0.85A to M.P. 1.80A.
(e) Agency or Terminal Stations—none on siding; traffic over siding received and forwarded through Oliver Yard—M.P. NO-195.6.
(f) Comment—Siding to be relocated in rail-highway crossing elimination project.

Moultrie-Pavo, Ga.

(a) Carrier's Designation—Georgia Northern Railway Co. and Southern Railway Co.'s *Moultrie-Pavo line,* Coastal Division.
(b) State—Georgia.
(c) Counties—Colquitt and Thomas.
(d) Mileposts—M.P. 28.8B to M.P. 13.0B.
(e) Agency or Terminal Station—Pavo—M.P. 13.3B.

North Aiken-Waters, S.C.

(a) Carrier's Designation—Southern Railway Co's Aiken Branch, Piedmont Division and Central of Georgia Railroad Co.'s former Edgefield-Waters line on former Augusta-Greenwood Line, Piedmont Division.
(b) State—South Carolina.
(c) Counties—Aiken and Edgefield.
(d) Mileposts—M.P. AB-18.5 to M.P. AB-0.0 and M.P. GF-276.5 to M.P. GF 280.3.
(e) Agency or Terminal Station—none on line; traffic over line received and forwarded through Langley—M.P. SA-66 and North Aiken—M.P. AB-19.

Parrish-High Level, Ala.

(a) Carrier's Designation—Southern Railway Co.'s Ensley Southern Branch, Alabama Division.
(b) State—Alabama.
(c) County—Walker.
(d) Mileposts—M.P. 1.6ES to M.P. 6.4ES.
(e) Agency or Terminal Stations—Parrish—M.P. 839.5.

Category No. 2—Lines which are under study and maybe the subject of a future ICC abandonment or discontinuance application.

Calverton-Warrenton, Va.

(a) Carrier's Designation: Southern Railway Co.'s Warrenton Branch, Eastern Division.
(b) State: Virginia.
(c) County: Fauquier.
(d) Mileposts: M.P. CW-0.0 to M.P. CW-8.9.
(e) Agency or Terminal Stations: None on Branch; traffic on Branch received and forwarded through Culpeper—M.P. 67.4.

King Scott Siding (Farrington)—Sheb, N.C.

(a) Carrier's Designation: Durham and South Carolina Railroad Co. and Norfolk Southern Railway Co.'s Durham Branch, Carolina Division.
(b) State: North Carolina.
(c) Counties: Wake, Durham.
(d) Mileposts: M.P. DD-26.5 to M.P. DD-36.0.
(e) Agency or Terminal Stations: None on Branch; traffic on Branch received and forwarded through Varina—M.P. VF-0.0 and Durham—M.P. DD-40.3.

Category No. 3—Lines for which abandonment or discontinuance applications are pending before the ICC.

Albany Passenger Terminal Co. (Docket No. AB-118)

(a) Carrier's Designation: Albany Passenger Terminal Co.'s entire line.
(b) State: Georgia.
(c) County: Dougherty.
(d) Mileposts: None—all in yard.
(e) Agency or Terminal Stations: Albany Passenger Terminal Co., station—M.P. J-297.1.

Brevard-Rosman, N.C. (Docket No. AB-26 (Sub-No. 11))

(a) Carrier's Designation: Transylvania Railroad Co. and Southern Railway Co.'s Rosman Branch, Carolina Division.
(b) State: North Carolina.
(c) County: Transylvania.
(d) Mileposts: M.P. TR-21.8 to M.P. TR-32.33.
(e) Agency or Terminal Stations: None on branch; traffic on branch received and forwarded through Brevard—M.P. TR-21.6.

*Palatka, Fla. (Docket No. AB 30-F)**

(a) Carrier's Designation: Georgia Southern and Florida Railway Co.'s Palatka stub end, Coastal Division.
(b) State: Florida.
(c) County: Putnam.
(d) Mileposts: M.P. 285-B minus 1,023 feet to M.P. 285-B plus 1,558 feet.
(e) Agency or Terminal Stations: None on line; traffic over line would be received and forwarded through Palatka—M.P. 282.0-B.

[FR Doc. 78-12475 Filed 5-8-78; 8:45 am]

*Line segments affected by this amendment are marked with an asterisk (*).

[7035-01]

[Notice No. 656]

ASSIGNMENT OF HEARINGS

MAY 4, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC 108313 (Sub-No. 14), Caledonia Lines, Inc., is now assigned for hearing July 11, 1978 (2 days), at Buffalo, NY, at a location to be later designated.

No. MC 140029 (Sub-No. 8), Clifford H. Hall, Inc., is now assigned for hearing July 13, 1978 (2 days), at Buffalo, NY, at a location to be later designated.

No. MC 144102, Deakin Fine Art Transport, Ltd., is now assigned for hearing July 17, 1978 (1 week), at Buffalo, NY, at a location to be later designated.

No. 36817, paper articles, between points in official territory, and No. 36817 (Sub-No. 1), sanitary paper and related articles, east, midwest, and south, now being assigned June 5, 1978, at the offices of the Interstate Commerce Commission in Washington, D.C.

No. MC 28536 (Sub-No. 16), Fox & Ginn, Inc., now assigned for prehearing conference May 8, 1978, at Washington, DC, is postponed to May 15, 1978, at 9 a.m., local time, at the offices of the Interstate Commerce Commission, Washington, DC.

No. MC 113651 (Sub-No. 242), Indiana Refrigerator Lines, Inc., now assigned June 5, 1978 at Orlando, FL, is canceled and reassigned for June 5, 1978 (1 week), at Orlando, FL, and will be held in Room 300 of the Federal Building, 80 North Hughley Street, and continued to June 12, 1978 (1 week), at Miami, FL, and will be held in Tax Court Room 1524 of the Federal Building, 51 Southwest 1st Avenue.

No. MC 114132 (Sub-No. 4), Churns Truck Lines, Inc., now assigned June 5, 1978, at Norfolk, VA, is postponed to June 26, 1978 (1 week), in the Grand Jury Room, U.S. Post Office and Courthouse, 600 Granby Street, Norfolk, VA.

No. MC 117883 (Sub-No. 222), Subler Transfer, Inc., now assigned June 26, 1978, at Detroit, MI, is postponed indefinitely.

No. MC 143568 (Sub-No. 2), Simmons Trucking, Inc., now being assigned June 1, 1978 (2 days), at Jefferson City, MO, in a hearing room to be later designated.

No. MC 113828 (Sub-No. 254F), O'Boyle Tank lines, Inc., now being assigned June 12, 1978, for prehearing conference at the offices of the Interstate Commerce Commission in Washington, DC.

No. MC 56679 (Sub-No. 93), Brown Transport Corp. now assigned June 5, 1978, at Atlanta, GA, is postponed indefinitely.

AB 10 (Sub-No. 6), Wabash Railroad Co. and Norfolk & Western Railway Co. abandonment between Fairbury and Clay in Livingston County, IL, now being assigned June 26, 1978 (2 days), for continued hearing at Chicago, IL, in a hearing room to be later designated.

No. MC 120436 (Sub-No. 2), Nussbaum Trucking, Inc., now being assigned June 13, 1978 (9 days), and June 28, 1978 (3 days), for continued hearing at Chicago, IL, in hearing rooms to be later designated.

No. MC 56679 (Sub-No. 97), Brown Transport Corp. now assigned May 31, 1978, at Atlanta, GA, is postponed indefinitely.

No. MC 142672 (Sub-No. 8), David Beneux Produce & Trucking, Inc., application dismissed.

No. MC 2389 (Sub-No. 3) Nevada Central Motor Lines, Inc., application dismissed.

No. MC 10169 (Sub-No. 4), Hatcher Trucking Co., Inc., now assigned June 19, 1978, at Raleigh, NC, will be held in Room 225, Federal Building, 310 new Bern Avenue.

No. MC-C-9860, Carolina Coach Co., et al. v. Williams Bus Rental, now assigned June 15, 1978, at Raleigh, NC, will be held in Room 209, Federal Building, 310 New Bern Avenue.

No. MC-F-13220, the Mason & Dixon Lines, Inc.—Control and merger—General Motor Lines, Inc., and MC 59583 (Sub-No. 159 and Sub-No. 162), the Mason & Dixon Lines, Inc., now assigned for hearing June 19, 1978, at Raleigh, NC, will be held in Room 209, Federal Building, 310 New Bern Avenue.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12612 Filed 5-8-78; 8:45 am]

[7035-01]

[Notice No. 69]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 26, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC field office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 6078 (Sub-No. 89TA), filed March 27, 1978. Applicant: D. F. BAST, INC., P.O. Box 2288, 1425 north Maxwell Street, Allentown, PA 18001. Applicant's representative: Eugene M. Malkin, 5 World Trade Center, Suite 6193, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Structural and fabricated steel*, the transportation of which requires, because of size and weight, the use of special equipment, and *structural and fabricated steel, and related materials and supplies*, which do not require, because of size or weight, the use of special equipment, when moving in mixed loads with items described above, from the facilities of the Levinson Steel Co., at or near Pittsburgh, PA, to Camden and North Perry, OH, Salem and Keasbey, NJ, and Ashland, KY, and from the facilities of Fort Pitt Bridge Division of Sprang Industries, Inc., near Canonsburg, PA, to Paducah, KY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Levinson Steel Co., P.O. Box 1617, Pittsburgh, PA 15320; Fort Pitt Bridge Division of Sprang Industries, Inc., P.O. Box 151, Canonsburg, PA 15317. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

No. MC 14252 (Sub-No. 31TA), filed March 31, 1978. Applicant: COMMERCIAL LOVELACE MOTOR FREIGHT, INC., 3400 Refugee Road, Columbus, OH 43227. Applicant's representative: William C. Buckham (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the plantsite of Olin Works, Olin Corp., located on U.S. Hwy 136 approximately 10 miles west of Covington (Fountain County), IN, as an off-route point in connection with carrier's presently authorized regular route operations to and from Danville, IL, for 180 days.

Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Olin Corp., P.O. Box 200, Pisgah Forest, NC 28768. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 82808 (Sub-No. 15TA), filed March 29, 1978. Applicant: C. L. HUNT, d.b.a. HUNT AND SONS, P.O. Box 433, Warrensburg, MO 64093. Applicant's representative: Frank W. Taylor, Jr., 1221 Baltimore, Suite 600, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Insulation, insulation products, insulation material and equipment* used in applying insulation, from Grain Valley, MO, and commercial zone to all points in the United States (except AK and HI), (2) *Returned shipments* of the above-described commodities; *and materials, supplies, and equipment*, used in the manufacture, processing, sale, and distribution of insulation, insulation products, and insulation material, from all points on the United States (except AK and HI), to Grain Valley, MO, and commercial zone, for 180 days. Supporting shipper(s): Fibrex Corp., Grain Valley, MO 64029. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 95136 (Sub-No. 24TA), filed March 30, 1978. Applicant: ALLEN S. YEATMAN, INC., P.O. Box 383, Montrose, VA 22520. Applicant's representative: Maxwell A. Howell, 1100 Investment Building, 1511 K Street NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber, treated lumber, ties, poles, piles, and pallets*, between points in Richmond, Westmoreland, Northumberland, Lancaster, and King George Counties, VA, on the one hand, and, on the other, points in CT, DE, GA, ME, MD, MA, NH, NJ, NY, NC, PA, RI, SC, TN, WV, and VT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Farnham Manufacturing Co., Inc., Farnham, VA 22460. (2) Wood Preservers, Inc., Warsaw, VA 22572. (3) Northern Neck Lumber Co., Inc., Warsaw, VA 22572. (4) Potomac Supply Corp., P.O. Box 8, Kinsale, VA 22488. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Room 10-502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

No. MC 107515 (Sub-No. 1134TA), filed March 30, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, 3901 Jonesboro Road SE., Forest Park, GA 30050. Applicant's representative: Alan E. Serby, Richard M. Tettelbaum, Serby & Mitchell, Fifth Floor-Lenox Towers, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, and meat byproducts* as described in paragraph A of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except in bulk), in vehicles equipped with mechanical refrigeration, from facilities of MBPXL Corp., Nebraska City, NE, to points in AL, FL, GA, MS, NC, SC, TN, and VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): MBPXL Corp., P.O. Box 2519, Wichita, KS 67201. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 107515 (Sub-No. 1135TA), filed March 30, 1978. Applicant: REFRIGERATED TRANSPORT CO., INC., P.O. Box 308, 3901 Jonesboro Road, Forest Park, GA 30050. Applicant's representative: Serby & Mitchell, Fifth Floor-Lenox Towers, 3390 Peachtree Road, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle; over irregular routes, transporting: *Carpeting, floor coverings, and tufted textile products*, from points in GA on and north of U.S. Hwy 78 and west of U.S. Hwy 441, to points in KS, MO (except St. Louis and points in its commercial zone), CO, NE, AZ, and CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Sweetwater Carpet Corp., U.S. Hwy 41, Ringgold, GA 30736. (2) Bigelow-Sanford, Inc., P.O. Box 3089, Greenville, SC 29620. (3) Wichita Building Materials, Inc., 3001 South Madison, Wichita, KS 67216. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta GA 30309.

No. MC 110563 (Sub-No. 224TA), filed March 23, 1978. Applicant: COLDWAY FOOD EXPRESS, INC., P.O. Box 847, State Route 29 North, Sidney, OH 45365. Applicant's representative: Victor J. Tambascia (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities of Geo. A. Hormel & Co., at (1) Scottsbluff, NE, to Hartford, CT; New Haven, CT; Elizabeth, NJ; Binghamton, NY; and Wilkes-Barre, PA; and (2) Fremont, NE, to New Haven, CT, and Binghamton, NY; and (3) Austin, MN, to Wilkes-Barre, PA, for 180 days. Supporting shipper(s): Geo. A. Hormel & Co., P.O. Box 800, Austin, MN 55912. Send protests to: Keith D. Warner, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 313 Federal Office Building, 234 Summit Street, Toledo, OH 43604.

No. MC 111545 (Sub-No. 248TA), filed March 30, 1978. Applicant: HOME TRANSPORTATION CO., INC., 1425 Franklin Road SE., P.O. Box 6426 Station A, Marietta, GA 30060. Applicant's representative: J. Michael May (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Trailers* designed to be drawn by passenger automobiles (excluding recreational vehicles such as travel trailers and campers), and buildings, complete or in sections, mounted on wheeled undercarriages (excluding modular units and prefabricated buildings), in initial movements, from the facilities of Savannah Homes, Inc., at or near Savannah, TN, to points in AL, AR, GA, IL, IN, KY, LA, MS, MO, NC, OH, OK, SC, TX, VA and WV, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Savannah Homes, Inc., P.O. Box 267, Savannah, GA 38372. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 114604 (Sub-No. 51TA), filed March 31, 1978. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer 1, Building 33, State Farmers Market, Forest Park, GA 30050. Applicant's representative: Frank D. Hall, 3384 Peachtree Road NE., Suite 713, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the facilities of Brundridge Foods, Inc., and/or Hudson Foods, Inc., at or near Troy, AL, to all points in the United States in and east of ND, SD, NE, KS, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brundridge Foods, Inc., Hudson Foods, Inc., P.O. Box 187, Brundridge, AL 36010. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree

Street NW., Room 300, Atlanta, GA 30309.

No. MC 114604 (Sub-No. 52TA), filed March 31, 1978. Applicant: CAUDELL TRANSPORT, INC., P.O. Drawer 1, Building 33, State Farmers Market, Forest Park, GA 30050. Applicant's representative: Frank D. Hall, 3384 Peachtree Road NE., Suite 713, Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Inedible offal*, from Dothan, AL, to Atlanta, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): InTex, a Division of Stone Commodities Corp., Suite 416, First Bank & Trust Building, Richardson, TX 75080. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 116725 (Sub-No. 24TA), filed March 31, 1978. Applicant: INDIANA VALLEY ENTERPRISES, INC., 855 Maple Avenue, Harleysville, PA 19438. Applicant's representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from Archbold, OH, to points in PA, NY, NJ, CT, RI, and MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper(s): LaChoy Food Products, 901 Stryker Street, P.O. Box 220, Archbold, OH 43502. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

No. MC 117119 (Sub-No. 681TA), filed March 31, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Applicant's representative: Martin M. Geffon, P.O. Box 338, Willingboro, NJ 08046. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen boxed meat*, from Philadelphia, PA, to the facilities of the Campbell Soup Co. at Napoleon, OH, Chicago, IL, and Omaha, NE, restricted to the transportation of traffic originating at and destined to the named points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Campbell Soup Co., Campbell Place, Camden, NJ 08101. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 124150 (Sub-No. 18TA), filed March 31, 1978. Applicant: SAVAGE BROTHERS, INC., 585 South 500 East, American Fork, UT 84003. Applicant's representative: Lon Rodney Kump, 333 East Fourth South, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron ore*, from Cedar City, UT, and points within 20 miles of Cedar City, UT, to points in AZ, CO, NM, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Utah International, Inc., P.O. Box 649, Cedar City, UT 84720. (C. Ray Juvelin Mill, Superintendent.) Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 124160 (Sub-No. 19TA), filed March 31, 1978. Applicant: SAVAGE BROTHERS, INC., 585 South 500 East, American Fork, UT 84003. Applicant's representative: Lon Rodney Kump, 333 East Fourth South, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lime and limestone products* (in bulk), from Caselton, WV, to the facilities of Utah Power & Light Co., at or near Huntington and Castle Dale, UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sierra Chemical Co., 1490 East Second Street, Reno, NV 89502. (Stanley K. Kinder, President.) Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 124170 (Sub-No. 84TA), filed March 31, 1978. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sugar* (other than bulk), from Brooklyn, NY, to points in MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Sugar Division, Amstar Corp., 1251 Avenue of the Americas, New York, NY 10020. (Richard T. Catterall, Manager-Rates and Analysis.) Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 124251 (Sub-No. 47TA), filed March 31, 1978. Applicant: JACK JORDAN, INC., 3631 South Dixie Road SE, P.O. Box 689, Dalton, GA 30720. Applicant's representative: Archie B. Culbreth, 2200 Century Parkway, Suite 202, Atlanta, GA 30345. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Polypropylene glycol and isocyanate* (in bulk, in insulated tank trailers), from points in Whitfield County, GA, to points in TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): General Latex & Chemical Corp., of Georgia, 1206 Lamar Street, Dalton, GA 30720. Send protests to: Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 124170 (Sub-No. 85TA), filed March 31, 1978. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed beef*, from Detroit, MI, to Portland, OR, Denver and Boulder, CO, for 180 days. Supporting shipper(s): Eastern Market Beef Processing Corp., 1545 Alfred Street, Detroit, MI 48207. (Herbert S. Norris, Vice President.) Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 124170 (Sub-No. 86TA), filed March 31, 1978. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Applicant's representative: William J. Boyd, 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Processed beef*, from Detroit, MI, to points in CA, for 180 days. Supporting shipper(s): Eastern Market Beef Processing Corp., 1545 Alfred Street, Detroit, MI 48207. (Herbert S. Norris, Vice President.) Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 124251 (Sub-No. 48TA), filed March 31, 1978. Applicant: JACK JORDAN, INC., 3681 South Dixie Road, P.O. Box 689, Dalton, GA 30720. Applicant's representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Authority sought to operate as a *common car-*

rier, by motor vehicle, over irregular routes, transporting: *Latex* (in bulk), from points in Whitfield County, GA, to points in LA and VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Industrial Adhesives, Inc., 359 DeKalb Industrial Way, Decatur, GA 30030. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 124624 (Sub-No. 4TA), filed March 30, 1978. Applicant: EXPRESSWAY, INC., 1105 St. Louis Avenue, Louisville, KY 40210. Applicant's representative: Robert H. Kinker, 314 West Main Street, Frankfort, KY 40601. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cosmetics and toilet preparations, articles and sundries, and premiums, equipment and supplies* used in connection with the sale of said cosmetics and toilet preparations, articles and sundries, (except commodities in bulk), (1) from the facilities of Avon Products, Inc., at Springdale, OH, to points in KY; (2) from Louisville, KY, to points in KY, restricted to traffic originated at the facilities of Avon Products, Inc., at Springdale, OH, and received from connecting carriers at Louisville, KY; and (3) *Rejected or returned shipments* of (1) and (2) above, from points in KY, to the facilities of Avon Products, Inc., at Springdale, OH, for 180 days. Supporting shipper(s): W. A. Townsend, Transportation Manager, Avon Products, Inc., 175 Progress Place, Springdale, OH 45246. Send protests to: Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, 6th and Broadway, Louisville, KY 40202.

No. MC 126243 (Sub-No. 24TA), filed March 27, 1978. Applicant: ROBERTS TRUCKING CO., INC., U.S. Hwy 271 South, P.O. Drawer G, Poteau, OK 74953. Applicant's representative: Prentiss Shelley, P.O. Drawer G, Poteau, OK 74953. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Environmental control equipment, air conditioners, heat pumps and parts, accessories and equipment* used in the installation thereof, packaged or crated, or not packaged or crated; (2) *Materials, supplies and equipment* used in the manufacture of (1) above, (except commodities in bulk), (1) from the facilities of International Environmental Corp., Oklahoma City, OK, to points in the United States, (except ID, MT, UT, WY, AK and HI), (2) from points in the United States (except ID, MT, UT, WY, AK and HI), to the facilities of International Environmental Corp., Oklahoma City, OK, restricted to traffic originating at or destined to the above named points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): International Environmental Corp., P.O. Box 25608, Oklahoma City, OK 73125. Send protests to: John V. Barry District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 126358 (Sub-No. 17TA), filed March 30, 1978. Applicant: BENNETT TRUCKING CO., P.O. Box 526, Hawkinsville, GA 31036. Applicant's representative: Paul M. Daniell, Suite 1200, Atlanta Gas Light Tower, 235 Peachtree Street, Atlanta, GA 30303. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (A) *Veneer,* from Hawkinsville, GA to Hosford, FL, Birmingham, AL, Belton, TX, Crystal Springs, MS, Winnsboro, SC, Hickory, Lenoir, Fayetteville and Statesville, NC, South Boston, MA, Portland, TN, Louisville, KY, Batesville, New Albany and Jasper, IN, Grand Rapids and Bay City, MI, and Stanley, WI, and (B) *Lumber* (except plywood and veneer), from Hawkinsville, GA, to points in FL, AL, SC, NC, VA and TN, for 180 days. Supporting shipper(s): (1) Victor Veneer Co., P.O. Box 187, Hawkinsville, GA 31035. (3) Newman Brothers Lumber Co., Route 2, Hawkinsville, GA 31036. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 127337 (Sub-No. 20TA), filed March 27, 1978. Applicant: CHET'S TRANSPORT, INC., Charlotte, ME 04666. Applicant's representative: Lawrence E. Lindeman, Suite 1032, Pennsylvania Avenue, 425 13th Street NW., Washington, DC 20004. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Meat and meat products,* from points on the International Boundary Line between the United States and Canada located in ME and MA to Boston, MA, and Philadelphia, PA, (2) *Pelts,* from points on the International Boundary Line between the United States and Canada located in ME and MA, to points in UT, IA, WI, OH and MA, and the reverse from Haweye, IA and Provo, UT, to New York City, NY; (3) *Frozen vegetables and frozen vegetables with frozen fruit and frozen berries,* from points on the International Boundary Line between the United States and Canada located on ME and MA, to points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, OH, IN and IL, restricted to shipments originating at points in NF, NB, NS, and PE, Canada. (4) *Meat and meat products,* from Boston, MA, to the International Boundary Line between the United States and Canada located in NY, VT, and NH to Quebec City and Montreal, PQ, Canada. (5) *Meat and meat products,* from MN and IL, to the International Boundary Line between the United States and Canada located in ME at or near Calais and Houlton, ME to the Atlantic Provinces of Canada (NF, NS, NB and PE), and the reverse on rejected meat and meat products. (6) *Citrus juices and blends of citrus juices,* fruit juices and blends of fruit juices and apple juices and blends of cider juices with mixed loads of exempt commodities, from MA to the International Boundary Line between the United States and Canada located in ME at or near Calais and Houlton, ME to the provinces of NB, NS, PE and NF, Canada, for 180 days. Supporting shipper(s): There are approximately (6) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 307, 76 Pearl Street, Portland, ME 04111.

No. MC 127705 (Sub-No. 53TA), filed March 31, 1978. Applicant: KREVDA BROS. EXPRESS, INC., 501 South Broadway, Gas City, IN 46933. Applicant's representatives: Donald W. Smith, P.O. Box 40659, Indianapolis, IN 46240. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers,* from Gas City, IN, to Baltimore, MD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

No. MC 129624 (Sub-No. 15TA), filed March 31, 1978. Applicant: ROUTE MESSENGERS OF PENNSYLVANIA, INC., 2525 Bainbridge Street, Philadelphia, PA 19146. Applicant's representative: Alan Kahn, 2 Penn Center Plaza, Philadelphia, PA 19102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Copying machine parts and supplies,* no single parcel or package to exceed 100 pounds in weight, from Pennsauken, NJ, to points in Berks, Lehigh, Bucks, Luzerne and Northampton Counties, PA, for 180 days. Supporting shipper(s): Xerox Corp., 7001 Westfield Avenue, Pennsauken, NJ. Send

protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106.

No. MC 129625 (Sub-No. 10TA), filed March 31, 1978. Applicant: ROBERT COLE TRUCKING CO., P.O. Box M, Falls Creek, PA 15840. Applicant's representative: William A. Gray, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Coal*, (in bulk, in dump vehicles), from points in Clearfield County, PA, to points in NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (14) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 133666 (Sub-No. 24TA), filed March 31, 1978. Applicant: JACOBSON TRANSPORT, INC., 1112 Second Avenue South, Wheaton, MN 56296. Applicant's representative: Thomas J. Burke, Jr., 1660 Lincoln Street, 1600 Lincoln Center Building, Denver, CO 80264. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Road asphalt and fuel oils*, from Superior, WI, to points in ND on and east of the Missouri River, for 180 days. Supporting shipper(s): Duininck & Gilchrist, Prinsburg, MN 56281. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, 110 South 4th Street, U.S. Court House, Minneapolis, MN 55401.

No. MC 135705 (Sub-No. 9TA), filed March 31, 1978. Applicant: MELROSE TRUCKING CO., INC., 6360 Raderville Route, Casper, WY 82601. Applicant's representative: Thompson and Kelley, 450 Capitol Life Center, Denver, CO 80203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, in bulk for use by manufacturers of ready-mix concrete, concrete building products and concrete structural products, from the Dave Johnston Power Plant near Glenrock, WY, and the Jim Bridger Power Plant near Rock Springs, WY, to points in Salt Lake County, UT and American Fork, Ogden, Provo, Spanish Fork and Woods Cross, UT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (8) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Paul A. Naughton, District Supervisor, Interstate Commerce Commission, Room 105, Federal Building and Court House, 111 South Wolcott, Casper, WY 82601.

No. MC 138882 (Sub-No. 62TA), filed March 29, 1978. Applicant: WILEY SANDERS, INC., P.O. Drawer 707, Troy, AL 36081. Applicant's representative: George A. Olsen, 69 Tonnele Avenue, Jersey City, NJ 07306. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Wrapping paper in rolls and bundles*, from facilities of Damsky Paper Co., located at or near Birmingham, AL, to points in LA, GA, FL, MS, TX, OK, KS, AR, TN, KY, SC, NC, VA, NY and IL, and (2) *Scrap and waste paper for recycling*, from points in GA, FL, MS, TX, OK, KS, AR, TN, KY, SC, NC, VA, NY, LA and IL, to facilities of Damsky Paper Co., located at or near Birmingham, AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Damsky Paper Co., P.O. Box 31282, Birmingham, AL 35222. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 139658 (Sub-No. 22TA), filed March 30, 1978. Applicant: HARRY POOLE, INC., 2322 Kensington Road, Macon, GA 31201. Applicant's representative: William Addams, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. Authority sought to opereate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer and fertilizer materials*, (in bulk, in dump trucks), between the plantsites of Kerr-McGee Co. at or near Jerico, SC, on the one hand, and, on the other, points in AL, FL, and GA, for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Chemical Enterprises, Inc., 8705 Katy Freeway, Suite 307, Houston, TX 77024. (2) Pelham Phosphate Co., Box 468, Pelham, GA 31779. (3) Stoller Chemical Co., Inc., 8705 Katy Freeway, Suite 400, Houston, Tex. 77024. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 139658 (Sub-No. 23TA), filed March 30, 1978. Applicant: HARRY POOLE, INC., 2322 Kensington Road, Macon, GA 31201. Applicant's representative: William Addams, Suite 212, 5299 Roswell Road NE., Atlanta, GA 30342. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Basic slag* (in bulk, in dump trucks), from points in Jefferson County, AL, (1) to the plantsite of Kerr-McGee at Jerico, SC, and (2) to points in FL in and west of Jefferson County, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Pelham Phosphate Co., Box 468, Pelham GA 31779, (2) Stoller Chemical Co., Inc., 8705 Katy Freeway, Suite 400, Houston, TX 77024, (3) Chemical Enterprises, Inc., 8705 Katy Freeway, Suite 307, Houston, TX 77024. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300 Atlanta, GA 30309.

No. MC 140678 (Sub-No. 4TA), filed March 31, 1978. ROBERT PATRICK McCARTHY, d.b.a., TRICO, P.O. Box 1319, Tulare, GA 93274. Applicant's representative: Walter H. Walker, III, Handler, Baker & Greene, 100 Pine Street, Suite 2550, San Francisco, CA 94111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Dry fertilizer*, (in bulk, in hopper type vehicles or self-unloading vehicles). From Conda County, Soda Springs, and Don, ID, to points in the States of WA, OR, and CA, under a continuing contract, or contracts, with Occidental Chemical Co., for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Occidental Chemical Co., P.O. Box 198, Lathrop, CA 95330. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 141804 (Sub-No. 105TA), filed March 31, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 422, Goodlettsville, TN 37072. Applicant's representative: Frederick J. Coffman, P.O. Box 422, Goodlettsville, TN 37072. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Central heating and air conditioning units and their components parts*, from the facilities of Heil-Quaker Corp. in Davidson County, TN, to points in CA, WA, OR, AZ, CO, NM, MT, NV, UT, and ID, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Heil-Quaker Corp., 1714 Heil Quaker Boulevard, La Vergne, TN 37086. Send protests to: Glenda Kuss, Transporta-

tion Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 142513 (Sub-No. 4 TA), filed March 31, 1978. Applicant: BIRK TRANSFER, INC., 360 Wheatland Avenue, Conemaugh, PA. 15909. Applicants representative: William A. Gray, Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Iron and steel wire*, from the plantsite of Bethlehem Steel Corp., located in Johnstown, PA, to Cheraw, SC; (2) *Reusable empty wire carriers*, from Cheraw, SC, to the plantsite of Bethlehem Steel Corp. located in Johnstown, PA, for 180 days. Supporting shipper(s): Bethlehem Steel Corp., Bethlehem, PA 18016. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 143317 (Sub-No 4TA), filed March 31, 1978. Applicant: GEORGE CLARK TRANSIT CO., 2902 Calumet Avenue, Manitowoc, WI 54220. Applicant's representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Phenolic coated resin sand and empty containers on return*, from points in Green Lake Co., WI, to points in MN (except Sartell) and MI, under a continuing contract, or contracts, with Faskure Coated Sand Division of Aurora Metal Co. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Faskure Coated Sand Division of Aurora Metal Co., P.O. Box 126, Fairwater, MI 53931 (Russell Henriksen). Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 143531 (Sub-No. 2TA), filed March 31, 1978. Applicant: POWDER RIVER MOTOR TRANSPORT CORP., 388 East 900 South, Provo, UT 84601. Applicant's representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Knocked down wooden buildings and materials and supplies* used in the erection thereof, from Tacoma, WA, to WI, MN, IL, OR, CA, MT, ID, UT, NV, AZ, WY, CO, NM, and MO, under a continuing contract, or contracts, with Lindal Cedar Homes, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Lindal Cedar Homes, Inc., 10411 Empire Way South, Seattle, WA 98178. (Gary Kline, Manager, Distribution Control). Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 143621 (Sub-No. 1TA), filed April 13, 1978. Applicant: TENNESSEE STEEL HAULERS, INC., 403 Maplewood Avenue, Nashville, TN 37210. Applicant's representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles:* (1) Between points in TN lying on and between TN Hwy 13 and U.S. Hwy 27; and (2) between points in (1) above, on the one hand, and, on the other, all points in TN, AL, AR, GA, KY, MS, MO, NC and VA, for 180 days. Supporting shipper(s): Tennessee Valley Authority, 620 Commerce Union Bank Building, Chattanooga, TN; Magic Chef, Inc., 740 King Edward Street SE., Chattanooga, TN; Production Steel, Inc., 1407 Elm Hill Pike, Nashville, TN. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No MC 143775 (Sub-No. 2TA), filed March 21, 1978. Applicant: PAUL YATES, INC., 6601 Orangewood, Glendale, AZ 85301. Applicant's representative: Edward N. Button, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Swimming pools, parts, and materials* used in the installation and assembly thereof, uncrated (except in bulk), from Holland, MI, and its commercial zone, to points in AZ, CO, NV, NM, UT, OK, MO, KS, ND, TN, NE, KY, Dallas, TX, Los Angeles, CA, Atlanta, GA, Redmond, OR, and their respective commercial zones, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Polynesian Pool Co., 1145 South Washington Avenue, Holland, MI 49423. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 144186TA, filed March 29, 1978. Applicant: SUPERIOR TRANSFER, INC., 2669 Merchant Drive, Baltimore, MD 21230. Applicant's representative: Ronald N. Cobert, 1730 M Street NW., Suite 501, Washington, DC 20036. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment), between the facilities utilized by Streamline Shippers Association, Inc., at Baltimore, MD, On the one hand, and, on the other, the facilities utilized by Streamline Shippers Association, Inc., at Chicago, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ray Camero, Executive Secretary, Streamline Shippers Association, Inc., 355 Santa Fe Avenue, Los Angeles, CA 90013. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Building, Baltimore, MD 21201.

No. MC 144555 (Sub-No. 1TA), filed March 31, 1978. Applicant: FRED KRUSE AND MICHAEL KRUSE, d.b.a., KRUSE TRUCKING, Route 1, Box 41, Cuba, MO 65453. Applicant's representative: B. W. La Tourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Mine props, ties—treated and untreated, posts—treated and untreated, roof board and rough sawed lumber*, between points in Crawford, Franklin, and Phelps Counties, MO, on the one hand, and, on the other, points in Christian, Jackson, St. Clair, Montgomery, Macoupin, Clinton, Mercer, Saline, Williamson, and Sangamon Counties, IL, and points in Pike County, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Arneson Lumber Co., Route No. 2, Steelville, MO 65565. Send protests to: P. E. Binder, Acting Distict Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12608 Filed 5-8-78; 8:45 am]

[7035-01]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

[Notice No. 65]

APRIL 21, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the

provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 4687 (Sub-No. 19TA), filed March 29, 1978. Applicant: BURGESS & COOK, INC., P.O. Box 458, 21 North 2nd Street, Fernandina Beach, FL 32034. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Polyethylene products*, (except in bulk), from Jacksonville, FL, to points in FL, GA, and AL, for 180 days. Supporting shipper(s): Coastal Bag Co., 627 North Lane Avenue, Jacksonville, FL 32205. Send protests to: G. H. Gauss, Jr., District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 8973 (Sub-No. 49TA), filed March 29, 1978. Applicant: METROPOLITAN TRUCKING, INC., 2424 95th Avenue, North Bergen, NJ 07047. Applicant's representative: E. S. Heisley, 666 Eleventh Street NW., No. 805, Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Expanded plastic products*, (except in bulk), from the facilities of The Dow Chemical Co., at or near Carteret, NJ, and Hanging-Rock, OH, to points in the United States, on and east of U.S. Hwy 85, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dow Chemical USA, P.O. Box 36000, Strongsville OH 44136. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, room 618, Newark, NJ 07102.

No. MC 11207 (Sub-No. 422TA), filed March 29, 1978. Applicant: DEATON, INC., 317 Avenue W, P.O. Box 938, Birmingham, AL 35201. Applicant's representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Avenue, Washington, DC 20014. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel, and iron and steel articles*, from the facilities of Armco Steel Corp. at Ashland, KY, to points to AL, AR, FL, GA, LA, MS, NC, SC, TN, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Armco Steel Corp., 24 North Main Street, Middletown, OH 45043. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 63417 (Sub-No. 147TA), filed March 29, 1978. Applicant: BLUE RIDGE TRANSFER CO., INC., P.O. Box 13447, Roanoke, VA 24034. Applicant's representative: William E. Bain, P.O. Box 13447, Roanoke, VA 24034. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *New furniture and furniture parts*, from Sanford, NC, and Roanoke, VA, to points in AZ, CA, CO, IA, MT, NV, NM, OR, UT, WA, and WY, for 180 days. Supporting shipper(s): Singer Furniture Co., P.O. Box 5337, Roanoke, VA 24012. Send protests to: Herman R. White, Acting District Supervisor, Bureau of Operations, Interstate Commerce Commission, P.O. Box 210, Roanoke, VA 24011.

No. MC 76032 (Sub-No. 336TA), filed March 29, 1978. Applicant: NAVAJO FREIGHT LINES, INC., 1205 South Platte River Drive, Denver, CO 80223. Applicant's representatives: Eldon E. Bresee, 1205 South Platte River Drive, Denver, CO 80223. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Uranium concentrates*, from the facilities of United Nuclear Corp. and Anaconda Co. at or near Grants, MN, to Metropolis, IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): United Nuclear Corp., Grants, MN 87020. (2) Anaconda Co., Grants, MN 87020. Send protests to: Herbert C. Ruoff, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

No. MC 100666 (Sub-No. 387TA), filed March 29, 1978. Applicant: MELTON TRUCK LINES, INC., P.O. Box 7666, 1129 Grimmett Drive, Shreveport, LA 71107. Applicant's representatives: Wilburn L. Williamson, 280 National Foundation Life Building, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber and lumber products*, from AR, TX, LA, MS, AL, OK, TN, and MO, to points in CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Smith Pallet Co., Inc., Box 207, Hatfield, AR 71945. Champion International Corp., Knightsbridge Drive, Hamilton, OH 45020. Ward-Davis, Inc., P.O. Box 1894, Texarkana, TX 75501, plus several others. Send protests to: Ray C. Armstrong, District Supervisor, Interstate Commerce Commission, T-9038 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

No. MC 112617 (Sub-No. 386TA), filed March 29, 1978. Applicant: LIQUID TRANSPORTERS, INC., P.O. Box 21395, Louisville, KY 40221. Applicant's representatives: Charles R. Dunford (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fly ash*, from Owensboro, KY, to points in AR, for 180 days. Supporting shipper(s): Fred B. Tetzel, vice president, Walter N. Handy Co., 1812 Fleming Road, Louisville, KY 40205. Send protests to: Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, 6th & Broadway, Louisville, KY 40202.

No. MC 11343 (Sub-No. 99TA), filed March 29, 1978. Applicant: GRA-BELL TRUCK LINE, INC., 679 Lincoln Avenue, P.O. Box 511, Holland, MI 49423. Applicant's representative: Wilhelmina Boersma, 1600 First Federal Building Detroit, MI 48226. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers and container accessories*, from the facilities of Brockway Glass Co., Inc., in Madison County, IN., to points in MI, for 180 days. Supporting shipper(s): Brockway Glass Co., Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

No. MC 113784 (Sub-No. 64TA), filed March 29, 1978. Applicant: LAIDLAW TRANSPORT LTD, 65 Guise Street, Hamilton, Ontario, Canada. Applicant's representative: Douglas R. Gowland (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Pulverized limestone,* (in bulk, in tank type vehicles), from International Boundaries on the Detroit and St. Clair Rivers to Elkhart, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Domtar Chemicals Group, 10 Gurney Crescent, P.O. Box 10, Station T, Toronto, Ontario, Canada. Send protests to: Interstate Commerce Commission, Bureau of Operations, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

No. MC 115162 (Sub-No. 412TA), filed March 29, 1978. Applicant: POOLE TRUCK LINE, INC., P.O. Drawer 500, Evergreen, AL 36401. Applicant's representative: Robert E. Tate, P.O. Drawer 500, Evergreen, AL 36401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Petroleum products,* in cases and drums, from plant site of Texaco, Inc., at or near Port Arthur, TX., to plant site of Texaco, Inc., at or near Bayonne, N.J., for 180 days. Supporting shipper(s): Texaco, Inc., 1111 Rusk, Houston, TX 77052. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Bldg., Birmingham, AL 35203.

No. MC 11654 (Sub-No. 202TA), filed March 29, 1978. Applicant: CHEM-HAULERS, INC., P.O. Box 339, Florence, AL 35630. Applicant's representative: Randy C. Luffman, P.O. Box 339, Florence, AL 35630. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Cleaning compound,* (in bulk, in tank vehicles), from Montgomery, AL, to Tinker Air Force Base, Midwest City, Oklahoma City, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Chemical Specialties Division of Pennwalt Corp., Three Parkway, Philadelphia, PA 19102. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 119656 (Sub-No. 36TA), filed March 29, 1978. Applicant: NORTH EXPRESS, INC., 219 East Main Street, Winamac, IN 76996. Applicant's representative: Donald W. Smith, Suite 945, 9000 Keystone Crossing, Indianapolis, IN 46240. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Canned goods,* (except in bulk), from the plantsites of the Joan of Arc facilities at or near Hoopeston and Princeville, IL, to points in WI, IN, KY, OH, MI, and from the plantsites of the Joan of Arc facility at or near Mayville, WI, to points in IL, KY, OH and MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority, Supporting shipper(s): Joan of Arc Company, Inc., Douglas Wiggins Corp. Traffic Manager, 2231 West Altorfer Drive, Peoria, IL 61614. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 124947 (Sub-No. 108TA), filed March 29, 1978. Applicant: MACHINERY TRANSPORTS, INC., 1945 South Redwood Road, Salt Lake City, UT 84104. Applicant's representative: David J. Lister, 1945 South Redwood Road, Salt Lake City, UT 84104. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Castings, parts and accessories for combines,* (except in bulk), between Independence, MO on the one hand and, on the other, Topeka, KS, restricted to shipments originating at or destined to the facilities of Allis-Chalmers Corp. located at or near the named points, for 180 days. Supporting shipper(s): Allis-Chalmers Corp., Box 512, Milwaukee, WI 53201. (Ralph E. Hallock, Manager, Corporation Transportation). Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 125777 (Sub-No. 215TA), filed March 29, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Applicant's representative: Duane O'Donnell, 4600 East 15th Avenue, Gary, IN 46403. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Flux recovered from aluminum slag,* between East Chicago, Hammond, IN, and points and places in the State of AL, MI, OH and PA, for 180 days. Supporting shipper(s): U.S. Reduction Co., A. T. Super Vice President, Traffic, 4610 Kennedy Avenue, East Chicago, IN 46312. Send protests to: Patricia A. Roscoe Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 125777 (Sub-No. 216TA), filed March 29, 1978. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Avenue, Gary, IN 46403. Applicant's representative: Duane O'Donnell, 4600 East 15th Avenue, Gary, IN 46403. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coke,* in bulk, in dump vehicles, from Buffalo, NY, to points in CT, MA, MI, NJ, OH, PA, RI, VT and WV for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hanna Furnace Corp., T. J. Mullen Jr., Chief Shipper, P.O. Box 1207, Buffalo, NY 14240. Send protests to: Patricia A. Roscoe Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 129631 (Sub-No. 62TA), filed March 29, 1978. Applicant: PACK TRANSPORT, INC., 3975 South 300 West Street, Salt Lake City, UT 84107. Applicant's representative: G. Davidson, 3975 South 300 West Street, Salt Lake City, UT 84107. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Brick and clay products,* from Ogden, UT, and its commercial zone, to Douglas, Carson City, Storey, Lyon, and Washoe Counties, NV, for 180 days. Applicant has also filed and underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Jensen Brick Co., P.O. Box 165, Clarksonn, UT 84301. (Thomas R. Jensen Owner) Send protests to: Lyle D. Helfer District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 133928 (Sub-No. 17TA), filed March 29, 1978. Applicant: OSTERKAMP TRUCKING, INC., 1049 North Glassell Street, Orange, CA 92667. Applicant's representative: Steven K. Kuhlman, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Wood fiberboard and accessories and supplies* used in the installation thereof, from the plantsite of Masonite Corp. located at or near Ukiah, CA, to points in AZ, CA, CO, ID, OR, and WA, restricted to a transportation service to be performed, under a continuing contract, or contracts, with Masonite Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Masonite Corp., 29 North Wacker Drive, Chicago, IL 60606. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 139468 (Sub-No. 27TA), filed March 22, 1978. Applicant: INTERNA-

TIONAL CONTRACT CARRIERS, INC., 6534 Gessner Road, Houston, TX 77040. Applicant's representative: John T. Wirth, 2310 Colorado State Bank Building, 1600 Broadway, Denver, CO 80202. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Buildings*, complete, knocked down, and in sections; (2) *building sections and building panels;* (3) *Parts and accessories*, used in the manufacture, installation, and completion of the commodities in (a) and (b) above; (4) *prefabricated structural components and panels, and accessories*, used in the installation and completion thereof, (a) from the plantsites of National Steel Products Co., Inc., at or near La Grange, GA, to points in AR, IL, KS, LA, MO, OK, and TX; (b) from the plantsites of National Steel Products Co., Inc., at or near Terre Haute, IN, to points in AR, LA, MS, and TX; (c) from the plantsites of National Steel Products Co., Inc., at or near Houston, TX, to points in IL, IN, IA, MN, MO, and WI, under a continuing contract, or contracts, with National Steel Products, Co., Inc., for 180 days. Restrictions: Restricted to traffic moving under a continuing contract, or contracts with National Steel Products Co., Inc. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): National Steel Products Co., Inc., P.O. Box 40490 (F. M. 529), 11919 Spencer Road, Houston, TX 77040. Send protests to: John F. Mensing, District Supervisor, Interstate Commerce Commission, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

No. MC 139482 (Sub-No. 50TA), filed March 29, 1978. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 347, County Road North 29 West, New Ulm, MN 56073. Applicant's representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought to operate as *common carrier*, by motor vehicle, over irregular routes, transporting: *Cheese*, from Fergus Falls, Winsted, Rochester, Zumbrota, and St. Paul, MN; Mason City, IA; and Marathon, Muscoda, Medford, Blair, and Green Bay, WI, to Booneville, MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Marathon Cheese Corp., P.O. Box 185, Marathon, WI 54448. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 142059 (Sub-No. 27TA), filed March 29, 1978. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, P.O. Box 911, Joliet, IL 60436. Applicant's representatives: Jack Riley, 1830 Mound Road, Joliet, IL 60436. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Expanded plastic products* (except in bulk), from the facilities of Dow Chemical Co. at or near Magnolia, AR, and Pevely, MO, to points in the United States on and east of U.S. Hwy 85, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dow Chemical U.S.A., Louis A. Stock, Traffic Manager, P.O. Box 36000, Strongsville, OH 44136. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 142619 (Sub-No. 2TA), filed March 15, 1978. Applicant: DASH TRANSPORTATION, INC., P.O. Box 221, Bloomingdale, IL 60108. Applicant's representatives: Edward J. Kiley, 1730 M Street NW., Suite 501, Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Steel and aluminum tubing, and materials, supplies, and equipment* used in the manufacture, sale, or distribution of steel tubing and aluminum tubing, between the facilities of Tubesales, located at or near Carol Stream, IL, Cranbury, NJ; Los Angeles, CA, and Atlanta, GA; and (2) *materials, supplies, and equipment* used in the manufacture, sale, or distribution of steel tubing and aluminum tubing, from Gary and Lafayette, IN; East Troy and Milwaukee, WI, and Alliance, OH, to the facilities of Tubesales at or near Carol Stream, IL, for 180 days. Supporting shipper(s): Tubesales, a corporation, Alan Collins, Manager of Operations, Carol Stream, IL. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 143423 (Sub-No. 5TA), filed March 29, 1978. Applicant: WILLIAM T. AUSTIN, d.b.a. Austin Trucking Co., Route 5, Box 249, Decatur, AL 35601. Applicant's representatives: D. H. Markstein, Jr., 512 Massey Building, Birmingham, AL 35203. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Copper rods*, from the plantsite of Cerro Wire & Cable Co. at Syosset, NY, to the plantsite of Cerro Wire & Cable Co. at Hartselle, AL, under a continuing contract, or contracts, with Cerro Wire & Cable Co., for 180 days. Supporting shipper(s): Cerro Wire & Cable Co., 201 Cedar Cove Road, Hartselle, AL 35648. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 143486 (Sub-No. 1TA), filed March 23, 1978. Applicant: DELTCO, 312 East 16th Street, Greeley, CO 80631. Applicant's representative: Leslie R. Kehl, Suite 1600, Lincoln Center Building, 1660 Lincoln Street, Denver, CO 80264. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (A) *Ore*, from Elko County, NV, to the mill facility of Eisenman Chemical Co., located at Salt Lake City, UT, and (b) *chemicals*, in bags, and *drilling mud*, (1) between the warehouses of Eisenman Chemical Co., located at or near Greeley, CO; Bakersfield and Woodland, CA; Weatherford, Burns Flat, and Woodward, OK; Canadian, TX; Casper and Evanston, WY; Myton and Salt Lake City, UT; Grand Island, NE, and Farmington, NM; and (2) from AZ, CO, CA, ID, KS, MI, MT, NE, NV, NM, Syracuse, NY; ND, OK, SD, TX, UT, Hopewell, VA, and WY, to the warehouses of Eisenman Chemical Co. as listed in subparagraph (1) above. The operations

No. MC 143808 (Sub-No. 2TA), filed March 29, 1978. Applicant: XXOFF, INC., Bank for Saving Building, 1900 Morris Avenue, Birmingham, AL 35203. Applicant's representative: D. H. Markstein, Jr., 512 Massey Building, Birmingham, AL 35203. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Medical specimens, such as, but not limited to, human blood, urine and tissue, requiring refrigeration*, (1) from Birmingham, AL, to Atlanta, GA and (2) from all points in AL to Birmingham, AL, for subsequent movement by air beyond AL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Biomedical Laboratories, Inc., 110 Vulcan Road, Birmingham, AL 35209; (2) Bio Science, 20 Perimeter Center East, Suite 2005, Atlanta, GA 30346. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 144166 (Sub-No. 2TA), filed March 29, 1978. Applicant: BILL STARR TRUCKING, INC., 1716 Berry Road, Independence, MO 64057. Applicant's representative: Frank W. Taylor, Jr., Suite 600, 1221 Baltimore Avenue, Kansas City, MO. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Newsprint in*

rolls, from the plantsite of Southland Paper Mill, Inc., at or near Lufkin, TX, to Independence, MO, under a continuing contract, or contracts, with Examiner Publishing Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Examiner Publishing Co., 321 West Lexington, Independence, MO Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 144452 (Sub-No. 1TA), filed March 22, 1978. Applicant: ARLEN LINDQUIST, d.b.a. ARLEN E. LINDQUIST TRUCKING, 3242 Old Hwy 8, Minneapolis, MN 55418. Applicant's representative: James B. Hovland, P.O. Box 1680, 414 Gate City Building, Fargo, ND 58102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Oil* (except in bulk), (a) from Roxana, IL, to Shell Lake, Rice Lake, Bruce, New Richmond, Viroqua, Sparta, Necedah, and Tomah, WI, Grand Forks, ND, and points in MN, and (2) *empty oil drums,* from Shell Lake, Rice Lake, Bruce, New Richmond, Viroqua, Sparta, Necedah, and Tomah, WI, Grand Forks, ND, and points in MN, to Roxana, IL, (3) *lubricants* (except in bulk), from New Orleans, LA, to Virginia, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (15) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 144497 TA, filed March 27, 1978. Applicant: JOHN DAVID WEBSTER, d.b.a. CENTRAL DISPATCH DISTRIBUTING, 1394 West Nineth, Pomona, CA 91766. Applicant's representative: William J. Monheim, 13710 East Whittier Boulevard, Suite 203, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Refractory materials and accessories,* from Baltimore, MD, Bauxite, AR, Canal Winchester, OH, Chicago Heights, IL, Cincinnati, OH, Greenville, TN, Highland, IN, Kalamazoo, MI, Niagara Falls, NY, Oak Hill, OH, Paris, TN, Port Kennedy, PA, Sledge, MS, South Shore, KY, St. Louis, Mo, Sugar Creek, OH, Vandalia, MO, Woodville, OH, and Zelienople, PA, to points in AZ, CA, NV, NM, and UT, under a continuing contract, or contracts, with the Pryor-Giggey Co., for 180 days. Supporting shipper(s): The Pryor-Giggey Co., 10000 Santa Fe Springs Road, Santa Fe Springs, CA 90670. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 144556 (Sub-No. 1TA), filed March 29, 1978. Applicant: SUNSET TRANSPORTATION CO., P.O. Box 126, Kenosh, UT 84637. Applicant's representative: Stuart L. Poelman, 700 Continental Bank Building, Salt Lake City, UT 84101. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Gypsum board and gypsum board products and accessories,* from Sigurd, UT, to points in CO, within the counties of Moffit, Routt, Grand, Summit, Eagle, Rio Blanco, Garfield, Pitkin, Lake Mesa, Delta, Gunnison, Saquache, Montrose, San Minguel, Ouray, Hinsdale, San Juan, Dolores, Montezuma, La Plata, Archuleta, and Denver, under a continuing contract, or contracts with L & W Supply Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): L & W Supply Corp., d.b.a. Building Specialties, 1350 Cherokee, Denver, CO 80223. (G. C. Krantz, General Manager.). Send protests to: Lyle D. Helfer, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City,UT 84138.

No. MC 144567 TA, filed March 29, 1978. Applicant: A. A. R. TRUCKING CORP., 31-34 137th Street, Flushing, NY 11354.. Applicant's representative: Harold L. Reckson, 33-28 Halsey Road, Fair Lawn, NJ 07410. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Used household goods or personal effects, in boxes or crates, electrical appliances,* from New York, NY, to Miami, FL, and its commercial zone, restricted to shipments with a subsequent movement by air or water in foreign commerce, under a continuing contract, or contracts, with T M A Packing & Shipping, Inc., for 180 days. Supporting shipper(s): T M A Packing & Shipping, Inc., 45-18, 83rd Street, Elmhurst, NY 11373. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

No. MC 144559 (Sub-No. 1TA), filed March 29, 1978. Applicant: BEELER BROS, INC., d.b.a. BEELER FARMS, P.O. Box 7, 91st Avenue and McDowell Road, Tolleson, AZ 85353. Applicant's representative: George Beeler, P.O. Box 7, Tolleson, AZ 85353. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Cottonseed meal, soybean meal, pelleted or in bulk feed ingredients* (except liquid feed in bulk), between points in AZ, on the one hand, and points in CO, on the other, under a continuing contract, or contracts, with Allmendinger Commodities, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Allmendinger Commodities, Box 151, Lytle Star Route, Colorado Springs, CA (Randall L. Allmendinger, Owner). Send protest to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 144570 TA, filed March 28, 1978. Applicant: DIVERSIFIED CARRIERS, INC., 903 Sixth Street NW., Rochester, MN 55901. Applicant's representative: Steven K. Kuhlmann, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, and articles* distributed by meat packinghouses as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the facilities utilized by Iowa Beef Processors, Inc., located at or near Laverne, MN, to points in the States of MA, NY, and PA. Restriction: Restricted to a transportation service to be performed under a continuing contract, or contracts, with Iowa Beef Processors, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South Fourth Street, Minneapolis, MN 55401.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary

[FR Doc. 78-12609 Filed 5-8-78; 8:45 am]

[7035-01]

[Notice No. 71]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 1, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate

Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 28060 (Sub-No. 42TA), filed April 4, 1978. Applicant: WILLERS, INC., d.b.a. WILLER TRUCK SERVICE, 1400 North Cliff Avenue, P.O. Box 944, Sioux Falls, SD 57101. Applicant's representative: Bruce E. Mitchell, Serby & Mitchell, Suite 375, 3379 Peachtree Road NE., Atlanta, GA 30326. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Meats, meat products, meat by-products, and articles distributed by meat packinghouses*, as described in sections A, B and C of appendix I to the report in Motor Carrier Certificates, 61 MCC 209 and 766, (except commodities in bulk, in tank vehicles), from the plantsite and/or warehouse facilities of John Morrell & Co., at or near Sioux Falls, SD, to points in OK and TX, and (2) *Such commodities* as are used by meat packers in the conduct of their business when destined to or for use by meat packers, from points in OK and TX, to the facilities of John Morrell and Co., at or near Sioux Falls, SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): John Morrell & Co., P.O. Box 1266, Sioux Falls, SD 57101. (T. I. Gunderson, Traffic Manager) Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501.

No. MC 41849 (Sub-No. 41TA), filed March 27, 1978. Applicant: KEIGHTLEY BROS., INC., 1601 South 39th Street, St. Louis, MO 63101. Applicant's representatives: Patrick M. Browne, 1601 South 39th Street, St. Louis, MO 63110. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in dump vehicles requiring power conveyor for unloading, from St. Louis, MO, to the following points in the State of IL, Cerro Gordo, Monticello, Peoria, Pontiac, Normal and Rantoul, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Morton Salt, 110 North Wecker Drive, Chicago, IL 60606. Send protests to: Peter E. Binder, District Supervisor, 210 North 12th Street, Room 1465, St. Louis, MO 63101.

No. MC 51146 (Sub-No. 592TA), filed April 3, 1978. Applicant: SCHNEIDER TRANSPORT, INC., P.O. Box 2298, 2661 South Broadway, Green Bay, WI 54306. Applicant's representatives: John R. Patterson, 2480 E. Commercial Boulevard, Fort Lauderdale, FL 33308. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Salt* (except in bulk), from the facilities of Hardy Salt Co. at or near Manistee, MI, to points in IL, IN, OH, WI points in IA on and east of U.S. hwy 169, Lexington and Louisville, KY, Baltimore, MD, St. Louis, MO, and Bird-in-Hand and Mifflintown, PA, including the commercial zones of the above specifically named cities, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hardy Salt Co., 800 South Vandeventer Avenue, St. Louis, MO 63116. (Eaph Lowe, Jr.) Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 59725 (Sub-No. 1TA), filed February 22, 1978. Applicant: MACK AVENUE MOVING & STORAGE, INC., 7740 Gratiot, Detroit, MI 48213. Applicant's representatives: Robert B. Simon, 7740 Gratiot, Detroit, MI 48213. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Used household goods and baggage*, between points in Wayne, Oakland and Macomb counties of MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): U.S. Army Support Acty., Transportation Division Selfridge ANGB, MI. Franklin E. Weeks, Traffic Manager/STASS-YT, Selfridge, ANGB, MI 48045. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 82492 (Sub-No. 196TA), filed April 5, 1978. Applicant: MICHIGAN & NEBRASKA TRANSIT CO., INC., 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Applicant's representatives: William C. Harris, 2109 Olmstead Road, P.O. Box 2853, Kalamazoo, MI 49003. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from Buffalo, NY, to points in IL, IN, IA, MI, MN, OH and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Rich Products Corp., 1145 Niagara Street, Buffalo, NY 14213. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

No. MC 83539 (Sub-No. 491TA), filed March 31, 1978. Applicant: C & H TRANSPORTATION CO., INC., 9757 Military Parkway, P.O. Box 270535, Dallas, TX 75227. Applicants representative: Thomas E. James (Same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stone*, between Napa and Solano County, CA, on the one hand and, on the other, points in NE, UT, CO, AZ, NM, OK, TX, AR, LA, TN, MS, KY, AL, GA, FL, SC, NC, WV, and VA, for 180 days. Supporting shipper(s): Stucco Stone Products, P.O. Box 237, Napa, CA 94558. Send protests to: Opal M. Jones Transportations Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

No. MC 103051 (Sub-No. 428TA), filed April 3, 1978. Applicant: FLEET TRANSPORT CO., INC., 934 44th Avenue North, P.O. Box 90408, Nashville, TN 37209. Applicants representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Defoaming compounds and cotton softeners* (in bulk, in tank vehicles), (2) *Industrial oils* (in bulk, in tank vehicles); and (3) *Liginin Sulfonate* (in bulk, in tank vehicles), (1) from Columbus, GA, to points east of the Mississippi River, AR, LA, and TX, (2) from Jacksonville, FL; Baton Rouge, LA; and Charleston, SC, to Co-

lumbus, GA, and (3) from Green Bay, WI, to Columbus, GA, for 180 days. Supporting shipper(s): Callaway Chemical Co., P.O. Box 2335, 1136 Chumar Street, Columbus, GA 31902. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

No. MC 103051 (Sub-No. 434TA), filed March 31, 1978. Applicant: FLEET TRANSPORT CO., INC., 934 44th Avenue, P.O. Box 90408, Nashville, TN 37209. Applicants representative: Russell E. Stone, P.O. Box 90408, Nashville, TN 37209. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer* (in bulk, in tank or hopper-type vehicles), from Adamsville, TN, to points in the States of KY, TN, AL, MS, LA, FL, GA, SC, NC, TX and MO, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Plant Food Enterprises, Inc., P.O. Box 254, Adamsville, TN 38310. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422 U.S. Court House, 801 Broadway, Nashville, TN 37203.

No. MC 106400 (Sub-No. 112TA), filed April 5, 1978. Applicant: KAW TRANSPORT CO., P.O. Box 12628, North Kansas City, MO 64116. Applicants representative: Harold D. Holwick, P.O. Box 12628, North Kansas City, MO 64116. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Crude oil* (in bulk, in tank vehicles), from Richardson County, NE, to Johnson & Wyandotte Counties, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Blue Bird Oil Co., 5540 Raytown Road, Raytown, MO 64133. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 106674 (Sub-No. 310TA), filed April 7, 1978. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, U.S. Highway 24 West, Remington, IN 47977. Applicant's representative: Jerry L. Johnson, P.O. Box 123 Remington, IN 47977. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fertilizer, liquid in bulk,* from CF Industries at or near Terre Haute, IN, to points in MI, IL and OH, for 180 days. Supporting shipper(s): Vistron Corp., 313 Midland Building, Cleveland, OH 44115. Send protests to: J. H. Gray District Supervisor, Bureau of Operations, Intestate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

No. MC 107002 (Sub-No. 528TA), filed April 5, 1978. Applicant: MILLER TRANSPORTERS, INC., P.O. Box 1123, U.S. Highway 80 West, Jackson, MS 39205. Applicant's representative: John J. Borth, P.O. Box 1123, Jackson, MS 39205. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Synthetic plastics,* dry, (in bulk, in tank vehicles), from Aberdeen, MS, to points in KY, OH, OK, TN, TX, AR, MO, AL, VA and WV, for 180 days. Supporting shipper(s): Continental Oil Co., P.O. Box 2197, Houston, TX 77001. Send protests to: Alan C. Tarrant District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

No. MC 111729 (Sub-No. 736TA), filed April 7, 1978. Applicant: PUROLATOR COURIER CORP., 3333 New Hyde Park Road, New Hyde Park, NY 11040. Applicant's representative: Elizabeth L. Henoch, (Same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Live tropical fish, aquariums, aquarium supplies,* restricted against the transportation of shipments weighing in excess of 100 lbs., from one consignor to one consignee on any one day, from Phoenix, AZ, to points in AZ, on traffic having a prior movement by air, for 180 days. Supporting shipper(s): Long Beach Fisheries, Inc., 2035, 14th Street, Long Beach, CA 90804. Send protests to: Maria B. Kejss Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

No. MC 113362 (Sub-No. 327TA), filed April 7, 1978. Applicant: ELLSWORTH FREIGHT LINES, INC., 310 East Broadway, Eagle Grove, IA 50533. Applicant's representative: Milton D. Adams, P.O. Box 429, Austin, MN 55912. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Feed ingredients,* in bags, from Sioux Falls, SD, to Austin, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): McFleeg, Inc., of Austin, 1210 14th Street NE., Austin, MN 55912. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 113843 (Sub-No. 253 TA), filed April 6, 1978. Applicant: REFRIGERATED FOOD EXPRESS, INC., 316 Summer Street, Boston, MA 02210. Applicant's representative: Lawrence T. Sheils, 316 Summer Street, Boston, MA 02210. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Oleomargarine and table sauces* (in vehicles equipped with mechanical refrigeration), from Baltimore, MD, to points in CT, DE, IL, KN, KY, ME, MA, MI, MO, NH, NJ, NY, OH, PA, RI, VT, VA, WV, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. H. Filbert, Inc., 3701 Southwestern Boulevard, Baltimore, MD 21229. Send protests to: John B. Thomas, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 150 Causeway Street, Boston, MA 02114.

No. MC 114273 (Sub-No. 360 TA), filed April 6, 1978. Applicant: CRST, INC., P.O. Box 68, 3930 16th Avenue, Cedar Rapids, IA 52406. Applicant's representative: Kenneth L. Core (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Appliances, parts, and accessories,* from Newton, IA, to points in AL, DE, GA, IN, KS, KY, MI MD, MO, NC, OH, PA, SC, TN, VA, WV, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Maytag Co., Newton, IA 50208. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 114457 (Sub-No. 376TA), filed March 31, 1978. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Applicant's representative: James H. Wills, 2102 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Baled wood pulp,* from points in WI and MI, to Brainerd and Cloquet, MN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Potlatch Corp., Northeast Mill Avenue, Brainerd, MN 56401. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Post Office, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 114457 (Sub-No. 377TA), filed April 3, 1978. Applicant: DART TRANSIT CO., 2102 University Avenue, St. Paul, MN 55114. Applicant's representative: James H. Wills, 2102 University Avenue, St. Paul, MN 55114. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Metal containers and can ends, metal,*

from Milwaukee, WI, to St. Louis, MO, Cincinnati, OH, Evansville, IN, Madisonville, KY, Omaha, NE, and Sioux City, IA, for 180 days. Supporting shipper(s): National Can Corp., 8101 West Higgins Road, Chicago, IL 60631. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 115322 (Sub-No. 141TA), filed April 6, 1978. Applicant: REDWING REFRIGERATED, INC., 9831 South Orange Avenue, P.O. Box 10177, Taft, FL 32809. Applicant's representative: L. W. Fincher, P.O. Box 426, Tampa, FL 33601. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, in vehicles equipped with mechanical refrigeration, from the facilities of General Foods Corp. at Avon, NY, to Dedham, MA, and Landover, MD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): General Foods Corp., 250 North Street, White Plains, NY. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

NO. MC 116947 (Sub-No. 55TA), filed April 6, 1978. Applicant: SCOTT TRANSFER CO., INC., 920 Ashby Street SW., Atlanta, GA 30310. Applicant's representative: William Addams, 5299 Roswell Road NE., Suite 212, Atlanta, GA 30352. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Fibreboard cans, with metal ends, set up*, from Henderson, TN, to Dover, DE, under a continuing contract, or contracts, with Sonoco Products Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sonoco Products Co., 1 North Second Street, Hartsville, SC 29550. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street, NW., Room 300, Atlanta, GA 30309.

No. MC 117344 (Sub-No. 271TA), filed March 16, 1978. Applicant: THE MAXWELL CO., P.O. Box 15010, 10380 Evendale Drive, Cincinnati, OH 45215. Applicant's representative: John C. Spencer (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron oxide* (in bulk, in tank vehicles), from Toledo, OH, to Washington, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Toledo Pickling & Steel Service, Inc., Joseph J. McCaffery, Vice President, P.O. Box 3377, Station C, Toledo, OH 43607. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 55140B Federal Building, 550 Main Street, Cincinnati, OH 45201.

No. MC 118130 (Sub-No. 87TA), filed April 6, 1978. Applicant: SOUTH EASTERN XPRESS, INC., P.O. Box 6985, Fort Worth, TX 76115. Applicant's representative: Billy R. Reid, P.O. Box 9093, Fort Worth, TX 76107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Automobile air conditioning units, components, and parts*, from Fort Worth, TX, to points in CA, NV, UT, AZ, CO, NM, KS, OK, LA, MS, AL, GA, FL, and SC, for 180 days. Supporting shipper(s): Metrotex Systems, Inc., 210 Northeast 7th, Fort Worth, TX 76106. Send protests to: Robert J. Kirspel, District Supervisor, Room 9A27, Federal Building, 819 Taylor Street, Fort Worth, TX 76102.

No. MC 119988 (Sub-No. 139TA), filed April 10, 1978. Applicant: GREAT WESTERN TRUCKING CO., INC., Highway 103 East, P.O. Box 1384, Lufkin, TX 75901. Applicant's representative: Clayte Binion, 1108 Continental Life Building, Ft. Worth, TX 76102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Ventilation products, roof louvers, turbines, and shutters*, from the plantsite of Lomanco, Inc., at Jacksonville, AR, to points in TX, OK, and LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Lomanco, Inc., 2101 West Main Street, P.O. Box 519, Jacksonville, AR 72076. Send protests to: John F. Mensing, District Supervisor, Interstate Commerce Commission, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

No. MC 123233 (Sub-No. 83TA), filed April 7, 1978. Applicant: PROVOST CARTAGE INC., 7887 Grenache Street, Ville d'Anjou, PQ, Canada. Applicant's representative: J. P. Vermette (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Denatured beer* (in bulk, in tank vehicles), from St. Louis, MO, to the Port of Entry on the International Boundary Line betwen the United States and Canada located at Detroit, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 10 days of operating authority. Supporting shipper(s): Clairol Canada, Division of Bristol-Myers Canada, Ltd., 1375 Newton Road, Boucherville, PQ., Canada, Send protests to: David A. Demers, District Supervisor, Interstate Commerce Commission, P.O. Box 548, 87 State Street, Montpelier, VT 05602.

No. MC 123255 (Sub-No. 158TA), filed March 30, 1978. Applicant: B&L MOTOR FREIGHT, INC., 140 Everett Avenue, Newark, OH 43055. Applicant's representative: C. F. Schnee, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products*, from the facilities of Westvaco Corp., at or near Wickliffe, KY, to Lewiston, ME, Stamford, CT, New York, Westbury, and Port Chester, NY., and Kearney, New Providence, and West Orange, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Westvaco Corp., 299 Park Avenue, New York, NY 10017. Send protests to: Frank L. Calvary, District Supervisor, Interstate Commerce Commission, 220 Federal Building and U.S. Courthouse, 85 Marconi Boulevard, Columbus, OH 43215.

No. MC 123389 (Sub-No. 45TA), filed April 3, 1978. Applicant: CROUSE CARTAGE CO., P.O. Box 586, Highway 30 West, Carroll, IA 51401. Applicant's representative: James E. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts, and articles distributed by meat packinghouses*, as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from the plantsites of and facilities used by Farmland Foods, Inc., at or near Crete, Lincoln, and Omaha, NE, Carroll, Denison, Des Moines, Fort Dodge, Sioux City, and Iowa Falls, IA, to points in AZ, CA, ID, MT, NM, NV, OR, UT, WA, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Richard W. Brodersen, Superintendent-Fleet Operations, Farmland Foods, Inc., P.O. Box 403, Denison, IA 51442. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 124117 (Sub-No. 30TA), filed March 29, 1978. Applicant: EARL FREEMAN AND MARIE FREEMAN, d.b.a. MID-TENN EXPRESS, P.O. Box 101, Eagleville, TN 37060. Applicant's representative: Roland M. Lowell, 618 United American Bank Building, Nashville, TN 37219. Authority sought to operate as a *common*

carrier, by motor vehicle, over irregular routes, transporting: *Glass containers*, between the facilities utilized by Midland Glass Co., Inc., at or near Warner Robbins, GA on the one hand and, on the other, points in Alamance, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Orange, Person, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties, NC, and Bedford, Campbell, Carroll, Floyd, Franklin, Halifax, Henry, Montgomery, Patrick, Pittsylvania, Pulaski, and Roanoke Counties, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper: Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 124821 (Sub-No. 33TA), filed April 3, 1978. Applicant: WILLIAM GILCHRIST, 509 Susquehanna Avenue, Old Forge, PA 18518. Applicant's representative: John W. Frame, P.O. Box 626, Camp Hill, PA 17011. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs*, from the facilities of Mueller Macaroni Co., Jersey City, NJ, to points in MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mueller Macaroni Co., 180 Baldwin Avenue, Jersey City, NJ 07306. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503

No. MC 125894 (Sub-No. 6TA), filed April 5, 1978. Applicant: J. AND R. SCHUGEL TRUCKING, INC., 301 North Water Street, New Ulm, MN 56073. Applicant's representative: Robert S. Lee, 1000 First National Bank Building, Minneapolis, MN 55402. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Feed ingredients*, from New Prague, MN, to points in IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): International Multifoods, 1200 Multifoods Building, Minneapolis, MN 55402. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 126118 (Sub-No. 73TA), filed April 5, 1978. Applicant: CRETE CARRIER CORP., P.O. Box 81228, Lincoln, NE 68501. Applicant's representative: Duane W. Acklie (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* in containers, from Peoria, IL, Cold Spring, MN; St Louis, MO; Columbus, OH; LaCrosse, WI., and Milwaukee, WI, and their commercial zones, to points in NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Robert F. Blinn, President, Norfolk Beverage Co., 206 East Northwest Avenue, Norfolk, NE 68701. (2) Jim Pile, President, Falstaff Distributing Co., Inc., Box 1243, Norfolk, NE 68701. (3) R. R. Robertson, President, Robertson Distributing Co., 1415 South 1st Street, Norfolk, NE 68701. Send protests to: Max H. Johnson, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

No. MC 126358 (Sub-No. 19TA), filed March 30, 1978. Applicant: BENNETT TRUCKING CO., P.O. Box 526, Hawkinsville, GA 31036. Applicant's representative: Paul M. Daniell, Suite 1200, Atlanta Gas Light Tower, 235 Peachtree Street, Atlanta, GA 30303. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber* (except plywood and veneer), from Cordele, GA to points in AL, MS, SC, NC, OH, VA, TN, and KY, for 180 days. Supporting shipper(s): Griffin Lumber Co., P.O. Box 237, Cordele, GA 31015. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 128285 (Sub-No. 16TA), filed April 5, 1978. Applicant: MELLOW TRUCK EXPRESS, INC., 9801 N. Vancouver Way, Portland, OR 97217. Applicant's representative: Nick I. Goyak, 1 S.W., Columbia, Suite 555, Portland, OR 97258. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber mill products*, restricted against the transportation of commodities (in bulk, in tank or hopper-type vehicles), between points in OR, WA, and CA; and from Columbia, Clackamas, Tillamook, and Douglas Counties, OR, and Bonner and Latah Counties, ID, to King and Pierce Counties, WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (5) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: R. V. Dubay, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, Portland, OR 97204.

No. MC 133689 (Sub-No. 185TA), filed April 5, 1978. Applicant: OVERLAND EXPRESS, INC., 719 First Street SW, New Brighton, MN 55112. Applicant's representative: Robert P. Slack, P.O. Box 6010, West St. Paul, MN 55118. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk), from points in MN, to points in the States of AR, IL, IN, IA, KS, LA, MI, WI, MO, NE, ND, OH, OK, SD and TX, for 180 days. Supporting shipper(s): General Foods Corp., 250 North Street, White Plains, NY 10605. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and Courthouse, 110 S. 4th Street, Minneapolis, MN 55401.

No. MC 135684 (Sub-No. 77TA), filed April 6, 1978. Applicant: BASS TRANSPORTATION CO., INC., P.O. Box 391, Old Croton Road, Flemington, NJ 08822. Applicant's representative: Ronald L. Knorowski, P.O. Box 391, Old Croton Road, Flemington, NJ 08822. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Chemicals and plastic products* (except in bulk, in tank vehicles), from the facilities utilized by Dow Chemical at or near Midland, MI to points in NJ, NY, PA, MA, CT, ME, NH and RI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority . Supporting shipper(s): Dow Chemical Co., 690 Building, Midland, MI 48640. Send protests to: District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 138438 (Sub-No. 22TA), filed April 3, 1978. Applicant: D. M. BOWMAN, INC., Route 9, Box 26, 15 East Oak Ridge Drive, Hagerstown, MD 21740. Applicant's representatives: Edward N. Button, P.O. Box 1417, 1329 Pennsylvania Avenue, Hagerstown, MD 21740. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick and concrete products*, from Nokesville and Manassas, VA, and their respective commercial zones, to points in the State of MD and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cherrydale Block Co., P.O. Box 687, Herndon, VA 22070. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, 12th and Constitution Avenue NW., Room 1413, Washington, DC 20423.

No. MC 138627 (Sub-No. 29TA), filed March 30, 1978. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Route 4, Fort Dodge, IA 50501. Applicant's representatives: Arlyn L. Westergren, 30 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the Chicago, IL, commercial zone, and Hennepin, IL, to Columbus, NE, and Red Oak, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Douglas & Lomason Co., 24600 Hallwood Court, Farmington Hills, MI 48018. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 138884 (Sub-No. 4TA), filed April 7, 1978. Applicant: CONDOR CORP., P.O. Box 630, Dixfield, ME 04224. Applicant's representatives: Peter L. Murray, 30 Exchange Street, Portland, ME 04101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Glued wood furniture panels, uncrated*, from shipper's plant in Andover, ME, to customers of shipper located in Morristown, TN, and New Albany, IN, under a continuing contract, or contracts with Andover Wood Products, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s); Andover Wood Products, Andover, ME. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 305, 76 Pearl Street, Portland, ME 04111.

No. MC 139787 (Sub-No. 6TA), filed April 7, 1978. Applicant: M & M TRUCKING CO., INC., P.O. Box 1743, Auburn, AL 36830. Applicant's representative: Kim C. Meyer, 235 Peachtree Street, Suite 1200, Atlanta Gas Light Tower, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Sand and gravel* (in bulk, in dump trucks), from Montgomery, Marion, and Elmore Counties, AL, to points in GA and those points in FL in and north of Brevard, Orange, Lake, Sumter, and Hernando Counties, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): R & S Materials, Inc., P.O. Box 3547, Montgomery, AL 36109. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 140310 (Sub-No. 2TA), filed March 31, 1978. Applicant: WALTER J. GRIFFIN, INC., P.O. Box 327, Monroe, NC 28110. Applicant's representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as *contract carrier*, by motor vehicle, over irregular routes, transporting: *Textiles, textile products, and household accessories and materials, equipment and supplies* used in the manufacture, sale, and distribution of the described commodities (except commodities in bulk and those which by reason of size or weight require the use of special equipment), between Los Angeles, CA, and Monroe, NC, on the one hand, and, on the other, points in AL, GA, IL, KS, MD, MA, MI, MN, NJ, KY, NY, PA, SC, TN, TX, VA, and DC, between Los Angeles, CA, and points in NC, under a continuing contract, or contracts, with Barth & Dreyfuss of CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Barth & Dreyfuss of CA, 2260 East 15th Street, Los Angeles, CA 90021. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

No. MC 140581 (Sub-No. 28TA), filed March 29, 1978. Applicant: TOMMY HAGWOOD, d.b.a. HAGWOOD ENTERPRISES, Route 1, Box 222-A, Trafford, AL 35172. Applicant's representative: William P. Jackson, Jr., 3426 North Washington Boulevard, P.O. Box 1240, Arlington, VA 22210. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles* (except trailers and motor vehicles weighing over 15,000 pounds), in secondary movements, in truckaway service, from points in MI, IL, KY, and OH, to points in TX, for 180 days. Supporting shipper(s): (1) Charlie Dennison, Jr., 10740 Forest Lane, Dallas, TX 75231. (2) American Daily Rental & Lease Co., Inc., 623 North Loop West, Houstin, TX 77008. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 141546 (Sub-No. 24TA), filed April 5, 1978. Applicant: BULK TRANSPORT SERVICE, INC., 1 Dundee Park, Andover, MA 01810. Applicant's representative: Kenneth B. Williams, 84 State Street, Boston, MA 02109. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Cement*, (in bags or bulk), from Kingston, NY, to points in CT, MA, NH, VT, RI, NY, ME, PA, and NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Independent Cement Corp., 65 William Street, Wellesley Office Park, Wellesley, MA 02181. Send protests to: Max Gorenstein, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

No. MC 141570 (Sub-No. 13TA), filed March 29, 1978. Applicant: ELECTRONICS TRANSPORT, INC., 3213 8th Avenue North, P.O. 31103, Birmingham, AL 35222. Applicant's representative: Mr. Craig Massey, 202 East Walnut Street, P.O. Box Drawer J, Lakeland, FL 33802. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Copying machines, and parts, materials and supplies* used in the manufacture, installation or sale of such commodities, between Norfolk, VA, and its commercial zone, on the one hand, and, all points in the state of NC on the other, under a continuing contract, or contracts, with Xerox Corp., for 180 days. Supporting shipper(s): Xerox Corp., 1616 North Fort Myer Drive, Arlington, VA 22209. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 141914 (Sub-No. 21TA), filed March 29, 1978. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Applicant's representative: Kathrena J. Franks, Route 1, Box 108A, Big Cabin, OK 74332. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wood and plasic articles, such as clothespins and toothpicks*, from the facilities of Penley Corp. at or near West Paris, ME, to points in the states of AZ, CA, AR, FL, GA, IL, KS, MN, MO, MD, NV, NM, NC, OH, OK, OR, SC, TN, TX, UT, VA, and WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Penley Corp., West Paris, ME 04289. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Court House Building, 215 NW. 3rd, Oklahoma City, OK 73102.

No. MC 141914 (Sub-No. 40TA), filed April 6, 1978. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Applicant's representative: Kathrena J. Franks, Route 1, Box 108A, Big Cabin, OK 74332. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Molded or foamed plastic articles expanded (polystyrene) such as egg cartons, food service trays, plates, dishes, and other molded articles*, from the facilities of Huntsman Container Co. at

or near Memphis, TN, to all points in the states of AR, CO, IL, LA, MO, OK, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Huntsman Container Co., wholly owned subsidiary of Keyes Fibre Co., Waterville, ME 04901. Send protests to: Connie Stanley, Transportaton Assistant, Room 240, Old Post Office and Court House Building, 215 NW. 3rd, Oklahoma City, OK 73102.

No. MC 143289 (Sub-No. 3TA), filed March 31, 1978. Applicant: DAVID K. KUYKENDALL, d.b.a. FEDERATED TRANSPORT SYSTEMS, 800 South McGary Street, Los Angeles, CA 90021. Applicant's representative: Lucy Kennard Bell, of Daniel M. Shapiro Law Offices, 9701 Wilshire Boulevard, Suite 829, Beverly Hills, CA 90212. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Finished and unfinished piece goods,* from Derby and East Haven, CT, to Los Angeles and San Francisco Counties, CA, under a continuing contract, or contracts, with Concord Fabrics, Inc., located in New York, NY for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Concord Fabrics, Inc., 1411 Broadway, New York, NY 10018. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321, Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 143267 (Sub-No. 16TA), filed March 30, 1978. Applicant: CARLTON ENTERPRISES, INC., 4588 State Route 82, Mantua, OH 44255. Applicant's representative: Peter A. Greene, 900 17th Street NW, Washington, DC 20006. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Steel wire,* in coils, from the plantsite of American Spring Wire Co. at Bedford Heights, OH, to Chicago, Joliet and Mattoon, IL, and Kokomo and Logansport, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Spring Wire Co., 26300 Miles Road, Bedford Heights, OH 44146. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 143812 (Sub-No. 2TA), filed April 7, 1978. Applicant: MARTIN E. VAN DIEST, d.b.a. M. VAN DIEST CO., 8087 Victoria Avenue, Riverside, CA 92504. Applicant's representative: William J. Monheim, 13710 East Whittier Boulevard, Suite 203, P.O. Box 1756, Whittier, CA 90609. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid sugar* (in bulk), from Crockett, CA, to points in AZ, ID, NM, OR, TX and WA, and *Foodstuffs, liquid* (in bulk), from points in WA to points in AZ and CA, for 180 days. Supporting shipper(s): (1) California and Hawaiian Sugar Co., One California Street, San Francisco, CA 94106. (2) T & P Custom Marketing Services, Inc., 2500 East Colorado Boulevard, Suite 315, Pasadena, CA 91107. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 144140 (Sub-No. 12TA), filed April 3, 1978. Applicant: SOUTHERN FREIGHTWAYS, INC., P.O. Box 374, Hwy 44 West, Eustis, FL 32726. Applicant's representative: John L. Dickerson, P.O. Box 374, Eustis, FL 32726. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Citrus products,* between points in FL, restricted to shipments having a prior or subsequent movement by water (except between Winter Garden and Tampa, FL), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Winter Garden Citrus Products Corp., P.O. Box 399, Winter Garden, FL 32787. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 144140 (Sub-No. 13TA), filed April 3, 1978. Applicant: SOUTHERN FREIGHTWAYS, INC., P.O. Box 374, Hwy 44 West, Eustis, FL 32726. Applicant's representative: John L. Dickerson, P.O. Box 374, Eustis, FL 32726. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Central heating and air conditioning units,* from Nashville, TN, to points in FL and GA, for 180 days. Supporting shipper(s): Heil-Quaker Corp., 1714 Heil-Quaker Boulevard, LaVergne, TN 37086. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 144380 (Sub-No. 1TA), filed March 29, 1978. Applicant: ROBERT J. RATHWAY AND WILLIAM C. PAULL, JR., d.b.a. B & B EQUIPMENT CO., a Partnership, R.F.D. No. 2, Box 169A, Perryopolis, PA 15473. Applicant's representative: William C. Paull, Jr., P.O. Box 383, Uniontown, PA 15401. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* from Belle Vernon, Masontown and New Geneva, PA, to Empire, OH, and Natrium, WV, under a continuing contract, or contracts, with Gallatin Fuels, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Gallatin Fuels, Inc., 250 West Main Street, Uniontown, PA 15401. Send protests to: J. A. Niggemyer, District Supervisor, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

No. MC 144448 (Sub-No. 2TA), filed March 29, 1978. Applicant: HERMAN STEFFENSMEIER, d.b.a. HERMAN STEFFENSMEIER TRUCKING, 811 East Decatur Street, West Point, NE 68788. Applicant's representative: Scott E. Daniel, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Alfalfa pellets and alfalfa meal* (in bulk and bags), from the facilities of Land O'Lakes Agricultural Services at West Point and Columbus, NE, to IA, MN and WI, under a continuing contract, or contracts, with Land O'Lakes Agricultural Services, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Susan Johnson, Distribution Control Specialist, Land O'Lakes Agricultural Services, 2827 8th Avenue South, Fort Dodge, IA 50501. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street. Omaha, NE 68102.

No. MC 144470 (Sub-No. 1TA), filed March 31, 1978. Applicant: COBB TRUCKING SERVICE, Route 3, P.O. Box 177, Bryan, TX 77801. Applicant's representative: Lawrence A. Winkle, Suite 1125, Exchange Park, P.O. Box 45538, Dallas, TX 75245. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Ammonium nitrate, urea, fertilizer and fertilizer material,* in bags and in bulk (except in tank vehicles), from the facilities of NIPAK, Inc., located at or near Kerens, Gainesville, Littlefield, Terrell and Pittsbury, TX, to points in AR, CO, KS, LA, MO, NM and OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): NIPAK, Inc., P.O. Box 2820, Dallas, TX 75221. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

No. MC 144509 (Sub-No. 1TA), filed April 3, 1978. Applicant: HOLSTON MOTOR EXPRESS, INC., 2372 Woodbridge Avenue, Kingsport, TN 37664. Applicant's representative: Walter Harwood, P.O. Box 15214, Nashville, TN 37215. Authority sought to operate

as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods, commodities in bulk, and those requiring special equipment), between Rogersville, TN, and Knoxville, TN (and its commercial zone), from Rogersville via TN Hwy 70 to its junction with Interstate 81, and then via Interstate 81 to Knoxville, TN, and return over the same route, serving all points in Carter, Hawkins, Sullivan, Unicoi, and Washington Counties, TN, as off-route points, for 180 days. Applicant intends to interline with other carriers at Knoxville, TN. Supporting shipper(s): There are approximately 22 statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Court House, 801 Broadway, Nashville, TN 37203.

PASSENGER CARRIER

No. MC 1515 (Sub-No. 246TA), filed March 10, 1978. Applicant: GREYHOUND LINES, INC., Greyhound Tower, Suite 1062, Phoenix, AZ 85077. Applicant's representative: W. L. McCracken, Greyhound Tower, Phoenix, AZ 85077. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *Passengers and their baggage, and express and newspapers,* in the same vehicle with passengers:

Route No. 1, between Hempstead, NY, and Bay Shore, NY, serving all intermediate points: From Hempstead over NY State Hwy 24 (Hempstead Turnpike), to junction unnumbered highway, (Merrick Avenue), then over unnumbered highway to junction NY State Hwy 27 (Sunrise Hwy), then over NY State Hwy 27 via Massapequa to Bay Shore and return over the same route.

Route No. 2, between Hempstead, NY, and Massapequa, NY, serving all intermediate points: From Hempstead over NY State Hwy 105 (Jerusalem Avenue), to junction NY State Hwy 107, then over NY State Hwy 107 to junction NY State Hwy 27 in Massapequa and return over the same route.

Route No. 3, between the junction of unnumbered highway (Merrick Avenue) and NY State Hwy 24 west of Hempstead, NY, and Smithtown, NY, serving all intermediate points: From the junction of unnumbered highway and NY State Hwy 240 over NY State Hwy 24 to junction NY State Hwy 106 (Newbridge Road), then over NY State Hwy 106 via Hicksville to junction NY State Hwy 495 (Long Island Expressway, then over NY State Hwy 495 to junction NY State Hwy 495 to junction NY State Hwy 111 at interchange 56, then over NY State Hwy 111 to Smithtown and return over the same route which currently originate or terminate at Hempstead would be extended to provide service to the named south shore points.

There is indeed an immediate and urgent need for the service proposed by applicant in that no other carrier currently provides daily scheduled, regular route service to points on Long Island east of Hempstead. Applicant currently provides charter service to all points located on Long Island, NY, in addition to the daily, regular scheduled service which it provides to Hempstead, NY. Therefore, the proposed extension of service to other points on Long Island, NY, would be a logical extension of Grehound's current operations and would require only a slight increase in miles and running time, while requiring no increase in manpower or equipment.

Applicant further submits that persons residing at points on Long Island, NY, east of Hempstead need and would use the service proposed by Greyhound herein, and therefore, applicant respectfully request that its application be granted.

Route No. 4, between the junction of NY State Hwy 24 and NY State Hwy 106 and the junction of NY State Hwy 105 and NY State Hwy 107 serving all intermediate points: From the junction of NY State Hwy 24 and NY State Hwy 107 over NY State Hwy 24 to junction NY State Hwy 107, then over NY State Hwy 107 to junction NY State Hwy 105 and return over the same route.

Route No. 5, between the junction of NY State Hwy 106 and NY State Hwy 495, and Smithtown, NY, serving all intermediate points: From the junction of NY State Hwy 106 and NY State Hwy 495 over NY State Hwy 106 to junction NY State Hwy 25, then over NY State Hwy 25 to Smithtown and return over the same route.

Route No. 6, between the junction of NY State Hwy 106 and NY State Hwy 495 (portions of which are also designated Interstate Hwy 495), and New York, NY, serving no intermediate points: From the junction of NY State Hwy 106 and NY State Hwy 495 over NY State Hwy 495 to New York, and return over the same route. Applicant, Greyhound Lines, Inc., is seeking the requested authority so as to be able to extend its current service on Long Island, NY, from Hempstead, NY, to points east on both the northern and southern shores of Long Island. Grehound currently conducts interstate operations between Hempstead, NY, on the one hand, and Boston, MA, Washington, DC, AL, New York, and Binghamton, NY, on the other hand. Upon grant of the authority requested herein, applicant would extend its current service from Hempstead to Bay Shore, NY, via Massapequa on the southern shore of Long Island, and from Hempstead to Smithtown, NY, via Hicksville on the north shore of Long Island. Two of applicant's current daily round trips which now originate or originate at Hempstead, NY, would be extended to provide service to the aforementioned north shore points, and two other daily round trips, for 180 days.

Supporting shipper(s): There are approximately 14 statements of support attached to the application which may be examined at the Interstate Commerce in Washington, DC, or copies thereof which may be examined at the field office named below. Send products to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 12610 Filed 5-8-78; 8:45 am]

[7035-01]

[Notice No. 70]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

APRIL 28, 1978.

The following are notices of filing of applications for temporary authority under section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment re-

sulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, DC, and also in the ICC field office to which protests are to be transmitted

MOTOR CARRIERS OF PROPERTY

No. MC 3854 (Sub-No. 41TA), filed April 3, 1978. Applicant: BURTON LINES, INC., P.O. Box 11306, East Durham Station, Durham, NC 27703. Applicant's representative: G. E. Martin, Jr., 815 Ellis Road, Durham, NC 27703. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Building, roofing, and insulating boards and panels,* from the plantsite of Johns-Manville Sales Corp., at or near Woodstock, VA, to points in FL, GA, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Johns-Manville Sales Corp., 200 North Main Street, Manville, NJ 08835. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

No. MC 50935 (Sub-No. 17TA), filed March 23, 1978. Applicant: WOLVERINE TRUCKING CO., 1020 Doris Road, Pontiac, MI 48057. Applicant's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Malt beverages and related advertising materials,* from the facilities of Pabst Brewing Co. in Houston County, GA, to Detroit, MI, and points in its commercial zone; and *empty malt beverage containers, pallets, and rejected shipments of malt beverages,* from Detroit, MI, and points in its commercial zone, to the facilities of Pabst Brewing Co. in Houston County, GA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): City Beverage Co., 1020 Doris Road, Pontiac, MI 48057 (G. D. Anderson, Sales Manager). Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 59367 (Sub-No. 120TA), filed April 3, 1978. Applicant: DECKER TRUCK LINE, INC., P.O. Box 915, 3384 5th Avenue South, Fort Dodge, IA 50501. Applicant's representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lignin powder,* in bags, from Oneida County, WI, to the facilities of Georgia-Pacific Corp., near Fort Dodge, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Georgia-Pacific Corp., P.O. Box 758, Fort Dodge, IA 50501. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 95540 (Sub-No. 1013TA), filed April 4, 1978. Applicant: WATKINS MOTOR LINES, INC., 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Applicant's representative: Benjy W. Fincher, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33802. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat byproducts, and articles distributed by meat packinghouses,* as described in sections A and C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766 (except hides and commodities in bulk), from Chicago, IL, to Jackson, MS, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Morrison Food Distributors, 5205 South Lois Avenue, Tampa, FL 33611. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 Northwest 53rd Terrace, Miami, FL 33166.

No. MC 103993 (Sub-No. 933TA), filed April 4, 1978. Applicant: MORGAN DRIVE-AWAY, INC., 28651 U.S. 20 West, Elkhart, IN 46515. Applicant's representatives: Paul D. Borghesani, 28651 U.S. 20 West, Elkhart, IN 46515. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Motor homes,* in secondary movements, in driveaway service, from Middlebury, IN, to points in the United States, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper(s): Coachmen Industries, Inc., P.O. Box 30, Middlebury, IN 46540. Send protests to: J. H. Gray, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 343 West Wayne Street, Suite 113, Fort Wayne, IN 46802.

No. MC 107478 (Sub-No. 32TA), filed April 3, 1978. Applicant: OLD DOMINION FREIGHT LINE (a corporation), P.O. Box 2006, High Point, NC 27261. Applicant's representatives: Harry J. Jordan, 1000 16th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Lumber, landscape timbers, and pallets,* from Kinsale, VA, to points in OH, DE, MD, TN, PA, NJ, NY, CT, RI, MA, VT, ME, NH, DC, SC, NC, FL, GA, IL, ID, IA, MI, MO, VA, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Potomac Supply Corp., Kinsale, VA 22488. Send protests to: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

No. MC 111289 (Sub-No. 7TA), filed March 31, 1978. Applicant: RICHARD D. FOLTZ, P.O. Box 161, Orwigsburg, PA 17961. Applicant's representatives: S. Berne Smith, P.O. Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Foodstuffs* (except in bulk), in vehicles equipped with mechanical refrigeration, from points in Derry Township, Dauphin County, PA, to points in OH on and south of Interstate 70 and on and west of U.S. Hwy 68, and between Louisville, KY, and Lebanon, PA, and (2) *materials and supplies* used in the production of foodstuffs (except in bulk), from Middletown and Hamilton, OH, to Lebanon, PA, restricted to transportation under a continuing contract, or contracts, with San Giorgio Macaroni, Inc., Lebanon, PA, and Hershey Foods Corp., Hershey, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Hershey Foods Corp. and San Giorgio Macaroni, Inc., Hershey, PA 17033. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503.

No. MC 111401 (Sub-No. 518TA), filed April 3, 1978. Applicant: GROENDYKE TRANSPORT, INC., 2510 Rock Island Boulevard, P.O. Box 632, Enid, OK 73701. Applicant's representative: Victor R. Comstock, P.O. Box 632, 2510 Rock Island Boulevard, Enid, OK 73701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Aqueous cobalt acetate solution* (in bulk, in tank vehicles), from Arab, AL, to Brownsville, TX, in foreign commerce only, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Hall Chemical Co., 28960 Lakeland Boulevard, Wickliffe, OH 44092. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post

Office and Courthouse Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 111545 (Sub-No. 247TA), filed March 31, 1978. Applicant: HOME TRANSPORTATION CO., INC., P.O. Box 6426, Station A, 1425 Franklin Road, Marietta, GA 30060. Applicant's representative: Robert E. Born (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Source and special nuclear materials, radioactive materials, and empty shipping packaging for such commodities*, between Piketon and Sargents, OH, on the one hand, and, on the other, Baltimore, MD, Norfolk and Portsmouth, VA, and Elizabeth, NJ, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Transnuclear, Inc., One North Broadway, White Plains, NY 10601. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW, Room 300, Atlanta, GA 30309.

No. MC 111717 (Sub-No. 28TA), filed April 3, 1978. Applicant: TRACTOR TRANSPORT, INC., 535 South 84th Street, Milwaukee, WI 53214. Applicant's representative: Frank M. Coyne, 25 West Main Street, Madison, WI 53703. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities*, as are dealt in, or used by, agricultural equipment and industrial equipment dealers and manufacturers (except commodities in bulk), restricted to movements from, to or between the facilities of Allis Chalmers Corp., for 180 days. Supporting shipper(s): Allis Chalmers Corp. and its dealers, between points in the United States located east of and including the States of NE, SE, NE, KS, OK, and TX, under a continuing contract, or contracts, with Allis Chalmers Corp., Milwaukee, WI 53701. (Ralph E. Hallock.) Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 112520 (Sub-No. 353TA), filed April 3, 1978. Applicant: McKENZIE TANK LINES, INC., P.O. Box 1200, 122 Appleyard Drive, Tallahassee, FL 32302. Applicant's representative: Sol H. Proctor, 1101 Blackstone Building, Jacksonville, FL 32202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Pumpmill liquid*, from Georgetown, SC, to Panama City, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Arizona Chemical Co., Berdan Avenue, Wayne, NJ 07470. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 113784 (Sub-No. 63TA), filed April 3, 1978. Applicant: LAIDLAW TRANSPORT LTD., 65 Guise Street, Hamilton, Ontario, Canada. Applicant's representative: Douglas R. Gowland (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Gypsum products and roofing materials*, from ports of entry on the international boundary between the United States and Canada at the Niagara, Detroit, and St. Clair Rivers and points in NY, IL, IN, MI, OH, PA, WV, KY, *and returned shipments pallets and materials and supplies* used in the manufacturing of gypsum products, and roofing materials in the reverse direction for the account of Canadian Gypsum Co., restricted to goods moving in foreign commerce, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Canadian Gypsum Co., P.O. Box 4034, Toronto, Ontario, Canada. Send protests to: Interstate Commerce Commission, Bureau of Operations, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

No. MC 116710 (Sub-No. 32TA), filed April 3, 1978. Applicant: MISSISSIPPI CHEMICAL EXPRESS, INC., 2001 East Texas Street, P.O. Box 6176, Bossier City, LA 71010. Applicant's representative: Joe T. Lanham, 1102 Perry-Brooks Building, Austin, TX 78701. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Amorphous molten polypropylene* (in bulk, in tank vehicles capable of maintaining the product at 390 F, from the plantsite of Crowley Chemical Co., Inc., at or near Crowley, LA, to Dalton, GA, Cincinnati, OH, Menssha, WI, and Valdosta, GA, under a continuing contract, or contracts, with Crowley Chemical Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Crowley Chemical Co., Inc., 261 Madison Avenue, New York, NY 10016. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, T-9038, U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113.

No. MC 117119 (Sub-No. 682TA), filed April 4, 1978. Applicant: WILLIS SHAW FROZEN EXPRESS, INC., P.O. Box 188, Elm Springs, AR 72728. Applicant's representative: L. M. McLean, P.O. Box 188, Elm Springs, AR 72728. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such merchandise* as is dealt in by retail, discount department or variety stores, (except commodities in bulk and foodstuffs), from Miami, FL, to the facilities of Wal-Mart Stores, Inc., at Bentonville and Searcy, AR, for 180 days. Supporting shipper(s): Wal-Mart Stores, Inc., P.O. Box 116, Bentonville, AR 72712. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 117758 (Sub-No. 6TA), filed April 3, 1978. Applicant: GRINGERI BROS. TRANSPORTATION CO., INC., Ayer Road, Routes 110 and 111, Harvard, MA 01451. Applicant's representative: James P. Martin, Jr., 8 W. Morse Road, Belingham, MA 02019. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen meat*, in refrigerated equipment, from Cohoes, NY, to Ayer, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Equity Meat Corp., 18 New Courtland Street, Cohoes, NY 12047. Send protests to: Paul A. Roberts, District Suervisor, Interstate Commerce Commission, 150 Causeway Street, Boston, MA 02114.

No. MC 117786 (Sub-No. 16TA), filed April 4, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Applicant's representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Charcoal, charcoal briquettes; fireplace logs (compressed sawdust, wax impregnated); charcoal lighter fluid*, in cans in cartons, hickory chips, (not charred), and vermiculite other than crude, from Elk Grove, CA, to points in AZ, NV, and UT, for 180 days. Supporting shipper(s): The Kinsford Co., 940 Commonwealth Building, P.O. Box 1033, Louisville, KY 40201. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 117786 (Sub-No. 17TA), filed April 4, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Applicant's representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting:

Door and/or door sections, garage, electrical, and parts and accessories used or useful in the installation thereof; steel tubing, and electrical machinery, from Covington, OH, and Detroit, MI to points in AZ, CA, CO, ID, MT, NV, NM, OR, TX, UT, WA and WY, for 180 days. Supporting shipper(s): VEMCO Products, Inc., 4063 North State, Route 48, Covington, OH 45318. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 117786 (Sub-No. 19TA), filed April 4, 1978. Applicant: RILEY WHITTLE, INC., P.O. Box 19038, Phoenix, AZ 85009. Applicant's representative: Thomas F. Kilroy, Suite 406, Executive Building, 6901 Old Keene Mill Road, Springfield, VA 22150. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Charcoal, charcoal briquettes, fireplace logs (compressed sawdust, wax impregnated), charcoal lighter fluid,* in cans, in cartons, hickory chips (not charred), and vermiculite, other than crude, from Crossville, TN, and Lincoln, MO, to points in AZ, CA, CO, NV, NM OR, UT and WA, for 180 days. Supporting shipper(s): The Kingsford Co., 940 Commonwealth Building, P.O. Box 1033, Louisville, KY 40201. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 118959 (Sub-No. 164TA), filed April 3, 1978. Applicant: JERRY LIPPS, INC., 130 South Frederick Street, Cape Girardeau, MO 63701. Applicant's representative: Robert M. Pearce, P.O. Box 1899, 1755 Chestnut Street, Bowling Green, KY 42101. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Paper and paper products,* from Procter & Gamble plantsite at Albany, GA, and nearby points to points in the States of LA and MS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Procter & Gamble Distributing Co., P.O. Box 599, Cincinnati, OH. 45201. Send protests to: P. E. Binder, Acting District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

No. MC 119670 (Sub-No. 31TA), filed April 3, 1978. Applicant: THE VICTOR TRANSIT CORP., P.O. Box 32115, 5250 Este Avenue, Cincinnati, OH 45232. Applicant's representative: Robert H. Kinker, 314 West Main Street, P.O. Box 464, Frankfort, KY 40601. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass, containers and caps, covers, disks or tops therefor,* from Huntington, WV, to Gas City, IN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Owens-Illinois, Inc., E. P. Young, Supervisor—Divisional Transportation, P.O. Box 1035, Toledo, OH 43666. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514—B Federal Building, 550 Main Street, Cincinnati, OH 45202.

No. MC 119789 (Sub-No. 446TA), filed April 4, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, TX, 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid plastic* (in containers, in mechanically refrigerated equipment), from Riverside, CA, to points in the United States (except AK, HI, IL, IN, IA, LA, MI, MN, MO, NE, OR, TX, and WA), for 180 days. Supporting shipper(s): Foam Systems Co., P.O. Box 5347, Riverside CA 92507. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX. 75242.

No. MC 119789 (Sub-No. 447TA), filed April 4, 1978. Applicant: CARAVAN REFRIGERATED CARGO, INC., P.O. Box 6188, Dallas, TX 75222. Applicant's representative: James K. Newbold, Jr. (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers,* from the facilities of Midland Glass Co., at or near Warner-Robbins, GA, to points in Alamance, Caswell, Chatham, Davidson, Davie, Durham, Forsyth, Guilford, Person, Randolph, Rockingham, Stokes, Surry, and Yadkin Counties, NC, and Bedford, Campbell, Carroll, Floyd, Franklin, Halifax, Henry, Montgomery, Patrick, Pittsylvania, Pulaski, and Roanoke Counties, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

No. MC 121794 (Sub-No. 3TA), filed April 3, 1978. Applicant: JAMES WILKETT, d.b.a. WILKETT TRUCKING CO., P.O. Box 209, Stigler, OK 74462. Applicant's representative: George G. Olsen, 1130 17th Street NW., Washington, DC 20036. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Coal,* in open top dump trucks, from points in Haskett, LeFlore, Muskogee, and Pittsburg Counties, OK, to points in Bosque, Dallas, Johnson, Morris, and Tarrant Counties, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Kiamichi Coal Co., Quinton, OK 74561. (2) Randall & Blake, Inc., 6000 Old Mill Road, Littleton, CO 80120. (3) Texas Lime Co., P.O. Box 851, Cleburne, TX 76031. (4) HEFCO Coal Sales Co., 509 Northwest 39th, Oklahoma City, OK 73118. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest, 3rd, Oklahoma City, OK 73102.

No. MC 123054 (Sub-No. 17TA), filed April 4, 1978. Applicant: R & H CORP., 295 Grand Avenue, Box 469, Clarion, PA 16214. Applicant's representative: William J. Lavelle, Wick, Vuono, & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Glass containers,* from the facilities of Glass Containers Corp. in the borough of Knox, Clarion County, the borough of Marienville, Forest County, and the borough of Parker, Armstrong County, PA, to Jersey City, Dayton, Vineland, Lawnside, Bridgeton, and Bayonne, NJ, for 180 days. Supporting shipper(s): Glass Containers Corp., Knox, PA 16232. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 125335 (Sub-No. 13TA), filed April 4, 1978. Applicant: GOOD-WAY, INC., P.O. Box 2283, York, PA 17405. Applicant's representative: Gailyn L. Larsen, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from the facilities of Commercial Distribution Center, at or near Kansas City, MO, to points in PA, NJ, MD, WV, VA, CT, NY, ME, and KY, for 180 days. Supporting shipper(s): Commercial Distribution Center, P.O. Box 477, Independence, MO 64051. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

No. MC 126358 (Sub-No. 18TA), filed April 3, 1978. Applicant: BENNETT TRUCKING CO., P.O. Box 526, Hawkinsville, GA 31036. Applicant's representative: Paul M. Daniell, Suite 1200, Atlanta Gas Light Tower, 235 Peachtree Street, Atlanta, GA 30303. Authority sought to operate as a *common carrier,* by motor vehicle, over irregu-

lar routes, transporting: (A) *Lumber* (except plywood and veneer, from Zenith, GA, to Dothan and Eufaula, AL, Kissimmee, Starke, and Jacksonville, FL, Sumter and Greenville, SC; Morganton, Thomasville, and Murfreesboro, NC, and Bassett, VA; and (B) (1) *Lumber* (except plywood and veneer), and (2) *wooden pallets*, from Cochran, GA, to Gainesville, Jacksonville, and Miami, FL, Hickory and Greensboro, NC, and Spartanburg and Greenville, SC, for 180 days. Supporting shipper(s): (1) Zenith Milling Co., P.O. Box 442, Ft. Valley, GA 31030, (2) Bleckley Lumber Co., Inc., Harris Road, Cochran, GA 31014. Send protests to: G. H. Fauss, Jr., District Supervisor, Bureau of Operations, Interstate Commerce Commission, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

No. MC 128155 (Sub-No. 7TA), filed March 31, 1978. Applicant: R. C. VAN LINES, INC., 1042 Northside Drive NW., Atlanta, GA 30318. Applicant's representative: R. C. Shumpert (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Household goods*, as defined by the Commission, restricted to traffic which is transported by means of a government bill of lading, between points in AZ, CA, NV, NM, UT, on the one hand, and, on the other, points in AL, AR, CO, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, NE, NJ, NY, NC, ND, OH, OK, PA, RI, SC, SD, TN, TX, VA, WV, WI, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): R. C. Van Lines, Inc., 1042 Northside Drive NW., Atlanta, GA 30318. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 133811 (Sub-No. 3TA), filed April 4, 1978. Applicant: H. E. McCONNELL and H. E. McCONNELL, Jr., d.b.a., H. E. McCONNELL & SON, 5117½ East Broadway, North Little Rock, AR 72118. Applicant's representative: Frank S. Hamlin, 1004 Pyramid Life Building, Little Rock, AR 72201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer* (in bulk and bags), from Olin Corp.'s plant in North Little Rock, AR, to various sites in LA, including but not limited to Farmersville, LA, and Jones, LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Olin Corp., P.O. Box 991, Little Rock, AR 72203. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 135895 (Sub-No. 19TA), filed April 4, 1978. Applicant: B&R DRAYAGE CO., P.O. Box 8534, Battlefield Station, Jackson, MS 39205. Applicant's representative: Harold H. Mitchell, Wynn & Bogen, P.O. Box 1295, Greenville, MS 38701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beer and malt beverages* (in containers), between Jacksonville, FL, and Houston, TX, on the one hand, and, on the other, Baton Rouge, LA, restricted to the transportation of traffic originating at or destined to the facilities of Southern Beverage Co., Inc., Baton Rouge, LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Southern Beverage Co., Inc., 7635 South Choctaw, Baton Rouge, LA 70806. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, MS 39201.

No. MC 136008 (Sub-No. 96TA), filed April 4, 1978. Applicant: JOE BROWN CO., INC., 8005 South I-35, Suite 102, Oklahoma City, OK 73149. Applicant's representative: John Tipsword, 8005 South I-35, Suite 102, Oklahoma City, OK 73149. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Stone, rock, ore, gravel, and aggregate*, from Fremont and Pueblo Counties, CO, to points in AL, AR, IL, IN, IA, KS, LA, MI, MS, MO, NE, ND, OH, OK, SD, TN, TX, WI, and WY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Arbor-Rock Co., P.O. Box 31559, Denver, CO 80041. Send protests to: Connie Stanley, Transportation Assistant, Room 240, Old Post Office and Courthouse Building, 215 Northwest 3d, Oklahoma City, OK 73102.

No. MC 140360 (Sub-No. 2TA), filed April 4, 1978. Applicant: SPINELLI BROS. TRUCKING, INC., 55 South Wade Boulevard, Millville, NJ 08332. Applicant's representative: Robert B. Pepper, 168 Woodbridge Avenue, Highland Park, NJ 08904. Authority sought to operate as a *contact carrier*, by motor vehicle, over irregular routes, transporting: *Glass tableware*, from Millville, NJ, to AZ, CA, CO, KS, OR, UT, and WA, under a continuing contract, or contracts, with J. G. Durand International, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. G. Durand International, Wade Boulevard, Millville, NJ 08332. Send protests to: District Supervisor, Interstate Commerce Commission, 428 East State Street, Room 204, Trenton, NJ 08608.

No. MC 140645 (Sub-No. 7TA), filed March 31, 1978. Applicant: UNITED TRUCKING, INC., 100 Stoffel Drive, Tallapoosa, GA 30176. Applicant's representatives: Clyde W. Carver, 5299 Roswell Road NE., Suite 212, Atlanta, GA 30342. Authority sought to operate as a *contrast carrier*, by motor vehicle, over irregular routes, transporting: (1) *Metal containers and metal container ends*; and (2) *machinery, materials, and supplies* used in the manufacture and distribution of metal containers, for the account of Southern Can Co.: (A) between Tallapoosa, GA, on the one hand, and, on the other, points in AZ, CA, CO, IN, ME, MT, NV, NM, NH, ND, OR, RI, SD, UT, VT, WA, and WY, (B) between points in Montgomery County, PA, on the one hand, and, on the other, points in AZ, CA, CO, IN, KS, MT, ND, NE, NV, NM, OK, OR, SD, UT, WA, and WY, under a continuing contract, or contracts, with Southern Can Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Southern Can Co., 100 Stoffel Drive, Tallapoosa, GA 30176. Send protests to: Sara K. Davis, Transportation Assistant, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 141804 (Sub-No. 106TA), filed April 6, 1978. Applicant: WESTERN EXPRESS, DIVISION OF INTERSTATE RENTAL, INC., P.O. Box 422, Goodlettsville, TN 37072. Applicant's representatives: Frederick J. Coffman, P.O. Box 422, Goodlettsville, TN 37072. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wearing apparel and display materials*, from Secaucus, NJ, to New Orleans, LA, Houston and Dallas, TX, and Los Angeles and San Francisco, CA, and their respective commercial zones, for 180 days. Supporting shipper(s): Petrie Stores Corp., 70 Enterprise Avenue, Secaucus, NJ 07094. Send protests to: Joe J. Tate, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203.

No. MC 142664 (Sub-No. 4TA), filed April 4, 1978. Applicant: IMPORT DEALERS SERVICE CORP., 2222 East Sepulveda Boulevard, Carson, CA 90744. Applicant's representative: R. Y. Schureman, 1545 Wilshire Boulevard, Los Angeles, CA 90017. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor vehicles* in truckaway service in secondary movements, from the Los Angeles, CA,

Harbor Commercial Zone to the Port of Oakland, CA, for 180 days. Supporting shipper(s): Matson Navigation Co., 1001 New Dock Street, Terminal Island, CA 90731. Send protests to: Irene Carlos Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 142672 (Sub-No. 17TA), filed March 23, 1978. Applicant: DAVID BENEUX PRODUCE AND TRUCKING, INC., P.O. Drawer F, Mulberry, AR 72947. Applicant's representative: Don Garrison, 324 North Second Street, Rogers, AR 72756. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Electric lamps, lighting fixtures, Christmas tree lamp outfits, electric cord sets, dry cell batteries and portable battery chargers;* and (2) *materials, equipment and supplies* used in the manufacture and distribution of the commodities named in (1) above, from Bellevue, Cleveland, Warren, Youngstown, Ravenna, Circlevelle and Bucyrus, OH; and Lexington, KY, to points in LA, OK and TX, for 180 days. Supporting shipper(s): General Electric Co., Nela Park, Cleveland, OH 44112. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

No. MC 143317 (Sub-No. 5TA), filed April 3, 1978. Applicant: GEORGE CLARK TRANSIT, CO., 2902 Calumet Avenue, Manitowoc, WI 54220. Applicant's representative: John L. Bruemmer, 121 West Doty Street, Madison, WI 53703. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Silica sand*, from points in Green Lake and Jackson Co., WI, to points in MN, (except Minneapolis and St. Paul) and Upper MI, under a continuing contract, or contracts, with Fairwater Silica, Inc., for 180 days. Supporting shipper(s): Fairwater Silica, Inc., P.O. Box 97, Fairwater, WI 53931. (David Jezwinski, Sr.) Send protests to: Gail Daugherty Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 143557 (Sub-No. 2TA), filed March 31, 1978. Applicant: MOUNT HOPE CARTAGE LIMITED, Airport Road East, Mount Hope, ON, Canada. Applicant's representative: Robert D. Gunderman, Suite 710 Statler Hilton, Buffalo, NY 14202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities*, (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between the Greater Buffalo International Airport (Erie County), NY on the one hand and, on the other, ports of entry on the International Boundary line between the United States and Canada on the Niagara River, restricted to the transportation of traffic (1) originating at or destined to points in the Regional Municipality of Hamilton-Wentworth, and that part of Burlington South of No. 5 side road running west from a place known as Boyne, ON, and (2) having a prior or subsequent movement by air, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (9) statements of support attached to the application which may be examined at the Interstate Commerce Commission in Washington, DC, or copies thereof which may be examined at the field office named below. Send protests to: Interstate Commerce Commission, Bureau of Operations, 910 Federal Building, 111 West Huron Street, Buffalo, NY 14202.

No. MC 143563 (Sub-No. 4TA), filed April 4, 1978. Applicant: R. C. MOORE, INC., Box 346, Waldoboro, ME 04572. Applicant's representative: Chester A. Zyblut, 366 Executive Building, 1030 Fifteenth Street NW., Washington, DC 20005. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen meats*, from Winterport, ME, to points in NC, SC, GA, FL, AL, MS, LA, AR, OK, TX, NM, AZ and CA, restricted to traffic having a prior movement by water, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Winterport Docks, Inc., Box 136, Winterport, ME 04496. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 305, 76 Pearl Street, Portland, ME 04111.

No. MC 143701 (Sub-No. 1TA), filed March 31, 1978. Applicant: WILLIAM OBERATE, INC., 628 Walnut, P.O. Box 394, Blue Springs, MO 64015. Applicant's representatives: Lester C. Arvin, 814 Century Plaza Bldg., Wichita, KS 67202. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except in bulk), from the facilities of Inland Disrtibution Center located at or near Kansas City, KS, to points in AL, GA, LA, MS, NC, SC, VA, and WV, restricted to traffic moving in vehicles equipped with mechanical refrigeration and originating at and destined to the points and area specified above, for 180 days. Supporting shipper(s): Inland Storage Distribution Center, P.O. Box 2249, Kansas City, KS 66110. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 143702 (Sub-No. 2TA), filed April 3, 1978. Applicant: ALL FREIGHT SYSTEMS, INC., 1026 South 10th Street, Kansas City, KS 66105. Applicant's representatives: Donald J. Quinn, Suite 900, 1012 Baltimore, Kansas City, MO 64105. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (except commodities in bulk), when moving in vehicles equipped with mechanical refrigeration from the facilities of Kansas City Cold Storage Corp. located in Kansas City, MO, to points in MN, NE, ND, and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kansas City Cold Storage Corp., 5000 East 3rd Street, Kansas City, MO 64106. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 144051 (Sub-No. 2TA), filed April 3, 1978. Applicant: ALFORD-LOGSTON, INC. 1714 Tabor, Houston, TX 77009. Applicant's representatives: Dale Alford, 1714 Tabor, Houston, TX 77009. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Home care products*, from Memphis, TN to Bienville, Bossier, Caddo, Caldwell, Catahoula, Claiborne, Concordia, DeSoto, E. Carroll, Franklin, Grant, Jackson, LaSalle, Lincoln, Madison, Morehouse, Natchitoches, Quachita, Rapides, Red River, Richland, Sabine, Tensas, Union, Webster, W. Carroll, and Winn Parishes, LA, under a continuing contract or contracts with Standley Home Products, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Standley Home Products, Inc., 112-116 Pleasant Street, Easthampton, MA 01027. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Building, 515 Rusk Avenue, Houston, TX 77002.

No. MC 144117 (Sub-No. 7TA), filed April 4, 1978. Applicant: TLC LINES, INC., 1666 Fabick Drive, P.O. Box 1090, Fenton MO 63026. Applicant's representative: Daniel C. Sullivan, William D. Brejcha, 10 South LaSalle Street, Suite 1600, Chicago, IL 60603. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper and paper products* (except

commodities in bulk), from the facilities of Howard Paper Mills at Urbana and Dayton, OH, to points in TX, WA, OR, CA, NV, ID, UT, AZ, MT, WY, CO and NM, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operationg authority. Supporting shipper(s): Howard Paper Mills, Inc., P.O. Box 151, Urbana, OH 43078. Send protests to: P. E. Binder, Acting District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 N. 12th Street, St. Louis, MO 63101.

No. MC 144426 (Sub-No. 1TA), filed March 27, 1978. Applicant: CHARLES D. MACKAY, R.F.D. No. 1, Fairfield Center, ME 04937. Applicant's representative: Charles D. Mackay (same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Crushed cars, motor blocks, transmission, rear ends, and wheels*, from points in ME to Madbury, NH and Everett, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): (1) Ron's Used Parts, Inc., Route 32, East Vassalboro, ME 04935. (2) Johnson's Car Crushers, Inc., Ballard Road, Wilton, NY. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 305, 76 Pearl St., Portland, ME 04111.

No. MC 144442 (Sub-No. 1TA), filed April 4, 1978. Applicant: ESSEX EXPRESS, INC., 1200 Hammondville Road, Pompano Beach, FL 33060. Applicant's representative: Clifton Peter Rose, Patton Boggs & Blow, 1200 Seventeenth St. NW., Washington, DC 20036. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wafers, cookies, breadsticks, and biscuits in cartons*, between the Stella d'Oro plant, Bronx, NY, and independent distributors in Miami, Tampa, Ft. Lauderdale, and Opa-Locka, FL, under a continuing contract or contracts with Stella d'Oro Biscuit Co., Inc., for 180 days. There is no environmental impact involved in this application. Supporting shipper(s): Stella d'Oro Biscuit Co., Inc., 184 West 237th Street, Bron, NY 10463. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 NW., 53rd Terrace, Miami, FL 33166.

No. MC 144549 (Sub-No. 1TA), filed April 3, 1978. Applicant: PITTSVILLE SERVICES, INC., P.O. Box 158, Skaneateles, NY 13152. Applicant's representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Sawdust* (in bulk), from Brookville, Sheffield, Ridgeway, Coal Grove, Shinglehouse, Crosby, Rew, Kane, Russell City, and Johnsburg, PA to Rochester, NY, under a continuing contract or contracts with Can-Am Sales Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Can-Am Sales Corp., P.O. Box 158, Skaneateles, NY 13152. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 S. Clinton Street, Room 1259, Syracuse, NY 13260.

No. MC 144549 (Sub-No. 2TA), filed April 3, 1978. Applicant: PITTSVILLE SERVICES, INC., P.O. Box 158, Skaneateles, NY 13152. Applicant's representative: David M. Marshall, Marshall and Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Wood flour*, between Pittsville, MD, and Pittsfield, MA, under a continuing contract or contracts with Wood Resources, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wood Resources, Inc., P.O. Box 158, Skaneateles, NY 13152. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 S. Clinton Street, Room 1259, Syracuse, NY 13260.

No. MC 144565 TA, filed April 4, 1978. Applicant: MERLIN CLARK, d.b.a. CLARK TRANSPORTATION & ENTERPRISES, 9421 S Hydraulic, Wichita, KS 67233. Applicant's representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Suite 1101, Topeka, KS 66612. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Distilled spirits, wine, cordials, and malt beverages*, from Lawrenceburg, Frankfort, Meadowlawn, Owensboro, Loretto, Bardstown and Clearmount, KY; Lynchburg, TN; Allen Park and Detroit, MI; Chicago, Plainfield, Lemont, Pekin, and Peoria, IL; Cincinnati and Silverton, OH; St. Louis and Kansas City, MO, to the facilities of A-B Sales, Inc., located at or near Wichita, KS, and at or near Hutchinson, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): A-B Sales, Inc., 435 Eldora, Wichita, KS 67202. Send protests to: M. E. Taylor, District Supervisor, Interstate Commerce Commission, 101 Litwin Building, Wichita, KS 67202.

No. MC 144566 TA, filed April 4, 1978. Applicant: BROCIOUS TRUCKING, INC., P.O. Box 261, Brockway, PA 15824. Applicant's representative: William A. Gray, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes transporting: *Containers and container accessories, components, ends, caps, lids, and closures*, from the facilities of Brockway Class Co. in Clearfield and Jefferson Counties, PA, to points in MD, for 180 days. Supporting shipper(s): Brockway Glass Co., Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: John J. England, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

WATER CARRIERS OF PASSENGERS

No. W-1319 (Sub-No. 1TA). By order entered April 26, 1978, the Motor Carrier Board granted St. Croix Cruise & Charter Co., Inc., St. Paul, MN, 180-day temporary authority to engage in the business of transportation by water vessel, in interstate commerce, in the transportation of passengers, in special and charter operations, between Stillwater, Marine, Taylors Falls, Bayport, Afton, MN, and Hudson and Prescott, WI on the St. Croix River. Warren G. Smith, St. Croix Cruise & Charter Co., Inc., 136 W. Delos St., St. Paul, MN 55107, for applicant. Any interested person may file a petition for reconsideration within 20 days of the date of this publication. Within 20 days after the filing of such petition with the Commission, any interested person may file and serve a reply thereto.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12611 Filed 5-8-78; 8:45 am]

[7035-01]

[Notice No. 72]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 4, 1978.

The following are notices of filing of applications for temporary authority under section 210(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the FEDERAL REGISTER publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the FEDERAL REGISTER. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated,

specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

No. MC 19311 (Sub-No. 44TA), filed March 28, 1978. Applicant: CENTRAL TRANSPORT, INC., 34200 Mound Road, Sterling Heights, MI 48077. Applicant's representative: Leonard R. Kofkin, 39 South La Salle, Chicago, IL 60603 (312-236-9375). Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment; (A) between Milwaukee, WI and Chicago, IL serving all intermediate points, and serving Chicago, IL and points within its commercial zone as points of joinder only; from Milwaukee, WI over U.S. Hwy 41 to Chicago, IL, and return over the same route; from Milwaukee, WI over WI Hwy 32 to the WI-IL State Line, then over Sheridan Road (formerly IL Hwy 42) to Chicago, IL and return over the same route; between Janesville, WI and Chicago, IL serving all intermediate points in WI and serving Chicago, IL and points within its commercial zone as points of joinder only; from Chicago over Interstate Hwy 90 to Janesville and return over the same route. Serving as off-route points in connection with the above described routes, those points in WI lying on, south and east of a line from Milwaukee over WI Hwy 15 to junction WI Hwy 59, then over WI Hwy 59 to junction WI Hwy 26, then over WI Hwy 26 to junction U.S. Hwy 51, then over U.S. Hwy 51 to IL-WI State Line. Restriction: Service on the above described routes and at the off-route points is restricted to the transportation of traffic moving to and from Chicago, IL. (B) Between Grand Rapids and Traverse City, MI serving all intermediate points, and serving Grand Rapids, MI and points within its commercial zone as points of joinder only; from Grand Rapids over U.S. Hwy 131 to junction MI Hwy 115, then over MI 115 to junction MI Hwy 37, then over MI Hwy 37 to Traverse City and return over the same route; from Grand Rapids over MI Hwy 37 to Traverse City and return over the same route; from Grand Rapids over Interstate Hwy 96 to junction U.S. Hwy 31, then over U.S. Hwy 31 to Traverse City and return over the same route. Serving as off-route points in connection with the above described routes, Evart, Rodney, Mecosta, MI and points lying on and west of a line from Grand Rapids over U.S. Hwy 131 to junction MI Hwy 115, then over MI Hwy 115 to junction MI Hwy 37, then over MI Hwy 37 to Traverse City, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (293) statements of support attached to the appliction which may be examined at the Field Office named below. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 26396 (Sub-No. 169TA), filed March 2, 1978, and published in the FEDERAL REGISTER issue of April 4, 1978, and republished as corrected this issue. Applicant: POPELKA TRUCKING CO., d.b.a., THE WAGGONNERS, P.O. Box 990, Livingston, MT 59047. Applicant's representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Acoustical materials and accessories*, from Plainfield, IL to CA and to the International Boundary Line in the states of MI and NY; and (2) *Materials, accessories and supplies used in the manufacture and manufacturing of acoustical materials and accessories*, from points in destinations named in (1) above, to the origin points named in (1) above, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): R. W. Capaul, President, Acoustiflex Corp., 811 Center Street, Plainfield, IL 60544. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101. The purpose of this republication is to correct the territorial description.

No. MC 50935 (Sub-No. 21TA), filed March 28, 1978. Applicant: WOLVERINE TRUCKING CO., 1020 Doris Road, Pontiac, MI 48057. Applicant's representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 48080 (313-776-1706). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Malt beverages* from Louisville, KY, to Drayton Plains, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Oak Distributing Co., 5600 Williams Lake Road, Drayton Plains, MI 48020, Robert Baitens, Vice President-Treasurer. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 95540 (Sub-No. 1011TA), filed March 28, 1978. Applicant: WATKINS MOTOR LINES, INC., P.O. Box 1636, 1144 West Griffin Road, P.O. Box 1636, Lakeland, FL 33801. Applicant's representative: Benjy W. Fincher, 1144 West Griffin Road, Lakeland, FL 33802. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic liquors and wine* in packages from Hartford, CT, to all points in the State of FL, for 180 days. There is no environmental impact involved in this application. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Heublein, Inc., 330 New Park Avenue, Hartford, CT 06101. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monetery Building, Suite 101, 8410 Northwest 53rd Terrace, Miami, FL 33166.

No. MC 98291 (Sub-No. 2TA), filed March 17, 1978, and published in the FEDERAL REGISTER issue of April 1978, and republished as corrected this issue. Applicant: KUNKLE TRANSFER & STORAGE CO., 420 South Third Avenue, Phoenix, AZ 85030. Applicant's representative: E. Stephen Heisley, 805 McLachlen Bank Building, 666 11th Street NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *General commodities* (except those of unusual value, livestock, classes A and B explosives, household goods as defined by the Commission, and those requiring special equipment) between points in AZ for 180 days. Supporting shipper(s): Stor Dor Freight System, Inc., 1144 North 19th Avenue, Phoenix, AZ 85009, Merchant Shippers, P.O. Box 6695, 1144 North 19th Avenue, Phoenix, AZ 85005, LAWI/CSA Consolidators, Inc., 805 North Brand Boulevard, Glendale, CA 91203, Western Freight Association, 1144 North 19th Avenue, Phoenix, AZ 85008, Universal Carloading & Distrib-

uting Co., Inc. 1142 North 19th Avenue, Phoenix, AZ 85009, Flynt Distributing Co., 40 West Gary Street, Columbus, OH 43215, Ohio Brass, 380 North Main Street, Mansfield, OH 44901, Northern Arizona News Co., Inc., 1709 North East Street, Flagstaff, AZ 86001, Ralston Purina Co., 4700 East Motel Drive, Flagstaff, AZ 86001, Desert News, 3535 North First Avenue, Tucson, AZ 85719, Kibbee's Shopping Center, Box E18, Wendon, AZ, Sound & Sight, 224 South Montezuma, Prescott, AZ, Arizona Shipper's Association, Inc. 221 East Congress, Tucson, AZ 85701, Citizens Utilities Co., 3405 Northern Avenue, Kingman, AZ 86401, Woody's Enterprises, Ltd., P.O. Box 36, Aguila, AZ 85320, Tri Valley Equipment Co., Inc., P.O. Box 36, Aguila, AZ 85348, Lee Mercantile Co., Inc., Chief & Elder Avenue, White-river, AZ 85929, White Mountain Supply Co., R.R. No. 4, Box 2254, Lakeside, AZ 85929, Central Pipe & Supply Co., P.O. Box 26445, Tucson, AZ 85726, Yavapai Fleet Supply, 435 North Washington, Prescott, AZ, Illinois-California Express, Inc., 510 East 51st Avenue, Denver, CO 80216, Navajo Freight Lines, Inc., 1205 South Platte River Drive, Denver, CO 80223, ITOFCA, P.O. Box 188, No. 2 Walker Avenue, Clarendon Hills, IL 60514, Sundance Freight Lines, Inc., P.O. Box 7676, Phoenix, AZ, Airway, Trucking, 3501 South 35th Avenue, Phoenix, AZ, Cyprus Bagdad Copper Co., Bagdad, AZ 83621, Frontier Warehouse & Transfer Co., 300 South 25th Avenue, Phoenix, AZ 85009, Garment Carriers, Inc., 1400 North 24th Avenue, Phoenix, AZ, and TIME-DC, Inc., 851 South 27th Avenue, Phoenix, AZ 85009. Send protests to: Andrew W. Baylor, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 3427 Federal Building, 230 North First Avenue, Phoenix, AZ 85025. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Applicant intends to interline at points in Phoenix, Yuma, Ehrenberg, and Flagstaff, AZ. The purpose of this republication is to reflect that carrier intends to interline.

No. MC 102560 (Sub-No. 14TA), filed March 21, 1978, and published in the FEDERAL REGISTER issue of April 21, 1978, and republished as corrected this issue. Applicant: FREILER TRUCK LINES, INC., P.O. Box 636, Amite, LA 70422. Applicant's representative: Harold R. Ainsworth, 2307 American Bank Building, New Orleans, LA 70130. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Brick and tile*, from the facilities of Elgin-Butler Brick Co., located in Bastrop County, TX, to points in AL, FL, LA, MS, GA, SC, NC, and TN, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Elgin-Butler Brick Co., P.O. Box 45019, Baton Rouge, LA 70895. Send protests to: Ray C. Armstrong, Jr., District Supervisor, Interstate Commerce Commission, T-9038, U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, LA 70113. The purpose of this republication is to correct the territorial description.

No. MC 114211 (Sub-No. 355TA), filed March 28, 1978. Applicant: WARREN TRANSPORT, INC., P.O. Box 420, 210 Beck Street, Waterloo, IA 50704. Applicant's representative: Adelor J. Warren (same as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel, conduit pipe and tubing* from the facilities of Wheatland Tube Co., located at or near Wheatland, PA, to points in AR, MO, TX, OK, CO, WY, IA, NE, LA, KS, ND, and SD, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Wheatland Tube Co., Wheatland, PA 16161. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 114632 (Sub-No, 152TA), filed March 9, 1978, and published in the FEDERAL REGISTER issue of April 12, 1978, and republished as corrected this issue. Applicant: APPLE LINES, INC., 212 Southwest Second Street, P.O. Box 287, Madison SD 57024. Applicant's representative: Michael L. Carter, 212 Southwest Second Street, Madison, SD 47042. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen food* (except commodities in bulk), from the facilities of General Foods Corp., located in points in MN, to points in the States of AR, IL, IN, IA, KS, LA, MI, WI, MO, NE, ND, OH, OK, SD, and TX, restricted to traffic originating at the facilities of General Foods Corp., and destined to the named destination States, for 180 days. Supporting shipper(s): General Foods Corp., 250 North Street, White Plains, NY 10605. (Robert J. Byrne, Manager, Transportation Pricing.) Send protests to: J. L. Hammond, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 455, Federal Building, Pierre, SD 57501. The purpose of this republication is to correct the territorial description.

No. MC 117940 (Sub-No. 266TA), filed March 28, 1978. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Applicant's representative: Allan L. Timmerman, 5300 Hwy 12, Maple Plain, MN 55359. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods* (except commodities in bulk) from Chicago, IL and its commercial zone to points in IN, KY, MI, and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Continental Freezers of Illinois, 4220 South Kildare Boulevard, Chicago, IL 60632. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Post Office, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 117940 (Sub-No. 267TA), filed March 28, 1978. Applicant: NATIONWIDE CARRIERS, INC., P.O. Box 104, Maple Plain, MN 55359. Applicant's representative: Allan L. Timmerman, 5300 Hwy 12, Maple Plain, MN 55359. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods and potato products* from Greenville, MI and its commercial zone to points in CT, DE, MD, MA, NH, NJ, NY, PA, VT, VA, WV and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ore Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 124170 (Sub-No. 87TA), filed March 28, 1978. Applicant: FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Applicant's representative: William J. Boyd, P.C., 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521 (312-986-5200). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Foodstuffs* (other than bulk), from the facilities of American Home Foods, a division of American Home Products Corp., in La Porte, IN, to the Lower Peninsula of MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Home Foods, Division of American Home Products Corp., 685 Third Avenue, New York, NY 10017, Harry Menaker, General Distribution Manager. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 124170 (Sub-No. 88TA), filed March 28, 1978. Applicant:

FROSTWAYS, INC., 3000 Chrysler Service Drive, Detroit, MI 48207. Applicant's representative: William J. Boyd, P.C., 600 Enterprise Drive, Suite 222, Oak Brook, IL 60521. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by health and beauty aid distributors and wholesalers from Detroit, MI to points and places in ME, NH, MA, CT, RI, VT, NY, NJ, PA, OH, MD, DE, DC, VA, WV, FL, GA, MS, AL, LA, NC, SC, TN, KY, IN, WI, and IL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Supreme Distributors Co., 6501 East McNichols Road, Detroit, MI 48212, William L. Johnston, General Traffic and Distribution Manager. Send protests to: Timothy S. Quinn, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 604 Federal Building and U.S. Courthouse, 231 West Lafayette Boulevard, Detroit, MI 48226.

No. MC 125023 (Sub-No. 56TA), filed March 13, 1978, and published in the FEDERAL REGISTER issue of April 12, 1978, and republished as corrected this issue. Applicant: SIGMA-4 EXPRESS, INC., 3825 Beech Avenue, P.O. Box 9117, Erie, PA 16504. Applicant's representative: Richard G. McCurdy (same as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials, from Eden, NC to points in the states of DE, DC, MD, NJ, PA, VA and WV;* (2) *materials, supplies and equipment* used in the manufacture, sale and distribution of malt beverages, and returned empty malt beverage containers (except commodities in bulk), from points in the states of DE, DC, MD, NJ, PA, VA and WV to Eden, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Miller Brewing Co., 3939 Highland Boulevard, Milwaukee, WI 53208. Send protests to: John J. England, District Supervisor, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222. The purpose of this republication is to correct the territorial description and also to add a section that was omitted.

No. MC 125681 (Sub-No. 7TA), filed February 17, 1978. Applicant: MATERIALS TRANSPORT, INC., P.O. Box 248, Tell City, IN 47586. Applicant's representative: Robert B. Herbert and/or Warren C. Moberly, 777 Chamber of Commerce Building, Indianapolis, IN 46204. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Salt*, in bulk, in dump vehicles, from Evansville, Newburgh, Rockport, or the facilities of Mulzer Crushed Stone near Mt. Vernon, IN, to points in that part of IL, on, south, and east of a line beginning at the IL-IN State line and extending along U.S. Hwy 36 to Decatur, IL, and then along U.S. Hwy 51 To Cairo, IL, under a continuing contract, or contracts, with Domtar, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Domtar Inc., Sifto Salt Division, 9950 West Lawrence Avenue, Schiller Park, IL 60176. Send protests to: Beverly J. Williams, Transportation Assistant, Interstate Commerce Commission, Federal Building and U.S. Courthouse, 46 East Ohio Street, Room 429, Indianapolis, IN 46204.

No. MC 134112 (Sub-No. 7TA), filed February 23, 1978, and published in the FEDERAL REGISTER issue of April 3, 1978, and republished as corrected this issue. Applicant: NATIONAL FREIGHTWAYS, INC., 1932 South 111th Street, Omaha, NE 68144. Applicant's representative: Gailyn L. Larsen, Peterson, Bowman, Larsen & Swanson, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Hides, skins and pelts, and pieces therefrom*, (except commodities in bulk), from the hide plant of Iowa Beef Processors, Inc., at or near Dakota City, NE, to points in the States of IL, IN, KS, KY, MI, MO, MA, NJ, NY, OH, PA, WV, WI and the ports of entry on the International Boundary line between the United States and Canada located in MI and NY, under a continuing contract, or contracts, with Iowa Beef Processors, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Robert E. Gillespie, Manager Rates and Regulatory Affairs, Iowa Beef Processors, Inc., Dakota City, NE 68731. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102. The purpose of this republication is to correct the territorial description.

No. MC 134235 (Sub-No. 7TA), filed March 24, 1978, and published in the FEDERAL REGISTER issue of April 21, 1978, and republished as corrected this issue. Applicant: KUHNLE BROTHERS, INC., P.O. Box 128, Chagrin Falls, OH 44022. Applicant's representative: Kenneth T. Johnson, Bankers Trust Building, Jamestown, NY 14701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Solar salt* in pneumatic equipment, from Jersey City, NJ, to all points and places in the States of NJ, PA, NY, CT, and MA, for 180 days. Supporting shipper(s): International Salt Co., 30 Buxton Farm Road, Stamford, CT 06905. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199. The purpose of this republication is to correct the territorial description.

No. MC 135874 (Sub-No. 115TA), filed March 28, 1978. Applicant: LTL PERISHABLES, INC., 550 East 5th Street South, South St. Paul, MN 55075. Applicant's representatives: K. O. Petrick, 550 East 5th Street South, South St. Paul, NM 55075. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, and meat byproducts*, as described in sections A & C of appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC, 209 and 766 (except in bulk) from Sioux Center, IA, and its commercial zone to Boston, MA; Detroit, MI; Buffalo, Champlain, and New York, NY; Philadelphia, PA, and Westminister, VT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Sioux-Preme Packing Co., P.O. Box 177, Sioux Center, IA 51250. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, and United States Courthouse, 110 South 4th Street, Minneapolis, MN 55401.

No. MC 141417 (Sub-No. 2TA), filed March 28, 1978. Applicant: SUPER SPEED DELIVERY & MESSENGER SERVICE, INC., 265 Route 46, Totowa, NJ 07512. Applicant's representatives: Morton E. Kiel, 5 World Trade Center, New York, NY 10048. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Textiles and textile picture kits* from Lynchburg, VA, Pawtucket, RI; Taylorsville, Statesville, Greenville, Aberdeen, Spindale, and Williamston, NC; Greenville, Lugoff, Simpsonville, Wateree, Kingstree, and Williamston, SC; to points in NJ, CT, MA, RI, and Newburgh, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Erlanger, Blumgar & Co., Inc., 1450 Broadway, New York, NY 10018. Send protests to: Joel Morrows, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton Street, Room 618, Newark, NJ 07102.

No. MC 141575 (Sub-No. 11TA), filed March 28, 1978. Applicant: TFS., INC., Box 126, Rural Route 2, Grand Island, NE 68801. Applicant's representative: Gailyn L. Larsen, Box 81849, Lincoln,

NE 68591. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Magnesium*, from the facilities of Martin Marietta Chemical Co., at or near Manistee, MI, to points in IA and NE, under a continuing contract, or contracts, with Ag Service, Inc., of Grand Island, NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Robert Wenzl, President, Ag Service, Inc., Rural Route 2 Box 126, Grand Island, NE 68801. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

No. MC 143031 (Sub-No. 3TA), filed December 29, 1977, and published in the FEDERAL REGISTER issue of March 10, 1978, and republished as corrected this issue. Applicant: LLOYD PAUL MURPHY, JAMES EDWARD MURPHY, TIMOTHY PAUL MURPHY, AND ERNEST STEWART MURPHY d.b.a. MURPHY & SONS, Route 2, Box 139, Spring City, TN 37381. Applicant's representative: Stan Guthrie, Attorney, Suite 100, Maclellan Building, Chattanooga, TN 37402. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *New furniture, furniture parts, crated and uncrated, materials and supplies* to be used by La-Z-Boy Chair Co. in the manufacturing and selling of new furniture, for 180 days. Restriction: The operations are limited to a transportation service to be performed, under a continuing contract, or contracts, with the shipper and La-Z-Boy Chair Co. Outbound shipments: New Furniture and furniture parts from the plantsite and storage facilities of La-Z-Boy Chair Co. at or near Dayton, TN to points in IA, LA, MD, MN, NJ, PA, WV, and WI. Inbound shipments: Furniture parts and materials and supplies to be used in the manufacturing of new furniture at the plantsite of La-Z-Boy in Dayton, TN. Supporting shipper(s): La-Z-Boy Chair Co., P.O. Box 191 Walnut Grove Road, Dayton, TN 37321. Send protests to: District Supervisor, Joe J. Tate, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37203. The purpose of this republication is to correct the territorial description.

No. MC 143486 (Sub-No. 1TA), filed March 23, 1978. Applicant: DELTCO, 312 East 16th Street, Greeley, CO 80631. Applicant's representative: Leslie R. Kehl, Suite 1600 Lincoln Center Building, Denver, CO 80264. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (a) *Ore*, from Elko County, NV, to the mill facility of Eisenman Chemical Co., located at Salt Lake City, UT, and (b) *chemicals*, in bags, and *drilling mud*, (1) between the warehouses of Eisenman Chemical Co., located at or near Greeley, CO; Bakersfield and Woodland, CA; Weatherford, Burns Flat, and Woodward, OK; Canadian, TX; Casper and Evanston, WY; Myton and Salt Lake City, UT; Grand Island, NE, and Farmington, NM, and (2) from AZ; CO; CA; ID; KS; MI; MT; NE; NV; NM; Syracuse, NY; ND; OK; SD; TX; UT; Hopewell, VA; and WY, to the warehouses of Eisenman Chemical Co. as listed in subparagraph (1) above. The operations authorized in paragraphs (a) and (b) above are limited to a transportation service to be performed under a continuing contract or contracts with Eisenman Chemical Co. of Greeley, CO, for 180 days. Supporting shipper(s): Eisenman Chemical Co., 312 East 16th Street, Greeley, CO 80631. Send protests to: District Supervisor Roger L. Buchanan, Interstate Commerce Commission, 492 U.S. Customs House, Denver, CO 80202.

No. MC 143570 (Sub-No. 2TA), filed March 28, 1978. Applicant: D & G TRUCKING, INC., 4420 Overland, Meridian, ID 83642. Applicant's representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Heating and air conditioning equipment and supplies, floor coverings and supplies, and supplies* used in the installation of all of the above. From Phoenix, AZ; Denver, CO, points in the commercial zones thereof, and the CA counties of Alameda, Contra Costa, Los Angeles, Orange, San Bernadino, Santa Clara, San Francisco, and San Mateo, to the facilities of A & H Supply, Inc., located in Salt Lake City, UT, and points in the commercial zone thereof, to the facilities of A & H Supply, Inc., located in Pocatello and Boise, ID, for 180 days. Supporting shipper(s): A & H Supply, Inc., 419 South 8th Street, Boise, ID 83706. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Suite 110, 1471 Shoreline Drive, Boise ID 83706

No. MC 144318TA, filed February 17, 1978, and published in the FEDERAL REGISTER issue of April 12, 1978, and republished as corrected this issue. Applicant: KEITH PADDOCK & SONS, INC., Routes 17 and 36, Jasper, NY 14855. Applicant's representative: S. Michael Richards, Raymond A. Richards, 44 North Avenue, P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Feed and feed ingredients*, from the facilities of Agway, Inc., Feed Division, at Kennedy, NY, to points in Bradford, Clinton, Columbia, Lycoming, Potter, Sullivan, and Tioga Counties, PA, and (2) *dry fertilizer and dry fertilizer materials*, from the facilities of Agway, Inc., Fertilizer-Chemical Division, at Big Flats, NY, to points in Bradford, Clinton, Columbia, Lycoming, Potter, Sullivan, and Tioga Counties, PA, and (3) *feed*, from the facilities of Agway, Inc., Feed Division, at Erwins, NY to points in Bradford, Potter, and Tioga Counties, PA, for 180 days. The purpose of this application is to convert the applicant's existing contract carrier authority to that of common carrier authority. Applicant presently holds authority as a contract carrier in permits MC 136560 (Sub-Nos. 2, 3, and 4) to transport the following. Supporting shipper(s): Agway, Inc., P.O. Box 4933, Syracuse, NY 13221. Send protests to: Interstate Commerce Commission, U.S. Courthouse and Federal Building, 100 South Clinton Street, Room 1259, Syracuse, NY 13260. The purpose of this republication is to correct the applicant's address.

No. MC 144517 (Sub-No. 1TA), filed March 28, 1978. Applicant: BEVERAGE ENTERPRISES, INC.; Route 5, Box 58, Imperial, MO 63052. Applicant's representative: B. W. LaTourette, Jr., 11 South Meramec, Suite 1400, St. Louis, MO 63105. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Nonalcoholic beverages*, from the St. Louis, MO-East St. Louis, IL, commercial zone to points and places in AR (except Clay, Randolph, Greene, Lawrence, Mississippi, Craighead, Jackson, Poinsett, Crittendon, Cross, Woodruff, White, St. Francis, Lee, Monroe, Prairie, Lonoke, Pulaski, Saline, Garland, Hot Spring, Clark, Grant, Jefferson, AR, counties), IL, IN, IA, KS, KY, MS, NE, OH, OK, TN (except Memphis, TN, and its commercial zone) and WI, and *glass bottles, plastic bottles, cans, bottle caps, nonalcoholic beverage cases, cartons, containers, and packaging, pallets, sodium benzoate, citric acid, and lubricants*, from points and places in AR (except Clay, Randolph, Greene, Lawrence, Mississippi, Craighead, Jackson, Poinsett, Crittendon, Cross, Woodruff, White, St. Francis, Lee, Monroe, Prairie, Lonoke, Pulaski, Saline, Garland, Hot Spring, Clark, Grant, Jefferson, AR, counties), IL, IN, IA, KS, KY, MS, NE, OH, OK, TN (except Memphis, TN, and its commercial zone), and WI to the St. Louis, MO-East St. Louis, IL, commercial zone, under a continuing contract, or contracts, with Taylor Beverages, Inc., 555 Brown Road, Hazelwood, MO 63042, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Taylor Beverages, Inc., 555 Brown Road, Hazelwood, MO

63042. Send protests to: District Supervisor J. P. Werthmann, Interstate Commerce Commission, Bureau of Operations, Room 1465, 210 North 12th Street, St. Louis, MO 63101.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-12613 Filed 5-8-78; 8:45 am]

[7035-01]

[I.C.C. Order No. 1, Amdt. 5; Revised S.O. No. 1252]

BIRMINGHAM SOUTHERN RAILROAD AND LOUISVILLE AND NASHVILLE RAILROAD CO.

Rerouting Traffic

Upon further consideration of ICC Order No. 1 and good cause appearing therefor:

It is ordered, That: ICC Order No. 1 be, and it is hereby, amended by substituting the following paragraph (e) for paragraph (e) thereof:

(e) Expiration date. This order shall expire at 11:59 p.m., October 31, 1978, unless otherwise modified, changed or suspended.

It is further ordered, That this amendment shall become effective at 11:59 p.m., April 30, 1978, and that this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the FEDERAL REGISTER.

Issued at Washington, D.C., April 26, 1978.

INTERSTATE COMMERCE COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 78-12607 Filed 5-8-78; 8:45 am]

[4310-84]

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[INT DES 78-15]

PROPOSED LIVESTOCK GRAZING PROGRAM, CERBAT/BLACK MOUNTAIN PLANNING UNITS, PHOENIX DISTRICT, ARIZONA

Availability of Draft Environmental Statement and Public Hearing Announcement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared an environmental statement concerning a proposed intensive livestock grazing program for the Cerbat/Black Mountain Planning Units in Mohave County, Ariz. The proposal involves the analysis of 26 allotment management plans (AMP's) covering about 93 percent of the 1.6 million-acre area. The AMP's integrate livestock grazing with other land uses. More than 150,000 acres have previously been set aside for wildlife management at the southern end of the Black Mountain Planning Unit and its use is not addressed in this statement.

The Department of the Interior invites written comments on the draft environmental statement within 45 days of this notice. Comments are being solicited from public agencies, interested individuals, and entities. Comments should be sent to the Arizona State Office (911), Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Ariz. 85073.

A limited number of copies of the draft environmental statement are available upon request at the following offices:

Arizona State Office (911), Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Ariz. 85073, 602-261-4127.

Phoenix District Office, Bureau of Land Mangement, 2929 West Clarendon Avenue, Phoenix, Ariz. 85017, 602-261-4231.

Kingman Resource Area, Bureau of Land Mangement, 2475 Beverly Avenue, Kingman, Ariz. 86401, 602-757-4011.

Copies of the draft environmental statement will be available for public reading and review at the following locations:

Office of Public Affairs, Bureau of Land Mangement, Interior Building, 18th and C Streets NW., Washington, D.C. 20240, 202-343-5717.

Phoenix District Office, Bureau of Land Mangement, 2929 West Clarendon Avenue, Phoenix, Ariz. 85017, 602-261-4231.

Arizona State Office, Bureau of Land Mangement, 2400 Valley Bank Center, Phoenix, Ariz. 85073, 602-261-3706.

Kingman Resource Area, Bureau of Land Mangement, 2475 Beverly Avenue, Kingman, Ariz. 86401, 602-757-4011.

Oral and/or written comments will also be received at formal public hearings to be held at the following locations:

June 7, 1978—7 p.m., County Fairgrounds Auditorium, Kingman, Ariz.

June 8, 1978—7 p.m., Maricopa County Board of Supervisors Auditorium, 205 West Jefferson Street, Phoenix, Ariz.

An administrative law judge will preside over the public hearings. Witnesses presenting oral comments should limit their testimony to ten (10) minutes. Written request to testify orally should be sent to the State Director (911), Arizona State Office, Bureau of Land Management, 2400 Valley Bank Center, Phoenix, Ariz. 85073.

Comments received on the draft environmental statement, whether written or oral, will be given equal consideration during preparation of the final environmental statement on the Proposed Livestock Grazing Program—Cerbat/Black Mountain Planning Units.

Dated: May 8, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-12812 Filed 5-8-78; 1:28 pm]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 91-409). 5 U.S.C. 552b(e)(3).

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[6320-01]

1

[M-127, Amdt. 2, May 3, 1978]

NOTICE OF DELETION OF ITEM FROM THE MAY 5, 1978 AGENDA

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 1 p.m., May 5, 1978.

PLACE: Room 1027, 1825 Connecticut Aveune NW., Washington, D.C. 20428.

SUBJECT: 8. Docket 31871, Report to the Congress on the feasibility and economic impact of youth standby fares (BPDA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: The staff has requested that Item 8 be deleted in order to permit further evaluation of the report on youth standby fares. Accordingly the following Members have voted that agency business requires the deletion of Item 8 from the May 5, 1978 agenda and that no earlier announcement of this deletion was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Richard J. O'Melia
Member, Elizabeth E. Bailey

[S-970-78 Filed 5-5-78; 9:19 am]

[6320-01]

2

[M-127, Amdt. 3, May 3, 1978]

NOTICE OF DELETION OF ITEM FROM THE MAY 5, 1978 AGENDA

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 1 p.m., May 5, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 15. Docket 30782, California-Toronto, Montreal Route Proceeding, Opinion and Order on Review (OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Member O'Melia, who will not be able to be present at the meeting, requested that this Item be deleted from the May 5, 1978 agenda and taken up at a later meeting when he will be able to attend. Accordingly, the following Members have voted that agency business requires the deletion of Item 15 from the May 5, 1978 agenda and that no earlier announcement was possible:

Chairman, Alfred E. Kahn
Vice Chairman, G. Joseph Minetti
Member, Lee R. West
Member, Elizabeth E. Bailey

[S-971-78 Filed 5-5-78; 9:19 am]

[6351-01]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 2 p.m., May 11, 1978.

PLACE: 2033 K Street NW., Washington, D.C. 5th floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement matters: offer of settlement; applications and revocations.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-974-78 filed 5-5-78; 2:52 pm]

[6570-06]

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Thursday, May 11, 1978.

PLACE: Chairman's Conference Room, No. 5240, on the fifth floor of the Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Parts of the meeting will be open to the public and part will be closed.

MATTERS TO BE CONSIDERED:

Parts open to the public:

1. Staff report on hearings concerning work-scheduling as it relates to religious discrimination.
2. Staff report on experience with utilization of temporary restraining orders in field offices.
3. Staff report on the proposed Memorandum of Understanding between EEOC and the Federal Communications Commission.
4. Report by Executive Director on Commission Operations.

Part closed to the public:

Litigation Authorization; General Counsel Recommendations: Matters closed to the public under Sec. 1612.13(a) of the Commission's regulations (42 FR 13830, March 14, 1977).

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued May 4, 1978.

[S-973-789 Filed 5-5-78; 2:52 pm]

[6714-01]

5

FEDERAL DEPOSIT INSURANCE CORPORATION.

NOTICE OF AGENCY MEETING

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10 a.m. on Friday, May 5, 1978, the members of the Board of Directors of the Federal Deposit Insurance Corporation will meet with Honorable Carol S. Greenwald, Commissioner of

Banks for the Commonwealth of Massachusetts, and Mr. William L. Brown, President, the First National Bank of Boston, Boston, Mass., to discuss the applications of Unity Bank and Trust Co., Boston (Roxbury), Mass., (1) for consent to establish branches at 592 Washington Street, Boston (Dorchester), Mass., and at 1630 Blue Hill Avenue, Boston (Mattapan), Mass., and (2) for consent to change the location of its main office from 416 Warren Street to 2343 Washington Street, both locations within Boston (Roxbury), Mass.

The meeting will be held in Room 6135 of the FDIC Building located at 550 17th Street NW., Washington, D.C.

The meeting will be closed to public observation pursuant to subsections (c)(8) and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(8) and (c)(9)(A)(ii)) since the public interest does not require public observation of the meeting.

Dated: May 4, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-972-78 Filed 5-5-78; 9:19 am]

[6720-01]

6

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10:30 a.m., May 12, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Franklin O. Bolling, 202-377-6671.

MATTERS TO BE CONSIDERED:

Consideration of capital expenditures—Budget amendment delegation of authority.
Consideration of change of office location—Home Federal Savings & Loan Association of San Diego, San Diego, Calif.
Branch office application—Western Federal Savings & Loan Association, Los Angeles, Calif.
Branch office application—First Federal Savings & Loan Association of Fulton County, Rochester, Ind.
Concurrent consideration of applications for (1) Branch office application—Biscayne Federal Savings & Loan Association, Miami, Fla., and (2) limited facility application—Peoples Federal Savings & Loan Association of Lake Worth, Lake Worth, Fla.
Branch office application—California Federal Savings & Loan Association, Los Angeles, Calif.

No. 149, May 5, 1978.

[S-976-78 Filed 5-5-78; 2:52 pm]

[7555-01]

7

NATIONAL SCIENCE FOUNDATION.

TIME AND DATE: May 18, 1978: Closed session 1 to 3 p.m.; Open session 3 to 5:15 p.m. May 19, 1978: Open session 8 to 10 a.m.; Closed session 10 a.m. to 12 noon.

PLACE: Room 540, 1800 G Street NW., Washington, D.C. 20550.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

1. Presentation by the Honorable Lucy Wilson Benson, Under Secretary of State for Security Assistance, Science, and Technology.
2. Program review—Astronomy.
3. Minutes—Open session, 197th meeting.
4. Chairman's report.
5. Director's report.
6. Board Committees—Reports on meetings.
7. NSF Advisory Groups—Reports on meetings.
8. Annual reviews of NSF centers.
9. Annual business.
10. Grants, contracts, and programs.
11. Other business.
12. Next meetings.

Portions to be considered at the closed session:

A. Minutes—Closed session, 197th meeting.
B. Annual business—Report from Nominating Committee and annual elections.
C. NSB annual reports.
D. NSF budgets for fiscal year 1980 and subsequent years.
E. Grants and contracts.

CONTACT PERSON FOR MORE INFORMATION:

Miss Vernice Anderson, Executive Secretary, 202-632-5840.

[S-975-78 Filed 5-5-78; 2:52 pm]

[7910-01]

8

RENEGOTIATION BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 42 FR 18831, May 2, 1978.

PREVIOUSLY ANNOUNCED DATE AND TIME OF MEETING: Tuesday, May 9, 1978; 10 a.m.

CHANGE IN MEETING: Cancellation.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: May 4, 1978.

HARRY R. VAN CLEVE,
Acting Chairman.

[S-977-78 Filed 5-5-78; 2:52 pm]

[6740-02]

9

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published May 8, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., May 10, 1978.

CHANGE IN THE MEETING: The following items have been added:

Item No., Docket No., and Company

CP-7.—CP75-362, El Paso Natural Gas Co.
M-1.—RM76-13, the need for site selection and facility operation criteria for liquefied natural gas information and storage terminals.
M-2.—Contract provisions under section 156.93.
M-3.—Inflated rate increase filings.

KENNETH F. PLUMB,
Secretary.

[S-978-78 Filed 5-5-78; 3:57 pm]

Federal Register

TUESDAY, MAY 9, 1978
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

HEALTH SYSTEMS AGENCY

Reviews of Certain Proposed Uses of Federal Health Funds

[4110-83]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Part 122]

HEALTH SYSTEMS AGENCY REVIEWS OF CERTAIN PROPOSED USES OF FEDERAL HEALTH FUNDS

Proposed Rulemaking

AGENCY: Public Health Service, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposed regulations governing the review and approval or disapproval by health systems agencies of certain proposed uses of Federal funds in accordance with section 1513(e) of the Public Health Service Act as amended by the National Health Planning and Resources Development Act of 1974. These reviews are designed to ensure to the maximum practicable extent that Federal health funds are expended in accordance with State and local health plans developed under the authority of Titles XV and XVI of the Public Health Service Act.

DATE: Comments must be received on or before June 8, 1978.

ADDRESS: Written comments and recommendations should be submitted to: Director, Office of Policy Coordination, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782. All materials received in response to this Notice will be available for public inspection and copying at the above location on weekdays (Federal holidays excepted) between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Colin C. Rorrie, Jr., Ph. D., Acting Director, Bureau of Health Planning and Resources Development, Center Building, Room 6-22, 3700 East-West Highway, Hyattsville, Md. 20782, 301-436-6850.

SUPPLEMENTARY INFORMATION: The National Health Planning and Resources Development Act of 1974 (Pub. L. 93-641, January 4, 1975) amended the Public Health Service Act (hereafter, "the Act") to include Title XV, "National Health Planning and Development," and Title XVI, "Health Resources Development." Among other things, Title XV authorizes the Secretary to enter into agreements with eligible entities for their designation as health systems agencies (HSA's) for health service areas established pursuant to section 1511 of the Act, and to provide grant assistance to such HSA's. Among the specific duties required as HSA's is the conduct of reviews to approve or disapprove certain proposed uses of Federal funds for the development, expansion or support of health resources (hereafter referred to as "review and approval").

The inclusion of health systems agency review and approval as one of these required functions is a response to criticisms of past Federal funding practices which, in the view of many local officials, gave insufficient weight to local needs and priorities. These critics urged local reviews of applications for Federal funds to ensure expenditure of these funds in accordance with local plans and priorities as well as national program goals, HSA review and approval evolved as a response to these criticisms and from earlier efforts to secure local views on applications for Federal funds. Under the previous comprehensive health planning (CHP) program (sections 314 (a) and (b) of the Public Health Service Act), the areawide CHP agencies "reviewed and commented" on some grant applications for Public Health Service (PHS) funds. Although local review of applications was considered important, the activity was criticized on the grounds that the agencies devoted too much time and resources to project review in lieu of planning activities: that the agencies lacked specific criteria against which to review application for Federal funds; that the PHS agencies did not always allow sufficient time for this review and did not always consider local comments before decisions to fund; and that many important programs did not participate in this local review. Similar criticisms have been leveled against other review and comment systems, such as that established under OMB Circular A-95.

To address these shortcomings, and to ensure to the maximum practicable extent that Federal health funds are expended in accordance with State or local health plans developed under the authority of Titles XV and XVI, section 1513(e) of the Act requires health systems agencies to review and approve or disapprove certain proposed uses of Federal funds. Federal funds under the covered authorities which are used to support, expand, or develop local health resources and are thus subject to review and approval amount to approximately $3 billion annually (excluding NIH, DOD, VA, and PHS hospitals). This figure represents a small but significant portion of total Federal health care expenditures, one over which the health planning agencies may exercise some control. The activity therefore provides an incentive for agencies and applicant to coordinate and help ensure the Federal funds are used to provide health services which are consistent with local and Statewide needs.

The Secretary wishes to note several aspects of the statutory foundation for this function. Section 1513(e) of the Act allows the HSA a period of not less than sixty (60) days to conduct the review required under that section (proposed § 122.413) and also establishes specific procedures through which an applicant may request of the Secretary a review of an HSA disapproval (proposed § 122.415). In exercising his authority to award Federal funds notwithstanding an HSA disapproval, the Secretary intends to conform closely to the guidance provided in the Report of the House Committee:

> "While the Committee has given the Secretary authority to make Federal funds available despite a decision by an HSA that the proposed uses of such funds would be inappropriate, it does not anticipate that the Secretary will do this with any frequency and that such a use of funds will be treated as an exception and carefully justified by the Secretary." (H.R. Rep. No. 93-1382, Sept. 26, 1974, p. 64.)

In addition to reviews of completed applications, the Congress intended the HSAs to assist in the early development of applications. The Report of the House Committtee further states:

> "It should be emphasized that the Committee does not anticipate simply that the HSAs will review applications which have already been written but more generally that they will work with people who are considering applying for funds to assure that these applications are consistent with the community's need." (H.R. Rep. No. 93-1382, Sept. 26, 1974, p. 9.)

Section 1532 of the Act also provides that in conducting such reviews, each HSA must (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the HSA in accordance with regulations of the Secretary.

The purposes of the proposed 42 CFR part 122, subpart E, are to set forth minimum procedures and criteria for HSA reviews under section 1513(e) of the Act of certain proposed uses of Federal funds; to describe the manner in which these procedures and criteria must be developed and published; to determine the Public Health Service programs, and types of applications within covered programs, to which this review must apply; and to set forth the procedure the Secretary will follow in considering, upon request of the applicant, whether to fund applications notwithstanding an HSA disapproval.

In issuing these proposed regulations, the Secretary wishes to emphasize certain of their features. One feature which is the subject of some misunderstanding is the consequence of and HSA approval or disapproval. First, HSA approval does not guarantee funding of an application, although no award of Federal funds sub-

ject to review and approval can be made unless either: (a) the HSA has approved the proposed use, or (b) the HSA has failed to approve or disapprove a proposal after having been provided at least 60 days in which to review and approve or disapprove the proposed use, or (c) the Secretary has overridden an HSA disapproval. While the HSA review will focus on the need for the activity in its health service area, the Federal funding agency may decide not to fund an application approved by an HSA for reasons related to technical merit, availability of funds, agency priorities, and so forth. Second, an HSA disapproval of an application does not prohibit funding. The Secretary is, however, prohibited from awarding funds for a project disapproved by an HSA until he has: (1) reviewed the HSA disapproval, upon request of the applicant, (2) allowed the appropriate State health planning and development agency 30 days to comment on the disapproval, and (3) decided to override the HSA disapproval. Section 1513(e) of the Act mandates specific procedures for review by the Secretary of an HSA disapproval; § 122.415 of the proposed regulations elaborates on these procedures and provides additional considerations the Secretary may use in making a determination.

The Secretary is proposing definitions in these regulations, and publishing a list of programs, to identify proposed uses of Federal funds subject to HSA review. Section 1513(e) of the Act stipulates that Federal funds appropriated under four Federal statutes (the PHS Act, the Community Mental Health Centers Act, sections 409 and 410 of the Drug Abuse Office and Treatment Act, and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970) are subject to HSA review, if the funds are for the "development, expansion, or support of health resources." The statute defines "health resources" as including health services, health care facilities, and health professions personnel (section 1531(4)). In addition, § 122.402 of the proposed regulations defines the "development," "expansion," and "support" of a health resource.

As a practical matter most activities reviewed under these definitions are likely to be the delivery of health services or the construction, alteration, acquisition, and equipping of health care facilities.

Appended to these proposed regulations is a list of Federal grant programs, based on the OMB Catalog classification, which may assist the HSA, the applicant, and the funding agency in determining which programs are subject to HSA review. This list is to serve only as a general guide and is not definitive. Absence of a program from the list does not necessarily mean that a particular application under the program is not subject to HSA reviews. Likewise, not all applications under those programs on the list are necessarily subject to HSA review.

The Secretary is pleased to note that PHS funding agencies implementing programs other than those authorized by the four Acts cited above have, in accordance with Congressional encouragement of expansion of the scope of review and approval, requested that HSAs review and comment on, or review and approve or disapprove, applications under certain of their programs. These programs are also on the list, and are indentified as included due to a PHS funding agency request for review and comment and/or review and approval or disapproval. HSAs are of course free to decline to review applications under these programs, but are encouraged to perform the reviews.

A particularly difficult area in the implementation of section 1513(e) concerns HSA reviews of proposals for research and training activities.

Research is not covered by the statutory definition of "health resources" (see section 1513(4) of the Act) and is therefore not per se subject to HSA review. However, some statutes whose basic purpose is research authorize the support of projects involving the delivery of health services, which is within that definition, and it is quite clear that Congress intended for research applications to be subject to review if they involve the delivery of health services. A proposal is currently under development in the Department to establish criteria for determining when a research application which has a service component is subject to review. The Secretary intends to issue a supplimintary notice of proposed rulemaking in the near future which will set forth these criteria. Accordingly, the proposed regulations set out below are silent on this matter and § 122.403(c) has been reserved for these criteria.

The Secretary wishes to emphasize that there are adequate Federal systems available for review of the research aspects of such applications, and HSAs should not attempt to duplicate Federal review of the research aspects of applications subject to review and approval. Further, to avoid the risk of inappropriate disclosure during the HSA review (since all materials in the hands of the HSA which are pertinent to reviews must be made available by the HSA to the public upon request), submission to the HSA of a summary of the purely research aspects of research applications with health care facility construction or service delivery components will be sufficient.

One of the considerations an HSA must address in adopting criteria for reviewing applications (§ 122.412) is "the special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages" (see § 122.412(a)(11)). The Secretary wishes to stress that research applications which are subject to review and approval should be reviewed by the HSAs with special attention to this consideration, since the purpose and impact of such research transcends local HSA boundaries.

With respect to training activities, it should be noted that health professions personnel (i.e., individuals whose main occupation is the delivery of health services) are clearly "health resources" as difined in section 1531(4); therefore the training of such personnel is "the development, expansion, or support of health resources." However, the statute (section 1513(e)(1)(B)) specifically exempts from HSA review proposed uses of funds under titles VII and VIII of the PHS Act except where they are "to support the development of health resources intended for use in the health service area or the delivery of health services." The rationale behind this limitation is that titles VII and VIII for the most part support the development of a national, rather than local, pool of health personnel and it would not be appropriate to subject national manpower development efforts to local HSA review.

There are, however, training activities under other authorities covered by section 1513(e) of the Act which also support the development of a national pool of health manpower. Because of the difficulty this presents for similar treatment of similar applications, these proposed regulations do not include specific criteria to determine which training applications are subject to review and approval. As in the case of research, these criteria will be included (as § 122.403(c)) in a supplementary Notice of Proposed Rulemaking (NPRM) which will be issued shortly. It is expected that the final set of criteria will not be published separately, but with the final regulations implementing this review function.

The Secretary wishes to elaborate on two issues regarding the statutory phrase "each proposed use." First, the reference to HSA review and approval or disapproval of each proposed use does not mean that every application is subject to HSA review. The funding agency will determine at which stage of the review process the application will be submitted to the HSA (§ 122.408). Some agencies may choose to do an initial screening and then submit for HSA review only those applications which are technically adequate and have a reasonable chance of being funded. Second, applications are

arrayed in the PHS Grants Administration Manual in the following categories: new, competing extension, noncompeting continuation, supplemental and noncompeting extension applications. The HSA is entitled to review any of these applications which come under the purview of section 1513(e). However, the proposed regulations (§ 122.408) provide procedures for the review of noncompeting continuation applications which will allow HSA staff to focus their reviews and resources on those noncompeting continuation applications which merit significant attention. The proposed regulations thus are consistent with the PHS Project Period System in providing that HSAs will be sent noncompeting continuation applications for their review and approval only if they make such a request of the Federal funding agency or there is a significant (i.e., 20 percent) increase in the funding level previously afforded the project.

To complete the description of the types of applications subject to review, the Secretary notes that an HSA must also review and approve or disapprove proposed uses in its health service area of Federal funds made available, either by the State or directly by the Secretary, from an allotment to the State under one of the four Acts previously cited (§ 122.403(a)(2)).

The Secretary also wishes to address the procedures HSAs must follow in conducting reviews of proposed uses of Federal funds. The procedures prescribed in these proposed rules are similar to those in the Certificate of Need regulations published on January 21, 1977. One necessary difference is due to the fact that the statute requires that HSAs be allowed not less than 60 days for these reviews, but that Certificate of Need reviews generally take place in 90 days. Additionally, language in these proposed regulations regarding procedures is limited, generally, to the language of the statute. This will allow maximum latitude to the HSAs in developing systems for reviews of Federal funds that will be compatible with those for other required reviews, such as Certificate of Need, and for optional reviews such as A-95 reviews. To facilitate further compatibility with A-95 reviews, proposed § 122.410(a)(1) reiterates the statutory provision for consultation with A-95 planning bodies (as well as other local planning and review organizations and units of general local government). The proposed rules delete one procedure included in the latter part of section 1532(b)(8) of the statute. The Secretary has determined that a public hearing, for good cause shown, need not be included as part of the procedures adopted by the HSA, because section 1513(e)(2) of the Act and proposed § 122.415 provide the opportunity for applicants to request the Secretary to fund applications which an HSA had disapproved. This does not, however, preclude an HSA from including this hearing as part of its procedures if it deems it appropriate.

Although HSAs must be allowed 60 days for these reviews, the Secretary is aware that special treatment will be necessary in the case of monies with less than 60 days available for their obligation. Such a situation might arise when supplemental appropriations are enacted late in a fiscal year. To avoid having these funds lapse, the proposed regulations (§ 122.413(c)) stipulate that when a proposed use of Federal funds is submitted to the HSA less than 60 days prior to the end of the period of availability of the funds, the Federal funding agency may award the funds with the condition than no Federal funds may be expended until the requirements of section 1513(e) of the Act have been met.

While HSAs may request, under section 1532(b) of the Act and proposed § 122.411, an extension of the 60-day review cycle, the Secretary hopes that such requests will be kept to a minimum, because of the impact on the review schedules of Federal funding agencies. Since HSA Determination that an application is not complete is likely to be the chief source of requests to extend the review period, the Secretary encourages the use of preapplication conferences to ensure that applications will, in most cases, be complete upon submission to the HSA. The Secretary also notes that proposed §122.410(a)(3) requires the HSA to inform applicants in advance of the information necessary for its review.

Although these regulations generally repeat the language of section 1532(c) of the Act regarding the considerations an HSA must address in its criteria for reviews of proposed uses of Federal funds, the Secretary has added two considerations not included in the Act and has elaborated on three other considerations. Proposed §122.412(a)(12) has been added to require HSAs to consider the contribution of a proposed use of Federal funds in meeting the needs of minorities, women, and the handicapped of the health service area. The Secretary has also added proposed §122.412(a)(11) which pertains to HSA review of national research projects, explained above in the discussion of research. Proposed §122.412(a)(3) expands the statutory provision of section 1532(c)(3) to require HSAs to consider not only whether services to be added or expanded by the project are needed, but also whether the project would, through relocation of a health care facility or reduction or termination of existing services, result in the removal of services from a population which is in need of them.

Finally, proposed §122.412(a)(10) elaborates on the "special needs and circumstances of health maintenance organizations (HMOs) for which assistance may be provided under Title XIII of the Act," consideration of which section 1532(c)(8) of the Act requires to be included in the agencies' review criteria. To ensure that HMOs receive the encouragement and special consideration the Congress intended when it made the development of group practices and HMOs a national priority in section 1502 of the Act, the Secretary sets forth in this section the specific criteria HSAs must employ in reviewing proposed uses of Federal funds by HMOs. A full explanation of this limited set of criteria, and a description of the process to be followed by agencies which wish to obtain the Secretary's approval of additional review criteria, are contained in the preamble to the recently published Notice of Proposed Rulemaking amending the regulations for reviews of new institutional health services, including certificate of need reviews (42 CFR Part 122, subpart D and Part 123, Subpart E). It should be noted that the proposed amendments for reviews of new institutional health services include, in addition to the same limited set of criteria for reviews of HMOs proposed here, special procedural requirements for reviews of HMOs and special provisions regarding the nature of the findings resulting from reviews of HMOs. These two types of provisions are not necessary in these regulations, since the ultimate decision regarding the awarding of Federal funds rests with the Secretary. Therefore, with the special review criteria for HMOs, the provisions of these regulations are adequate to ensure that reviews of proposed uses of Federal funds do not improperly impair the development of HMOs.

The Secretary believes an explanation of the treatment of confidential material in these reviews is in order. Applications for Federal funds through a contract mechanism frequently contain privileged information which has always been protected by Federal procurement regulations to ensure its confidentiality. For example, much of the information contained in a contract proposal is of a proprietary nature or would be advantageous to competitors if made public. However, if the contract proposal is subject to review and approval and is submitted to the HSA, the information in it must be made available to the public upon request. Therefore, to minimize the adverse effect on contract bidders, only summaries of those sections of contract proposals which contain confidential information will have to be submitted to the HSA. As previously noted, similar problems are posed by research applications (whether for grant or contract assistance) and summaries of the purely research

aspects of research projects subject to review and approval will be sufficient for HSA review.

More detail regarding the items in contract proposals or research applications which may be summarized for purposes of HSA review will be contained in the application and proposal instructions developed by the Federal funding agencies. These instructions will provide both for protecting confidential information and for ensuring that the HSA will receive sufficient information regarding a contract proposal or grant application to reach an informed decision concerning it. In addition, the Department procurement regulations will reflect the fact that information submitted to HSAs cannot be kept confidential.

The Secretary wishes to call attention to the fact that title XV of the Act (section 1524(c)(6)) also provides for review and approval by the Statewide Health Coordinating Council (SHCC) of State plans and applications for funds under allotments from the Public Health Service Act, the Community Mental Health Centers Act, and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. This provision was included in the Act to ensure that Federal financial assistance to State agencies concerned with particular health problems is expended in accordance with broader State health goals and priorities.

The Secretary may make allotment funds available notwithstanding a SHCC disapproval, at the request of the Governor or an agency of State government other than the applicant. Although it is not required by the statute, the Secretary intends, in considering such a request, to solicit the views of the appropriate State health planning and development agency.

Regulations for SHCC review and approval are not needed, since the statute requires neither that regulations for this function be issued nor that SHCCs adopt review procedures and criteria in accordance with section 1532. Therefore guidance regarding this function will be issued in the form of guidelines. The Secretary notes that, since the requirement for SHCC review and approval is effective without regulations, each SHCC is required by section 1524(c)(6) to perform this function. Although SHCCs are not required to adopt review procedures and criteria, the Secretary encourages them to do so to conform to the general statutory emphasis on public accountability and participation in the conduct of reviews.

It is therefore proposed to amend title 42, Code of Federal Regulations, by the addition of a new subpart E to part 122 thereof, as set forth below.

NOTE.—The Department of Health, Education, and Welfare has determined that this document does not contain a major proposal requiring preparation of an inflation impact statement under Executive Order 11821 and OMB Circular A-107.

Dated: February 8, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: April 26, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

Subpart E—Health Systems Agency Reviews of Certain Proposed Uses of Federal Health Funds

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AUTHORITY: Sec. 215, 58 Stat. 690 (42 U.S.C. 216); Sec. 1513(e) of the Public Health Service Act, 88 Stat. 2238 (42 U.S.C. 300 *l*-2(e)).

Subpart E—Health Systems Agency Reviews of Certain Proposed Uses of Federal Health Funds

§ 122.401 Purpose and applicability.

(a) Section 1513(e) of the Public Health Service Act provides that each health systems agency shall review and approve or disapprove certain proposed uses of Federal funds within the health service area for which the health systems agency is designated. In addition, section 1513(e) provides that with respect to certain proposed uses of Federal funds by Indian tribes or inter-tribal organizations, the health systems agency shall only review and comment on such proposed uses. The primary purpose of these reviews is to assure that projects funded by the programs subject to review under section 1513(e) are consistent with and will help to implement the plans of the health systems agencies.

(b) The regulations of this subpart are applicable to the performance by a health systems agency of any review pursuant to section 1513(e) of the Act and in accordance with the designation agreement.

NOTE.—Under 42 CFR 122.106(c), a health systems agency may not perform the function of review and approval of proposed uses of Federal funds within its health service area during its first year of conditional designation, and may not in any event perform such function until such agency has established a health systems plan and annual implementation plan in accordance with section 1513(b) (2) and (3) of the Act and the Secretary has in writing authorized the agency to perform such function.

§ 122.402 Definitions.

In addition to the terms defined in subpart A of this part, as used in this subpart:

(a) "Applicant" means a person applying to a Federal funding agency for a grant, loan or loan guarantee, or submitting to a Federal funding agency a proposal for a contract, reviewable under this subpart; or, in the case of funds made available by a State from an allotment to the State, a person applying to a State program agency for a grant or contract reviewable under this subpart.

(b) "Construction" includes:

(1) The construction of new buildings and the acquisition, expansion, remodeling, replacement, and alteration of existing buildings; and

(2) Equipping new buildings and existing buildings, whether or not expanded, remodeled, or altered.

(c) "Development * * * of health resources" means activities which directly result in the generation of new health resources or the improvement, including consolidation, of existing health resources. It includes, but is not limited to, education and training of health professions personnel, the development of facilities or services, and arrangements to provide services.

(d) "Expansion * * * of health resources" means any activity which will result in a substantial and significant increase in the quantity of health resources.

(e) "Federal funding agency" means the organizational component of the Department of Health, Education, and Welfare which has the authority to make a grant, contract, loan, or loan guarantee reviewable under this subpart.

(f) "Health resources" includes health services, health professions personnel, and health care facilities. For purposes of this subpart:

(1) "Health services" means clinically related (i.e., diagnostic, treatment, habilitative or rehabilitative) services, and includes alcohol, drug abuse, mental health, preventive and environmental health services.

(2) "Health professions personnel" means individuals whose main occupation is the delivery of health services, and

(3) "Health care facilities" has the meaning given it in § 122.301(b) of this part.

(g) "Person" means an individual, a trust or estate, a partnership, a corpo-

ration (including associations, joint stock companies, and insurance companies), a State, or political subdivision or instrumentality (including a municipal corporation) of a State.

(h) "State program agency" means the agency of State government submitting a State plan or application to the Secretary as a condition to the receipt of any funds under allotments made to States reviewable under this subpart.

(i) "Support of health resources" means the furnishing of resources needed to provide a health resource including money, manpower, equipment, facilities, supplies or consultative service.

§ 122.403 General.

(a) Except as provided in paragraph (b) and (c) of this section, each health systems agency shall, in accordance with applicable provisions of this subpart, review and approve or disapprove each proposed use within its health service area of Federal funds—

(1) Appropriated under the Public Health Service Act, the Community Mental Health Centers Act, sections 409 and 410 of the Drug Abuse Office and Treatment Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 for grants, contracts, loans or loan guarantees for the development, expansion, or support of health resources; or

(2) Made available by the State in which the health service area is in whole or in part located (from an allotment to the State under an Act referred to in paragraph (a)(1) of this section) for grants or contracts for the development, expansion, or support of health resources.

NOTE.—Grants, loans and loan guarantees made directly by the Secretary to applicants within States from allotments to States are subject to review under subparagraph (a)(1) above.

(b) A health systems agency shall review and comment on, but shall not approve or disapprove, each proposed use within its health service area of Federal funds described in subparagraph (a) of this section by an Indian tribe or inter-tribal Indian organization for any program or project which will be located within or will specifically serve—

(1) A Federally-recognized Indian reservation,

(2) Any land area in Oklahoma which is held in trust by the United States for Indians or which is a restricted Indian-owned land area, or

(3) A Native village in Alaska (as defined in section 3(c) of the Alaska Native Claims Settlement Act).

(c) [Reserved]

§ 122.404 Section 1536 States.

(a) With respect to any proposed use of Federal funds in the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, American Samoa, the Northern Marianas Islands, or any other State determined by the Secretary to meet the requirements of section 1536(a) of the Act and with respect to which a grant is made by the Secretary pursuant to section 1516 of the Act, the requirements imposed upon health systems agencies by this subpart shall, except where otherwise stated herein, apply to the State health planning and development agency of such State as though the State were a health service area and the State Agency a health systems agency for such area.

(b) A State Agency in a State covered by paragraph (a) of this section may not perform the function of review and approval of proposed uses of Federal funds within its State during its first year of conditional designation, and may not in any event perform such function until (1) the Statewide Health Coordinating Council has established a State health plan for the State in accordance with section 1524(c) of the Act and 42 CFR 123.110(a) and (2) the Secretary has in writing authorized the State Agency to perform such function.

§ 122.405 Involvement of more than one health systems agency.

Where a proposed use of Federal funds would involve the development, expansion or support of health resources in more than one health service area, references in this subpart to "the health systems agency" shall be deemed to refer to the health systems agency for each such health service area.

§ 122.406 Covered programs; publication of lists.

The Secretary will publish as appendices to this subpart, and will revise from time to time, lists of Federal programs which are covered by paragraph (a) of § 122.403. Such appendices will be for informational purposes only, and the fact that a program is not listed shall not mean, if paragraph (a) of § 122.403 is otherwise applicable, that such program is not covered.

§ 122.407 Covered programs; exceptions; determination by Secretary.

(a) In certain programs which are listed pursuant to § 122.406 or otherwise generally covered by paragraph (a) of § 122.403 of this subpart, there may be individual proposed uses of Federal funds which are not for the development, expansion, or support of health resources. Accordingly, either an applicant or a health systems agency may, in accordance with procedures prescribed by the Secretary, request of the Federal funding agency a determination as to whether any particular proposed use of Federal funds is subject to review and approval or disapproval by a health systems agency. The Federal funding agency will promptly notify both the applicant and the health systems agency of its determination. Where the Federal funding agency concludes on its own initiative that a particular proposed use of Federal funds in a program generally covered by § 122.403(a) is not subject to review and approval or disapproval by a health systems agency, it will promptly notify the applicant and the health systems agency of that determination.

(b) In the case of any application for a grant, or proposal for a contract, for training or research which an applicant or health systems agency believes may be within the coverage of § 122.403(c), either the applicant or the health systems agency may, in accordance with procedures prescribed by the Secretary, request of the Federal funding agency a determination as to whether the proposed use is subject to review and approval or disapproval by a health systems agency. The Federal funding agency will promptly notify both the applicant and the health systems agency of its determination. Where the Federal funding agency concludes on its own initiative that a particular proposed use of Federal funds appropriated for grants or contracts for training or research is subject to such review and approval or disapproval, it will promptly notify the applicant and health systems agency of that determination.

§ 122.408 Procedures for submission of applications.

(a) *General.* Except as otherwise specified in this section, applications for Federal funds shall be submitted at such times and in such form and manner as may be prescribed by the appropriate Federal funding agency or, in the case of funds made available by a State under an allotment program covered by § 122.403(a)(2), by the State program agency.

(b) *HSA review of direct Federal grants, contracts, loans, and loan guarantees.* (1) An application for a grant, loan, or loan guarantee or a proposal for a contract which is subject to review by a health systems agency under § 122.403(a)(1) shall, at the option of the Federal funding agency, be submitted either:

(i) Simultaneously to the health systems agency and the Federal funding agency, or

(ii) First to the health systems agency and then, following approval or disapproval by the health systems agency or the expiration of the period for health systems agency review, whichever comes first, to the Federal funding agency; or

(iii) Directly to the Federal funding agency, which will, before approving

such application or proposal and at such time as it deems appropriate, submit the application or proposal, or a summary thereof, to the health systems agency: *Provided, that:*

(2) An application for a noncompeting continuation grant shall be submitted to a health systems agency for review and approval or disapproval in accordance with subparagraph (1) only upon the request of the health systems agency or when the applicant proposes an increase in the funding level of 20 percent or more from that of the previous budget period.

(i) A request by a health systems agency for submission to it of an application for a noncompeting continuation grant will be effective only if it is received by the Federal funding agency at least six months before the scheduled date of the continuation grant award.

(ii) A copy of each application for a noncompeting continuation grant not subject to review under this subparagraph shall be provided by the applicant to the health systems agency at the time the application is submited to the Federal funding agency or to the clearinghouse established pursuant to Office of Management and Budget Circular A-95, whichever is earlier.

(c) *Proposed uses of allotment funds.* A proposal for the use of funds to be made available by the State from an allotment to a State which is subject to review by a health systems agency under § 122.403(a)(2) shall be submitted to the health systems agency by the State program agency or, at the option of the State program agency and in accordance with procedures established by such agency, by the applicant.

§ 122.409 Adoption and public notice of health systems agency review procedures and criteria.

(a) Prior to performance of any review pursuant to section 1513(e) of the Act, and in accordance with its designation agreement, each health systems agency shall, except as provided in § 122.411 of this subpart, adopt review procedures and criteria which meet the requirements of § 122.410 and § 122.412, respectively, of this subpart.

(b) Before adopting the review procedures and criteria required by this subpart or any revisions of such procedures and criteria, the health systems agency shall give interested persons an opportunity to offer written comments on the procedures and criteria, or any revisions thereof, which it proposes to adopt as follows:

(1) The health systems agency shall distribute copies of it proposed review procedures and criteria, and proposed revisions thereof, to the agencies, institutions and associations with which the agency must coordinate its activities pursuant to section 1513(d) of the Act and its designation agreement, to units of general local government within its health service area, to the State Agency and Statewide Health Coordination Council of each State in which all or any part of the agency's health service area is located, and to health systems agencies designated for contiguous health service areas.

(2) The health systems agency shall publish, in one or more newspapers of general circulation in its health service area, a notice stating that review procedures and criteria, or revisions thereof, have been proposed for adoption and are available at specified addresses for inspection and copying. A health systems agency may request from the Secretary an exception to this requirement. Such request shall be in writing, shall contain a detailed explanation of the reasons for the request and of the substitute publication procedures that the agency intends to follow if the exception is approved. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective and do not adversely and substantially affect the rights of persons affected by the subject reviews.

(3) The health systems agency shall allow 30 days from the date of publication of the notice for persons to submit written comments on the proposed review procedures and criteria, or any revision thereof, prior to their adoption.

(c) Each health systems agency shall distribute copies of its adopted review procedures and criteria, and any revisions thereof, to the agencies and organizations specified in paragraph (b)(1) of this section and to the Secretary, and shall provide such copies to other persons upon request.

§ 122.410 Procedures for health systems agency review.

(a) The procedures adopted and utilized by a health systems agency for conducting reviews pursuant to section 1513(e) of the Act and this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review. The notification shall be sent within seven (7) days of the receipt by the health systems agency of the application, and shall include notification of the proposed schedule for the review, of the period within which a public hearing during the course of the review may be requested by persons directly affected by the review as defined in this subparagraph (which must be a reasonable period from the transmittal of the written notification required by this subparagraph) and of the manner in which notification will be provided of the time and place of any hearing so requested. For purposes of this subparagraph, "affected persons" include, at a minimum, the person (hereinafter referred to as the "applicant") whose application for a proposed use of Federal funds (hereinafter referred to as the "project") is being reviewed, all other health systems agencies serving health service areas in which the project will be conducted, the State Agency (and if allotment funds are involved the State program agency) for each State in which all or part of any such health systems agency's health service area is located, major health and health-related institutions and agencies located enitrely or in part in the health systems agency's health service area, entities with which the health systems agency must coordinate its activities pursuant to section 1513(d) of the Act, and those members of the public who are to be served by the proposed project. Written notification to members of the public may be provided through newspapers of general circulation in the area and public information channels; notification to all other affected persons shall be by mail (which may be as part of a newsletter). The health systems agency must simultaneously provides such written notification to the Federal funding agency.

(2) Schedules for reviews which provide that not longer than 60 days will elapse from the date of notification made in accordance with paragraph (a)(1) of this section to the date of the written findings made in accordance with paragraph (a)(5) of this section, unless the Secretary has specified a longer period with respect to a particular program.

(3) Provision for applicants to submit to the health systems agency (at the health systems agency's request and in such form and manner as the agency shall prescribe and publish) such information as the agency may require concerning the project.

(4) Submission of periodic reports by providers of health services and other persons subject to health systems agency review under this subpart respecting the development of proposals subject to review.

(5) Provision for written findings which state the basis for any final decision or recommendation made by the health systems agency. Such findings shall be sent to the applicant, to the State Agency and State program agency for each State in which the project will be conducted, and to the Federal funding agency, and shall be available to others upon request.

(6) Notification, upon request, to applicants and other persons subject to health systems agency review under this subpart of the status of the agency review of projects, of findings made in the course of such review, and other appropriate information respecting such review.

(7) Provision for public hearing in the course of agency review if requested by one or more persons directly affected by the review. The agency may not impose fees for such a hearing. For purposes of this subparagraph, "persons directly affected" by the review include, at a minimum, the applicant, entities with which the health systems agency must coordinate its activities pursuant to section 1513(d) of the Act, entities located in the health systems agency's health service area which provide services or conduct activities similar to the proposed services or activities under review or which, prior to the receipt by the health systems agency of the application for review, have formally indicated an intention to provide similar services or conduct similar activities in the future, and members of the public who are to be served by the proposed project. Where such a hearing is requested, the agency shall, prior to such hearing, provide notice of such hearing, in accordance with its procedure adopted pursuant to paragraph (a)(1) of this section. The procedure for a hearing must provide an opportunity for any person to present testimony.

(8) Preparation and publication, at least annually, of reports by the health systems agency of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency since the publication of the last report and a general statement of the findings and decisions made in the course of such reviews.

(9) Access by the general public to all applications or summaries thereof reviewed by the health systems agency and to all other written materials pertinent to any agency review.

(10) In the case of construction projects, submission to the health systems agency by the persons proposing such projects of letters of intent in such detail and in such form as may be necessary to inform the agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(11) Provision during its review for coordination and consultation with other health systems agencies reviewing the same project.

(12) Provision for agency coordination, to the maximum extent possible, of its reviews of projects under this subpart and its reviews of proposed new institutional health services pursuant to Subpart D of this Part.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service being reviewed.

§ 122.411 Exceptions to use of health systems agency procedures.

After following the procedure set forth in § 122.409(b) of this subpart an agency may, with respect to any type of group of reviews, request from the Secretary an exception to the requirement of § 122.409(a) that it utilize review procedures which meet the requirements of § 122.410. Such request shall be in writing, must contain a detailed explanation of the reasons for the request and of the substitute review parocedures that the agency intends to follow if the exception is approved, and must be accompanied by copies of all written comments submitted under § 122.409(b) to the agency with respect to the request for an exception. The Secretary may grant such an exception if he determines that the proposed substitute procedures are less costly or more effective, are consistent with the purposes of the Act, and do not adversely and substantially affect the rights of persons affected by the subject reviews. The health systems agency shall distribute copies of substitute procedures approved by the Secretary in accordance with the requirements of § 122.409(c) of this subpart.

§ 122.412 Criteria for health systems agency review.

(a) The health systems agency shall adopt and utilize as appropriate specific criteria for conducting the reviews covered by this subpart, which criteria shall include at least the following general considerations:

(1) The relationship of the health services being reviewed to the applicable health systems plan and annual implementation plan adopted pursuant to section 1513(b) (2) and (3), respectively, of the Act.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for the services to be offered, expanded, reduced, relocated, or eliminated.

(4) The availability of alternative, less costly, or more effective methods of providing such services.

(3) The need that the population served or to be served by such services has for the services to be offered, expanded, reduced, relocated, or eliminated.

(4) The availability of alternative, less costly, or more effective methods of providing such services.

(5) The immediate and long-term financial feasibility of the proposal.

(6) The relationship of the services proposed to be provided to the existing health care system of the area in which such services are proposed to be provided.

(7) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services proposed to be provided and the availability of alternative uses of such resources for the provision of other health services.

(8) The relationship, including the organizational relationship, of the health services proposed to be provided to ancillary or support services in the health service areas in which the proposed health services will be provided.

(9) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics and specialty centers.

(10) The special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII of the Act. Such needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization or proposed health maintenance organization for the health services proposed to be provided by such organization.

(ii) The availability of such health services from non-health maintenance organization providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization or proposed health maintenance organization. In assessing the availability of such health services from non-health maintenance organization providers, the agency shall consider only whether the health services from such providers:

(A) Would be available under a contract of at least five years duration with a non-health maintenance organization provider;

(B) Would be available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization or proposed health maintenance organization. (For example—whether physicians associated with the health maintenance organization have or will have full staff privileges at a non-health maintenance organization hospital);

(C) Would cost no more than if the health service were provided by the health maintenance organization or proposed health maintenance organization; and

(D) Would be available in a manner which is administratively feasible to the health maintenance organization

or proposed health maintenance organization.

(iii) Such other factors as the agency may propose and the Secretary may, in accordance with paragraph (c) of this section, find to be consistent with the purpose of Title XIII of the Act.

(11) The special needs and circumstances of biomedical and behavioral research projects which are designed to meet a national need and for which local conditions offer special advantages.

(12) The contribution of the project in meeting the needs of minorities, women and handicapped individuals in the health service area.

(13) In the case of a construction project:

(i) The costs and methods of the proposed construction, including the costs and methods of energy provision, and

(ii) The probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the purpose for which a particular review is being conducted or the type of health service reviewed.

(c) Where an agency proposes under paragraph (a)(10)(iii) of this section that it be permitted to base its reviews of health maintenance organizations on criteria which consider factors not set forth in paragraph (a)(10) of this section, it shall do so in a written request to the Secretary, specifying the reasons for the proposal. The Secretary will approve the request if he finds the additional factors to be consistent with the purpose of Title XIII of the Act. Unless the Secretary has approved the additional factors, the agency shall base its review solely on the factors set forth in paragraph (a)(10) of this section.

§ 122.413 Period for health systems agency review.

Notwithstanding any provision of any Act referred to in § 122.403, a health systems agency shall be allowed not less than 60 days to make the review required by that section.

(a) Unless the appropriate Federal funding agency or State program agency specifies in writing a longer period with respect to a program or particular proposed use of Federal funds covered by this subpart, the period for health agency review of any such proposed use shall be 60 days, except that the health systems agency may, at its option, complete its review in a shorter period.

(b) The period for health systems agency review shall begin on the date of notification by the health systems agency to the applicant, the Federal funding agency or the State program agency, as the case may be, of its receipt of an application or summary, in accordance with procedures established by the Federal funding agency or State program agency pursuant to § 122.408.

(c) Where a proposed use of Federal funds is submitted to a health systems agency for its review less than 60 days prior to the end of the period of availability of the funds involved, the Federal funding agency may, at its option, make the grant, loan or loan guarantee or award the contract so as to preserve the availability of the funds. Any such grant, loan, loan guarantee or contract must, however, be subject to the condition that no Federal funds may be expended until the applicable requirements of section 1513(e) of the Act and this subpart have been met.

§ 122.414 Notification of health systems agency approval or disapproval.

Not later than the close of the first business day following the end of the period described in § 122.413 for review of a proposed use of Federal funds, the health systems agency shall provide written notification to the applicant, the appropriate Federal funding agency, the State Agency, and (in the case of a proposed use of Federal funds from a State allotment covered by § 122.403(a)(2) the State program agency) of its approval or disapproval of the proposed use, setting forth the reasons for such approval or disapproval.

(a) Mailing of the required notification shall be deemed a provision of notification for purposes of this section and § 122.410(a)(6).

(b) Any proposed use of Federal funds with respect to which notification has not been provided by the health systems agency in accordance with this section shall be deemed not to have been disapproved by the health systems agency.

§ 122.415 Consequences of health systems agency disapproval.

(a) *General.* If a health systems agency, in accordance with applicable provisions of this subpart, disapproves a proposed use in its health service area of Federal funds, the Secretary may not make such Federal funds available for such use until he has made, upon the request of the entity making such proposal, a review of the agency decision.

(b) *Procedures for requesting review.* To be effective, a request for review must be:

(1) Received by the Federal funding agency, in such form and manner as may be prescribed by the Federal funding agency, not later than 30 days after the provision of notice to the applicant of disapproval of the proposed use of Federal funds by the health systems agency in accordance with § 122.414; and

(2) Accompanied by a justification for approval by the Secretary of the proposed use of Federal funds despite the health systems agency's disapproval, including detailed responses to the reasons given by the health systems agency for its disapproval.

(c) *State Agency comments.* In making his review of a health systems agency disapproval under this section, the Secretary will give the appropriate State Agency 30 days in which to consider such disapproval and to provide its comments on such disapproval to the Secretary.

(1) To assist the State Agency in considering a health systems agency disapproval under this paragraph, the Secretary will provide the State Agency with copies of the request for review and any material accompanying such request furnished pursuant to paragraph (b) of this section.

(2) To be considered under this paragraph, comments by a State Agency must be received by the Secretary not later than 30 days after the information described in subparagraph (1) of this paragraph is mailed or otherwise provided to the State Agency.

(d) *Review by the Secretary.* The Secretary, after taking into consideration comments received from the State Agency in accordance with paragraph (c) of this section, may make such Federal funds available for such use, notwithstanding the disapproval of the health systems agency. Each decision by the Secretary to make funds available despite the disapproval of a health systems agency will be submitted to the applicant and the appropriate health systems agency and State Agency, and will contain a detailed statement of the reasons for the decision. In reviewing a health systems agency's disapproval under this paragraph, the Secretary will consider at least the following:

(1) Whether the health systems agency substantially adhered to the applicable review procedures adopted by the health systems agency under this subpart.

(2) Whether the proposed use of Federal funds is consistent with the applicable review criteria adopted by the health systems agency under this subpart.

(3) Whether the failure to make the proposed Federal funds available will adversely affect the health of residents of other health service areas.

(4) Whether the proposed use of Federal funds meets a national or regional need which cannot efficiently or effectively be met in another health service area.

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION (ADAMHA), *Federal grants subject to review and approval or disapproval*

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.235	Drug abuse community service programs.	X	
13.237	Mental health—hospital improvement grants.	X	
13.238	Mental health—hospital staff development grants.	X	
13.240	Community mental health centers—staffing and construction.	X	
13.242	Mental health research grants.	X	
13.244	Mental health clinical or service-related training grants.	X	
13.251	Alcohol community service programs.	X	
13.252	Alcohol demonstration programs.	X	
13.254	Drug abuse demonstration programs.	X	
13.257	Alcohol formula grants (State plan and application for allotment grants).	X	
	Alcohol formula grants (projects funded under allotments).	X	
13.259	Mental health—children's services.	X	
13.269	Drug abuse prevention formula grants (projects funded under allotments).	X	
13.273	Alcohol research programs	X	
13.274	Alcohol clinical or service-related training programs.	X	
13.275	Drug abuse education programs.	X	
13.279	Drug abuse research programs.	X	
13.280	Drug abuse clinical or service-related training programs.	X	
13.290	Special alcoholism projects to implement the Uniform Act.	X	
13.295	Community mental health centers—comprehensive services support.	X	
	State plan required by sec. 237—CMHC Act.	X	

Notes

Federal grants subject to review and comment by request of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA).

Secs. 1513(e) and 1524(c)(6) of the PHS Act refer specifically to Federal funds appropriated under the Public Health Service Act, the Community Health Center Act or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. Sec. 1513(e) also includes secs. 409 and 410 of the Drug Abuse Office and Treatment Act as the result of the 1976 amendments to the act. The Alcohol, Drug Abuse, and Mental Health Administration, has requested the following Federal health program, not subject to review under secs. 1513(e) and 1524(c)(6), be subject to review and comment.

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.269	Drug abuse prevention formula grants (State plan and application for allotment grants).	X	

HEALTH RESOURCES ADMINISTRATION (HRA), *Federal grants subject to review and approval or disapproval*

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.298	Nurse practitoner training programs.	X	
13.305	Allied health professions—special project grants (pt. (a) only).	X	
13.889	Training of expanded function dental auxiliaries.	X	
13.369	Nursing school construction—assistance—loan and loan guarantees.	X	
13.379	Family medicine residency training grants.	X	
13.884	Grants for residency training in general internal medicine and/or general pediatrics.	X	
13.886	Educational programs for the physician's assistant.	X	
13.887	Medical facilities construction—project grants.	X	
*	State medical facilities plan and application for allotment grants (title XVI, PHS Act)[1].	X	
*	Projects funded under allotment (title XVI, PHS Act).	X	
*	Training in emergency medicine.	X	
*	Health professions teaching facilities loans and loan guarantees for construction (title VII, PHS Act).		
*	Interdisciplinary team training	X	
*	Bilingual health clinical training centers.	X	
*	Grants for residency training in general dentistry.	X	
*	Regional systems of continuing education.	X	
*	Medical school development costs (emphasizing family medicine).	X	
*	Area health education centers (AHEC's).	X	

[1]The State medical facilities plan must be found by the SHCC to be consistent with the title XV State health plan before the State medical facilities plan can be approved by the Secretary.

*It is expected that OMB numbers will be assigned to these programs in future issues of the Catalog of Federal Domestic Assistance.

Notes

Federal grants subject to review and approval or disapproval by request of the Health Resources Administration (HRA).

Secs. 1513(e) and 1524(c)(6) of the PHS Act refer specifically to Federal funds appropriated under the Public Health Service Act, the Community Mental Health Centers Act, or the Comprehensive Alcohol Abuse and Alcoholism, Prevention, Treatment, and Rehabilitation Act of 1970. Sec. 1513(e) also includes secs. 409 and 410 of the Drug Abuse Office and Treatment Act, as the result of the 1976 amendments to that act. The Health Resources Administration has requested the following Federal health programs, not subject to review under secs. 1513(e) and 1524(c)(6), be subject to review and approval or disapproval.

Catalog No.	Name of program	Subject to review by— HSA	SHCC 120	20
13.369	Nursing school construction assistance—direct grants.	X		
13.384	Health professions startup assistance.	X		
*	Regional health professions schools.	X		
*	Health professions teaching facilities grants for construction (title VII, PHS Act).	X		

*It is expected that OMB numbers will be assigned to these programs in future issues of the Catalog of Federal Domestic Assistance.

HEALTH SERVICES ADMINISTRATION (HSA), *Federal grants subject to review and approval or disapproval*

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.210	Comprehensive public health services—formula grants (State plan and application for allotment grants).	X	
	Comprehensive public health services (projects funded under allotments).	X	
13.217	Family planning projects	X	
13.224	Community health centers (includes rural health initiatives and urban health initiatives).	X	
13.246	Migrant health grants	X	
13.256	Health maintenance organization development.	X	
13.258	National health service corps[2]	X	
13.260	Family planning services—training grants and contracts.	X	
13.284	Emergency medical services	X	
13.292	Sudden infant death syndrome information and counseling program.	X	
13.296	Comprehensive hemophilia diagnostic and treatment centers.	X	
13.882	Hypertension program (State plan and application for allotment grants).	X	
	Hypertension programs (projects funded under allotments).	X	
*	Genetic disease counseling and education.	X	

[2]It should be noted that while this program is authorized by sec. 333 of the PHS Act and would, therefore, be subject to HSA review and approval or disapproval, legislation enacted subsequently to Public Law 93-641 states that HSA's shall have the opportunity to review and comment on such applications. However, the Bureau of Community Health Services has requested that HSA's review and approve or disapprove such applications.

*It is expected that OMB numbers will be assigned to these programs in future issues of the Catalog of Federal Domestic Assistance.

Notes

Federal grants subject to review and approval or disapproval by request of the Health Service Administration (HSA).

Secs. 1513(e) and 1524(c)(6) of the PHS Act refer specifically to Federal funds appropriated under the Public Health Service Act, the Community Mental Health Centers Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. Sec. 1513(e) also includes secs. 409 and 410 of the Drug Abuse Office and Treatment Act, as a result of the 1970 amendments to that act. The Bureau of Community Health Services in Health Services Administration has requested the following Federal health programs, not subject to review under secs. 1513(e) and 1524(c)(6), be subject to review and approval or disapproval.

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.211	Crippled children's services (State plan and application for allotment grants).		X
13.232	Maternal and child health services (State plan and applications for allotment grants.		X
	Maternal and infant projects	X	
	Children and youth projects	X	
23.004	Appalachian health demonstrations.	X	
13.766	Health underserved rural areas.	X	
13.888	Home health services grant program.	X	

NATIONAL INSTITUTES OF HEALTH (NIH), *Federal grants subject to review and approval or disapproval*

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.392	Cancer-construction	X	
13.397	Cancer centers support	X	
13.399	Cancer control	X	
*	Heart and lung national research and demonstration centers support.	X	
*	Heart and lung control	X	

*It is expected that OMB numbers will be assigned to these programs in future issues of the Catalog of Federal Domestic Assistance.

CENTER FOR DISEASE CONTROL (CDC), *Federal grants subject to review and approval or disapproval*

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.267	Urban rat control	X	
13.268	Disease control—project grants	X	
13.283	Center for disease control—investigation, surveillance, and technical assistance (only those programs which are funded in whole or in part under authority of the public Health Service Act are subject to review).	X	
*	Health information and health promotion[3].		

[3]Administered by the Office of Health Information and Promotion, Office of the Assistant Secretary for Health during fiscal year 1978.

*It is expected that OMB numbers will be assigned to these programs in future issues of the Catalog of Federal Domestic Assistance.

Notes

Federal grants subject to review and comment by request of the Center for Disease Control (CDC).

Secs. 1513(e) and 1524(c)(6) of the PHS Act refer specifically to Federal funds appropriated under the Public Health Service Act, the Community Mental Health Centers Act, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970. Sec. 1513(e) also includes secs. 409 and 410 of the Drug Abuse Office and Treatment Act, as the result of the 1976 amendments to that act. The Center for Disease Control has requested the following program, not subject to review under secs. 1513(e) and 1524(c)(6), be subject to HSA review and comment.

Catalog No.	Name of program	Subject to review by— HSA	SHCC
13.266	Childhood lead-based paint poisoning control.	X	

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