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Federal Register

TUESDAY, MAY 16, 1978

highlights

DETROIT, MICHIGAN, WORKSHOPS

HOW TO USE THE FEDERAL REGISTER

FOR: Any person who must use the Federal Register and Code of Federal Regulations.

WHAT: Free public workshop (approximately 3 hours) to present:

1. Brief history of the Federal Register system.
2. Difference between legislation and regulations.
3. Relationship of Federal Register and the Code of Federal Regulations.
4. Important elements of a typical Federal Register document.
5. An introduction to the finding aids of the FR/CFR system.

WHEN: June 13 and 14, 1978, at 9:30 a.m. (Each session identical)

WHERE: McNamara Federal Building, 477 Michigan Avenue, Detroit, Michigan, Room 1090.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in government actions. There will be no discussion of specific agency regulations.

RESERVATIONS: Call Linda Kato or Nicki White, New Detroit, Inc., 313-961-9160.

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The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday). This is a voluntary program. (See OFR notice 41 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
	CSC			CSC
	LABOR			LABOR
	HEW/ADAMHA			HEW/ADAMHA
	HEW/CDC			HEW/CDC
	HEW/FDA			HEW/FDA
	HEW/HRA			HEW/HRA
	HEW/HSA			HEW/HSA
	HEW/NIH			HEW/NIH
	HEW/PHS			HEW/PHS

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

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

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

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NOTE: There were no items eligible for inclusion in the list of RULES GOING INTO EFFECT TODAY.

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NOTE: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's LIST OF PUBLIC LAWS.

[Last Listing: May 11, 1978]

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[3195-01]

Title 3—The President

Executive Order 12058 • May 11, 1978

Functions Relating to Nuclear Non-Proliferation

By virtue of the authority vested in me by the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242, 92 Stat. 120, 22 U.S.C. 3201) and the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. *Department of Energy.* The following functions vested in the President by the Nuclear Non-Proliferation Act of 1978 (92 Stat. 120, 22 U.S.C. 3201), hereinafter referred to as the Act, and by the Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*), hereinafter referred to as the 1954 Act, are delegated or assigned to the Secretary of Energy:

(a) That function vested by Section 402(b) of the Act (92 Stat. 145, 42 U.S.C. 2153a).

(b) Those functions vested by Sections 131a(2)(G), 131b(1), and 131f(2) of the 1954 Act (92 Stat. 127, 42 U.S.C. 2160).

(c) That function vested by Section 131f(1)(A)(ii) of the 1954 Act to the extent it relates to the preparation of a detailed generic plan.

SEC. 2. *Department of State.* The Secretary of State shall be responsible for performing the following functions vested in the President:

(a) Those functions vested by Sections 104(a), 104(d), 105, 403, 404, 407, and 501 of the Act (92 Stat. 122, 123, 123, 146, 147, 148, and 148, 22 U.S.C. 3223(a), 3223(d), 3224, and 42 U.S.C. 2153b, 2153c, 2153e, and 22 U.S.C. 3261).

(b) That function vested by Section 128a(2) of the 1954 Act (92 Stat. 137, 42 U.S.C. 2157(a)(2)).

(c) That function vested by Section 601 of the Act to the extent it relates to the preparation of an annual report.

(d) The preparation of timely information and recommendations related to the President's functions vested by Sections 126, 128b, and 129 of the 1954 Act (92 Stat. 131, 137, and 138, 42 U.S.C. 2155, 2157, and 2158).

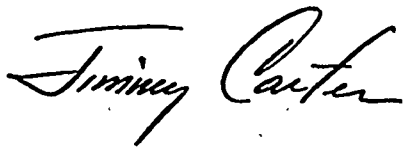
(e) That function vested by Section 131c of the 1954 Act (92 Stat. 129, 42 U.S.C. 2160(c)); except that, the Secretary shall not waive the 60-day requirement for the preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without the approval of the President.

SEC. 3. *Department of Commerce.* The Secretary of Commerce shall be responsible for performing the function vested in the President by Section 309(c) of the Act (92 Stat. 141, 42 U.S.C. 2139a).

SEC. 4. *Coordination.* In performing the functions assigned to them by this Order, the Secretary of Energy and the Secretary of State shall consult and coordinate their actions with each other and with the heads of other concerned agencies.

SEC. 5. *General Provisions.* (a) Executive Order No. 11902 of February 2, 1976, entitled "Procedures for an Export Licensing Policy as to Nuclear Materials and Equipment," is revoked.

(b) The performance of functions under either the Act or the 1954 Act shall not be delayed pending the development of procedures, even though as many as 120 days are allowed for establishing them. Except where it would be inconsistent to do so, such functions shall be carried out in accordance with procedures similar to those in effect immediately prior to the effective date of the Act.



THE WHITE HOUSE,
May 11, 1978.

[FR Doc. 78-13478 Filed 5-15-78; 10:26 am]

[3195-01]

The President

Executive Order 12059 • May 11, 1978

United States Circuit Judge Nominating Commission

By virtue of the authority vested in me as President by the Constitution and statutes of the United States of America, in order to clarify and amend the responsibilities of the various panels of the United States Circuit Judge Nominating Commission and to continue the Commission, it is hereby ordered as follows:

SECTION 1. *Establishment of the Commission.* There is hereby established the United States Circuit Judge Nominating Commission (hereinafter referred to as the "Commission"). The Commission shall be composed of thirteen panels, each of which shall, upon the request of the President, recommend for nomination as circuit judges persons whose character, experience, ability and commitment to equal justice under law, fully qualify them to serve in the Federal judiciary. Except as indicated below, each panel shall serve a geographic area set forth in 28 U.S.C. 41. The panels shall be as follows:

(1) Panel for the District of Columbia Circuit;

(2) Panel for the First Circuit;

(3) Panel for the Second Circuit;

(4) Panel for the Third Circuit;

(5) Panel for the Fourth Circuit;

(6) Panel for the Eastern Fifth Circuit, for the States of Alabama, Florida, Georgia and Mississippi;

(7) Panel for the Western Fifth Circuit, for the States of Louisiana and Texas, and the Canal Zone;

(8) Panel for the Sixth Circuit;

(9) Panel for the Seventh Circuit;

(10) Panel for the Eighth Circuit;

(11) Panel for the Southern Ninth Circuit, for the States of Arizona, California, and Nevada;

(12) Panel for the Northern Ninth Circuit, for the States of Alaska, Hawaii, Idaho, Montana, Oregon and Washington, and the Territory of Guam; and

(13) Panel for the Tenth Circuit.

A panel shall be designated as, *e.g.*, the "United States Circuit Judge Nominating Panel for the First Circuit."

SEC. 2. *Membership.* (a) The membership of the Commission shall consist of the combined memberships of the panels. The President may appoint a member of the Commission as its Chairman, with such duties as the President may assign.

(b) A panel shall be composed of a Chairman and such other members as the President may appoint;

(c) Each panel shall include members of both sexes and members of minority groups, and each panel shall include at least one lawyer from each State within a panel's area of responsibility.

(d) All members of the panel for the District of Columbia Circuit shall be persons residing within the District of Columbia or within twenty miles of its boundaries.

SEC. 3. *Functions of Panels.* (a) A panel shall begin functioning when the President or his designee notifies its Chairman that the President desires the panel's assistance in aid of his constitutional responsibility and discretion to select a nominee to fill a vacancy or vacancies on a United States Court of Appeals. Upon such notification, the panel shall:

(1) Give public notice of the vacancy or vacancies within the relevant geographic area, inviting suggestions as to potential nominees;

(2) Conduct inquiries to identify potential nominees;

(3) Conduct inquiries to identify those persons among the potential nominees who are well qualified to serve as a United States Circuit Judge; and

(4) Report to the President, within the time specified in the notification of the vacancy or vacancies, the results of its activities, including its recommendations as to the persons whom the panel considers best qualified to fill the vacancy or vacancies.

(b) The Panel for the District of Columbia Circuit shall have the additional function of recommending nominees for the United States District Court for the District of Columbia, in accordance with the standards and procedures prescribed by this order for recommending nominees for circuit judges.

SEC. 4. *Standards for Selection of Proposed Nominees.* (a) Before transmitting to the President the names of the persons it deems best qualified to fill an existing vacancy or vacancies, a panel shall have determined:

(1) That those persons are members in good standing of at least one state bar, or the District of Columbia bar, and members in good standing of any other bars of which they may be members;

(2) That they possess, and have reputations for, integrity and good character;

(3) That they are of sound health;

(4) That they possess, and have demonstrated, outstanding legal ability and commitment to equal justice under law; and

(5) That their demeanor, character, and personality indicate that they would exhibit judicial temperament if appointed to the position of United States Circuit Judge.

(b) In selecting persons whose names will be transmitted to the President, a panel shall consider whether the training, experience, or expertise of certain of the well qualified individuals would help to meet a perceived need of the court of appeals on which the vacancy or vacancies exist.

(c) To implement the above standards, a panel may adopt such additional criteria or guidelines as it considers appropriate for the identification of potential nominees and the selection of those best qualified to serve as United States Circuit Judges.

(d) Each panel is encouraged to make special efforts to seek out and identify well qualified women and members of minority groups as potential nominees.

SEC. 5. *Ineligibility of Commission Members.* No person shall be considered by a panel as a potential nominee while serving as a Commission member or for a period of one year after termination of such service.

SEC. 6. *Travel Expenses and Financing.* (a) Members of the Commission shall receive no compensation from the Government of the United States for their service as members of the Commission, but may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law (5 U.S.C. 5702 and 5703) for persons intermittently employed in the government service.

(b) All necessary expenses incurred in connection with the work of the Commission shall be paid from the appropriation for "Unanticipated Needs"

in the Executive Office Appropriations Act or from such other funds as may be available.

(c) Expenditures authorized by this Section may be made only after the President has notified a panel's chairman that he desires the panel's assistance in accordance with Section 3 above, and before the termination of appointments to the panel in accordance with Section 7 below.

SEC. 7. *Term of Membership.* Unless extended by the President, each appointment to a panel shall terminate thirty days after submission of the panel's report to the President.

SEC. 8. *Termination of Commission.* The Commission shall terminate on December 31, 1978, unless sooner extended by the President.

SEC. 9. *Revocations.* Executive Order No. 11972 and Executive Order No. 11993 are hereby revoked.

Jimmy Carter

THE WHITE HOUSE,
May 11, 1978.

[FR Doc. 78-13489 Filed 5-15-78; 12:02 pm]

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 Energy, Department of Housing and Urban Development

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment (1) excepts under Schedule C a position in the Department of Energy because it is confidential in nature and (2) reestablishes a position in the Department of Housing and Urban Development because it is confidential in nature.

EFFECTIVE DATES: Department of Energy—April 28, 1978; Department of Housing and Urban Development—April 27, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3331(a)(10) and 213.3384(h) are added as set out below:

§ 213.3331 Department of Energy.

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

(10) One Confidential Assistant (Secretary) to the Deputy Under Secretary for Commercialization.

* * * * *

§ 213.3384 Department of Housing and Urban Development.

* * * * *

(h) *Office of the Administrator, Federal Disaster Assistance Administration.* (1) One Private Secretary (Steno) to the Administrator.

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

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

[FR Doc. 78-13152 Filed 5-15-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts from the competitive service under Schedule C the position of Administrator, Southwestern Power Administration because the position is confidential in nature.

EFFECTIVE DATE: May 1, 1978.

FOR FURTHER INFORMATION:

On Position Authority Contact: Hugh A. Strehle, Civil Service Commission, 202-632-4625.

On Position Content Contact: Eugene H. Beach, Department of Energy, 202-566-9505.

Accordingly, 5 CFR 213.3331(t) is added as set out below:

§ 213.3331 Department of Energy.

* * * * *

(t) *Southwestern Power Administration.* (1) Administrator.

(5 U.S.C. 3301, 3302; E.O. 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. 78-13153 Filed 5-15-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of Justice, Department of Energy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Part 213 is amended to: (1) Except a position at the Department of Justice from the competitive service because it is confidential in nature, and (2) reflect organization transfers involving title changes at the Department of Energy.

EFFECTIVE DATES: Department of Justice—May 6, 1978; Department of Energy—May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3310(a)(11) and 213.3331(c)(7), (m)(6) are amended as follows:

§ 213.3310 Department of Justice.

(a) *Office of the Attorney General.* * *

*

(11) One Staff Assistant (Secretary) and one Special Assistant to the Director, Office of Public Information.

* * * * *

§ 213.3331 Department of Energy.

* * * * *

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

(7) Two Confidential Assistants to Members of the Commission.

* * * * *

(m) *Office of the Assistant Secretary for Intergovernmental and Institutional Relations.* * * *

(6) Two Staff Assistants, Congressional Affairs.

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

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

[FR Doc. 78-13212 Filed 5-15-78; 8:45 am]

[6325-01]

PART 213—EXCEPTED SERVICE

Department of the Navy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: Positions of Student Pharmacist for temporary, part-time, or intermittent employment in U.S. Navy facilities are excepted under Schedule A because it is not practicable to examine for them. Position incumbents will be students who are enrolled in an approved pharmacy program in a participating non-Federal in-

stitution, and whose compensation is fixed under 5 U.S.C. 5351-54. Employment under this authority may not exceed one year.

EFFECTIVE DATE: May 6, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3108(a)(2) is added as set out below:

§ 213.3108 Department of the Navy.

(a) *General.* * * *

(2) Positions of Student Pharmacist for temporary, part-time or intermittent employment in U.S. Naval Regional Medical Centers, hospitals, clinics and departments when filled by students who are enrolled in an approved pharmacy program in a participating non-Federal institution, and whose compensation is fixed under 5 U.S.C. 5351-54. Employment under this authority may not exceed one year.

(5 U.S.C. 3301, 3302; EO 10577, 3 CFR 1954-58 Comp., p. 218.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-13213 Filed 5-15-78; 8:45 am]

[6325-01]

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Noncompetitive Appointment of ACTION's Community Volunteers

AGENCY: Civil Service Commission.

ACTION: Final regulation.

SUMMARY: The Commission's regulations are amended to implement Executive Order 12034 of January 10, 1978, allowing noncompetitive entry into the competitive service to certain ACTION Community volunteers.

EFFECTIVE DATE: March 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Raleigh M. Neville, 202-632-6817.

Accordingly, the headnote of 5 CFR 315.605 and paragraphs (a) and (b) are amended as set out below:

§ 315.605 Appointment of Former ACTION volunteers.

(a) *Agency authority.* Subject to the prior approval of the Commission, an agency in the executive branch may appoint noncompetitively, for other than temporary employment, a person whom the Director of ACTION certifies as having served satisfactorily as a volunteer or volunteer leader under the Peace Corps Act (22 U.S.C. 2051 et seq.), or as a VISTA volunteer under the Economic Opportunity Act of 1964 (42 U.S.C. 2991 et seq.) or the Domestic Volunteer Service Act of 1973 (Pub. L. 93-113), or as a full-time Community volunteer (including Criminal Justice volunteer, volunteer in Justice, and VETREACH volunteer) under Part C of title I of Pub. L. 93-113. To be qualifying under this section VISTA and Community volunteer service must total at least 1 year. In addition, a Community volunteer must have served prior to October 1, 1976.

(b) *Time limit.* An agency in the executive branch may make an appointment under this section only within 1 year after the person completes the qualifying service. (For Community volunteers who have completed their service before March 10, 1978, the 1-year period begins on March 10, 1978.) However, an agency may extend the period for 2 more years to a total of 3 years if the person, after the qualifying service, is:

(1) In the military service;

(2) Studying at a recognized institution of higher learning; or

(3) In another activity which, in the agency's view, warrants extension.

* * * * *

(E.O. 12034, 43 FR 1917, Jan. 13, 1978.)

For the United States Civil Service Commission.

JAMES C. SPRY,
Executive Assistant to the Commissioners.

[FR Doc. 78-13154 Filed 5-15-78; 8:45 am]

[3410-30]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

[Amdt. 40]

PART 250—DONATION OF FOOD FOR USE IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

AGENCY: Food and Nutrition Service.

ACTION: Final rule, but with comments requested.

SUMMARY: The Food and Nutrition Service amends the regulations governing the food donation program to remove a prohibition of food donations to certain summer camps. This change results from a change made by section 4(b) of the Agriculture and Consumer Protection Act of 1973, as amended by the Food and Agriculture Act of 1977. Foods will now be made available to nonprofit summer camps for children in which the ratio of adults participating in camp activities to children in attendance is not unreasonable.

EFFECTIVE DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Juan del Castillo, Director, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8371.

SUPPLEMENTARY INFORMATION: Nonprofit summer camps for children are eligible to receive food donations under a number of authorities. Section 4(b) of the Agriculture and Consumer Protection Act of 1973, as amended, prohibited the Secretary of Agriculture from donating foods to summer camps in which the number of adults participating in camp activities exceeded one adult for each five children under 18 years of age so participating.

The regulations were amended on March 6, 1974, to incorporate the prohibition of section 4(b). With the concurrence of staff members of the Committee on Agriculture and Forestry, U.S. Senate, however, the regulations excluded from consideration as "adults participating in camp activities" professional, supervisory, or custodial personnel whose services are necessary for the participation of handicapped children in a summer camp's activities. A further exception was made when the regulations were again amended on August 16, 1974, to provide that persons 18 years of age and older in a summer camp who perform basic support duties such as cooking, gardening, and property maintenance and who do not remain on the premises on a round-the-clock basis are not to be considered as participating adults. This change was made in conformance with congressional intent as expressed in Senate Report No. 93-978.

Despite the exceptions described above, there was widespread concern among officials of youth and camping organizations about potential inequities resulting from the prohibition in section 4(b). For example, it was felt that other exceptions in the permissible adult-to-children ratio should be made for certain types of summer camps, such as those serving inner-city youth or juvenile delinquents. This concern was made known to Congress and, as a result, section 4(b) was amended by Pub. L. 95-113, approved September 29, 1977, to authorize food donations to summer camps for children in which the number of adults

participating in camp activities as compared with the number of children under 18 years of age so participating is not unreasonable in light of the nature of such camp and the characteristics of the children in attendance.

The regulations are amended to incorporate this change and to indicate that a determination as to whether the ratio of participating adults to children in attendance in a summer camp is "not unreasonable" is to be made by the State agency responsible for food distribution. The exclusion from consideration as participating adults of those professional, supervisory, or custodial personnel necessary for participation of handicapped children is retained. With respect to the status of cooks, gardeners, and others who perform similar support functions in summer camps, the Department has determined that such employees should not be considered as participating adults regardless of whether or not they remain on camp premises on a round-the-clock basis.

Two other changes are made by this amendment. The definition of "service institutions" is revised to conform with the definition of "sponsors", the term by which institutions participating in the Summer Food Service Program for Children are now referred to in the regulations for that program (7 CFR Part 225). In addition, the amendment deletes a requirement that distributing agencies submit to the Food and Nutrition Service Regional Office an annual inventory report. The latter change results from a survey of distributing agencies in which it was found that other requirements in the regulations make this report unnecessary.

This amendment is published as a final rule in view of the fact that it affects the eligibility of summer camps to receive donated foods during the 1978 camping season, which begins as early as May in some States. Since it is the policy of the Department to invite public comments on such amendments, however, interested persons may submit written suggestions regarding these changes to the above address. Comments received will be considered in making any further changes deemed desirable.

Accordingly, the food donations regulations are amended, as follows:

1. In § 250.3, paragraph (n-1) is revised to read as follows:

§ 250.3 Definitions.

* * * * *

(n-1) "Service institutions" means nonresidential public or private nonprofit institutions and public or private nonprofit camps that develop special summer or school vacation programs providing food service similar to that available to children during the school year under the National School Lunch and School Breakfast Programs.

* * * * *

§ 250.6 [Amended]

2. In § 250.6(r), the words "an annual inventory report in such form as the Department may prescribe," are deleted.

3. In § 250.8, paragraph (c)(1) is revised to read as follows:

§ 250.8 Eligible recipient agencies.

* * * * *

(c) *Summer camps.* (1) Nonprofit summer camps for children are eligible to receive commodities under section 416, section 32, section 709, and section 4(a) if the distributing agency determines that the number of adults participating in camp activities as compared with the number of children under 18 years of age so participating is not unreasonable in light of the nature of the camp and the characteristics of the children in attendance. Persons 18 years of age and over including program directors, counselors, and others who engage in recreational, educational, and direct administrative functions are considered as adults participating in the activities of a summer camp. Employees whose presence on camp premises is solely for the purpose of performing duties such as cooking, gardening, property maintenance, or similar support functions are not considered as adults participating in a summer camp's activities. In no event are persons such as nurses, therapists, and attendants who perform professional, supervisory, or custodial services to be considered as adults participating in the activities of a summer camp if they perform services essential to the participation of mentally, emotionally, or physically handicapped children.

* * * * *

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-197.

(Catalog of Federal Domestic Assistance Program No. 10.550.)

Dated: May 8, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-13061 Filed 5-15-78; 8:45 am]

[3410-15]

CHAPTER XVII—RURAL ELECTRIFICATION ADMINISTRATION, DEPARTMENT OF AGRICULTURE

PART 1701—PUBLIC INFORMATION

Appendix A—REA Bulletins

AGENCY: Rural Electrification Administration.

ACTION: Final rule.

SUMMARY: This includes revisions since November 25, 1977, to the listing and summary descriptions of REA bulletins and supplements thereto that provide the program policies and requirements of the Rural Electrification Administration. The revision reflects both new and revised REA bulletins issued after publication in the FEDERAL REGISTER under proposed rulemaking procedures to secure public comment and participation.

EFFECTIVE DATES: REA bulletins become effective on date of final issuance unless otherwise set forth therein (see Appendix A below for each REA bulletin and its issuance date.)

FOR FURTHER INFORMATION CONTACT:

Mr. Blaine D. Stockton, Jr., Acting Director, Management Services Division, Rural Electrification Administration, Room 4024-S, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-4512.

SUPPLEMENTARY INFORMATION: REA regulations are issued pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.). No public comments were received on any of the REA policy and rulemaking bulletins issued during this period.

The following listings of new and revised bulletins and summary descriptions of bulletins add to or replace existing listings in Appendix A to Part 1701 (40 FR 16074).

APPENDIX A—REA BULLETINS

REA Bulletin No., date of last issuance and description of content

Joint Rural Electrification and Telephone Program Bulletins

20-9:320-12; October 1976 (Supplement). A supplement dated January 27, 1978, providing REA borrowers with updated procedures relating to the transmission of a funds transfer message to the U.S. Treasury.

44-2:345-1; November 1976 (Supplement). A supplement dated November 18, 1977, defining wood decay and providing REA borrowers with a basis for rejecting wood products showing decay.

103-9:403-4; October 1977 (Replacing June 1960). Procedure for the purchase and redemption by REA borrowers of 2 Percent Treasury Bonds—REA Series and 5 Per-

cent Treasury Certificates of Indebtedness—REA Series.

RURAL ELECTRIFICATION PROGRAM BULLETINS

1-7; December 1977 (Replacing August 1969). The policy and recommendations of REA concerning appropriate levels of general funds for electric borrowers in relationship to REA approval of loans and loan fund advances.

43-5; July 1977 (Supplements). Supplements 1 and 2 issued October 1977 and January 1978, respectively. The supplements amend the basic list of materials acceptable for use on systems of REA electric borrowers.

108-1; October 1977 (Replacing October 1974). The requirements of REA on the preparation and submission of operating reports by electric distribution borrowers.

108-2; November 1977 (Replacing January 1971). The requirements of REA on the preparation and submission of operating reports by power supply borrowers and distribution borrowers with generating facilities.

181-1; March 1978 (Replacing January 1972). Uniform System of Accounts prescribed by REA for use by electric borrowers.

181-3; February 1972 (Supplement). A supplement dated October 20, 1977, to serve as a guideline to provide uniform accounting procedures for purchase rebates.

183-1; October 1977 (Replacing November 1969). The policy and procedure of REA pertaining to depreciation rates of electric plant.

RURAL TELEPHONE PROGRAM BULLETINS

320-23; December 1977 (New). The policy and requirements of REA relating to post-loan procedures for telephone borrowers with substantial and continuing construction programs.

344-2; January 1977 (Supplements). Supplements 2 and 3 issued September 1977 and January 1978, respectively. The supplements amend the basic list of materials acceptable for use on telephone systems of REA borrowers.

345-6; January 1978 (Replacing June 1973). Specifications of REA for splicing plastic-jacketed cables used on telephone systems of REA borrowers.

345-13; April 1974 (Supplement). A supplement dated February 10, 1978, permitting the use of continuous uniformity thickness monitoring equipment to take advantage of new technology for monitoring and controlling the uniformity of jacket thickness.

345-14; July 1971 (Supplement). A supplement dated February 10, 1978, permitting the use of continuous uniformity thickness monitoring equipment to take advantage of new technology for monitoring and controlling the uniformity of jacket thickness.

345-36; November 1966 (Supplement). A supplement dated February 10, 1978, permitting additional methods of packaging parallel drop wire.

345-59; March 1971 (Supplement). A supplement dated March 2, 1978, relating to improved long-term electrical stability for cables subjected to adverse temperature and humidity conditions.

345-61; March 1971 (Supplement). A supplement dated March 2, 1978, relating to improved long-term electrical stability for cables subjected to adverse weather and humidity conditions.

345-67; November 1976 (Supplement). A supplement dated February 10, 1978, permitting the use of continuous uniformity thickness monitoring equipment to take advantage of new technology for monitoring and controlling the uniformity of jacket thickness.

345-69; January 1978 (Replacing April 1973). Specifications of REA for two-wire voice frequency repeater equipment on borrowers' telephone systems.

345-70; August 1974 (Supplement). A supplement dated February 10, 1978, permitting the use of continuous uniformity thickness monitoring equipment to take advantage of new technology for monitoring and controlling the uniformity of jacket thickness.

345-77; January 1978 (New). A new REA specification for serving area interface housings.

345-78; February 1978 (New). A new REA specification for carbon arresters and protectors.

384-3; November 1977 (Replacing February 1976). The procedure of REA concerning central office equipment contracts and specifications for telephone borrowers.

402-1; December 1962 (Supplement). A supplement dated February 13, 1978, eliminating certain mortgage restrictions concerning dividend and other distributions by telephone borrowers.

402-2; November 1960 (Supplement). A supplement dated October 13, 1977, reducing to one the number of certified copies of pertinent excerpts of minutes of board or membership meetings required by REA from its borrowers.

403-3; October 1959 (Supplement). A supplement dated September 20, 1977, reducing to one the number of certified copies of pertinent excerpts of minutes of board or membership meetings required by REA from its borrowers.

415-1; August 1960 (Supplement). A supplement dated October 25, 1977, providing for the inclusion of the Rural Telephone Bank under the provisions of this bulletin.

Dated: May 10, 1978.

DAVID A. HAMIL,
Administrator.

[FR Doc. 78-13282 Filed 5-15-78; 8:45 am]

[3410-07]

CHAPTER XVIII—FARMERS HOME ADMINISTRATION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER G—MISCELLANEOUS REGULATIONS

[FmHA Instruction 440.3]

PART 1888—SPECIAL ASSISTANCE TO DROUGHT STRICKEN AREAS

Projects Under Construction and Experiencing Delays

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule with comments requested.

SUMMARY: The Farmers Home Administration issues amended regulations to provide for revised completion dates of projects with a special provision for those projects requiring specialized items, for the granting of completion date extensions by the FmHA Administrator for only hardship situations, and for the submitting of a detailed review of each drought project to the FmHA National Office by the 5th working day of each month. This action is brought about by construction delays resulting from uncontrollable circumstances and by the need to maintain monitoring on those projects in which construction has not been completed. The intended effect is to allow adequate time for completion of those projects which are experiencing delays and to establish a reporting mechanism to determine the status of those projects under construction.

EFFECTIVE DATE: May 16, 1978. However, comments must be received on or before June 15, 1978.

ADDRESSES: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, South Building, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Mr. Charles B. Hart, 202-447-5717.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration (FmHA) amends sections 1888.13 and 1888.17 of Part 1888, Chapter XVIII, Title 7, in the Code of Federal Regulations (42 FR 19322; 42 FR 23158; 42 FR 43965) as follows:

(1) Sections 1888.13(c) and 1888.17(b) are amended to provide for the revised completion date of projects to no later than October 31, 1978. However, those projects requiring specialized items should be completed no later than June 30, 1979. An extension may be granted for hardship cases by the FmHA Administrator.

(2) Section 1888.17(c) is added to provide for a monthly detailed review to be submitted to the FmHA National Office for each project in which construction has not been completed. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemptions in 5 U.S.C. 553 with respect to such rules. This amendment, however, is not published for proposed rulemaking since this assistance is currently needed to alleviate hardship situations and any delay would be contrary to the public interest.

Therefore, §§ 1888.13(c) and 1888.17 (b) and (c) are amended and read as follows:

§ 1888.13 Loans and grants to rural communities for water supply assistance.

* * * * *

(c) For those projects determined to meet the requirements of paragraph (b) of this section, assistance may be provided to the extent necessary for the construction, enlargement, extension, improvement, or any other appropriate community water facility purpose for ameliorating drought caused problems. Such assistance may include, but not be limited to, deepening an existing well, developing a new water source by digging a new well, or extending water supply lines to other water sources. Additionally, assistance may be provided for short-term measures necessary to augment community water supplies where there are severe problems resulting from water shortages due to the drought, including the use of loan funds for initial operation and maintenance expenses attributable to such measures. However, increased operation and maintenance expenses on existing facilities attributable to the drought are not items for which assistance may be provided. Eligibility is limited to those project measures which can be completed by the appropriate date shown in section 1888.17(b). Under special circumstances or hardship, an extension of completion time may be granted by the FmHA Administrator. Exhibit A to this Subpart provides a Memorandum of Understanding between the Farmers Home Administration and the Economic Development Administration (EDA) to enable either agency to be more responsive to the applicants needs.

* * * * * *

§ 1888.17 Termination provisions.

* * * * * *

(b) Community water supply projects should be completed not later than October 31, 1978; however, those projects requiring specialized items of equipment or materials such as treatment or water storage facilities or the drilling of water wells should be completed as early as possible but not later than June 30, 1979. An extension of these completion dates may be granted by the FmHA Administrator only under hardship situations.

(c) Each State Director will assign a member of the Community Programs staff for continuous monitoring and providing needed assistance for each community water supply project. A detailed review of each drought project in which construction has not been completed will be submitted not later than the 5th working day of each month to the National Office, Attention: Water and Waste Disposal Loan Division, reflecting the current status of each project. The format shown in Exhibit B, available in any FmHA office, will be used for this purpose.

* * * * * *

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70).

Dated: May 9, 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-13188 Filed 5-15-78; 8:45 am]

[3410-37]

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

SUBCHAPTER C—REGULATIONS AND STANDARDS UNDER THE AGRICULTURAL MARKETING ACT OF 1946

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

Subpart—United States Standards for Grades of Canned Clingstone Peaches[1]

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to change the grading standards for canned clingstone peaches. This action is being taken at the request of industry and the effect of this rule will be to improve the standards.

EFFECTIVE DATE: June 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Howard W. Schutz, Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-4693.

SUPPLEMENTARY INFORMATION: For the past 10 years California has produced more than 60 percent of the nation's total peach crop and has packed more than 95 percent of the nation's commercial canned peach pack.

Peaches rank as the highest stone fruit produced in the United States, both in terms of quantity and economic value and ranks as the highest in quantity of all canned fruits produced in the nation. The latest available data indicates that the annual U.S. peach crop exceeds 1.3 million tons valued at $254.5 million and of which over 62 percent is produced in California. The two main varietal types of peaches that are grown and processed are the yellow clingstone and the yellow freestone.

Almost 600,000 tons of yellow clingstone peaches are produced annually in California of which more than 590,000 tons are canned commerically. This constitutes approximately 98 percent of the U.S. total canned yellow clingstone peach pack.

The last major revision of the U.S. Standards for Grades of Canned Clingstone Peaches was in 1957 with subsequent amendments at various times since then. In 1967 the Canners League of California (CLC) Standards Committee requested the Department to provide a preliminary draft of an attribute type standard based on statistical principles for canned clingstone peaches. This being a totally new concept of grading for the canning industry, several years of preliminary study were conducted by the processors. Prior to the 1976 peach processing season, the CLC Standards Committee requested the Department to set up a formal study program during the 1976 canning season. In compliance with this request a formal study was drawn up and coordinated in 10 different cling peach canning plants in California. Department representatives met with CLC's Ad Hoc Attribute Standards Committee on September 23, 1976 and gave a preliminary report of the study. Later in 1976, a comprehensive summary of the analysis of the 1976 study was submitted to the CLC Standards Committee, along with a revised draft of the attributes standards containing modifications suggested by the results of the study.

Attribute food standards seminar dealing with the basic attributes approach for food standards with particular emphasis on the proposed draft of revisions to the U.S. Standards for Grades of Canned Clingstone Peaches were presented to the public on March 11, 1977 and March 24, 1977, at Stockton and San Jose, Calif., respectively. As a result of the 1976 study and the above mentioned meetings the CLC Standards Committee requested that this revised draft be published in the FEDERAL REGISTER as a proposed rulemaking. The Standards Committee further requested that the clingstone peach canners be given until March 1, 1978 to study the revisions and new concepts of the proposed rulemaking and its effect on production and qual-

[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.

ity control operations during the 1977 canning season.

On April 28, 1977 a Notice of Proposed Rulemaking was published in the FEDERAL REGISTER (42 FR 21746), regarding the issuance of United States Standards for Grades of Canned Clingstone Peaches under Chapter I, Part 52 which has been changed to Chapter XXVIII, Part 2852 by a rule effective June 27, 1977, establishing a new Chapter for the Food Safety and Quality Service in the Code of Federal Regulations. Interested persons were given until March 1, 1978 to submit written data, views or arguments regarding the proposed standards.

Information concerning the proposal was released to the news media and was carried in trade publications. In all instances it was pointed out that use of U.S. grade standards and official grading services is voluntary.

Department representatives were invited to again meet with the CLC Standard Committee on July 8, 1977 and were requested to present seminars to the interested public dealing with the basic attributes approach for food standards with particular emphasis on the Proposed Rulemaking for Revision of the U.S. Standards for Grades of Canned Clingstone Peaches and the application of this Proposed Rulemaking during a 1977 study. Three seminars were presented by Department representatives between July 14, 1977 and July 25, 1977 at Stockton, Modesto and San Jose, Calif. with 78 persons in total attendance.

Ten different clingstone peach canning plants in California participated in a Department coordinated study during the 1977 canning season using the Proposed Rulemaking under normal canning plant operating conditions. During the time period from July 26, 1977 through September 15, 1977, 61 Departmental visits were made to these individual canning plants for the purpose of monitoring the study.

During the weeks of September 12, 1977 and September 19, 1977, Department representatives met with four processed food retail buying groups for the purpose of discussing and explaining the proposed standards.

On September 16, 1977, Department representatives met with the CLC Standards Committee at which time a preliminary report of the 1977 canning season study was given to the Committee who indicated its agreement with the proposed rulemaking.

This revision of the United States Standards for Grades of Canned Clingstone Peaches will:

(1) Convert the current score points variables standard to an attributes standard based on statistical principles;

(2) Eliminate the score points since the attributes approach is a go/no-go approach;

(3) Eliminate the separate grade criteria for solid-pack peaches, the U.S. Grades D classification, and the alternate grade nomenclature of Fancy, Choice and Standard from the various grade classifications, retaining only the letter grades U.S. Grade, A, B, C and Substandard;

(4) Function in combination with the two statistical sampling plans recently added to the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products, §§ 2852.38a, 2852.38b and 2852.38c (43 FR 10539);

(5) Provide for separate acceptance criteria for unofficially submitted samples. These are single sample units that do not represent a lot;

(6) Provide for various defect classifications according to severity or frequency of occurrence. These classifications are minor, major, severe and critical, with descending allowances starting with the most liberal allowances for minor defects to the most restrictive allowances for the critical defects.

Five letters were received in response to the proposal during the comment period. Of the four favorable responses, two were from individual consumers, one was from a food marketing company that deals in retail size canned and frozen foods, and one was from the Canners League of California, a non-profit trade association representing 33 California fruit and vegetable canners. The other comment received was not pertinent to the content of the proposal, but rather was a complaint as to the shortness of storage life of canned peaches after opening and storing them in a refrigerator.

Minor changes in the text from the published proposal are: (1) Deletion of references to "fleshy texture" under character as it was found to be adequately covered by "shelly units" (excessively thin-fleshed units) under classified defects; (2) deletion of "frayed units" as classified defects and reassigning them as character prerequisities. (These two changes give the standard much better balance.); (3) a clearer definition of overall appearance as "brightness". This cleared up a lot of misinterpretation of the original intent; (4) some AQL's were rounded off to be in line with the statistical sampling plans in the Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products, §§ 2852.38a–2852.38c (7 CFR 10539); (5) under the styles of halves and quarters, the classification of detached pieces was moved from severe to major, as it was found to be too restrictive from a practical standpoint. Due to the softness of the suture line (the naturally occurring indentation, running from the stem to the apex of a peach) in canned clingstone peaches, additional detached pieces may be caused by handling during labeling, casing and transit; (6) several editorial changes made for clarification purposes; (7) Brix cutoff between "light" and "heavy" syrup and between "heavy" and "extra-heavy" syrup changed to be in line with the applicable Food and Drug Standards of Identity (21 CFR 145.170(a)(3)).

After consideration of all relevant matters presented by interested persons, and since there were no unfavorable comments regarding the proposal, the proposed revision to the United States Standards for Grades of Canned Clingstone Peaches is adopted as set forth below.

Effective date: The revised U.S. Standards for Grades of Canned Clingstone Peaches shall become effective on June 1, 1978.

Sec.

2852.2561 Product description.
2852.2562 Styles.
2852.2563 Definitions of terms.
2852.2564 Recommended sample unit sizes.
2852.2565 Liquid media and Brix measurements.
2852.2566 Fill or container.
2852.2567 Recommended fill of container for canned "solid-pack" clingstone peaches.
2852.2568 Recommended drained weights.
2852.2569 Recommended fill weights.
2852.2570 Grades.
2852.2571 Factors of quality.
2852.2572 Classification of defects.
2852.2573 Tolerances for defects.
2852.2574 Sample size.
2852.2575 Compliance with quality requirements.

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

§ 2852.2561 Product description.

Canned clingstone peaches is the product represented as defined in the Standards of Identity for canned peaches (21 CFR 145.170 and 145.171) issued under the Federal Food, Drug and Cosmetic Act. For the purposes of the standards in this subpart, and unless the text indicates otherwise, the terms, "canned peaches" or "canned clingstone peaches" include "canned yellow clingstone peaches," "canned spiced yellow clingstone peaches," "canned 'solid-pack' yellow clingstone peaches" and "canned artificially sweetened yellow clingstone peaches" as defined in the Standards of Identity.

§ 2852.2562 Styles.

(a) *"Whole"* consists of peeled whole peaches with or without stems removed.

(b) *"Halved" or "Halves"* consists of peeled and pitted peaches cut approximately in half along the suture from stem to apex.

(c) *"Quartered" or "Quarters"* consists of halved peaches cut into two approximately equal parts.

(d) *"Sliced" or "Slices"* consists of peeled and pitted peaches cut into wedge-shaped sectors.

(e) *"Diced" or "Dice"* consists of peeled and pitted peaches cut into cube-like units.

(f) *"Halves and pieces"* consists of peeled and pitted peaches in which more than 50 percent, by weight, of the peaches are halves.

(g) *"Pieces" or "Irregular pieces," or "Mixed pieces of irregular sizes and shapes"* consists of peeled, pitted peaches of irregular sizes and shapes or peaches that do not conform to any of the foregoing styles.

§ 2852.2563 Definitions of terms.

(a) *Acceptance Quality Level (AQL).* The maximum percent of defective units or the maximum number of defects per hundred units, of product that, for purposes of acceptance sampling can be considered satifactory as a process average.

(b) *Blemished* means any unit which is affected by scab, hail injury, or discoloration to the extent that the appearance or eating quality is affected:

(1) Not more than slightly;

(2) Materially; or

(3) Seriously.

(c) *Brightness* means the extent that the overall appearance of the sample unit as a mass is dulled by oxidation, pigmentation or other causes.

(1) Grades A and B—not affected.

(2) Grade C—not more than materially affected.

(3) Substandard—fails grade C.

(d) *Character* refers to the texture and tenderness of the product as follows:

(1) *Good character.*—(i) *Whole.* The units have a texture typical of properly prepared and processed peaches; the units are at least reasonably tender or the tenderness may be variable within the unit; the units may be slightly hard or slightly soft.

(ii) *Halves; slices; quarters; halves and pieces; pieces or irregular pieces.* The units have at least a reasonably tender texture typical of properly prepared and processed peaches and may be no more than slightly frayed.

(iii) *Dice.* The product generally has at least a reasonably tender texture typical of properly prepared and processed peaches; the units are intact and may be no more than slightly frayed.

(2) *Fairly good character.*—(i) *Whole.* The units have a fairly tender texture typical of properly prepared and processed peaches; the units may be lacking in uniformity of tenderness and may be substantially firm or soft.

(ii) *Halves; slices; quarters; halves and pieces; pieces or irregular pieces.* The units have a texture typical of properly prepared and processed peaches; the units may be fairly tender and may lack uniformity of tenderness; the units may be soft and frayed or may be substantially firm.

(iii) *Dice.* The product generally has a fairly tender texture typical of properly prepared and processed peaches; the units are intact and may be frayed.

(3) *Poor character.—All styles.* The units are excessively soft or mushy or are excessively hard.

(e) *Color.*—(1) *General.* The color of canned yellow clingstone peaches other than "spiced" peaches refers to the predominant and characteristic color on the surface of whole units, and the outside surfaces of other units. The cut surfaces of such units are also considered when adversely affected by discoloration.

(2) *Individual unit color classifications.*—(i) *Good color* means peach units that are equal to or better than light orangish-yellow.

(ii) *Fairly good color* means peach units that may fail to meet minimum color requirements for "good color" but are equal to or better than greenish-yellow.

(iii) *Poor color* means peach units that may fail to meet minimum color requirements for "fairly good color."

(f) *Crushed or broken* in the styles of whole, halves, and quarters means:

(1) A unit is "crushed" if it has definitely lost its normal shape and is crushed not due to ripeness; and

(2) A unit is "broken" if severed into definite parts. Any unit in halves style that is split from the edge to the pit cavity is not considered broken.

(g) *Defect.* Any nonconformance of a unit(s) of product from a specified requirement of a single quality characteristic.

(h) *Extraneous vegetable material.*—(1) *Small pieces* means long stems, pieces of twigs not more than 51 mm (2.0 inch) in length, or leaf material or portions thereof.

(2) *Short stem* means the woody stem which attaches the peach to the twig of the tree and is 3 mm (0.12 inch) to 10 mm (0.39 inch) in length. Dark brown stems less than 3 mm (0.12 inch) in length are also considered as short stems.

(i) *Flavor and odor. "Normal flavor and odor"* means that the canned peaches are free from objectionable flavors and odors of any kind.

(j) *Mechanical damage.*—(1) *Partial slice,* in the style of slices, is a unit that has had a semblance of a slice with respect to thickness and shape but is less than three-fourths of an apparent full slice and that does not bear marks of crushing. Pieces are reassembled to equal an average full size slice and counted as one unit.

(2) *Detached piece,* in the style of halves and quarters, is a piece which has the appearance of a slice resulting from an off-suture cut or other improper cutting.

(3) *Gouges* means holes or gouges that do not destroy the normal configuration of the unit but adversely affect the appearance of the unit:

(i) Not more than slightly;

(ii) Materially; or

(iii) Seriously.

(4) *Off-suture cut,* in the styles of halves and quarters, is a unit which has been cut at a distance from the suture greater than 10 mm (0.39 inch) at the widest measurement and the appearance is affected:

(i) Not more than slightly;

(ii) Materially; or

(iii) Seriously.

(5) *Partially detached piece,* in the style of halves and quarters, is a piece which has the appearance of a slice resulting from an off-suture cut or other improper cutting. The defect is attached to the half or quarter from which cut, but must be detached more than one-third of the length of the half or quarter along the suture approximately parallel with the suture.

(6) *Other mechanical damage* means a unit in the styles of whole, halves and quarters which is damaged to the extent that the shape of the unit is affected:

(i) Not more than slightly;

(ii) Materially; or

(iii) Seriously.

(k) *Peel* means all of the outer layer of the peach that is normally removed during processing.

(l) *Sample unit size* means the amount of product specified to be used for inspection. It may be:

(1) The entire contents of a container; or

(2) A portion of the contents of a container; or

(3) A combination of the contents of 2 or more containers; or

(4) A portion of unpacked product.

(m) *Shelly,* in the styles of halves, quarters and slices, means a unit in which the pit cavity has been trimmed to such an extent as to leave the unit only fairly fleshy.

(n) *Slab,* in the style of slices, means an irregularly shaped unit resulting from the slicing operation that materially deviates from the normal shape of a wedge-shaped sector.

(o) *Sliver,* in the style of slices, means any unit that weighs 3 g (0.12 ounces) or less and has the symmetry of a full slice.

(p) *Unit* means one whole, half, quarter, slice, dice, or piece of peach as applicable for the style.

§ 2852.2564 Recommended sample unit sizes.

(a) *Factors of quality.* Compliance with requirements for factors of quality is based on the following recommended sample unit sizes for the respective style.

(1) Halves, quarters—25 units.
(2) Whole—25 units.
(3) Slices—50 units or 100 units.
(4) Dice—200 g (7 ounces).
(5) Halves and pieces: Pieces or irregular pieces—1,000 g (35.3 ounces).

§ 2852.2565 Liquid media and Brix measurements.

"Cut-out" requirements for liquid media in canned clingstone peaches are not incorporated in the grades of the finished product since sirup or any other liquid medium, as such, is not a factor of quality for the purposes of these grades. The "cut-out" Brix measurements, as applicable, for the respective designations are as follows:

Designations	*Brix measurements*
Extra heavy sirup or extra heavily sweetened fruit juice(s) and water or extra heavily sweetened fruit juice(s).	22° or more but not more than 35°.
Heavy sirup or heavily sweetened fruit juice(s) and water or heavily sweetened fruit juice(s).	18° or more but less than 22°.
Light sirup or lightly sweetened fruit juice(s) and water or lightly sweetened fruit juice(s).	14° or more but less than 18°.
Slightly sweetened water or extra light sirup or slightly sweetened fruit juice(s) and water or slightly sweetened fruit juice(s).	10° or more but less than 14°.
In water	Not applicable.
In fruit juice(s) and water	Do.
In fruit juice(s)	Do.
Artificially sweetened	Do.

§ 2852.2566 Fill of container.

The standard of fill of container for canned clingstone peaches is the maximum quantity of the peach units which can be sealed in the container and processed by heat to prevent spoilage, without crushing or breaking such ingredient. Canned clingstone peaches that do not meet this requirement are "Below Standard in Fill."

§ 2852.2567 Recommended fill of container for canned "solid-pack" clingstone peaches.

The recommended fill of container for canned "solid-pack" clingstone peaches 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 "solid-pack" clingstone peaches be as full of peaches as practicable without impairment of quality and that the product (including liquid, if any) occupy not less that 90 perceant of the volume of the container.

§ 2852.2568 Recommended drained weights.

(a) *General.*—(1) The minimum drained weight recommendations for the various applicable styles in table I of this subpart are not incorporated in the grades of the finished product since drained weight, as such, is not factor of quality for the purposes of these grades.

(2) The recommended minimum drained weights are based on equalization of the product 30 days or more after the product has been canned.

(b) *Method for determining drained weight.* The drained weight of canned clingstone peaches and canned "solid-pack" clingstone peaches is determined by emptying the contents of the container, turning the pit cavities down in halves, upon a U.S. Standard No. 8 circular sieve of proper diameter containing 8 meshes to the inch (0.0937-in± 3 percent, square openings) so as to distribute the product evenly, inclining the sieve slightly to facilitate drainage, and allowing to drain for 2 minutes. The drained weight is the weight of the sieve and peaches less the weight of the dry sieve. A sieve 8 inches in diameter is used for the equivalent of No. 3 size cans (404×414) and smaller, and a sieve 12 inches in diameter is used for containers larger than the equivalent of the No. 3 size can.

(c) *Definitions of symbols.* (1) X_d—The average drained weight of all the sample units in the sample.

(2) *LL*—Lower limit for drained weights of individual sample units.

(d) *Compliance with recommended drained weights.* A lot of canned clingstone peaches and canned unsweetened "solid-pack" clingstone peaches is considered as meeting the minimum drained weight recommendations if the following criteria are met:

(1) The average of the drained weights from all the sample units in the sample meets the recommended average drained weight (designated as X_d in table I);

(2) The number of sample units which fail to meet the recommended minimum drained weight for individuals (designated as *LL* in table I) does not exceed the applicable acceptance number specified in the single sampling plan of table II.

§ 2852.2569 Recommended fill weights.

(a) *General.* The minimum fill weight recommendations for the various styles in table III of this subpart are not incorporated in the grades of the finished product since fill weight, as such, is not a factor of quality for the purpose of these grades.

(b) *Method for determining fill weight.* The fill weight of canned clingstone peaches is determined in accordance with the U.S. Standards for Inspection by Variables and the U.S. Standards for Determination of Fill Weights.

(c) *Definitions of terms and symbols.* "Subgroup" means a group of sample units representing a portion of a sample.

X'_{min} means the minimum lot average fill weight.

LWL_x means the lower warning limit for subgroup averages.

LRL_x means the lower reject limit for group averages.

LWL means the lower warning limit for individual fill weight measurements.

TABLE I.—*Recommended minimum drained weights for canned clingstone peaches*

Container designation (metal, unless otherwise stated)	Container size (overall dimensions)		Overflow capacity (fluid ounces)	Sliced						Diced in any liquid medium	
				In extra heavy sirup (ounces)		In heavy sirup (ounces)		In any other liquid medium (ounces)			
	Diameter (inches)	Height (inches)		X_d	LL_x	X_d	*LL*	X_d	*LL*	X_d	*LL*
5Z	211	200		2.8	2.2	3.0	2.4	3.1	2.5	2.9	2.6
5Z	211	202		3.0	2.4	3.2	2.6	3.3	2.7	3.2	2.9
6Z	300	200		3.4	2.8	3.6	3.0	3.7	3.1	3.7	3.4
7Z	211	212		4.0	3.4	4.2	3.6	4.3	3.7	4.3	4.0
8Z tall	211	304		4.9	4.3	5.1	4.5	5.2	4.6	5.2	4.7
No. 300	300	407		8.9	8.2	9.1	8.4	9.3	8.6	9.5	8.9
No. 303	303	406		9.9	9.1	10.1	9.3	10.3	9.5	10.5	9.8
No. 303 glass			17.0	9.9	9.1	10.1	9.3	10.3	9.5	10.5	9.8
No. 2	307	409		12.0	11.1	12.3	11.4	12.6	11.7	12.7	11.9
No. 2½	401	411		17.4	16.3	17.8	16.7	18.2	17.1	18.5	17.5
No. 2½ glass			28.35	16.9	15.8	17.3	16.2	17.7	16.6	18.0	17.0
No. 10	603	700		64.5	62.5	66.5	64.5	68.5	66.5	70.0	68.2

TABLE I—(Continued)

Container designation (metal, unless otherwise stated)	Heavy pack—any style in any liquid medium (ounces)		Solid pack—all applicable styles (unsweetened only) (ounces)	
	X_d	4LL	X_d	LL
No. 2½	20.0	18.6	25.5	24.1
No. 10	76.0	73.5	92.0	89.5

TABLE I (Continued)

Container designations (metal, unless otherwise stated)	Halves						Quarters and mixed pieces of irregular sizes and shapes					
	In extra heavy sirup (ounces)		In heavy sirup (ounces)		In any other liquid medium (ounces)		In extra heavy sirup (ounces)		In heavy sirup (ounces)		In any other liquid medium (ounces)	
	X_d	LL	X_d	LL	X_d	LL	X_d	LL	X_d	LL	X_d	LL
8Z tall	5.0	4.3	5.2	4.5	5.3	4.6	5.0	4.3	5.2	4.5	5.3	4.6
No. 300	9.0	8.2	9.2	8.4	9.4	8.6	9.0	8.2	9.2	8.4	9.4	8.6
No. 303	10.0	9.1	10.2	9.3	10.4	9.5	10.0	9.1	10.2	9.3	10.4	9.5
No. 303 glass	10.0	9.1	10.2	9.3	10.4	9.5	10.0	9.1	10.2	9.3	10.4	9.5
No. 2	12.1	11.0	12.4	11.3	12.7	11.6	12.1	11.0	12.4	11.3	12.7	11.6
No. 2½ glass	17.1	15.7	17.5	16.1	17.9	16.5	17.1	15.7	17.5	16.1	17.9	16.5
No. 2½							17.6	16.2	18.0	16.6	18.4	17.0
No. 2½, 7 count or more	17.6	16.2	18.0	16.6	18.4	17.0						
No. 2½, 6 count or less	17.0	15.6	17.4	16.0	17.8	16.4						
No. 10							64.5	62.0	66.5	64.0	68.5	66.0
No. 10, 24 count or more	64.5	62.0	66.5	64.0	68.5	66.0						
No. 10, 23 count or less	63.0	60.5	65.0	62.5	67.0	64.5						

TABLE II.—*Single sampling plan for drained weights*

Sample size (number of sample units)	3	6	13	21	29
Acceptance No	0	1	2	3	4

TABLE III.—*Recommended fill weight values for canned clingstone peaches*

Container designation (metal, unless otherwise designated)	X'_{min}	LWL_x	LRL_x	LWL	LRL	R	R_{max}	Sampling allowance code
				Halves				
8Z tall	5.4	4.9	4.7	4.4	3.9	1.2	2.5	I
No. 300	9.6	9.0	8.7	8.3	7.6	1.5	3.2	L
No. 303 glass	10.6	10.0	9.6	9.2	8.5	1.6	3.4	M
No. 303	10.6	10.0	9.6	9.2	8.5	1.6	3.4	M
No. 2	12.9	12.2	11.8	11.3	10.5	1.9	3.9	O
No. 2½ glass	18.2	17.3	16.9	16.2	15.2	2.3	4.9	S
No. 2½, 7 count or more	18.7	17.8	17.4	16.7	15.7	2.3	4.9	S
No. 2½, 6 count or less	18.0	17.1	16.7	16.0	15.0	2.3	4.9	S
No. 10, 24 count or more	70.5	69.0	68.2	67.1	65.4	4.0	8.4	Z
No. 10, 23 count or less	69.0	67.5	66.7	65.6	63.9	4.0	8.4	Z
				Sliced—fill weight values (ounces)				
6Z	4.0	3.6	3.4	3.2	2.8	.9	1.9	G
8Z tall	5.4	5.0	4.8	4.4	4.0	1.0	2.1	H
No. 300	9.7	9.2	8.9	8.5	7.9	1.4	3.0	K
No. 303 glass	10.7	10.1	9.8	9.4	8.7	1.5	3.2	L
No. 303	10.7	10.1	9.8	9.4	8.7	1.5	3.2	L
No. 2	13.1	12.4	12.1	11.6	10.9	1.7	3.7	N
No. 2½	19.0	18.2	17.8	17.2	16.3	2.1	4.4	Q
No. 2½ glass	18.5	17.7	17.3	16.7	15.8	2.1	4.4	Q
No. 10	72.0	70.6	69.8	68.8	67.2	3.7	7.9	Y
				Quarters—fill weight values (ounces)				
8Z tall	5.5	5.1	4.9	4.6 [c]	4.1	1.1	2.2	H
No. 300	9.9	9.4	9.1	8.7	8.1	1.4	3.0	K
No. 303 glass	11.0	10.4	10.1	9.7	9.0	1.5	3.2	L
No. 303	11.0	10.4	10.1	9.7	9.0	1.5	3.2	L
No. 2	13.3	12.6	12.3	11.8	11.0	1.7	3.7	N
No. 2½ glass	18.8	18.0	17.6	17.0	16.1	2.1	4.4	Q
No. 2½	19.3	18.5	18.1	17.5	16.6	2.1	4.4	Q
No. 10	74.0	72.6	71.8	70.8	69.2	3.7	7.9	Y

TABLE III.—*Recommended fill weight values for canned clingstone peaches* (Continued)

Container designation (metal, unless otherwise designated)	X'_{min}	LWL_x	LRL_x	LWL	LRL	R'	R_{max}	Sampling allowance code
Diced—fill weight values (ounces)								
5 oz	3.4	3.2	3.0	2.9	2.6	.60	1.20	D
5 oz	3.7	3.5	3.3	3.2	2.9	.60	1.20	D
6 oz	4.3	4.1	3.9	3.8	3.5	.60	1.20	D
7 oz	5.0	4.8	4.6	4.5	4.2	.60	1.20	D
8Z tall	6.1	5.9	5.7	5.6	5.3	.60	1.20	D
No. 300	10.6	10.2	10.0	9.8	9.4	.90	2.0	G
No. 303	11.7	11.3	11.1	10.8	10.3	1.1	2.2	H
No. 303 glass	11.7	11.3	11.1	10.8	10.3	1.1	2.2	H
No. 2	14.3	13.8	13.6	13.3	12.8	1.2	2.5	I
No. 2½	20.7	20.2	20.0	19.6	19.0	1.3	2.7	J
No. 2½ glass	20.2	19.7	19.5	19.1	18.5	1.3	2.7	J
No. 10	77.0	75.9	75.4	74.6	73.4	2.8	5.9	U
Mixed pieces of irregular sizes and shapes—fill weight values (ounces)								
No. 2½	19.3	18.5	18.1	17.5	16.6	2.1	4.4	Q
No. 10	74.0	72.6	71.8	70.8	69.2	3.7	7.9	Y
Spiced, whole—fill weight values (ounces)								
No. 2½ 6 count or less	17.0	15.9	15.4	14.6	13.4	2.8	5.9	U
No. 2½ 7 count or more	17.5	16.4	15.9	15.1	13.9	2.8	5.9	U
No. 10	70.0	68.2	67.3	66.0	64.0	4.7	9.8	CI
Heavy pack halves, sliced, mixed pieces of irregular sizes and shapes—fill weight values (ounces)								
No. 10	86.0	84.8	84.2	83.4	82.1	3.0	6.4	V

LRL means the lower reject limit for individual fill weight measurements.

R' means a specified average range value.

R_{max} means a specified maximum range for a subgroup.

"Sampling allowance code" means a letter on the sampling allowance chart of the U.S. Standards for Inspection by Variables. This letter identifies the appropriate line which gives the amount of sampling allowance to be applied to the specification average for fill weights in order to determine compliance with requirements for fill weight averages for a sample.

(d) *Subgroup size.* The subgroup size for determination of fill weights shall be 5 sample units.

(e) *Compliance with recommended fill weights.* Compliance with the recommended fill weights for canned clingstone peaches shall be in accordance with the acceptance criteria specified in the U.S. Standards for Inspection by Variables and the U.S. Standards for Determination of Fill Weights.

§ 2852.2570 Grades.

(a) *"U.S. Grade A"* is the quality of canned clingstone peaches that:

(1) Meets the following prerequisites in which the peaches:

(i) Have similar varietal characteristics;

(ii) Have a normal flavor and odor;

(iii) Have overall brightness of the sample unit as a mass and are not affected by dullness;

(iv) Have units that are practically uniform in size and shape in sliced style;

(v) Are practically free from pit material, except for whole style;

(vi) Are practically free from crushed and broken units in the styles of whole, halves, and quarter;

(vii) Do not exceed the aggregate area of peel specified for the style as follows:

(*a*) Whole—5.5 cm^2 (0.85 in^2 or 1 × 0.85);

(*b*) Halves—4.5 cm^2 (0.7 in^2 or 1 × 0.7);

(*c*) Quarters—2.25 cm^2 (0.34 in^2 or 1 × 0.34);

(*d*) Slices—50 count, 1.8 cm^2 (0.28 in^2 or 1 × 0.28); 100 count, 3.5 cm^2 (0.54 in^2 or 1 × 0.54);

(*e*) Dice—0.5 cm^2 (0.08 in^2 or 1 × 0.08);

(*f*) Halves and pieces, pieces or irregular pieces—3.25 cm^2 (0.5 in^2 or 1 × 0.5);

(viii) Have a good character such that the number of units that have fairly good character does not exceed the following:

(*a*) Whole, halves, and quarters—1 unit;

(*b*) Slices—50 count, 3 units; 100 count, 5 units;

(*c*) Halves and pieces, and pieces or irregular pieces—50 g;

(*d*) Dice—10 g;

(2) Are within the limits for defects as classified in table IV and specified in tables V, VI, VII, VIII, or IX.

(b) *"U.S. Grade B"* is the quality of canned clingstone peaches that:

(1) Meets the following prerequisites in which the peaches:

(i) Have similar varietal characteristics;

(ii) Have normal flavor and odor;

(iii) Have overall brightness of the sample unit as a mass and are not affected by dullness;

(iv) Have units that are practically uniform in size and shape in sliced style;

(v) Are practically free from pit material, except for whole style;

(vi) Are practically free from crushed and broken units in the styles of whole, halves, and quarters;

(vii) Do not exceed the aggregate area of peel specified for the style as follows:

(*a*) Whole—22.5 cm^2 (3.5 in^2 or 1×3.5);

(*b*) Halves—19 cm^2 (3 in^2 or 1×3);

(*c*) Quarters—9.5 cm^2 (1.5 in^2 or 1×1.5);

(*d*) Slices—50 count, 7 cm^2 (1.1 in^2 or 1×1.1); 100 count, 14 cm^2 (2.2 in^2 or 1×2.2);

(*e*) Dice—1.5 cm^2 (0.23 in^2 or 1×0.23);

(*f*) Halves and pieces, pieces or irregular pieces—12.25 cm^2 (1.9 in^2 or 1×1.9);

(viii) Have a reasonably good character such that the number of units that

have fairly good character does not exceed the following:

(a) Whole, halves, and quarters—3 units;

(b) Slices—50 count, 5 units; 100 count, 10 units;

(c) Halves and pieces, pieces or irregular pieces—100 g;

(d) Dice—20 g;

(2) Are within the limits for defects as classified in table IV and specified in tables V, VI, VII, VIII, or IX.

(c) *"U.S. Grade C"* is the quality of canned clingstone peaches that:

(1) Meets the following prerequisites in which the peaches:

(i) Have similar varietal characteristics;

(ii) Have a normal flavor and odor;

(iii) Have overall brightness of the sample unit as a mass which is not more than materially affected by dullness;

(iv) Have units that may be variable in size and shape in sliced style;

(v) Are practically free from pit material, except for whole style;

(vi) Are practically free from crushed and broken units in the styles of whole, halves, and quarters;

(vii) Do not exceed the aggregate area of peel specified for the style as follows:

(a) Whole—45 cm^2 (7 in^2 or 1×7);

(b) Halves—38 cm^2 (5.9 in^2 or 1×5.9);

(c) Quarters—19 cm^2 (3 in^2 or 1×3);

(d) Slices—50 count, 15 cm^2 (2.3 in^2 or 1×2.3); 100 count, 30 cm^2 (4.6 in^2 or 1×4.6);

(e) Dice—3 cm^2 (0.5 in^2 or 1×0.5);

(f) Halves and pieces, pieces or irregular pieces—27 cm^2 (4.2 in^2 or 1×4.2);

(viii) Have a fairly good character such that the number of units that have poor character does not exceed the following:

(a) Whole, halves, and quarters—3 units;

(b) Slices—50 count, 5 units; 100 count, 10 units;

(c) Halves and pieces, pieces or irregular pieces—100 g;

(d) Dice—20 g;

(2) Are within the limits for defects as classified in table IV and specified in tables V, VI, VII, VIII, or IX.

(d) *"Substandard"* is the quality of canned clingstone peaches that fails to meet the requirements for U.S. Grade C.

§ 2852.2571 Factors of quality.

The grade of a lot of canned clingstone peaches is based on compliance with requirements for the following quality factors:

(a) Prerequisite quality factors:
(1) Similar varietal characteristics;
(2) Flavor and odor;
(3) Brightness;
(4) Uniformity of size of slices;
(5) Pit material;
(6) Crushed or broken units;
(7) Peel; and
(8) Character.
(b) Classified quality factors:
(1) Individual unit color;
(2) Workmanship;
(3) Blemished;
(4) Uniformity of size;
(5) Mechanical damage; and
(6) Extraneous vegetable material.

§ 2852.2572 Classification of defects.

Defects are classified as minor, major, severe, or critical. Each "X" mark in table IV represents "one (1) defect."

TABLE IV.—*Classification of defects*

Quality factor	Defect	Classification			
		Minor	Major	Severe	Critical
	WHOLE				
Individual	Fairly good (in grade A and B only)		X		
Unit color	Poor (in grade A, B, and C)			X	
Blemished	Not more than slightly	X			
	Materially		X		
	Seriously			X	
Uniformity of size	Excessive variation (each unit)	X			
Mechanical damage	Gouge:				
	Not more than slightly	X			
	Materially		X		
	Seriously			X	
	Other mechanical damage:				
	Not more than slightly	X			
	Materially		X		
	Seriously			X	
Extraneous vegetable material.	Small piece (each piece)				X
	HALVES AND QUARTERS				
Individual	Fairly good (in grade A and B only)		X		
Unit color	Poor (in grade A, B and C)			X	
Blemished	Not more than slightly	X			
	Materially		X		
	Seriously			X	
Uniformity of size	Excessive variation (each unit)	X			
Mechanical damage	Off-suture:				
	Not more than slightly	X			
	Materially		X		
	Seriously			X	
	Partially detached piece	X			
	Detached piece		X		
	Shelly unit (in grade A and B only)		X		
	Gouge:				
	Not more than slightly	X			
	Materially		X		
	Seriously			X	
	Other mechanical damage:				
	Not more than slightly	X			
	Materially		X		
	Seriously			X	
Extraneous vegetable material.	Short stem (each stem)	X			
	Small piece (each piece)				X

TABLE IV.—*Classification of defects*—Continued

Quality factor	Defect	Classification			
		Minor	Major	Severe	Critical
	SLICES				
Individual	Fairly good (in grade A and B only)		X		
Unit color	Poor (in grade A, B, and C)			X	
Workmanship	Sliver		X		
	Slab			X	
Blemished	Not more than slightly	X			
	Materially		X		
	Seriously			X	
Mechanical damage	Shelly unit (in grade A and B only)		X		
	Gouge:				
	Not more than slightly	X			
	Materially		X		
	Seriously			X	
	Partial slice		X		
Extraneous vegetable material.	Short stem (each stem)	X			
	Small piece (each piece)				
	DICE				
Individual	Fairly good (in grade A and B only—each 8 g)		X		
Unit color	Poor (in grade A, B, and C—each 8 g)			X	
Workmanship	More than 20mm (0.79 in) and less than 8 mm (0.31) on 1 cut edge, each 8 g.	X			
Blemished	Materially (each 8 g)		X		
	Seriously (each 8 g)			X	
Extraneous vegetable material.	Short stem and small piece (each piece)				
	HALVES AND PIECES; PIECES OR IRREGULAR PIECES				
Individual	Fairly good (in grade A and B only) (each 40g)		X		
Unit color	Poor (in grade A, B, and C) (each 40 g)			X	
Blemished	Not more than slightly (each 40 g)	X			
	Materially (each 40 g)		X		
	Seriously (each 40 g)			X	
Extraneous vegetable material.	Short stem (each stem)	X			
	Small piece (each piece)				X

§ 2852.2573 **Tolerances for defects.**

TABLE V.—*Whole*

	Grade A				Grade B				Grade C			
	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical
AQL[1]	10.0	2.5	1.0	0.4	15.0	10.0	2.5	1.0	25.0	15.0	10.0	2.5

[1]AQL expressed as defects per 100 units.
[2]Total equals Minor plus Major plus Severe plus Critical.

TABLE VI.—*Halves; quarters*

	Grade A				Grade B				Grade C			
	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical
AQL[1]	12.5	8.5	2.5	0.4	20.0	12.5	5.0	1.0	33.0	20.0	12.5	2.5

[1]AQL expressed as defects per 100 units.
[2]Total equals Minor plus Major plus Severe plus Critical.

TABLE VII.—*Slices*

	Grade A				Grade B				Grade C			
	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical
AQL[1]	10.0	6.5	1.5	0.65	20.0	15.0	5.0	1.5	40.0	25.0	15.0	2.5

[1]AQL expressed as defects per 100 units.
[2]Total equals Minor plus Major plus Severe plus Critical.

TABLE VIII.—*Dice*

	Grade A				Grade B				Grade C			
	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical
AQL[1]	12.5	6.5	2.5	0.4	15.0	8.5	4.0	0.65	20.0	10.0	8.5	1.0

[1]AQL expressed as defects per 100 units.
[2]Total equals Minor plus Major plus Severe plus Critical.

TABLE IX.—*Halves and pieces; pieces or irregular pieces*

	Grade A				Grade B				Grade C			
	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical	Total[2]	Major	Severe	Critical
AQL[1]	10.0	2.5	1.0	0.4	12.5	6.5	2.5	1.0	20.0	12.5	6.5	2.5

[1]AQL expressed as defects per 100 units.
[2]Total equals Minor plus Major plus Severe plus Critical.

§ 2852.2574 Sample size.

The sample size to determine compliance with requirements of these standards shall be as specified in the sampling plans and procedures in the "Regulations Governing Inspection and Certification of Processed Fruits and Vegetables and Related Products" (7 CFR 2852.1-2852.83) for lot inspection and on-line inspection, as applicable.

§ 2852.2575 Compliance with quality requirements.

(a) *Lot inspection.* A lot of canned clingstone peaches is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2570 are met; and

(2) The Acceptable Quality Levels (AQL) in tables V, VI, VII, VIII, and IX, as applicable for the style, are not exceeded.

(b) *On-line inspection.* A portion of production is considered as meeting requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2570 are met; and

(2) The Acceptable Quality Levels (AQL) in tables V, VI, VII, VIII, and IX, as applicable for the style, are not exceeded.

(c) *Single sample unit.* Each unofficial sample unit submitted for quality evaluation will be treated individually and is considered as meeting the requirements for quality if:

(1) The prerequisite requirements specified in § 2852.2570 are met; and

(2) The Acceptable Quality Levels (AQL) in tables V, VI, VII, VIII, and IX, as applicable for the style, are not exceeded.

The U.S. Standards for Grades of Canned Clingstone Peaches as hereby amended shall become effective June 1, 1978, and thereupon will supersede U.S. Standards for Grades of Canned Clingstone Peaches which have been in effect since June 20, 1973.

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 May 4, 1978.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service.

[FR Doc. 78-13099 Filed 5-15-78; 8:45 am]

[6210-01]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

[Regs. G, T and U; Docket No. R-0147]

OTC LIST REQUIREMENTS

Final Rule

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: These amendments to the Supplements to Regulations G, T and U will require that dealers must submit bona fide bids and offers for an OTC stock to an automated quotation system if they are to be counted as market-makers in that stock for the purpose of qualifying for the Board's List of OTC Margin Stocks. The minimum market-maker requirement for a stock to be included on the List under the present rule recognizes those dealers who make "regularly published bona fide bids and offers for such stock." When the List was first published by the Board in 1969, the "pink sheets" of the National Quotation Bureau were the only consistent source of the required price information. Since that time an automated quotation system of the National Association of Securities Dealers (NASDAQ), has been developed to a point where price information on all stocks on the Board's list can now be obtained from it. The Board is presently using data from both the "pink sheets" and NASDAQ for its surveys. The amendments will eliminate the necessity of reviewing data from the "pink sheets", most of which is considered duplicative, and reduce staff review and computer time.

EFFECTIVE DATE: June 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Laura Homer, Chief Attorney, Securities Regulation, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2781.

SUPPLEMENTARY INFORMATION: All but one of the comments received

on the Board's proposal to eliminate the use of "pink sheets" data when surveying stocks for inclusion on the Board's List of OTC Margin Stocks (43 FR 11214) favored the amendment. The one exception was received from the National Association of OTC Companies (NAOTC) which stated its view that many non-NASDAQ stocks have better markets than NASDAQ listed stocks.

Certain language regarding securities listed on "exempt exchanges" is being removed from the regulations at this time as no longer necessary. The Securities and Exchange Commission has notified Board staff that the last of the "exempt exchanges", the Honolulu Stock Exchange, recently ceased operations. The present rule permits registration of stocks on "exempt exchanges" as an alternative to meeting the market-maker requirement. The Board finds that it would serve no useful purpose to follow the requirements for notice and public participation prior to eliminating the language regarding securities listed on "exempt exchanges".

Accordingly, pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78q and w) the Board amends 12 CFR Parts 207, 220 and 221 as follows:

PART 207—SECURITIES CREDIT BY PERSONS OTHER THAN BANKS, BROKERS, OR DEALERS

1. Section 207.5(d)(2) and 207.5(e)(2) of Part 207, Securities Credit by Persons other than Banks, Brokers or Dealers, would be amended as follows:

§ 207.5 Supplement.

* * * * *

(d) *Requirements for inclusion on List of OTC Margin Stocks.* * * *

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit *bona fide* bids and offers to an automated quotations system for their own accounts.

* * * * *

(e) *Requirements for continued inclusion on List of OTC margin stock.* * * *

(2) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit *bona fide* bids and offers to an automated quotations system for their own accounts.

PART 220—CREDIT BY BROKERS AND DEALERS

2. Section 220.8(h)(2) and 220.8(i)(2) of Part 220, Credit by Brokers and Dealers, would be amended as set forth below:

§ 220.8 Supplement.

* * * * *

(h) *Requirements for inclusion on List of OTC Margin Stocks.* * * *

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit *bona fide* bids and offers to an automated quotations system for their own accounts.

* * * * *

(i) *Requirements for continued inclusion on List of OTC Margin Stocks.* * * *

(2) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit *bona fide* bids and offers to an automated quotations system for their own accounts.

PART 221—CREDIT BY BANKS FOR THE PURPOSE OF PURCHASING OR CARRYING MARGIN STOCKS

3. Section 221.4(d)(2) and 221.4(e)(2) of Part 221, Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks, would be amended as follows:

§ 221.4 Supplement.

* * * * *

(d) *Requirements for inclusion on List of OTC margin stock.* * * *

(2) Four or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit *bona fide* bids and offers to an automated quotations system for their own accounts.

* * * * *

(e) *Requirements for continued inclusion on List of OTC margin stock.* * * *

(2) Three or more dealers stand willing to, and do in fact, make a market in such stock and regularly submit *bona fide* bids and offers to an automated quotations system for their own accounts.

By order of the Board of Governors, May 10, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-13210 Filed 5-15-78; 8:45 am]

[6320-01]

Title 14—Aeronautics and Space

CHAPTER II—CIVIL AERONAUTICS BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Reg. ER-1048, Amdt. 1]

PART 202—CERTIFICATES AUTHORIZING SCHEDULED ROUTE SERVICE: TERMS, CONDITIONS, AND LIMITATIONS

Notice of Approval by Comptroller General

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice of approval by the Comptroller General of the reporting requirements contained in Part 202 concerning the terms, conditions, and limitations of a certificate held by a route air carrier under section 401 of the Federal Aviation Act of 1958, as amended. This approval is required by the Federal Reports Act and was transmitted to the Civil Aeronautics Board by letter dated May 1, 1978.

DATES: Effective May 11, 1978; adopted May 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Raymond Kurlander, Director, Bureau of Accounts and Statistics, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5270.

Accordingly, the Civil Aeronautics Board amends Part 202 of its Economic Regulations (14 CFR Part 202) by adding the following note at the end of Part 202:

NOTE: The application requirements contained in §§ 202.13(a), 202.13(b), 202.14(b) and 202.15 and the reporting requirements contained in §§ 202.13(c), 202.13(d) and 202.16(a)(b) have been approved by the U.S. General Accounting Office under number B-180226 (R0523).

This amendment is issued by the undersigned pursuant to the delegation of authority from the Board to the Secretary in 14 CFR 385.24(b).

(Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; (U.S.C. 1324).)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-13277 Filed 5-15-78; 8:45 am]

[6750-01]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

[Docket 8855-o]

PART 13—PROHIBITED TRADE PRACTICES AND AFFIRMATIVE CORRECTIVE ACTIONS

The Coca-Cola Co., et al.

AGENCY: Federal Trade Commission.

ACTION: Final order to cease and desist.

SUMMARY: This order, among other things, requires an Atlanta, Ga., soft drink manufacturer and three parent bottlers to cease imposing in any manner territorial limitations or class of customer restrictions on its licensed Coca-Cola or allied product bottlers, in connection with the sale or distribution of soft drink products sold in other than refillable containers. The firms are additionally required to provide protection for confidential commercial information submitted by its bottlers.

DATES: Complaint issued July 15, 1971; final order issued April 7, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Alfred F. Dougherty, Jr., Director, Bureau of Competition, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3601.

SUPPLEMENTARY INFORMATION: In the matter of the Coca-Cola Co., a corporation; Coca-Cola Bottling Co. (Thomas), Inc., a corporation; Coca-Cola Bottling Works (Thomas), Inc., a corporation; and Coca-Cola Bottling Works 3rd, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart—Coercing and intimidating: § 13.358 Distributors. Subpart—Combining or conspiring: § 13.388 To control allocations and solicitation of customers; § 13.395 To control marketing practices and conditions; § 13.450 To limit distribution or dealing to regular, established, or acceptable channels or classes; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—Cutting off access to customers or market: § 13.560 Interfering with distributive outlets. Subpart—Cutting off supplies or service: § 13.610 Cutting off supplies or service; § 13.655 Threatening disciplinary action or otherwise.

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

The final order to cease and desist, including further order requiring report of compliance therewith, is as follows:

FINAL ORDER

This matter having been heard by the Commission upon the appeal of complaint counsel from the initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission, for reasons stated in the accompanying opinion, having granted the appeal:

It is ordered, That the initial decision and order of the administrative law judge be, and they hereby are, vacated, and the findings of fact and conclusions of law contained in the accompanying opinion of the Commission be, and they hereby are, adopted as the findings and conclusions of the Commission in this matter.

Accordingly, the following cease and desist order is hereby entered:

ORDER

I.

It is ordered, That the following definitions shall apply in this order:

A. *Allied products.* The soft drink products of the Coca-Cola Co., other than "Coca-Cola," including Sprite, Fresca, Fanta, Tab, and Mr. PiBB, among others;

B. *Bottler.* Any individual, partnership, corporation, association, or other business or legal entity which purchases respondents' syrups or concentrates for use in the manufacture and sale, primarily at wholesale, of finished soft drink beverages;

C. *Central warehousing.* A method of distribution in which soft drink products are received at a storage facility and either resold or delivered to retail outlets or wholesalers;

D. *Concentrate.* The basic soft drink ingredients, either dry or liquid, to which sugar is added to prepare a syrup;

E. *Confidential commercial information.* Facts, data, statistics, or other material which concern the business of licensed Coca-Cola or allied product bottlers including, but not limited to, trade secrets, customer lists, plant equipment or production capacities, or syrup and concentrate purchases obtained by or available to, respondents pursuant to, or as a result of, any agreement, understanding, or provision of a trademark license, and which could, if disclosed to a competitor, cause substantial harm to the competitive position of the bottler from whom the material was obtained;

F. *Nonrefillable.* A special container designed to be filled only once with finished Coca-Cola or allied soft drink beverages;

G. *Post-mix syrup.* A soft drink ingredient which is used in fountain-dispensing or vending equipment and which is usually sold by bottlers and other wholesalers in steel tanks. A typical post-mix system draws 1 ounce of syrup from a tank, usually having about a 5-gallon capacity, and mixes it at the point of sale with 5 ounces of carbonated water to produce finished soft drink beverages;

H. *Pre-mix system.* A system which draws from a tank, usually having about a 5-gallon capacity, a finished serving of a soft drink product containing both syrup and carbonated water, "pre-mixed," to produce finished soft drink beverages;

I. *Soft drink products.* Nonalcoholic beverages and colas, carbonated and uncarbonated, flavored and nonflavored, sold in bottles or cans, or through pre-mix or post-mix systems or the like;

J. *Syrup.* A mixture of ingredients in liquid form which, when mixed with carbonated water, becomes a finished soft drink product.

II.

It is further ordered, That the Coca-Cola Co.; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc.; and Coca-Cola Bottling Works 3rd, Inc., and the officers, agents, representatives, employees, successors, and assigns of each respondent, directly or through any corporate or other device, in connection with the advertising, merchandising, offering for sale, and sale or distribution of soft drink products, including syrups and concentrates, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

A. Attempting to enter into, entering into, continuing, maintaining, enforcing, or renewing any contract provision, combination, understanding, or agreement to limit, allocate, or restrict the territory in which, or the persons or class of persons to whom, licensed Coca-Cola or allied product bottlers may sell or distribute post-mix syrup or finished soft drink beverages packaged in pre-mixed containers or in nonrefillable bottles or cans.

B. Imposing or attempting to impose any limitations or restrictions respecting the territories in which, or the persons or class of persons to whom, bottlers may sell or distribute post-mix syrup or finished soft drink beverages packaged in pre-mix containers or in nonrefillable bottles or cans.

C. Refusing to sell, threatening to refuse to sell, or impairing sales to any bottlers, operating pursuant to a li-

[1] Copies of the complaint, initial decision, opinion, dissenting statement of Commissioner Clanton, and final order filed with the original document.

cense consented to, granted by, approved by, or ratified by the Coca-Cola Co.; Coca-Cola Bottling Co., Inc.; Coca-Cola Bottling Works, Inc.; or Coca-Cola Bottling Works 3rd, Inc., for the duration of the license, anything used in the manufacture and sale of soft drink products, including, but not limited to, syrups and concentrates or the container in which they are sold, or otherwise in anyway penalizing any such bottler because of the territory in which, or the persons or class of persons to whom, the bottler sells or distributes post-mix syrup or finished soft drink beverages packaged in premix containers or nonrefillable bottles or cans.

D. Refusing to deliver all of a licensed Coca-Cola or allied product bottler's order for syrups, flavoring, or concentrates because the bottler has made, or intends to make, sales of post-mix syrup or soft drinks packaged in pre-mix containers or nonrefillable bottles or cans to customers outside of the territory granted to the bottler, or because the bottler has made, or intends to make, such sales to customers within the territory granted to the bottler, with knowledge that the customer has transshipped or will transship such soft drinks outside of the territory.

E. Impeding, hindering, or preventing, either directly or indirectly, the methods, including, but not limited to, central warehouse delivery, by which licensed bottlers may distribute Coca-Cola or allied products, *Provided, however,* That respondents may: (1) establish quality standards, including standards for the rotation of Coca-Cola and allied products inventories in the central warehouse and at retail delivery locations, irrespective of whether the soft drinks are redelivered from a warehouse or delivered directly to the retail outlet by a bottler; (2) require the bottlers to use a uniform container dating system so that bottlers and retailers will recognize the date without reference to a code; (3) require the bottlers to be responsible, directly or indirectly, for the maintenance of such standards of quality; and (4) require each bottler to place an identification mark of origin on each bottle, bottle cap, or can for the purpose of monitoring compliance with such quality control standards.

F. Enforcing or aiding in the enforcement of any contract provision, agreement, or understanding providing for entry into or examination of the plant and facilities of any independent bottler by another independent bottler,

III.

It is further ordered, That respondents shall provide for the protection of confidential commercial information acquired from bottler licensees of Coca-Cola or allied product brands as follows:

A. Access to or use of confidential commercial information obtained by respondents, their officers, employees, or agents concerning the production, packaging, distribution, promotion, or sale of Coca-Cola or allied product brands by any licensed bottler shall be restricted to those of respondents' officers, employees, or agents who are neither involved in nor responsible for the product, marketing, promotion, or sale of finished soft drink products by respondents' bottling or canning operations, divisions, subsidiaries, or affiliates.

B. Such officers, employees, or agents who receive, process, or evaluate package-approval requests; process or fill syrup or concentrate purchase orders; conduct on-site inspections of independent bottling plants and facilities; or receive or review confidential commercial information obtained from any independent Coca-Cola or allied product bottler in the course of carrying out the provisions of any soft drink trademark licensing agreement, shall refrain from making any such confidential information available to, or communicating or discussing any such information with, any person involved in or responsible for the production, marketing, promotion, or sale of finished soft drinks by respondents' bottling or canning operations, divisions, subsidiaries, or affiliates.

C. Such officers, employees, or agents who receive, process, or have access to confidential information concerning the business of individual independent Coca-Cola or allied product bottler licensees, shall refrain from suggesting, influencing, or making recommendations to any person concerning the production, distribution, marketing, promotion, or sale of finished soft drinks by respondents' bottling or canning operations, divisions, subsidiaries, or affiliates, *Provided, however,* That this provision shall not apply to respondents' officers, employees, or agents who receive, review, or evaluate data, information, or statistics only in aggregate form or quality control inspection reports which include such information as bacteriological tests, water analyses, water carbonation and syrup content tests; sanitation inspection checks, or bottle washing solution analyses, so long as such reports do not also contain information concerning the bottler's plant equipment, production capacity, or similar types of confidential commercial information.

D. Respondents shall provide each officer, employee, or agent who receives, reviews, or has access to confidential information as set forth in subparagraphs A. through C. above with a copy of this order and an explanation, in writing, of the restrictions this order imposes on access to and the use of such information.

E. Subparagraphs A. through C. above shall not apply: (1) to data or information which is in the public domain or which has entered the public domain from a source other than respondents or their officers, employees, or agents; or (2) to transactions involving orders from licensed Coca-Cola or allied product bottlers for finished canned or bottled soft drink products prepared by any respondent for a bottler pursuant to an agency canning or bottling agreement.

IV.

It is further ordered, That within sixty (60) days from the date the Coca-Cola Co. receives service of this order, it shall service a copy of this order upon all bottlers of its soft drink products.

V.

It is further ordered, That respondents the Coca-Cola Co.; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc.; and Coca-Cola Bottling Works 3rd, Inc., shall forthwith distribute a copy of this order to each of their subsidiaries and operating divisions.

VI.

It is further ordered, That respondents the Coca-Cola Co.; Coca-Cola Bottling Co. (Thomas), Inc.; Coca-Cola Bottling Works (Thomas), Inc.; and Coca-Cola Bottling Works 3rd, Inc., shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondents, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change which may affect compliance obligations arising out of the order.

It is further ordered, That each respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Chairman Pertschuk did not participate in the consideration of this matter.

Commissioner Clanton dissented and filed a Dissenting Statement.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-13289 Filed 5-15-78; 8:45 am]

[6750-01]

[Docket 8856-o]

PART 13—PROHIBITED TRADE PRACTICES, AND AFFIRMATIVE CORRECTIVE ACTIONS

PepsiCo, Inc.

AGENCY: Federal Trade Commission.

ACTION: Order to cease and desist.

SUMMARY: This order, among other things, requires a Purchase, N.Y. soft drink manufacturer to cease imposing in any manner territorial limitations or class of customer restrictions on its licensed Pepsi-Cola or allied product bottlers, in connection with the sale or distribution of soft drink products sold in other than refillable containers. The firm is additionally required to provide protection for confidential commercial information submitted by its bottler.

DATES: Complaint issued July 15, 1971; Final order issued April 7, 1978.[1]

FOR FURTHER INFORMATION CONTACT:

Alfred F. Dougherty, Jr., Director, Bureau of Competition, Federal Trade Commission, Sixth Street at Pennsylvania Avenue NW., Washington, D.C. 20580, 202-523-3601.

SUPPLEMENTARY INFORMATION: In the matter of PepsiCo, Inc., a corporation. The prohibited trade practices and/or corrective actions, as codified under 16 CFR 13, are as follows:

Subpart—coercing and intimidating: § 13.358 Distributors. Subpart—combining or conspiring: § 13.388 To control allocation and solicitation of customers; § 13.395 To control marketing practices and conditions; § 13.450 To limit distribution or dealing to regular, established or acceptable classes; § 13.470 To restrain or monopolize trade; § 13.497 To terminate or threaten to terminate contracts, dealings, franchises, etc. Subpart—cutting off access to customers or market: § 13.560 Interfering with distributive outlets. Subpart—cutting off supplies or service: § 13.610 Cutting off supplies or service; § 13.655 Threatening disciplinary action or otherwise.

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

The final order to cease and desist, including further order requiring report of compliance therewith, is as follows:

[1]Copies of the complaint, initial decision, opinion of the commission by Commissioner Dole, final order, and dissenting statement of Commissioner Clanton filed with the original document.

FINAL ORDER

This matter having been heard by the Commission upon the appeal of complaint counsel from the initial decision, and upon briefs and oral argument in support thereof and in opposition thereto, and the Commission, for reasons stated in the accompanying opinion, having granted the appeal:

It is ordered, That the entire record in the matter of The Coca-Cola Co., et al., Docket No. 8855, be, and it hereby is, incorporated into, and made part of, the record in this proceeding.

It is further ordered, That the findings of fact set forth in the initial decision of the administrative law judge be, and they are, adopted by the Commission to the extent they are consistent with the findings of fact and conclusions of law contained in the accompanying opinion of the Commission in this matter.

It is further ordered, That the order dismissing the complaint entered by the administrative law judge be, and it hereby is, vacated.

Accordingly, the following cease and desist order is hereby entered:

ORDER

I

It is ordered, That the following definitions shall apply in this order:

A. Allied products—the soft drink products of PepsiCo, Inc., other than "Pepsi-Cola" including "Teem," "Mountain Dew," and "Patio," among others;

B. Bottler—any individual, partnership, corporation, association, or other business or legal entity which purchases respondents' syrups or concentrates for use in the manufacture and sale, primarily at wholesale, of finished soft drink beverages;

C. Central warehousing—a method of distribution in which soft drink products are received at a storage facility and either resold or delivered to retail outlets or wholesalers;

D. Concentrate—the basic soft drink ingredients, either dry or liquid, to which sugar is added to prepare a syrup;

E. Confidential commercial information—facts, data, statistics, or other material which concern the business of licensed Pepsi-Cola or allied product bottlers including, but not limited to, trade secrets, customer lists, plant equipment or production capacities, or syrup and concentrate purchases obtained by or available to, respondent pursuant to, or as a result of, any agreement, understanding, or provision of a trademark license, and which could, if disclosed to a competitor, cause substantial harm to the competitive position of the bottler from whom the material was obtained;

F. Nonrefillable—a special container designed to be filled only once with finished Pepsi-Cola or allied soft drink beverages;

G. Post-mix syrup—a soft drink ingredient which is used in fountain-dispensing or vending equipment and which is usually sold by bottlers and other wholesalers in steel tanks. A typical post-mix system draws one ounce of syrup from a tank, usually having about a five-gallon capacity, and mixes it at the point of sale with five ounces of carbonated water to produce finished soft drink beverages;

H. Pre-mix system—a system which draws from a tank, usually having about a five-gallon capacity, a finished serving of a soft drink product containing both syrup and carbonated water, "pre-mixed," to produce finished soft drink beverages;

I. Soft drink products—nonalcoholic beverages and colas, carbonated and uncarbonated, flavored and nonflavored, sold in bottles or cans, or through pre-mix or post-mix systems or the like;

J. Syrup—a mixture of ingredients in liquid form which, when mixed with carbonated water, becomes a finished soft drink product.

II

It is further ordered, That respondent PepsiCo, Inc., and the officers, agents, representatives, employees, successors, and assigns of respondent, directly or through any corporate or other device, in connection with the advertising, merchandising, offering for sale, and sale or distribution of soft drink products, including syrups and concentrates, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from directly or indirectly:

A. Attempting to enter into, entering into, continuing, maintaining, enforcing, or renewing any contract provision, combination, understanding, or agreement to limit, allocate, or restrict the territory in which, or the persons or class of persons to whom, licensed Pepsi-Cola or allied products bottlers may sell or distribute post-mix syrup or finished soft drink beverages packaged in pre-mix containers or in nonrefillable bottles or cans.

B. Imposing or attempting to impose any limitations or restrictions respecting the territories in which, or the persons or class of persons to whom, bottlers may sell or distribute post-mix syrup or finished soft drink beverages packaged in pre-mix containers or in nonrefillable bottles or cans.

C. Refusing to sell, threatening to refuse to sell, or impairing sales to any bottlers, operating pursuant to a license to, granted by, approved by, or ratified by PepsiCo, Inc., for the duration of the license, anything used in the manufacture and sale of soft drink products, including, but not limited to,

syrups and concentrates or the container in which they are sold, or otherwise in any way penalizing any such bottler because of the territory in which, or the persons or class of persons to whom, the bottler sells or distributes post-mix syrup or finished soft drink beverages packaged in premix containers or nonrefillable bottles or cans.

D. Refusing to deliver all of a licensed Pepsi-Cola or allied product bottler's order for syrups, flavoring, or concentrates because the bottler has made, or intends to make, sales of post-mix syrup or soft drinks packaged in pre-mix containers or nonrefillable bottles or cans to customers outside of the territory granted to the bottler, or because the bottler has made, or intends to make, such sales to customers within the territory granted to the bottler, with knowledge that the customer has transshipped or will transship such soft drinks outside of the territory.

E. Impeding, hindering, or preventing, either directly or indirectly, the methods, including, but not limited to central warehousing, by which licensed bottlers may distribute Pepsi-Cola or allied products, *Provided,* however, that respondent may (1) establish quality standards, including standards for the rotation of Pepsi-Cola and allied product inventories in the central warehouse and at retail delivery locations, irrespective of whether the soft drinks are redelivered from a warehouse or delivered directly to the retail outlet by a bottler; (2) require the bottlers to use a uniform container dating system so that bottlers and retailers will recognize the date without reference to a code; (3) require the bottlers to be responsible, directly or indirectly, for the maintenance of such standards of quality; and (4) require each bottler to place an identification mark of origin on each bottle, bottle cap, or can for the purpose of monitoring compliance with such quality control standards.

F. Enforcing or aiding in the enforcement of any contract provision, agreement, or understanding providing for entry into or examination of the plant and facilities of any independent bottler by another independent bottler.

III

It is further ordered, That respondent shall provide for the protection of confidential commercial information acquired from bottler licensees of Pepsi-Cola or allied product brands as follows:

A. Access to or use of confidential commercial information obtained by respondent, its officers, employees, or agents concerning the production, packaging, distribution, promotion, or sale of Pepsi-Cola or allied product brands by any licensed bottler shall be restricted to those of respondent's officers, employees, or agents who are neither involved in nor responsible for the production, marketing, promotion, or sale of finished soft drink products by respondent's bottling or canning operations, divisions, subsidiaries, or affiliates.

B. Such officers, employees, or agents who receive, process, or evaluate package-approval requests; process or fill syrup or concentrate purchase orders; conduct on-site inspections of independent bottling plants and facilities; or receive or review confidential commercial information obtained from any independent Pepsi-Cola or allied product bottler in the course of carrying out the provisions of any soft drink trademark licensing agreement, shall refrain from making any such confidential information available to, or communicating or discussing any such information with, any person involved in or responsible for the production, marketing, promotion, or sale of finished soft drinks by respondent's bottling or canning operations, division, subsidiaries, or affiliates.

C. Such officers, employees, or agents who receive, process, or have access to confidential information concerning the business of individual independent Pepsi-Cola or allied product bottler licensees, shall refrain from suggesting, influencing, or making recommendations to any person concerning the production, distribution, marketing, promotion, or sale of finished soft drinks by respondent's bottling or canning operations, divisions, subsidiaries, or affiliates, *Provided,* however, that this provision shall not apply to respondent's officers, employees, or agents who receive, review, or evaluate data, information, or statistics only in aggregate form or quality control inspection reports which include such information as bacteriological tests, water analyses, water carbonation and syrup content tests, sanitation inspection checks, or bottle washing solution analyses, so long as such reports do not also contain information concerning the bottler's plant equipment, production capacity, or similar types of confidential commercial information.

D. Respondent shall provide each officer, employee, or agent who receives, reviews, or has access to confidential information as set forth in subparagraphs A. through C. above with a copy of this order and an explanation, in writing, of the restrictions this order imposes on access to and the use of such information.

E. Subparagraphs A. through C. above shall not apply (1) to data or information which is in the public domain or which has entered the public domain from a source other than respondent or its officers, employees, or agents; or (2) to transactions involving orders from licensed Pepsi-Cola or allied product bottlers for finished canned or bottled soft drink products prepared by respondent for a bottler pursuant to an agency canning or bottling agreement.

IV

It is further ordered, That within sixty (60) days from the date respondent receives service of this Order, it shall service a copy of this Order upon all bottlers of its soft drink products.

V

It is further ordered, That respondent shall forthwith distribute a copy of this order to each of its subsidiaries and operating divisions.

VI

It is further ordered, That respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change which may affect compliance obligations arising out of the order.

It is further ordered, That respondent shall, within sixty (60) days after service upon it of this order, file with the Commission a report in writing setting forth in detail the manner and form in which it has complied with this order.

Chairman Pertschuk did not participate in the consideration of this matter.

Commissioner Clanton dissented for the reasons expressed in his dissenting statement in the companion case involving the Coca-Cola Co., Docket 8855.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-13290 Filed 5-15-78; 8:45 am]

[6351-01]

Title 17—Commodity and Securities Exchanges

CHAPTER I—COMMODITY FUTURES TRADING COMMISSION

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

Delegation of Authority to the Director of the Division of Enforcement

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission has codified its

April 8, 1976, delegation to the Director of the Division of Enforcement, or to such person or persons under his direction as he may designate from time to time, to perform all functions reserved to the Commission under Subparts B and C of the Commission's Reparation rules, 17 CFR 12.21 through 12.34, prior to the docketing of the formal adjudicatory proceeding. Under the delegation, the Director or such person is empowered to review reparation complaints, to forward complaints and other documents to the parties and to the Commission's Office of Hearings and Appeals, to undertake appropriate investigations, to delay the institution of a formal adjudicatory proceeding if an investigation is undertaken and to institute a formal adjudicatory proceeding. This delegation of authority enables the Commission to accomplish, as promptly as possible, the review and processing of complaints and related procedural matters prior to the docketing of a formal reparation proceeding.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Clinton Burr, Chief, Reparations Section, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, D.C. 20581, 202-254-3814.

SUPPLEMENTAL INFORMATION: Section 14 of the Commodity Exchange Act, 7 U.S.C. 18, provides that any person who wishes to complain of a violation of any provision of the Act or any rule, regulation or order thereunder by any person registered with the Commission as a floor broker, futures commission merchant, associated person, commodity trading advisor or commodity pool operator may, within two years after the cause of action accrues, apply to the Commission for a reparation award. If, after hearing before an Administrative Law Judge, the Commission determines that the commodity professional has violated any provision of the Act or any rule, regulation, or order thereunder, the Commission may order that a reparation award be made to the complainant.

On January 22, 1976, the Commission adopted rules to implement the provisions of Section 14. 41 FR 3994, et. seq. (January 24, 1976). Those rules, as amended, are codified in 17 CFR Part 12 (1977). At its meeting of April 8, 1976, the Commission delegated to the Director of the Division of Enforcement, with the power to subdelegate to persons under his direction, the authority to review and process complaints and related documents in accordance with the Commission's Reparation rules prior to the docketing of the formal adjudicatory proceeding. The Commission has determined to adopt § 140.81 of its regulations in order to codify that delegation.

Subparts B and C of the Commission's Reparations rules, 17 CFR 12.21 through 12.34, basically govern Commission review and processing of reparation complaints and related documents prior to the docketing of the formal adjudicatory proceeding. Among other things, these provisions establish the procedures for filing reparation complaints (§ 12.21); provide that the Commission may forward a copy of the complaint to the person against whom the award is sought if the Commission determines that the facts in the complaint warrant this action (§ 12.22); prescribe how these persons may either answer or satisfy the complaint (§ 12.23); provide that the Commission may investigate any complaint and may delay institution of a formal proceeding if an investigation is undertaken (§ 12.25); permit the Commission to determine whether or not to institute a formal adjudicatory proceeding (§ 12.31); and establish a mechanism for the parties to settle the matters in dispute (§ 12.34).

The review and processing of complaints and related procedural matters prior to the docketing of the formal proceeding require a considerable amount of time. The delegation to the Director of the Division of Enforcement and his subdelegation to the Chief of the Reparations Section of the Division has enabled the Commission to accomplish these preliminary matters as promptly as possible and has facilitated contact between the parties in order to resolve disputes without the necessity of a formal hearing. Thus, of the approximately 800 reparation complaints that the Reparations Section of the Enforcement Division has reviewed and investigated since April 1976, approximately 240 have been disposed of without the institution of a formal proceeding. Of that number, approximately 60 involved disputes that were settled by the parties and approximately 180 were determined either not to allege violations of the Act or Commission regulations, not to show that the alleged violations had been committed by persons subject to the Act's registration requirements, or not to have resulted in any damages to the complaining party.

This delegation reserves to the Commission the right to revoke the delegated authority at any time and specifically empowers the Director of the Division of Enforcement to submit matters to the Commission for its consideration whenever he believes it to be appropriate.

Based on the foregoing, the Commission hereby amends Part 140 of Chapter 1 of Title 17 of the Code of Federal Regulations by adding a new § 140.81 to read as follows:

§ 140.81 Delegation of authority to the Director of the Division of Enforcement.

Pursuant to the authority granted under sections 2(a)(4) and 2(a)(11) of the Commodity Exchange Act, as amended, 7 U.S.C. 4a(c) and 4a(j), the Commodity Futures Trading Commission hereby delegates, until such time as the Commission orders otherwise, the following functions to the Director of the Division of Enforcement to be performed by him or by such person or persons under his direction as he may designate from time to time:

(a) With respect to reparation proceedings brought pursuant to section 14 of the Commodity Exchange Act, as amended, 7 U.S.C. 18 and subject to the Commission's Reparation rules as set forth in Part 12 of this chapter, to perform all functions reserved to the Commission in Subparts B and C of the Reparation rules, prior to the docketing of formal adjudicatory proceedings pursuant to § 12.41 of those rules.

(b) Notwithstanding the provisions of paragraph (a) of this section, in any case in which the Director believes it appropriate, he may submit the matter to the Commission for its consideration.

(Pub. L. 93-463 Sec. 101(a)(4) and 101(a)(11), 88 Stat. 1391, (7 U.S.C. 4a(c) and 4a(j) (Supp. V, 1975).)

The foregoing rules shall be effective immediately. The Commission finds that the rules relate solely to agency practice and procedure and that the public procedures and publication prior to the effective date of the rules, in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 553, are not required.

Issued in Washington, D.C. on May 5, 1978.

By the Commission.

WILLIAM T. BAGLEY,
Chairman, Commodity Futures Trading Commission.

[FR Doc. 78-13275 Filed 5-15-78; 8:45 am]

[4110-07]

Title 20—Employees' Benefits

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

[Reg. No. 4]

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

Subpart K—Employment—Wages—Self-Employment—Self-Employment Income

INCOME FROM SELF EMPLOYMENT OF LIMITED PARTNER

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These final regulations provide that the distributive share of partnership income or loss received by a limited partner is excluded from social security coverage. They define limited partner as one whose financial liability with respect to the obligations of the partnership is limited to the amount of his or her financial investment in the partnership. Generally, the limited partner will not have performed services in the operation of, or participated in the control of, the business carried on by the partnership for the taxable year involved. The Social Security Amendments of 1977 added to the Social Security Act the change affecting income received by a limited partner. The effect of these regulations is exclusion from self-employment income of "Investment" income of a limited partner. The changes in the references to section 702(a) of the Internal Revenue Code conform these regulations to an amendment to that Code by the Tax Reform Act of 1976 (Pub. L. 94-455) which renumbered the provision without changing its text.

DATE: These regulations shall be effective May 16, 1978.

COMMENTS: Although published without Notice of Proposed Rule Making, consideration will be given to any comments about the regulations submitted in writing on or before June 30, 1978.

ADDRESSES: Comments should be sent to the Acting Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203.

Copies of all comments received in response to this notice will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Ms. Dorothy E. Algea, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-5587.

SUPPLEMENTARY INFORMATION: For taxable years beginning before January 1, 1978, each partner's distributive share of partnership income or loss was includable in his or her net earnings from self-employment for social security purposes. The law did not distinguish between those who worked in the partnership and those who only invested money and limited their financial risk of loss. For that reason, some business organizations actively solicited investments by limited partners as a means for an investor to become insured for social security benefit purposes. In these situations the investor did no work and limited his or her financial loss to the amount invested. The advertisements were directed mainly at people engaged in work not covered by the Social Security Act. People who got social security coverage through this method qualified for social security benefits even though they performed no services and the coverage resulted, in fact, from income from investments. This was counter to the general requirement that social security benefits be work related. The change is effective for taxable years beginning after December 31, 1977.

Since these regulations revise the existing regulations for conformity with a change made in the law by the Social Security Amendments of 1977 (Pub. L. 95-216), the Secretary finds that publication of Notice of Proposed Rule Making would be unnecessary because they are primarily reflective of the statutory amendments (5 U.S.C. 553(b)(B)). Although the Notice of Proposed Rule Making is being dispensed with, consideration will be given to comments submitted in writing to the Acting Commissioner of Social Security.

(Secs. 205(a), 1102, and 211 of the Social Security Act; 53 Stat 1368, as amended; 49 Stat 647, as amended; 64 Stat 502, as amended; and 91 Stat 1535; 42 U.S.C. 405(a), 1302, and 411.)

(1977 Catalog of Federal Domestic Assistance Program No. 13.803, Social Security—Retirement Insurance.)

NOTE.—The Social Security Administration has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 (November 27, 1974) as amended by Executive Order 11949 (December 31, 1976) and OMB Circular A-107.

Dated: March 10, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: May 9, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

1. In § 404.1050, paragraphs (a) and (b) are amended to read as follows:

§ 404.1050 Definition of net earnings from self employment

(a) Subject to the special rules set out in §§ 404.1052 to 404.1065, inclusive, and to the exclusions set out in § 404.1070, the term "net earnings from self employment" means:

* * * * *

(2) (i) For taxable years beginning after December 31, 1977. His or her distributive share (whether or not distributed) as determined under section 704 of the Internal Revenue Code of 1954, as amended, of the income or loss (described in section 702(a)(8) of that Code and as computed under section 703 of that Code) from any trade or business carried on by any partnership of which he or she is a member other than as a limited partner. The limited partner's distributive share is includable in net earnings from self employment if (A) it is a guaranteed payment described in section 707(c) of that Code, and (B) the amount is payment to the limited partner for services he or she actually rendered to or on behalf of the partnership. A guaranteed payment described in section 707(c) of that Code is not net earnings from self employment if and to the extent that the limited partner did not perform services to or on behalf of the partnership for the amount involved. For purposes of this Subpart K, "limited" partner means one whose financial liability with respect to the obligations of the partnership is limited to the amount of his or her financial investment in the partnership. Generally, the individual will not have performed services in the operation of, or participated in the control of, the business carried on by the partnership for the taxable year involved.

(ii) For taxable years beginning before January 1, 1978. His or her distributive share (whether or not distributed), as determined under section 704 of the Internal Revenue Code of 1954, of the income or loss, described in section 702(a)(8) (formerly section 702(a)(9)) of that Code and as computed under section 703 of that Code,

Taxes) of the Internal Revenue Code of 1954, as amended. Gross income does not include income derived by an individual from an activity which is not a trade or business within the meaning of section 211(c) of the Act and § 404.1070 of this Subpart. Also, for social security purposes the gross income determined in accordance with that Code does not include a limited partner's distributive share of income or loss (see paragraph (a)(2)(i) of this section) unless it is a guaranteed payment described in section 707(c) of that Code for services actually rendered to or on behalf of the partnership by the limited partner, as described in paragraph (a)(2)(i) of this section. Section 706(a) of that Code and the regulations interpreting that provision, relating to the taxable year of a partner receiving guaranteed payments described in section 707(c), apply in computing taxable income.

(2) For taxable years beginning before January 1, 1978. With respect to taxable years to which the provisions of the Internal Revenue Code of 1954 apply, gross income derived by an individual from a trade or business includes payments received from a partnership of which he or she was a member for services rendered to the partnership or for the use of capital by the partnership, to the extent the payments are determined without regard to the income of the partnership. Payments received from a partnership not engaged in a trade or business within the meaning of section 211(c) of the Act and § 404.1070 do not constitute gross income derived by an individual from a trade or business.

* * * * *

2. In § 404.1051, the title and paragraphs (d) and (g) are revised to read as follows:

§ 404.1051 General Rules for Computation of Net Earnings from Self Employment.

* * * * *

(d) *Partnerships.* When an individual has net earnings from self employment within the definition of § 404.1050(a)(2), those net earnings are combined with his or her other net earnings from self employment in determining total net earnings from self employment for the taxable year.

* * * * *

(g) *Nature of partnership interest.* (1) For taxable years beginning after December 31, 1977, net earnings from self employment ordinarily include an individual's distributive share of the income or loss (described in section 702(a)(8) of the Internal Revenue Code of 1954, as amended) from a partnership of which he or she was a member during the taxable year. However, income or loss as a limited partner in a partnership is includable as net earnings from self employment only if:

(i) The amount involved is a guaranteed payment described in section 707(c) of that Code, and

(ii) The amount is payment to the limited partner for services he or she actually performed to or on behalf of the partnership.

Income or loss as a limited partner in a partnership is not net earnings from self employment if and to the extent that the limited partner did not perform services for the amount. If a partnership elected under section 1361 of that Code to be taxed as a domestic corporation, that election does not affect how net earnings from self employment are computed by a partner for social security purposes.

(2) For taxable years beginning before January 1, 1978, the exception involving a limited partner, described in paragraph (g)(1) of this section, does not apply.

* * * * *

§§ 404.1051, 404.1052, 404.1057, 404.1058, and 404.1065 [Amended]

3. In §§ 404.1051, 404.1052, 404.1057, 404.1058, and 404.1065, the Internal Revenue Code reference is amended to show "section 702(a)(8)" each place that "section 702(a)(9)" appears.

[FR Doc. 78-13252 Filed 5-15-78; 8:45 am]

[4110-07]

[Reg. No. 22]

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—General Procedures

AGENCY: Social Security Administration, HEW.

ACTION: Interim regulation.

SUMMARY: The Social Security Administration (SSA) is changing its regulations for issuing social security numbers (SSN's). These regulations will require all applicants for original SSN's to submit documentary evidence of identity, age, and citizenship, or alien status. All applicants for duplicate or corrected SSN cards will be required to submit sufficient evidence to establish their identity and validity of their SSN record. These regulations are necessary to protect the integrity of the SSN by exercising all means at SSA's disposal to stop or curtail the abuses and misuses of the SSN. These revisions apply to issuance of SSN's for any purposes.

EFFECTIVE DATE: To be effective when published in the FEDERAL REGISTER.

DUE DATE FOR COMMENT: Comments may be submitted on or before July 17, 1978.

ADDRESSES: Please submit any comments regarding these changes in writing to the Acting Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, Md. 21203. Copies of all comments received in response to these regulations will be available for public inspection during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

John L. Renner, Legal Assistant, Office of Policy and Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7519.

SUPPLEMENTARY INFORMATION: From the beginning of the social security program the issuance of the SSN has been based on the individual's allegations of identifying information without supporting evidence. The generally unverified issuance of the SSN was consistent with the need for a simple, rapid issuance procedure, and the initially minimal incentive for fraud.

Although the SSN was originally intended for the social security program only, Executive Order 9397, issued November 22, 1943, required that all Federal components use the SSN for any needed identification system for individuals.

There was little nonprogram use of the SSN within the Federal Government until 1961, when the Internal Revenue Service started to use the SSN for taxpayer identification. Thereafter the developing computer revolution and the usefulness in computer recordkeeping of a standard number induced widespread adoption of the SSN as a personal identifier by the Federal Government, State and local governments, and many private organizations.

The SSA became aware that as the role of the SSN as an identifier expanded, the SSN also became subject to greater abuse. An SSA task force study in 1971 included recommendations in its report for the tightening up of the SSN system. In November 1971, SSA began to require simple evidence of identity of all first time SSN applicants age 55 or over. In 1972, motivated mainly by concern over illegal aliens and welfare fraud, Congress amended the Social Security Act (Pub. L. 92-603). These amendments required, among other things, that SSA obtain from applicants such evidence

as may be necessary to establish their age, citizenship or alien status, and true identity, and to determine which (if any) social security number has previously been assigned to the applicant. At that time SSA required additional evidence only from applicants for new numbers who were age 18 or older, foreign born, or to welfare recipients.

To carry out his responsibility to ensure the integrity of the SSN, the Secretary has approved additional SSA initiatives to improve the SSN issuance process. The procedures implementing this decision are included in these interim regulations which affect the issuance of all SSN's.

The regulations:

(a) Provide that all individuals who apply for an original SSN submit documentary evidence to establish their identity, age, and citizenship or alien status;

(b) Provide that all applicants for duplicate or corrected SSN cards submit sufficient evidence to establish their identity and to validate the accuracy of their SSN records;

(c) Provide that all applicants for original SSN's, who are age 18 or older, must be interviewed in person;

(d) Provide that a birth certificate alone is not sufficient to establish identity except where no other evidence of identity exists for a child under 7 years of age and there is no basis for doubting the validity of the birth certificate or the SSN application; and

(e) Provide that SSA may verify any documents, supplied as evidence in the course of SSN application, with the custodian of the original record.

The new regulations set out SSA's procedures and practices which are designed to protect the applicant's social security record by helping to assure that it is complete and accurate. These procedures will help prevent a person from misusing an SSN, either knowingly or unknowingly. Since these are procedural matters, and delay in their issuance would be contrary to the public interest, the Secretary finds that there is good cause for dispensing with prior notice. Therefore, as authorized by the Administrative Procedure Act, 5 U.S.C. 553(b) these regulation changes go into effect immediately.

Accordingly, the amendments are adopted as set forth below.

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

(Catalog of Federal Domestic Assistance Program Nos. 13.800-13.807, Social Security.)

Dated: May 9, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: May 10, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

In chapter III of the title 20 CFR, subpart B of part 422 is amended as follows:

1. Section 422.103 is revised to read as follows:

§ 422.103 Social security numbers.

(a) *General.* The Social Security Administration maintains a record of the earnings reported for each individual assigned a social securtiy number. The individual's name, together with the social security number identifies the record so that the wages or self-employment income reported for or by the individual can be properly posted to the individual's record. Additional procedures concerning social security numbers may be found in Internal Revenue Service, Department of the Treasury regualtion 26 CFR 31.6011(b)-2.

(b) *Applying for a number.* Every individual needing a social security number may apply for one by filing a signed Treasury Department form SS-5, "Application for Social Security Number," at any local social security office, or, if the individual is in the Philippines, at the Veterans' Administration regional office, Manila, Philippines. (See § 422.106 for special procedures for imigrants and certain nonimmigrants.) Form SS-5 may be obtained at:

(1) Any local social security office;

(2) The Social Security Administration, Baltimore, Md. 21235;

(3) Offices of District Directors of Internal Revenue;

(4) U.S. Postal Service offices (except the main office in cities having a social security office);

(5) U.S. Employment Service offices in cities which do not have a social security office; and

(6) The Veterans' Administration regional office, Manila, Philippines. Upon request, the social security office will distribute a quantity of application form SS-5 to labor unions, employers, or other representative organizations.

(c) *Assignment procedure.* Social security numbers are assigned by SSA's central office in Baltimore, Md. Upon receipt of a completed form SS-5, the local social security office, or the Veterans' Administration regional office, Manila, Philippines, will require the applicant to furnish evidence, as necessary, to assist SSA in establishing his or her age, citizenship, alien status, true identity, and previously assigned social security number(s), if any. A personal interview may be required of the applicant. (See § 422.107 for evidence requirements.) Upon satisfactory establishment of the pertinent items, the social security office or Veterans' Administration regional office forwards the application to the SSA's central office for checking against the SSA's files. If the applicant requests a social security number card immediately, a form SSA-5028, Receipt for Application for a Social Security Number, will be issued. If the investigation does not disclose a previously assigned number, the central office assigns a number and forwards to the applicant form OA-702, "Social Security Number Card." If the investigation discloses a previously assigned number, a duplicate social security number card is issued to the applicant. For issuance of social security numbers to aliens and other groups or categories, see § 422.104.

(d) *Replacement of lost or damaged social security number card.* In case of loss of or damage to the social security number card, a duplicate card bearing the same number will be issued. (See § 422.107 for evidence requirements.)

2. Section 422.104 is revised to read as follows:

§ 422.104 Assignment of social security numbers.

Social security numbers may be assigned to the following applicants who meet the evidence requirements in § 422.107:

(a) U.S. citizens;

(b) Aliens lawfully admitted to the United States for permanent residence or under other authority of law permitting them to engage in employment in the United States (see § 422.105 regarding presumption of authority of nonimmigrant alien to engage in employment); and

(c) Aliens who are legally in the United States but not under authority of law permitting them to engage in employment, but only for a nonwork purpose (see § 422.107(e) (1) and (2)).

3. Section 422.104a is redesignated as § 422.105 and is revised to read as follows:

§ 422.105 Presumption of authority of nonimmigrant alien to accept employment.

The nonimmigrant visa classifications assigned by the Immigration and Naturlization Service shall be used to determine whether a nonimmigrant alien is authorized to engage in employment. (See 22 CFR 41.12 for these classifications.) Permission to engage in employment shall not be presumed in the case of an alien who has not been issued a visa or whose visa shows any classification symbol designated and provided by the Immigration and Naturalization Service which does not reflect that the alien may engate in employment.

4. Section 422.105 is redesignated as § 422.106 and is revised to read as follows:

§ 422.106 Obtaining applications from immigrants and certain nonimmigrant classes.

All newly admitted immigrants and all aliens already in the United States whose status is changed to permanent resident will apply for SSN's through local SSA offices, with the following exception. The Immigration and Naturalization Service will obtain applications for social security numbers from aliens who have never had a social security number, who entered this country in a temporary admittance category and who, subsequent to entry, acquired status as lawful permanent residents of the United States. The Immigration and Naturalization Service obtains from each such alien an application for a social security number and, after verifying the alien's age and identity, forwards the application to SSA's central office for issuance of a social security number.

5. Section 422.107 is revised to read as follows:

§ 422.107 Evidence requirements.

(a) *General.* Applicants for social security numbers must submit evidence which the Secretary regards as convincing of their age, citizenship, or alien status, and true identity. Applicants for duplicate or corrected social security cards must submit evidence of identity and may also be required to submit evidence of age and citizenship or alien status. An applicant is also required to submit evidence to assist the SSA in determining the existence and identity of any previously assigned number(s). In the case of a noncitizen, evidence is also required to establish whether the applicant, because of his alien status, is prohibited from engaging in employment in the United States. A social security number will not be assigned, or a duplicate or corrected card issued, unless all of the evidence requirements are met. An in person interview will be required of all applicants age 18 or older who apply for an original social security number. All documents submitted as evidence are subject to verification with the custodians of the original records.

(b) *Evidence of age.* All applicants for a social security number are required to submit evidence of age to support the date of birth alleged. Applicants for a duplicate or corrected social security card may be required to submit evidence of age to support the date of birth alleged. Examples of the types of evidence which may be submitted are birth or baptismal certificates, school and church records, census records, insurance policies, marriage records, employment records, and passports.

(c) *Evidence of identity.* All applicants for a social security number or a duplicate or corrected social security card are required to submit corroborative evidence of their identity. Corroborative evidence of identity may consist of a driver's license, a voter registration card, a passport, or other similar document serving to identify the individual. It is preferable that the document contain the applicant's signature for comparison with his signature on the application for a social security number. A birth certificate alone is not sufficient evidence to establish identity except where no other evidence of identity exists for a child under 7 years of age and there is no basis for doubting the validity of the birth certificate or the social security number application.

(d) *Evidence of U.S. citizenship.* Generally, an allegation of U.S. citizenship by birth will be supported by the evidence of age and identity described in paragraphs (b) and (c) of this section. Additional evidence must be supplied when the evidence of age or identity does not show place of birth or where such evidence of age or identity does not agree with the applicant's allegation of birth in the United States. Where an applicant indicates that he is foreign born and that he is a U.S. citizen, he is required to present documentary evidence of U.S. citizenship. Any of the following is acceptable evidence of U.S. citizenship:

(1) Certificate of naturalization;

(2) Certificate of citizenship;

(3) U.S. passport;

(4) U.S. citizen identification card (INS form I-179 or I-197);

(5) Consular report of birth (State Department form FS-240); or

(6) Other verification from the Immigration and Naturalization Service, U.S. Department of State, or Federal or State court records confirming citizenship. If required evidence is not available, a social security number will not be assigned until satisfactory evidence of U.S. citizenship is furnished.

(e) *Evidence of alien status.*—(1) *Citizen of country other than Canada or Mexico.* Where the applicant is a foreign citizen (of a country other than Canada or Mexico), the applicant is required to have an Alien Registration Receipt Card (I-151 or I-551) or an Arrival-Departure Record (I-94) and will be asked to produce such document. If the applicant fails to do so, a social security number will not be issued. If the applicant produces an Alien Registration Receipt Card, or produces an Arrival-Departure Record which contains an authorization to work, a social security number card will be issued. However, if the Arrival-Departure Record does not contain authorization to work and the social security number is for a work purpose, it will not be issued. If the applicant requests the number for a nonwork purpose, e.g., an Internal Revenue Service purpose, the number will be issued and the record will be annotated. In the latter case, if earnings are later reported to the SSA, the Immigration and Naturalization Service will be notified of such report.

(2) *Mexican or Canadian citizen.* If a Canadian or Mexican citizen has an Alien Registration Receipt Card or an Arrival-Departure Record, the rules in paragraph (e)(1) of this section apply. If a Canadian or Mexican citizen is legally in the United States with a border crossing card, or a border visitor's permit (or, in the case of a Canadian citizen, without documentation), but does not have an Alien Registration Receipt Card or an Arrival-Departure Record, and wants a social security number for a nonwork purpose, e.g., an Internal Revenue Service purpose, the SSA will assign a number to the applicant and issue a number card. The record will be annotated and the Immigration and Naturalization Service will be notified if earnings are reported to the earnings record.

(3) *Failure to submit evidence.* If the applicant does not comply with a request for evidence or other information regarding alien status within a reasonable time, the SSA will again attempt to contact him. If there is still no response, a social security number will not be issued.

(4) *Invalid or expired documents.* The SSA will not issue a social security number when an applicant presents invalid or expired Immigration and Naturalization Service documents. Invalid documents are forged documents purportedly issued by the Immigration and Naturalization Service or properly issued documents which were altered subsequent to issue. An expired document is one whose term of validity has expired.

(5) *Notice to alien applicant.* An alien who applies for a social security number will be advised that information obtained by the SSA in connection with his application for, and issuance of, a social security number might be transmitted to the Immigration and Naturalization Service. If a number is to be issued for nonwork purposes, the applicant will be advised that the Immigration and Naturalization Service will be notified should earnings be reported to his earnings record.

6. Section 422.110 is revised to read as follows:

§ 422.110 Individual's request for change in record.

Form OAAN-7003, "Request for Change in Social Security Records," should be completed and signed by any person who wishes to change the name or other personal identifying information previously submitted. The person must establish his or her identity and may be required to validate their SSN record. (See § 422.107 for

evidence requirements.) Form OAAN-7003 may be obtained from any local social security office or from one of the sources noted in § 422.103(b). The completed request for change in records may be submitted to any SSA office or, if the individual is in the Philippines, to the Veterans' Administration regional office, Manila, Philippines. If the request is for a change in name, a new social security number card will be issued to the person making the request bearing the same number previously assigned.

[FR Doc. 78-13167 Filed 5-15-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER D—DRUGS FOR HUMAN USE

[Docket No. 78N-0094]

CEFADROXIL CAPSULES

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the antibiotic drug regulations to provide for the certification of cefadroxil capsules. Pursuant to section 507 of the Federal Food, Drug, and Cosmetic Act, the manufacturer has supplied sufficient data and information to establish the safety and efficacy of cefadroxil capsules.

DATES: Effective May 16, 1978. Comments by June 15, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Department of Health, Education and Welfare, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Joan Eckert, Bureau of Drugs (HFD-140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4290.

SUPPLEMENTARY INFORMATION: Having evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of cefadroxil capsules, the Commissioner of Food and Drugs concludes that the data supplied by the manufacturer concerning the subject antibiotic drug product are adequate to establish its safety and efficacy when used as directed in the labeling and that the regulations should be amended in parts 430, 436, and 442 (21 CFR parts 430, 436, and 442) to provide for its certification.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463, as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner (21 CFR 5.1), parts 430, 436, and 442 are amended as follows:

PART 430—ANTIBIOTIC DRUGS: GENERAL

1. Part 430 is amended in subpart A:

a. In § 430.5 by adding new paragraphs (a)(62) and (b)(62), to read as follows:

§ 430.5 Definitions of master and working standards.

(a) * * *

(62) *Cefadroxil.* The term "cefadroxil master standard" means a specific lot of cefadroxil that is designated by the Commissioner as the standard of comparison in determining the potency of the cefadroxil working standard.

(b) * * *

(62) *Cefadroxil.* The term "cefadroxil working standard" means a specific lot of a homogeneous preparation of cefadroxil.

b. In § 430.6 by adding new paragraph (b)(64), to read as follows:

§ 430.6 Definitions of the terms "unit" and "microgram" as applied to antibiotic substances.

* * * * *

(b) * * *

(64) *Cefadroxil.* The term "microgram" applied to cefadroxil means the cefadroxil activity (potency) contained in 1.0537 micrograms of the cefadroxil master standard.

PART 436—TESTS AND METHODS OF ASSAY OF ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

2. Part 436 is amended:

a. In § 436.33(b) by alphabetically inserting a new item in the table, as follows:

§ 436.33 Safety test.

* * * * *

(b) * * *

	Test dose				
Antibiotic drug	Diluent (diluent number as listed in § 436.31)	Concentration in units or milligrams of activity per milliliter	Volume in milliliters to be administered to each mouse	Route of administration as described in par. (c) of this section	
* * * * * * *					
Cefadroxil	10	40	0.5	Oral.	
* * * * * * *					

b. In § 436.105, paragraphs (a) and (b) are amended by alphabetically inserting a new item in the respective tables, as follows:

§ 436.105 Microbiological agar diffusion assay.

* * * * * * *

(a) * * *

Antibiotic	Media to be used (as listed by medium number in § 436.102(b))		Milliliters of media to be used in the base and seed layers		Test organism	Suggested volume of standardized inoculum to be added to each 100 mls of seed agar	Incubation temperature for the plates
	Base layer	Seed Layer	Base layer	Seed layer			
						Milliliters	Degrees C.
*	*	*	*	*	*	*	*
Cefadroxil.....	2	1	21	4	A	0.05	37
*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*

Antibiotic	Drying conditions (method number as listed in § 436.200)	Working standard stock solutions				Standard response line concentrations	
		Initial solvent	Diluent (solution number as listed in § 436.101(a))	Final concentration units or million grams per milliliter	Storage time under refrigeration	Diluent	Final concentrations, units or micrograms of antibiotic activity per milliliter
*	*	*	*	*	*	*	*
Cefadroxil.....	Not dried.....		1	1 mg.....	Use same day...	1	12.8, 16.0, 20.0, 25.0, and 31.2 µg.
*	*	*	*	*	*	*	*
*	*	*	*	*	*	*	*

(b) * * *

PART 442—CEPHA ANTIBIOTIC DRUGS

4. Part 442 is amended:

a. In Subpart A by adding new § 442.6, to read as follows:

§ 442.6 Cefadroxil monohydrate.

(a) *Requirements for certification—*(1) *Standards of identity, strength, quality, and purity.* Cefadroxil monohydrate is 7-[D-2-amino-2(*p*-hydroxyphenyl)acetamido] - 3 - methyl - 8 - oxo- 5-thia-1-azabicyclo[4.2.0] oct-2-ene-2-carboxylic acid monohydrate. It is so purified and dried that:

(i) Its potency is not less than 900 micrograms and not more than 1,050 micrograms of cefadroxil per milligram on an anhydrous basis.

(ii) It passes the safety test.

(iii) Its moisture content is not less than 4.2 percent and not more than 6.0 percent.

(iv) Its pH in an aqueous solution containing 50 milligrams per milliliter is not less than 4.0 and not more than 6.0.

(v) When calculated on an anhydrous basis, its absorptivity at 264 nanometers is not less than 95 percent and not more than 104 percent of that of the cefadroxil standard similarly treated and corrected for potency.

(vi) It passes the identity test.

(vii) It is crystalline.

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

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

(i) Results of tests and assays on the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(ii) Samples required: 10 packages, each containing approximately 500 milligrams.

(b) *Tests and methods of assay—*(1) *Potency.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample in sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Further dilute an aliquot of the stock solution with solution 1 to the reference concentration of 20 micrograms of cefadroxil per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay for cefadroxil.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, except prepare the working standard and sample solutions and calculate the potency of the sample as follows:

(*a*) *Preparation of working standard solutions.* Dissolve and dilute an accurately weighed portion of the cefadroxil working standard in sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter.

(*b*) *Preparation of sample solutions.* Dissolve an accurately weighed portion of the sample in sufficient distilled water to obtain a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter (estimated).

(c) Calculate the potency of the sample in micrograms per milligram as follows: Micrograms of cefadroxil per milligram of sample

$$= \frac{\frac{A_u}{} \times \frac{P_a}{} \times 100}{\frac{A_s}{} \times \frac{W_u}{} \times (100-m)}$$

where:

A_u=Absorbance of sample solution;
P_a=Potency of working standard solution in micrograms per milliliter;
A_s=Absorbance of working standard solution;
W_u=Milligrams of sample per milliliter of sampe solution;
m=Percent moisture in sample.

(2) *Safety.* Proceed as directed in § 436.33 of this chapter.

(3) *Moisture.* Proceed as directed in § 436.201 of this chapter.

(4) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 50 milligrams per milliliter.

(5) *Absorptivity.* Determine the absorbance of the sample and standard solutions in the following manner: Dissolve accurately weighed portions of approximately 50 milligrams each of the sample and standard in 250 milliliters of distilled water. Transfer a 10-

milliliter aliquot to a 100-milliliter volumetric flask and dilute to volume with distilled water. Using a suitable spectrophotometer and distilled water as the blank, determine the absorbance of each solution at 264 nanometers. Determine the percent absorptivity of the sample relative to the absorptivity of the standard using the following calculations: Percent relative absorptivity=Absorbance of sample X milligrams standard X potency of standard in micrograms per milligram X 10/Absorbance of standard X milligrams sample X (100−m)

where:
m=Percent moisture in the samples.

(6) *Identity.* Using the sample and working standard solutions prepared as described in paragraph (b)(5) of this section and a suitable spectrophotometer, record the ultraviolet spectrum from 220 to 340 nanometers. The spectrum of the sample compares qualitatively with that of the cefadroxil working standard.

(7) *Crystallinity.* Proceed as directed in § 436.203(a) of this chapter.

b. By adding new § 442.106 to Subpart B, to read as follows:

§ 442.106 Cefadroxil capsules.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Cefadroxil capsules are composed of cefadroxil monohydrate and one or more suitable and harmless lubricants and diluents enclosed in a gelatin capsule. Each capsule contains 500 milligrams of cefadroxil. Its potency is satisfactory if it is not less than 90 percent and not more than 120 percent of the number of milligrams of cefadroxil that it is represented to contain. Its moisture content is not more than 7 percent. The cefadroxil monohydrate used conforms to the standards prescribed by § 442.6(a)(1).

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

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

(i) Results of tests and assays on:

(*a*) The cefadroxil monohydrate used in making the batch for potency, safety, moisture, pH, absorptivity, identity, and crystallinity.

(*b*) The batch for potency and moisture.

(ii) Samples required:

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

(*b*) The batch: A minimum of 30 capsules.

(b) *Tests and methods of assay*—(1) *Potency.* Use either of the following methods; however, the results obtained from the hydroxylamine colorimetric assay shall be conclusive.

(i) *Microbiological agar diffusion assay.* Proceed as directed in § 436.105 of this chapter, preparing the sample for assay as follows: Place a representative number of capsules into a high-speed glass blender jar containing sufficient 1 percent potassium phosphate buffer, pH 6.0 (solution 1), to give a stock solution of convenient concentration. Blend for 3 to 5 minutes. Remove an aliquot and further dilute with solution 1 to the reference concentration of 20.0 micrograms of cefadroxil per milliliter (estimated).

(ii) *Hydroxylamine colorimetric assay.* Proceed as directed in § 442.40(b)(1)(ii) of this chapter, preparing the sample as follows: Blend a representative number of capsules into a high-speed glass blender jar with sufficient distilled water to give a stock solution of convenient concentration. Further dilute an aliquot of this solution with distilled water to a concentration of 1 milligram of cefadroxil per milliliter (estimated).

(2) *Moisture.* Proceed as directed in § 436.201 of this chapter.

Since the conditions prerequisite to providing for certification of this drug have been complied with and as the matter is noncontroversial, the Commissioner finds for good cause that notice and public procedure are unnecessary and that the amendment may become effective upon the date of publication. Interested persons may, on or before June 15, 1978, file with the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments, in four copies and identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office of the Hearing Clerk, Food and Drug Administration (HFC-20), between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

Effective date. June 15, 1978.

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

Dated: May 8, 1978.

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

[FR Doc. 78-13186 Filed 5-15-78; 8:45 am]

[4910-22]

Title 23—Highways

CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

PART 771—ENVIRONMENTAL IMPACT AND RELATED STATEMENTS

Miscellaneous Amendments

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rulemaking.

SUMMARY: This document amends FHWA environmental regulations to allow the processing as nonmajor Federal actions of projects having only a minimal effect upon properties protected by section 4(f) of the Department of Transportation Act[1] or section 106 of the National Historic Preservation Act; it will also allow for the delegation to Regional Administrators of the responsiblity for making certain 4(f) determinations and allow for the designation of Regional Counsels to review those 4(f) statements for legal sufficiency. These amendments are designed to clarify certain regulatory provisions and to modify internal delegations of authority.

EFFECTIVE DATE: May 19, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert G. Clour, Environmental Programs Division, 202-426-0106, or Marguerite L. Price, Office of the Chief Counsel, 202-426-0791, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday-Friday.

SUPPLEMENTARY INFORMATION: Existing regulations appear as Part 771, Chapter I, Title 23, Code of Federal Regulations, and codify material in volume 7, chapter 7, section 2 of the Federal-Aid Highway Program Manual.[2]

The existing regulations require that Federal Highway Administration projects which have involvement with section 4(f) or section 106 properties must be processed as major actions regardless of the magnitude or scope of the projects. This amendment will allow some projects of this type to be processed as nonmajor actions which do

[1] Codified at 49 U.S.C. 1653(f). An identical provision appears at 23 U.S.C. 138.

[2] The Federal-Aid Highway Program Manual is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

not require formal documentation under NEPA. The requirements for section 4(f) or section 106 will not be changed by this amendment.

The existing Federal Highway Administration regulations require that the Federal Highway Administrator make all 4(f) determinations. This amendment will allow the Administrator to delegate that responsibility to the Regional Administrators for section 4(f) determinations except where concurrence of the Office of the Secretary is required.

The existing regulations require the Federal Highway Administration Chief Counsel to review all section 4(f) statements for legal sufficiency. This amendment will allow the Chief Counsel to delegate this responsibility to the Regional Counsels where the Regional Administrators are responsible for making the 4(f) determinations.

NOTE.—The Federal Highway Administration has determined that this document does not contain a significant proposal according to the criteria established by the Department of Transportation pursuant to Executive Order 12044.

The matters affected herein relate to grants, benefits, or contracts within the purview of 5 U.S.C. 553(a)(2). The amendment itself is of a technical nature designed to clarify existing regulatory provisions and modify internal delegations of authority. Accordingly, general notice of proposed rulemaking is neither required nor appropriate.

Issued on May 5, 1978.

KARL S. BOWERS,
Acting Federal Highway Administrator.

In consideration of the foregoing, the Federal Highway Administration is amending Part 771 of Chapter I, Title 23, Code of Federal Regulations, as follows:

1. Section 771.9(d)(7) is revised to read:

§ 771.9 Major and nonmajor actions.

* * * * *

(d) * * *

(7) A project that has more than minimal effect on properties protected under section 4(f) of the DOT Act or section 106 of the Historic Preservation Act.

* * * * *

2. Section 771.14(c) is revised by deleting subparagraph (5) and amending subparagraph (4) to read as follows:

§ 771.14 Final environmental impact statement processing.

* * * * *

(c) * * *

(4) Highway sections for which the Federal Highway Administrator requests the Regional Administrator to send the final EIS to the Washington headquarters office for review either by the Assistant Secretary for Policy and International Affairs or by the FHWA Headquarters office.

* * * * *

3. Section 771.19 is revised by amending paragraphs (f), (g), (h), (i), (j), (l), and (n) to read as follows:

§ 771.19 Section 4(f) statements.

* * * * *

(f) It is essential that the information necessary for the determination under section 4(f) be consolidated in a separate statement, or if a negative declaration or EIS is being prepared, as a separate section of that document. The section 4(f) statement should be self-contained to the extent practicable. It should list factors, reasons, and effects that are used to evaluate each alternative and the special measures planned to minimize harm to the section 4(f) lands. It may be necessary to repeat information contained in the EIS, negative declaration or nonmajor action determination to eliminate unnecessary reference.

(g) A section 4(f) evaluation (consisting of draft section 4(f) information and a section 4(f) statement as set forth in § 771.19) is to be prepared during the location study phase of the highway development except in the specific circumstances for separate circulation and processing as provided below.

(1) The section 4(f) involvement must be coordinated with the agency having jurisdiction over the section 4(f) lands. Comments received and the HA/FHWA evaluation of the comments should be included in the section 4(f) statement.

(2) For those highway sections that are being processed with a nonmajor action determination, draft section 4(f) information necessary to evaluate alternatives, the section 4(f) involvement, and the measures to minimize harm are to be made available to the Departments of the Interior and Housing and Urban Development and, if appropriate, to the Department of Agriculture for comments. Included should be a copy of the FHWA Division Administrator's letter to the HA advising it of FHWA's concurrence in the nonmajor action determination. The HA and FHWA shall evaluate the comments received and prepare the section 4(f) statement. The processing of the section 4(f) statement within FHWA shall follow procedures set forth in paragraph (n) of this section.

(3) For those highway sections that are being processed with a negative declaration, the negative declaration shall be prepared following the requirements of § 771.11. In addition, the information necessary to evaluate the alternatives, the section 4(f) involvement, and the measures to minimize harm shall be included in the draft negative declaration as a separate part of the document as draft section 4(f) information. The determination that alternatives which do not use section 4(f) lands are not feasible and prudent would not be made at the draft negative declaration stage. The draft negative declaration/section 4(f) information is to be made available to the Departments of the Interior and Housing and Urban Development and, if appropriate, to the Department of Agriculture for comment. The HA and FHWA shall evaluate the comments received and prepare the final negative declaration and section 4(f) statement. The final negative declaration/section 4(f) statement shall be processed as set forth in § 771.11 and § 771.19(n).

(4) The draft section 4(f) information prepared for highway sections that are being processed with a nonmajor action determination or negative declaration shall be furnished to the Regional Administrator for comment at the time it is made available to other agencies.

(5) For those projects that are being processed with an EIS, the EIS shall be prepared and coordinated following the applicable requirements of §§ 771.5, 771.8, 771.12, and 771.14. In addition, the information necessary to evaluate the alternatives, the section 4(f) involvement, and measures to minimize harm shall be included in the draft EIS as a separate part of the document as draft section 4(f) information. The determination that alternatives which do not use section 4(f) land are not feasible and prudent would not be made at the draft EIS stage. The draft EIS/section 4(f) information is to be circulated for comments in accordance with § 771.12. The Departments of the Interior and Housing and Urban Development and, if appropriate, the Department of Agriculture should be invited to comment on the section 4(f) information in addition to the EIS. The HA and FHWA shall evaluate comments received on the draft EIS/section 4(f) statement. Processing of the final EIS/section 4(f) statement shall be as set forth in §§ 771.14 and 771.19(n).

(6) The section 4(f) statement shall include a summary of the coordination, a copy of the comments received, and the HA/FHWA evaluation of the comments. It should also include a section on unresolved issues and an explanation of the efforts made to resolve the issues.

(7) Nothing in the processing procedures in this section is to be construed as superseding public hearing requirements or the requirement to make available nonmajor action determina-

tions, draft negative declaration/section 4(f) information or draft EIS/section 4(f) information at required public hearings.

(8) Separate circulation of the section 4(f) information will be required when: (i) the section 4(f) area is designated after the nonmajor action determination, final negative declaration, or final EIS is processed; (ii) a minor modification in the alignment or design that involves a section 4(f) area is made after the nonmajor action, final negative declaration, or final EIS is processed; or (iii) another agency is the lead agency for the environmental process. In such cases, the section 4(f) statement would not need to be accompanied by further NEPA documentation unless, after consultation with the FHWA offices which had review authority for the original NEPA document, a decision is made to supplement the original NEPA documentation.

(9) There may be other unusual instances when, after a review of the circumstances, the Regional Administrator believes there is a basis for separate processing of the section 4(f) after the processing of a nonmajor action, negative declaration or EIS is completed. Such instances shall be submitted to the Associate Administrator for Right-of-Way and Environment for approval. The request for approval shall be accompanied with detailed information relative to the reasons why separate preparation and circulation is required and information about the highway section and section 4(f) area that will permit the Associate Administrator to make a decision on the request.

(h) When circulating draft section 4(f) information to the agencies noted in paragraph (g) of this section, the HA may establish a time limit of not less than 45 days for comment.

(i) The following information, where pertinent and available, should be included in the draft section 4(f) information to initiate the necessary interagency review.

* * * * *

(j) Accurate and detailed information is needed to support the determination that there is no feasible or prudent alternative. Supporting information should demonstrate that there are unique problems, truly unusual factors present, and evidence that the cost or community disruption resulting from alternative routes reaches extraordinary magnitudes. Section 4(f) statements shall be reviewed for legal sufficiency by the FHWA Chief Counsel or his designee.

(k) * * *

(l) The HA and FHWA Division Administrator should make a special effort to resolve any issues concerning section 4(f) lands prior to forwarding the section 4(f) statement to the Regional Federal Highway Administrator.

(m) * * *

(n)(1) The Division Administrator shall make a review of the section 4(f) statement and forward it and the nonmajor action determination concurrence, final negative declaration or final EIS, as appropriate, to the Regional Administrator for processing of the section 4(f) statement.

(2) For those section 4(f) statements being processed with a nonmajor action determination concurrence, the HA shall not proceed with those activities noted in § 771.5(e) until notified by FHWA that the section 4(f) determination has been made.

(e) The FHWA Regional Administrator shall review the section 4(f) statement, including comments and evaluations by the HA and FHWA Division Administrator for completeness and adequacy. Processing of the section 4(f) statement and the preparation and processing of the determination required by 49 U.S.C. 1653(f) shall be in accordance with the delegation of authority contained in FHWA Order 1-1.[3] The determination required by 49 U.S.C. 1653(f) shall be made by the Federal Highway Administrator or his designee.

§ 771.21 [Amended]

4. Section 771.21(e)(2) is revised to read as follows:

* * * * *

(e) * * *

(2) Office of the Secretary of Transportation (Office of Environment and Safety, P-20)—one copy.

* * * * *

[FR Doc. 78-13222 Filed 5-15-78; 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 Tennessee Plan

AGENCY: Occupational Safety and Health Administration.

ACTION: Final rule.

[3]This document is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D.

SUMMARY: This amendment officially recognizes that the State of Tennessee has completed all of the developmental steps specified in its occupational safety and health plan as approved on July 5, 1973 (38 FR 17838) 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.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Barbara Bryant, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-634-4922.

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(e)) (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. Such a determination may not be made until at least three 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 at least one additional year to evaluate the plan on the basis of actual operations. Upon making a determination under 18(e) that the 18(c) requirements are being met, Federal enforcement of 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.

Section 1902.34 of Subpart D provides that the evaluation of a State's fully operational program, preparatory to an 18(e) determination, shall commence upon publication in the FEDERAL REGISTER of a certification that all developmental steps have been completed. Such certification must list the developmental steps, including approved amendments thereto, and the dates their approvals were 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 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 amend the appropriate subpart of Part 1952 of this chapter to reflect this finding.

Certification that a State has completed its developmental steps does not mean that the Assistant Secretary had 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: *AFL-CIO* v. *Marshall*, et. al., C.A.D.C. No. 75-1506, January 20, 1978.)

On July 5, 1973, notice was published in the FEDERAL REGISTER (38 FR 17838) of the approval of the Tennessee plan as a developmental plan and the adoption of Subpart P of Part 1952 containing the decision and describing the plan. During the three year period ending July 1, 1976, (three years from the date of the State's first 23(g) grant award) James G. Neeley, Commissioner, Tennessee Department of Labor (and prior to his appointment, Ben O. Gibbs, Commissioner, Tennessee Department of Public Health) submitted documentation attesting to the completion of each State developmental commitment for review and approval as provided in 29 CFR Part 1953. Following OSHA 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 Tennessee developmental steps.

NOTICE OF COMPLETION OF DEVELOPMENTAL STEPS UNDER THE TENNESSEE PLAN

In accordance with the provisions of 29 CFR 1902.34, notice is given that the Tennessee occupational safety and health plan is hereby certified, effective May 3, 1978, as having completed all the developmental steps specified in the plan as approved June 28, 1973, on or before July 1, 1976, (see Subpart P of 29 CFR Part 1952) as follows:

(a) All developmental steps specified in the plan and amendments thereto have been completed:

(1) Tennessee occupational safety and health standards identical to Federal standards have been promulgated, subsequently amended to reflect changes in and additions to Federal standards and approved by the Regional Administrator for Occupational Safety and Health (hereafter referred to as the Regional Administrator) on March 31, 1975, (40 FR 14383, March 31, 1975), on August 27, 1976, (41 FR 47613, October 29, 1976), and January 23, 1978, (43 FR 14164).

(2) Legislative amendments required to bring the Tennessee Occupational Safety and Health Act of 1972 into conformity with Federal requirements were enacted on March 29, 1974, effective July 1, 1974, by Chapter 585, Public Acts of 1974, and approved by the Secretary of Labor on August 15, 1975, (40 FR 36566, August 21, 1975). Further State-initiated amendments to the Act transferring all occupational safety and health responsibility (previously held jointly by the Commissioner of Labor and the Commissioner of Public Health) to the Commissioner of Labor were promulgated effective July 1, 1977, and approved by the Assistant Secretary on May 3, 1978.

(3) Tennessee regulations governing occupational safety and health recordkeeping and reporting (Chapter 0800-1-3) were promulgated by the Tennessee Department of Labor on June 10, 1974, and subsequently amended on April 15, 1976, July 14, 1977, August 15, 1977, and February 1, 1978. These regulations, which contain requirements essentially identical to the Federal 29 CFR Part 1904 were approved by the Assistant Secretary on May 3, 1978.

(4) Tennessee regulations governing inspections, citations, and proposed penalties were originally promulgated by the Commissioner of Labor on July 2, 1973, (effective July 13, 1973) and the Commissioner of Public Health on April 3, 1974, (effective May 3, 1974) and approved by the Secretary of Labor on August 15, 1975 (40 FR 36566, August 21, 1975). These regulations were subsequently consolidated and codified as Tennessee Department of Labor Chapter 0800-1-4 and reapproved by the Assistant Secretary, as amended, on May 3, 1978.

(5) Tennessee regulations governing temporary variances were promulgated by the Commissioner of Labor on July 2, 1973 (effective July 13, 1973) and the Commissioner of Public Health on April 3, 1974 (effective May 3, 1974) and approved by the Secretary of Labor on August 15, 1975 (40 FR 36566, August 21, 1975). These regulations, which were subsequently consolidated, codified as Tennessee Department of Labor Chapter 0800-1-2, expanded to include permanent variances, and amended in response to Federal comment, were reapproved by the Assistant Secretary on May, 1978. A further Tennessee plan amendment pledging to honor all multi-establishment variances granted by the Assistant Secretary to employers for places of employment within the State of Tennessee under procedures to which the State of Tennessee was given an opportunity to participate (29 CFR 1905.13 and 1905.14) was approved by the Assistant Secretary on November 7, 1977 (42 FR 5846, November 11, 1977).

(6) A manual Management Information System was implemented in July, 1973, and converted to an automated system in July, 1975. Documentation describing the completion of this developmental step was approved by the Assistant Secretary on November 7, 1977 (42 FR 58746, November 11, 1977).

(7) A Tennessee occupational safety and health poster for private employers and local government employers choosing to be treated as private employers was approved by the Secretary of Labor on August 15, 1975 (40 FR 36566, August 21, 1975). A separate poster for State government and all other local government employers was approved by the Assistant Secretary on May 3, 1978. These posters advise employees of their rights and obligations under the Tennessee plan and are required to be posted in all workplaces throughout the State.

(8) Tennessee regulations governing the operation of the Tennessee Occupational Safety and Health Review Commission (Chapters 1030-1 through 1030-7) were promulgated on May 5, 1974, subsequently amended in response to Federal comment on February 13, 1978, and approved by the Assistant Secretary on May 3, 1978.

(9) A revised Tennessee Compliance Operations Manual was initially developed in May, 1976, subsequently amended in response to Federal comment and to reflect changes in Federal procedures through December 20, 1976, and approved by the Assistant Secretary on May 3, 1978.

(10) A Tennessee Public Employee plan and implementing regulations (Tennessee Department of Labor Chapter 0800-1-5) have been adopted by the State, amended in response to Federal comment and approved by the Assistant Secretary on May 3, 1978.

(11) The Tennessee Department of Labor entered into agreement with the

University of Tennessee Center for Government Training for development of a 30 hour course entitled "OSHA for Laymen" be presented at 17 local education facilities. The Secretary of Labor approved the goals of the contract on August 15, 1975 (40 FR 36566, August 21, 1975) and the Assistant Secrtary approved its successful completion on November 11, 1977).

(12) The Tennessee State plan narrative was amended in the following manner: (a) To reflect throughout the language of the 1974 enacted legislative amendments and current program operation; (b) to include a pledge to operate in accord with Federal direction for handling of serious violations and imminent danger situations discovered during on-site consultation activities; (c) to reflect promulgation of State occupational safety and health standards; (d) to document completion of training for Division of Occupational Safety and Health employees and to assure that all new compliance officers will attend the Chicago Institute. This change was approved by the Assistant Secretary on November 7, 1977 (42 FR 58746, November 11, 1977).

(13) The Tennessee Uniform Administrative Procedures Act as amended in 1975 which defines State-wide procedures for the adoption and filing of rules and regulations including those dealing with occupational safety and health, was approved by the Assistant Secretary as a plan amendment on November 7, 1977 (42 FR 58746, November 11, 1977).

(14) The Tennessee redesignation of its job title, "industrial hygienist" as "environmental engineer" was approved by the Secretary of Labor on August 15, 1975 (40 FR 36566, August 11, 1977).

(15) The Tennessee certification that all positions in the Division of Occupational Safety were placed under the State's merit system by Executive Order effective July 1, 1975, and that all positions in the occupational health program previously under the Department of Public Health are included in the classified service of the State's approved merit system was approved by the Assistant Secretary on November 7, 1977 (42 FR 58746, November 11, 1977).

(b) The personnel operations of the Tennessee Department of Labor, Occupational Safety and Health Division, and the servicing merit system agency 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 January 22, 1976. (See section (a)(15) above.) In addition a Tennessee Department of Labor affirmative action plan to promote equal employment opportunity dated November 5, 1976, has been judged acceptable by the U.S. Civil Service Commission and the Regional Administrator.

(c) 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, and 1918 (longshoring, ship repairing, shipbuilding, shipbreaking), which are excluded from coverage under the plan, and the State program covering State and local government employees. In addition coverage of railroad employees is likewise excluded from this certification pursuant to a Supreme Court of Tennessee ruling on February 2, 1976, in *Fowinkle* v. *Southern Railway Co.* (553 SW. 2d 278, 1976) that the Tennessee Occupational Safety and Health Act of 1972 does not extend to this group of workers. Pending resolution of this jurisdictional question at the Federal level, coverage for this group of workers will be provided by Federal OSHA.

LOCATION OF THE PLAN AND ITS APPROVED SUPPLEMENTS FOR INSPECTION AND COPYING

A copy of these approved supplements, along with the approved plan may be inspected and copied during normal business hours at the following locations: 2100 M Street NW., Washington, D.C. 20210; Office of the Regional Administrator, Region IV, Occupational Safety and Health Administration, 1375 Peachtree Street NE., Suite 567, Atlanta, Ga. 30309; and Office of the Tennessee Commissioner of Labor, 501 Union Building, Nashville, Tenn. 37210.

EFFECT OF CERTIFICATION

The performance of the Tennessee occupational safety and health program in actual operation will be monitored and evaluated after publication of this certification, to determine whether the State is providing an effective program under *AFL-CIO* v. *Marshall* cited above. The Assistant Secretary will then make a determination under section 18(e) of the Act whether Federal enforcement authority and standards should cease to apply to issues under the plan.

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 666) and Federal standards authority under section 6 (29 U.S.C. 655) of the Act will not be relinquished during this evaluation period. However, under the terms of an operational status agreement entered into with Tennessee on November 11, 1974 (39 FR 44200, December 23, 1974) and amended April 14, 1976, (41 FR 34252, August 13, 1976), the exercise of this authority by the U.S. Department of Labor will continue to be limited to, among other things: 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 Tennessee plan; working conditions in railroads, except working conditions as to which other Federal agencies exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety and health; and investigations and inspections for the purpose of the evaluation of the Tennessee plan under section 18(e) and (f) of the Act.

In accordance with this certification, 29 CFR 1952.224 is hereby amended to reflect successful completion of the developmental period by adding a paragraph (k) as follows:

§ 1952.224 Completion of developmental steps and certification.

* * * * *

(k) In accordance with § 1902.34 of this chapter, the Tennessee occupational safety and health plan received certification, effective May 3, 1978, as having completed all developmental steps specified in its plan as approved on June 28, 1973, on or before July 1, 1976.

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

Signed at Washington, D.C., this 3rd day of May 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-13262 Filed 5-15-78; 8:45 am]

[4510-26]

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Supplement to Tennessee State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: The Tennessee Compliance Operations Manual (Manual) provides direction to the Tennessee occupational safety and health enforcement staff on compliance procedures under the Tennessee Occupational Safety and Health Act of 1972. Notice

of a revised manual was published in the FEDERAL REGISTER (41 FR 1918, January 13, 1976). Additions and corrections to this supplement reflecting State-initiated changes and in response to Federal review and comment have been submitted by the State. This document provides notice that the Manual is approved as amended. This approval constitutes successful completion of a developmental aspect of the State's plan.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION CONTACT:

Barbara Bryant, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, 202-634-4922.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR part 1902. On July 5, 1973, notice was published in the FEDERAL REGISTER (38 FR 17838) of the approval of the Tennessee plan and the adoption of subpart P of part 1952 containing the decision and describing the plan. On January 13, 1976, notice of submission of a revised Tennessee Compliance Operations Manual was published in the FEDERAL REGISTER (41 FR 1918). Subsequently, on February 2, 1976, April 29, 1976, June 30, 1976, September 24, 1976, July 1, 1977, October 12, 1977, and March 2, 1978, Tennessee submitted additions and corrections to this supplement reflecting State-initiated changes and in response to Federal review and comment. The supplement and its amendments are described below:

DESCRIPTION OF THE SUPPLEMENT

The Tennessee Compliance Operations Manual provides direction to State compliance staff in carrying out the requirements of the Tennessee Occupational Safety and Health Act of 1972. The manual generally reflects procedures equivalent to those in the Federal OSHA Field Operations Manual as of December 1, 1976. (The State has responded to subsequent Federal Program Changes and is amending its manual to reflect the assignment of all occupational safety and health responsibility to the Commissioner of Labor as of July 1, 1977, but those supplements are not developmental steps and therefore are not reflected herein.) In response to Federal review and comment, the following changes were made to the State's original submission:

(a) Description of the responsibility of the Director of Occupational Safety and Health;

(b) Provision for legal action to be taken in event of forcible interference with an inspection;

(c) Requirement for State compliance officers to check employer compliance with State recordkeeping and reporting requirements;

(d) Clarification of actions subsequent to referral of health or safety hazards to appropriate specialists;

(e) Provision for issuance of expedited citations in specific situations;

(f) Revision of the definition of repeated violation as it applies to nonfixed establishments. (Repetition of a similar violation anywhere within the State is considered repeated.);

(g) Correction of imminent danger definition;

(h) Addition of procedures identical to the Federal for consideration of Petitions for Modification of Abatement;

(i) Addition of section describing pre-contest informal conferences and post-contest settlement conferences with employers;

(j) Revision of penalty calculation procedures for failure to abate, willful, repeated, and regulatory violations, to make them identical to Federal procedures;

(k) Clarification of penalty collection procedures;

(l) Addition of an informal complaint policy identical to the Federal.

LOCATION OF THE PLAN AND ITS SUPPLEMENTS FOR INSPECTION AND COPYING

A copy of this approved supplement, along with the approved plan, may be inspected and copies during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, 2100 M Street NW., Washington, D.C. 20210; Office of the Regional Administrator, Region IV, Occupational Safety and Health Administration, 1375 Peachtree Street NE., Suite 567, Atlanta, Ga. 30309; and Office of the Tennessee Commissioner of Labor, 501 Union Building, Nashville, Tenn. 37210.

DECISION

No public comments or requests for a hearing were received in response to the January 13, 1976, FEDERAL REGISTER notice. Subsequent plan change submissions described herein merely update and/or bring into closer conformity with Federal regulations an existing State plan document which was previously made available for public comment. Therefore, after consideration, the Tennessee Compliance Operations Manual, as amended and described above, is hereby approved under part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally. In addition, 29 CFR 1952.224 is amended by adding a new paragraph (i) as follows:

§ 1952.224 Completed developmental steps.

* * * * *

(i) In accordance with plan commitments, Tennessee revised its original Compliance Operations Manual on May 19, 1975. The manual which was subsequently amended in response to Federal comment and to reflect all Federal procedures in effect as of December 1, 1976, was approved by the Assistant Secretary on May 3, 1978.

(Secs. 8(g), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 667).)

Signed at Washington, D.C., this 3rd day of May 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-13285 Filed 5-15-78; 8:45 am]

[4510-26]

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Supplements to Tennessee State Plan

AGENCY: Occupational Safety and Health Administration, labor.

ACTION: Final rule.

SUMMARY: Approval of the following regulations constitutes successful completion of four developmental aspects of the Tennessee State occupational safety and health plan: (a) occupational safety and health inspections, citations, and proposed penalties, (b) variances from occupational safety and health standards, (c) rules of the Occupational Safety and Health Review Commission, and (d) occupational safety and health recordkeeping and reporting. In addition, amendments to the Tennessee Occupational Safety and Health Act of 1972, as enacted by the Tennessee General Assembly, effective July 1, 1977 transferring all occupational safety and health responsibility to the Tennessee Commissioner of Labor are approved.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION, CONTACT:

Barbara E. Bryant, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, telephone: 202-634-4923.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the FEDERAL REGISTER (38 FR 17838) of the approval of the Tennessee Plan and the adoption of Subpart P of Part 1952 containing the decision and describing the plan. On September 5, 1975, and January 13, 1976, notice of submission of a number of Tennessee supplements involving developmental and State-initiated changes was published in the FEDERAL REGISTER (40 FR 41148 and 41 FR 1918, respectively). Subsequently on April 19, April 28, July 1, and November 23, 1977, and on February 6, 1978, Tennessee submitted further additions and amendments to several of these supplements in response to Federal review and comment. The supplements covered by this notice are described below:

DESCRIPTION OF THE SUPPLEMENTS

(a) *Legislation.* During the 1977 session of the Tennessee General Assembly, the Tennessee Occupational Safety and Health Act of 1972 was amended to transfer all responsibility and authority under the Tennessee Act to the Commissioner of Labor and to provide that promulgation of all rules, regulations, and standards under the Tennessee Act and procedures for contested cases thereunder and judicial review thereof are in conformity with the Tennessee Uniform Administrative Procedures Act.

(b) *Tennessee regulations on Inspections, Citations and Proposed Penalties.* Tennessee regulations paralleling 29 CFR Part 1903, Inspections, Citations, and Proposed Penalties, were originally approved by the Assistant Secretary for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary) on August 15, 1975, (40 FR 36566). The Tennessee Department of Labor regulations have since been recodified as Tennessee Department of Labor Chapter 0800-1-4, and the State has amended several sections both independently and in response to Federal comment. The amendments described below were promulgated on August 15, 1977, and February 13, 1978.

1. *References to Tennessee Department of Public Health.* In response to the Tennessee General Assembly's recent amendment of the Tennessee Act, this regulation has been amended throughout to remove references to the Commissioner of Public Health.

2. *Objection to inspection.* Section 0800-1-4.05 has been amended to provide for compulsory process in the event entry for inspection is denied.

3. *Advance notice of inspection.* A new paragraph, section 0800-1-4.07(3), has been added to reflect the criminal penalty provided by the Tennessee Act for unauthorized advance notice. Section 0800-1-4.07(1) has been revised to eliminate an earlier provision that advance notice could be provided for fatality/catastrophe investigations.

4. *Trade secrets.* Section 0800-1-4.10 now references the Tennessee penalty for unauthorized disclosure of a trade secret.

5. *Citations, notice of DeMinimis Violations.* Section 0800-1-4.15(2) has been revised to remove the 60-day maximum abatement period. A new section 0800-1-15(6) describing procedures for considering a petition for modification of abatement has been added. The procedure is identical to the Federal procedure with the exception that in Tennessee employees have 20 calendar days in which to object to a petition prior to action by the Commissioner of Labor.

6. *Employer and employee contests.* Section 0800-1-4.18(2) has been amended to reflect an employee's right under Tennessee law to contest citations as well as abatement dates.

(c) *Tennessee regulations on occupational safety and health recordkeeping and reporting.* Tennessee regulations paralleling the Federal 29 CFR Part 1904, Recording and Reporting of Occupational Injuries and Illnesses, were originally promulgated on June 10, 1974, and subsequently revised on April 15, 1976, July 14, 1977, August 15, 1977, and February 13, 1978. The regulation is codified as Tennessee Department of Labor Chapter 0800-1-3 and contains provisions essentially identical to the Federal regulation. State and local government employers are excluded from coverage under this regulation as a separate regulation (Chapter 0800-1-5) covers public sector recordkeeping. Employers having fewer than 10 employees at any one time during the working year are likewise excluded from coverage except if selected for participation in the annual survey.

(d) *Tennessee regulations on variances from Occupational Safety and Health Standards.* Tennessee regulations paralleling the Federal 29 CFR Part 1905, Rules of Practice for Variances, have been codified as Tennessee Department of Labor Chapter 0800-1-2. The regulation includes procedures for granting temporary variances (which were previously approved on August 15, 1975, 40 FR 39566) and permanent variances. The State has also corrected several sections of the regulations in response to Federal comment. The corrections, which were promulgated on August 15, 1977, include:

1. A description of the contents of an application for a temporary variance (0800-1-2.06);

2. Provisions for renewal of a temporary variance (0800-1-2.07(3));

3. A description of the contents of the newspaper notice to be published on all adequate variance applications under consideration (0800-1-2.08(2));

4. Provision for affected employers and employees to request a hearing on any variance application within 30 days of publication of notice (0800-1-2.09(1));

5. Provision for specifying in the variance application the occupational safety and health standard from which a permanent variance is requested (0800-1-2.18(3)(c)).

(e) Tennessee Rules of the Occupational Safety and Health Review Commission. Regulations describing the operation of the independent Tennessee Occupational Safety and Health Review Commission were originally promulgated on May 5, 1974, and subsequently amended in response to Federal comment on Februay 13, 1978. The regulation, codified as Chapters 1030-1 through 1030-7, parallels the Federal 29 CFR Part 2200. The corrections and revisions include:

1. References to Hearing Examiner have been changed to that of Administrative Judge throughout;

2. Employee right to contest the terms and conditions of a citation, not merely the abatement date, as provided by the Tennessee Act (1030-2.01);

3. Provision for Review Commission action on petitions for modification of abatement applied for and contested as provided in Tennessee Department of Labor regulation 0800-1-4.15(6)(1030-3.05);

4. Removal of provision for administrative amendment of citations by the Tennessee Department of Labor after contest but prior to expiration of the contest period;

5. Removal of provisions allowing unilateral review of Review Commission rules. (The Tennessee Uniform Administrative Procedures Act requires public notice and opportunity for public hearing prior to such revision).

LOCATION OF THE PLAN AND ITS SUPPLEMENTS FOR INSPECTION AND COPYING

A copy of these approved supplements, along with the approved plan may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, 2100 M Street NW., Washington, D.C. 20210; Office of the Regional Administrator, Region IV, Occupational Safety and Health Administration, 1375 Peachtree Street

NE., Suite 567, Atlanta, Ga. 30309; and Office of the Tennessee Commissioner of Labor, 501 Union Building, Nashville, Tenn. 37210.

DECISION

No public comments or requests for a hearing were received in response to the September 5, 1975, and January 13, 1976, FEDERAL REGISTER notices. Subsequent plan change submissions described herein merely update and/or bring into closer conformity with Federal regulations existing State plan documents which were previously made available for public comment. Therefore, after consideration, the Tennessee plan supplements outlined above are hereby approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

In addition, 29 CFR 1952.224 is amended by deleting paragraphs (a), (b) and (c) thereof and replacing them with revised paragraphs (a), (b) and (c). New paragraphs (g) and (h) are also added. The revised and new paragraphs read as follows:

§ 1952.224 Completed developmental steps.

(a) In accordance with § 1952.223(b), the Tennessee Occupational Safety and Health Act of 1972 was amended by Chapter 585, Public Acts of 1974, on March 20, 1974, with an effective date of July 1, 1974 and approved by the Secretary of Labor in August 15, 1975 (40 FR 36556). Further State-initiated amendments to the Act transferring all occupational safety and health responsibility to the Commissioner of Labor were promulgated effective July 1, 1977, and approved by the Assistant Secretary on May 3, 1978.

(b) In accordance with § 19522.223(d), regulations governing inspections, citations, and proposed penalties were originally promulgated by the Commissioner of Labor on July 2, 1973 (effective July 13, 1973) and approved by the Assistant Secretary on August 15, 1975 (40 FR 36556). These regulations were subsequently codified as Tennessee Department of Labor Chapter 0800-1-4 and reapproved by the Assistant Secretary, as amended, on May 3, 1978. The Tennessee Commissioner of Public Health promulgated parallel regulations on April 3, 1974 (effective May 3, 1974) which were also approved on August 15, 1975. These Department of Public Health regulations became inoperative on July 1, 1977.

(c) In accordance with § 1952.223(e), regulations governing temporary variances were promulgated by the Commissioner of Labor on July 2, 1973 (effective July 13, 1973) and approved by the Assistant Secretary on August 15, 1975, (40 FR 36566). These regulations, which were subsequently codified as Tennessee Department of Labor Chapter 0800-1-2, were expanded to include permanent variances, and amended in response to Federal comment, and reapproved by the Assistant Secretary on May 3, 1978. The Commissioner of Public Health promulgated regulations dealing with temporary variances on April 3, 1974, (effective May 3, 1974) which were also approved by the Secretary on August 15, 1975. These Department of Public Health regulations became inoperative on July 1, 1977.

* * * * *

(g) In accordance with plan commitments, regulations governing Occupational Safety and Health Recordkeeping and Reporting (Chapter 0800-1-3) were promulgated by the Tennessee Department of Labor on June 10, 1974, and subsequently amended on April 15, 1976, July 14, 1977, August 15, 1977 and February 13, 1978. These regulations, which contain requirements essentially identical to the Federal 29 CFR Part 1904, were approved by the Assistant Secretary on May 3, 1978.

(h) In accordance with plan commitments, the Tennessee Occupational Safety and Health Review Commission promulgated regulations governing its operation on May 5, 1974 (Chapters 1030-1 through 1030-7). These regulations were subsequently amended in response to Federal comment on February 13, 1978, and approved by the Assistant Secretary on May 3, 1978.

(Secs. 8(g), 18 Pub. L. 91-596, 84 Stat. 1600, 1608 (29 U.S.C. 657(g), 667).)

Signed at Washington, D.C. this 3rd day of May, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-13286 Filed 5-15-78; 8:45 am]

[4510-26]

PART 1952—APPROVED STATE PLANS FOR ENFORCEMENT OF STATE STANDARDS

Approval of Supplements to Tennessee State Plan

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Final rule.

SUMMARY: This document approves supplements to the Tennessee State Occupational Safety and Health Plan involving developmental and State-initiated changes. The supplements include descriptions of coverage of State and local government employees, Tennessee Department of Labor regulations codifying public sector program specifics and a public employee poster. This approval constitutes successful completion of a developmental aspect of the State's plan.

EFFECTIVE DATE: May 3, 1978.

FOR FURTHER INFORMATION, CONTACT:

Barbara E. Bryant, Office of State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, 202-634-4922.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667) (hereinafter called the Act) for review of changes and progress in the development and implementation of State plans which have been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On July 5, 1973, notice was published in the FEDERAL REGISTER (38 FR 17838) of the approval of the Tennessee plan and the adoption of Subpart P of Part 1952 containing the decision and describing the plan. On September 5, 1975, and January 13, 1976, notice of submission of a number of Tennessee supplements involving developmental and State-initiated changes was published in the FEDERAL REGISTER (40 FR 41148 and 41 FR 1918, respectively). Subsequently, in April, 1976, and on September 27, 1977, February 6, 1978, and March 9, 1978, Tennessee submitted further additions and corrections to those supplements concerning the State's Public Sector program in response to Federal review and comment. The supplements covered by this notice are described below:

DESCRIPTION OF THE SUPPLEMENTS

(a) *Public Sector Regulations.* On June 21, 1977, the Tennessee Department of Labor initiated promulgation procedures for a new regulation formalizing the State's responsibility for occupational safety and health enforcement activity in the public sector. TDOL Chapter 0800-1-5, entitled Safety and Health Provisions for the Public Sector, (effective September 13, 1977 with amendments effective February 13, 1978, and July 14, 1978) implements section 19 of the Tennessee Occupational Safety and Health Act of 1972 which requires State agencies and those local governments not choosing to be treated as private employers to develop a comprehensive self-compliance program. The Tennessee Department of Labor, in addition to monitoring these self-compliance programs, provides the following enforcement activity:

1. The department will conduct monitoring inspections, including a walkthrough, of at least one worksite in at least two departments or establishments and review records of each public sector program at least biennially. These inspections will result in the issuance of citations with abatement dates for standards violations which may be contested by public employers and employees to the Tennessee Occupational Safety and Health Review Commission. Monetary penalties will not be proposed.

2. The department will respond to and inspect, in a manner identical to private sector coverage, all public sector employee complaints filed with the Tennessee Department of Labor;

3. The department will conduct an investigation, including an inspection, of all fatalities and accidents resulting in the hospitalization of 5 or more employees in the public sector;

4. The department will respond to discrimination complaints filed by public sector employees in a manner identical to private sector coverage;

5. The department will take action in the case of defective agency self-compliance programs, including notification, opportunity for contest to the Review Commission (in the case of State agencies), negotiation, and referral for gubernatorial action.

(b) *Public Sector Plan.* Part IV of the Tennessee plan has been amended to reflect that designee's enforcement activities required by TDOL Chapter 0800-1-5, entitled Safety and Health Provisions in the Public Sector, as well as general requirements for State agency and local government self-compliance programs.

State agencies are required to maintain an effective and comprehensive occupational safety and health program in compliance with the standards and regulations promulgated under the Tennessee Occupational Safety and Health Act, including a program of self-inspection and internal sanctions, subject to monitoring by the Commissioner of Labor. A Tennessee Occupational Safety and Health Council has been established to assist State agencies in achieving compliance. State agency programs found defective may be cited and may contest the citation before the Tennessee Review Commission which will in turn submit its findings of fact and recommendations to the Governor.

County, municipal and other local governments have the option of being treated as a private employer or developing their own program of self-compliance. Details on the components of an adequate self-compliance program are discussed in the plan supplement. Each political subdivision must submit a plan of action for approval by the Commissioner of Labor. Determination that a self-compliance program is ineffective can result in revocation, by the Governor, of the local government's right to maintain a self-compliance program in favor of being treated as a private employer.

(c) *Public Employee Poster.* A Tennessee occupational safety and health poster for public employees has been developed by the Tennessee Department of Labor. The poster contains provisions notifying public employees of their obligations and protections under the Tennessee Act, their right to request inspections and their right to remain anonymous as a result, their right to participate in inspections through walkaround and/or employee interviews, their protection against discharge or discrimination for exercising their rights under State law, and their right to file complaints about the administration of the State program with the Occupational Safety and Health Administration. This poster is intended for the information of employers and employees in the public sector, except for those local governments choosing to be treated as private employers as provided in section 19 of the Tennessee Act.

LOCATION OF THE PLAN AND ITS SUPPLEMENTS FOR INSPECTION AND COPYING

A copy of these approved supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of State Programs, Occupational Safety and Health Administration, 2100 M Street, NW., Washington, D.C. 20210; Office of the Regional Administrator, Region IV, Occupational Safety and Health Administration, 1375 Peachtree Street, NE, Suite 567, Atlanta, Ga. 30309; and Office of the Tennessee Commissioner of Labor, 501 Union Building, Nashville, Tenn. 37210.

DECISION

No comments or requests for a hearing were received in response to the September 5, 1975, and January 13, 1976, FEDERAL REGISTER notices. Subsequent plan change submissions described herein merely update and/or bring into closer conformity with Federal regulations an existing State plan document which was previously made available for public comment. Therefore, after consideration, the Tennessee regulations on Safety and Health Provisions in the Public Sector (TDOL Chapter 0800-1-5), Part IV of the Tennessee plan dealing with public sector compliance, and the Tennessee public employee poster, as amended and described above, are hereby approved under Part 1953. This decision incorporates the requirements of the Act and implementing regulations applicable to State generally.

In addition, 29 CFR 1952.224 is amended by amending paragraph (d) as set forth below, and by adding a new paragraph (j):

§ 1952.224 Completed development steps.

* * * * * *

(d) In accordance with the requirements of 29 CFR 1952.10, the Tennessee occupational safety and health poster for private employers and local government employers choosing to be treated as private employers was approved by the Assistant Secretary on August 15, 1975. In addition, a Tennessee occupational safety and health poster for public employees was approved by the Assistant Secretary on May 3, 1978.

* * * * * *

(j) In accordance with State plan commitments, a Tennessee Public Employee plan and implementing regulations (Tennessee Department of Labor Chapter 0800-1-5) have been adopted and were approved by the Assistant Secretary on May 3, 1978.

(Secs. 8(g), 18, Pub. L. 91-596, 84 Stat. 1600, 1608 29 U.S.C. 657(g), 667).)

Signed at Washington, D.C. this 3rd day of May, 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-13287 Filed 5-15-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

[FRL 882-6]

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

Subchapter C—Air Programs

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

Delegation of Authority to State/Local Air Pollution Control Agencies in Arizona, California, and Nevada

AGENCY: Environmental Protection Agency.

ACTION: Final Rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is amending 40 CFR 60.4 *Address* by adding addresses of agencies to reflect new delegations of authority from EPA to certain state/local air pollution control agencies in Arizona, California, and Nevada. EPA has delegated authority to these agencies, as described in a notice appearing elsewhere in today's FEDERAL REGISTER, in order to implement and enforce the standards of

performance for new stationary sources.

EFFECTIVE DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald Katz (E-4-3), Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, 415-556-8005.

SUPPLEMENTARY INFORMATION: Pursuant to delegation of authority for the standards of performance for new stationary sources (NSPS) to State/Local air pollution control agencies in Arizona, California, and Nevada from March 30, 1977 to January 30, 1978, EPA is today amending 40 CFR 60.4 *Address*, to reflect these actions. A Notice announcing this delegation is published elsewhere in today's FEDERAL REGISTER. The amended § 60.4 is set forth below. It adds the address of the air pollution control agencies, to which must be addressed all reports, requests, applications, submittals, and communications pursuant to this part by sources subject to the NSPS located within these agencies' jurisdictions.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation actions which are reflected in this administrative amendment were effective on the dates of delegation and it serves no purpose to delay the technical change on these additions of the air pollution control agencies' addresses to the Code of Federal Regulations.

(Sec. 111, Clean Air Act, as amended (42 U.S.C. 7411).)

Dated: April 5, 1978.

SHEILA M. PRINDIVILLE,
Acting Regional Administrator, Environmental Protection Agency, Region IX.

Part 60 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

1. In § 60.4 paragraph (b) is amended by revising subparagraphs D, F, and DD to read as follows:

§ 60.4 Address.

* * * * *

(b) * * *

(D) Arizona:

Maricopa County Department of Health Services, Bureau of Air Pollution Control, 1825 East Roosevelt Street, Phoenix, AZ 85006.

Pima County Health Department, Air Quality Control District, 151 West Congress, Tucson, AZ 85701.

* * * * *

(F) California:

Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, CA 94109.

Del Norte County Air Pollution Control District, Courthouse, Crescent City, CA 95531.

Fresno County Air Pollution Control District, 515 S. Cedar Avenue, Fresno, CA 93702.

Humboldt County Air Pollution Control District, 5600 S. Broadway, Eureka, CA 95501.

Kern County Air Pollution Control District, 1700 Flower Street (P.O. Box 997), Bakersfield, CA 93302.

Madera County Air Pollution Control District, 135 W. Yosemite Avenue, Madera, CA 93637.

Mendocino County Air Pollution Control District, County Courthouse, Ukiah, CA 94582.

Monterey Bay Unified Air Pollution Control District, 420 Church Street (P.O. Box 487), Salinas, CA 93901.

Northern Sonoma County Air Pollution Control District, 3313 Chanate Road, Santa Rosa, CA 95404.

Sacramento County Air Pollution Control District, 3701 Branch Center Road, Sacramento, CA 95827.

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123.

San Joaquin County Air Pollution Control District, 1601 E. Hazelton Street (P.O. Box 2009), Stockton, CA 95201.

Santa Barbara County Air Pollution Control District, 4440 Calle Real, Santa Barbara, CA 93110.

Shasta County Air Pollution Control District, 1855 Placer Street, Redding, CA 96001.

South Coast Air Quality Management District, 9420 Telstar Avenue, El Monte, CA 91731.

Stanislaus County Air Pollution Control District, 820 Scenic Drive, Modesto, CA 95350.

Trinity County Air Pollution Control District, Box AJ, Weaverville, CA 96093.

Ventura County Air Pollution Control District, 625 E. Santa Clara Street, Ventura, CA 93001.

* * * * *

(DD) Nevada:

Nevada Department of Conservation and Natural Resources, Division of Environmental Protection, 201 South Fall Street, Carson City, NV 89710.

Clark County County District Health Department, Air Pollution Control Division, 625 Shadow Lane, Las Vegas, NV 89106.

Washoe County District Health Department, Division of Environmental Protection, 10 Kirman Avenue, Reno, NV 89502.

* * * * *

[FR Doc. 78-13011 Filed 5-15-78; 8:45 am]

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 882-7]

PART 61—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS

Delegation of Authority to State/Local Air Pollution Control Agencies in Arizona, California, and Nevada

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is amending 40 CFR 61.04 *Address* by adding addresses of agencies to reflect new delegations of authority from EPA to certain state/local air pollution control agencies in Arizona, California, and Nevada. EPA has delegated authority to these agencies, as described in a notice appearing elsewhere in today's FEDERAL REGISTER, in order to implement and enforce the national emission standards for hazardous air pollutants.

EFFECTIVE DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Gerald Katz (E-4-3), Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, 415-556-8005.

Pursuant to delegation of authority for national standards for hazardous air pollutants (NESHAPS) to State/Local air pollution control agencies in Arizona, California, and Nevada from March 30, 1977, to January 30, 1978, EPA is today amending 40 CFR 61.04 *Address*, to reflect these actions. A notice announcing this delegation is published elsewhere in today's FEDERAL REGISTER. The amended § 61.04 is set forth below. It adds the address of the air pollution control agencies, to which must be addressed all reports, requests, applications, submittals, and communications pursuant to this part by sources subject to the NESHAPS located within these agencies' jurisdictions.

The Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. The delegation actions which are reflected in this administrative amendment were effective on the dates of delegation and it serves no purpose to delay the technical change on these additions of the air pollution control agencies' addresses to the Code of Federal Regulations.

(Sec. 112, Clean Air Act, as amended (42 U.S.C. 7411).)

Dated: April 5, 1978.

SHAILA M. PRINDIVILLE,
Acting Regional Administrator, EPA, Region IX.

Part 61 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. In § 61.04 paragraph (b) is amended by revising subparagraphs D, F, and DD to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(D) Arizona.
Maricopa County Department of Health Services, Bureau of Air Pollution Control, 1825 East Roosevelt Street, Phoenix, Ariz. 85006.
Pima County Health Department, Air Quality Control District, 151 West Congress, Tucson, Ariz. 85701.

* * * * *

(F) California.
Bay Area Air Pollution Control District, 939 Ellis Street, San Francisco, Calif. 94109.
Del Norte County Air Pollution Control District, Courthouse, Crescent City, Calif. 95531.
Fresno County Air Pollution Control District, 515 South Cedar Avenue, Fresno, Calif. 93702
Humboldt County Air Pollution Control District, 5600 South Broadway, Eureka, Calif. 95501.
Kern County Air Pollution Control District, 1700 Flower Street (P.O. Box 997), Bakersfield, Calif. 93302.
Madera County Air Pollution Control District, 135 West Yosemite Avenue, Madera, Calif. 93637.
Mendocino County Air Pollution Control District, County Courthouse, Ukiah, Calif. 94582.
Monterey Bay Unified Air Pollution Control District, 420 Church Street (P.O. Box 487), Salinas, Calif. 93901.
Northern Sonoma County Air Pollution Control District, 3313 Chanate Road, Santa Rosa, Calif. 95404.
Sacramento County Air Pollution Control District, 3701 Branch Center Road, Sacramento, Calif. 95827.
San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, Calif. 92123.
San Joaquin County Air Pollution Control District, 1601 East Hazelton Street (P.O. Box 2009), Stockton, Calif. 95201.
Santa Barbara County Air Pollution Control District, 4440 Calle Real, Santa Barbara, Calif. 93110.
Shasta County Air Pollution Control District, 1855 Placer Street, Redding, Calif. 96001.
South Coast Air Quality Management District, 9420 Telstar Avenue, El Monte, Calif. 91731.
Stanislaus County Air Pollution Control District, 820 Scenic Drive, Modesto, Calif. 95350.
Trinity County Air Pollution Control District, Box AJ, Weaverville, Calif. 96093.
Ventura County Air Pollution Control District, 625 East Santa Clara Street, Ventura, Calif. 93001.

* * * * *

(DD) Nevada.
Clark County, County District Health Department, Air Pollution Control Division, 625 Shadow Lane, Las Vegas, Nev. 89106.
Washoe County District Health Department, Division of Environmental Protection, 10 Kirman Avenue, Reno, Nev. 89502.

* * * * *

[FR Doc. 78-13012 Filed 5-15-78; 8:45 am]

[6820-24]

Title 41—Public Contracts and Property Management

CHAPTER I—FEDERAL PROCUREMENT REGULATIONS

[FPR Temp. Reg. 44, Supp. 1]

COST ACCOUNTING STANDARDS BOARD REQUIREMENTS

CROSS REFERENCE: For the text of a temporary regulation published by the General Services Administration on the implementation of Cost Accounting Standards Board requirements regarding national defense contracts of civilian executive agencies and negotiated non-defense contracts see FR Doc. 78-13276 appearing in the Notices section of this issue. Refer to the table of contents under "General Services Administration" for the page number.

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[BC Docket No. 78-21; RM-2932]

PART 73—RADIO BROADCAST SERVICES

FM Broadcast Station in Ronan, Mont.; Changes Made in Table of Assignments

AGENCY: Federal Communications Commission.

ACTION: Report and Order.

SUMMARY: Action taken herein assignes a Class C FM channel to Ronan, Mont., as that community's first FM assignment. The channel provides for an FM station which could furnish first and second FM as well as first and second nighttime aural service to substantial areas and populations.

EFFECTIVE DATE: June 19, 1978.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Mildred B. Nesterak, Broadcast Bureau, 202-632-7792.

SUPPLEMENTARY INFORMATION:

REPORT AND ORDER—(PROCEEDING TERMINATED)

Adopted: May 5, 1978.

Released: May 10, 1978.

In the matter of amendment of § 73.202(b), Table of Assignments, FM Broadcast Stations (Ronan, Mont.), BC Docket No. 78-21, RM-2932.

1. The Commission herein considers the Notice of Proposed Rule Making, 43 FR 3405, in the above-captioned proceeding, instituted in response to a petition filed by KBMR Radio, Inc. ("petitioner"), licensee of AM Station KERR, Polson, Mont. The petitioner proposed the assingment of Class C FM Channel 222 to Ronan, Mont. No oppositions were filed to the petition. Petitioner filed supporting comments in which it reaffirmed its intention to file for the channel, if assigned.

2. Ronan (pop. 1,347), situated in Lake County (pop. 14,445),[1] is located 216 kilometers (135 miles) west of Great Falls, Mont., and 248 kilometers (155 miles) east of Spokane, Wash. It is located in the Flathead Indian Reservation which extends through several counties.

3. Petitioner states that Lake County's population has increased 10 percent between 1960-1970. We are told the principal industry in the area surrounding the reservation is related to forestry. In support of its proposal, petitioner submitted sufficient information with respect to the need for a Class C FM assignment to Ronan to serve the large, sparsely populated area a Class A station could not reach.

4. Channel 222 could be assigned to Ronan, Mont., in conformity with the minimum distance separation requirements. Preclusion would be caused on noncommercial educational Channels 219A, 220A, and 220 in Kalispell (pop. 10,526), Columbia Falls (2,652), Missoula (29,497), Polson (2,464), and Whitefish (3,349). All of the above, plus nine additional communities over 1,000 population will sustain preclusion on one or more commercial channels. A total of nine of these communities[2] without commercial FM asssignments would sustain commercial channel preclusion. In both categories, petitioner shows that other Class A and Class C channels (educational or commercial as the case may be) are availa-

[1] Population figures are taken from the 1970 U.S. Census.

[2] Montana: Thompson Falls (pop. 1,536), Plains (1,046), Choteau (1,586), Browning (1,700), Columbia Falls (2,652), Whitefish (3,349), Polson (2,464); Idaho: Mullan (1,279), Kellogg (3,811).

ble for the communities in the precluded areas.

5. Petitioner states that since Ronan is centrally located in a large, sparsely populated area, and because of its importance to the area and the Indian population in and around the Flathead Reservation, as well as the general population, a Class C channel is warranted. It notes that the proposed channel would bring a first FM broadcast service to Ronan and Lake County. Petitioner shows that a Class C station operating with effective radiated power of 75 kilowatts and antenna height of 152 meters (500 feet) would provide a first FM service to 3,046 persons in an 2,800 square kilometer (1,050 square mile) area and a second FM service to 5,104 persons in a 4,000 square kilometer (1,580 square mile) area. The same figures would apply to a first and second nighttime aural service.

6. We have given careful consideration to the proposal and believe that Channel 222 should be assigned to Ronan, Mont. Although a community of this size is not normally assigned a Class C channel, the proposed assignment would provide for an FM station which could render first and second FM as well as first and second nighttime aural service to substantial areas and populations. Since a Class A channel would not provide such service, and since other channels are available for assignment to the communities without FM assignments located within the precluded areas, we believe the public interest would be served by assigning Channel 222 to Ronan, Mont.

7. Canadian concurrence has been obtained for the proposed assignment.

8. Authority for the action taken herein is contained in Sections 4(i), 5(d)(1), 303 (g) and (r) and 307(b) of the Communications Act of 1934, as amended, and § 0.281 of the Commission's rules.

9. In view of the foregoing: *It is ordered*, That effective June 19, 1978, § 73.202(b) of the Commission's rules and regulations, the FM Table of Assignments, as regards Ronan, Mont., is amended, to read as follows:

City and Channel No.
Ronan, Mont., 222.[3]

10. *It is further ordered*, That this proceeding is terminated.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083 (47 U.S.C. 154, 303, 307).)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-13211 Filed 5-15-78; 8:45 am]

[3]Any application for this channel must specify at least an effective radiated power of 75 kilowatts and antenna height of 500 feet above average terrain, or equivalent.

[4310-55]

Title 50—Wildlife and Fisheries

CHAPTER I—UNITED STATES FISH AND WILDLIFE SERVICE, DEPARTMENT OF THE INTERIOR

PART 32—HUNTING

Steel Shot Regulations on the Shiawassee National Wildlife Refuge, Saginaw, Michigan for the 1978 Hunting Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has required the use of steel shot on Shiawassee National Wildlife Refuge for the 1978 goose hunting season. When eaten by waterfowl, spent lead pellets have a toxic effect. Shotshells loaded with steel shot will reduce the number of deaths to waterfowl caused by eating spent lead pellets.

DATES: 1978 Goose Hunting Season as set by Federal and State of Michigan laws.

FOR FURTHER INFORMATION CONTACT:

Robert G. Johnson, Refuge Manager, Shiawassee National Wildlife Refuge, 6975 Mower Road, Saginaw, Mich. 48601, telephone 517-777-5930.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of geese on the Shiawassee National Wildlife Refuge, Michigan, is permitted during the 1978 waterfowl season. The hunting area comprising approximately 1,200 acres is delineated on maps located at the refuge headquarters, Saginaw, Mich., and at the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of geese subject to the following special conditions:

(1) Hunting shall be by Federal permit and only from assigned blinds and pits. Blind assignments will be determined by drawings.

(2) All hunters are required to use steel shot shells. These shells must be loaded with No. 4 shot or larger, except buckshot is not allowed.

(3) Lead shot shells shall not be in the possession of any reservation holders while hunting on the refuge.

(4) Each hunter may possess not more than 12 shotgun shells.

(5) A blind rental fee of two dollars per hunter is required.

(6) Not more than three hunters are permitted in each blind or pit.

(7) Permit application cards must be postmarked on or before September 15, 1978 and only successful applicants will be notified.

(8) After completion of the days hunt, all hunters must proceed to refuge headquarters for check-out and the submission of geese for examination.

The provisions of these special regulations supplement the regulations which govern hunting on wildlife refuges generally which are set forth in Title 50, Code of Federal Regulations, Part 32, and are effective through November 30, 1978. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Date: May 5, 1978.

CHARLES A. HUGHLETT,
Acting Regional Director.

[FR Doc. 78-13196 Filed 5-15-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Crab Orchard National Wildlife Refuge, Illinois, to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to migratory game bird hunting of Crab Orchard National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: As set by Federal and State of Illinois laws for 1978 season.

FOR FURTHER INFORMATION CONTACT:

Wayne D. Adams, Project Manager, Post Office Box J, Carterville, Ill. 62918, telephone 618-997-3344.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Migratory game bird hunting is permitted on the Crab Orchard National Wildlife Refuge, Ill., only on the areas designated by signs as being open to hunting. These areas comprising 23,000 acres as Areas I and III are de-

lineated on maps available at the refuge headquarters and from the Office of the Regional Director, U.S. Fish and Wildlife Service, Department of the Interior, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Migratory game bird hunting shall be in accordance with all applicable State of Illinois regulations subject to the following conditions:

(1) Only portable or temporary blinds located in the immediate vicinity of the site may be used for hunting and these must be removed or dismantled at the end of the day's hunt. Blinds and pits beyond the shoreline of refuge waters may not be constructed, established, occupied or hunted from.

(2) Waterfowl hunters using 12 gage shotguns must use steel shot shells only, and may not possess ammunition containing lead or other toxic shot.

(3) Hunters may hunt only from the refuge provided blinds on Grassy, Orchard, Sawmill and Turkey Islands during the goose season.

(4) Hunting is prohibited in areas during goose season, as posted with "No Hunting" signs.

(5) Only authorized waterfowl hunting is permitted on the controlled areas of Grassy Point, Carterville Public, and Greenbriar Road Areas from sunrise to 12:00 Noon daily during the goose season. Goose hunting on these areas is subject to the following conditions:

(a) Hunting is permitted only from existing refuge established blinds. This includes lake shorelines.

(b) Hunters must comply with all rules as posted.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comment at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 OMB Circular A-107.

Dated: May 5, 1978.

CHARLES A. HUGHLETT,
Acting Regional Director.

[FR Doc. 78-13175 Filed 5-15-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Chautauqua National Wildlife Refuge, Illinois, to Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to migratory game bird hunting of Chautauqua National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: As set by Federal and State of Illinois laws for 1978 season.

FOR FURTHER INFORMATION CONTACT:

Howard A. Lipke, Refuge Manger, Mark Twain National Wildlife Refuge, 311 N. 5th St., Suite 100, Quincy, Ill. 62301, telephone 217-224-8580.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game bird hunting for individual wildlife refuge areas.

Public hunting of migratory game birds is permitted on the Chautauqua National Wildlife Refuge, Ill., only on the areas designated by signs. These areas comprising 745 acres are delineated on maps available at the refuge headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Migratory game bird hunting shall be in accordance with all applicable State regulations subject to the following conditions:

(1) Blinds—no permanent structure, excluding wood or brush duck blinds, shall be permitted, no blinds shall be locked or otherwise sealed against public entry.

(2) Federal steel shot regulations will be in effect during the waterfowl season. The new regulations make it illegal to have 12 gauge shotgun shells in possession, except those containing non-toxic (steel) shot, while hunting waterfowl. Only 12 gauge shotguns will be required to use steel shot during the 1978 waterfowl season. All other sizes of shotgun, including 10 gauge, are exempt from the steel shot requirements during this year's season.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 5, 1978.

CHARLES A. HUGHLETT
Acting Regional Director.

[FR Doc. 78-13176 Filed 5-15-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Ottawa National Wildlife Refuge, Ohio, to Goose Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to goose hunting of Ottawa National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: Conform to 1978 season as set by Federal and State of Ohio regulations.

FOR FURTHER INFORMATION CONTACT:

Leland E. Herzberger, Refuge Manager, Ottawa National Wildlife Refuge, 14000 W. State Route 2, Oak Harbor, Ohio 43449, telephone 419-897-0211.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; hunting migratory game birds; for individual wildlife refuge areas.

Hunting of Canada, snow (including blue color phase) and white-fronted geese is permitted on the Ottawa National Wildlife Refuge, Ohio, only on the areas designated by signs as being open to hunting. These areas comprising 640 acres are delineated on maps available at the refuge headquarters and from the Office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111. Hunting shall be in accordance with all applicable State regulations subject to the following conditions:

(1) Hunting shall be by state permit and only from assigned blinds. Blind assignments will be determined by drawings.

(2) A fee of five dollars per hunter will be required for blind rental.

(3) No more than two persons per blind (permit holder and one guest) are permitted.

(4) Hunters must report to the check station at least one hour before legal shooting time.

(5) Each hunter may possess not more than 10 shells. Only nontoxic steel shot in shot sizes no larger than No. 1 will be permitted. Hunters may not have shotgun shells containing lead or other toxic shot in their possession.

(6) Hunters will be permitted to pursue and shoot downed geese only within 75 yards of their assigned blind.

(7) Hunting hours shall be from the legal opening time in the morning until 12 noon.

from any trade or business carried on by any partnership of which he or she was a member.

(b) (1) For taxable years beginning after December 31, 1977. An individual's gross income (see paragraph (c) of this section) from a trade or business ordinarily is determined in accordance with Subtitle A (Income

(8) All hunters must be out of their assigned blinds by 1:00 P.M.

(9) All hunters must report to the check station and submit their geese for examination by 2:00 P.M.

(10) The use of trained dogs to retrieve downed geese within the hunting area is permitted.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50 Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 5, 1978.

CHARLES A. HUGHLETT,
Regional Director.

[FR Doc. 78-13179 Filed 5-15-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Sherburne National Wildlife Refuge, Minnesota to Public Hunting of Migratory Game Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening to public hunting of Sherburne National Wildlife Refuge is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide additional recreational opportunity to the public.

DATES: In accordance with State of Minnesota migratory game bird seasons for 1978.

FOR FURTHER INFORMATION CONTACT:

R. B. Papike, Refuge Manager, Route 2, Zimmerman, Minn. 55398, phone 612-389-3323.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of ducks, coots, rails, Wilson snipe, and woodcock on the Sherburne National Wildlife Refuge is permitted only on the areas designated by signs as open to hunting. These open areas, comprising approximately 7,510 acres for ducks, coots, rails, Wilson snipe, and woodcock (designated area B on map); and approximately 10,850 acres for Wilson snipe and woodcock (designated area A on map), are delineated on a map available at refuge headquarters, Route 2, Zimmerman, Minn. 55398, and from the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be in accordance with all applicable State and Federal regulations covering the hunting of these species subject to the following special conditions:

1. Steel shot is required to hunt ducks and coot regardless of shotgun gage. Persons taking ducks and coots may not possess ammunition containing lead or other toxic shot.

2. Boats, without motors, may be used on the St. Francis River only from designated river access sites.

3. Boats and decoys must be removed from the refuge at completion of days hunt.

4. Field possession of ducks and coots in area of refuge closed to hunting of ducks and coots is prohibited.

The provisions of this special regulation supplements the regulations which govern hunting on wildlife refuge areas generally, which are set forth in Title 50, Code of Federal Regulations, Part 32.

The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: May 5, 1978.

CHARLES A. HUGHLETT,
Regional Director.

[FR Doc. 78-13177 Filed 5-15-78; 8:45 am]

[4310-55]

PART 32—HUNTING

Opening of Tamarac National Wildlife Refuge, Minnesota, to Migratory Game Bird Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Special regulation.

SUMMARY: The Director has determined that the opening of the Tamarac National Wildlife Refuge to migratory game bird hunting is compatible with the objectives for which the area was established, will utilize a renewable natural resource, and will provide recreational opportunity to the public.

DATES: Will conform to dates established by the State of Minnesota for 1978.

FOR FURTHER INFORMATION CONTACT:

Omer N. Swenson, Refuge Manager, Tamarac National Wildlife Refuge, Rochert, Minn. 56578, telephone 218-847-4355.

SUPPLEMENTARY INFORMATION:

§ 32.12 Special regulations; migratory game birds; for individual wildlife refuge areas.

Public hunting of ducks, geese, and coots on the Tamarac National Wildlife, Rochert, Minn., is permitted in the area designated by signs as public hunting area. This area comprising 12,500 acres is delineated on maps available at the Refuge Headquarters and from the office of the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minn. 55111.

Hunting shall be in accordance with all applicable State regulations during the season specified above. The hunting of other migratory game bird species as may be authorized by Minnesota State regulations is prohibited.

The following special conditions apply:

1. No person shall, for the purpose of hunting, enter or leave the refuge except by designated roads or trails.

2. Use of steel shot is required for hunting waterfowl and coots. Possession of lead shot shells while hunting waterfowl and coots is prohibited.

3. Construction of permanent blinds, platforms, or scaffolds is prohibited. Temporary blinds may be constructed, but if left overnight, such blinds will be available on a first-come-first-served basis.

4. The use of dogs to retrieve downed waterfowl and coots is encouraged.

5. Boats are permitted for waterfowl hunting.

The provisions of this special regulation supplement the regulations which govern hunting on wildlife refuge areas generally which are set forth in Title 50, Code of Federal Regulations, Part 32. The public is invited to offer suggestions and comments at any time.

NOTE.—The U.S. Fish and Wildlife Service has determined that this document does not contain a major proposal requiring preparation of an economic impact statement under Executive Order 11949 and OMB Circular A-107.

Dated: March 23, 1978.

OMER N. SWENSON,
Refuge Manager.

Dated May 5, 1978.

CHARLES A. HUGLETT,
Acting Regional Director.

[FR Doc. 78-13178 Filed 5-15-78; 8:45 am]

[3410-37]

Title 9—Animals and Animal Products

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE, MEAT AND POULTRY PRODUCTS INSPECTION, DEPARTMENT OF AGRICULTURE

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

Nitrates, Nitrites, and Ascorbates (or Isoascorbates) in Bacon

AGENCY: Food Safety and Quality Service, U.S. Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the Federal meat inspection regulations by prohibiting the use of sodium and potassium nitrate in bacon, by requiring that 120 parts per million ingoing sodium nitrite or an equivalent amount of potassium nitrite (148 ppm) be added to bacon, by requiring that specified levels of sodium ascorbate or sodium erythorbate (isoascorbate) be used in the preparation of bacon, and by providing nitrosamine sampling and analytical information for nitrosamines and retention criteria for certain bacon. This action is taken partly on the basis of industry and consumer requests and is necessary in order to prevent the presence of nitrosamines in bacon. Bacon containing confirmable levels of carcinogenic nitrosamines after preparation for eating is deemed to be adulterated. Information available to the Department indicates that the laboratories available for testing bacon on behalf of packers have the capability of confirming nitrosamines down to 10 parts per billion (PPB). This information also indicates that those laboratories have the capability to further develop and refine their testing procedures so that within 12 months they will be able to confirm the presence of nitrosamines down to 5 ppb. Packers must take the steps required to produce product without confirmable nitrosamine presence, probably by developing procedures for processing bacon with as little as 40 ppm of nitrite.

EFFECTIVE DATE: June 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Irwin Fried, Acting Director, Product Labels and Standards Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 202, Annex Building, Washington, D.C. 20250, 202-447-6042.

SUPPLEMENTARY INFORMATION: Limiting the use of nitrite in curing meat has been the focus of a widespread controversy. Nitrite is toxic at high levels and, when combined with secondary and tertiary amines, forms nitrosamines. Many of the nitrosamines, including those found in bacon, have been found carcinogenic to laboratory animals. Nitrite, when combined with meat components, also provides the characteristic color and flavor of cured meats. On the other hand, nitrite inhibits the outgrowth of *Clostridium botulinum* spores, thus preventing the formation of the toxin which causes botulism.

Historical Background

Nitrite has been used for thousands of years in curing meat. Until the late 1960's the U.S. Department of Agriculture (USDA) believed that toxicity of nitrite was the only concern. In 1971, USDA and Food and Drug Administration (FDA) analysts reported levels of nitrosamines in parts per billion (ppb) range in some meat products that had nitrite added, especially bacon. As a result, the formation and occurrence of nitrosamines and their relation to nitrite have been extensively studied.

N-nitrosopyrrolidine (N-pyrr) is the nitrosamine most commonly found in bacon after frying. The amount found depends on the temperature at cooking, degree of doneness, the amount of nitrite and ascorbate used, and other factors not clearly known at this time.

The N-nitroso compounds, often discussed as a group, are considered individually when assessing the biological effect of an exposure to a mixture of these compounds. Nitrosamines and nitrosamides differ in their rates and sites of absorption, chemical stability in physiologic fluids, distribution, metabolism, and excretion. Information is limited on the dose response characteristics of nitrosamines and carcinogenicity in rats.

Sufficient data are available, however, on the toxic effects of N-nitroso compounds to permit a qualitative judgment of the risk of human exposure. These compounds affect every animal species tested, and there is no toxicologic reason why they should not be considered carcinogenic to humans.

In 1972, USDA was petitioned by consumer groups to ban or greatly reduce the use of nitrite in meat products. USDA denied the petition indicating that additional information was needed on the chemistry associated with nitrosamine formation. A court decision, affirmed by the Court of Appeals, upheld the USDA position. In 1973, Canadian Department of Agriculture research workers found nitrosamines in spice and cure premixes. USDA confirmed these findings and banned such premixes. In 1975, the Department published proposed regulations in the FEDERAL REGISTER concerning the use of nitrates and nitrites in meat food products including bacon. In 1977, the Consumer Nutrition Institute (CNI) petitioned USDA to ban the use of nitrite totally in meat products, including bacon. Also, in 1977 the American Meat Institute petitioned the USDA to amend the regulations with respect to bacon to prohibit the use of nitrates, and to require the use of 120 ppm nitrites and 550 ppm sodium ascorbate.

Establishment of a USDA Expert Panel

Because of the complexity of the problem, an Expert Panel on Nitrites, Nitrates, and Nitrosamines was established in 1973 to review all aspects of curing meat products and various problems that had been identified with this processing procedure. The Panel was to make specific recommendations to the Secretary wherever and whenever appropriate and advise him on the public health hazard from use of nitrite.

In 1974, the Panel recommended that the use of nitrate salts in the curing process be discontinued in all meat and poultry products except for dry-cured products and fermented sausage products; the level of nitrite salt permitted to be added for curing meat be limited to 156 ppm in all processed products, with the exception of bacon and dry-cured products; and the 200 ppm residual nitrite salt limit be decreased in various product categories. It deferred recommendations for nitrite in bacon and dry-cured products pending availability of further research data.

In 1975, prior to the publication of the proposed regulations in the FEDERAL REGISTER, new information on the formation of nitrosamines in fried bacon came to light which prompted USDA and the Panel to agree that there was a need to address the specific problem of nitrosamine formation in bacon. Because of this information, the Panel recommended in 1975 lower levels of nitrite usage for processing bacon and further that maximum permitted levels of ascorbate or erythorbate be use because they had been shown capable of decreasing nitrosation in bacon. The recommended levels were 120 ppm of sodium nitrite and 550 ppm of ascorbate.

At its 10th meeting, March 29, 1977, the Panel recommended the adoption of the 120 ppm sodium nitrite level and simultaneous use of sodium ascorbate or sodium erythorbate at 550 ppm. At the last meeting, September 1977, the Panel agreed on the final recommendations on nitrite and nitrosamines to be developed for the Secretary of Agriculture. Following the dissolution of the Panel, FSQS called on the meat industry to respond and present data on the subject. In March 1978, the American Meat Institute

(AMI), a national trade association of the meat packing industry, responded on behalf of the industry to a notice published in the FEDERAL REGISTER, October 18, 1977, calling for a submission of data "demonstrating whether the use of nitrates and/or nitrites in the production of bacon results in the formation of carcinogenic nitrosamines during its ordinary processing or preparation for eating * * *." The original deadline for submitting data—January 16, 1978—was extended 60 days to March 17, 1978, by notice published in the FEDERAL REGISTER December 13, 1977.

PROPOSAL AND COMMENTS

On November 11, 1975, the Department published a document (40 FR 52614-16) which among other things, proposed to prohibit the use of nitrate in bacon, to limit the amount of nitrite to be added to bacon to 125 ppm, and to require ascorbate or erythorbate to be used at the maximum rate permitted by regulation (approximately 550 ppm).

The proposal as a whole resulted in 341 comments. Of these, the following comments seem relevant with respect to bacon:

A number of comments indicated agreement with the position expressed by the Department that nitrites inhibit the growth of *Clostridium botulinum* in certain meat food products including bacon.

Some comments stated that nitrites should not be banned, without proof that they are chief causes of human cancer. In this connection the concern with respect to cancer related to nitrosamines and as noted below restrictions are being placed on the use of nitrites in bacon in order to prevent the formation of nitrosamines.

A food scientist stated that in addition to preventing botulism, nitrites prevent oxidative rancidity and flavor deterioration in mildly heated meat. Although the authorities are not unanimous, the Administrator is aware of the respectable body of opinion that sees this further value in the use of nitrites.

A few other comments were mildly supportive of the proposal, stating that the proposed levels of nitrite and ascorbate were correct; that the manufacturer could live with the proposed levels, and that the general American consumer expects to see red color in a finished, cured product, especially a beef product.

A number of manufacturers requested that residual levels alone should be used to determine the amount of nitrite present, and that the Administrator should not attempt to prescribe the amount added at formulation. The amount of residual nitrite is not an acceptable indicator of the amount of nitrite introduced, and the Aministrator's objective is to limit the quantity used to the amount needed.

Some commenters stated that a lower, as well as an upper, limit for nitrite should be specified. In this final rule the Administrator, instead of specifying an upper limit, is specifying the exact amount of nitrite that the producer of bacon must target for to assure that the botulism hazard and the nitrosamine hazard are both avoided.

A few manufacturers pointed out that specifying a maximum for nitrite and a specified amount for ascorbate or erythrobate would cause them process control problems in that it was difficult to target for a maximum amount of one substance and a specified amount of another substance in the same pickle solution. Specifying the exact amount for both solves this problems.

Some commenters recommended use of vitamin C, some wanted use of a higher lever of ascorbate, some stated that ascorbate or erythrobate cause product discoloration, and some state that although ascorbate and erythrobate do prevent nitrosamine formation, they also interfere with the nitrite's antibotulinal activity. One manufacturer commented that requiring ascorbate or erythrobate was wasteful and would establish a strong demand for these products which would raise their prices. Vitamin C is not approved for use in bacon in this docket because all experimetal work was done with the sodium salt of vitamin C (sodium ascorbate) and its isomer (sodium erythrobate). The Administrator has determined that the proposed level of ascorbate and erythrobate is adequate to prevent nitrosamine formation; that it will not seriously inhibit the nitrite's antibotulinal activity; and that properly used, it will not discolor the product. Obviously, a concern about "wasting" cure accelerators or raising their prices is distinctly secondary to a concern for human health.

Several commenters stated that nitrite levels could probably be reduced further, but that the action proposed was appropriate at this time. The Administrator considers a level which approximates that in the proposal (120 vs 125 ppm) of nitrite to be appropriate.

A commenter stated that the prohibition of the use of nitrates and the limits with respect to nitrites should apply only to pumped bacon and not to dry cured bacon. Some comments also stated that nitrates should be banned as they only serve as reservoirs for nitrites; others that nitrates were used in curing since ancient times and are still useful today. The common or usual name "bacon" refers only to pumped bacon and the common or usual meaning of the term "dry cured bacon" refers only to that particular product which must be labeled as "dry cured bacon." The specified limits in the proposal were only intended to refer to bacon, i.e., pumped bacon. In this connection it should be noted that dry cured bacon cannot be produced under the conditions required for bacon by this rule. For pumped bacon nitrates are neither needed nor desirable since their conversion to nitrite cannot be controlled and the docket requires a direct control of nitrite addition. For products, such as those which are cured over an extended period of time, including dry cured bacon, the use of nitrate is desirable as a reservoir for nitrite which is dissipated and must be replenished until the cure is complete.

One commenter makes reference to the fact that the control limits proposed do not specify the variances permitted. As noted further in this docket, establishments, in order to continue to produce bacon, will have to establish controls that will maintain nitrite and ascorbate usage at stipulated levels.

Some commenters stated that bacon should bear special labeling indicating that it is hazardous to one's health, and one comment stated that it should be required to be labeled "Contains cancer causing chemicals when fried." The Administrator has determined that bacon produced under the conditions specified below should not contain confirmable levels of carcinogens when prepared for eating and should not otherwise be hazardous to health. Therefore, such a warning label would not be truthful and could not be used.

One commenter suggested that input levels of parts per million (ppm) should be translated into ounces per 100 gallons of cure or per 100 pounds of product. The conversion is, of course, determinable mathematically.

Many commenters opposed the use of any nitrites in meat food products including bacon without stating reasons. However, as indicated below it has been determined that nitrites should be used in bacon.

Some commenters stated that they are allergic to nitrite. Many people are allergic to a variety of other foods or food ingredients such as salt, beef, pork, milk, etc. Those affected must read ingredient statements and avoid all food containing ingredients to which they are allergic.

Another commenter commented that nitrite causes allergic epilepsis and hyperkinesis in children, and that they are so universal as to be well nigh unavoidable. The vast majority of children appear to tolerate well the amount of nitrite they now consume. Neither of the mentioned afflications is widespread. Parents and guardians of children sensitive to this compound must also read ingredient statements and avoid such foods, and educate affected children with respect to their dietary restrictions.

One commenter would require each manufacturer of cured product to produce some nitrite-free product for

those who are allergic. However, there is no authority to impose such a requirement.

A group of commenters attacked the use of nitrite as unnecessary. They argued that cooking destroys botulinum toxin, so nitrite should not be added to food which has to be cooked. The Administrator has some duty to those consumers who purchase these products expecting that the product will behave as it has in the past. Botulinum toxin is rather easily destroyed by heat, but sometimes bacon is heated lightly and the toxin is deadly.

A commenter stated that the Administrator should permit equivalent products to be developed which are clearly marked not to contain nitrites. In this connection is should be noted that a proposal was published in the FEDERAL REGISTER on April 28, 1978 (43 FR 18193-18195) which would permit certain meat products including bacon to be prepared under specified circumstances without nitrites. The proposal also would require labeling indicating the absence of nitrites under specified conditions.

Finally a commenter stated that permitting the use of nitrate and nitrite in any meat food products is a violation of the Delaney amendment. Another said that USDA cannot legally authorize a new food additive use, such as using nitrite to combat botulism, which did not clear FDA under the FDC Act. The Department has determined that nitrates and nitrites are not food additives subject to the provisions of the Delaney amendment when used in meat products because they were permitted as preservatives and for other purposes in meat products in general prior to the enactment of the food additive provisions under the Food, Drug, and Cosmetic Act, and thus are specifically exempted from such food additive status.

PERTINENT INFORMATION

Prior to the receipt of the industry response and during that 5-month period while the notice was in effect, a number of events occurred which bear on that matter and are worth noting:

(1) *Completion of a final report by the Secretary's Expert Panel on Nitrites and Nitrosamines.* A Panel majority recommended that the Department issue regulations to establish use levels of 120 parts per million (ppm) for nitrite in bacon, and of 550 ppm for sodium ascorbate or isoascorbate. These were the levels the Panel had discussed as appropriate since late 1975, and the Administrator believes it is significant that after continued deliberations and evaluations the recommendations of the majority remained as they were earlier. It should be noted that the Panel viewed these levels as interim until more information is developed or other alternatives found. The Panel also recommended discontinuing the use of nitrates in the curing of bacon because it determined that the use of nitrates was unnecessary for such purpose.

(2) *The Department continued to receive comments from interested parties giving their views as to the use of nitrites in bacon.* Commentors included consumers, livestock producers, Cogressmen, and others from various professions. Those in favor of banning the use of nitrite pointed to the dangers of carcinogens in the food supply. Those recommending its continued use cited the lack of data proving that nitrosamines in the amounts found in bacon constituted a real health hazard.

(3) *Indications of increased public awareness, and consumers ability to identify "nitrite-free" products.* Associated with the Public discussion and participation in the nitrite issue, consumers have been made more aware of the nature of this matter, its significance in relation to any health hazard, and the labeling of products which are produced and marketed without nitrite. For example, consumers may purchase "Pork Breakfast Strips (or Slices)" to use in lieu of bacon, or "Uncured Cooked Sausage" to use in lieu of frankfurters. This indicates that processors may prepare nitrite-free products, and that consumers know how to identify them for purchase. To offer consumers an even wider choice of non-nitrited products, FSQS published a proposal in the FEDERAL REGISTER on April 28, 1978, to allow the production of bacon and other cured products with no nitrite under certain specified conditions.

(4) *Continued work investigating nitrite substitutes or adjuncts, and blocking agents.* A number of investigations of new systems for blocking nitrosamine formation are underway. Work is being done with alpha tocopherol, potassium sorbate and nitrite combinations, acetyls, parabens, and spray systems. Conclusive results are not yet available. One particularly promising method involves the use of 40 ppm nitrite with low levels (0.26 percent) of potassium sorbate. The data indicate that such bacon would be protected against toxin production by *Clostridium botulinum* and confirmable levels of nitrosamines are not present after preparation for eating when bacon is processed by this method.

(5) *Data submitted to the use of 120 ppm of nitrite and 550 ppm of ascorbate.* The industry submitted data and information indicating that when 120 ppm of nitrite and 550 ppm of ascorbate are used in processing bacon, preparation for eating should not result in the formation of nitrosamines at confirmable levels down to 10 ppb. These data are summarized in the minutes of the meeting of the Secretary's Expert Panel on Nitrites and Nitrosamines and in "Response For Bacon" prepared by the American Meat Institute (AMI) on behalf of industry in response to the October 18, 1977, FEDERAL REGISTER notice. The minutes of the Panel meetings and the AMI report is available for viewing at the Department of Agriculture's Office of the Hearing Clerk, or copies may be obtained from the FSQS Information Division, USDA, Washington, D.C. 20250.

THE INDUSTRY RESPONSE

In the March 17, 1978, response, AMI stated that: "Bacon as produced today, is not a health hazard. It is however, possible to reduce the formation of nitrosamines in fried bacon by lowering the amounts of sodium nitrite and including sodium ascorbate or isoascorbate. USDA should no longer delay in implementing this. It is also anticipated that industry research now underway will lead to even further reduction of nitrosamines in bacon."

REGULATORY ACTION

The Administrator, in determining a course of action, was faced with an extremely complex task. The subject of cancer and carcinogens is one that arouses fear in most people. However, researchers are far from unanimous in their opinion as to the dangers posed by the finding of nitrosamines in bacon. USDA, of course, is required to protect the public from substances that adulterate products and which may be harmful or deleterious. It is contemplated that the action being taken by USDA will result in the elimination of nitrosamines at confirmable levels, the reduction in the lowest level at which nitrosamines may be confirmed by laboratory testing, and to the reduction of nitrite to the lowest amount possible while still maintaining the bacon characteristics which are known to satisfy the consumer.

Based on all the information available to the Administrator, including that received as a result of the rulemaking proceeding, he has made the following determinations:

(1) Sodium or potassium nitrate should not be permitted to be used as an ingredient in bacon. As noted below the Administrator has determined that bacon shall contain a specified amount of nitrite. The amount of nitrite added directly can be closely controlled as required by the limits placed upon its use. The nitrates are only used as a source of nitrite. The conversion of nitrate to nitrite is not a controllable reaction, however, and therefore no reliable limits can be placed upon its use in bacon.

(2) Bacon preserved by the use of nitrites must contain at least 120 ppm ingoing sodium nitrite or 148 ppm ingoing potassium nitrite in order to assure the prevention of toxin formation by *Clostridium botulinum.* The proposal specified that a larger

amount of nitrite, e.g., 125 ppm sodium nitrite should be used in bacon. However, since the lower amounts are all that is needed in bacon for this purpose, these amounts are adopted as requirements.

(3) Bacon shall also contain sodium ascorbate or sodium erythorbate (isoascorbate) at 550 ppm. This is necessary in order to prevent the formation of nitrosamines in bacon cured with nitrites. Hydrated forms of these substances shall be adjusted to attain the equivalent of 550 ppm in order to be equal in amount to the unhydrated forms of these substances.

(4) In order to assure that such bacon does not contain nitrosamines when prepared for eating the Department shall institute a sampling and analytical program consisting of analysis by a thermal energy analyzer. If it is indicated that any nitrosamine is present at a confirmable level, then confirmation will be attempted by gas chromatography and mass spectrometry. The bacon tested shall have been cooked at 340° F for 3 minutes on each side. A specified time and temperature of frying is necessary to assure a standardized sample preparation. The 340° F temperature and 3 minute per side procedure was selected because experiments have shown that nitrosamine formation, if it is to occur, will occur under these conditions and this approximates times and temperatures used by householders in the preparation of crisp bacon.

(5) It has been found that close adherence to the required levels of nitrites and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon will effectively block the formation of nitrosamines. The presence of confirmable nitrosamines in bacon produced by an establishment would indicate a lack of control with respect to the adherence to such requirements. In order to protect the public against the possible dangers posed by the presence of nitrosamines, the Department will retain all product in an establishment immediately upon confirmation of any nitrosamines in any bacon produced by that establishment.

Each lot of bacon must be sampled and analyzed and found free of confirmable nitrosamines before the retention is removed and it may be marketed as bacon. All futher production will also be retained, sampled, and analyzed under the same conditions. Bacon from future production of that establishment will no longer be retained when the establishment provides information that the process is in compliance with requirements and confirmable nitrosamines are not being formed. The Administrator has determined that when five consecutive normal sized lots are found to contain no confirmable nitrosamines a valid conclusion may be reached that the process and the product is in compliance. Because nitrosamines are not formed in bacon until prepared for eating, a provision is made for removal of the retention from lots of bacon which are to be used only as ingredients in other meat food products processed for eating without further preparation at the establishment, provided such preparation would not result in the formation of confirmable nitrosamines.

This rule provides that testing must be performed by methodology and procedures that would detect the presence of nitrosamines at 10 ppb at this time. Within 12 months from the date of publication of this document it is anticipated that laboratories available for testing bacon on behalf of packers can develop the capability to analyze samples of bacon for nitrosamines and to confirm their presence at a level of 5 ppb or more. This capability, among other things, depends on proper equipment, analytical expertise, and experience. The Department will maintain close surveillance to assure that this capability is achieved in as short a period of time as possible.

The Department is willing to participate in a cooperative effort with industry to provide assistance where needed concerning the institution of proper production controls during the period prior to the effective date of the regulation. The Department will cooperate with industry in an effort to develop laboratory capabilities to confirm levels of nitrosamines in bacon at 5 ppb. Further, the Department is seeking advice on how to effectuate this effort.

AMENDMENT OF REGULATIONS

On the basis of all the foregoing, § 318.7 of the Federal meat inspection regulations is hereby amended as follows:

1. A new paragraph (b) is added to read as follows:

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

* * * * *

(b) Requirements for the use of nitrite and sodium ascorbate or sodium erythorbate (isoascorbate) in bacon.

(1) With respect to bacon: Sodium nitrite shall be used at 120 parts per million (ppm) ingoing or an equivalent amount of potassium nitrite shall be used (148 ppm ingoing); and 550 ppm of sodium ascorbate or sodium erythorbate (isoascorbate) shall be used. Sodium ascorbate or sodium erythorbate have a molecular weight of approximately 198. Hydrated forms of these substances shall be adjusted to attain the equivalent of 550 ppm of sodium ascorbate or sodium erythorbate.

(2) The Department shall collect samples of bacon from producing plants and analyze for the level of nitrosamines by the thermal energy analyzer (TEA). In the event that a TEA analysis indicates that a confirmable level of nitrosamines might be present, additional samples will be collected and analyzed by gas chromotography. Presumptive positive results must be confirmed by mass spectrometry before being considered positive. If any one of the samples is found to contain confirmable levels of nitrosamines, all bacon in the producing plant and all future production will be retained. The Department shall sample and analyze such retained bacon for nitrosamines on a lot by lot basis. A lot shall be that bacon produced by the establishment in any single shift. Samples from any lot found to contain nitrosamines at a confirmable level shall cause the lot of bacon to be disposed of in a manner to assure it will not form nitrosamines when cooked. Such disposal may include incorporation of the uncooked bacon as an ingredient of another meat food product provided it is processed for eating without further preparation in a manner to preclude the formation of nitrosamines. The bacon shall no longer be retained if the operator of the establishment makes adjustments in the processing of the product and provides data based on laboratory analyses of samples from five consecutive normal sized lots that establishes that the product being produced contains no confirmable levels of nitrosamines. All tests of bacon for nitrosamines under this subparagraph shall be made on bacon cooked at 340° F for 3 minutes on each side. In order to determine that no confirmable levels of nitrosamines are present in the sample tested, the testing must be performed by methodology and procedures that would detect the presence of any nitrosamines at 10 ppb at this time and at 5 ppb within 1 year of the effective date of this paragraph.

* * * * *

2. In the table in paragraph (c)(4), the "Products" column relating to "Sodium or potassium nitrate" as "Curing agents" is amended to read: "Cured products other than bacon."

3. In the table in paragraph (c)(4), the "Amount" column relating to "Sodium or potassium nitrate" as "Curing agents" is amended by adding the following at the end thereof: "Except that nitrites may be used in bacon only in accordance with paragraph (b) of this section."

(Sec. 21, 34 Stat. 1264, 21 U.S.C. 621; 42 FR 35625, 35631.)

An impact analysis statement is available from Food Safety and Quality Service.

Done at Washington, D.C., on May 12, 1978.

ROBERT ANGELOTTI,
Administrator,
Food Safety and Quality Service

[FR Doc. 78-13470 Filed 5-15-78; 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.

[6325-01]

CIVIL SERVICE COMMISSION

[5 CFR Part 900]

INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

Standards for a Merit System of Personnel Administration

AGENCY: U.S. Civil Service Commission.

ACTION: Proposed rulemaking.

SUMMARY: The U.S. Civil Service Commission (hereinafter the "Commission") is proposing to issue revised Standards for a Merit System of Personnel Administration (hereinafter the "Standards") in the form of regulations as part of Title 5, Part 900, Subpart F. These Standards now appear in 45 CFR Part 70. Section 208(a) of the Intergovernmental Personnel Act (IPA) transferred responsibility for administering the current Standards from the Department of Health, Education, and Welfare to the Commission. On November 30, 1976, the Commission published an "Advance Notice of Proposed Rulemaking" which announced its intent to review the Standards and invite comments from interested parties. There was almost unanimous agreement among the parties that responded that revision was needed in one form or another.

DATES: Comments are invited and should be received on or before July 17, 1978.

ADDRESS: Interested persons are invited to submit written comments regarding this proposal to Norman Beckman, Director, Bureau of Inter-governmental Personnel Programs, U.S. Civil Service Commission, 1900 E Street NW., Washington, D.C., 20415. The envelope should be marked, "Revised Standards for a Merit System of Personnel Administration."

FOR FURTHER INFORMATION CONTACT:

Lawrence D. Greene, Director, Office of Personnel Assistance Policy Development, Bureau of Intergovernmental Personnel Programs, U.S. Civil Service Commission, 1900 E Street NW., Washington, D.C., 20415, Phone 202-632-6044.

SUPPLEMENTARY INFORMATION: Section 208(a) of the Intergovernmental Personnel Act (IPA) transferred responsibility for administering the current Standards from HEW to the Commission. the transfer occurred simultaneously with issuance of a revised set of Standards in 1971 by the Secretaries of the Departments of Health, Education, and Welfare, Labor, and Defense. The Commission has administered these Standards in their current form since that time. The reasons for considering these changes now are the length of time since the last revision; the fact that the current Standards were promulgated by Federal agencies not now holding the responsibility the Commission has for administering the Standards; several legal and administrative developments have taken place since enactment of the IPA in fields such as civil rights, personnel selection, and labor management relations; and, changes in public personnel administration in general have impacted on various provisions of the Standards.

The November 30, 1976, FEDERAL REGISTER announcement (41 FR 52473) of the U.S. Civil Service Commission's intent to revise the Standards brought considerable comment. More than 300 letters of comment were received from across the country. These comments were analyzed and suggestions incorporated in the proposed revised Standards. State and local government officials, representatives of public interest and other groups, and Federal officials throughout the country were invited to meet and discuss issues involved in revising the Standards, in addition to the formal call for comments. Results of these discussions are also reflected in this proposed revision of the Standards. Finally, as the capstone of this phase of the consultation, a public meeting was held by the Commission at which the Commissioners personally heard testimony from a variety of individuals representing groups affected by the Standards.

Most of the discussion and comments dealt with four areas of the Standards: Equal employment opportunity, selection, appointment, and coverage of the Standards. Following are summaries of the comments in these areas.

1. *Equal employment opportunity.* The comments received reflect the issue of how to promote and foster progress in EEO through implementation of systems based on merit principles. Some of the commentators called for more clarity in the Standards, particularly regarding the Commission's affirmative action policy and requirements.

2. *Selection.* Most commentators expressed the need for improving this area of personnel management while recognizing that resources to do so are currently inadequate. Effective selection is crucial to the grant programs. Proper and efficient administration depends on hiring highly qualified people. Every effort needs to be made to incorporated successful EEO programs into the selection process.

3. *Appointment.* The most common expression in the comments on this area was support for maintaining efforts to foster merit employment. As part of this, means should be devised and permitted which carry forward progress in EEO on a merit basis. A number of commentators said there should be more room for flexibility in applying different approaches to achieving affirmative action goals short of selection or appointment based on race and sex. Some suggested increasing the number of the names to be certified to provide more flexibility.

4. *Coverage of the standards.* This was the most controversial area in which comments were received. The problem as expressed by those who commented is how to deal with the issue of increasing responsiveness of public agencies to elected officials through greater numbers of exempt positions, as opposed to additional opportunities for advancement of career employees with tenure and continuity in administration of programs during changes in administration.

With the merging of the IPA Merit Principles and the Standards, the Commission proposes to incorporate the Federal regulatory experience in Standards administration over the past 38 years with what the Congress has set forth as the most significant principles of personnel management on a merit basis. The proposed Standards are intended to provide greater flexibility, foster innovation, and recognize the necessary diversity contained in the variety of approaches taken to merit system administration in State and local governments.

In consideration of the foregoing, it is proposed to revise the Merit System Standards presently in 45 CFR Part 70; revise 5 CFR Part 900, Subpart F; place the revised Merit System Standards presently in 45 CFR Part 70 in 5 CFR Part 900, Subpart F. The pro-

posed revision of 5 CFR Part 900, Subpart F is set out below.

PART 900—INTERGOVERNMENTAL PERSONNEL ACT PROGRAMS

* * * * *

Subpart F—Standards for a Merit System of Personnel Administration

Sec.

900.601 Statement of purpose and applicability.
900.602 Merit Principle I.
900.6021 Recruitment.
900.6022 Selection and appointment.
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900.603 Merit Principle II.
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900.6051 Layoffs, separations, and employee evaluation.
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900.608 Administration.
900.6081 Review of merit systems.
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900.6083 Organization.
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900.609 Compliance and assistance.
900.610–620 [Reserved]

AUTHORITY: 42 U.S.C. 4728, 4763: E.O. 11589, 3 CFR 1971 Comp., p. 152.

Subpart F—Standards for a Merit System of Personnel Administration

§ 900.601 Statement of purpose and applicability.

(a) The regulations and guides in §§ 900.602 through 900.620 incorporating the merit principles in section 2 of the Intergovernmental Personnel Act of 1970, are promulgated by the Commission to prescribe intergovernmental personnel standards on a merit basis as a condition of eligibility in the administration of various grant-in-aid and other intergovernmental programs as provided in section 208(a) of the Intergovernmental Personnel Act. See the appendix for a list of the grant-in-aid and other programs to which these Standards are applicable.

(b) Proper and efficient administration of grant-in-aid and other intergovernmental programs is a mutual concern of the Federal, State and local agencies cooperating in the implementation of these programs. Proper and efficient administration requires clear definition of functions, employment of highly qualified personnel, and development of staff morale and individual efficiency. Adequate resources are needed to staff, develop, and implement effective personnel programs. Cooperative efforts by the central personnel organization and program agencies and their personnel offices are essential in providing comprehensive personnel services. Personnel programs which are planned and administered in a timely, expeditious manner will contribute to the effective accomplishment of program objectives and maintenance of merit principles.

(c) An integral part of the intergovernmental programs is the maintenance by the State and local governments of their own merit-based systems of personnel administration for their grant-aided agencies. Federal agencies are interested in the development and continued improvement of State and local personnel systems, but under the Intergovernmental Personnel Act, Social Security Act, and other grant statutes they may not exercise authority, direction, or control over selection, assignment, advancement, retention, compensation, or other personnel actions with respect to any individual State or local employee.

(d) There is a wide range of legal, administrative, and technical approaches available to State and local governments to implement these Standards. The choice among techniques or approaches which will accomplish the results called for in these Standards is a matter for State or local government determination.

(e) These Standards provide State and local governments the flexibility to pursue innovative and diverse approaches to strengthening personnel management. They are intended to be performance oriented to the maximum extent consistent with effective administration and to limit mandatory provisions to key areas.

(f) A key feature in the administration of these Standards is the cooperative involvement of elected Chief Executives in the maintenance of merit approaches to personnel administration and the improvement of their personnel management. This enables the Commission to use simplified approaches to the maintenance of adequate State provisions for merit-based personnel administration and for administration of the Standards in small local governments.

(g) Continuing application of these Standards will give reasonable assurance of a proper basis for personnel administration, promote a career service, and result in increased operating efficiency and program effectiveness. Personnel systems based on these Standards will promote equal employment opportunity, assure the fair treatment of applicants and employees in all aspects of personnel administration, and contribute to the achievement of a representative work force.

(h) These Standards emphasize the need for inclusion of all groups in our society in State and local government employment and for initiatives to overcome any serious underrepresentation in the grant programs. They provide a basis for firm compliance action when reasonable progress is not made.

(i) Within these Standards, means are provided for the implementation of national policies for structuring jobs, training and employing the handicapped and disadvantaged, and implementing Congressional and related State employment and rehabilitation programs.

(j) In conjunction with the Commission, the Federal grantor and other agencies are involved in the evaluation and maintenence of merit based personnel administration to the maximum extent feasible. In cases where elements of the personnel system or the administration of the system do not meet the Standards, the Commission provides consultation and technical assistance to State and local governments to obtain appropriate revisions. In matters involving serious deviations from the provisions of the Standards, the Commission submits recommendations to and coordinates necessary action by the Federal agencies. The Federal agencies attempt to avoid using the sanction of withdrawing Federal grant funds and place their emphasis on negotiation and technical assistance to achieve the required substantial conformity with these Standards. Where necessary, however, enforcement actions are taken in accordance with the regulations of the specific grant or other programs. (See § 900.609.)

(k) In order to assist State and local governments in maintaining their personnel systems under these Standards, technical consultation services will be provided to the extent resources are available.

(l) The requirements include the six merit priciples contained in section 2 of the Intergovernmental Personnel Act of 1970 (Pub. L. 91-648) and are consistent with these principles.

(m) The provisions under §§ 900.602 through 900.620 identified as requirements are the regulatory provisions of these Standards.

(n) There are two types of provisions in the "Guide" sections:

(1) Interpretations of the intent of the requirements. While these are not regulations, they explain policies, practices, or other actions needed to comply with the regulations.

(2) Recommendations for desirable methods of personnel administration. While State and local governments are encouraged to seriously consider them, they are optional in nature.

§ 900.602 Merit Principle I.

(a) *General requirement.* Recruiting, selecting, and advancing employees

will be on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applicants for initial appointment.

§ 900.6021 Recruitment.

(a) *Requirement.* Recruiting efforts will be planned and carried out in a manner that assures open competition. Special emphasis will be placed on recruiting efforts to attract minorities, women, or other groups that are substantially underrepresented in the work force to help assure they will be among the candidates from whom appointments are made.

(b) *Guide.* The recruiting program needs to be based upon planning to meet current and projected work force needs. Recruitment needs to be tailored to the number and type of positions to be filled and to labor market conditions. The recruiting efforts of the central organization and the program agencies ought to be coordinated and carried out in a timely manner so as to permit successful competition with other employers.

§ 900.6022 Selection and appointment.

(a) *Requirement.* (1) Selection procedures will be job related and to the extent practical will be reliable, valid, and objective. They will provide for the appropriate ranking of candidates.

(2) Selection for entrance to the career service normally will be through open competition. Appointments to positions in the career service will be made on the basis of merit by selection from eligible lists established in accordance with the provisions of these standards on recruitment, selection, and equal employment opportunity.

(3) Procedures will be established by State and local governments to insure that appointing officials review and give equitable consideration to an appropriate number of candidates based on whatever ranking system is used on the list when making a selection for initial entry to the career service.

(4) To facilitate the career employment of the severely handicapped such as the blind, deaf, cerebral palsied, paraplegic, and quadriplegic; or of socially, educationally, or economically disadvantaged persons; or of participants in employment or rehabilitation programs authorized by Congress or related programs authorized by State legislatures, competition may be limited to such persons.

(5) In those occasional instances where there is evidence that open or limited competition is not practical, noncompetitive appointments may be made.

(6) Job-related minimum requirements will be established wherever they are needed for entrance to a class. They will be met by all successful candidates for examination, appointment, and promotion.

(7) Permanent appointment will be contingent upon satisfactory performance by the employee during a reasonable, fixed probationary period.

(8) Temporary, provisional, or other nonstatus appointments will not be used as a way of defeating the purpose of the career service and will have a reasonable time limit. If lists of eligibles are available, they normally will be used for filling temproary positions. Short-term emergency appointments may be made without regard to the other provisions of this section to provide for maintenance of essential services in an emergency situation where normal procedures are not practical.

(b) *Guide.* (1) Compliance with technical standards for test validation contained in selection guidelines issued by this Commission would meet the requirements of these standards for job relatedness and validity. Adequate job analysis needs to be conducted to insure job relatedness of selection procedures. Any ranking procedures utilized in career advancement or promotion programs need to be job related and achieve the degree of validity and objectivity which is practical to the same extent as selection procedures for initial appointment.

(2) State and local governments have wide latitude in determining a manageable number of eligible candidates to refer for consideration for entrance to the career service. The procedures need to provide for selection based on relative ability, knowledge, and skills of the eligibles; for fair treatment without regard to an eligible's race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors except where provided for by Federal law; for the protection of the eligibiles privacy and constitutional rights; and for the equitable consideration of all eligibles.

(3) Provisions which would generally result in appointment from the whole list of eligibles or its equivalent would not meet the requirements of these standards. Any one of a variety of approaches providing for appointment from among the most qualified available eligibles from lists meets the requirements of this section. Where candidates are ranked in broad groups, appointments could, for example, be made first from a best qualified category, second, from a well qualified category, and third, from a qualified category or according to an equivalent system.

(4) State and local governments are encouraged to provide for entry through cooperative education, work study, internships, and similar programs.

(5) Minimum qualification and performance requirements and duties may be appropriately modified to permit the appointment and promotion of trainees to positions normally filled at full proficiency level.

§ 900.6023 Career advancement.

(a) *Requirement.* State and local government personnel systems can use a wide variety of approaches in promoting employees to higher level positions so long as they consider the eligible permanent employees in the agency or the career service and adequately assure that all persons promoted are qualified for the position.

(b) *Guide.* (1) The director of the personnel system needs to certify to the eligibility of persons selected for promotion or to delegate that authority to operating agencies, subject to an appropriate post-audit procedure.

(2) Systematic promotion methods are encouraged. They need to provide for competition among qualified career employees at appropriate points in the career advancement system. In addition, provisions need to be made to bring persons into the career service at higher levels where this will provide abilities not available among career employees, enrich the career service, or contribute to improved employment opportunities for underrepresented groups.

(3) Systems need to be established to provide opportunities for upward mobility through training, education, and career development.

§ 900.603 Merit principle II.

(a) *General requirement.* Equitable and adequate compensation will be provided.

§ 900.6031 Classification and compensation.

(a) *Requirement.* Classification and compensation plans will be maintained on a current basis. To maintain a high quality work force and to assure equitable compensation for comparable work, the compensation plan will take into account the responsibility and difficulty of the work, the compensation needed to compete in the labor market and to stay in proper alignment with other agencies of the government, and other pertinent factors.

(b) *Guide.* (1) Classification plans need to be based on job analysis and should be utilized for decisionmaking on compensation, selection, employee development, career advancement, upward mobility, and other personnel program activities.

(2) Collective negotiation or meeting and conferring with employee organizations to achieve equitable and adequate compensation can be consistent with these standards.

(3) In those programs in which States are responsible for supervision of local administration, States may determine whether local agency compensation will be governed by: A plan of the local government which covers other local agencies; a plan of the State which covers local grant-aided agencies; or a plan of the State which

covers the agency responsible for State administration of Federal grants.

§ 900.604 Merit principle III.

(a) *General requirement.* Employees will be trained as needed to assure high-quality performance.

§ 900.6041 Training.

(a) *Guide.* State and local governments should also provide training as needed to prepare employees for career advancement. Training programs should include systematic methods for assessing training needs, providing training to meet priority needs, selecting personnel for training and evaluating the training provided.

§ 900.605 Merit principle IV.

(a) *General requirement.* Employees will be retained on the basis of the adequacy of their performance and provision will be made for correcting inadequate performance and separating employees whose inadequate performance cannot be corrected.

§ 900.6051 Layoffs, separations, and employee evaluations.

(a) *Requirement.* Employees who have acquired permanent status will not be subject to separation except for cause or reason of curtailment of work or lack of funds. Procedures will be established to provide for the transfer, demotion, or separation of employees whose performance continues to be inadequate after reasonable efforts have been made to correct it. Retention of employees in classes affected by reduction in force will be based upon systematic consideration of type of appointment and other relevant factors.

(b) *Guide.* Employees need to be evaluated periodically on a systematic and job related basis to provide needed information: (1) for supervisors to assess the adequacy of individual employee performance in relation to performance requirements, (2) for employees to recognize their own performance improvement needs, and (3) as a basis for personnel actions including recognizing or rewarding superior performance and correcting inadequate performance or separating employees in cases where inadequate performance cannot be corrected. Quality of performance is a relevant factor to be taken into account in reduction in force systems.

§ 900.606 Merit principle V.

(a) *General requirement.* Fair treatment of applicants and employees in all aspects of personnel administration without regard to race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors and with proper regard for their privacy and constitutional rights as citizens will be assured.

§ 900.6061 Equal employment opportunity and affirmative action.

(a) *Requirement.* (1) Equal employment opportunity will be assured to all persons and measures will be initiated to include qualified minorities, women, and other appropriate groups among the persons considered for selection, especially when they are significantly underrepresented.

(2) Affirmative action programs consistent with merit principles will be developed and implemented for personnel services provided to and personnel administration within the grant-aided agencies and will include work force analysis and problem identification to determine whether percentages of minorities and women employed are substantially similar to percentages of those groups available in the work force in the relevant job market who possess the basic job related qualifications. The program will include development of a systematic action plan that is consistent with the merit principles and include the development of goals and timetables formulated to correct any substantial disparities or other problem identified in the analysis prescribed above.

(3) Affirmative action programs will include systems to collect and maintain data on applicants and employees by race, sex, or ethnic group to determine if the selection process results in adverse impact. The Commission, upon request by the Governor or his/her designee(s) on behalf of an individual State or local agency, may waive the requirement to collect data on applicants where the percentages of minorities and women employed at various levels in a State or local grant-aided agency are substantially similar to the percentages of these groups available in the relevant job market who possess the basic job-related qualifications.

(4) Requests for these waivers should be submitted in writing to the appropriate regional director of the Commission. Such waivers may be requested by a State to cover any one or more of the following categories:

(i) An employment level (or levels) within a State or local agency;

(ii) A job classification, classification series; or occupational grouping, as appropriate.

(5) A request for waiver must include relevant statistical data and analysis indicating that women and minorities are not substantially under represented in the categories for which the waiver is being requested in comparison with the percentages of these groups possessing the basic job related qualifications in the relevant job market. If specific occupational information is not available, then relevant statistical data and analysis indicating that women and minorities are not substantially underrepresented in the categories for which the waiver is being requested when compared to the general work force must accompany the request for waiver.

(6) The waivers will be granted without time limit but with the provision that if the race and sex composition of the category in the agency's work force changes substantially, the applicability of the waiver to that category may be withdrawn.

(7) Where a selection process has adverse impact, the requirements of the employee selection guidelines issued by this Commission will apply. A selection process includes tests and other employment procedures which are used as a basis for any employment decision as stipulated in the selection guidelines.

(8) Periodic evaluation of results to assess the effectiveness of the affirmative action programs in achieving both the long term and interim goals on a timely basis will be undertaken.

(9) Prohibitions against descrimination consistent with the Civil Rights Act of 1964 as amended (42 U.S.C. 2000e et seq.), the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.), the Age Discrimination in Employment Act of 1967 (29 U.S.C. 621 et seq.), the Equal Pay Act of 1963 (29 U.S.C. 206(d)(1)) and other relevant statutes will be established by the State and local governments and enforced by them.

(b) *Guide.* (1) To help assure equal employment opportunity, a personnel system needs to prohibit the following practices where based on race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors:

(i) Failing or refusing to hire, discharging, or otherwise discriminating against any individual with respect to compensation, terms, conditions, or privileges of employment;

(ii) Limiting, segregating, or classifying employees or applicants for employment with the intent of depriving them of employment opportunities or adversely affecting their employment status;

(iii) Failing or refusing to refer a candidate for employment;

(iv) Causing or attempting to cause an employer to discriminate against an individual;

(v) Discriminating against any individual in admission to, or employment in, any program established to provide training; and,

(vi) Discriminating against an individual in any other aspect of personnel administration.

(2) Federal law provides for an exception from the general rule prohibiting discrimination in cases in which religion, sex, national origin, or age is a bona fide occupational qualification for employment. However, court cases and other interpretations indicate that there are few, if any, jobs to which

this exception can be applied in programs covered by these standards.

(3) Employment tests need to accurately reflect handicapped applicants' or employees' job-related knowledges, skills, and abilities rather than their impairments.

(4) Work force analysis and problem identification normally need to be based upon the percentage of qualified candidates by race, sex, or ethnic group available in the relevant job market where such data is available. Where this data is not available, total work force may be used for this purpose. The analysis of the State or local government organization's work force may be done by individual job classifications or by classification series or occupational groupings, as appropriate. Systems for collecting data on applicants or employees by self-identification will not require them to disclose their race, sex, or ethnic group.

(5) Goals and timetables need to be flexible and include both numerical targets and action steps.

(6) State and local governments are encouraged to involve employee organizations in the formulation of affirmative action plans.

§ 900.6062 Employee management relations.

(a) *Guide.* (1) The proper and efficient administration of Federal grant-in-aid programs by State and local governments and the well-being of the employees of such programs require effective communication and an orderly and constructive relationship between employees and management officials. Collective negotiations, meeting and conferring with employee organizations, or other methods can make positive contributions to the communications process by providing employees an opportunity to participate in the formulation of policies and practices affecting the conditions of their employment.

(2) State and local government policies need to delineate the rights of employees of programs covered by these standards to form, join, and assist an employee organization or to refrain from any such activity, freely and without fear of penalty or reprisal.

(3) To facilitate effective participation in formulation of personnel policies by employees, State and local governments which establish a formal framework need to address all aspects of the labor management relationship and ought to indicate the rights and obligations of both management officials and employees; subjects for negotiating or meeting and conferring; criteria for recognition of employee organizations, determination of units, and resolution of impasses; and unfair labor practices and standards of conduct.

(4) The objectives of these provisions may be achieved through legislative enactment, promulagation of an executive order by the Chief Executive, or through the rules and regulations of the agency directly responsible for administering a program covered by the standards. The maintenance of a system of personnel administration based on merit principles needs to be assured in any collective negotiation or meet and confer system established.

(5) In the interest of effective administration of the Standards, the Commission has established procedures to insure that affected employee organizations are as fully informed of their administration as is feasible. State and local governments also should adopt procedures for this purpose.

§ 900.6063 Appeals.

(a) *Requirement.* In the event of separation or demotion, State and local governments will provide permanent employees with the right to appeal through an impartial process that may be recommendatory or enforceable on the appointing authority. In addition, they will provide for appeals of alleged discrimination on the basis of race, color, religion, sex, national origin, political affiliation, age, handicap, or other nonmerit factors by any applicant or employee through an impartial process that will result in timely, enforceable decisions.

(b) *Guide.* An impartial grievance procedure may satisfactorily meet the above requirements but an adequate appeal capability needs to be maintained for applicants and any employees not covered by the grievance procedure. State and local government personnel systems need to include an impartial procedure to process other employee grievances.

§ 900.607 Merit principle VI.

(a) *General requirement.* State and local governments will inform their employees of their political rights and prohibited practices under the Hatch Act.

§ 900.6071 Political activity.

(a) *Guide.* (1) The Hatch Act, as amended, 5 U.S.C. 1501–1508, prohibits certain types of political activity on the part of State and local government employees whose principal employment is in a federally funded program, irrespective of whether their positions are covered by these standards.

(2) State and local governments ought to adopt and themselves enforce provisions on political activity which are consistent with the Federal Hatch Act and which will facilitate their effective control of prohibited political activity by employees.

(3) State and local government policies on political activity need to insure that all employees have the right to express their views as citizens, to pursue their legitimate involvement in the political system, and to vote; that employees not engage in or be subject to coercion for political purposes, and not seek candidacy for public office in a partisan election.

§ 900.608 Administration.

(a) *General.* This section consists of regulations and guides on the administration of State and local personnel systems (§§ 900.6082 through 900.6085 and 900.6087) and Federal administration of the standards (§§ 900.6081, 900.6086, and 900.6088).

§ 900.6081 Review of merit systems.

(a) *Requirement.* (1) Certification of agreement by the Chief Executive of the jurisdiction (hereinafter "certification") to maintain a system of personnel administration in conformance with these standards is an eligibility requirement in grant or other programs to which personnel standards on a merit basis are applicable. (See appendix.)

(2) New personnel legislation and regulations will be made available promptly to the Commission on an informational basis so that the jurisdiction may be advised regarding any problems which could affect the jurisdiction's ability to implement the certification.

(3) Laws, rules, regulations, policy statements, and negotiated agreements impacting on a personnel system subject to these standards must provide for a system of personnel administration based on merit. This policy basis and the administration of the personnel system will be subject to review for substantial conformity to the standards.

(4) Certifications are to be submitted by the Governor to the Commission within 6 months of the effective date of implementation of the revised standards. Subsequent certifications will be submitted within 90 days after they have been requested by the Commission for the following reasons:

(i) Upon change in incumbent chief executives;

(ii) Upon initial application for Federal grant-in-aid or eligibility for other intergovernmental programs;

(iii) Upon passage of significant new personnel legislation affecting a State's merit system;

(iv) Upon major reorganization or restructuring of the personnel system of the jurisdiction; or,

(v) Upon determination that there exist major problems or apparent significant departures from the principles.

(5) Certifications are to be submitted, upon request, to appropriate Commission regional offices.

(6) The Governor shall designate an agency or agencies which will be re-

sponsible for supervising local compliance with these Standards. This agency will obtain certifications from local chief executives. The States must maintain these certifications and make them available to the Commission on request.

(7) A Chief Executive may indicate that grant-aided or other programs not previously covered by these Standards are not currently in compliance with the Standards, but they will comply within a reasonable period of time. In such a situation, he or she must also submit for Commission approval an action plan outlining the features of a proposed merit system and provide a specific timetable for compliance.

(8) Before signing a certification, a Chief Executive may request advice and assistance from the Commission in order to determine whether the agencies under his/her jurisdiction are in compliance with the Standards. Such assistance and/or negotiations may continue beyond the specified time requirement for the Chief Executive's certification. In the absence of such a certification, temporary assurance as to compliance with the Standards may be effected by:

(i) Obtaining certification from the heads of those State and local agencies which are required to have merit personnel systems as a condition of Federal grant-in-aid or other intergovernmental programs; or

(ii) The Commission regional office may conduct an advance personnel management evaluation of those agencies subject to the Standards.

(9) Where grants-in-aid are not passed through a State agency to local governments, the latter can transmit all required certifications and applications for waiver directly to the appropriate regional office of the Commission.

§ 900.6082 Coverage of the standards.

(a) *Requirement.* (1) These Standards are applicable to all State and local personnel, except those exempted in this section, engaged in the administration of grant-in-aid programs under Federal laws and regulations requiring the establishment and maintenance of personnel standards* on a merit basis. To help assure the recruitment, selection, and advancement of highly qualified personnel and continuity of program administration, career coverage will be provided by State and local personnel systems for all non-exemptible management, supervisory, technical, and other positions in grant-aided programs, irrespective of the source of funds for their salaries. To assure proper organizational responsiveness, appropriate numbers of top level positions may be exempted if they determine and publicly advocate substantive program policy, provide legal counsel, or are required to maintain a close confidential working relationship with a key exempt official. State and local governments have flexibility in determining whether top level policy positions will be filled on a career or exempt basis so long as the number of positions filled on an exempt basis does not exceed the number which may be exempt under the above provision. Unskilled laborers, bona fide part-time positions, temporary positions established for the purpose of conducting a special project, study, or investigation, and severely handicapped persons may be exempted if that would not have an undesirable impact on proper and efficient administration or on the achievement of equal employment opportunity.

(2) The Commission, at the request of the Governor or his/her designee(s) on behalf of the State or its local governments, may waive for a State or local government for a 2-year period with the possibility of extension any one or a combination of the provisions of these Merit System Standards for experimental or research projects designed to improve merit systems or their operations. Upon completion, the project will be evaluated to determine whether its objectives have been achieved.

(3) Requests for such waivers should be sent to the appropriate regional office of the Commission. Requests for waivers from local jurisdictions will be submitted by the local Chief Executive to the State agency designated by the Governor to supervise local compliance with the Standards. Any recommendation by the State for approval of a waiver from a local government shall be submitted to the appropriate Commission regional office for approval before implementation.

(b) *Guide.* (1) State and local governments may exempt from the application of these Standards members of boards or similar bodies who do not perform administrative duties as individuals; officials serving ex officio and performing incidental administrative duties; the executive heads of agencies and positions reporting directly to them which are primarily responsible for both substantive program policy determination and its public advocacy; confidential assistants to the above positions; and attorneys serving as legal counsel or conducting litigation.

(2) Normally, positions involving only policy development may not be exempted. Generally, positions involving policy determination and public advocacy that are engaged in the direction of line operations may be exempted from the Standards only when they report directly to the executive head of an agency. An exception to this reporting relationship may be made within the primary components of large multiprogram agencies where the heads of major units in these organizations and positions reporting directly to them may also be exempted.

(3) Upon exemption of a position from the career service, incumbents with permanent status retain their career service tenure or are appropriately compensated for its termination.

(4) State and local governments are encouraged to develop systems for assigning career management employees to exempt policy determining and advocacy, confidential and other key positions without tenure in such a position but with reinstatement rights to a career service position. These systems allow Chief Executives to place highly qualified career employees in key jobs without sacrificing responsiveness to new program direction or to the Chief Executive.

(5) Job related qualification requirements ought to be established for positions exempted from these Standards.

(6) The exclusion of management positions from collective bargaining is not a basis for exemption of such positions from the merit system.

§ 900.6083 Organization.

(a) *Requirement.* (1) A State or local government's merit system organization will provide for impartial administration.

(2) At the option of the State, a local government which does not have a jurisdiction-wide personnel system meeting these Standards may elect one of the following:

(i) To cover grant-aided programs under a personnel system serving other grant-aided agencies covered by the Standards, such as a system serving State agencies, another city or county, or a group of local jurisdictions;

(ii) To cover grant-aided programs using a single cooperative personnel system where this is warranted as the basis for future development of a comprehensive system.

(3) Chief Executives of local governments with less than 25 employees in all activities covered by these Standards may apply to the State agency designated by the Governor to supervise local compliance with the Standards for a waiver of their requirements on the basis that compliance is impractical. Normally, if any State or local merit system meeting these Standards has jurisdiction over the local programs, it will be considered practical to continue to apply the Standards in those local programs. Applications for waivers are subject to approval by appropriate State grant-aided agencies, and if endorsed by them must be forwarded to the appropriate Commission regional office for final approval.

(4) The Chief Executive of a jurisdiction which requests a waiver as pro-

vided above must certify that personnel administration in the grant-aided programs will be consistent with the six merit principles in the Inter-governmental Personnel Act. Evaluation of local personnel administration in such agencies will be conducted by the State agency supervising local compliance with the Standards and will be initiated only when a complaint has been received alleging practices inconsistent with the merit principles.

(b) *Guide.* (1) Any one of a variety of personnel system organizations covering substantially all employees in State or local government or the State grant-aided agencies meets the requirements of this section. Personnel organizations need to be administered by a qualified executive responsible to the Chief Executive, a top official, or a board or commission. Staff ought to be appointed on the basis of merit and serve in accordance with the provisions of the personnel system.

(2) The central personnel organization needs to be provided with sufficient staff and other resources to enable it to give effecitve personnel administration services to the grant-aided agencies.

(3) In the interest of economy, efficiency, and effectiveness, a single personnel system is needed to cover all of the grant-aided agencies in a jurisdiction subject to these Standards.

§ 900.6084 Intergovernmental cooperation.

(a) *Guide.* To facilitate public service mobility and maximum utilization of personnel resources, provision should be made for: cooperative inter-jurisdictional recruiting, selection, examining, certifying, training, research and development, and other personnel functions; adding to registers of eligibles applicants with eligibility on comparable examinations in other jurisdictions; appointing employees on the basis of their permanent career status in another jurisdiction, with maximum protection of their retirement and other benefits.

§ 900.6085 Extension of personnel system.

(a) *Requirement.* Employees with permanent status under a personnel system meeting these Standards will retain comparable status if the employing agency is placed under the jurisdiction of another personnel system.

(b) *Guide.* As determined by the State, upon the initial extension of the personnel system to a program, incumbents may obtain permanent status through an open competitive or qualifying examination; or if they have a specified period of satisfactory service in the agency at the State's discretion, they may be granted permanent status. If they do not pass a required examination, employees may be retained in the positions in which they have incumbency preference without acquiring the rights of career status.

§ 900.6086 Establishing a merit requirement or policy.

(a) *Requirement.* (1) Federal agencies may adopt, only with prior approval of the Commission, regulations that require as a condition for receiving Federal financial or other assistance or otherwise participating in an intergovernmental program that State and local agencies establish and maintain, a personnel system that conforms with a Federal merit requirement or policy. To avoid inconsistent and conflicting approaches to State and local governments, normally such merit requirements or policies should consist of application of these Standards.

(2) The following regulation shall be adopted by Federal agencies that wish to require that State and local agencies establish and maintain a personnel system that conforms with these Standards:

"Methods of personnel administration will be established and maintained in public agencies administering the program in conformity with the Standards for a Merit System of Personnel Administration which incorporate the Intergovernmental Personnel Act Merit Principles (Pub. L. 91-648 § 2, 84 Stat. 1909) prescribed by the Commission pursuant to section 208 of the Intergovernmental Personnel Act of 1970."

(3) For grant or other programs that are State supervised and locally administered, insert the following after the word "administering" in the above: "or supervising the administration of."

(4) No variation from the language contained in paragraphs 2 and 3 of this section may be used without approval by the Commission.

(5) The Commission shall provide, within available resources, consultation and technical advice and assistance to State and local jurisdictions to aid them in complying with the Standards. In the absence of available resources, the Commission may provide technical assistance on a reimbursable basis to Federal agencies administering grants and State and local agencies receiving grants for the purpose of aiding the State and local agencies to comply with the Standards.

§ 900.6087 Personnel records and reports.

(a) *Requirement.* (1) Appropriate personnel records will be maintained to assure the proper administration of the personnel system and grant-aided agency personnel programs. Periodic reports, such as statistical reports on personnel administration, will be prepared as required by the Commission to indicate compliance with applicable State and local requirements and these Standards.

(2) Each federally aided State or local agency and each State or local merit system agency shall permit the Commission during normal business hours to review its books, records, and other sources of information as may be required to ascertain compliance with these Standards.

(3) Each State or local agency affected shall furnish annually to the Commission completed report CSC Form 1129, Review of Personnel Operations—Grant-Aided Agency, and other reports as may be required to show compliance with these Standards.

(4) Each State and affected local merit system agency shall furnish annually to the Commission completed report CSC Form 1128, Review of Personnel Operations—Merit System Agency.

(b) *Guide.* State and local governments should provide employees with opportunities to review information in their employee files to assure a control on the accuracy of that information. They should limit access to employee records to persons who have a legitimate need to see them.

§ 900.6088 Review of personnel operations.

(a) *Requirement.* (1) The Commission, in cooperation with the appropriate Federal agency, shall make or arrange for onsite reviews of each State merit system agency and other affected State agencies to determine compliance with the Standards, except that reviews of the latter agencies by the State merit system agency at the discretion of the Commission may be accepted in lieu of Commission reviews.

(2) The agency designated by the Governor to supervise local compliance with the Standards, in consultation with the appropriate regional office of the Commission, shall make or arrange for onsite reviews of the operations of the merit system for each local agency to determine compliance with the Standards.

§ 900.609 Compliance and assistance.

(a) The Commission, when corrective action is required, will negotiate with the appropriate State merit system agency to achieve compliance and will coordinate its activities with the appropriate Federal agency.

(b) The Commission shall request the appropriate Federal agency to render assistance when required to achieve compliance.

(c) The Commission, when there is a question of substantial conformity with the Standards after negotiation or the rendering of necessary technical assistance, shall forward its findings to the Federal agency, recommending that grant termination procedures or other appropriate action be initiated.

§ 900.610-620 [Reserved]

APPENDIX TO THE STANDARDS FOR A MERIT SYSTEM OF PERSONNEL ADMINISTRATION

PART I: The following programs have a statutory requirement for the establishment and maintenance of personnel standards on a merit basis

Program, Legislation, and Statutory Reference

Drug Abuse Prevention, Drug Abuse Office and Treatment Act of 1972, § 409, on March 21, 1972; 21 U.S.C. § 1176(e)(8).

National Health Planning and Resources Development, Public Health Service Act (Title XV), as amended by the National Health Planning and Resources Development Act of 1974, 42 U.S.C. § 300m-1(b)(4)(B).

Medical Facilities Assistance (Construction and Modernization), Public Health Service Act (Title XVI), as amended by the National Health Planning and Resources Development Act of 1974, § 1603, on January 2, 1975; 42 U.S.C. § 300o-2(b).

Old-Age Assistance*, Social Security Act (Title I), as amended by the Social Security Act Amendments of 1939, § 101, on August 10, 1939; 42 U.S.C. § 302(a)(5)(A).

Employment Security (Unemployment Insurance and Employment Service), Social Security Act (Title III), as amended by the Social Security Act Amendments of 1939, § 301, on August 10, 1939, and the Wagner-Peyser Act, as amended by Public Law 775, § 2, on September 8, 1950; 42 U.S.C. § 503(a)(1) and 29 U.S.C. § 49d(b).

Aid to Families with Dependent Children (AFDC), Social Security Act (Title IV A), as amended by the Social Security Act Amendments of 1939, § 401, on August 10, 1939; 42 U.S.C. § 602(a)(5).

Maternal and Child Health Services/Crippled Children Services, Social Security Act (Title V), as amended by the Social Security Act Amendments of 1939, § 503, on August 10, 1939; 42 U.S.C. § 705(a)(3)(A).

Aid to the Blind*, Social Security Act (Title X), as amended by the Social Security Act Amendments of 1939, § 701, on August 10, 1939; 42 U.S.C. § 1202(a)(5)(A).

Aid to the Permanently and Totally Disabled*, Social Security Act (Title XIV), as amended by the Social Security Act Amendments of 1950, § 1402, on August 28, 1950, 42 U.S.C. § 1352(a)(5)(A).

Aid to the Aged, Blind or Disabled*, Social Security Act (Title XVI), as amended by the Public Welfare Amendments of 1962, § 1602, on July 25, 1962; 42 U.S.C. § 1382(a)(5)(A).

Medical Assistance (Medicaid), Social Security Act (Title XIX), as amended by the Social Security Amendments of 1965, § 1902, on July 30, 1965; 42 U.S.C. § 1396a(a)(4)(A).

Grants to States for Social Services, Social Security Act (Title XX), as amended by the Social Services Amendments of 1974, § 2003, on January 4, 1975; 42 U.S.C. § 1397b(d)(1)(D).

Developmental Disabilities Services and Facilities Construction, Developmental Disabilities Services and Facilities Construction Act, as amended by the Developmentally Disabled Assistance and Bill of Rights Act, § 111, on October 4, 1975; 42 U.S.C. § 6063(b)(7).

Comprehensive Mental Health Services (Services and Facilities), Community Mental Health Centers Act (Title II), as amended by the Community Mental Health Centers Amendments of 1975, § 303, on July 29, 1975; 42 U.S.C. § 2689t(a)(1)(D).

State and Community Programs on Aging (Older Americans), Older Americans Act of 1965 (Title III), as amended by the Older Americans Comprehensive Services Amendments of 1973, § 305, on May 3, 1973; 42 U.S.C. § 3025(a)(2).

Nutrition Program for the Elderly, Older Americans Act of 1965 (Title VII), as amended by Public Law 92-258, § 705, on March 22, 1972; 42 U.S.C. § 3045d(a)(3).

Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (Title III), § 303, on December 31, 1970; 42 U.S.C. § 4573(a)(5).

Civil Defense Personnel and Administrative Expenss, Civil Defense Act of 1950 (Title II), as amended by Public Law 94-361, § 804, on July 14, 1976; 50 U.S.C. App. 2286(a)(4).

PART II: The following programs have a regulatory requirement for the establishment of personnel standards on a merit basis

Program, Legislation, and Regulatory Reference

Food Stamp, Food Stamp Act of 1964, as amended; 7 CFR § 271.1(g).

Occupational Safety and Health Standards, Williams-Steiger Occupational Safety and Health Act of 1970; 29 CFR § 1902.3(h).

Occupational Safety and Health Statistics Williams-Steiger Occupational Safety and Health Act of 1970; BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A.

Child Welfare Services, Social Security Act (Title IV B), especially as amended by the Social Security Amendments of 1967, on January 2, 1968; 45 CFR § 220.49(c).

PART III: The following programs have a personnel requirement which may be met by a merit system which conforms to the Standards for a Merit System of Personnel Administration

Program, Legislation, and Reference

Comprehensive Employment and Training Act, Comprehensive Employment and Training Act of 1973; 29 CFR § 98.14(a).

Vocational Rehabilitation Services, Rehabilitation Act of 1973 (Title I), as amended; 45 CFR § 1361.15(b) [40 FR 54705, November 25, 1975].

Disability Determination Services, Social Security Act (Titles II and XVI), as amended; SSA Disability Insurance State Manual, Part IV, § 425.1

Health Insurance for the Aged (Medicare), Social Security Act (Title XVIII), especially as amended by the Health Insurance for the Aged Act, on July 30, 1965; SSA State Operations Manual, Part IV, § 4510(a).

[FR Doc. 78-13228 filed 5-15-78; 8:45 am]

*Legislative provisions which apply only to Puerto Rico, the Virgin Islands, and Guam.

[3410-02]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 918]

FRESH PEACHES GROWN IN GEORGIA

Proposed Expenses, Rate of Assessment, and Carryover of Unexpended Funds

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This notice invites written comments on proposed expenses and a rate of assessment for the 1978-79 fiscal period, to be collected from handlers to support activities of the Industry Committee which locally administers the Federal marketing order covering Georgia peaches.

DATES: Comments must be received on or before June 5, 1978. Proposed effective dates: March 1, 1978, through February 28, 1979.

ADDRESSES: Send two copies of comments to the Hearing Clerk, U.S. Department of Agriculture, Room 1077, South Building, Washington, D.C. 20250, where they will be available for public inspection during business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: The proposals under consideration were submitted by the committee, established under Marketing Order No. 918, as amended (7 CFR Part 918; 42 FR 40883), regulating the handling of peaches grown in Georgia, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), as the agency to administer its terms and provisions. The proposals are:

(a) Expenses that are reasonable and likely to be incurred by the Industry Committee during the period March 1, 1978, through February 28, 1979, will amount to $16,042.50.

(b) The rate of assessment for said period payable by each handler in accordance with § 918.41 is fixed at $0.0125 per bushel (48 pounds net weight) of peaches.

(c) Unexpended assessment funds in excess of expenses incurred prior to February 28, 1978, up to a maximum of $20,000, shall be carried over as a reserve in accordance with § 918.44.

Dated: May 10, 1978.

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

[FR Doc. 78-13280 Filed 5-15-78; 8:45 am]

[3410-02]

[7 CFR Part 1004]

[Docket No. AO-160-A54]

MILK IN THE MIDDLE ATLANTIC MARKETING AREA

Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreement and to Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends the date for filing exceptions to a recommended decision concerning a proposed amended order regulating the handling of milk in the Middle Atlantic marketing area. A group of cooperatives that supply milk to the market requested additional time to complete an analysis of the decision.

DATE: Exceptions are now due on or before June 11, 1978.

ADDRESS: Exceptions should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued September 1, 1977, published September 8, 1977 (42 FR 45001). Recommended Decision issued April 21, 1978, published April 27, 1978 (43 FR 17950).

Notice is hereby given that the time for filing exceptions to the above listed recommended decision concerning proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Middle Atlantic marketing area is hereby extended to June 11, 1978.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on May 11, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-13279 Filed 5-15-78; 8:45 am]

[3410-02]

[7 CFR Part 1036]

[Docket No. AO-179-A43]

MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

Notice of Extension of Time for Filing Exceptions to the Recommended Decision on Proposed Amendments to Tentative Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing exceptions to proposed rule.

SUMMARY: This notice extends further the time for filing exceptions to the March 31, 1978, recommended decision concerning a proposed amended order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area. A group of handlers requested additional time to complete an analysis of the decision.

DATE: Exceptions now are due on or before May 31, 1978.

ADDRESS: Exceptions should be filed with the Hearing Clerk, Room 1077, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing, issued September 20, 1977, published September 26, 1977 (42 FR 48886). Notice of Extension of Time for filing briefs, issued November 25, 1977, published November 30, 1977 (42 FR 60927). Recommended Decision, issued March 31, 1978, published April 6, 1978 (43 FR 14478).

Notice of Extension of Time for filing exceptions to the recommended decision, issued April 24, 1978, published April 27, 1978 (43 FR 17963).

Notice is hereby given that the time for filing exceptions to the recommended decision issued March 31, 1978 (43 FR 14478) with respect to the proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Eastern Ohio-Western Pennsylvania marketing area is hereby extended to May 31, 1978.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

Signed at Washington, D.C., on May 11, 1978.

WILLIAM T. MANLEY,
Deputy Administrator,
Marketing Program Operations.

[FR Doc. 78-13278 Filed 5-15-78; 8:45 am]

[3410-15]

Rural Electrification Administration

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Proposed Revision of REA Specification PE-22 for Aerial and Underground Telephone Cable

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletin 345-13 to announce the revision of REA Specification PE-22 for Aerial and Underground Telephone Cable. This specification was revised to upgrade the electrical requirements and to include a section on Qualification Testing. The effect of this action will be to take advantage of state-of-the-art improvements in cable manufacturing and help assure the long-term performance characteristics of the cable under certain environmental conditions. On issuance of REA Bulletin 345-13, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than June 15, 1978.

ADDRESS: Persons interested in the revised specification 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. Warner T. Smith, Chief, Outside Plant Branch, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1340, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone No. 202-447-3827.

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 345-13. A copy of the proposed revision of REA Bulletin 345-13 and the proposed revision of REA Specification PE-22

may be secured in person or by written request from the Director, Telephone Operations and Standards Division.

Dated: May 9, 1978.

JOHN H. ARNESEN,
Acting Assistant Administrator—Telephone.

[FR Doc. 70-13273 Filed 5-15-78; 8:45 am]

[3410-15]

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Proposed Revision of REA Specification PE-33 for Cable Shield Bonding Connectors

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to revise REA Bulletin 345-65 to announce the revision of REA Specifiction PE-33 for Cable Shield Bonding Connectors. This specification was revised to reflect performance requirements that are consistent with present day state-of-the-art and performance needs. The effect of this action will be towards industry standardization and cost minimization. On issuance of REA Bulletin 345-65, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than: June 15, 1978.

ADDRESS: Persons interested in the revised specification 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. Warner T. Smith, Chief, Outside Plant Branch, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1340, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone No. 202-447-3827.

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 345-65. A copy of the proposed revision of REA Bulletin 345-65 and the proposed revision of REA Specification PE-33 may be secured in person or by written request from the Director, Telephone Operations and Standards Division.

Dated: May 9, 1978.

JOHN H. ARNESEN,
Acting Assistant Administrator—Telephone.

[FR Doc. 78-13274 Filed 5-15-78; 8:45 am]

[3410-15]

[7 CFR Part 1701]

RURAL TELEPHONE PROGRAM

Proposed Revision of REA Specification PE-200 for Polyethylene Raw Material

AGENCY: Rural Electrification Administration.

ACTION: Proposed rule.

SUMMARY: REA proposes to issue a File With for REA Bulletin 345-21 to announce a revision of REA Specification PE-200 for Polyethylene Raw Material. This revision is needed to permit the use of modified jacketing compounds based on technical advances in the area of compound formulation technology. The effect of this action will be to permit modified jacketing compounds with improved cost/performance characteristics. On issuance of the File With for REA Bulletin 345-21, Appendix A to Part 1701 will be modified accordingly.

DATE: Public comments must be received by REA no later than: June 15, 1978.

ADDRESS: Persons interested in the revision of REA Specification PE-200 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. Warner T. Smith, Chief, Outside Plant Branch, Telephone Operations and Standards Division, Rural Electrification Administration, Room 1340, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, telephone number 202-447-3827.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 USC 901 et seq.), REA proposes to issue a File With for REA Bulletin 345-21. The text of the proposed File With REA Bulletin 345-21 is as follows:

FILE WITH REA BULLETIN 345-21

The Melt Index requirement under Appendix C of REA Specification PE-200 has been revised to reflect technical advances in compound formulation technology which will permit the use of higher melt index jacketing compounds with improved cost/performance characteristics.

Please make a pen and ink change for Melt Index under Appendix E from 0.5 to 0.650 maximum which becomes effective immediately.

Dated: May 9. 1978.

JOHN H. ARNESEN,
Acting Assistant Administrator—Telephone.

[FR Doc. 78-13281 Filed 5-15-78; 8:45 am]

[3410-07]

Farmers Home Administration

[7 CFR Part 1900]

FARMERS HOME ADMINISTRATION APPEAL PROCEDURE

Addition of Subpart

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMARY: The Farmers Home Administration proposes to add a new Subpart which will provide a new procedure for appeal, with hearing and review, for all FmHA applicants, borrowers and grantees who are directly and adversely affected by an administrative decision. The intended effect of this action is to assure a standardized and fair appeal from any such action. This proposal consolidates and refines existing FmHA appeals procedures and covers actions not presently subject to existing appeals procedures. This action is taken as a result of an administrative decision.

DATE: Comments must be received on or before July 17, 1978.

ADDRESS: Submit written comments to the Office of the Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Room 6316, Washington, D.C. 20250. All written comments made pursuant to this notice will be available for public inspection at the address given above.

FOR FURTHER INFORMATION CONTACT:

Arthur M. Collings, Jr., phone 202-447-2564.

SUPPLEMENTARY INFORMATION: The Farmers Home Administration proposes to add a new Subpart B, "Farmers Home Administration Appeals Procedure," and a new Part 1900, "General," in Subchapter H, Chapter XVIII, Title 7 in the Code of Federal Regulations. This proposal provides for a hearing on appeal from a deci-

sion by FmHA, an appeal on the record from the hearing, and a third review to determine whether the decision is "arbitrary and capricious." The appeal officials will vary depending on which FmHA official made the decision from which the appeal is taken. The procedure will apply to all FmHA loan and grant programs.

PART 1900—GENERAL

Therefore, as proposed, Part 1900, Subpart B reads as follows:

Subpart B—Farmers Home Administration Appeal Procedure

Sec.
1900.51 Purpose.
1900.52 Definitions.
1900.53 Appeal from an initial FmHA decision.
1900.54 Effect of appeal decision.
1900.55-1900.100 [Reserved]

AUTHORITY: 7 U.S.C. 1989; 42 U.S.C. 1480; 42 U.S.C. 2942; 5 U.S.C. 301; Sec. 10 Pub. L. 93-357, 88 Stat. 392; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.70; delegations of authority by Director, OEO 29 FR 14764, 33 FR 9850.

Subpart B—Farmers Home Administration Appeal Procedure

§ 1900.51 Purpose.

This regulation is established to provide a uniform procedure whereby a person may appeal any Farmers Home Administration (FmHA) program administrative action directly affecting such person. The only appeal by a borrower not covered by this regulation is one involving foreclosure (see 7 CFR 1955.15). This procedure will be applicable to administrative decisions made after its effective date.

§ 1900.52 Definitions.

(a) *Appellant.* An appellant is an applicant, borrower, or grantee, either an individual or organization, that is directly and adversely affected by an administrative decision by FmHA.

(b) *Directly and adversely affected.* The term "directly and adversely affected" includes having a request for FmHA assistance denied, reduced, cancelled, or not renewed.

(c) *Hearing.* A hearing, as used in this regulation, is an informal proceeding at which an appeal from an adverse decision is heard.

(d) *Hearing officer.* The hearing officer will be:

(1) In the case of an appeal of an initial decision by a County Supervisor, the District Director having jurisdiction over that county office. If That Distric Director had a significant role in the initial determination, the District Director from a nearby geographical district office will be designated by the State Director;

(2) In the case of an appeal of an initial decision by a District Director, the State Director, who may designate a program chief to be the hearing officer;

(3) In the case of an appeal of an initial decision by a State Director, the appropriate program Assistant Administrator;

(4) In the case of an appeal of an initial decision by a Division Director, the appropriate Program Assistant Administrator; and

(5) In the case of an appeal of an initial decision by an Assistant Administrator, the appropriate Deputy Administrator.

(e) *Record.* The term record means the FmHA file, papers filed by an appellant, notes or transcript (if any) of a hearing, and decisions made by FmHA officials.

(f) *Review officer.* The review officer, when the hearing officer is:

(1) The District Director, will be the State Director;

(2) The State Director, will be the appropriate Program Assistant Administrator;

(3) The Program Assistant Administrator, will be the appropriate Deputy Administrator; and

(4) The Deputy Administrator will be the Administrator.

§ 1900.53 Appeal from an initial FmHA Decision.

(a) If a person or organization is directly and adversely affected by an FmHA decision or action, the official taking such action or making the decision will inform that person or organization by letter of the action taken. The letter will include the following:

(1) A statement of the action taken or decision made and the specific reason(s) for the conclusion reached.

(2) An invitation to call at the decision-making official's office to discuss the decision with that official. The person (or organization) may bring to the meeting any additional information or a representative.

(3) A statement that the person (or organization) may appeal the decision directly to the hearing officer. The statement should read as follows:

> You may appeal the above action by writing to (hearing officer) (address) within 30 calendar days of the date of this letter, giving the reasons why you believe this matter should be decided differently. A copy of your appeal should be sent to me so that I can expeditiously forward the file on this matter to the hearing officer.

(4) A statement that if the person (or organization) wants the status quo maintained the decision may be stayed pending appeal if requested by the person (or organization) at the discretion of the decision-making official.

(b) If a request is received to stay the decision, the decision-maker, based on the facts and circumstances, may stay the decision. An appropriate case for a stay would be if to not grant the stay would make an appeal useless.

(c) If the program or organization takes the opportunity for a meeting with the decision-making official, as set forth in § 1900.53(a)(2), and, as a result of that meeting, the request is not granted, the official will send a letter to the person (or organization) which will contain the statements set forth in § 1900.53(a) (1) and (3).

(d) When an appellant appeals a decision as provided in § 1900.53 (a)(3) or (b), the appeal will be handled as follows:

(1) Upon receipt of the copy of the appeal letter, the decision-making official will forward the entire file on the matter to the hearing officer.

(2) The hearing officer will arrange for a hearing to be held as soon as possible but within 30 calendar days of the receipt of the appeal. If the appellant or the decision-maker for good reason is unable to attend a hearing within the 30 calendar day period, the hearing officer, after considering the circumstances, will set a date for the hearing.

(3) *Failure to appear.* (i) If the appellant or appellant's representative, without reasonable cause fails to appear at the hearing, the appellant's appeal will be deemed to have been concluded.

(ii) If the failure to appear is with reasonable cause, the hearing officer will reschedule the hearing at a time convenient to all interested parties.

(4) *The hearing.* (i) The hearing will be an informal proceeding at which the appellant may provide any information or witnesses the appellant believes should be considered in reaching a proper decision. The appellant may present evidence, witnesses, and arguments in support of appellant's complaint, controvert evidence relied on by the FmHA, and question all witnesses. Hearings conducted by the hearing officer shall be informal, and any evidence may be received by the hearing officer without regard to whether that evidence could be employed in judicial proceedings.

(ii) The decision-making official (or successor) will be at the hearing and will present evidence if necessary. Any other witnesses or FmHA personnel the decision-making official thinks necessary to fully determine the matter will be at the hearing to present evidence.

(iii) Before the hearing, the appellant or appellant's representative, unless otherwise prohibited by law or regulation, may examine; and, at appellant's expense, copy all relevant documents, records and regulations of FmHA. The original decision-making official will present the reasons for the original adverse decision. The appellant may be represented by an attorney or any other person at the hearing. All witnesses may be questioned by the hearing officer and any interested party.

(iv) An FmHA employee will take notes at the hearing. Within 5 working days after the hearing a copy of the notes will be provided to the appellant who may notify FmHA of any changes appellant thinks should be made to the notes within 4 working days of receipt of the copy. If the appellant requests in advance, appellant may arrange to have a transcript of the hearing made at appellant's own expense. At FmHA's request, a copy of the transcript will be provided to FmHA's for cost of reproduction.

(5) For good cause, the hearing officer on the request of any interested party may, in the hearing officer's complete discretion, continue the hearing to a future time.

(6) The decision of the hearing officer shall be based upon facts presented at the hearing, appropriate FmHA files, applicable statutes and regulations, and the hearing officer's general knowledge of FmHA program functions.

(7) Within 20 calendar days of the hearing the hearing officer will determine what action to take with regard to the appeal and:

(i) If the initial decision is reversed, will inform the appellant and original decision-making official by letter of the decision and what action will be taken.

If the initial decision is upheld or modified but not reversed, will inform the appellant by letter of the decision giving the specific reasons, with a copy to the decision-making official. The letter must contain the following statement:

If you wish to have the above decision further reviewed, you may appeal in writing to (review officer/address) within 20 calendar days of the date of this letter explaining why you believe the decision is incorrect. Since this review will be based on the record, including papers filed, FmHA files, notes or transcripts of the appeal meeting, my decision, applicable statutes and regulations, and any additional written information you wish to submit, you should include any additional information you think is important and indicate whether you wish to present any information in person. A copy of your appeal should be sent to me so that I can expeditiously forward the record to the review officer.

(e) If the appellant does not request in writing an appeal of the hearing officer's decision within the 20 calendar day period provided in the letter, the appeal will be considered concluded.

(f) If the appellant appeals to the review officer:

(1) Upon receipt of the copy of the appeal the hearing officer will forward the record to the review officer.

(2) The review officer will obtain a copy of the transcript of the hearing if one was arranged for by the appellant.

(3) If no personal meeting was requested by the appellant, the review officer will review the record on the case and applicable law and regulation, any additional information furnished by the appellant and such additional information as the review officer deems necessary and render a decision within 30 calendar days of receipt of the appeal.

(4) If the appellant indicates a desire to present information in person, the review officer will arrange a meeting for the sole purpose of receiving such additional information. The meeting will be held within 15 calendar days of receipt of the appeal. A final decision will be rendered within 30 calendar days of receipt of appeal.

(5) If the decision of the hearing officer is reversed, the appellant will be informed by letter of the decision and what action will be taken. The original decision-making official and the hearing officer will also be notified.

(6) If the hearing officer's decision is upheld or modified but not reversed, the appellant will be informed of the decision by letter giving the specific reasons for the decision, with a copy each to the decision-making official and hearing officer. The letter must contain the following statement:

If you believe the above decision is arbitrary and capricious, that is, lacking any rational, factual, or legal basis, you may write the Administrator, FmHA, 14th and Independence Avenue SW., Washington, D.C. 20250, explaining why. The Administrator's review will be based only on the existing written record. A copy of your letter to the Administrator should be sent to me so that I can expeditiously forward the record to the Administrator.

(g) Upon receipt of an appeal from a hearing review officer's decision, the Administrator or his delegate will review the record, which will have been forwarded by the review officer upon receipt of a copy of the letter and determine whether the decision was arbitrary and capricious. If not, the decision will be upheld and the appellant so notified. If the Administrator or his delegate finds the decision to have been arbitrary and capricious, he will determine what action should be taken and notify all affected parties. The Administrator may not delegate this authority except to the Associate Administrator, if the appeal is from an initial decision of an Assistant Administrator or higher official.

§ 1900.54 Effect of appeal decision.

(a) *Effective date.* When an appeal is concluded, the effective date of the action to be taken will be the originally proposed effective date of the initial decision from which the appeal was taken.

(b) *Legal effect.* A decision made when an appeal is concluded will be administratively conclusive. It will not, however, be determinative of the legality of the action to be taken.

§ 1900.55—1900.100 [Reserved]

Dated: May 9, 1978.

GORDON CAVANAUGH,
Administrator, Farmers Home Administration.

[FR Doc. 78-13291 Filed 5-15-78; 8:45 am]

[3410-37]

Food Safety and Quality Service

[9 CFR Part 318]

FEDERAL MEAT INSPECTION REGULATIONS

Substances Used in Preparation of Bacon

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This document proposes to amend the Federal meat inspection regulations by requiring that 40 parts per million (ppm) of sodium nitrite or an equivalent amount of potassium nitrite (49 ppm) be added to bacon and by requiring that 0.26 percent potassium sorbate by weight of bacon be added to bacon. This would supersede the current provisions requiring that bacon contain 120 ppm sodium nitrite (or an equivalent amount of potassium nitrite—148 ppm) and 550 ppm sodium ascorbate or sodium erythorbate. This action is for the purpose of further reducing the amount of nitrite used in bacon.

DATE: Comments and data must be received on or before November 16, 1978.

ADDRESS: Written comments and data must be sent to the Hearing Clerk, Room 1977, South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Mr. Irwin Fried, Acting Director, Product Standards, Labels and Packaging Division, Food Safety and Quality Service, U.S. Department of Agriculture, Room 202, Annex Building, Washington, D.C. 20250, 202-447-6042.

BACKGROUND INFORMATION

In another document published in this issue of the FEDERAL REGISTER, the Department published a final rule which, among other things, prohibits the use of sodium and potassium nitrite in bacon, requires that 120 ppm ingoing sodium nitrite or an equivalent amount of potassium nitrite (148 ppm) be used in bacon, and requires that specified levels of sodium ascorbate or sodium erythorbate (isoascorbate) be used in bacon. However, the Administrator has determined to take action to require that nitrites be used

in bacon at the lowest possible levels in order to further insure that those levels of nitrite do not contribute to the formation of nitrosamines in bacon at the time of cooking.

Based on a review and evaluation of all data available at this time, it appears that bacon made with 40 ppm sodium nitrite (or an equivalent amount of potassium nitrite—49 ppm) and 0.26 percent potassium sorbate by weight of bacon can be manufactured under properly controlled conditions so that it is free of botulinal hazard, and does not contain confirmable levels of nitrosamines. The data that support this conclusion were submitted by industry in response to the USDA notice for such data published in the FEDERAL REGISTER on October 18, 1977, and are available for viewing at the USDA Office of the Hearing Clerk.

The data submitted by industry on this new method of processing bacon were derived from experiments involving relatively small numbers of bacon samples in comparison to the total volume of bacon produced annually. Therefore, it appears advisable that additional studies be undertaken to substantiate the original findings submitted by the industry. The Administrator is of the view that 12 months is sufficient time for these studies to be conducted and for the process to be evaluated under actual processing plant operating conditions.

Under these circumstances, the Administrator has determined that if the data referred to above are confirmed by additional testing and interested parties do not provide substantive data demonstrating that bacon made with 40 ppm sodium nitrite (or an equivalent amount of potassium nitrite—49 ppm) and 0.26 percent potassium sorbate would not be free of botulinal hazard and would not be free from confirmable levels of nitrosamines, this proposal will become a final rule at a maximum of 1 year from the date of this publication.

AMENDMENT OF REGULATIONS

On the basis of the foregoing, it is proposed to amend the Federal meat inspection regulations (9 CFR Section 318.7(b)) as follows:

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

* * * * *

(b) Requirements for the use of nitrite and potassium sorbate in bacon.

(1) With respect to bacon: Sodium nitrite shall be used at 40 parts per million (ppm) ingoing or an equivalent amount of potassium nitrite shall be used (49 ppm ingoing); and 0.26 percent of potassium sorbate by weight of bacon shall be used.

* * * * *

A Draft Impact Analysis Statement is available from the Food Safety and Quality Service.

Done at Washington, D.C., on May 12, 1978.

ROBERT ANGELOTTI,
Administrator, Food Safety and Quality Service.

[FR Doc. 78-13469 Filed 5-15-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

OFFICE OF CONSERVATION AND SOLAR APPLICATIONS

[10 CFR Part 430]

ENERGY CONSERVATION PROGRAM FOR APPLIANCES

Proposed Rulemaking and Public Hearing Regarding Test Procedures for Water Heaters; Cancellation of Hearing

AGENCY: Department of Energy.

ACTION: Cancellation of hearing.

SUMMARY: On April 3, 1978 (43 FR 13888), the Department of Energy published proposed amendments to Test Procedures for Water Heaters. The public hearing on this proposal, as scheduled in the FEDERAL REGISTER, was to be held on May 16, 1978. However, since no request to speak for this hearing was received, the hearing is hereby canceled.

DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

James A. Smith, 202-566-4635.

Issued in Washington, D.C., May 12, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

[FR Doc. 78-13412 Filed 5-15-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

[12 CFR 220]

[Reg. T; Docket No. R-0080]

CREDIT BY BROKERS AND DEALERS ON NONCONVERTIBLE CORPORATE DEBT SECURITIES NOT LISTED ON A NATIONAL SECURITIES EXCHANGE; UNIFORM LOAN VALUE FOR ALL ELIGIBLE NONCONVERTIBLE CORPORATE DEBT SECURITIES

Proposed Rulemaking

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board proposes to amend Regulation T to permit a broker or dealer to extend and maintain credit on nonconvertible corporate debt securities not listed on a national securities exchange which satisfy certain criteria as to size of issue, availability of information and current payments of principal and interest. In addition, the proposal provides a uniform loan value for all nonconvertible corporate debt securities, whether listed or unlisted, that are eligible for loan value.

If adopted this regulation would promote competitive equality between brokers and banks and would improve the efficiency of capital markets. The Board is proposing to take this action under Section 7 of the Securities Exchange Act of 1934.

DATE: Comments must be received on or before June 15, 1978.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All materials submitted shall be in writing and should include the docket number R-0080.

FOR FURTHER INFORMATION CONTACT:

Robert S. Plotkin, Assistant Director, or Laura M. Homer, Chief Attorney, Securities Regulation, Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, 202-452-2782.

SUPPLEMENTARY INFORMATION: In July 1968, Congress amended section 7 of the Securities Exchange Act of 1934 (15 U.S.C. 78g) ("the Act") to authorize the Board to control credit extended or maintained by banks, brokers, dealers and others with respect to securities that are not listed on a national securities exchange but rather are traded in the "over-the-counter" ("OTC") market. Prior to this amendment, the Board's authority was limited, with respect to brokers and dealers, to credit extended for the purpose of purchasing or carrying securities listed on a national securities exchange, and the Act contained an absolute prohibition against the extension of credit by a broker or dealer on all other securities. "Exempt securities" (generally Federal and municipal obligations) have always been excluded from the Board's authority to set margin requirements. Since 1968, the Board has exercised its new authority by adopting criteria and selecting those equity securities traded in the OTC market that are eligible for margin credit. The Board publishes a List of OTC Margin Stocks, which is revised periodically; some 1,100 issues are presently on the List. For purposes of Regulation T, a debt security convertible into an equity security is considered to be an equity security and there are presently five convertible debt securities on the Board's List of OTC Margin Stocks.

The National Association of Securities Dealers, Inc. ("NASD") has requested the Board to amend Regulation T to permit brokers and dealers to extend and maintain credit on any unlisted nonconvertible corporate debt securities which meet certain minimum standards with respect to size of issue and rating by at least one nationally recognized statistical rating service.

The Board believes that the NASD's request has considerable merit. Extending marginability to unlisted corporate bonds would promote competitive equality and improve the efficiency of capital markets. Such action may, moreover, aid companies in marketing new issues of debt securities and facilitate the trading of debt securities more easily in the national market system contemplated by the Securities Act Amendments of 1975. On the other hand, the Board has responsibility to prevent destabilizing credit from being extended, and it is generally agreed that certain criteria should be established, so that there is a reasonable likelihood that debt collateral can be liquidated in an orderly manner. To this end, the Board is seeking to adopt a self-executing rule with criteria readily ascertainable by the securities industry and the investing public—thereby eliminating the need for a published List. The Board proposes therefore that unlisted nonconvertible corporate debt securities be eligible for margin credit by brokers and dealers if:

(1) A principal amount of not less than $25 million of the issue is outstanding at the time of the extension of credit;

(2) All payments of principal or interest are current and not in default at the time of the extension of credit; and,

(3) The issue is registered under the Securities Act of 1933 and current reports are provided by the issuer in accordance with the Securities Exchange Act of 1934.

Comments are requested on the advisability of using this criteria, particularly the requirement of a principal amount of bonds outstanding of not less than $25,000,000.

The Board further considered the level of margin to be required, should the proposed regulation be adopted. It noted that whereas present Regulation T requirements could conceivably permit 100% loan value to be extended on listed corporate bonds, the major securities exchanges impose a 25% maintenance requirement and many brokerage houses require a somewhat higher margin (generally 30%). Although price and volume information is generally available for exchange-traded bonds, the Board noted that such information for corporate OTC bonds is minimal, and markets for some issues may, at times, be "thin". Accordingly, the Board believes that it is necessary to set a specific level of margin with respect to credit that will be extended on unlisted corporate bonds in order to prevent speculative excesses and possible erosion of equity cushions in margin accounts. In view of the economic similarity of both the listed and unlisted markets for bonds and in order to promote regulatory equality, the Board is of the opinion that the same level of margin that may be required for unlisted corporate bonds should also be required for listed corporate bonds. At the present time, the Board is considering setting the level of margin required for both listed and unlisted corporate bonds at 30%, and the public is invited to submit comments on the appropriateness of that amount.

The proposed requirements will affect only extensions of credit by brokers and dealers subject to Regulation T and will not affect banks subject to Regulation U since the Act specifically prohibits the Board from applying margin requirements to credit extended by banks on non-equity securities.

Pursuant to sections 7 and 23 of the Securities Exchange Act of 1934, as amended (15 U.S.C. 78g and w), the Board proposes to amend Regulation T (12 CFR 220) as set forth below:

§ 220.4 Special Accounts.

* * * * *

(i) *Special bond account.* In a special bond account a creditor may extend and maintain credit on exempted securities and margin non-equity securities. The maximum loan value of an exempted security shall be determined by the creditor in good faith. The maximum loan value of a margin non-equity security shall be as prescribed from time to time in § 220.8 (the Supplement to Regulation T). Call options may be issued, endorsed or guaranteed in this account on any underlying equity security which is held in this account because it is an exempted security. For the purpose of this paragraph, the term "margin non-equity security" means a debt security which is listed on a national securities exchange or a debt security which meets all of the following requirements:

(1) At the time of the extension of credit, a principal amount of not less than $25,000,000 of the issue is outstanding.

(2) The issue was registered under section 5 of the Securities Act of 1933 and the issuer either files periodic reports pursuant to section 13(a) or 15(d) of the Securities Exchange Act of 1934 or is an insurance company which meets all of the conditions specified in section 12(g)(2)(G) of the Act.

(3) At the time of the extension of credit, the creditor has a reasonable basis for believing that the issuer is not in default on interest or principal payments.

* * * * *

§ 220.8 Supplement.

* * * * *

(b) *Maximum loan value for a special bond account.* The maximum loan value of a margin non-equity security shall be 70 percent of its current market value as determined by any reasonable method.

To aid in consideration of this matter by the Board, interested persons are invited to submit relevant data, views, comments, or arguments. All material should include the docket number R-0030. Such material will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

By order of the Board of Governors, May 1, 1978.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 78-13245 Filed 5-15-78; 8:45 am]

[6750-01]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 772 3051]

COOGA MOOGA, INC., ET AL.

Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Provisional consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this provisionally accepted consent agreement, among other things, would require a Los Angeles, Calif. marketer and promoter of Acne-Statin, a product advertised for the treatment of acne, to cease disseminating advertisements which misrepresent, through endorsements or otherwise, the characteristics, performance, efficacy or superiority of its skin products. Additionally, the firm would be required to maintain ad substantiation records for a specified period of time; and to pay a pro rata share of any restitution which might be ordered by the Commission or a court.

DATE: Comments must be received on or before July 17, 1978.

ADDRESS: Comments should be directed to: Office of the Secretary, Fed-

eral Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Thomas Donegan, Jr., Assistant Director for Food and Drug Advertising, Bureau of Consumer Protection, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580. 202-724-2464.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and provisionally accepted by the Commission, has been placed on the public record, together with material submitted to the Commission that is not exempt from public disclosure under the Freedom of Information Act, for a period of sixty (60) days., Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

COOGA MOOGA, INC., A CORPORATION, AND CHARLES E. BOONE, INDIVIDUALLY AND AS CORPORATE PRESIDENT

AGREEMENT CONTAINING CONSENT ORDER TO CEASE AND DESIST

The Federal Trade Commission having initiated an investigation of certain acts and practices of Cooga Mooga, Inc., a corporation, and Charles E. Boone, individually and as a corporate officer, sometimes hereinafter referred to as respondents, and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of acts and practices being investigated;

It is hereby agreed by and between the said proposed respondents and their attorney, and counsel for the Federal Trade Commission that;

1. Proposed respondent Cooga Mooga, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State-of New York, with its principal office and place of business at 9255 Sunset Boulevard, Suite 519, Los Angeles, Calif. 90069.

2. Proposed respondent Charles E. Boone is an individual and corporate officer of Cooga Mooga, Inc. and maintains an office at 9255 Sunset Boulevard, Suite 519, Los Angeles, Calif. 90069.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of complaint here attached.

4. Proposed-respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

5. This agreement shall not become a part of the official record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released; and such acceptance may be withdrawn by the Commission if comments or views submitted to the Commission disclose facts or considerations which indicate that the order contained in the agreement is inappropriate, improper, or inadequate.

6. No agreement, understanding, representation, or interpretation not contained in the order or the aforementioned agreement may be used to vary or contradict the terms of the order.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated or that any of the facts are true as alleged in the draft of the complaint here attached.

8. This agreement is not intended to affect, nor shall it be construed as affecting, any rights and obligations as between the respondents, or either of them, and any other persons or entities involved in or connected with the discovery, invention, formulation, marketing, sale or advertising of Acne-Statin.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34(b) of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and shall become final and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Mailing of the complaint and decision containing the agreed-to order to the proposed respondent's addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order.

10. Proposed respondents have read the proposed complaint and order contemplated hereby, and understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order, and that they may be liable for a civil penalty as provided by law for each violation of the order after it becomes final.

ORDER

I

It is ordered that respondents Cooga Mooga, Inc., a corporation, and Charles E. Boone, individually and as a corporate officer, their successors and assigns, either jointly or individually, and the corporate respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of all products do forthwith cease and desist from:

A. Disseminating or causing the dissemination of any advertisement by means of the United States mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of Acne-Statin will cure acne or any skin condition associated with acne.

2. Represents that Acne-Statin will eliminate or reduce the bacteria responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition associated with acne.

3. Represents that Acne-Statin will eliminate the fatty acids responsible for pimples, blackheads, whiteheads, other acne blemishes or any skin condition association with acne.

4. Represents that Acne-Statin is superior to prescription or over-the-counter antibacterial acne preparations in the treatment of acne.

5. Represents that Acne-Statin is superior to soap in the anti-bacterial treatment of acne.

6. Represents that either Charles E. Boone or any member of his family used and/or benefited from a product, unless such representation is true.

7. Misrepresents the extent to which any product has been tested or the results of any such test(s).

8. Misrepresents the efficacy, use or the mode of performance of any prod-

uct where the use or misuse of the product may affect the health or safety of the user.

B. Disseminating or causing the dissemination of any advertisement by means of the U.S. mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents that use of Acne-Statin or any other acne product by persons with acne will result in skin free of pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. Represents that Acne-Statin or any other acne product can eliminate the cause of acne or any skin condition associated with acne;

3. Represents that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne,

unless, at the time of each dissemination of such representation(s) respondents possess and rely upon competent and reliable scientific or medical evidence as a reasonable basis for such representation(s). Competent and reliable scientific or medical evidence shall be defined as evidence in the form of at least two double-blind clinical studies which conform to accepted designs and protocols and are conducted by different persons, independently of each other. Such persons shall be dermatologists who are recognized as specialists in acne and its treatment and who are experienced in conducting such studies.

C. Disseminating or causing the dissemination of any advertisement by means of the U.S. mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly makes representations referring or relating to the performance or efficacy of any product or refers or relates to any characteristic, property or result of the use of any product, unless, at the time of each dissemination of such representation(s) respondents possess and rely upon a reasonable basis for such representation(s).

D. Disseminating or causing the dissemination of any advertisement by means of the U.S. mails or by any means in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, which directly or indirectly:

1. Represents through an endorsement that use of Acne-Statin or any other acne product by persons with acne will result in skin free of pimples, blackheads, whiteheads or any other blemishes associated with acne;

2. Represents through an endorsement that Acne-Statin or any other acne product can eliminate the cause of acne or any skin condition associated with acne;

3. Represents through an endorsement that Acne-Statin or any other acne product is superior to prescription or over-the-counter acne preparations in the treatment of acne or any skin condition associated with acne; and

4. Makes representations through an endorsement, referring or relating to the performance or efficacy of any product or referring or relating to any characteristic, property, or result of the use of any product, unless, prior to the time of the first dissemination of such representation(s), respondents make a reasonable inquiry into the truthfulness of a proposed endorsement and possess and rely upon information from reliable sources independent of the advertiser or other parties with an interest in the product or service which is the subject of the endorsement. For purposes of this provision "information" may include tests or studies in the possession of the advertiser, however, such information must be independently evaluated by reliable sources in order to provide a basis for an endorsement. For products or services not related to health or safety, respondents may rely on the personal experience of the endorser where the evaluation of such products or services, for purposes of any endorsement, requires no professional expertise and such products or services can be reasonably evaluated through lay use. Additionally, if a material connection exists between the endorser and the advertiser or its advertising agency, such connection must be disclosed in the advertisement(s) which contain the endorsement. A "material connection" shall mean, for purposes of this section, any financial interest in the sale of the product or service which is the subject of the endorsement or any familial connection between the endorser and the advertiser or its advertising agency.

II

It is further ordered, That if any party involved in the marketing, sale and/or advertising of Acne-Statin is directed, by a final order of the Commission or a final court decree, to make restitution, then respondents Cooga Mooga, Inc. and/or Boone will contribute their pro rata share to such restitution. Such restitution shall not exceed the total amount of monies paid by the Acne-Statin Joint Venture and/or any party to that venture to Cooga Mooga, Inc. and/or Boone. Furthermore, such restitution shall be limited to no more than twenty-five cents (25¢) for each bottle for which a refund is returned. However, if a partial restitution is ordered, respondents' pro rata share of such restitution shall be the fraction, that is twenty-five cents (25¢) per bottle (the numerator) over the actual sales price of the bottle (the denominator), of the restitution ordered. Respondents' restitution shall be confined to all purchases made during the advertising campaign which contained Boone's endorsement and all reorders made by persons who first purchases Acne-Statin during such campaign or for a period of two (2) months after the last disseminated advertisment bearing "Boone's" endorsement; provided however, if a United States District Court, pursuant to Section 19 of the Federal Trade Commission Act, 15 U.S.C. 57b, imposes different restitution obligations on Cooga Mooga, Inc. and/or Boone, such obligations shall supersede this order provision. However, if the District Court does not address the respondents as parties, their obligation for restitution shall be defined by this provision.

III

It is further ordered, That respondents shall forthwith distribute a copy of this order to each of its operating divisions.

It is further ordered, That each respondent notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

It is further ordered, That each respondent shall, within sixty (60) days after this order becomes final, and annually thereafter for one (1) year, file with the Commission a report, in writing, signed by respondent, setting forth in detail the matter and form of its compliance with this order.

It is further ordered, That each respondent shall maintain files and records of all substantiation related to the requirements of Parts IB, IC and ID of this Order for a period of five (5) years after the first dissemination of any advertisement which relates to that portion of the Order. Additionally, such materials shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a demand for such materials.

ANALYSIS OF PROPOSED CONSENT TO AID PUBLIC COMMENT

The Federal Trade Commission has provisionally accepted an agreement to a proposed consent order from Cooga Mooga, Inc., and Charles E. Boone.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Com-

ments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The complaint charged the respondents with disseminating and causing the dissemination of advertisements containing several false and misleading representations regarding Acne-Statin, an acne preparation. In particular, the complaint alleged that respondent Boone endorsed the product and indicated his family's satisfaction with the product. Boone's endorsement related directly to the product's efficacy and a medical evaluation of the product. The complaint also alleged that the advertisements claimed that Acne-Statin would cure and eliminate the cause of acne, resulting in skin free of pimples and blemishes, and that it was scientifically tested and superior to soap as well as all other acne preparations in the treatment of acne. Finally, the complaint alleged that photographs of bacterial colonies were used in the advertisement to represent the effectiveness of Acne-Statin for killing the bacteria which causes acne, when in fact the photographs were pictures of other types of bacteria, not bacteria which is casually related to acne.

The consent order contains the following provisions designed to remedy the advertising violations charged.

Parts IA(1)-(5) prohibit the dissemination of claims that Acne-Statin cures acne, eliminates the bacteria or fatty acids responsible for blemishes, and is superior to all other acne preparations.

IA(6) prohibits Charles E. Boone from representing that he or any member of his family benefited from the use of any product unless in fact they did benefit from the product.

IA (7) and (8) prohibit any misrepresentation of the extent to which any product has been tested or the results of such tests and any misrepresentations of the efficacy, use or mode of performance, of any health or safety-related products.

Part IB defines the scientific or medical evidence necessary as a reasonable basis for any claim that any acne product, including Acne-Statin, eliminates the cause of acne; will result in skin free of acne blemishes; and is superior to other acne preparations.

Part IC required respondents to have a reasonable basis at the time of dissemination for any representation relating to the efficacy, performance, any characteristic or property, or the result of use of any product.

Part ID requires respondents to make a reasonable inquiry into the truthfulness of any proposed endorsement relating to any characteristic, property, efficacy, performance, and the result of use of any product or any endorsement to the effect that Acne-Statin or any acne product can eliminate the cause of acne; is superior to other acne preparations; and that use of such a product will result in skin free from blemishes.

Part II requires respondent Boone to pay his pro rata share of any restitution which might be ordered by the Commission or by a court.

Part III of the Consent Order requires that respondents distribute a copy of the order to each operating division; notify the Commission at least thirty (30) days prior to any proposed structural change in the corporate respondent which affects compliance with the Consent Order; file an initial compliance report with sixty (60) days of the effective date of the Consent Order; and maintain records of all substantiation related to the requirements of Parts IB, IC and ID of the Consent Order for five (5) years after the first dissemination of any advertisement which relates to that portion of the Consent Order and make such records available to the staff of the Federal Trade Commission within fifteen (15) days of a demand for such material.

The purpose of this analysis is to facilitate public comment on the proposed order and is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

JAMES A. TOBIN,
Acting Secretary.

[FR Doc. 78-13284 Filed 5-15-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[20 CFR Part 416]

[Reg. No. 16]

SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Evidence of Permanent Residence in the United States Under Color of Law

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Proposed Rule Making.

SUMMARY: The proposed amendment to the regulations provides that aliens who have continuously resided in the United States since before January 1, 1970, will be presumed to be permanently residing in the United States under color of law. The proposed amendment to the regulations is based on a policy decision, and constitutes a more liberal definition of the phrase "permanently residing in the United States under color of law". This change is intended to provide aliens who are long-term residents of the United States, and who are unable to provide the documentation required by current regulations (§ 416.204), another way to establish that they are permanently residing in the United States under color of law for purposes of the Supplemental Security Income (SSI) program.

DATES: Comments must be received on or before June 30, 1978.

ADDRESSES: Prior to final adoption of the proposed amendment to the regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing to the Commissioner of Social Security, Department of Health, Education, and Welfare, P.O. Box 1585, Baltimore, MD. 21203.

Copies of all comments received in response to this notice will be available during regular business hours at the Washington Inquiries Section, Office of Information, Social Security Administration, Department of Health, Education, and Welfare, North Building, Room 5131, 330 Independence Avenue SW., Washington, D.C. 20201.

FOR FURTHER INFORMATION CONTACT:

Mr. S. J. Weissman, Legal Assistant, Social Security Administration, 6401 Security Boulevard, Baltimore, Md. 21235, telephone 301-594-7341.

SUPPLEMENTARY INFORMATION: Under section 1614(a)(1)(B) of the Social Security Act the term "aged, blind, or disabled individual" means an individual who among other requirements is "a resident of the United States, and is either (i) a citizen or (ii) an alien lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law (including any alien who is lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) or section 212(d)(5) of the Immigration and Nationality Act)." Section 416.204 of present Regulations No. 16 interprets the phrase "permanently residing in the United States under color of law" as individuals who can provide one of the following forms of documentation:

1. INS Form I-94 (Arrival-Departure Record) endorsed "REFUGEE—CONDITIONAL ENTRY".

2. INS Form I-94 endorsed to show bearer has been paroled for an indefinite period pursuant to section 212(d)(5) of the Immigration and Nationality Act.

3. Documentation in the form of correspondence from the Immigration

and Naturalization Service stating the applicant has been granted indefinite voluntary departure or an indefinite stay of deportation.

4. If the evidence described above is not available, the applicant shall state the reason therefor and submit other evidence of probative value.

A number of aliens who were converted from State welfare rolls to SSI beneficiary status at the inception of the program were removed from the rolls when their cases were redetermined, because they were unable to establish that they were either lawfully admitted for permanent residence or otherwise permanently residing in the United States under color of law. While most of these individuals were long-term residents of the United States, they could not provide appropriate Immigration and Naturalization Service (INS) documentation as described above. The action removing these beneficiaries from the SSI rolls and denying post 1973 applicants in similar circumstances has resulted in considerable hardship for these individuals. Because of this we propose to expand the definition of "permanently residing in the United States under color of law."

The expanded definition provides that aliens who have continuously resided in the United States since before January 1, 1970, will be presumed to be permanently residing in the United States under color of law. This proposed amendment to the regulations parallels President Carter's proposed legislation for granting permanent resident status to aliens who have been in the United States since before January 1, 1970.

The proposed amendment to the regulations will permit aliens who were converted from State welfare rolls to SSI beneficiary status at the inception of the program and later terminated, because of not meeting current policy requirements of permanently residing in the United States under color of law, to reestablish entitlement assuming all eligibility requirements, including the since before January 1, 1970, residency requirement, have been met. It would also provide similar treatment to post 1973 applicants who have resided in the United States since before January 1, 1970.

Where an alien establishes permanent residence in the United States as described above and meets all other eligibility requirements for SSI benefits, the claim will be allowed. In this situation, we will notify INS of the alien's presence in this country. Disclosure to INS is authorized by § 401.3(b)(2) of Regulation No. 1 (published as an interim regulation in the FEDERAL REGISTER of March 16, 1977 (42 FR 14703)). Such notification to INS is essential for our purposes because the color of law concept requires an open residence in the United States. Thus, it is necessary that the appropriate Federal authority is aware of the alien's residence in this country. This notification will permit INS to take whatever action it deems necessary with respect to adjusting the alien's status. An adjustment of status would serve to verify our determination that the alien is permanently residing in the United States under color of law.

However, we do not propose or intend to inquire into whether the alien has filed for adjustment of status, as the purpose of the proposed amendment is designed solely to qualify long-term residents of the United States for the SSI program. In the event an alien is deported after having been determined to be eligible, his or her benefits would be suspended pursuant to § 416.1329.

Since this policy represents a change of position, it would have a prospective effect, beginning with the date the amendment becomes effective. If this amendment is adopted, aliens who were denied in the past due solely to their inability to provide evidence of permanent residence in the United States under color of law, and who seek the benefit of this policy change will be required to file a new application for SSI benefits. Aliens converted from State welfare rolls at the inception of the SSI program and later terminated, upon redetermination, for the same reason expressed in the preceding sentence, and who seek the benefit of this policy change will also be required to file a new application for SSI benefits.

Reopening and revision of a prior unfavorable determination would not be appropriate, because at the time the determination of denial or termination was made it was correct and in accordance with existing policy and regulations. A change of legal interpretation would not constitute "good cause" for reopening and revising a prior decision (§ 416.1481). However, if an alien has been notified that his or her claim has been denied or his or her benefits terminated (in the case of an alien who was converted from the State welfare rolls to SSI beneficiary status) and during the appeals process eligibility is established or reestablished based on this change of policy, no new application is required to entitle or reentitle the alien to benefits beginning with the first month the alien is eligible. The first month of entitlement or reentitlement would be the month the proposed amendment becomes effective.

Accordingly § 416.204 is being amended by revising paragraph (a)(3) and adding paragraph (a)(4). As previously stated, the proposed change provides that aliens who have continuously resided in the United States since before January 1, 1970, will be presumed to be permanently residing here under color of law.

The proposed amendment is to be issued under the authority contained in sections 1102, 1614(a)(1)(B), 1631(d)(1), of the Social Security Act, 49 Stat. 647, as amended, 86 Stat. 1471, and 86 Stat. 1475; 42 U.S.C. 1302, 1382c(a)(1)(B), and 1383(d)(1).

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income for the Aged, Blind, and Disabled.)

NOTE.—The Social Security Administration 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: March 20, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

Approved: May 9, 1978.

HALE CHAMPION,
Acting Secretary of Health, Education, and Welfare.

Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is amended as set forth below:

1. Section 416.204 is amended by revising paragraph (a)(3) and by adding paragraph (a)(4) to read as follows:

§ 416.204 Evidence of permanent residence in the United States under color of law.

(a) *Type of evidence to be submitted.* Evidence that an applicant has been residing permanently under color of law in the United States, as defined in § 416.120 for the purposes of establishing eligibility for Supplemental Security Income payments, shall be of the following character:

* * * * *

(3) Documentation in the form of correspondence from the Immigration and Naturalization Service stating the applicant has been granted indefinite voluntary departure or an indefinite stay of deportation, or

(4) Evidence which establishes that the applicant has continuously resided in the United States since before January 1, 1970. Where the applicant establishes permanent residence in the United States under color of law as provided for in this subparagraph (4), and where the applicant meets all other eligibility requirements, the Social Security Administration will notify the Immigration and Naturalization Service of the presence of the applicant in this country.

* * * * *

[FR Doc. 78-13166 Filed 5-15-78; 8:45 am]

[4110-03]

Food and Drug Administration

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[21 CFR Part 436]

[Docket No. 78N-0129]

ANTIBIOTIC AND ANTIBIOTIC-CONTAINING DRUGS

Tests Regarding Residual Quaternary Amines; Withdrawal of Proposal and Termination of Rule Making Proceedings

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: The Commissioner of Food and Drugs is withdrawing a proposal to establish limits for residual quarternary amines as a requirement for certification of bulk antibiotics used in oral and parenteral products. Too much time has elapsed since the proposal was published, and the proposal is being withdrawn for reconsideration.

EFFECTIVE DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip L. Paquin, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-5220.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of November 7, 1969 (34 FR 18045), the Commissioner issued a proposal to establish limits for quarternary amines as a requirement for certification of bulk antibiotics used in oral and parenteral products. Included in the proposal were tests and methods of analysis for detecting residues of quaternary ammonium compounds in procaine penicillin G and tetracycline antibiotics. The proposal would have added new §§ 141.120 and 141.585 to 21 CFR Part 141, which was subsequently recodified as 21 CFR Part 436 in the FEDERAL REGISTER of May 30, 1974 (39 FR 18922)).

Because of the excessive time that has elapsed since the proposal was published, the Commissioner has decided to withdraw the proposal pending his reconsideration of the matter. If he concludes that action is required on this matter, a new proposal will be issued.

Therefore, the proposal published in the FEDERAL REGISTER of November 7, 1969 (34 FR 18045) on this matter is hereby withdrawn.

This withdrawal is issued under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701(a), 52 Stat. 1052-1053, as amended, 1055 (21 U.S.C. 355, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1).

Dated: May 9, 1978.

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

[FR Doc. 78-13187 Filed 5-15-78; 8:45 am]

[4510-23]

DEPARTMENT OF LABOR

Office of the Secretary

[41 CFR Part 29-50]

CENTRALIZED DATA PROCESSING FACILITIES

Cooperation With State and Local Governments To Coordinate and Improve Information Systems

AGENCY: Department of Labor.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Labor Procurement Regulations by establishing a new Part to provide regulations and procedures on the use of State owned or controlled centralized data processing facilities by State and local governments, when such facilities are financed in whole or in part with Federal funds. This amendment is necessary to provide procedures to implement OMB Circular No. A-90, and transmittal No. 1.

DATE: Written comments concerning the proposed regulations are invited and must be received on or before June 15, 1978.

ADDRESS: Written comments shall be submitted to the Assistant Secretary for Administration and Management, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, Attention: Walter C. Terry, Director, Office of Grants, Procurement and ADP Management Policy.

FOR FURTHER INFORMATION CONTACT:

Theodore Goldberg, Assistant Director, Division of Grants and Procurement Policy, Office of Grants, Procurement, and ADP Management Policy, Room S-1325, 200 Constitution Avenue NW., Washington, D.C. 20210, telephone 202-523-9175.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of the Secretary of Labor, contained in the Act of March 4, 1913 (37 Stat. 736, 29 U.S.C. 551) it is proposed that 41 CFR, Chapter 29, Department of Labor Procurement Regulations (DOLPR) be amended. The amendment is necessary to add a new part to provide procedures for implementing the Office of Management and Budget (OMB) Circular No. A-90, and Transmittal Memorandum No. 1. We believe the development of a coordinated information system will result in mutual savings for all involved.

This document was prepared under the direction and control of Walter C. Terry, Director, Office of Grants, Procurement, and ADP Management Policy, Office of the Assistant Secretary for Administration and Management, U.S. Department of Labor.

It is proposed to amend 41 CFR Chapter 29 as follows:

PART 29-50—COOPERATION WITH STATE AND LOCAL GOVERNMENTS TO COORDINATE AND IMPROVE INFORMATION SYSTEMS

Sec.
29-50.000 Scope of part.
29-50.100 General.
29-50.101 Definition.
29-50.200 Policy.

AUTHORITY: 63 Stat. 389, 80 Stat. 379; U.S.C. 301, 40 U.S.C. 486(c); Reorganization Plan No. 6 of 1950, 14 FPR 3174, 64 Stat. 1263, 5 U.S.C. Appendix; Office of Management and Budget Circular No. A-90 and Transmittal Memorandum No. 1.

§ 29-50.000 Scope of part.

This part describes policies and procedures for carrying out the requirements of the Office of Management and Budget (OMB) Circular No. A-90, of September 7, 1976, regarding the use of State centralized data processing facilities by State and local agencies which receive Federal assistance from the Department of Labor (DOL) (hereinafter referred to as applicable State agency). The provisions of this part shall be employed by all DOL Agencies with respect to programs involving Federal assistance.

§ 29-50.100 General.

In recent years, there has been an increasing trend toward establishing centralized data processing facilities by State governments. These facilities are necessary to provide for more coordinated and effective intergovernmental flow of information concerning separate but related government programs devoted to public needs, and to eliminate duplication. The Department of Labor, through its various its various Agencies, is committed to implementing comprehensive communications-based systems in support of various assistance programs (e.g., State Employment Security Agencies support by the DOL Employment and Training Administration). The Department of Labor is also committed to cooperating with State and local governments in their efforts to achieve more coordinated and effective intergovernmental (Federal, State, and local) flow of information and to eliminate unnecessary duplication. Because of a new emphasis on automation and increasing demands for greater cooperation between Federal, State and local elements of governments in the development and use of State centralized data-processing facilities, the follow-

ing policies and guidelines are to be utilized in handling requests for approval of the use of State centralized facilities to process all or part of the applicable State agency's federally financed workloads.

§ 29-50.101 Definition.

The term "information system" refers to a body of organized procedures for identifying, collecting, processing, retrieving, and disseminating information. It refers both to a continuing system and to a system established for one-time reports.

§ 29-50.200 Policy.

(a) The Department of Labor will direct all applicable State agencies to cooperate and participate with State and local officials in determining the optimum means for meeting interrelated Federal, State, and local information requirements, and to assure that an applicable State agency's individual requirements are not imposed in a manner which unduly impedes State and local governments' ability to meet other information requirements. When Federal information requirements are to be imposed on State or local governments, the views of the chief executives of the units of government affected, or their authorized representatives, shall be sought, considered, and when possible, implemented; and shall be included in the official record of the agency documenting the coordination. A reasonable time (21 days) shall be allowed for responses.

(b) The Department of Labor will approve utilization of available Federal Resources to States to pay the applicable State agency's fair share of the cost of the proposed data-processing facility activities or for services received from a central facility. The costs for providing such services shall be reasonable and in accordance with the principles contained in Federal Management Circular (FMC) 74-4 and the Department of Labor's implementing procedures entitled "ADP Cost Determination Guide: An Application of Cost Principles Contained in FMC 74-4 to ADP facilities." In determining reasonableness, consideration will be given to the several options under which the services could have been provided. The proposed system or use of a centralized facility must lead to improvements or benefits for both the applicable State agency and other elements of the State government. The quality of the service must be assured and acceptable to the applicable State agency and the Department of Labor.

(c) The Department of Labor, through applicable State agencies, will pay for centralized ADP services only on the basis of a Federally-approved cost allocation and direct charge plan, and only after the completion and approval of a comparative cost analysis. Such analysis must consider book value and economic life span of applicable State agencies' owned equipment. An annual agreement between the applicable State agency and the centralized facility must establish ceiling costs and be approved by the Department of Labor; costs in excess of the agreement may not be transferred to other Federal grants or contracts. Annual efficiency and economy reviews shall be conducted to determine the most cost effective method to meet approved applicable State agencies' objectives. Based on these reviews, the Department of Labor, through its applicable State agencies, reserves the right to terminate any centralization agreement upon a 90-day written notice.

(d) The Department of Labor will direct applicable State agencies to specifically state in their request for proposals that the State central data-processing facility has the opportunity to submit a major procurement for providing service through its central data-processing facility.

(e) The Department of Labor encourages computer sharing by permitting other State facilities access to excess computer capacity from the applicable State agency facility on a reimburseable basis, provided that Department of Labor programs are not adversely affected. When the applicable State agency's equipment is used to service two or more cost objectives, the costs for providing such services shall be reasonable and in accordance with the cost principles contained in FMC 74-4 and the Department of Labor's implementing procedures as cited in paragraph (b) above.

(f) In all cases where an applicable State is served by a State centralized data-processing facility, the DOL-approved agreement between the applicable State agency and the central facility will provide for the right of Federal review and/or audit of facilities, including periodic cost determination reviews by the Federal personnel.

(g) The Department of Labor will, upon request, provide assistance to applicable State agencies in regard to developing ADP cost algorithms. The Department of Labor will review each applicable State agency for assistance in the context of other similar types of proposals being considered or previously approved, in order to assist the applicant in taking advantage of other experiences, promote appropriate compatability among systems and avoid the financing of unnecessary duplicate efforts.

(h) In instances the "lead agency" role (where developmenmt of proposals involves several grant-in-aid programs or possible several Federal agencies), such a role will be automatically assumed by the Federal agency having potentially the predominant financial interest. The "lead agency" will be responsible for convening all other agencies involved for the purpose of (1) Conducting a joint review of the merits of the proposal, (2) exchanging views on possible agency actions, and (3) framing a coordinated approach to the proposal.

(i) The Department of Labor will participate, through applicable State agencies, in all joint meetings during the course of the developmental projects, and will be represented on all steering committees, policy committees, advisory committees, data-processing authority, etc., that affect the operation of the central facility.

Signed of Washington, D.C., this 9th day of May 1978.

ALFRED M. ZUCK,
Assistant Secretary for Administration and Management.

[FR Doc. 78-13253 Filed 5-15-78; 8:45 am]

[4110-07]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

[45 CFR Part 234]

AID TO FAMILIES WITH DEPENDENT CHILDREN PROGRAM; PROTECTIVE, VENDOR, AND TWO-PARTY PAYMENTS

Decision to Develop Regulations

AGENCY: Social Security Administration, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Social Security Administration is planning to publish proposed regulations to implement the new statutory provisions involving protective, vendor, and two-party payments in the Aid to Families with Dependent Children (AFDC) program.

Under the proposed regulations, the limitation on the number of individuals receiving AFDC protective and vendor payments who can be counted as recipients for Federal financial participation in any month, will be raised from 10 percent to 20 percent of the number of other AFDC recipients in the State for that month. Two-party checks drawn jointly to the order of the recipient and the person furnishing goods, services, or items, will be included within the 20 percent limitation, along with protective and vendor payments, in cases where a determination has been made that the relative of the child involved has demonstrated such inability to manage funds that the child's welfare is jeopardized. The regulations will also require a statement of the specific reasons for making protective, vendor, or two-party check payments to be placed in the file of the child involved.

FOR FURTHER INFORMATION CONTACT:

Mr. C. B. Wooldridge, Room 4111, 330 C Street, SW., Washington, D.C. 20201, telephone 202-245-8817.

Dated: May 1, 1978.

DON WORTMAN,
Acting Commissioner of Social Security.

[FR Doc. 78-13168 Filed 5-15-78; 8:45 am]

[6315-01]

COMMUNITY SERVICES ADMINISTRATION

[45 CFR Part 1061]

[CSA Instruction 6132-2a]

CHARACTER AND SCOPE OF SPECIFIC PROGRAMS

Community Food and Nutrition Program (CFNP)

AGENCY: Community Services Administration.

ACTION: Proposed rule.

SUMMARY: The Community Services Administration is filing a proposed rule revising its policy statement for the Community Food and Nutrition Program funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended. This proposed rule is required since CSA has determined that there is a need for policy changes to the prior year's funding policy and a need to inform applicants regarding this FY's application and review process. This proposed rule details policies, application procedures, and allocations relevant to funding Community Food and Nutrition projects with FY 78 funds.

DATE: CSA welcomes comments on this proposed rule. All comments received prior to June 12, 1978, will be considered.

ADDRESS: Please address all comments to: Community Services Administration, Office of Program Development, Attn: Marshall Boarman, Washington, D.C. 20506.

FOR FURTHER INFORMATION CONTACT:

Marshall Boarman, 202-254-5140.

SUPPLEMENTARY INFORMATION: CSA is proposing to revise § 1061.50-1 through 1061.50-15 (CSA Instruction 6132-2). The proposed revision reflects changes in program emphasis and program categories and provides a more detailed picture of eligible activities than is found in the current subpart and instruction. These changes are the result of the recommendations of CFNP planning sessions whose participants included representatives of CSA Headquarters and Regional Offices, CAA's, SEOO's, anti-hunger groups, low-income people, Indian people and migrants.

The shift in program enphasis will be away from direct service delivery by grantees and toward the stimulation of the delivery of goods and services to the poor by other agencies and institutions. To bring about this shift, it is essential that all CFNP grantees—community action agencies and other organizations and groups—work together and not at cross purposes. Evidence of intent to cooperate will be a factor in rating applications.

The categories of projects eligible for funding in FY 78 are listed in the proposed rule in the order of their priority: (1) Access, (2) self-help, (3) food supply and (4) crisis relief. Unlike last year, FY 78 program priorities will not be defined in terms of percentages.

The deletion of advocacy as a separate program category does not imply any weakening of the advocacy thrust of the program. On the contrary, it reflects recognition of the fact that advocacy cuts across all program categories. The pervasiveness of advocacy is apparent in the examples of eligible activities shown under each of the four program categories.

Section 7 on "Priority Categories of Beneficiaries" in CSA Instruction 6132-2 has been deleted.

USDA has issued instructions to Food and Nutrition Service Regional Administrators and State Welfare Commissioners which should greatly expedite certification procedures for persons applying for food stamp benefits. It should no longer be necessary, therefore, for CFNP funds to be used on the same scale as in the past for direct financial assistance and feeding support.

Prospective applicants are encouraged to submit their notice of intent to apply for a CFNP grant to the appropriate area and statewide Clearinghouses as soon as possible. There is no need to wait for publication of the final rule in the FEDERAL REGISTER to submit notice of intent to apply.

WILLIAM W. ALLISON,
Deputy Director.

The regulations on the Community Food and Nutrition Program, 45 CFR 1061.50-1 through 1061.50-15, are proposed to be revised as follows:

Sec.
1061.50-1 Applications.
1061.50-2 Definitions.
1061.50-3 Purpose of the subpart.
1061.50-4 Introduction.
1061.50-5 Policy.
1061.50-6 Purposes of the program.
1061.50-7 Program categories.
1061.50-8 Eligible participants.
1061.50-9 Eligible applicants.
1061.50-10 Funding.
1061.50-11 Application procedures.
1061.50-12 Reporting requirements.
1061.50-13 Current FY application and review information.

AUTHORITY: Sec. 602, 78 Stat. 530, 42 U.S.C. 2942.

§ 1061.50-1 Applicability.

This subpart is applicable to all grants and contracts funded under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended, when the assistance is administered by the Community Services Administration.

§ 1061.50-2 Definitions.

(a) *Program.* The provision of federal funds and administrative direction to accomplish a prescribed set of objectives through the conduct of specific activities. Example: CSA's Community Food and Nutrition Program.

(b) *Project.* The implementation level of a program where resources are used to produce an end product that directly contributes to the objectives of the program. Example: The community garden project of the CAA in Philadelphia, Pa.

(c) *Catalyst.* A person or thing which stimulates, triggers, expedites or facilitates the production of something.

§ 1061.50-3 Purpose of the subpart.

This subpart sets forth CSA's policy for the Community Food and Nutrition Program (CFNP) authorized under section 222(a)(5) of the Economic Opportunity Act of 1964, as amended. It discusses the program purposes and categories of activities, participant and applicant eligibility criteria, application procedures and reporting requirements. The appendices provide additional information relating to funding for the current fiscal year and the process for reviewing, rating and ranking applications.

§ 1061.50-4 Introduction.

(a) Section 201(a) of the Economic Opportunity Act of 1964 as amended states that the basic purpose of all Title II programs, including the Community Food and Nutrition Program, is—"to *stimulate* a better focusing of all available local, state, private and Federal resources upon the goal of enabling low-income families and low-income individuals * * * *to become fully self-sufficient*" (emphasis added).

(b) This statement sums up CSA's historic mission which has been to serve as a stimulator or catalyst of activities conducted by other public and private institutions rather than as a provider of services in competition with these institutions. CSA's limited funds make it necessary, in any event, for CFNP projects to reduce their involvement in direct service delivery and to function primarily as advocates and catalytic agents.

(c) A second important point made in the statement quoted above is that the catalytic activity of Title II programs, including the CFNP, should be directed to helping the poor escape

the cycle of poverty. The relevance of the CFNP to this objective is underscored by a report entitled "Dietary Goals for the United States" issued in December, 1977, by the U.S. Senate's Select Committee on Nutrition and Human Needs. According to the report, an inadequate diet is a principal cause of six of the ten leading killer diseases—the six being diabetes, strokes and hypertension, heart disease, some cancers, arteriosclerosis and cirrhosis of the liver. An inadequate diet leads to ill health which in turn leads to unemployability and chronic dependence on public assistance programs. Hence the importance of a concentrated attack on the problem of malnutrition among the poor.

§ 1061.50-5 Policy.

(a) Section 222(a)(5) of the Economic Opportunity Act authorizes: "A program to be known as Community Food and Nutrition designed to provide, on an emergency basis, directly or by delegation of authority pursuant to the provisions of Title VI of this Act, financial assistance for the provision of such supplies and services, nutritional foodstuffs, and related services as may be necessary to counteract conditions of starvation or malnutrition among the poor. Such assistance may be provided by way of supplement to such other assistance as may be extended under the provisions of other Federal programs, and may be used to extend and broaden such programs to serve economically disadvantaged individuals and families where such services are not now provided."

(b) In its effort to "supplement" and "extend and broaden" other Federal food programs, the CFNP must not lose sight of the essentially catalytic nature of CSA's mission referred to in § 1061.50-4. Funds should be used primarily as seed money or in ways that have a multiplier effect and not for duplicative or long-term feeding programs. The emphasis on catalytic activity does not preclude the use of CFNP funds, in *emergency* situations, for the direct delivery of foodstuffs and related services to individuals and families within CSA poverty guidelines who are insufficiently served or not served at all by other programs.

(c) In addition, CFNP projects will be expected to conform to the five purposes of Title II programs listed in section 201(a) of the Economic Opportunity Act and reflected in CSA's General Standards of Effectiveness, and to the two specific purposes of the CFNP cited in section 222(a)(5) of the EOA and reflected in the *specific* Standards of Effectiveness. (All of these purposes/standards are outlined below. See also CSA Instruction 7850-1a for detailed procedures on how all projects are to address the Standards of Effectiveness.)

§ 1061.50-6 Purposes of the program.

(a) Every CFNP Project, while not expected to achieve each of the following Title II purposes (*General Standards*), must contribute to the achievement of *at least one* of them:

I. *Planning and Coordination.* Strengthened community capabilities for planning and coordination so as to insure that available assistance related to the elimination of poverty can be more responsive to local needs and conditions.

II. *Improvement of Service Delivery.* Better organization of services related to the needs of the poor.

III. *Maximum Feasible Participation.* Maximum feasible participation of the poor in the development and implementation of all programs and projects designed to serve the poor.

IV. *Mobilization of Resources.* Broadened resource base of programs directed to the elimination of poverty so as to include all elements of the community able to influence the quality and quantity of services to the poor.

V. *Innovative approaches.* Greater use of new types of services and innovative approaches in attacking causes of poverty, so as to develop increasingly effective methods of employing available resources.

(b) In addition, each CFNP project must contribute to the achievement of at least one of the following legislatively-mandated purposes of the community food and nutrition program (specific standards of effectiveness):

I. Improvement in the nutritional status of the target population.

II. Reduction in hunger among the target population.

§ 1061.50-7 Program categories.

The categories of projects eligible for funding under the community food and nutrition program are as follows:

(a) *Access.* To improve the opportunities for low-income people to gain access to, and participate in, Federal and non-Federal food and nutrition programs. Activities eligible for funding under this category include but are not limited to:

(1) Expanding the participation of eligible individuals and families in the various Federal food programs, (e.g., food stamps, school breakfast and lunch, child care feeding, WIC, elderly feeding, etc.) through a range of activities focusing on program operators, such as:

(i) Monitoring programs conducted by other agencies to insure compliance with relevant Federal and State statutes and regulations.

(ii) Seeking changes in Federal and State statutes and regulations to insure a more equitable distribution of food and nutrition benefits to the poor;

(iii) Participating with the State in the development of State plans, certification manuals, etc., for food and nutrition programs;

(iv) Building coalitions to make possible community input into the improvement and implementation of programs;

(v) Initiating projects to fill gaps in existing feeding programs while at the same time negotiating the transfer of funding for such projects to other agencies;

(vi) Designing and carrying out strategies for obtaining matching funds for new and existing projects supported from CFNP funds, and for spinning off such projects to other agencies (e.g., projects funded under HEW and USDA such as title XX; food stamp outreach.

(2) Expanding participation of the poor in food programs through a range of activities focusing on participants, such as:

(i) Catalyzing an expanded and more effective outreach program on the part of other agencies;

(ii) Initiating, or stimulating the formation of, community education programs aimed at apprising low-income persons of their entitlements under Federal and non-Federal food programs;

(iii) Stimulating efforts to provide the poor with assistance in prescreening and application procedures and with adequate representation in administrative hearings, etc.;

(iv) Encouraging USDA and HEW to design new (and redesign existing) nutrition education and consumer education programs so they are more responsive to the needs of low-income consumers;

(v) Encouraging USDA and HEW to direct more research toward the food and nutrition problems of the poor.

(b) *Self-help.* To improve, through self-help projects, the ability of low-income people to produce and purchase foodstuffs. Activities eligible for funding under this category include but are not limited to:

(1) Activities centered around the production, preservation, conservation, distribution, and utilization of foodstuffs, such as:

(i) Organizing family and community gardens;

(ii) Organizing food co-ops and buying clubs;

(iii) Establishing greenhouses, canneries, food gleaning projects, etc.;

(iv) Organizing farmers markets, etc.;

(2) Activities which support self-help projects, such as:

(i) Mobilizing the resources of State agriculture departments, land grant colleges, co-op extension services, USDA (e.g., the Agricultural Stabilization and Conservation Service), VISTA, CETA, etc. for obtaining seeds, plants, land, water, and information;

(ii) Cooperating with land grant and other colleges to provide more assistance to small scale (even part-time) growers, etc.;

(iii) Promoting the utilization of unused Federal, State, and local land for food production;

(iv) Seeking to change laws and regulations that impede the involvement of the poor in food production, processing, and distribution, etc.

(c) *Food supply.* To increase, through projects other than self-help projects, the availability of food to the poor. Activities eligible for funding under this category include but are not limited to:

(1) Organizing consumer action relating to public and private sector food policies, food sales, and sales taxes so as to lower food prices for the poor;

(2) Developing and seeking to get adopted innovative proposals to increase the amount of food available to the poor, e.g., tax incentives for food industry donations to the poor;

(3) Developing methods to utilize excess food products as well as methods to make use of salvageable foods; etc.

(d) *Crisis relief.* To improve community crisis-relief mechanisms. Activities eligible for funding under this category include but are not limited to:

(1) Organizing food banks;

(2) Negotiating for improvements in public welfare systems for issuing emergency food stamps;

(3) Assisting communities to improve their crisis relief programs so that those most in need will receive swift relief;

(4) Providing food stuffs directly and/or issuing food vouchers but only if at least one of the following conditions is satisfied: (i) There is a temporary emergency and timely help is not forthcoming from other agencies and (ii) the provision of relief is a catalytic effort which includes a plan to transfer to another agency, within a specified period of time, responsibility for a continuation of direct services.

§ 1061.50-8 Eligible participants.

(a) All activities supported from CFNP funds must be targeted on low-income individuals and families as defined in CSA income poverty guidelines (§ 1061.2 of CSA instruction 6004-1k and changes thereto). It is important to stress this since in the case of some programs, such as the food stamp program and the national school lunch program, the persons eligible for benefits form a larger group than those who fall within CSA poverty guidelines. In such cases, the rule of thumb should be that a majority of the individuals or families served are within CSA guidelines.

(b) Individuals are eligible to participate upon a self-declaration of need without the delay of a "means test" or income investigation. Self-declaration of need makes possible immediate assistance for those suffering from hunger and in danger of malnutrition.

§ 1061.50-9 Eligible applicants.

(a) *General community projects.* (1) Section 222(a) of the Economic Opportunity Act states that the Director shall provide financial assistance "* * * in a manner that will encourage, wherever, feasible, *the inclusion of assisted projects in community action programs* * * *" [emphasis added]. In addition, section 222(a)(5) of the act requires that the Director carry out the CFNP "* * * in a manner that will insure the availability of * * * supplies and services, nutritional foodstuffs and related services *through a community action agency where feasible,* or other agencies and organizations if no such (community action) agency exists or is able to administer (the program) * * *" [emphasis and parentheses added].

(2) Therefore, applicants eligible to apply for general community fund are CAA's and limited purpose agencies (LPA's) serving as CAAs. As an exception to this rule, an SEOO which has the capability for operating general community projects may apply directly to the appropriate CSA regional office for funds to be used in a geographical area not currently served (or proposed to be served) by a CAA or by an LPA acting in place of a CAA.

(3) Other public or private nonprofit organizations or agencies, including CAP associations, which meet CSA's general eligibility criteria may apply for general community funds but must do so through a CAA or LPA acting in place of a CAA, in which case the CAA or LPA will be the grantee and the project operator will be a delegate agency.

(4) CAA's are strongly encouraged to work with anti-hunger groups and organizations where possible. This can take the form of delegating part or all of the CFNP work program to such entities; closely and systematically coordinating with these organizations and groups in the development of applications; requesting participation by representatives of these groups in the grantee's self-evaluation of the project(s), etc. The formation of such alliances exemplifies at least two of the CFNP's general standards of effectiveness (mobilization of resources and coordination) and will be a factor in rating applications received from CAA's and eligible LPA's.

(b) *Migrant projects.* Farmworker-governed organizations are eligible to apply under this funding category. Other organizations wishing to operate migrant projects may do so as contract agencies of the farmworker-governed grantees.

(c) *Indian projects.* Indian groups whose governance is controlled by the populations to be served are eligible to apply for Indian project funds. This includes Indian nations, tribes, bands, pueblos, or other organized groups or communities, including Alaskan Native villages as defined in the Alaskan Native Claims Settlement Act, who are either indigenous to the United States or who otherwise have a special relationship to the United States, or a State through treaty, agreement, executive order, law, court order, or administrative action of the Department of Interior, except as otherwise provided by Federal law.

(d) *Regional training and technical assistance (T&TA) projects.* (1) Public and private nonprofit organizations and agencies which CSA's general eligibility criteria may apply for regional T&TA funds. Applicants not previously funded by CSA must submit a statement of their T&TA experience in the food and nutrition field and document specific instances of T&TA success and-or impact.

(2) Activities proposed by T&TA applicants must be designed to assist CFNP grantees in the development of the skills required to effectively conduct the fiscal year 1978 CFNP activities outlined earlier in this subpart. T&TA efforts should focus on implementing CSA's standards of effectiveness in activities falling within national CFNP priorities.

(3) In addition, proposed activities must address the, problems that may be preventing local CFNP project sponsors from dealing effectively with the nutritional needs of the poor. These problems must be clearly identified.

(e) *Headquarters training and technical assistance (T&TA) projects and research and demonstration (R&D) projects.* (1) Public and private nonprofit organizations or agencies which meet CSA's general eligibility criteria may apply for HQ T&TA and R&D funds.

(2) As distinct from regional T&TA projects, headquarters T&TA projects will focus on grantee needs that are common to a number of regions or require a national strategy. In addition headquarters T&TA projects may be required to address the needs of other projects administered directly from headquarters, e.g. Indian projects.

(3) The objective of R&D projects is to develop new knowledge or demonstrate new hypotheses relevant to the solution of the problems of hunger and malnutrition among the poor. Activities proposed in applications for R&D funds should relate to activities described under the four program categories defined earlier in this subpart but should emphasize new and untried approaches to solving problems in the food and nutrition area. R&D projects are not intended primarily to meet the operational needs of a particular organization or the community it serves, but rather to advance the state of knowledge about the problems of hunger and malnutrition and potential

solutions so as to have maximum impact on these problems nationwide.

(f) *Special support projects.* (1) Public and private non-profit organizations or agencies which meet CSA's general eligibility criteria—other than CAA's LPA's acting in place of CAA's, SEOO's and CAP associations—may apply for special support funds.

(2) Special support projects must be designed to have a broad impact on the problem of hunger and malnutrition among the poor, i.e., an impact that extends beyond the boundaries of particular communities. The objective of special support projects is to assist in the development, coordination, and expansion of food and nutrition programs for the poor on a multicounty or statewide basis.

(3) Special Support projects must relate to the four program categories outlined in 1061.50-7. Special Support activities may include but are not limited to: monitoring and interpreting changes in relevant Federal and state laws, regulations and procedures; initiating and/or coordinating legal services activities, including representation of the poor at administrative hearings; developing or improving a statewide food and nutrition information center or clearinghouse; developing or strengthening multi-county or statewide hunger coalitions and task forces; providing assistance to poor people, or their representatives, to attend meetings and conferences on food and nutrition issues, etc.

(4) Applicants must show evidence of successful experience and competence in carrying out the kinds of activities described above. In addition, applicants must indicate on their applications how they intend to coordinate their proposed activities with CAA's, the SEOO and other CFNP grantees in the state to be served.

§ 1061.50-10 Funding.

(a) *Non-Federal Share.* The non-Federal share is waived for CFNP projects (see § 1068.20 or CSA Instruction 6802-3). However, grantees are expected to mobilize local and state resources throughout the life of the project.

(b) *Federal Share.* Federal Share as matching funds granted under Section 222(a)(5) may be used to match USDA funds to support food stamp outreach projects, as well as Title XX funds.

§ 1061.50-11 Application procedures.

(a) *Required Forms*—(1) *Basic Forms.*

(i) OEO Form 419—Summary of Work Program and Budget (see OEO Instruction 6710-1).

NOTE.—Goals and Activities must be consistent with the Standards of Effectiveness for Section 222(a)(5) projects and the General Standards for Title II Programs outlined in CSA Instruction 7850-1a and the Form 419 must reflect these standards.

(ii) OEO Form 25—Program Account Budget (see OEO Instruction 6710-1).

(iii) SF-424 (Complete Sections I and II)—Federal Assistance (see CSA Instruction 6710-3a).

(iv) OEO Form 25a—Program Account Budget Support Sheet (see OEO Instruction 6710-1).

(v) OEO Form 301—Summary of Grant Application (see OEO Instruction 6710-1 For new grantees only.

(vi) CAP Form 5—Application for CAP-Community Information (see OEO Instruction 6710-1).

(vii) CAP Form 84—Participant-Characteristics Plan (see OEO Instruction 6710-1).

(2) The following forms are also required.—*When delegating Programs.*

(i) CAP Form 11—Assurance of Compliance with Regulations under Civil Rights Act.

(ii) CAP Form 85—Administering Agency Funding Estimate.

(iii) CAP Form 87—Delegate Agency Basic Information.

(b) *Clearinghouse Review (A-95).* Applicants are reminded that applications for CFNP funds must be submitted to appropriate Clearinghouses in accordance with the provisions of OMB Circular A-95. (See 1067.10 or Instruction 6710-3a.) Applicants are encouraged to submit their notification of intent to apply as soon as such a determination is made.

(c) *Where to Apply.*

Category of project	Send applications to
(1) General community projects.	Appropriate CSA regional office.
(2) Migrant projects.	Farmworker-governed organizations should forward applications to CSA headquarters.
(3) Indian projects.	Indian tribal councils and eligible urban Indian groups should forward applications to CSA headquarters.
(4) Regional training and technical assistance.	Appropriate CSA regional office.
(5) Headquarters training and technical assistance projects and research and demonstration (R. & D.) projects.	CSA headquarters.
(6) Special support projects.	Appropriate CSA regional office.

§ 1061.50-12 Reporting requirements.

Grantees will follow the financial and project reporting requirements outlined in CSA Instructions 6800-8 and 6800-9 respectively.

§ 1061.50-13 Current FY application and review information.

The Appendices to this subpart provide additional information relevant to funding CFNP projects in the current Fiscal Year.

APPENDIX A.—FISCAL YEAR 1978 FUNDING PROCESS

1. TIMETABLE FOR ACCEPTING APPLICATIONS

Applications will be accepted from the effective date of the final rule through July 31, 1978.

2. FISCAL YEAR 1978 PROGRAM CATEGORY PRIORITIES

The program categories described in § 1061.50-7 are listed in priority order, (1) Access; (2) Self-help; (3) Food Supply and (4) Crisis Relief.

3. REVIEW PROCESS

The review process for General Community and Special Support projects is competitive, i.e., each application will be reviewed, rated and ranked according to the rating criteria listed in Appendix B. This process will be undertaken at the CSA office where applications are submitted as indicated in § 1061.50-11 of this subpart.

4. ALLOCATION OF FISCAL YEAR 1978 CFNP FUNDS BY PROGRAM CATEGORY

In fiscal year 1978, CSA will distribute CFNP funds in the following categories and amounts:

	millions
General community projects	$16.2
Migrant projects	4.0
Indian projects	3.0
Regional T&TA projects	3.8
Special support projects	2.0

The allocation of funds to the Regions for projects in the General Community and T&TA categories will be announced in the near future.

5. CSA FORM 419 AND ATTACHMENTS

All applicants for CFNP funds are required to submit a CSA Form 419 (Summary of Work Programs and Budget). This Form is particularly important in the case of applicants for General Community and Special Support projects. Since funds for these projects will be awarded on a competitive basis, it is absolutely essential that applicants provide, through the Form 419 and attachments, as complete and specific a picture as possible of what they propose to do and how they intend doing it. Where space on the Form 419 is insufficient, continuation sheets should be used.

6. RATING CRITERIA

In preparing the Form 419 and attachments, applicants for General Community and Special Support projects should keep in mind the six criteria (discussed below) which will be used by CSA reviewing teams in rating and ranking applications (See also Appendix B).

a. Needs/Analysis. The first criterion—the analysis of needs—refers to the initial step in the planning process which lies behind the project described in the Form 419. CSA Instruction 6710-1, Change 11, requires Title II grantees to develop and maintain planning documents which address: (1) The incidence of poverty in the area served by the grantee; (2) the problems and causes of such poverty; (3) the grantee's assignments of priorities to the solutions of these problems; (4) the goals of the grantee for the proposed funding period; (5) the approaches to be used in solving the problem; (6) the resources that can be mobilized and (7) how available public and private resources can be utilized. The planning document must also

provide evidence of participation of the poor in the development and implementation of the plan. CSA Instruction 6710-1, Change 11, further authorizes CSA to request resubmission of the relevant planning documents to support new funding requests.

Applicants who are currently being funded by CSA and who are operating CFNP projects should attach to the Form 419 that portion of the planning document which addresses the problem of malnutrition and hunger. The information should be updated where necessary. New applicants and current CSA grantees whose planning documents do not deal with the problem of malnutrition and hunger should attach to the Form 419 a needs analysis to support the choice of project goals described in the Form.

The needs analysis should describe the nature and extent of the nutritional needs of the poor in the community the project will serve. The analysis should indicate what efforts are currently being undertaken to meet those needs, what gaps or shortfalls there are in these efforts and the extent to which the needs or problems remain unmet or unsolved. The applicant should clearly identify, among the range of needs listed, the precise need(s) the proposed project will attack. Appropriate statistics to document the need(s) should be supplied—for example, the number of persons participating in the Food Stamp Program as compared with the number of eligible persons not participating.

The needs analysis should include a description of the process by which the needs to be addressed by the proposed project were determined, how the project goals were established and who participated in the process, for example, whether and to what extent the poor participated. In determining local needs, applicants should take into account not only the views of the persons being served but national priorities and statewide needs as refined in the State Needs Estimate which should be available from the Regional Office on or about June 20, 1978.

b. *Adequacy of Work Program and Budget.* The second of the rating criteria listed in Appendix B—the adequacy of the work program and budget—refers primarily to the project's goals (Item 11 of Form 419), the activities that will be undertaken to achieve these goals (Item 13) and the budget (CSA Forms 25 and 25a). The applicant should first indicate to which of the four national program categories—Access, Self-Help, Food Supply and Crisis Relief—the project relates. If the applicant proposes to address more than one of the national program categories, the application should indicate the priority assigned to each (Item 12).

The project's goals should be stated concisely and in quantitative terms where possible. the statement of goals should reflect a comprehensive planned work program for the entire requested program year. All specific activities to be undertaken by the grantee in order to achieve the stated goals should not only be listed but adequately described. The description of activities should indicate the relationship of the activities to the stated goals, i.e. the strategy by which the activities will be directed to and actually accomplish the goals.

c. *Anticipated Impact on Needs.* The statement of goals should include a description of what the applicant intends to accomplish, i.e. what results or changes the applicant intends to bring about in relation to the problem to be solved. The anticipated impact of the project should be stated in specific and measurable terms and should include the number of persons to be served, the extent to which their nutritional needs will be met and the extent to which unmet needs will remain after the project is completed.

d. *Consistency with Legislative purposes (General Standards of Effectiveness).* The project's goals and the activities undertaken in pursuit of these goals must conform not only to the national program categories described in § 1061.50-7 but also to one or more of the Title II purposes embodied in the General Standards of Effectiveness described in § 1061.50-6. Each applicant must list in Item 11 of CSA Form 419, along with the project goals, the particular specific and General Standard(s) of Effectiveness which the project will address. In addition, the applicant should, in describing in Item 13, the activities for each project goal, clearly indicate exactly *how* these Standards of Effectiveness will be addressed. In other words the applicant must state how the project will (1) strengthen the community's planning and coordinating capabilities and/or (2) improve service delivery systems and/or (3) make use of innovative approaches and/or (4) involve maximum feasible participation by the poor in the planning and implementation of the Project and/or (5) mobilize a broad range of resources. As stated in § 1061.50-8, the formation of alliances with other anti-hunger groups exemplifies one or more of the Standards of Effectiveness and will be a factor in rating applications.

e. *Catalytic Nature of the Project.* The emphasis, in the expenditure of fiscal year 1978 CFNP funds, will be on catalytic activity rather than on direct service delivery (see § 1061.50-4). The applicant should, therefore, in the statement of project goals and activities, describe the extent to which, and the manner in which, the project will stimulate other institutions, organizations or groups to become involved in the effort to eliminate hunger and malnutrition among the poor. Delegation to another agency of responsibility for operating a CFNP project does not, by itself, qualify as a catalytic activity.

f. *Ability of Applicant to Perform.* CSA Instruction 6800-9 requires Title II grantees to submit a semi-annual and annual Project Progress Review Report (CSA Form 440). This Report provides an analysis of the accomplishments in relation to each goal in the grantee's currently approved work program, and includes an assessment of grantee status with respect to general and/or specific standards of effectiveness applicable to each goal.

Since the ability of applicants to successfully carry out their proposed work program is one of the important rating criteria, applicants who are currently operating (or have operated in the past) a CFNP project should attach to the Form 419 a copy of the CFNP portion of the most recent Form 440, updating it where necessary. CSA grantees who have never operated a CFNP project should attach to the Form 419 that portion of their most recent Form 440 which relates to a project they have operated that is similar to CFNP projects. Applicants not previously funded by CSA should attach to the Form 419 a self-evaluation or third party evaluation of a project they have been operating that is similar to CFNP projects, along with a brief statement summarizing their overall administrative ability and general track record.

7. TRAINING AND TECHNICAL ASSISTANCE

The applicant's need for training and technical assistance in carrying out the project should be carefully described in Item 15 of the Form 419. It is presumed that most, if not all, projects will need some form of technical assistance. The training and technical assistance plans developed by the Regions and Headquarters will depend to a large extent upon the statement of needs supplied by applicants on the Form 419.

8. PROGRAM ACCOUNTS

For the purposes of the fiscal year 1978 funding process, the following program account numbers for the national program categories should be entered in Item 16 of the Form 419:

Program account:	*National program category*
12	Access
13	Self-help
14	Food supply
15	Crisis relief

If the applicant proposes to address more than one national program category in the same project, only one Form 419 is needed for the project but the goals and activities falling in separate program categories should be clearly separated from each other on the Form 419 and a separate budget (Forms 25 and 25a) should be attached for each program account.

APPENDIX B

RATING CRITERIA	POINTS
1. Analysis of Needs (10 points) • The nature and extent of the problem is adequately described and documented (10 points)	
2. Adequacy of Work Program and Budget (15 points) • Project has specific and measurable goals (5 points) • Activities are adequately described and appropriately related to goals (5 points) • Budget is appropriate and adequately documented (5 points)	
3. Anticipated Impact on Needs (15 points) • Impact is minimal (5 points) • Impact is moderate (10 points) • Impact is substantial (15 points)	
4. Consistency with Legislative Purposes (General Standards of Effectiveness) (30 points) • Strengthens community's planning and coordination capabilities (7 points) • Improves service delivery systems (5 points) • Is innovative (5 points) • Involves maximum feasible participation of poor (5 points) • Mobilizes a broad range of resources (8 points)	
5. Catalytic Nature of Project (10 points) • Project stimulates the delivery of services through institutions other than the grantee (10 points)	
6. Ability of Applicant to Perform (20 points) • Assessment of past CFN or other relevant projects (10 points) • Assessment of applicant's overall administrative ability and general track record (10 points)	
TOTAL POINTS: 100	

APPENDIX B

APPENDIX C

Applicants for General Community, Special Support and Regional T&TA projects should address requests for Forms and should submit their applications to the appropriate Regional Office listed below:

Mr. Ivan Ashley, Regional Director, CSA Region I, E-400, John F. Kenney Federal Building, Boston, Mass. 02203, phone, 617-223-4080.
Boston—Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.

Mr. William A. White, Regional Director, CSA Region II, 26 Federal Plaza, 32d floor, New York, N.Y. 10007, phone, 212-264-1900.
New York—New Jersey, New York, Puerto Rico, and Virgin Islands.

Dr. W. Astor Kirk, Regional Director, CSA Region III, 3535 Market St.—Gateway Bldg., Philadelphia, Pa. 19104, phone, 215-596-6001.
Philadelphia—Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.

Mr. William "Sonny" Walker, Regional Director, CSA Region IV, 101 Marietta St., NW., Atlanta, Ga. 30303, phone, 404-242-2717.
Atlanta—Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee.

Mr. Glenwood Johnson, Regional Director, CSA Region V, 300 South Wacker Dr., 24th floor, Chicago, Ill. 60606, phone, 312-353-5562.
Chicago—Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin.

Mr. Ben T. Haney, Regional Director, CSA Region VI, 1200 Main St., Dallas, Tex. 75202, phone, 214-749-1301.
Dallas—Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

Mr. Wayne Thomas, Regional Director, CSA Region VII, 911 Walnut St., Kansas City, Mo. 64106, phone, 816-758-3761.
Kansas City—Iowa, Kansas, Missouri, and Nebraska.

Mr. David Vanderburgh, Regional Director, CSA Region VIII, 1961 Stout St., Federal Bldg., Denver, Colo. 80294, phone, 303-327-4767.
Denver—Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming.

Mr. Alphonse Rodriguez, Regional Director, CSA Region IX, 450 Golden Gate Ave., Box 36008, San Francisco, Calif. 94102, phone, 415-556-5400.
San Francisco—Arizona, California, Hawaii, Nevada, and Trust Territories.

Mr. John Finley, Regional Director, CSA Region X, 1321 2d Ave., Seattle, Wash. 98101, phone, 206-399-4910.
Seattle—Alaska, Idaho, Oregon, and Washington.

[FR Doc. 78-13221 Filed 5-11-78; 2:29 pm]

[6351-01]

COMMODITY FUTURES TRADING COMMISSION

[17 CFR Part 32]

REGULATION OF COMMODITY OPTION TRANSACTIONS

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for rulemaking.

SUMMARY: The Commodity Futures Trading Commission has suspended, effective June 1, 1978, the solicitation or acceptance of orders or payment for the purchase or sale of commodity options. The Commission has received a petition to allow firms meeting conditions for public protection to continue to offer and sell options on physical commodities after June 1, 1978. The Commission is considering this proposal and invites interested persons to comment on it.

DATES: Public Hearing: 9 a.m., May 19, 1978. Written comments to be received on or before May 23, 1978. Proposed effective date: June 1, 1978.

ADDRESS: Written comments on the petition should be sent to: Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581. Attention: Secretariat. The public hearing will be held at the above address.

FOR FURTHER INFORMATION CONTACT:

Teresa J. Hermosillo or Mark N. Rae, Office of General Counsel, Commodity Futures Trading Commission, 2033 K Street NW., Washington, D.C. 20581, telephone 202-254-5347 or 202-254-7295, respectively.

SUPPLEMENTARY INFORMATION: On April 12, 1978, the Commodity Futures Trading Commission adopted Rule 1[7] CFR 32.11 as an amendment to its interim commodity option regulations.[1] 43 FR 16153 et. seq. (April 17, 1978). Section 32.11, which becomes effective on June 1, 1978, will generally suspend, until further action of the Commission, the solicitation or acceptance of orders or payment for the purchase or sale of commodity options.[2]

On May 11, 1978, the Commission received a petition for interim rulemaking, filed pursuant to Commission rule 17 CFR 13.2 (1977), which, among other things, petitions the Commission to amend 32.11 to allow some firms, which can meet established conditions for the protection of the public, to continue to offer and sell options on physical commodities (so-called dealer options) after June 1, 1978. The Commission is presently considering this petition.

Because the option suspension will go in effect on June 1, 1978, and will require a complete cessation of all option sales to the general public, if the Commission should be willing to give favorable consideration to the petition and adopt a rule, whether in the form proposed or otherwise, which will permit some form or degree of existence for dealer options, the Commission must act on the petition expeditiously. Accordingly, the Commission has tentatively scheduled a Commission meeting for May 23, 1978 to consider the petition and to determine whether to amend § 32.11 to allow dealer options to continue to be sold and, if so, under what terms and conditions.

In advance of that meeting the Commission is holding a hearing both on written and oral submissions to permit members of the public to express their views on the merits of the petition. Interested persons are invited to participate in this proceeding by submitting comments on the petition in written form to the Commission at the address listed below. All comments received prior to May 23, 1978, will be considered. The Commission will also hold a public hearing on Friday, May 19,

[1] 17 CFR Part 32 (1977), as amended, 42 FR 61831 (December 6, 1977).

[2] Section 32.11 does not, however, restrict the offer and sale of commodity options to commercial interests for use in connection with their businesses under the provisions of the trade option exemption contained in § 32.4 of the interim regulations.

1978, to receive oral presentations regarding the petition. Persons who wish to appear and present their views orally should contact Ms. Jane Stuckey, Office of the Secretariat, at the address listed below. Oral presentations will be limited to 15 minutes. The full text of the petition is set forth below.

AUTHORITY: Secs. 2(a)(1), 4c(b), 8a Commodity Exchange Act (7 U.S.C. 2, 6c(b) and 12a (1976).)

Issued in Washington, D.C. on May 12, 1978.

WILLIAM T. BAGLEY,
Chairman.

PETITION FOR INTERIM RULEMAKING BEFORE THE COMMODITY FUTURES TRADING COMMISSION

Mocatta Metals Corp. (Mocatta) and Metals Quality Corp. (Metals Quality) hereby petition the Commodity Futures Trading Commission (Commission) to amend its regulation § 32.11 on the basis of the factors, and in the manner, set forth below:

STATEMENT OF INTEREST

1. Mocatta and Metals Quality are New York corporations that are engaged as a substantial portion of their business in the purchase and sale of various commodities, including gold, silver, copper, platinum, Krugerrand coins, and bags of silver coins. As part of their physical commodities business, Mocatta and Metals Quality sell and repurchase option contracts in these commodities. Mocatta and Metals Quality repurchase options sold by them to make the option contracts more liquid and, thus, more attractive to investors, although they have no legal obligation to repurchase such options. The option contracts written by Mocatta and Metals Quality permit the holder to purchase from the writer or sell to the writer a fixed amount of the specified commodity at a fixed price before a fixed time and date.

2. Mocatta and Metals Quality sell their commodity options only to registered futures commission merchants who resell the options to their customers pursuant to the Commission's interim option regulations.

3. Funds equal to 90 percent of the amount received from customers in connection with an option purchase are required to be segregated for the customers' benefit by FCMs selling Mocatta or Metals Quality options.

4. Money, securities or property equal to the amount by which the value of each option exceeds the amount received or to be received by the grantor for that option is segregated for the purchaser's benefit by Mocatta and Metals Quality.

5. Mocatta and Metals Quality provide confirmation of all option orders executed, including execution price and an option identification number.

6. Futures commission merchants selling Mocatta and Metals Quality options to their customers record the options on their books in the name of their customers by the option identification numbers provided by the grantor.

7. Mocatta first began selling commodity options in 1971, but terminated sales in view of the Goldstein-Samuelson scandals.

8. Pursuant to the regulatory authority afforded by the Commodity Exchange Act, the CFTC, on October 22, 1975, requested comments on several alternative methods of regulating trading in commodity options. 40 FR 49360 (1975).

9. In July 1976, the Advisory Committee on Definition and Regulation of Market Instruments submitted to the Commission a report concerning commodity option trading. The report suggested that the Commission initiate a pilot program of exchange option trading and that the CFTC permit nonexchange traded options, including dealer options, to continue to be traded, if dealers provided customer safeguards equivalent to an exchange market clearing mechanism. *CCH Com. Fut. L. Rep.* (Special Supp. July 1976).

10. In 1976 Mocatta and Metals Quality resumed sales of options on physical commodities.

11. On September 13, 1976, the CFTC adopted a resolution to implement a pilot program for commodity option trading.

12. On November 22, 1976, the CFTC adopted interim rules regulating trading in commodity options until the pilot program could be implemented. The rules imposed certain registration, segregation, recordkeeping, and disclosure requirements on FCMs selling commodity options, including dealer options. 41 FR 51808 (1976).

13. On April 5, 1977, the CFTC proposed the implementation of a pilot program of option trading on exchanges. Under the proposal, all other option trading would have been banned. 42 FR 18246 (1977).

14. On October 17, 1977, the CFTC revised its proposal for a pilot program. Under the revised proposal, trading in dealer options would have been permitted "if it can be shown to the Commission's satisfaction that appropriate safeguards can be instituted to alleviate the need for a clearing mechanism." 42 FR 55538, 40 (1977).

15. Mocatta, among others, submitted comments on the October 17, 1977, proposal demonstrating that options written by dealers pursuant to a suggested regulatory plan would provide safeguards equivalent to those provided by a market clearing mechanism. Mocatta's comments, filed with the Commission regarding the Commission's various option proposals, are incorporated herein by reference.

16. On February 6, 1978, the CFTC proposed that all trading of commodity options in the United States be suspended. The notice of the proposed suspension stated that oral hearings would occur on February 27, 1978, and that written comments could be submitted on or before March 8, 1978. 43 FR 4869 (1978).

17. Mocatta and others presented oral testimony and written comments to the CFTC opposing the banning of its options on the grounds, among others, that its options performed legitimate economic functions, that the sale of its options were not—and had never been—associated with the fraudulent marketing practices frequently used in the sale of London options, and that banning the sale of its options at this time could injure numerous investors.

18. On April 5, 1978, the Commission promulgated regulations banning the sale in this country of both foreign options and U.S. dealer options, effective June 1, 1978. 43 FR 16153 (1978).

19. In the FEDERAL REGISTER notice adopting the ban the Commission states that "[t]he primary purpose of this rule is to prevent members of the public from incurring any further financial losses due to the unsound and illegal practices engaged in by individuals and firms selling commodity options." 43 FR 16153 (1978). The Commission recites a series of abuses which have occurred in the sale of commodity options.

20. The sale of Mocatta and Metals Quality options have not caused the problems which resulted in the Commission's ban. To our knowledge there have been no enforcement or injunctive actions with respect to the sale of Mocatta or Metals Quality options; of the 940 reparations complaints filed as of March 8, 1978, only two even mention a Mocatta option and none relate to Metals Quality options; Mocatta and Metals Quality have never been sued by a dissatisfied option puchaser; and Mocatta and Metals Quality have never defaulted on any option they have granted.

21. If the Commission ban takes effect, Mocatta and Metals Quality will be unable to grant commodity options and will be irreparably harmed.

CONGRESSIONAL ACTION WARRANTING AMENDMENT OF REGULATION § 32.11

1. On April 14, 1978, subsequent to the date the Commission adopted its ban on the sale of commodity options, the Senate Subcommittee on Agricultural Research and General Legislation of the Committee on Agriculture, Nutrition, and Forestry reported out a CFTC reauthorization bill, S. 2391. That bill contained a provision ban-

ning the sale of all commodity options until the Commission could demonstrate to Congress its ability to regulate commodity options, with the proviso that trade options and a designated class of dealer options sold pursuant to specified criteria could be sold notwithstanding the Congressional or any administrative ban.

2. On April 19, 1978, S. 2391 was reported out of the full Senate Committee on Agriculture, Nutrition, and Forestry without any changes in the commodity option provision.

3. The salient portion of S. 2391 regarding the dealer option exemption provides that:

(d) Notwithstanding the provisions of subsections (b) and (c) of this section or section 8a(5) of this Act, a registered futures commission merchant may offer to enter into, or confirm the execution of, any transaction subject to the provisions of subsection (b) of this section if—

(1) The grantor in the transaction is a person who: (A) is in the business of buying, selling, producing, or otherwise utilizing the underlying commodity; (B) at all times has a net worth of at least $10,000,000 certified annually by an independent public accountant using generally accepted accounting principles; (C) agrees to notify such futures commission merchant if he has reason to believe his net worth has fallen below $10,000,000; (D) segregates daily, exclusively for the benefit of purchasers, money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction; (E) provides an identification number for each transaction; and (F) provides confirmation of all orders for such transactions executed, including execution price and a transaction identification number;

(2) The futures commission merchant has evidence that the grantor meets the requirements set forth in clause (1) of this subsection; and

(3) The futures commission merchant treats and deals with an amount of money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal in value to the value received from its customers as payment of the purchase price in connection with such transactions, as security for performance of the transactions until the expiration or liquidation of those transactions, records each transaction in its customer's name by a transaction identification number provided by the grantor, and provides a disclosure statement to its customers, pursuant to regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction.

(e) The provisions of subsection (c) and (d) of this section shall expire on September 30, 1984.

4. On May 9, 1978, a CFTC reauthorization bill was reported out of the full House Committee on Agriculture, including a different dealer option provision.

5. The salient portion of that bill regarding the dealer options provides that:

(4) Notwithstanding the foregoing provisions of this subsection, the Commission, in its sole discretion and subject to such rules and regulations as it may prescribe without regard to the requirements of the Administrative Procedure Act or any other provision of this Act, may permit any person domiciled in the United States who on May 5, 1978, was in the business of granting an option on a physical commodity and was in the business of buying, selling, producing or otherwise utilizing that commodity to continue to grant or issue options on that commodity. Such rules and regulations, among other things, may restrict the distribution of such options to, and the offer and sale of such options by, such futures commission merchants as may be specified by the Commission. Permission granted pursuant to this subsection may be terminated only after a hearing including a finding that the continuation of such permission is contrary to the public interest * * *.

6. In view of the fact that the cognizant committees in both the House and Senate have reported out reauthorization bills containing dealer option provisions, there is every reason to believe that the CFTC reauthorization legislation enacted into law will contain either a statutory dealer option exemption or provision for the Commission to exempt persons from the commodity option ban if they were in business on a specified date.

PROPOSED AMENDMENT

In view of the substantial change of circumstances resulting from Congressional actions since the Commission adopted its ban on the sale of commodity options, including the dealer options sold by Mocatta and Metals Quality, it would be appropriate for the Commission to permit the sale of such options.

Such permission is imperative if the Commission is to avoid the irreparable and unnecessary injury to Mocatta, Metals Quality, FCM's dealing in their options and customers that will occur if the Commission's ban were to take effect on June 1 and to be lifted shortly thereafter as a result of Congressional action. We have previously indicated the kind of injury Mocatta and Metals Quality and FCMs dealing in their options would suffer as a result of a ban on the sale of their options (see Mocatta comment letters on Commission option proposals). A letter to the Commission from Thomas A. Russo datd March 31, 1978 (incorporated herein by reference) explains the injury that could occur to existing holders of Mocatta and Metals Quality options through the demise of the two-way market for their options as a result of the Commission's ban. These potential damages are all the more unnecessary in view of the pending Congressional action.

The interim rule that we are proposing would essentially parallel the dealer option exemption language of S. 2391. While the House bill contains no specific criteria for determining when an exemption should be granted by the Commission, Congressman Richmond stated, in connection with the House dealer option provision, that the conditions set forth in the dealer option provision he had originally proposed would be appropriate criteria under the provision finally reported out of Committee. Those criteria basically were the same as the Senate criteria with the U.S. person and on a physical commodity limitations and only a $2,000,000 net worth requirement. We are suggesting a $6,000,000 requirement, halfway between the two proposals, and we have added the House bill's May 5, 1978 grandfather provision.

With these matters in mind, we respectfully petition the Commission to amend its regulation § 32.11 by adding a new paragraph (d) as follows:

(d) The provisions of paragraph (a) of this section shall not apply to the solicitation or acceptance of orders for, or the acceptance of money, securities or property in connection with, the purchase or sale of any commodity option on a physical commodity if—

(1) The option was granted by a person domiciled in the United States who: (A) on May 5, 1978 was in the business of buying, selling, producing, or otherwise utilizing that underlying commodity; (B) at all times has a net worth of at least $6,000,000 certified annually by an independent public accountant using generally accepted accounting principles; (C) agrees to notify such futures commission merchants that are selling his options if he has reason to believe his net worth has fallen below $6,000,000; (D) segregates daily, exclusively for the benefit of purchasers, money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction; (E) provides an identification number for each transaction; and (F) provides confirmation of all orders for such transactions executed, including execution price and a transaction identification number;

(2) The futures commission merchants selling such options have evidence that the grantor meets the requirements set forth in clause (1) of this paragraph (d); and

(3) The futures commission mechants selling such options treat and deal with an amount of money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal in value to the value received from customers as payment of the purchase price in connection with such transactions, as security for performance of the transactions until the expi-

ration or liquidation of those transactions, record each transaction in their cutomers' names by transaction identification numbers provided by the grantor, and provide a disclosure statement to customers, pursuant to regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction.

COMMISSION AUTHORITY TO ADOPT AMENDMENT, EFFECTIVE PRIOR TO JUNE 1, 1978

The Commission's authority to adopt the proposed amendment to Regulation § 32.11 is contained in sections 2(a)(1), 4c(b) and 8a(5) of the Act, 7 U.S.C. 2, 6c(b) and 12a (1976).

In order to effectuate the amendment prior to the June 1, 1978 effective date of the option ban, we believe that the Commission can find, pursuant to its Regulation § 13.5 and 5 U.S.C. 553(b), that notice and public participation in this proposed rulemaking are "impractical, unnecessary or contrary to the public interest," and that, pursuant to Commission Regulation § 13.6 and 5 U.S.C. 553(d), publication thirty (30) days prior to effective date is not required, for the following reasons: (1) the Commission's ban will take effect on June 1, 1978; (2) the dealer option exemptions in bills pending in Congress would not take effect prior to June 1, 1978; (3) the proposed rule is patterned after the exemptive language of the bills pending in Congress; (4) firms which would qualify under the proposed rule and their customers will be unnecessarily and irreparably harmed if the proposed rule is not in effect prior to June 1, 1978; and (5) the proposed rule is exemptive in nature.

ALTERNATIVE

Should the Commission determine not to adopt such an interim rule, we petition, in the alternative and on the grounds set forth above, that the Commission, pursuant to its authority under Regulation § 32.4(b) or otherwise, exempt from its ban on the sale of commodity options, effectuated under Regulation § 32.11, the sale of options granted by Mocatta and Metals Quality under the following conditions:

(1) The grantor in the transaction (A) at all times has a net worth of at least $6,000,000 certified annually by an independent public accountant using generally accepted accounting principles; (B) notifies futures commission merchants selling his options if he has reason to believe his net worth has fallen below $6,000,000; (C) segregates daily, exclusively for the benefit of purchasers, money, "exempted securities" (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal to an amount by which the value of each transaction exceeds the amount received or to be received by the grantor for such transaction; (D) provides an identification number for each transaction; and (E) provides confirmation of all orders for such transactions executed, including execution price and a transaction identification number;

(2) The futures commission merchants selling such options have evidence that the grantor meets the requirements set forth in clause (1) above; and

(3) The futures commission merchants selling such options treat and deal with an amount of money, 'exempted securities' (within the meaning of section 3(a)(12) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(12)), commercial paper, bankers' acceptances, commercial bills, or unencumbered warehouse receipts, equal in value to the value received from their customers as payment of the purchase price in connection with such transactions, as security for performance of the transactions until the expiration or liquidation of those transactions, record each transaction in their customers' names by transaction identification numbers provided by the grantor, and provide a disclosure statement to customers, pursuant to regulations of the Commission, that discloses, among other things, all costs, including any markups or commissions involved in such transaction.

[FR Doc. 78-13487 Filed 5-15-78; 11:24 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.

[6110-01]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

PLENARY SESSIONS

Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by administrative agencies in carrying out their programs, will meet in plenary session on Thursday, June 8, 1978, at 1:45 p.m., and on Friday, June 9, 1978, at 9:45 a.m., in hearing room B of the Interstate Commerce Commission, 12th Street and Constitution Avenue NW., Washington, D.C.

The conference will consider the following matters:

1. A proposed recommendation on time limits on agency actions.
2. A proposed recommendation on the procedures for determining social security disability claims.
3. A proposed recommendation on reduction of delay in ratemaking cases.
4. A proposed bylaw on avoidance of conflicts of interest.

Plenary sessions of the Conference are open to the public. Further information on the meeting, including copies of proposed recommendations and supporting reports, may be obtained from the Office of the Chairman, 2120 L Street NW., Suite 500, Washington, D.C. 20037, telephone 202-254-7020.

RICHARD K. BERG,
Executive Secretary.

MAY 10, 1978.

[FR Doc. 78-13215 Filed 5-15-78; 8:45 am]

[6110-01]

COMMITTEE ON AGENCY ORGANIZATION AND PERSONNEL

Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of a meeting of the Committee on Agency Organization and Personnel of the Administrative Conference of the United States, to be held at 10:30 a.m., June 8, 1978, in the offices of the Administrative Conference, 2120 L Street NW., Washington, D.C.

The Committee will meet to consider: (1) further action on the study of separation of rulemaking and adjudication under the Occupational Safety and Health Act, and (2) the status of other Committee projects.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least 1 day in advance. The Committee Chairman may, if he deems it appropriate, permit members of the public to present oral statements at the meeting; any member of the public may file a written statement with the Committee before, during, or after the meeting.

For further information concerning this Committee meeting contact Richard K. Berg, 202-254-7065. Minutes of the meeting will be available on request.

RICHARD K. BERG,
Executive Secretary.

MAY 10, 1978.

[FR Doc. 78-13216 Filed 5-15-78; 8:45 am]

[3410-07]

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

[Designation Number A606]

ARIZONA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in Cochise County, Ariz., as a result of high temperatures combined with low humidity June 1 through June 15, 1977; excessive rainfall (accompanied by hailstorms) July 11 and 12, 1977, August 12 and 21, 1977, December 27, 28, and 29, 1977, January 15, 16, 17, and 31, 1978, and February 6 throuh February 11, 1978; and plant diseases July 7, 1977, which reached the epidemic stage August 30 and continued through September 21, 1977.

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 Bruce Babbitt that such designation be made.

Aplications for emergency loans must be received by this Department no later than November 6, 1978, for physical losses and May 9, 1979, for production losses, except that qualified borrowers who receive initial loans pursuant to this designation may be eligible for subsequent loans. The urgency of the need for loans in the designated area makes it impracticable and contrary to the public interest to give advance notice of proposed rulemaking and invite public participation.

Done at Washington, D.C. this 9th day of May 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc.78-13268 Filed 5-15-78; 8:45 am]

[3410-07]

[Designation Number A607]

MONTANA

Designation of Emergency Areas

The Secretary of Agriculture has determined that farming, ranching, or aquaculture operations have been substantially affected in the following Montana Counties as a result of snowstorms and blizzard conditions during February 1978:

Big Horn, Blaine, Carter, Custer, Daniels, Dawson, Fallon, Garfield, Hill, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Sheridan, Valley, and Wibaux.

Therefore, the Secretary has designated these areas as eligible for emergency loans pursuant to the provisions of the consolidated Farm and Rural Development Act, as amended, and the provisions of 7 CFR 1904 Subpart C, Exhibit D, Paragraph V B, including the recommendation of Governor Thomas L. Judge that such designation be made.

Applications for emergency loans must be received by this Department no later than November 6, 1978, for physical losses and May 9, 1979, for production losses, except that quali-

fied 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 9th day of May 1978.

JAMES E. THORNTON,
Associate Administrator,
Farmers Home Administration.

[FR Doc. 78-13269 Filed 5-15-78; 8:45 am]

[3410-11]

PACIFIC CREST NATIONAL SCENIC TRAIL ADVISORY COUNCIL, SOUTHERN CALIFORNIA SUBGROUP

Notice of Meeting

A meeting of the Southern California Subgroup of the Pacific Crest National Scenic Trail Advisory Council will be held at 9:30 a.m., June 20, 1978, in the conference room, Forest Supervisor's Office, Angeles National Forest, 150 South Los Robles, Pasadena, Calif. 91101.

Agenda items include a review of action taken to date by agencies. Council recommendations on needed trailheads, feeder trails, shelters and signing will also be developed.

The meeting will be open to the public. Persons who wish to attend should notify Karl Tameler, c/o Regional Forester, 630 Sansome Street, San Francisco, Calif. 94111, 415-556-6983. Written statements may be filed with the Subgroup before or after the meeting.

Dated: May 10, 1978.

CHESTER A. SHIELDS,
Associate Deputy Chief.

[FR Doc. 78-13267 Filed 5-15-78; 8:45 am]

[3410-15]

Rural Electrification Adminsitration

DAIRYLAND POWER COOPERATIVE AND COOPERATIVE POWER ASSOCIATION

Draft Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has issued a Draft Environmental Impact Statement in accordance with Section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with financial assistance for Dairyland Power Cooperative, P.O. Box 817, LaCrosse, Wis. 54601 and for Cooperative Power Association, 3316 West 66th Street, Minneapolis, Minn. 55435.

The finanacial assistance will provide Dairyland Power Cooperative and Cooperative Power Association with the financing required to participate with Lake Superior District Power Co. and Northern States Power Co. of Wisconsin in the joint construction of Unit 1 of the Tyrone Energy Park, a 1150 MW (nominal) nuclear generating plant, to be located in Dunn County, Wis.

REA's Draft Environmental Impact Statement consists of the following: (i) The Final Environmental Statement dated April 1977 issued by the U.S. Nuclear Regulatory Commission; (ii) REA comments on the Final Environmental Statement; (iii) the Initial Decision (Construction Permit) issued by the Atomic Safety and Licensing Board.

Additional information may be secured on request, submited to Mr. Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. Comments are particularly invited from State and local agencies which are authorized to develop and enforce environmental standards, and from Federal agencies having jurisdiction by law or special expertise with respect to any environmental impact involved from which comments have not been requested specifically.

Copies of the REA Draft Environmental Impact Statement have been sent to various Federal, State, and local agencies, as outlined in the Council on Environmental Quality Guidleines. The Draft Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th and Independence Avenue SW., Washington, D.C., or at the borrowers' addresses indicated above.

Comments concerning the environmental impact of the proposed construction should be addressed to Mr. Richter at the address given above. Comments must be received on or before July 17, 1978 to be considered in connection with the proposed action.

Any release of funds by REA will be contingent upon REA's reaching satisfactory conclusions with respect to environmental effects and final action will be taken only after compliance with environmental statement procedures by the National Environmental Policy Act of 1969.

Dated at Washington, D.C., this 9th day of May 1978.

DAVID A. HAMIL,
Administrator, Rural
Electrification Administration.

[FR Doc. 78-13271 Filed 5-15-78; 8:45 am]

[3410-22]

Science and Education Administration

COMMITTEE OF NINE

Meeting

Pursuant to the Federal Advisory Committee Act, Pub. L. 92-463, notice is hereby given of a meeting of the Committee of Nine from 8:30 a.m. to 5 p.m., June 14-15, 1978, in room 6451-South Building, U.S. Department of Agriculture, Washington, D.C.

The purpose of the meeting is to evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations. The meeting is open to the public, and written statements can be filed with the committee before or after the meeting.

The names of the members of the committee, the agenda, minutes, and other information pertaining to the meeting may be obtained from the Recording Secretary, U.S. Department of Agriculture, Science and Education Administration, Cooperative Research, Washington, D.C. 20250, telephone 202-447-4177.

Dated: May 5, 1978.

R. J. ALDRICH,
Acting Deputy Director.

[FR Doc. 78-13270 Filed 5-15-78; 8:45 am]

[6320-01]

CIVIL AERONAUTICS BOARD

[Docket 32579; Order 78-5-52]

EL AL ISRAEL AIRLINES LTD.

Proposed United States-Israel standby fares; Order of Suspension and Investigation.

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 1st day of May, 1978.

By tariff revisions filed March 29, 1978, for effectiveness May 13, 1978, EL AL Israel Airlies Ltd. (EL AL) proposes new United States-Israel standby fares at New York-Tel Aviv round-trip levels of $575 and $675, basic and peak season, respectively. Confirmation of space for travel at these fares, which permit no stopovers, would not be issued earlier than 9 a.m. of the day of departure nor later than three hours before flight time. Failure to use confirmed space would result in assessment of a $100 cancellation penalty, except in cases of death or illness. Sales would be limited to 550 seats per week in each direction. Trans World Airlines, Inc. (TWA) has filed tariff revisions to match EL AL's standby fare, and also proposes a United States-

Israel advance purchase excursion (APEX) fare at New York-Tel Aviv levels of $545 basic season and $655 peak season, with the same conditions as existing APEX fares in other North Atlantic markets. The APEX has not been introduced in the United States-Israel market in the past due to Israeli Government disapproval.

The Board is encouraged by both filings, which would offer new low fare benefits to the public in a market where such opportunities especially for individual travel, have been severely limited.[1] The Government of Israel has disapproved TWA's proposed APEX fare, however, and in these circumstances we will not permit EL AL's standby fare to become effective. The Board believes strongly that all carriers should have an equal opportunity to compete with new low fare offerings, but in this case the Israeli Government has denied TWA this opportunity at the outset. Moreover, the public is losing much more in denial of TWA's APEX than it would gain in approval of EL AL's standby fare. The proposed APEX fare is significantly superior, from the passenger's point of view, to the standby fare in terms of both price and convenience. While a standby fare is very useful to the carrier because it fills, at the last minute, seats which would otherwise fly empty, it appeals only to that part of the traveling public which can take advantage of a chancy no-reservation service. The APEX fare provides firm reservations and would be attractive to considerably more passengers than the standby (as demonstrated this past winter in the New York-London market), especially in very long-haul markets such as New York-Tel Aviv with lengthy travel time where the importance of secure advance arrangements is crucial. The APEX fare would be particularly attractive in the United States-Israel market where low-fare opportunities for both charters and individual travel on scheduled service have been virtually non-existent.

The Board is always reluctant to suspend new low fares which would promote greater use of air transportation and provide a wider choice of price/quality options to the consumer. In this case, however, we have concluded that circumstances compel us to suspend EL AL's proposal in order to pursue effectively our long-term policy objectives. The public loses very little by our suspension of the standby fare which offers a much narrower range of low-fare travel opportunities, and stands to gain much more over the long term by our firm support of the right of competitive carriers to provide a variety of low fare options, such as TWA's APEX proposal, which make travel more widely available for consumers and expand the total market. In these circumstances, the Board finds that the Government and the aeronautical authorities of Israel have refused to permit the charging of fares contained in a properly filed and published tariff of Trans World Airlines (an air carrier) filed under the Federal Aviation Act for foreign air transportation to Israel. Accordingly, the Board has decided to invoke section 1002(j)(3) of the Act to suspend the standby fare tariffs for passenger foreign air transportation filed by EL AL Israel Airlines, Ltd., between the United States and Israel, as described below, for a period of 365 days from the date of this order.[2]

Accordingly, pursuant to sections 102, 204(a), 403 and 1002(j)(3) of the Federal Aviation Act of 1958,

It is ordered that:

1. The tariff provisions specified below hereof are suspended and their use deferred from May 13, 1978, to and including May 12, 1979, unless otherwise ordered by the Board, and that no changes be made therein during the period of suspension except by order or special permission of the Board;

2. This order shall be submitted to the President[3] and shall become effective simultaneously with the effectiveness of the tariff provisions specified below; and

3. Copies of this order shall be filed with the tariff and be served upon El Al Israel Airlines, Ltd., Trans World Airlines, Inc., and the Ambassador of Israel in Washington, D.C.

This order will be published in the FEDERAL REGISTER.

By the Civil Aeronautics Board.[4]

PHYLLIS T. KAYLOR,
Secretary

PASSENGER FARES TARIFF NO. PF-4, C.A.B. NO. 44, ISSUED BY AIR TARIFFS CORP., AGENT

On Original Pages 54-A and 54-B, all provisions in Rule 172; and

On 6th Revised Page 222-G all fares and provisions in Table 157.

[1]The lowest peak season fare now available to Tel Aviv on scheduled service is an 8/21-day nonaffinity group fare at $817, and no charters are permitted from the United States to Israel, except from the U.S. west coast, due to Israel's strong government policy against charters.

[2]Section 1002(j)(3) allows the Board to take a variety of other actions in such circumstances: ordering the foreign air carrier to charge the rates filed by a U.S.-flag carrier during the suspension period and making the continuation of service by the foreign-flag carrier contingent on charging such rates. It is the Board's view that the circumstances of this case at this time warrant only the use of the suspension power, and not the other courses of action authorized in 1002(j)(3).

[3]This order was submitted to the President on May 1, 1978.

[4]All Members concurred except Chairman Kahn who did not participate.

MAY 9, 1978.

HON. ALFRED E. KAHN,
Chairman, Civil Aeronautics Board,
Washington, D.C.

DEAR MR. CHAIRMAN: I have reviewed your proposed order (Docket 32579) dated May 1, 1978, which suspends passenger fares filed by El Al Israel Airlines Ltd.

As I indicated to you previously in approving your suspension of Contract Cargo Rates for British Airways (letter dated October 3, 1977), I am generally opposed to suspending low fares. In this case, however, our international aviation policy is better served by withholding our approval of these fares until the government of Israel approves the competitive and economic low fares of Trans World Airlines that offer even greater price and service benefits to air travelers. I also expect this issue to be resolved before other bilateral aviation issues are negotiated. Thus, for foreign policy reasons, I have decided to take no action and allow the Board's order to become effective.

Sincerely,

JIMMY CARTER.

[FR Doc. 78-13266 Filed 5-15-78; 8:45 am]

[6320-01]

[Docket 32381]

SPOKANE-VANCOUVER ROUTE PROCEEDING

Notice of Prehearing Conference

A prehearing conference in this proceeding will be held on June 6, 1978, at 10 a.m. (local time), in Room 1003, Hearing Room B, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

For information concerning the substance and other details in this proceeding, interested persons are referred to the Order of Administrative Law Judge issued simultaneously.

Dated at Washington, D.C., May 10, 1978.

RICHARD M. HARTSOCK,
Administrative Law Judge.

[FR Doc. 78-13265 Filed 5-15-78; 8:45 am]

[6320-01]

[Docket 32294]

U.S.-BAHAMAS SERVICE INVESTIGATION

Postponement of Prehearing Conference

Notice is hereby given that the prehearing conference in the above-titled proceeding now assigned to be held on May 18, 1978 (43 FR 16207, April 17, 1978) is postponed and will be held on May 19, 1978 at 9:30 a.m. (local time) in Room 1003, Hearing Room D, Universal North Building, 1875 Connecticut Avenue NW., Washington, D.C., before the undersigned.

The postponement is at the request of Delta Air Lines, Inc., concurred in by Eastern, National and Pan American and without objection from American and North Central.

Dated at Washington, D.C., May 10, 1978.

WILLIAM A. KANE, Jr.,
Administrative Law Judge.

[FR Doc. 78-13264 Filed 5-15-78; 8:45 am]

[3510-25]

DEPARTMENT OF COMMERCE

Industry and Trade Administration

ELECTRONIC INSTRUMENTATION TECHNICAL ADVISORY COMMITTEE

Partially Closed Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Electronic Instrumentation Technical Advisory Committee will be held on Tuesday, June 20, 1978, at 9:30 a.m. in room 3817, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C.

The Electronic Instrumentation Technical Advisory Committee was initially established on October 23, 1973. On October 7, 1975 and October 21, 1977, the Assistant Secretary for Administration approved the re-charter and extension of the Committee pursuant to section 5(c)(1) of the Export Administration Act of 1969, as amended, 50 U.S.C. App. section 2404(c)(1) and the Federal Advisory Committee Act.

The Committee advises the Office of Export Administration with respect to questions involving (A) technical matters, (B) worldwide availability and actual utilization of production technology, (C) licensing procedures which may affect the level of export controls applicable to electronic instrumentation, including technical data or other information related thereto, and (D) exports of the aforementioned commodities and technical data subject to multilateral controls in which the United States participates including proposed revisions of any such multilateral controls.

The Committee meeting agenda has four parts:

GENERAL SESSION

(1) Opening remarks by the Chairman.

(2) Presentation of papers or comments by the public.

(3) Presentation and discussion on A-D and D-A converters.

EXECUTIVE SESSION

(4) Discussion of matters properly classified under Executive Order 11652, dealing with the U.S. and CoCOM control program and strategic criteria related thereto.

The General Session of the meeting is open to the public, at which a limited number of seats will be available. To the extent time permits members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

With respect to agenda item (4), the Assistant Secretary of Commerce for Administration, with the concurrence of the delegate of the General Counsel, formally determined on October 21, 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 be 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 U.S.C. 552b(c)(1). Such matters are specifically authorized under criteria established by an Executive Order to be kept secret in the interests of the national defense or foreign policy. All materials to be reviewed and discussed by the Committee during the Executive Session of the meeting have been properly classified under Executive Order 11652. All Committee members have appropriate security clearances.

Copies of the minutes of the open portion of the meeting will be available upon written request addressed to the Freedom of Information Officer, Industry and Trade Administration, room 3012, U.S. Department of Commerce, Washington, D.C. 20230.

For further information, contact Mr. Charles C. Swanson, Director, Operations Division, Office of Export Administration, Industry and Trade Administration, room 1617M, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-4196.

The complete Notice of Determination to close meetings or portions thereof of the series of meetings of the Electronic Instrumentation Technical Advisory Committee and of any subcommittees thereof was published in the FEDERAL REGISTER on October 28, 1977 (42 FR 56767).

Dated: May 11, 1978.

RAUER H. MEYER,
Director, Office of Export Administration, Bureau of Trade Regulation, U.S. Department of Commerce.

[FR Doc. 78-13272 Filed 5-15-78; 8:45 am]

[3510-08]

National Oceanic and Atmospheric Administration

ENVIRONMENTAL IMPACT STATEMENT

Public Hearings on Draft

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement for the Coastal Management Program of the State of New Jersey.

The hearings will be held on June 13, 1978 at 7:30 p.m. in the Cumberland County Court House, Freeholders' Meeting Room, Second Floor, Rear, Broad Street, (Route 49), Bridgeton, N.J., on June 14, 1978 at 7:30 p.m. in the Ocean County Administration Bldg., Freeholders' Meeting Room, Hooper Avenue and Washington Street, Toms River, N.J., and on June 15, 1978 at 10:00 a.m. in the State Museum Auditorium, 205 W. State Street, Trenton, N.J.

The views of interested persons and organizations are solicited.These may be expressed orally or in written statements.

Presentations will be scheduled on a first-come, first-serve basis, but may be limited to a maximum of 10 minutes or as otherwise appropriate. Priority will be given to those with written statements. Time will be available at the end of the meeting for parsons without statements to present their views orally. The Office of Coastal Zone Management staff may question any speaker following presentation of his/her statement. No verbatim transcritpt of the hearing will be maintained; but staff present will record the general thrust of the remarks.

Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management as soon as possible so that an appearance schedule may be drawn up and definite times established for presentations. Please contact:

June Cradick, Office of Coastal Zone Management National Oceanic and Atmospheric Administration 3300 Whitehaven St., N.W., Washington, D.C. 20235, phone: 202-634-6791.

Written comments may also be submitted by mail to the office of Coastal Zone Management. Such comments should be received before June 19, 1978, to assure adequate consideration for inclusion in the Final Environmental Impact Statement.

Copies of the Draft Environmental Impact Statement may be obtained by contacting the Office of Coastal Zone Management or:

David Kinsey, Chief, Office of Coastal Zone Management, Department of Environmental Protection, P.O. Box 1889, Trenton, N.J. 08625, phone 609-292-8262.

Comments may address the adequacy of the impact statement and/or the nature of the New Jersey Coastal Management Program.

Following consideration of the comments received at these hearings, as well as written comments submitted, the Office of Coastal Zone Management will prepare the final environmental impact statement pursuant to the National Environmental Policy Act of 1969 and implementing guidelines.

Dated: May 8, 1978.

R. L. CARNAHAN,
Acting Assistant Administrator for Administration.

[FR Doc. 78-13202 Filed 5-15-78; 8:45 am]

[3125-01]

COUNCIL ON ENVIRONMENTAL QUALITY

TSCA INTERAGENCY TESTING COMMITTEE

Meeting

This notice is intended to advise all interested persons of a scheduled meeting of the Act for the purpose of making recommendations to the Administrator of the Environmental Protection Agency regarding priorities for issuance of requirements for testing chemical substances and mixtures.

The Committee has invited Dr. Warren R. Muir of the Environmental Protection Agency to update the Committee on the activities of the Office of Toxic Substances. The meeting will be held Thursday, May 25, at 9 a.m., room 9104, New Executive Office Building, 726 Jackson Place NW., Washington, D.C. The portion of the meeting open to the public is expected to end approximately 10:30 a.m., followed by a closed executive session. All interested persons are invited to attend.

Dated: May 11, 1978.

MARVIN E. STEPHENSON,
Chairperson, TSCA Interagency Testing Committee.

[FR Doc. 78-13263 Filed 5-15-78; 8:45 am]

[3810-71]

DEPARTMENT OF DEFENSE

Department of the Navy

FREEDOM OF INFORMATION ACT INDEX OF FINAL DISPOSITIONS OF COMPLAINTS OF WRONG SUBMITTED PURSUANT TO ARTICLE 138, UNIFORM CODE OF MILITARY JUSTICE (UCMJ)

Determination That Publication Would be Unnecessary and Impracticable

The Department of the Navy has determined, pursuant to and in accordance with 5 U.S.C. 552(a)(2) and 32 CFR 701.59(d)(3)(iii), that the publication of the "Index of final dispositions of Complaints of Wrong submitted pursuant to Article 138, UCMJ, and Reports of Wrong submitted pursuant to Article 1106, *United States Navy Regulations, 1973"* would be unnecessary and impracticable. This determination is supported by the fact that there is insufficient public interest in the Index to justify mass routine publication, and, that the materials indexed are so rapidly increasing that any publication with reasonable frequency would still be incomplete.

The Index contains final dispositions of "Complaints of Wrong," Article 138, UCMJ, and "Reports of Wrong," Article 1106, *U.S. Navy Regulations, 1973.* Briefly stated, Article 138 (10 U.S.C. § 938) established a grievance procedure for members of the Armed Forces who considered themselves wronged by their commanding officer acting under color of his military authority. Under the procedure, service members who are not satisfied with their commanding officer's response to their request for redress can complain to the officer exercising general courtmartial jurisdiction over their commanding officer. The officer exercising general court-martial jurisdiction is responsible for examining into the complaint, providing redress if warranted, and reporting the complaint and the proceedings had thereon to the Secretary of the Navy. Article 1106, U.S. Navy Regulations, 1973, established a similar grievance procedure for members of the naval service who consider themselves wronged by a superior other than their commanding officer.

Internally reproduced copies of the Index are available at $3.55 per copy, the direct cost of duplication, by writing: Judge Advocate General (Code 20), Department of the Navy, Washington, D.C. 20370.

For further information contact:

Lieutenant Commander James E. Pinnell, JAGC, U.S. Navy, Military Justice Division (Code 204), Office of the Judge Advocate General, Department of the Navy, Washington, D.C. 20370, telephone 202-694-5094.

Dated: May 16, 1978.

K. D. LAWRENCE,
Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 78-13217 Filed 5-15-78; 8:45 am]

[3810-70]

Office of the Secretary

DEFENSE SCIENCE BOARD TASK FORCE ON ICBMs/MX

Notice of Advisory Committee Meeting

The Defense Science Board Task Force on ICBMs/MX will meet in closed session at R&D Associates, Marina del Ray, Calif. on 8-9 June 1978.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on overall research and engineering policy and to provide long-range guidance to the Department of Defense in these areas.

The Task Force will evaluate alternative basing modes for U.S. land-based ICBMs. Concepts will be examined against survivability, cost and SALT verification considerations.

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.

MAY 11, 1978.

MAURICE W. ROCHE,
Director, Correspondence and Directives DoD/WHS

[FR Doc. 78-13226 Filed 5-15-78; 8:45 am]

[3128-01]

DEPARTMENT OF ENERGY

KERR-MCGEE CORP.

[Case Number 660R00102]

Final Action on Consent

Pursuant to 10 CFR § 205.199J, The Office of Special Counsel for Compliance (OSC) of the Economic Regulatory Administration (ERA) of the Department of Energy (DOE), hereby gives notice of final action taken on a Consent Order. Under the terms of 10 CFR § 205.199J(c), no Consent Order involving sums in excess of $500,000 shall become effective until ERA publishes notice of its execution and solicits and considers public comments with respect to its terms. On February 24, 1978, ERA published Notice of a Consent Order which was executed between Kerr-McGee Corporation and DOE (43 FR 7686, February 24, 1978). With that notice, and in accordance with 10 CFR § 205.199J(c), ERA invited interested persons to comment on the Consent Order. A press release in conformity with 10 CFR § 205.199J(c) was issued simultaneously.

Some comments were received suggesting that certain language modifications be made to the Consent Order. These suggested modifications related to the definition of purchaser and to the effect of the Consent Order on the rights of third parties. 10 CFR § 205.199I(a) empowers the ERA to provide such remedies as it determines are necessary. Accordingly, after giving due consideration to these comments, the OSC of the ERA determined that the language as used in

the Consent Order is the most appropriate under the circumstances of this case.

The OSC of the ERA has decided, however, that the Consent Order should be modified in one significant respect. The Consent Order previously published requires the payment of interest on the refunds as follows:

Interest on all amounts refunded in accordance with (a) above shall be computed utilizing the following rates: 6 percent per annum on the amounts outstanding prior to July 1, 1975; 9 percent per annum on the amounts outstanding for the period July 1, 1975 through January 31, 1976; 7 percent per annum on the outstanding amounts for the period February 1, 1976 until the refunds are completed.

ERA has adopted the same interest rates as used by the Internal Revenue Service in establishing interest rates payable on refunds. Effective February 1, 1978, the interest required to be paid was reduced to 6 percent per annum. Therefore, the Consent Order has been modified as follows:

Interest on all amounts refunded in accordance with (a) above shall be computed utilizing the following rates: 6 percent per annum on the amounts outstanding prior to July 1, 1975; 9 percent per annum on the amounts outstanding for the period July 1, 1975 through January 31, 1976; 7 percent per annum on the amounts outstanding for the period February 1, 1976 through January 31, 1978; 6 percent per annum on the outstanding amounts for the period February 1, 1978 until the refunds are completed.

OSC has concluded that the Consent Order as executed between DOE and Kerr-McGee is an appropriate resolution of the compliance proceedings described in the Notice published on February 24, 1978, and hereby gives notice that the Consent Order shall become effective on May 16, 1978, as modified.

Issued in Washington, D.C. on the 12th day of May, 1978.

PAUL L. BLOOM,
SPECIAL COUNSEL FOR COMPLIANCE.

[6560-01]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 882-5]

REGION IX; STANDARDS OF PERFORMANCE OF NEW STATIONARY SOURCES (NSPS). AND NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS (NESHAPS)

Delegation of Authority to States of Arizona, California and Nevada

AGENCY: Environmental Protecion Agency (EPA).

SUMMARY: This Notice is to advise the public of delegation of authority to implement and enforce the NSPS and NESHAPS from EPA to certain State/Local air pollution control agencies in Arizona, California and Nevada.

FOR FURTHER INFORMATION CONTACT:

Gerald Katz (E-4-3), Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, 415-556-8005.

SUPPLEMENTARY INFORMATION: Pursuant to section 111 of the Clean Air Act, as amended, the Administrator promulgated regulations in 40 CFR Part 60 establishing standards of performance for 24 categories of new stationary sources (NSPS). In addition, pursuant to section 112 of the Clean Air Act, as amended, the Administrator promulgated in 40 CFR Part 61 national emission standards for four hazardous air pollutants (NESHAPS). These hazardous air pollutants are asbestos, mercury, beryllium and vinyl chloride. Sections 111(c) and 112(d) require the Administrator to delegate authority to implement and enforce the standards to any State which submits an adequate procedure. Nevertheless, the Administrator retains concurrent authority to implement and enforce the standards following delegation of authority to a State.

On August 19, 1973, the Regional Administrator, Region IX, forwarded to the States in his Region information setting forth the requirements for an adequate procedure for implementing and enforcing the NSPS and NESHAPS. Since that time numerous requests for delegation from State/Local agencies have been submitted to EPA, Region IX. In response to these requests and after thorough reviews, EPA, Region IX delegated authority to implement and enforce the NSPS and NESHAPS. The letters of delegation sent to these agencies contained certain conditions. These conditions generally include designations of the categories/pollutants delegated, reporting requirements (to EPA), a statement of EPA's concurrent enforcement authority, a no variance provision, test method requirements, revocation procedures, and a requirement that sources subject to NSPS and NESHAPS submit all reports to the delegated Agency and EPA, Region IX. In some instances the original requests for delegation were followed by new requests to include categories/pollutants promulgated by EPA after the original date of delegation. The Clean Air Act Amendments of 1977 require EPA to investigate new categories/pollutants and to revise existing regulations to reflect current information and technology.

Prior to March 30, 1977 EPA, Region IX notified the public of each delegation in a separate FEDERAL REGISTER notice. Updates, such as this Notice, will now be done on annual basis.

The following is a list of the air pollution control agencies with delegation of authority (after March 30, 1977) for NSPS and/or NESHAPS and the dates of delegation. The list does not indicate the actual categories/pollutants delegated. To obtain this information or copies of the letters of delegation contact EPA, Region IX or the agency listed.

Nevada State Department of Conservation and Natural Resources, Division of Environmental Protection (NSDCNR) Carson City, Nev.—NSPS, March 30, 1977.

NSDCNR on behalf of Clark County District Health Department Las Vegas, Nev.—NSPS, April 11, 1977; NESHAPS, January 30, 1978.

NSDCNR on behalf of Washoe County District Health Department Reno, Nev.—NSPS, April 11, 1977; NESHAPS, April 11, 1977.

California Air Resources Board (CARB) on behalf of the South Coast Air Quality Management District, El Monte, Calif.—NSPS, May 27, 1977 and November 23, 1977; NESHAPS, May 27, 1977 and November 23, 1977.

CARB on behalf of the Bay Area Air Pollution Control District, San Francisco, Calif.—NSPS, June 15, 1977; NESHAPS, June 15, 1977.

Maricopa County Health Department on behalf of the Maricopa County Bureau of Air Pollution Control, Phoenix, Ariz.—NSPS, August 24, 1977; NESHAPS, August 24, 1977.

CARB on behalf of the Shasta County Air Pollution Control District, Redding, Calif.—NSPS, September 12, 1977; NESHAPS, September 12, 1977.

CARB on behalf of the Kern County Air Pollution Control District, Bakersfield, Calif.—NSPS, October 5, 1977; NESHAPS, October 5, 1977.

CARB on behalf of the San Diego County Air Pollution Control District, San Diego, Calif.—NSPS, November 21, 1977; NESHAPS, November 21, 1977.

CARB on behalf of the Stanislaus County Air Pollution Control District, Modesto, Calif.—NSPS, November 23, 1977; NESHAPS, November 23,, 1977.

Effective immediately, all reports required prusuant to the NSPS and NESHAPS by sources located in the jurisdictions of the agencies listed above should be submitted to these agencies and to EPA, Region IX.

Dated: April 5, 1978.

SHEILA M. PRINDIVILLE,
Acting Regional Administrator, EPA, Region, IX.

[FR Doc. 78-13010 Filed 5-15-78; 8:45 a.m.]

[6712-01]

FEDERAL COMMUNICATIONS COMMISSION

[Report No. I-462]

INTERNATIONAL AND SATELLITE RADIO

Applications Accepted for Filing

MAY 1, 1978.

The applications listed herein have been found, upon initial review, to be acceptable for filing. The Commission reserves the right to return any of these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's rules, regulations, and its policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1). Effective March 6, 1978, all applications acepted for filing will be assigned Call Signs. However, these assignments are for administrative purposes only and do not in any way prejudice Commission actions.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

SATELLITE COMMUNICATIONS SERVICES

HI—633-DSE-P/L-78 Oceanic Cablevision, Inc., Kalihi, HI (KF 81). Amendment to operate this station on a cost-sharing basis with Pacific Network, Inc. on a nonprofit use.

FL—513-DSE-ML-78 (Correction) Florida Cablevision, Inc., Broward County, FL (WF46). Modification of license to permit the operation of this station on a cost-sharing nonprofit basis with: Teleprompter Southeast, Inc. and American Television & Communications Corporation.

OK—508-DSE-P/L-78 (Correction) Community Cables, Inc., Enid, OK (KH51). Correct name as shown and longitude coordinates as follows: Long. 97°52'50" W.

CA—555-DSE-R-78 California Microwave, Sunnyvale, CA (KE26). Renewal of this station's Developmental license from: May 9, 1978 to: May 9, 1979.

CA—557-DSE-ML-78 California Microwave, Inc., Sunnyvale, CA (KE26). Modification of license to increase the power to 65 dBw on frequency 6268.3 MHz, with a 150D9 emission.

AZ—552-DSE-TC-78 Mesa Community Television, Inc., Mesa, AZ (KF65). Application for Consent of Transfer of Control of this station from: Mesa Community Television, Inc. to: Storer Broadcasting Company.

CA—306-CSG-P/L-78 Comsat General Corporation, Palo Alto, CA. Authority to establish a communications satellite developmental earth station at Ocean Routes, Inc. in Palo Alto, CA. Lat. 37°24'27" N. Long. 122°08'42" W. This station would be operated at L-band frequencies with the MARISAT satellite positioned over the Pacific Ocean for the purpose of conducting demonstrations of the operational network. Frequencies: 1638.5 to 1624.5 MHz. Emissions of 6.4F9 or 30F9. With a 4 foot parabolic antenna.

000524-DSE-P/L-78 (KH63), Communications Services, Inc. Application for authority to construct and operate new earth station. Service: Domestic fixed satellite. Class of station: Fixed earth station. Location: Lockhart, Caldwell, Tex. 29°54'6" N. Lat., 97°40'37" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9—DBW. Antennas: 4.5 meters, Andrews Model ESA5-46.

000528-DSE-P/L-78 (KH64), oklahoma Cable Systems, Inc. Application for authority to construct and operate new earth station. Service: Domestic fixed satellite. Class of station: Fixed earth station. Location: Weatherford, Custer, Okla. 35°31'2" N. Lat., 98°42'46" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9—DBW. Antennas: 6.0 meters, U.S. Tower Model 2.

000529-DSE-P/L-78 (KH65), Community Telecommunications, Inc. Application for authority to construct and operate new earth station. Service: Domestic fixed satellite. Class of station: Fixed earth station. Location: Sidney, Cheyenne County, Nebr. 41°8'8" N. Lat., 102°58'38" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9—DBW. Antennas: 5.0 meters, Scientific Atlanta Model 8008.

000531-DSE-P/L-78 (KH66), Lafourche Communications, Inc. Application for authority to construct and operate new earth station. Service: Domestic fixed satellite. Class of station: Fixed earth station. Location: Thibodaux, Lafourche Parish, La. 29°44'12" N. Lat., 90°44'20" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9—DBW. Antennas: 6.1 meters, Harris Corp. Model 6MROTV.

000523-DSE-P/L-78 (WH43), Sammons Communications, Inc. Application for authority to construct and operate new earth station. Service: Domestic fixed satellite. Class of station: Fixed earth station. Location: McComb, Pike County, Miss. 31°14'58" N. Lat., 90°26'8" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9—DBW. Antennas: 4.5 meters, Scientific Atlanta Model 8008B.

000530-DSE-P/L-78 (WH47),Ppublic Cable Co. Application for authority to construct and operate new earth station. Service: Domestic fixed satellite. Class of station: Fixed earth station. Location: Portland, Portland, Maine. 43°37'51" N. Lat., 70°24'49" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9—DBW. Antennas: 10.0 meters, Scientific Atlanta Model 8003-1. With respect to the proposed merger between the applicants parent company, American Television & Communications Corp. and Time, Inc., it is contemplated that control of the applicant would be transferred to the merged entity if the commission grants the pending application (file No. 447-DSE-AL-(11)-78) of its parent company for assignment of licenses to the merged entity. This is a major application within the meaning of section 1.1305 of the rules on environmental processing.

000533-DSE-P/L-78 (WH43), American Cablevision of Carolina, Inc. Application for authority to construct and operate new earth station. Service: Domestic fixed satellite. Class of station: Fixed earth station. Location: Spring Lake, Spring Lake, N.C. 35°9'40" N. Lat., 78°58'8" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9—DBW. Antennas: 5.0 meters, Scientific Atlanta Model 8008B.

000521-DSE-P/L-78, KB87, American Cable Television, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Lake Havasu City, Mohave, Ariz., 34°29'42" N. Lat., 114°20'22" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, RF Systems Model 806-6-6M.

000532-DSE-P/L-78, KF80, TV Cable Corp. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Van Buren, Fort Smith, Ark., 35°26'49" N. Lat., 94°21'54" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, USTC Model SAT/FLEC 2.

000520-DSE-P/L-78, KH58, American Cable Television, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Bullhead City, Mohave, Ariz., 35°6'3" N. Lat., 114°36'56" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, RF Systems Model 806-6-6M.

000522-DSE-P/L-78, KH59, American Cablevision Corp. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Cleveland, Liberty, Tex., 30°18'56" N. Lat., 95°5'32" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 5 meters, Scientific Atlanta Model 8008B.

000527-DSE-P/L-78, KH60, Teleprompter Corp. Application for authority to construct Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Sime, Ventura, Calif., 34°16'44" N. Lat., 118°47'36" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Andrew Model ESA5-4HP.

000526-DSE-P/L-78, KH61, Teleprompter Corp. Application for authority to construct Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Tucumcari, Logan, N. Mex., 35°9'41" N. Lat., 103°43'27" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Andrew Model ESA5-4HP.

000525-DSE-P/L-78, KH62, Community Cablevision of Odessa. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Odessa, Ecton County, Tex., 31°50'59" N. Lat., 102°22'25" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Andrew ESA5-4HP.

[FR Doc. 78-13198 Filed 5-15-78; 8:45 am]

[6712-01]

[Report No. I-465]

INTERNATIONAL AND SATELLITE RADIO

Applications Accepted for Filing

MAY 8, 1978.

The Applications listed herein have been found, upon initial review, to be Acceptable for filing. The Commission reserves the right to return any of

these applications if, upon further examination, it is determined they are defective and not in conformance with the Commission's Rules, Regulations and its Policies. Final action will not be taken on any of these applications earlier than 31 days following the date of this notice. Section 309(d)(1). Effective March 6, 1978, all applications accepted for filing will be assigned Call Signs. However these assignments are for administrative purposes only and do not in any way prejudice Commission actions.

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

SATELLITE COMMUNICATIONS SERVICES:

DS-RC-2-A,
RCA American Communications, Inc. To amend the service to substitute one digital 1.544 Mbps channel in the place of 24 voice grade channels which were previously authorized in the grant of application DS-RC-2. And to augment the service by operation of one duplex full-period digital channel for six month period beginning June 30, 1978.

548-DSE-P/L-78,
Greater Lafayette TV Cable Co., Inc. Lafayette, Ind. (WH50). Amendment to change coordinates to read: Lat. 40°25'24" N. and long. 86°51'33" W.

000490-DSE-P/L-78, KH46, Marfa TV Cable Co. Application for authority to construct and operate new Earth station. Service: Domestic fixed statellite. Class of station: Fixed Earth station. Location: Marfa, Presidio County Tex., 30°19'20" N. Lat.,104°40'50" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Scientific Atlanta Model no. SA8008B.

000538-DSE-P/L-78, KH69, Central Communications TV, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed statellite. Class of station: Fixed Earth station. Location: Seminole, Gaines, Tex. 32°43'29" N.Lat.,102°38'0" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, USTC SAT/FLEC 2.

000544-DSE-P/L-78, KH70, Central Communications TV, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed statellite. Class of station: Fixed Earth station. Location: Seagrave, Gaines, Tex., 32°57'18" N. Lat.,102°33'0" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters USTC model SAT/FLEC 2.

000547-DSE-P/L-78, KH72, NW Translator TV, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed statellite. Class of station: Fixed Earth station. Location: Pondcreek, Enid, Okla. 36°40'48" N. Lat.,97°53'18" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Andrew model ESA5-4.

000551-DSE-P/L-78, KH74, Satellite, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed statellite. Class of station: Fixed Earth station. Location: Kahe Point, Honolulu, Hawaii, 21°21'4' N. Lat.,158°7'35" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 10 meters, Scientific Atlanta Model 8002.

000561-DSE-P/L-78, KH76, Southwest Cable Corp. Application for authority to construct and operate new Earth station. Service: Domestic fixed statellite. Class of station: Fixed Earth station. Location: Espanola, Rio Arribo, N. Mex., 35°59'59" N. Lat.,106°3'41" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Prodelin Model 137-750.

000560-DSE-P/L-78, KH77, Added Attractions, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed statellite. Class of station: Fixed Earth station. Location: Near Broken Bow, Custer, Nebr., 41°23'43" N. Lat.,99°38'30" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Andrew Corp. Model ESA4-5HP.

000559-DSE-P/L-78, KH78, Added Attractions, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Kearney, Buffalo, Nebr., 40°41'38" N. Lat., 99°5'9" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Andrew Corp. model

000558-DSE-P/L-78, KH79, Minden Systems, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Minden, Webster, La., 32°38'22" N. Lat., 93°14'41" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, RF systems model 806-6-6M.

000565-DSE-P/L-78, KH80, RCA American Communications, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Sunnyvalle (AFS), Santa Clara, Calif., 37°23'43" N. Lat., 122°1'42" W.Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW; 5925.000-6425.000 MHz 4000F9Y .00 DBW. Antennas: 10 meters, RSI model 1032-10.

000563-DSE-P/L-78, KH81, M2PSC, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Eielson AFB, Eielson, Alaska, 64°39'37" N. Lat., 147°4'8" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 10 meters, Edwards model ESA10-46.

000566-DSE-P/L-78, KH82, Medelco, Inc. d.b.a. cable TV in Fairmont. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Fairmont, Martin, Minn. 43°38'14" N. Lat., 94°28'34" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters RE system model 806-6-6M.

000550-DSE-P/L-78, WH49, Arlington Telecommunications Corp. d.b.a. ARTEC. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Arlington, Arlington, Va., 38°53'22" N. Lat., 77°5'28" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 4.5 meters, Andrew ESA4-5HP.

000548-DSE-P/L-78, WH50, Greater Lafayette TV Cable Co., Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Lafayette, Tippecanoe, Ind. 40°25'22" N. Lat., 86°63'56" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, Harris 6 meter 615003.

000549-DSE-P/L-78, WH52, Storer Cable TV of Florida, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Lake Wales, Polk, Fla., 27°52'36" N. Lat., 81°32'57" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, USTC 6.1/4.

000546-DSE-P/L-78, WH53, Storer Cable TV of Florida, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Venice, Sarasota, Fla., 27°6'0" N. Lat., 82°22'15" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, USTC 6.1/4.

000545-DSE-P/L-78, WH54, Gulf Coast Teleception, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Port Charlotte, Charlotte, Fla., 26°57'53" N. Lat., 82°4'24" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, USTC 6.1/4.

000556-DSE-P/L-78, WH56, Booth American Co., d.b.a. Salem Cable TV Co. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Salem, Roanoke County, Va., 37°18'27" N. Lat., 80°2'55" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 5 meters, Scientific Atlanta Model 8008B.

000562-DSE-P/L-78, WH57, Indian River Cablevision, Inc. Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Sebastian, Indian River, Fla., 27°46'24" N. Lat., 80°26'53" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 6 meters, RMI Model 615-003.

000564-DSE-P/L-78, WH58, Comcast Corp., Application for authority to construct and operate new Earth station. Service: Domestic fixed satellite. Class of station: Fixed Earth station. Location: Aberdeen, Harford, Md., 39°31'33" N. Lat., 76°14'6" W. Long. Particulars of operation: 3700.000-4200.000 MHz, 36000F9, DBW. Antennas: 5 meters, Scientific Atlanta Model 8008B.

[FR Doc. 78-13200 Filed 5-15-78; 8:45 am]

[6210-01]

FEDERAL RESERVE SYSTEM

CENTRAL BANCSHARES OF THE SOUTH, INC.

Acquisition of Bank

Central Bancshares of the South, Inc., Birmingham, Ala., has applied for the Board's approval under section

3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842 (a)(3)) to acquire 100 percent (less directors' qualifying shares) of the voting shares of Central Bank of Dothan, Dothan, Ala., a proposed new bank. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 9, 1978.

Board of Governors of the Federal Reserve System, May 10, 1978.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

[FR Doc. 78-13256 Filed 5-15-78; 8:45 am]

[6210-01]

CENTRAL NATIONAL BANCSHARES, INC.

Acquisition of Bank

Central National Bancshares, Inc., Des Moines, Iowa, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 percent or more of the voting shares of Union Trust & Savings Bank, Fort Dodge, Iowa. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 9, 1978.

Board of Governors of the Federal Reserve System, May 10, 1978.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

[FR Doc. 78-13257 Filed 5-15-78; 8:45 am]

[6210-01]

Formation of Bank Holding Company

El Paso Bancshares, Inc., Monument, Colorado, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 97.5 percent of the voting shares of the El Paso County Bank of Monument, Monument, Colo. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 2, 1978.

Board of Governors of the Federal Reserve System, May 9, 1978.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

[FR Doc. 78-13260 Filed 5-15-78; 8:45 am]

[6210-01]

FIRST BANCORP OF N.H., INC.

Acquisition of Bank

First Bancorp of N.H., Inc., Manchester, N.H., has applied for the Board's approval under section 3(a)(3) of the Bank Holding company Act (12 U.S.C. 1842(a)(3)) to acquire at least 50.1 percent of the voting shares of Londonderry Bank & Trust Co., Londonderry, N.H. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Boston. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, to be received not later than June 8, 1978.

Board of Governors of the Federal Reserve System, May 9, 1978.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

[FR Doc. 78-13254 Filed 5-15-78; 8:45 am]

[6210-01]

GALVESTON COUNTY BANCSHARES, INC.

Formation of Bank Holding Company

Galveston County Bancshares, Inc., Texas City, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of the Texas City National Bank, Texas City, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Secretary; Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 5, 1978.

Board of Governors of the Federal Reserve System, May 9, 1978.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

[FR Doc. 78-13259 Filed 5-15-78; 8:45 am]

[6210-01]

ORBANCO, INC.

Proposed Acquisition of Union Investment Co.

Orbanco, Inc., Portland, Oreg., has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of Union Investment Co., Birmingham, Mich. Notice of the application was published on various dates in newspapers circulated in Alabama, Arizona, California, Colorado, Florida, Georgia, Indiana, Michigan, Nevada, North Carolina, Ohio, Oklahoma, South Carolina, Texas, Utah, and Wyoming.

Applicant states that the proposed subsidiary would engage in the activities of (i) the financing of personal property and equipment and the leasing and or purchasing of leases covering certain of such property where at the inception of the initial lease the effect of the transaction (and, with respect to government entities only, reasonably anticipated future transactions) will yield a return that will compensate the lessor for not less than the lessor's full investment in the property plus the estimated total cost of financing the property over the terms of the lease, or the acting as an agent, broker or advisor in the leasing and or financing of such property, and the servicing of such financing and or leases; (ii) making, acquiring or servicing loans and other extensions of credit; (iii) the servicing of loans; (iv) acting as broker or agent for the sale of credit-related life insurance; (v) originating and servicing loans secured by real estate, including construction loans and (vi) providing insurance directly related to an extension of credit only as a reinsurer of credit life and credit accident and health insurance. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or

gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of San Francisco.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than June 8, 1978.

Board of Governors of the Federal Reserve System, May 9, 1978.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

[FR Doc. 78-13255 Filed 5-15-78; 8:45 am]

[6210-01]

REPUBLIC BANCORPORATION, INC.

Formation of Bank Holding Company

Republic Bancorporation, Inc., Englewood, Colo., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 80 percent or more of the voting shares of Republic National Bank of Englewood, Englewood, Colo. The factors that are considered in acting on the application are set forth in section 3(c) of the act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City. Any person wishing to comment on the application should submit views in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 to be received no later than June 9, 1978.

Board of Governors of the Federal Reserve System, May 10, 1978.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

[FR Doc. 78-13258 Filed 5-15-78; 8:45 am]

[6820-22]

GENERAL SERVICES ADMINISTRATION

REGIONAL PUBLIC ADVISORY PANEL ON ARCHITECTURAL AND ENGINEERING SERVICES

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of a meeting of the Regional Public Advisory Panel on Architectural and Engineering Services, Region 4, May 31 and June 1, 1978, from 9 a.m. to 4 p.m., Room 3E1, 1776 Peachtree Street NW., Atlanta, Ga. The meeting will be devoted to the initial step of the procedures for screening and evaluating the qualifications of architect-engineers under consideration for selection to furnish professional services for the proposed restoration and conversion of the Nashville, Tenn. Historic Union Station. The meeting will be open to the public.

Dated: May 5, 1978.

L. D. STROM,
Regional Administrator.

[FR Doc. 78-13170 Filed 5-15-78; 8:45 am]

[6820-22]

REPORT ON ENVIRONMENTAL ACTIONS

Public Notice

Pursuant to the provisions of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), and section 1500.6(e) of the Council on Environmental Quality guidelines for the preparation of environmental impact statements (38 FR 20550) the following is a list of administrative actions for which environmental impact statements were under preparation by the General Services Administration from December 1, 1977, through February 28, 1978, for real property disposal actions and for facility planning actions. Also listed are administrative actions for which environmental impact statements are planned in the future and actions for which environmental assessments were completed with negative declarations.

Dated: May 3, 1978.

JAMES B. SHEA, Jr.,
Commissioner, Public Buildings Service.

FACILITY PLANNING ACTIONS

ENVIRONMENTAL IMPACT STATEMENTS/ NEGATIVE DECLARATIONS

REGION 1

A. EIS'S IN PREPARATION

Fort Kent, Maine—Preliminary final EIS for construction of a new border station.

Springfield, Mass.—Draft EIS for construction of a new courthouse-Federal office building and parking facility.

Providence, R.I.—Preliminary draft EIS for a new constriction of a Federal office building.

Boston, Mass.—Draft EIS for instruction of a new Federal office building.

B. EIS'S PLANNED

Boston, Mass.—Preliminary draft EIS for ease construction of a new Veterans Administration clinic building.

Houlton, Maine—Preliminary draft EIS for construction of new border station.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

Lexington, Mass.—Construction of a hazardous materials storage building on existing leased Environmental Protection Agency's laboratory site.

REGION 2

A. EIS'S IN PREPARATION

New York, N.Y.—201 Varick Street—Draft EIS for repair and alteration project to include a detention facility for illegal aliens.

B. EIS'S PLANNED

Niagara Falls (Rainbow Bridge), N.Y.—Construction of a new border station to replace existing facility.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

New York, N.Y.—201 Varick Street—Repair and alteration of the Defense Contract Administration Service, region's protion of the building.

REGION 3

A. EIS'S IN PREPARATION

Suitland, Md.—Draft EIS for the Suitland Federal Center master plan—Southern portion including Smithsonian Institution Museum Support Center.

Washington, D.C.—Final EIS for the repair and alteration of the Old Post Office (12th and Pennsylvania Avenue NW.).

Washington, D.C.—Amendment to the draft EIS for the repair and alteration of the west heating plant (20th and K Streets NW.).

Wilkes-Barre, Pa.—Draft EIS for lease construction of a Federal office building.

B. EIS'S PLANNED

Washington, D.C.—Draft EIS for relocation and consolidation, and new construction for Nuclear Regulatory Commission.

Washington, D.C.—Draft EIS for new construction for the University of the District of Columbia.

Washington, D.C.—Draft EIS for lease 1900 Half Street (Buzzard Point).

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

Washington, D.C.—Auditors complex, 14th and C Streets SW., repair and alteration.

REGION 4

A. EIS'S IN PREPARATION

Savannah, Ga.—Draft EIS for new construction of a Federal building and parking facility.

Knoxville, Tenn.—Draft EIS for new construction of a Federal building.

Birmingham, Ala.—Draft EIS for new construction of Federal building-courthouse and parking facility.

Nashville, Tenn.—Draft EIS for renovation of Union Station.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

Charlotte, N.C.—Charles R. Jones Federal Building (major repair and alteration project).

REGION 5

A. EIS'S IN PREPARATION

East St. Louis, Ill.—Final EIS for construction of a Federal building and courthouse.

Detroit, Mich.—Draft EIS for acquisition, repair, and alteration of a secondary truck inspection facility for the U.S. Customs Service.

Detroit, Mich.—Preliminary final EIS for U.S. Federal Courthouse Annex.

Milwaukee, Wis.—Draft EIS for lease construction of a Federal building and parking facility.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

None.

REGION 6

A. EIS'S IN PREPARATION

Omaha, Nebr.—Draft EIS for construction of a Federal office building.

B. EIS'S PLANNED

St. Louis, Mo.—Draft EIS for construction of courthouse.

Kansas City, Kansas/Kansas City, Mo. (Standard Metropolitan Statistical Areas)—Draft EIS for Internal Revenue Service—Midwest Service Center.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

None.

REGION 7

A. EIS'S IN PREPARATION

El Paso, Tex.—Draft EIS for construction of Federal building and parking facility and the repair and alteration of Courthouse Federal Building conversion.

Santa Fe, N. Mex.—Draft EIS for construction of the National Park Service Building (temporarily deferred).

Ysleta (El Paso), Tex.—Draft EIS for Federal construction of a border station (temporarily deferred).

Austin, Tex.—Draft EIS for lease for Internal Revenue Service (temporarily deferred).

Little Rock, Ark.—Draft EIS for construction of extension to post office-courthouse (temporarily deferred).

Roma, Tex.—Draft EIS for lease of a border station.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

None.

REGION 8

A. EIS'S IN PREPARATION

Denver Federal Center, Jefferson County, Colo.—Master plan/environmental impact statement.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

None.

REGION 9

A. EIS'S IN PREPARATION

Los Angeles, Calif.—Final EIS for construction of a parking facility.

West Los Angeles, Calif.—Draft EIS for construction of a Federal Bureau of Investigation parking facility.

San Jose, Calif.—Draft EIS for construction of Federal building and parking facility.

B. EIS'S PLANNED

San Francisco, Calif.—Draft EIS for construction of Federal Building.

Santa Barbara, Calif.—Draft EIS for lease construction of Veterans Administration Clinic.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

None.

REGION 10

A. EIS'S IN PREPARATION

Anchorage, Alaska—Federal Building—Supplement to the final EIS.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

None.

REAL PROPERTY DISPOSAL ACTIONS

ENVIRONMENTAL IMPACT STATEMENTS/ NEGATIVE DECLARATION

REGION 1

A. EIS'S IN PREPARATION

Charlestown, R.I.—Draft EIS regarding disposal of approximately 604 acres of the former Naval Auxiliary Landing Field.

Newport, North Kingstown, Middletown, and Portsmouth, R.I.—Draft EIS regarding disposal of approximately 3,200 acres of the former Quonset Point Naval Air Station, Construction Battalion Center, and U.S. Naval Base.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Plymouth, Conn.—Public sale of 1.55 acres of land improved with a single family Cape Cod style home by auction/sealed bid combination.

New Castle, N.H.—Conveyance through the Heritage Conservation and Recreation Service for transfer to the New Hampshire Department of Natural Resources and Economic Development for park and recreational purposes.

REGION 2

A. EIS'S IN PREPARATION

Negative.

B. EIS'S PLANNED

Negative.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATION

Kinderhook, N.Y.—Negotiated sale of 0.327 of an acre, unimproved land to the Village of Kinderhook for municipal use.

REGION 3

A. EIS'S IN PREPARATION

None.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Anne Arundel County, Md.—Negotiated sale of the GSA-Curtis Bay Storage Depot to Anne Arundel County for an industrial complex.

Cheltenham, Md.—Assignment of the Naval Communications Unit to the

Historic Conservation and Recreation Service for Prince George's County for public park and recreational purposes.

Gainesville, Va.—Proposed assignment of Portion, Vint Hill Farms Station to Department of Transportation for Virginia Highway Commission.

REGION 4

A. EIS'S IN PREPARATION

Negative.

B. EIS'S PLANNED

Negative.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Key West, Fla.—Assignment of a portion of the Naval Air Station, Key West, Fla., to the Department of Health, Education, and Welfare for subsequent conveyance to the City of Key West for health purposes.

Miami, Fla.—Public sale of improvements located on leased land at the FAA "H" Facility by competitive bid for offsite removal.

Albany, Ga.—Negotiated sale of two large tracts and one smaller tract, totaling approximately 1900 acres, at the Naval Air Station to the Albany-Dougherty Payroll Development Authority for industrial development; public sale of the transmitter site (3.0 acres) by competitive bid; Federal transfer of approximately 103 acres to the Department of Labor for use as a Job Corps Center; assignment of a 6-acre portion to the Department of Health, Education, and Welfare for subsequent conveyance to the City of Albany for use as a fire fighting training facility; and negotiated sale of the remaining easements to the subservient landowners.

Augusta, Ga.—Assignment of a 2-acre portion of the Fort Gordon-Oliver Area to the Department of Health, Education, and Welfare for subsequent conveyance to the Richmond County Board of Education and assignment of a 230-acre portion to the Department of Health, Education,and Welfare for subsequent conveyance to The Board of Regents, University System of Georgia, for educational purposes; and assignment of approximately 9 acres to the Heritage Conservation and Recreation Service for subsequent conveyance to the City of Augusta for park and recreational purposes.

Fort Knox, Ky.—Public sale of 376 acres of the Fort Knox Military Reservation by competitive bid and assignment of 114 acres to the Department of Health, Education, and Welfare for subsequent conveyance to Bullitt County Schools Systems for educational purposes.

Henderson County, Ky.—Negotiated sale of the Lock and Dam 48 to the American Electric Power Service Corp., Canton, Ohio, for construction of an electric generating plant.

Winston-Salem, N.C.—Negotiated sale of a portion of the Winston-Salem Housing Site to Forsyth County for possible use as a rental project.

Alleghany/Wilkes Counties, N.C.—Public sale of six houses on the Blue Ridge Parkway at Mahogany Rock by competitive bid and assignment of four houses to the Department of Health, Education, and Welfare for subsequent conveyance to Surry County Board of Education for educational purposes.

REGION 5

A. EIS'S IN PREPARATION

Negative.

B. EIS'S PLANNED

Negative.

C. ENVIRONMENTAL ASSESMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Northbrook, Ill.—Former Coast Guard Radio Station, consisting of approximately 27 acres of unimproved land. Proposed disposal in three parts: The first section to Postal Service for building a small post office; the second section to Cook County, Forest Preserve natural prairie; the third section to Village of Northbrook for active recreation.

Hancock, Mich.—Former Naval Reserve Center, consisting of approximately 1 acre of fee-owned land on the Portage Lake waterfront in Hancock. Property is divided into two parcels. Proposed disposal of both parcels by assignment to Department of Health, Education, and Welfare for conveyance to Michigan Technical University.

Adrian, Mich.—Former Federal Building consisting of a 0.4 acre square tract improved with a one-story brick and stell-sash Federal Building. Proposed disposal by conveyance through Department of Health, Education and Welfare to the City Schools of Adrian.

Columbus,Ohio—Post Office and Courthouse, consisting of a four-story and basement building located on 0.842 acre of land. Proposed disposal by conveyance to the State of Ohio as an historic monument.

Anoka, Minn.—Former Main Post Office, consisting of 0.35 acre improved with a 2½ story brick building. Propsed disposal by sealed bid sale.

New Ulm, Minn.—Former U.S. Post Office, consisting of a single-story masonry building on approximately 0.35 acre of fee-owned land. Proposed disposal by negotiated sale to City of New Ulm for historic preservation purposes and use as a museum.

Cleveland, Ohio—Cleveland Army Tank-Automative Plant—Test Track, consisting of 40.71 acres of test track land in the northwestern part of the 216 acre Tank Plant property. Proposed disposal by conveyance to City of Cleveland for use as an interference-free zone for an airport instrument landing system.

Mishawaka, Ind.—Naval Industrial Reserve Ordnance Plant, consisting of a manufacturing plant; two major buildings and 25.83 acres of level land. Proposed disposal by competitive sealed bid sale including land, buildings, and personal property as one unit, to be used for general manufacturing.

Harrison County, Ind.—Lock and Dam no. 43, consisting of a 1.61 acre site improved with 4 structures. Proposed disposal of both parcels by sealed bid sale.

REGION 6

A. EIS'S IN PREPARATION

Negative.

B. EIS'S PLANNED

Negative.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Fort Des Moines, Iowa—Public sale of 2.42 acres of the former Fort Des Moines by competitive bid.

Adair, Iowa—Assignment of Adair Bin Site (1.0 acre) to the City of Adair for public health use.

Topeka, Kans.—Negotiated sale to the City of Topeka, Kans., or a public sale of two improved non-contiguous parcels of land, Forbes Air Force Base, Cullen Village Housing Area with 261.77 acres and Baker Drive Area with 23.07 acres.

REGION 7

A. EIS'S IN PREPARATION

Matagorda Island, Tex.—Draft EIS in process regarding disposal of 18,992.18 acres former Matagorda Island Air Force Range, Texas.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Dona Ana County, N. Mex.—Public sale of 2.56 acres of land with improvement at Rio Grande Project at Mesilla Dam, by competitive bids.

REGION 8

A. EIS'S IN PREPARATION

Negative.

B. EIS'S PLANNED

Negative.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Sturgis, S. Dak.—Public sale of the former Titan "I" Missile Site No. 3,

near Sturgis, S. Dak. by competitive sale.

Ogden, Utah—Public sale of the former U.S. Post Office Building and underlying land by competitive sale.

Cheyenne, Wyo.—Public sale of the Federal Aviation Administration-owned real estate and buildings near Cheyenne, Wyoming by competitive sale.

Monte Vista, Colo.—Negotiated sale of the former Forest Service Warehouse and underlying land to Rio Grande County.

Grand Forks, N. Dak.—Public sale of the Grand Forks Air Force Base ILS Outer Market Annex by competitive sale.

REGION 9

A. EIS'S IN PREPARATION

Negative.

B. EIS'S PLANNED

Novato, Calif.—Draft EIS regarding disposal of approximately 1745 acres of the former Hamilton AFB.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Tonopah, Nev.—Transfer to the Bureau of Land Management approximately 0.153 acre of land improved with a one-story duplex and carport that was a portion of the former AEC Housing Complex in Tonopah, Nev. This will provide additional housing for Bureau of Land Management employees assigned to the area.

Moffett Field, Calif.—Even exchange of 4.95 acres with Pacific Gas & Electric Co., a public utility company, to provide a site for Pacific Gas & Electric Co. owned electrical transmission towers and substation serving the Ames Research Center. The property is a portion of the National Aeronautics and Space Administration, Ames Research Center, Moffett Field, Calif.

San Francisco, Calif.—Negotiated sale to the University of California's Hastings College of the Law of the Federal Building, 100 McAllister Street for use as dormitories, apartments, gymnasium, auditorium, meeting rooms and office space.

Honolulu, Hawaii—Transfer to the Department of Agriculture approximately 1.46 acres of unimproved land which is a portion of Fort Ruger Military Reservation for use by the Forest Service for plant study, research and disease prevention programs.

Palo Alto, Calif.—Transfer 1.792 acres portion of the Veterans Administration Hospital to General Services Administration for a motor pool site.

Alameda, Calif.—Assign approximately 2.99 acres of the Maritime Alameda Reserve Shipyard to the Department of Transportation, Federal Highway Administration for conveyance to the City of Alameda for road projects.

Los Angeles County, Calif.—Negotiated sale with the City of Los Angeles for 106.16 acres fee land and easements and 28 buildings identified as a portion of the Los Angeles Defense Area, Nike 88.

REGION 10

A. EIS'S IN PREPARATION

None.

B. EIS'S PLANNED

None.

C. ENVIRONMENTAL ASSESSMENTS COMPLETED WITH NEGATIVE DECLARATIONS

Olympia, Wash.—Negotiated sale of approximately 3.32 acres of fee land, 0.30 acre of easement and 220 feet of saltwater frontage together with all improvements to the State of Washington, Department of Natural Resources.

Benton County, Wash.—Negotiated sale of 648 acres being a portion of the Department of Energy Hanford Reservation to the State of Washington, Department of Ecology.

[FR Doc. 78-13218 Filed 5-15-78; 8:45 am]

[6820-24]

[Federal Procurement Regs.; Temporary Reg. 44, Supplement 1]

REGULATIONS CHANGES BY THE COST ACCOUNTING STANDARDS BOARD (CASB)

1. *Purpose.* This regulation implements the regulations changes by the CASB (43 FR 9775, Mar. 10, 1978) which became effective March 10, 1978, with respect to national defense contracts of civilian executive agencies. The regulation also modifies provisions prescribed by FPR Temporary Regulaton 44, dated March 29, 1978 (43 FR 14108, Apr. 4, 1978), with respect to negotiated nondefense contracts.

2. *Effective date.* This regulation is effective retroactively to March 10, 1978.

3. *Expiration date.* This regulation expires on March 10, 1979.

4. *Background.* FPR Temporary Regulation 44 implements changes to CASB regulations promulgated on September 12, 1977, and October 5, 1977, which became effective March 10, 1978. The CASB promulgated on March 10, 1978, further changes that also became effective on March 10, 1978, which are the basis for this regulation. The primary purpose of the provisions are to provide definitions for "cost accounting practice" and "change to either a disclosed cost accounting practice or an established cost accounting practice."

5. *Explanation of changes.* a. Section 1-3.1202 is added to republish the definitions regarding cost accounting practices promulgated by the CASB (4 CFR 331.20(h) and (i)). The CASB illustrations are not republished.

b. Section 1-3.1204-1 is amended to change the Cost Accounting Standards clause, the Disclosure and Consistency of Cost Accounting Practices clause, and the Administration of Cost Accounting Standards clause, to reflect the CASB promulgation.

c. Section 1-3.1204-2 is amended to change the non-defense contract clauses to extend the application of the CASB promulgation to nondefense contracts.

d. Section 1-3.1204-3 is revised to reflect the CASB promulgation with regard to the applicability date of cost accounting standards to CAS covered subcontracts.

e. Section 1-3.1207 is amended to reflect the CASB promulgation with regard to the obligation of the contracting officer to make findings prior to utilization of the new equitable adjustment provisions of the CASB clauses for accounting changes.

f. Section 1-3.1214 is amended to reflect the CASB promulgation with regard to equitable adjustment for accounting changes.

6. *Effect on other issuances.* The following changes are made in the FPR.

a. Section 1-3.1202 is added, as follows:

§ 1-3.1202-2 Cost accounting practice.

The definitions of "cost accounting practice" and "change to either a disclosed cost accounting practice or an established cost accounting practice" appearing in 4 CFR 331.20 apply to both national defense and nondefense CAS covered contracts and are set forth below:

(a) A "cost accounting practice" is any accounting method or technique which is used for measurement of cost, assignment of cost to cost accounting periods, or allocation of cost to cost objectives.

(1) Measurement of cost encompasses accounting methods and techniques used in defining the components of cost, determining the basis for cost measurement, and establishing criteria for use of alternative cost measurement techniques. The determination of the amount paid or a change in the amount paid for a unit of goods and services is not a cost accounting practice. Examples of cost accounting practices which involve measurement of costs are:

(i) The use of either historical cost, market value, or present value;

(ii) The use of standard cost or actual cost; or

(iii) The designation of those items of cost which must be included or excluded from tangible capital assets or pension cost.

(2) Assignment of cost to cost accounting periods refers to a method or

technique used in determining the amount of cost to be assigned to individual cost accounting periods. Examples of cost accounting practices which involve the assignment of cost to cost accounting periods are requirements for the use of specified accrual basis accounting or cash basis accounting for a cost element.

(3) Allocation of cost to cost objectives includes both direct and indirect allocation of cost. Examples of cost accounting practices involving allocation of cost to cost objectives are the accounting methods or techniques used to accumulate cost, to determine whether a cost is to be directly or indirectly allocated, to determine the composition of cost pools, and to determine the selection and composition of the appropriate allocation base.

(b) A "change to either a disclosed cost accounting practice or an established cost accounting practice" is any alteration in a cost accounting practice, as defined in paragraph (a) of this section, whether or not such practices are covered by a Disclosure Statement, except that:

(1) The initial adoption of a cost accounting practice for the first time a cost is incurred or a function is created is not a change in cost accounting practice. The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice. As used here, function is an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished.

(2) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

b. Section 1-3.1204-1 is amended (1) by amending the full coverage clause in paragraph (a)(1) of the section to revise provisions (a)(4)(B) and (d) and to add provision (a)(4)(C); (2) by amending the modified coverage clause in paragraph (a)(2) of the section to add provision (a)(5); and (3) by amending the administration clause in paragraph (b) of the section to revise provisions (a)(2), (c), and (f), as follows:

§ 1-3.1204-1 National defense contract clauses.

(a)(1) * * *

COST ACCOUNTING STANDARDS

(a)(4) * * *

(B) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to either a disclosed cost accounting practice or an established cost accounting practice, other than a change made under other provisions of this subparagraph (4): *Provided*, That no agreement may be made under this provision that will increase costs paid by the United States.

(C) When the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change under (4)(A), above, negotiate an equitable adjustment as provided in the Changes clause of this contract.

* * * * *

(d) The Contractor shall include in all negotiated subcontracts which he enters into the substance of this clause except paragraph (b). The contractor shall require such inclusion in all subcontracts of any tier, including the obligation to comply with all Cost Accounting Standards in effect on the date of award of the subcontract or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. This requirement shall apply only to negotiated subcontracts in excess of $100,000 where the price negotiated is not based on:

* * * * *

(a)(2) * * *

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES

(a) * * *

(5) When the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice, negotiate an equitable adjustment as provided in the changes clause of this contract.

* * * * *

(b) * * *

ADMINISTRATION OF COST ACCOUNTING STANDARDS

* * * * *

(a) * * *

(2) For any change to cost accounting practices proposed in accordance with paragraph (a)(4)(B) or (a)(4)(C) of the Cost Accounting Standards clause or with paragraph (a)(3) or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause not less than 60 days (or such other date as may be mutually agreed to) prior to the effective date of the proposed change; or

* * * * *

(c) Agree to appropriate contract and subcontract amendments to reflect adjustments established in accordance with paragraphs (a)(4) and (a)(5) of the Cost Accounting Standards clause or with paragraphs (a)(3), (a)(4), or (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause.

* * * * *

(f) For negotiated subcontracts containing the Cost Accounting Standards clause, require the subcontractor to comply with all Standards in effect on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data or date of award, whichever is earlier.

* * * * *

c. Section 1-3.1204-2 is amended (1) by amending the nondefense full coverage clause in paragraph (a) of the section to revise provision (a)(4) and to add provision (a)(6), and (2) by amending the nondefense modified coverage clause in paragraph (b) of the section to revise provision (a)(2) and to add provision (a)(4), as follows:

§ 1-3.1204-2 Nondefense contract clauses.

(a) * * *

COST ACCOUNTING STANDARDS—NONDEFENSE CONTRACT

(a) * * *

(4) Negotiate with the Contracting Officer to determine the terms and conditions under which a change to either a disclosed cost accounting practice or an established cost accounting practice, other than a change made under (a)(3) above or (a)(6) below, may be made. A change to a practice may be proposed by either the Government or the Contractor; *Provided, however*, That no agreement may be made under this provision that will increase costs paid by the United States.

* * * * *

(6) Negotiate an equitable adjustment (as provided in the Changes clause of this contract, if any) when the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice.

* * * * *

(b) * * *

CONSISTENCY OF COST ACCOUNTING PRACTICES—NONDEFENSE CONTRACT

(a) * * *

(2) Follow consistently the cost accounting practices established or disclosed as required by regulations of the Cost Accounting Standards Board and administered under the Administration of Cost Accounting Standards clause. If any change is made in established practices or in disclosed practices for purposes of any contract or subcontract subject to those disclosure requirements, the change must be applied in a consistent manner to this contract. A change to these practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract. No agreement may be made under this provision that will increase costs paid by the United States.

* * * * *

(4) Negotiate an equitable adjustment (as provided in the Changes clause of this contract, if any) when the parties agree to a change to either a disclosed cost accounting practice or an established cost accounting practice.

* * * * *

d. Section 1-3.1204-3 is revised, as follows:

§ 1-3.1204-3 National defense subcontracts.

The Cost Accounting Standards clause in § 1-3.1204-1(a)(1) and the Administration of Cost Accounting Standards clause in § 1-3.1204-1(b) require contractors and subcontractors to flow-down the requirement to comply with cost accounting standards in effect on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data or date of award, whichever is earlier, unless the subcontractor is exempt from CAS requirements or the subcontractor qualifies for and elects to comply with the modified contract coverage clause.

e. Section 1-3.1207 is amended by revising paragraph (a), as follows:

§ 1-3.1207 Contract price adjustments.

(a) *Modifications to Disclosure Statements or established practices.* Paragraphs (a)(4) of the Cost Accounting Standards clause and (a)(3) and (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause provide for adjustment of contract price under certain circumstances. Paragraphs (a)(3), (a)(4), and (a)(6) of the Cost Accounting Standards—Nondefense Contract clause and (a)(2) and (a)(4) of the consistency of Cost Accounting Practices—Nondefense Contract clause similarly provide for adjustments. The cognizant contracting officer (ACO) is responsible for obtaining the contractor's cost impact proposal and for the conduct of all negotiations of such adjustments to all Government prime contracts. Prior to the use of the provisions of (a)(4)(C) of the Cost Accounting Standards clause, (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause or the Cost Accounting Standards—Nondefense Contract clause, or (a)(3) of the Consistency of Cost Accounting Practices—Nondefense Contract clause, the cognizant contracting officer (ACO) shall make a finding that the change is desirable and is not detrimental to the interests of the Government.

* * * * *

f. Section 1-3.1214 is amended by revising paragraph (c), as follows:

§ 1-3.1214 Administration of voluntary changes.

* * * * *

(c) *Receipt of cost impact proposal.* Upon receipt of an acceptable proposal from the contractor, the cognizant contracting officer shall promptly analyze the proposal with the assistance of the auditor to determine whether or not the proposed change will result in increased costs being paid by the United States. In considering the proposed adjustments to subcontracts containing a cost accounting standards clause to determine whether increased cost to the United States will result from the change, the cognizant contracting officer shall not consider the effect of the proposed adjustments upon the prime contracts and subcontracts under which the subcontracts were entered into. If the cognizant contracting officer determines that the proposed adjustments will not result in an increase in the aggregate cost to be paid under the contracts and subcontracts containing a cost accounting standards clause, he shall promptly negotiate the contract price adjustments pursuant to § 1-3.1207. If the cognizant contracting officer determines that the proposed adjustments will result in an increase in the aggregate cost to be paid under the contracts and subcontracts containing a cost accounting standards clause, he shall so notify the contractor and advise him that the proposed change will not be recognized unless and agreement can be reached which will prevent an increase in the aggregate cost to be paid under such contracts and subcontracts. Contracts and subcontracts which contain paragraph (a)(4)(C) of the Cost Accounting Standards clause, (a)(5) of the Disclosure and Consistency of Cost Accounting Practices clause or the Cost Accounting Standards—Nondefense Contract clause, or (a)(3) of the Consistency of Cost Accounting Practices—Nondefense Contract clause provide for equitable adjustment for changes if the contracting officer determines that the change is desirable and not detrimental to the interests of the Government (see § 1-3.1207(a)). Where the cognizant contracting officer (ACO) makes such a determination, he shall notify the contractor and the parties will negotiate an equitable adjustment.

* * * * *

7. *Comments.* The date within which comments may be submitted with respect to FPR Temporary Regulation 44, dated March 29, 1978, and this Supplement 1 to the temporary regulation is extended to 60 days after the date this regulation is published in the FEDERAL REGISTER. Comments may be submitted to the Director, Federal Procurement Regulations Staff (mailing address: General Services Administration (FV), Washington, DC 20406.

Dated: May 4, 1978.

ROBERT T. GRIFFIN,
Acting Administrator of General Services.

[FR Doc. 78-13276 Filed 5-15-78; 8:45 am]

[6820-24]

[GSA Bulletin FPR 25; Federal Procurement Supplement 3]

COST ACCOUNTING STANDARDS ADMINISTRATION

Interim Guidance

To: Heads of Federal agencies.
Subject: Cost Accounting Standards Administration—interim guidance.

1. *Purpose.* This supplement adds additional interim guidance concerning the administration of subpart 1-3.12, Cost Accounting Standards, of the Federal Procurement Regulations (FPR). In addition, an index to guidance items is added as attachment B to the bulletin.

2. *Expiration date.* This bulletin contains items of a continuing nature and will remain in effect until canceled.

3. *Filing instructions.* Remove pages 1, 2, 2.1 and 2.2, and 61 of attachment A, and insert new pages 1, 2, 2.1 and 2.2, and 61 through 72, which add new item numbers 27 through 29. Insert attachent B.

Dated: April 28, 1978.

ROBERT P. GRAHAM,
Commissioner, Federal Supply Service.

INTERIM GUIDANCE ON
COST ACCOUNTING STANDARDS MATTERS

Item Number	Page Number	Title and Source
1	3	Guidance for the implementation of CAS 409, Depreciation of Tangible Capital Assets: DPC 75-4, October 3, 1975, Item XVI
2	6	CAS-covered contracts versus uncovered contracts: DPC 75-6, January 19, 1976, Item VIII (DPC 76-1, August 30, 1976)
3	7	Increased costs paid under CAS-covered contracts: DPC 75-6, January 19, 1976, Item VIII (DPC 76-1, August 30, 1976)
4	8	Individual contract adjustments: DPC 75-6, January 19, 1976, Item VIII (DPC 76-1, August 30, 1976)
5	9	Noncompliance cases involving contractor propogals: DPC 76-1, August 30, 1976, Item X (revised from DPC 75-6, January 19, 1976)
6	9	Interim guidance for implementing CAS 412: W.G. 76-1, February 24, 1976
7	11	Interim guidance for application of CAS to contract modifications and to orders placed under basic agreements: W.G. 76-2, February 24, 1976
8	13	Interim policy for application of CAS to subcontracts: W.G. 76-3, March 11, 1976
9	14	Interim guidance for determining increased costs to the Government for CAS-covered FPP contracts: W.G. 76-4, October 1, 1976
10	15	Interim guidance on treatment of implementation costs related to changes in cost accounting practices: W.G. 76-5, October 1, 1976
11	16	Interim guidance on application of CAS clause to changes in contractor's established practices when a disclosed statement has been submitted: W.G. 76-6, October 1, 1976
12	17	Interim guidance on the significance of "effective" and "applicability" dates included in cost accounting standards: W.G. 76-7, October 1, 1976
13	20	Application of CAS 405, Accounting for Unallowable Costs to Directly Associated Cost: DPC 76-6, January 31, 1977, Item XXXV (supersedes Item XV of DPC 74-3, November 29, 1974)
14	22	Interim guidance on use of the offset principle in contract price adjustments resulting from accounting changes: W.G. 76-8, December 17, 1976
15	24	Interim guidance for measurement of cost impact on firm-fixed-price contracts: W.G. 76-9, December 17, 1976
16	26	Retroactive implementation of cost accounting standards when timely compliance is not feasible: W.G. 77-10, February 2, 1977
17	28	Interim guidance for the implementation of CAS 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives: W.G. 77-11, February 2, 1977
18	38	Interim guidance on deliberate noncompliance and inadvertent noncompliance: W.G. 77-12, March 29, 1977
19	41	Interim guidance on the applicability of CAS 405 to costs determined unallowable on the basis of allocability: W.G. 77-13, March 29, 1977

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Item Number	Page Number	Title and Source
20	42	Interim guidance on early implementation of new cost accounting standards issued by the CAS Board: W.G. 77-14, March 29, 1977
21	44	Interim guidance on the influence of CAS regulations on contract terminations: W.G. 77-15, March 29, 1977
22	46	Interim guidance on applicability of cost accounting standards to letter contracts: W.G. 77-16, June 14, 1977
23	47	Interim guidance--Identification of CAS contract universe at a contractor's plant: W.G. 77-17, June 14, 1977
24	48	Interim guidance for implementation of Cost Accounting Standard 414--Cost of Money as an Element of the Cost of Facilities Capital; and Defense Procurement Circular (DPC) 76-3: W.G. 77-18, June 14, 1977
25	56	Interim guidance--Policy for withdrawing determination of adequacy of disclosure statement: W.G. 77-20, June 14, 1977
26	58	Interim guidance--Administration of leased facilities under Cost Accounting Standard 414, Cost of Money as an Element of the Cost of Facilities Capital: W.G. 77-19, August 18, 1977
27	61	Interpretation No. 1 to CAS 402, Consistency in allocating costs incurred for the same purpose: DPC 76-9, August 30, 1977
28	61	Interim guidance--Implementation of CAS 410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives: W.G. 78-21, January 16, 1978
29	70	Interim guidance--CAS 409 and the development of asset service lives: W.G. 78-22, February 6, 1978

computed in a manner as if the contractor had purchased the asset. The cost of money will not be included in the net book value of leased assets as reflected on the CASB-CMF form.

5. The cost of money related to leased assets will be allocated to benefiting cost objectives as an integral part of the cost of money factors for all capital assets, as prescribed by Standard 414.

6. Consistent with Interim Guidance paper W.G. 77-18, land will be shown on the CASB-CMF form (at its fair value at the beginning of the term of the lease) for each accounting period it is used in regular business operations.

Item 27 Interpretation No. 1 to CAS 402, Consistency in allocating costs incurred for the same purpose: Defense Procurement Circular (DPC) 76-9, August 30, 1977

Interpretation No. 1 to CAS 402 (Consistency in allocating costs incurred for the same purpose) was issued by the Cost Accounting Standards Board (41 FR 24691, June 18, 1976). Since that time, questions have been raised regarding the application of the Interpretation to Bid and Proposal (B&P) costs.

With respect to B&P costs, the Interpretation provides that these costs shall be a direct charge to a contract only as a result of a specific contract requirement. B&P costs resulting from other than a specific contract requirement shall not be a direct charge to a contract.

As of September 1, 1976, direct charges of B&P costs must be authorized by specific terms of the contract. Existing contracts in which B&P costs were contemplated to be a direct charge shall be modified to provide for recognition of any of these costs incurred from September 1, 1976, forward. Bid and Proposal costs charged direct prior to September 1, 1976, which were not charged pursuant to specific contract terms shall be allowed on the basis of the criteria existing before Interpretation No. 1 was published.

Item 28 Interim guidance--Implementation of CAS 410, Allocation of Business Unit General and Administrative Expense to Final Cost Objectives: W.G. 78-21, January 16, 1978

References: W.G. 77-11 [Item 17 of this GSA Bulletin 25]
ASPR 15-201.4 [§1-15.201.4 of the FPR]

Background

W.G. 77-11 provides guidance on implementation matters identified at the time CAS 410 was promulgated. Additional questions have surfaced during the development of contractor implementation proposals. This paper addresses those questions.

Discussion

Since a variety of issues and related guidance are involved, the guidance will be presented in a question and answer format.

1. Question

Is it appropriate to include functional costs, such as program management and procurement, in the G&A pool if all costs of a particular function are included?

Answer

No, unless the costs are insignificant. As defined in CAS 410 and emphasized in W.G. 77-11, G&A expenses are incurred for the general management and administration of a business unit as a whole. They must be allocated to final cost objectives on a base that measures the total activity of the business unit. G&A expenses are intended to have no direct causal or beneficial relationship with any intermediate or final cost objective. Applying the G&A definition requires appropriate purification of the G&A expense pool. Expenses such as program management, procurement, subcontract administration, and G&A-type expenses incurred for another segment, should not be identified as G&A expenses. They should be the subject of a separate distribution in reasonable proportion to the benefits received.

2. Question

Prefatory remarks in the standard say, "Contractors who have included selling costs in a cost pool separate and apart from the G&A expense pool may continue that practice or may change and include selling costs in their G&A expense pool." May selling costs be included in the G&A expense pool if an inequitable distribution results?

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Answer

No. Althrough the prefatory remarks are permissive in this regard, the standard's fundamental requirement paragraph 410.40(d)(1) requires a separate allocation of costs which can be allocated to business unit costs objectives on a beneficial or causal relationship which is best measured by a base other than a cost input base. Further requirements in paragraph 410.50(b)(1) indicate that the allocation base for combined pools must be appropriate for both. ASPR tests of allocability and reasonableness must also be satisfied. Therefore, if a significant disparity exists in marketing activity for elements of the business, selling expenses should be the subject of a separate distribution in reasonable proportion to the benefits received. For example, it may be appropriate to separately allocate selling costs of foreign and domestic markets.

3. Question

The standard says, "The cost input base selected to represent the total activity of a business unit during a cost accounting period may be: (1) Total cost input, (2) value-added cost input, or (3) single element cost input." Is the total cost input preferred?

Answer

Yes. The standard says, "A total cost input base is generally acceptable as an appropriate measure of the total activity of a business unit." The prefatory comments say, "...the term 'total activity' refers to the production of goods and services during the cost accounting period." Thus, unless circumstances exist where a significant difference is apparent between the activity involved in the production of goods and services during the cost accounting period and the costs of this activity, a total cost input base should be used. When circumstances exist where total cost input does not appear to be an appropriate measure of total activity of the business unit, other bases available in the standard should be considered. However, the conditions involved should be carefully considered before departing from a total cost input base. The value-added base shall be used where inclusion of material and subcontract costs would significantly distort the allocation and where costs other than labor are significant measures of total activity. What constitutes a significant distortion in

this context will be addressed as a separate question below. The criteria for use of a single-element cost input base are very specific. The standard says, "A single element base may not produce equitable results where other measures of activity are also significant in relation to total activity. A single element base is inappropriate when it is an insignificant part of the total cost of some of the final cost objectives." Considering the criteria for the use of the value-added and single-element bases, the thrust of the standard is toward implementing a total cost input base in most situations. Purification of the G&A expense pool is the most viable approach to minimizing any potential inequities which may surface in implementing the total cost input base.

4. Question

Should interdivisional transfers be included in a total cost input base?

Answer

Yes. The inclusion of interdivisional transfers in a total cost input base is supported by several provisions of the standard. CAS 410.40(b)(1) states that business unit G&A expenses shall be allocated "...by means of a cost input base representing the total activity of the business unit...." CAS 410.50(d) supplements that fundamental requirement by stipulating that the cost input base used to allocate G&A costs shall include "all significant elements of that cost input which represent the total activity of the business unit." Prefatory comment No. 1 also lends support by stating that "...when a total cost input base has been selected, all significant costs other than the costs included in the G&A expense pool should be included in the base."

Given this interpretation of CAS 410, there are only two ways in which interdivisional transfers may be excluded from the receiving division's G&A base. These are (1) the use of a base in appropriate circumstances whose constituent parts do not include material, such as value-added or single-element bases, or (2) when the interdivisional receipts are not significant.

Disputes as to the inclusion of costs such as interdivisional material or the selection of a base often obscure a more fundamental aspect of compliance with CAS 410. This is the requirement that the G&A pool represent only the centralized

management costs as discussed in question No. 1 of this guidance paper. Correct "purification" of many existing G&A pools will greatly minimize the impact of base selections.

5. Question

What type of circumstance would meet the value-added base criteria that inclusion of material and subcontract costs would significantly distort the allocation of the G&A expense pool in relation to the benefits received?

Answer

Responding to this question requires consideration of the context in which the criteria is presented in the standard and of related comments published by the CAS Board.

In describing the G&A base in 410.50(d), the CAS Board said, "The cost input base used to allocate the G&A expense pool shall include all significant elements of that cost input which represent the total activity of the business unit." In the prefatory comments the CAS Board said, "...the term 'total activity' refers to the production of goods and services during a cost accounting period." What is being pursued for the base is a flow of costs which bears a reasonable relationship with the production of goods and services. The criteria for a value-added base appears to be referring to a significant distortion in that relationship.

The production of goods and services requires material, labor, overhead, and other direct and indirect elements in varying amounts. The fact that a variance in amounts occurs usually reflects a variance in activity involved rather than a distortion in the relationship of costs and activity. However, when the activity involved in cost objectives is similar but the costs vary significantly, this usually indicates that a distortion exists for which use of a value-added base should be considered.

Two examples of circumstances in which significant distortions would likely lead to a decision to use a value-added base are described below:

a. Government-furnished components. The Government may furnish engines in its contract for aircraft. Similar aircraft are sold to commercial customers, but the contractor

issues subcontracts for the engines, including engine costs as part of the price. The same general management and administration of the business unit as a whole exists whether the customer furnishes the components or not. Consequently, including the component costs would significantly distort the results of using a total cost input base. Assuming no other circumstances of the contractor's activity would mitigate satisfaction of the standard's criteria for use of a value-added base, exclusion of material and subcontract costs would probably eliminate the distortion (the standard does not permit exclusion of engine costs only).

b. Precious metals. Products with similar configuration may have as the only difference the fabrication of one in gold and the other in sheet metal. The result would be that one product would have such a substantially greater material cost level that cost input would not be representative of the activity of the business unit. However, this type of circumstance should be reviewed with special care. Additional general management and administration costs may be necessary because of the greater cost level. For example, more financial accounting may be required to determine cash flow requirements and to support financing arrangements. Top-level management may be expected to monitor high-cost areas more than other elements of the business.

Once a distortion has been identified, the CAS Board's published materiality criteria may be helpful in determining whether the distortion is significant.

Equally important to assessing whether a significant distortion exists is considering whether use of a value-added base would minimize the distortion and result in an allocation best representing the total activity of the business unit during a cost accounting period. If not, its use would not comply with the basic requirement of the standard.

6. Question

The Standard states, "A value-added cost input base is total cost less material and subcontract costs." Should indirect material and subcontract costs be deducted from total costs to arrive at the value-added base? What is the definition of subcontract costs?

Answer

The costs deducted from total costs to determine the value-added base should be limited to direct material and subcontract costs. The DD Form 633 under the heading of direct material provides an authoritative definition of subcontract costs, which states, "Include parts, components, assemblies, and services to be produced by other than you [the contractor] in accordance with your designs, specifications, or directions and applicable only to the prime contract."

In applying this definition, care must be taken to avoid inappropriate inclusions or exclusions from the value-added base as a result of a broad application of terminology or individual contractor account classifications. For example, subcontract labor of the "body shop" type is often used to supplement the normal work force and is used interchangeably with the regular employees under the direction of the same supervision. Under these circumstances, the work performed does not fit the definition of services to be performed by other than the contractor. Thus it would be inappropriate to deduct these amounts from the total costs. On the other hand it would be appropriate to deduct the cost of subcontracts for items such as interior decoration of aircraft even though a contract accounts for them as part of other direct costs.

7. Question

When may the single-element cost input base be used to allocate the G&A expense pool?

Answer

A single-element cost input base may be used when a contractor can demonstrate that it best represents the total activity of a business unit and produces equitable results. Thus, a single-element base such as direct labor dollars may be used when the direct labor dollars are significant and the other measures of activity are less significant in relation to total activity. The contractor should periodically analyze the single-element base to ensure that it continues to best represent total activity and produces equitable results. When other measures of activity become significant, a single-element base may not produce equitable results. A

single-element base is inappropriate when it is an insignificant part of the total cost of some of the final cost objectives.

8. Question

CAS 410.50(j) prescribes use of a special allocation of G&A expenses where a particular final cost objective in relation to other final cost objectives receives significantly more or less benefit from G&A expense than would be reflected by allocation on an otherwise acceptable cost input base. What guidelines should be followed in applying this provision?

Answer

The CAS 410.50(j) provision is applicable only to a particular final cost objective which is an exception to the contractor's normal operation. An illustration of a circumstance appropriate for using a special allocation is shown in CAS 410.60(g). A contractor who normally constructs base operating facilities receives a significantly unusual requirement in one contract to acquire operating equipment for the base being constructed. A particularly important comment there says agreement by the parties is necessary. Taking this in conjunction with the standard's prefatory comment that the special allocation provision calls for the exercise of judgment, it appears that the intent is to use the special allocation provision in exceptional cases to resolve situations where equitable allocation to a particular cost objective cannot be achieved by normal methods.

Prefatory comments to the Standard state:

> If the G&A expense pool meets the requirements of the Standard, the existence of a need for special allocation to a class of contracts or type of situation would indicate that the allocation base being used is not representative of the total activity of the business unit during a typical cost accounting period.

Thus, before approving a special allocation the G&A expense pool should be carefully reviewed to purify it of any expenses which may be allocated to cost objectives more directly than by a cost input base. If a significant distortion still exists, then the cost input base selected should be reconsidered.

Administrative Contracting Officers should exercise caution in agreeing to the use of a special allocation. The use of a special allocation to gain a competitive advantage is not appropriate. However, it is recognized that the same operation may be normal in one contractor's circumstance but represent a special allocation situation in another contractor's circumstance.

9. Question

When a special allocation under CAS 410.50(j) is used, must it be described in the contractor's Disclosure Statement?

Answer

Yes. The contractor must amend his Disclosure Statement. Otherwise the contractor would be in noncompliance for failure to follow disclosed practices. The description should identify not only the special allocation but also the circumstances which required its use.

10. Question

CAS 410.50(g)(2) provides that separate allocations of significant home office centralized service functions, staff management of specific activities of segments, and central payments or accruals shall be allocated to segment cost objectives in proportion to the beneficial or causal relationship between the cost objectives and the expenses where such a relationship is identifiable. When separate allocations are reflected in home office cost accounting, must the separate allocations be identified as such in the cost transfers to the segments?

Answer

Yes. The requirement for this is CAS 403. To support that home office expenses charged to a CAS-covered contract were allocated to the segment in compliance with CAS 403, the contractor should be required to identify the allocation base and components of the expense pool.

11. Question

Should a facilities contract as defined in ASPR 7-701 be included in the total cost input base?

Answer

Yes, unless the provisions of CAS 410.50(j) apply. See Question 8.

ASPR 7-701 states that facilities contracts can take the following forms:

a. Facilities Acquisition Contract, which provides for acquisition, construction, and installation of facilities.

b. Facilities Use Contract, which provides for maintenance, accountability, and disposition of facilities.

c. Consolidated Facilities Contract, which provides for both a and b above.

With respect to Consolidated Facilities Contracts, there may be cases where it would be appropriate to apply the provisions of CAS 410.50(j) to only one portion of the contract and not the other; e.g., only to the facilities acquisition portion of the contract and not to the facilities use portion.

Item 29 Interim Guidance--CAS 409 and the Development of Asset Service Lives: W.G. 78-22, February 6, 1978

BACKGROUND

1. CAS 409 applies only to assets acquired by a contractor after the beginning of its next fiscal year, after receipt of a CAS-covered contract, and after July 1, 1975. For most contractors, CAS 409 became applicable to their tangible capital assets acquired after January 1, 1976. CAS 409.50(e)(3) grants the contractor a 2-year period following the date when the standard must be followed for the development of adequate historical records to support the asset lives used in computing depreciation for those assets to which the standard is applicable.

2. In describing criteria for estimating service lives initially established for tangible capital assets (or groups of assets), CAS 409.50(e) says, in part: "The estimate of the expected actual periods of usefulness need not include the additional period tangible capital assets are retained for standby or incidental use where adequate records are

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maintained which reflect the withdrawal from active use."

In addition, CAS 409.50(e)(2) provides in part: "Supporting records shall be maintained which are adequate to show the age at retirement or, if the contractor so chooses, at withdrawal from active use (and retention for standby or incidental use) for a sample of assets for each significant category."

DISCUSSION

1. Equitable adjustments of CAS-covered contracts for accounting changes required by CAS are generally applicable only to those contracts in existence on the effective date of the standard (see W.G. 76-7 [Item 12 of this GSA bulletin 25]). An exception to that general rule is seen in the provisions of CAS 409, which allow a grace period to develop records of asset service lives. During this period, many contractors have used some method other than their historical records to estimate asset service lives. Under these circumstances, asset service lives for those assets acquired during the grace period are not required to be adjusted to the historical lives. Therefore, the first applicability of the requirements to base asset service lives on historical records of experience takes place after the grace period. Consequently, all CAS-covered contracts and subcontracts awarded before the conclusion of the grace period are subject to equitable price adjustment for changes related to adopting the new method of arriving at asset service lives for assets acquired after the grace period.

2. There is another issue raising questions about asset service lives. The CAS 409 provision for adjusting service lives to reflect standby or incidental usage provides the contractor an opportunity to prevent having longer lives applied in the depreciation process merely because an asset is not disposed of when withdrawn from active use. To take advantage of this opportunity, the contractor must maintain a record supporting the status of assets.

"Standby" status exists when the asset is withdrawn from regular usage with no definite plans for continuing its use. The asset is retained merely for possible temporary replacement during repair of a productive asset, emergency, or other unusual usage. Diminishing the usage to a part-time basis does not constitute standby status.

GUIDANCE

1. Equitable adjustment procedures are available to the initial compliance with the historical records requirement of CAS 409.50(e)(3) for all CAS-covered contracts existing prior to the end of the grace period.

2. Contractors should be required to provide sufficient detail in records of asset lives or other documentation to support that assets retained for standby or incidental use were withdrawn from service. As indicated in CAS 409.50(e)(2), the records may be for a sample of assets for each significant category. These records are required only when asset lives are adjusted for standby or incidental use.

AN INDEX TO UNCODIFIED COST ACCOUNTING STANDARDS GUIDANCE

Key: CAS Cost accounting standard
DPC Defense Procurement Circular
WG CAS Steering Committee Working Group paper
Bul Federal Procurement Regulations (FPR) bulletin
TR FPR temporary regulation
[...] Republication

Adjustments, individual contract	DPC76-1,X[Bul25,item4]
Adjustments to price, offset principle	WG76-8[Bul25,item14]
Applicability date, effective date	WG76-7[Bul25,item12]
Applicability to letter contracts	WG77-16[Bul25,item22]
Asset depreciation	DPC74-4,XVI[Bul25,item1]
Asset service lives	WG78-22[Bul25,item29]
Basic agreements, orders placed	WG76-2[Bul25,item7]
Bid & proposal costs, interpretation	DPC76-9,VI[Bul25,item27]
CAS 402, Interpretation 1	DPC76-9,VI[Bul25,item27]
CAS 405, directly associated costs	DPC76-6,XXXV[Bul25,item13]
CAS 405, unallowable on basis of allocability	WG77-13[Bul25,item19]
CAS 409, asset service lives	WG78-22[Bul25,item29]
CAS 410	WG77-11[Bul25,item17]; WG78-21[Bul25,item28]
CAS 412	WG76-1[Bul25,item6]
CAS 414	WG77-18[Bul25,item24]; DPC76-3;DPC76-7,III; DPC76-9,IV;DPC76-12,III

CAS 414, FPR interim policies	TR 40
CAS 414, leased facilities	WG77-19[Bul25,item26]
CAS 415, FPR interim policies	TR 43
CAS-covered vs uncovered contracts	DPC76-1,X[Bul25,item2]
Changes, implementation costs	WG76-5[Bul25,item10]
Changes in established practices	WG76-6[Bul25,item11]
Contract modifications	WG76-2[Bul25,item7]
Contract universe identification	WG77-17[Bul25,item23]
Cost input base	WG78-21[Bul25,item28]
DPC 76-3	WG77-18[Bul25,item24]
Depreciation, tangible capital assets	DPC75-4,XVI[Bul25,item1]
Directly associated costs	DPC76-6,XXXV[Bul25,item13]
Disclosure statement, withdrawal of adequacy	WG77-20[Bul25,item25]
Effective date, applicability date	WG76-7[Bul25,item12]
Established practice changes	WG76-6[Bul25,item11]
FFP contracts, increased costs	WG76-4[Bul25,item9]
FFP contracts, measurement of cost impact	WG76-9[Bul25,item15]
G&A pool, functional or selling costs in	WG78-21[Bul25,item28]
Identification of contract CAS universe	WG77-17[Bul25,item23]
Implementation, early, of new standards	WG77-14[Bul25,item20]
Implementation, retroactive	WG77-10[Bul25,item16]
Implementation of changes, costs of	WG76-5[Bul25,item10]
Increased costs, FFP contracts	WG76-4[Bul25,item9]
Increased costs paid	DPC76-1,X[Bul25,item3]
Individual contract adjustments	DPC76-1,X[Bul25,item4]
Leased facilities under CAS 414	WG77-19[Bul25,item26]
Letter contracts, applicability	WG77-16[Bul25,item22]
Measurement of cost impact	WG76-9[Bul25,item15]
Noncompliance, contract proposals	DPC76-1,X[Bul25,item5]
Noncompliance, deliberate and inadvertent	WG77-12[Bul25,item18]
Offset principle, price adjustments	WG76-8[Bul25,item18]
Proposal noncompliance	DPC76-1,X[Bul25,item5]
Retroactive implementation, when timely compliance not feasible	WG77-10[Bul25,item16]
Subcontract application	WG76-3[Bul25,item8]
Terminations, influence of CAS regulations	WG77-15,[Bul25,item21]
Unallowable costs, directly associated	DPC76-6,XXXV[Bul25,item13]
Unallowable costs, on basis of allocability	WG77-13[Bul25,item19]
Uncovered contracts vs CAS covered	DPC76-1,X[Bul25,item2]

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[FR Doc. 78-13225 Filed 5-15-78; 8:45 am]

[4110-88]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse, and Mental Health Administration

NEW YORK STATE OFFICE OF DRUG ABUSE SERVICES AND NARCOTIC AND DRUG RESEARCH, INC.

Research on Drug Abuse; Authorization of Confidentiality

Under the authority vested in the Secretary of Health, Education, and Welfare by section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)), all persons who—

1. Are employed by the New York State Office of Drug Abuse Services, New York, N.Y., or Narcotic and Drug Research, Inc., Albany, N.Y.; and

2. Have, in the course of that employment, access to information which would identify individuals who are the subjects of the research on drug abuse which is assisted by the Department of Health, Education, and Welfare grant numbered RO1 DA 01926, entitled "Economic Behavior of Street-Level Opiate Addicts";

are hereby authorized to protect the privacy of the individuals who are the subjects of that research by withholding their names and other identifying characteristics from all persons not connected with the conduct of that research.

As provided in section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)):

> Persons so authorized to protect the privacy of such individuals may not be compelled in any Federal, State, or local civil, criminal, administrative, legislative, or other proceedings to identify such individuals.

This authorization does not authorize employees of the New York State Office of Drug Abuse Services or Narcotic and Drug Research, Inc., to refuse to reveal to qualified personnel of the Department of Health, Education, and Welfare, for the purpose of management or financial audits or program evaluation, the names or other identifying characteristics of individuals who are the subjects of the research conducted pursuant to Department of Health, Education, and Welfare grant numbered RO1 DA 01926. Such personnel will hold any identifying information so obtained strictly confidential in accordance with 45 CFR 5.71.

This authorization is applicable to all information obtained pursuant to Department of Health, Education, and Welfare grant numbered RO1 DA 01926 which would identify the individuals who are the subjects of the research conducted under that grant.

Dated: March 15, 1978.

ROBERT L. DUPONT,
Director, National Institute on Drug Abuse.

Dated: May 2, 1978.

DAVID F. KEFAUVER,
Acting Deputy Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 78-13171 Filed 5-15-78; 8:45 am]

[4110-86]

Center for Disease Control

CENTER FOR DISEASE CONTROL PROGRAMS AND POLICIES ADVISORY COMMITTEE (AD HOC)

Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Center for Disease Control announces the following Committee meeting:

Name: Center for Disease Control (CDC) Programs and Policies Advisory Committee (Ad Hoc).

Dates: May 31, June 1, 2, 1978.

Place: Room 207, Building 1, Center for Disease Control, 1600 Clifton Road NE., Atlanta, Ga. 30333.

Time: 9 a.m.

Type of meeting: Open.

Contact person: Ms. Patsy Whitesell, Executive Secretary of Committee, Bureau of Training, Center for Disease Control, 1600 Clifton Road NE., Atlanta, Ga. 30333, phone AC—404-633-3311, extension 6502, FTS 236-7502.

Purpose: The CDC Programs and Policies Advisory Committee (Ad Hoc) will make recommendations to the Secretary, the Assistant Secretary for Health, and the Director, Center for Disease Control pertaining to future direction, programs, and policies for CDC.

Agenda: The Committee will conduct a final review of priority public health problems and strategies of intervention for reducing morbidity and mortality due to each problem. Recommendations on CDC's role in the specified interventions as well as general recommendations on CDC policy and methods will be developed.

Agenda items are subject to change as priorities dictate.

The meeting is open to the public for observation and participation. Anyone wishing to have a question answered during the meeting by a scheduled speaker should submit the question in writing, along with his or her name and affiliation, through the Executive Secretary to the Chairperson. At the discretion of the Chairperson and as time permits, appropriate questions will be asked of the speakers.

A roster of members and other relevant information regarding the meeting may be obtained from the contact person listed above.

Dated: May 5, 1978.

WILLIAM H. FOEGE,
Director, Center for Disease Control.

[FR Doc. 78-13214 Filed 5-15-78; 8:45 am]

[4110-02]

Office of Education

NATIONAL ADVISORY COMMITTEE ON BLACK HIGHER EDUCATION AND BLACK COLLEGES AND UNIVERSITIES

Meeting

AGENCY: National Advisory Committee on Black Higher Education and Black Colleges and Universities.

ACTION: Notice.

SUMMARY: This notice sets forth the schedule and proposed agenda of the fifth meeting of the National Advisory Committee on Black Higher Education and Black Colleges and Universities. Notice of this meeting is required under section 10(a) (2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1). This document is intended to notify the general public of their opportunity to attend.

DATE: June 12 and 13, 1978, 9:00 a.m to 5:00 p.m.

ADDRESS: 2225 Georgia Avenue, N.W, The Harambee House Hotel, Kilimanjaro Hall, Washington, D.C. 20001.

FOR FURTHER INFORMATION CONTACT:

Ms. Carol J. Smith, Program Delegate, National Advisory Committee, on Black Higher Education and Black Colleges and Universities, Room 4913, ROB-3, 400 Maryland Avenue, S.W., Washington, D.C. 20202, 202-245-2825 or 245-2352.

The National Advisory Committee on Black Higher Education and Black Colleges and Universities is governed by the provisions of Part D of the General Education Provisions Act (Pub. L. 90-247 as amended; 20 U.S.C. 1233 *et seq.*) and the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix I) which set forth standards for the formation and use of the advisory committees.

The Committee is directed to advise the Secretary of Health, Education and Welfare, the Assistant Secretary for Education, and the Commissioner of Education. The Committee shall examine all approaches to higher education of Black Americans as well as the needs of historically Black colleges and universities.

The meeting on June 12 and 13, 1978, will be open to the public beginning at 9:00 a.m. and ending 5:00 p.m. each day. The meeting will be held at 2225 Georgia Avenue, N.W., Washington, D.C. 20001.

The proposed agenda includes: (1) Annual report, (2) recommendations, (3) final report.

Records shall be kept of all Committee proceedings and shall be available for public inspection at the Office of the National Advisory Committee on Black Higher Education and Black Colleges and Universities located at 7th and D Streets, S.W., Room 4913, ROB-3, Washington, D.C.

Signed at Washington, D.C. on May 11, 1978.

CAROL J. SMITH,
Program Delegate, National Advisory Committee on Black Higher Education and Black Colleges and Universities.

[FR Doc. 78-13230 Filed 5-15-78; 8:45 am]

[4110-03]

Food and Drug Administration

[Docket No. 77N-0437; DESI 9149, 11120, 11127, and 12486]

PHYSICIAN LABELING FOR ANTIPSYCHOTIC DRUGS

Precaution Statement

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice requires that physician labeling for antipsychotic drugs, except for lithium carbonate, include a precaution statement concerning the chronic administration of these drugs. Also, this notice announces that a meeting will be held on June 26, 1978, Conference Room E, 9:00 a.m. between FDA and all sponsors of NDA's and IND's of these drugs to discuss the design and initiation of epidemiological studies involving the chronic administration of the drugs.

DATES: Physician labeling to be revised on or before September 13, 1978. Supplements to approved NDA's and ANDA's due on or before July 17, 1978.

ADDRESSES: Communications forwarded in response to this notice should be identified with Docket No. 77N-0437, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Room 10B-04, Bureau of Drugs.

Supplements to abbreviated new drug applications (identify with ANDA number): Division of Generic Drug Monographs (HFD-530), Bureau of Drugs.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Inquiries regarding the meeting of June 26, 1978: Ronald Kartzinel, M.D., Division of Neuropharmacological Drug Products (HFD-120).

FOR FURTHER INFORMATION CONTACT:

Ronald L. Wilson, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3650.

SUPPLEMENTARY INFORMATION: The Food and Drug Administration is charged with assuring that drugs are safe and effective for their intended use and that their labeling provides adequate information for such use and is not false or misleading. The full disclosure of information to physicians concerning precautions is an important element in the discharge of that responsibility. The statutory scheme anticipates that new information concerning the safety and effectiveness of marketed drugs may require that FDA prescribe changes in their labeling to reveal limitations on use or to warn of previously unanticipated hazards. In accordance with this statutory scheme, the Director of the Bureau of Drugs is now requiring a precaution statement in the labeling of antipsychotic drugs, except for lithium carbonate, to inform physicians of recent information concerning the chronic administration of these drugs.

Data were presented at the FDA Toxicology Advisory Committee meeting of February 23, 1977, from studies in rodents involving the chronic administration of four antipsychotic investigational drugs, three of which showed treatment-related increase in the incidence of mammary neoplasms. At the next meeting of the Toxicology Advisory Committee of May 12, 1977, a report was presented by a subcommittee that had reviewed the data. The Toxicology Advisory Committee's conclusions were presented to the Psychopharmacological Agents Advisory Committee at its meeting of June 16, 1977.

The conclusions of the Toxicology Advisory Committee are as follows:

> The * * * investigational drugs under consideration as well as other prolactin-inducing compounds are all considered to have carcinogenic potential for the mammary glands in rats and mice. There is clearly-demonstrated and well-accepted scientific evidence for this effect. Several variables, including ovarian function in rodents, determine whether or not this potential will be realized. This potential does not require further confirmation by additional animal carcinogenesis studies.
>
> There are major differences in hormonal and reproductive physiology between rodents and humans, including some related to the role of prolactin. At present, the Committee feels there is insufficient evidence to extrapolate from mice and rats to humans with respect to the role of prolactin in mammary carcinogenesis. It is, therefore, the opinion of the Advisory Committee that the rodent studies are not relevant to a determination of the magnitude of the potential for human risk from mammary cancer.
>
> The assessment of human risk, if any, will require appropriate epidemiologic studies of cohorts which have been exposed to antipsychotic, prolactin-increasing drugs for several years, or the demonstration, through comparative pharmacological and physiological studies, of the relevance to man of rodent or other models.

REFERENCES

1. Minutes of the Toxicology Advisory Committee Meeting, February 23-24, 1977.

2. Minutes of the Toxicology Advisory Committee Meeting, May 12-13, 1977.

3. Minutes of the psycho- pharmacological Agents Advisory Committee Meeting, June 16, 1977.

4. FDA Toxicology Advisory Committee report on Antipsychotic Drugs.

Reprints of the above references have been placed on file with the Hearing Clerk (HFC-20), Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, and may be seen between 9 a.m. and 4 p.m., Monday through Friday.

In view of these findings and conclusions, the Director of the Bureau of Drugs concludes that physicians should be aware of this new information and that a precaution statement should be required in the physician labeling of all antipsychotic drugs, except for lithium carbonate which does not increase prolactin secretion. Additional information as to human risk will be available when epidemiological studies are completed. Accordingly, it is now required that the physician labeling for such products be revised to include under the Precautions section the following statement:

> There is sufficient experimental evidence to conclude that chronic administration of antipsychotic drugs which increase prolactin secretion has the potential to induce mammary neoplasms in rodents under the appropriate conditions. There are recognized differences in the physiological role of prolactin between rodents and humans. Since there are, at present, no adequate epidemiological studies, the relevance to human mammary cancer risk from prolonged exposure to (*name of drug*) and other antipsychotic drugs is not known.

The following drug entities, and their salts and esters, are examples of antipsychotic agents which are covered by this notice, although this is not intended to be an exhaustive listing: acetophenazine, butaperazine, carphenazine, chlorperazine, chlorpromazine, chlorprothixine, mesoridazine, fluphenazine, haloperidol, loxapine, molindone, perphenazine, piperacetazine, prochlorperazine, promazine, thiopropazate, thioxene, trifluopera-

zine, triflupromazine, and thioridazine.

The notice applies not only to the particular antipsychotic drugs subject to the Drug Efficacy Study but to all antipsychotic drug products that are the subject of new drug applications approved either before or after the Drug Amendments of 1962 and also to any identical, related, or similar drug product (21 CFR 310.6), whether or not it is the subject of an approved new drug application. Any person may request an opinion of the applicability of this notice to a specific drug product he manufactures or distributes by writing to the Division of Drug Labeling Compliance (address given above). The following antipsychotic drugs were reviewed by the Drug Efficacy Study and conclusions on them were published in the following FEDERAL REGISTER notices:

November 28, 1970 (35 FR 18213; DESI 11020): Acetophenazine maleate; Fluphenazine hydrochloride; Thiopropazate hydrochloride.

April 3, 1971 (36 FR 6447; DESI 9149): Chlorpromazine hydrochloride; Perphenazine; Prochlorperazine edisylate; Prochlorperazine maleate; Promazine hydrochloride; Thioridazine hydrochloride; Trifluoperazine hydrochloride; Triflupromazine hydrochloride; Triflupromazine.

July 27, 1972 (37 FR 15038; DESI 11127): Chlorpromazine; Prochlorperazine.

August 8, 1972 (37 FR 15947; DESI 12486): Chlorprothixene.

The Director also concludes that there exists a need for evidence to determine whether the chronic administration of antipsychotic drugs which increase prolactin secretion has the potential to induce mammary neoplasms in humans. Therefore he is inviting all sponsors of NDA's and IND's of antipsychotic drugs to a meeting to discuss the design and initiation of appropriate epidemiological studies. The meeting will be held on June 26, 1978 at 9 a.m. in Conference Room E, —— Floor, Parklawn Building, 5600 Fishers Lane, Rockville, Md. All inquiries regarding this meeting should be directed to Dr. Ronald Kartzinel, Director of the Division of Neuro- pharmacological Drug Products, Food and Drug Administration.

Supplements to approved NDA's or ANDA's providing for appropriate revision of labeling to add the above precaution statement shall be submitted on or before July 17, 1978. The revised labeling shall be put into use by September 13, 1978 or at the next printing of the labeling, whichever occurs first. The revised labeling may be put into use without advance approval by the Food and Drug Administration.

This notices is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050-1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.70).

Dated: May 3, 1978.

J. RICHARD CROUT,
Director, Bureau of Drugs.

[FR Doc. 78-13066 Filed 5-15-78; 8:45 am]

[4110-03]

[Docket No. 78N-0084]

MUMPS VACCINE AND MUMPS VIRUS VACCINE, LIVE IMMUNIZATION OF SOURCE PLASMA (HUMAN) DONORS

Manufacture Discontinued

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs announces that (1) the manufacture of licensed Mumps Vaccine (prepared from killed mumps virus) has been discontinued and the product is no longer available for hyperimmunization of Source Plasma (Human) donors, and (2) the use of Mumps Virus Vaccine, Live (prepared from live, attenuated mumps virus) in place of Mumps Vaccine for hyperimmunization of Source Plasma (Human) donors is prohibited because available data do not support such use.

EFFECTIVE DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael L. Hooton, 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: Mumps Vaccine, Mumps Immune Globulin (Human) and Mumps Virus Vaccine, Live, are licensed biological products that are indicated for protection against mumps.

Mumps Vaccine also has been approved for the hyperimmunization of Source Plasma (Human) donors. Plasma from such donors is used for the manufacture of Mumps Immune Globulin (Human).

The Commissioner of Food and Drugs announces that (1) the manufacture of licensed Mumps Vaccine has been discontinued and the product is no longer available for hyperimmunization of Source Plasma (Human) donors; and (2) the use of Mumps Virus Vaccine, Live, in place of Mumps Vaccine for hyperimmunization of Source Plasma (Human) donors is prohibited.

Under § 601.25 (21 CFR 601.25) of the biologic regulations, the Panel on Review of Viral and Rickettsial Vaccines is evaluating the safety, effectiveness, and labeling of all Viral and Rickettsial Vaccines licensed before July 1, 1972. To date, the panel has determined that Mumps Vaccine is poorly antigenic and offers no sustained protection against mumps. Accordingly, the panel has recommended that licenses be revoked for the manufacture of Mumps Vaccine. There are only two licensed manufacturers of Mumps Vaccine in the United States, and both have discontinued manufacture of the vaccine. At one manufacturer's request, its license has been revoked. The dating period for the last lots of manufactured Mumps Vaccine expired in 1977, and therefore Mumps Vaccine is no longer available.

The Commissioner is aware of some uncertainty as to whether approval of Source Plasma (Human) licenses for immunization of donors with mumps vaccine includes immunizing donors with Mumps Virus Vaccine, Live (a live viral product).

The Commissioner finds that the available data do not support use of Mumps Virus Vaccin, Live for the hyperimmunization of Source Plasma (Human) donors. A specific product, Mumps Vaccine (a killed viral product), is the only licensed product that has been consistently approved for mumps hyperimmunization of Source Plasma (Human) donors.

Accordingly, Mumps Virus Vaccine, Live is prohibited for use to hyperimmunize Source Plasma (Human) donors. The Commissioner advises that the Food and Drug Administration will institute regulatory action against any Source Plasma (Human) establishment which uses Mumps Virus Vaccine, Live to hyperimmunize Source Plasma (Human) donors.

Dated: May 10, 1978.

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

[FR Doc. 78-13185 Filed 5-15-78; 8:45 am]

[4110-03]

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees

and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, place	Type of meeting and contact person
1. Technical Electronic Product Radiation Safety Standards Committee.	June 1 and 2, 9 a.m., room 416, 12720 Twinbrook Pkwy., Rockville, Md	Open public hearing June 1, 9 a.m. to 10 a.m.; open committee discussion June 1, 10 a.m. to 4:30 p.m., June 2, 8:30 a.m. to 11:30 a.m.; Marshall S. Little (HFX-440), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3426.

General function of the committee. Advises on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation in accordance with 42 U.S.C. 263f(f)(1)(A).

Open committee discussion. Discussion of Bureau of Radiological Health standards procedures; amendments to the diagnostic X-ray standards; proposed amendments concerning X-ray therapy simulators; draft amendments concerning computerized tomographic equipment; proposed amendment to test procedures for microwave oven standard; review of information on ultrasound bioeffects; concepts for recommendations for diagnostic ultrasound equipment; phototherapy and bioeffects of light; laser light shows; status report on standards projects—amendments to laser standard, mercury vapor lamps, microwave diathermy, sunlamps, and consumer education; new developments in X-ray recommendation projects; and the Bureau's responsibility for medical devices.

Committee name	Date, time, place	Type of meeting and contact person
2. Panel on Review of Ophthalmic Drugs.	June 2 and 3, 9 a.m.; conference room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (June 2); Holiday Inn, Chevy Chase, Md. (June 3).	Open public hearing June 2, 9 a.m. to 10 a.m.; open committee discussion June 2, 10 a.m. to 4:30 p.m., June 3, 9 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6057.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before May 29, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Type of meeting and contact person
3. Ophthalmic Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	June 5, 9 a.m., conference room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4300.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the treatment of infectious diseases, dermatological disorders, and ocular diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion and review of Timolol (NDA 18-086) for glaucoma; review of proposed iritis studies of Betamethasone and the difficulties in design; and review of human toxicity problems with 6-hydroxydopamine (NDA 18-079).

Committee name	Date, time, place	Type of meeting and contact person
4. Panel on Review of Oral Cavity Drug Products.	June 6 and 7, 9 a.m., conference room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing June 6, 9 a.m. to 10 a.m.; open committee discussion June 6, 10 a.m. to 4:30 p.m., June 7, 9 a.m. to 4:30 p.m., John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6057.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before June 1, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Type of meeting and contact person
5. Dermatology Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	June 8, 9 a.m., conference room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, Md., 20857, 301-443-4300.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the treatment of infectious disease, dermatological disorders, and ocular diseases.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of Oxsoralen with ultraviolet light in the treatment of psoriasis and consideration of adrenal suppression studies as a part of the guidelines for testing topical steroids.

Committee name	Date, time, place	Type of meeting and contact person
6. Panel on Review of Contraceptives and Other Vaginal Drug Products.	June 8 and 9, 9 a.m., Shenandoah B room, Ramada Inn, Arlington, Va.....	Open public hearing June 8, 9 a.m. to 10 a.m.; open committee discussion June 8, 10 a.m. to 4:30 p.m., June 9, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before June 5, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Type of meeting and contact person
7. Panel on Review of Antimicrobial Agents.	June 9 and 10, 9 a.m., Rosslyn B room, Ramada Inn, Arlington, Va.....	Open public hearing, June 9, 9 a.m. to 5 p.m.; open committee discussion, June 10, 9 a.m. to 4:30 p.m.; Armond M. Welch, (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda-Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before June 6, 1978, and submit a brief statement of the general nature of the dada, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

To date, the following presentations have been scheduled for this time period.

Committee name	Date, time, place	Type of meeting and contact person
8. Panel on Review of Miscellaneous External Drug Products.	June 11 and 12, 9 a.m.; Georgia Room, Holiday Inn, Bethesda, Md. (June 11); Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (June 12)..	Open committee discussion June 11, 9 a.m. to 4:30 p.m.; open public hearing June 12, 9 a.m. to 10 a.m.; open committee discussion June 12, 10 a.m. to 4:30 p.m.; John T. McElroy (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-6057.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda-Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before June 7, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to persent, the names and addresses of proposed participants, and an indication of the approximate time desires for their presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Type of meeting and contact person
9. Peripheral and Central Nervous System Drugs Advisory Committee.	June 12 and 13, 9 a.m., Conference Room G, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing June 12, 9 a.m. to 10 a.m.; open committee discussion June 12, 10 a.m. to 4:30 p.m., June 13, 9 a.m. to 4:30 p.m.; Charles Prettyman (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3310.

General function of the committee. Reviews and evaluates available data concerning safety and effectiveness of marketed and investigational prescription drugs for use in neurologic disease.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of the geriatric guidelines (June 12); Inderal indication for migraine (morning of June 13); and Fenfluramine and neurotoxicity (afternoon of June 13).

Committee name	Date, time, place	Type of meeting and contact person
10. Ear, Nose, and Throat Device Classification Panel.	June 22 and 23, 9 a.m. Room 6321, FB-8, 200 C ST. SW., Washington DC....	Open public hearing June 22, 9 a.m. to 10:30 a.m.; open committee discussion June 22, 10:30 a.m. to 4:30 p.m., June 23, 9 a.m. to 4:30 p.m.; Harry R. Sauberman, P.E. (HFK-460), 5757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7530.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to the proposed classification of ear, nose, and throat devices to the executive secretary. Those desiring to make formal presentations should notify the executive secretary by June 8, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. At this meeting the Panel will review medical and scientific information on the safety and efficacy of: (a) tympanostomy tubes which contain a membrane; (b) endolymphatic shunt tubes which contain a valve; (c) porous polyethylene when used as an implant material; and (d) tinnitus maskers. This Panel will also review selected FEDERAL REGISTER writeups pertaining to the classification of several other specific ENT devices.

Committee Name	Date, time, place	Type of meeting and contact person
11. Science Advisory Board.....	June 22 and 23, 8:30 a.m.; West Plaza Room, Camelot Inn, Little Rock, Ark	Open public hearing June 22, 8:30 a.m. to 9:30 a.m.; open committee discussion June 22, 9:30 a.m. to 4 p.m., June 23, 8:30 a.m. to 4 p.m.; Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079, 501-541-4523.

General function of the committee. Advises on establishment and implementation of a research program that will assist the Commissioner of Food and Drugs and the Administrator, Environmental Protection Agency, in fulfilling their regulatory responsibilities.

Agenda—Open public hearing. Any interested parties are invited to present information, data, or views, orally or in writing, on issues pending before the Board.

Open committee discussion. Discussion of the Director's report; chemistry program; teratology report; mutagenesis report and the aromatic amines report.

Committee name	Date, time, place	Type of meeting and contact person
12. Gastrointestinal Drugs Advisory Committee Subcommittee on Hepatotoxicity.	June 23, 9 a.m., Conference Room B, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; Joan C. Standaert (HFD-110), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4760.

General function of the Committee. Reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

Agenda—Open public hearing. Any interested person may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion and revision of the Fogarty Guidelines on Hepatotoxicity.

Committee name	Date, time, place	Type of meeting and contact person
13. Panel on Review of Miscellaneous Internal Drug Products.	June 23, 24, and 25; Conference Room C, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. (June 23); Holiday Inn, Chevy Chase, Md. (June 24 and 25).	Open public hearing June 23, 9 a.m. to 10 a.m.; open committee discussion June 23, 10 a.m. to 4:30 p.m., June 24 and 25, 9 a.m. to 4:30 p.m.; Armond M. Welch (HFD-510), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4960.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those who desire to make such a presentation should notify the contact person before June 20, 1978, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Type of meeting and contact pesen
14. Immunology Device Classification Panel.	June 29, 9 a.m., Silver Room, Holiday Inn, 8777 Georgia Ave., Silver Spring, Md.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 5 p.m.; S. K. Vadlamudi, Ph.D., D.V.M. (HFK-440), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7234.

Topic and Presenter

Clinical Forms and Morpholoy—Dr. Samuel Frank; Etiologic Role of Hormones—Dr. John Strauss; Etiologic role of Bacteria—Dr. Sirje Puhvel; Host Immune Response—Dr. Sirje Puhvel; Sebum and Other Etiologic Factors—Dr. Peter Pochi; Topical and Systemic Antibiotics—Dr. Alan Shalita; Benzoyl Peroxide, Resorcinol, Sulfur—Dr. Richard Dobson; Consumer Needs in Acne—Dr. Zenona Mally; Salicylic Acid—Dr. Albert Kligman; Scrubs, Cleansers, and Topical Antibacterials—Dr. John Strauss; Clinical Methods of Evaluating Topical Treatment—Dr. Alan Shalita; and Microbiological Considerations—Dr. Charles Evans.

After all presentations have been given there will be a panel discussion.

Open committee discussion. The Panel will review data submitted in response to the over-the-counter (OTC) review's call for data for this Panel (see also § 330.10(a)(2) (21 CFR 330.10(a)(2))).

The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present information pertinent to the classification of immunology devices to the executive secretary. Those desiring to make formal presentations should notify the executive secretary by June 20, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The panel will review and comment on the reclassification petition submitted under section 513(b)(2) of the act (21 U.S.C. 360c(b)(2), by Abbott Laboratories, North Chicago, Ill. 60064, to reclassify its Alpha-Fetoprotein Diagnostic Kit (Fetascreen™).

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md., 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves the scheduling of meetings at locations outside of the Washington, D.C., area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: May 11, 1978.

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

[FR Doc. 78-13288 Filed 5-15-78; 8:45 am]

[4110-03]

ADVISORY COMMITTEES

Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, place	Type of meeting and contact person
1. Drug Abuse Advisory Committee.....	June 1, 9 a.m., Conference room. F, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md..	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 11:30 a.m.; closed presentation of data 11:30 a.m. to 12 m.; closed committee deliberations 12 m. to 12:30 p.m.; open committee discussion 12:30 p.m. to 4:30 p.m.; Robert C. Nelson, (HFD-120), 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3800.

General function of the committee. Advises the Commissioner regarding the scientific and medical evaluation of all information gathered by the Department of Justice and the Department of Health, Education, and Welfare with regard to safety, efficacy, and abuse potential of drugs or other substances and recommends actions to be taken by the Deportment of Health, Education, and Welfare with regard to maketing, investigation, and control of such drugs or other substances.

Agenda—Open Public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the committee.

Open committee discussion. Discussion of control items: agonist-antagonist analgesics; butorphanol, cyclazocine and nalbuphine. Discussion of research items: review of Schedule I research protocols; report on the status of the Schedule I brochure; review of the 1978 review of the marihuana research guidelines; and report on the Interagency Committee on New Therapies for Pain and Discomfort.

Closed presentation of data. Presentation by sponsor of IND 4080 (Nalbuphine (Endo Labs.)). This portion of the meeting will be closed to permit presentation of trade secret data (5 U.S.C. 552b)(c)(4)).

Closed committee deliberations. Discussion of IND 4080 (Nalbuphine (Endo Labs.)). This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Committee name	Date, time, place	Type of meeting and contact person
2. Ophthalmic Device Classification Panel.	June 12 and 13, 1 p.m., room 303A, HHH Bldg., 200 Independence Ave. SW., Washington, D.C.	Closed committee deliberations June 12, 9 a.m. to 12 m.; open public hearing June 12, 1 p.m. to 2 p.m.; open committee discussion June 12, 2 p.m. to 5 p.m.; open public hearing June 13, 9 a.m. to 10 a.m.; open committee discussion June 13, 10 a.m. to 5 p.m.; Max W. Talbott, Ph. D. (HFK-460), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7538.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present to the executive secretary information pertinent to hydrophilic contact lenses, intraocular lenses, and other ophthalmic devices. Submission of data relative to tentative classification findings is also invited. Those desiring to make formal presentations should notify the executive secretary by May 29, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss aspects of the clinical testing of soft contact lenses. Additionally, the committee will review the progress of the intraocular lens clinical investigation. The committee will also discuss other areas generally pertaining to ophthalmic devices.

Closed committee deliberations. The committee will review premarket approval applications for ophthalmic devices. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Committee name	Date, time, place	Type of meeting and contact person
3. Cardiovascular Device Classification Panel.	June 30, 9 a.m., room 1409, FB-8, 200 C St. SW., Washington, D.C.....	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 11 a.m.; closed committee deliberations 11 a.m. to 4 p.m.; Glenn A. Rahmoeller (HFK-450), 8757 Georgia Ave., Silver Spring, Md. 20910, 301-427-7559.

General function of the committee. Reviews and evaluates available data concerning the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested parties are encouraged to present to the executive secretary information pertinent to the classification of cardiovascular devices. Those desiring to make formal presentations should notify the executive secretary by June 16, 1978, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied on, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Panel members will discuss the development of product development protocol guidelines for prosthetic heart

valves, vascular graft prostheses, oxygenators, and pacemakers. Outlines for these guidelines, which will be applicable as guidelines to Premarket Notification Submissions as well as Premarket Approval Applications, will be presented to the panel. The Panel will also review clinical data (if available) for Teflon-coated guide wires.

Closed committee deliberations. The Panel members will review new drug applications and investigational drug applications for biological arterial grafts. They will also review a new premarket approval application. This portion of the meeting will be closed to permit discussion of trade secret data (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing; (2) an open committee discussion; (3) a closed presentation of data; and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this FEDERAL REGISTER notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC-18), 5600 Fishers Lane, Rockville, Md. 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner, with the concurrence of the Chief Counsel, has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA), as amended by the Government in the Sunshine Act (Pub. L. 94-409), permit such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines of similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably, deliberative sessions to formulate advice and recommendations to the agency on matters that do not independently justify closing.

Dated: May 11, 1978.

SHERWIN GARDNER,
Acting Commissioner,
Food and Drugs.

[FR Doc. 78-13353 Filed 5-15-78; 8:45 am]

[4110-08]

National Institutes of Health

CANCER CONTROL PREVENTION, DETECTION, DIAGNOSIS, AND PRETREATMENT EVALUATION REVIEW COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Prevention, Detection Diagnosis, and Pretreatment Evaluation Review Committee, National Cancer Institute, June 1-2, 1978, building 31A, conference room 4, 9000 Rockville Pike, Bethesda, Md. 20014. Except as noted below, this meeting will be open to the public on June 1, 1978, from 8:30 a.m. to 5 p.m., and on June 2, 1978, from 8:30 a.m. to 12 noon to review an interagency agreement with the Occupational Safety and Health Administration, Washington, D.C., and the breast cancer detection demonstration projects from: Albert Einstein Medical Center, Philadelphia; University of Arizona; Cancer Research Center, Missouri; University of Pittsburgh; Rhode Island Hospital; Saint Joseph Hospital, Texas; Saint Vincent's Medical Center, Florida; Samuel Merrit Hospital, California; University of Southern California; Vanderbilt University Medical Center, Tennessee; Virginia Mason Research Center, Seattle; Wilmington Medical Center, Delaware; and, University City Science Center, Pennsylvania. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), title 5, United States Code and section 10(d) Pub. L. 92-463, the meeting will be closed to the public approximately 14 times during the 2 days for approximately 10 minutes each time to discuss personal information concerning individuals associated with each contract. In addition, and in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 2, 1978, from 12 noon to adjournment, for the review, discussion, and evaluation of approximately three contract proposals. These proposals and the discussions of the proposals could reveal confidential trade secrets or commercial property such as patentable material, and personal information con-

cerning individuals associated with the proposals.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, building 31, room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will provide a summary of the meeting and a roster of committee members, upon request.

Dr. Carlos E. Caban, Executive Secretary, National Cancer Institute, Blair Building, room 7A07, National Institutes of Health, Bethesda, Md. 20014, 301-427-7945, will furnish substantive program information.

(Catalog of Federal Domestic Assistance No. 13.399, National Institutes of Health.)

Dated: May 9, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-13385 Filed 5-15-78; 8:45 am]

[4110-08]

MICROBIOLOGY AND INFECTIOUS DISEASES ADVISORY COMMITTEE

Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Microbiology and Infectious Diseases Advisory Committee, National Institute of Allergy and Infectious Diseases on May 31-June 1 and 2, 1978, at the Holiday Inn, Chevy Chase, Md.

This meeting will be open to the public from 8:30 a.m. until 9:30 a.m. on June 1 to discuss program policies and issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and section 10(d) of Pub. L. 92-463, the meeting of the Committee will be closed to the public from 2 p.m. to recess on May 31, from 9:30 a.m. to recess on June 1, and from 8:30 a.m. to adjournment on June 2 for the review, discussion, and evaluation of individual grant applications and contract proposals. These applications, proposals, and discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and proposals.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, NIAID, National Institutes of Health, Building 31, Room 7A32, Bethesda, Md. 20014, 301-496-5717, will provide summaries of the meeting, and rosters of the Committee members.

Dr. Thelma N. Fisher, Executive Secretary, Microbiology and Infectious Diseases Advisory Committee, NIAID, National Institutes of Health, Westwood Building, Room 706, Bethesda, Md. 20014, 301-496-7465, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.856, National Institutes of Health.)

Dated: May 9, 1978.

SUZANNE L. FREMEAU,
Committee Management Officer, National Institutes of Health.

[FR Doc. 78-13386 Filed 5-15-78; 8:45 am]

[4110-85]

Office of the Assistant Secretary for Health

NATIONAL HEALTH SERVICE CORPS SCHOLARSHIP PROGRAM

Designation of Health Specialties

Section 751 of the Public Health Service Act (42 CFR 62) directs the Secretary of Health, Education, and Welfare to establish the National Health Service Corps Scholarship Program to obtain physicians, dentists, nurses and other health-related specialists for the National Health Service Corps.

Notice is hereby given that for fiscal year 1978, in addition to students of medicine, osteopathy and dentistry, scholarship support is available under the National Health Service Corps Scholarship Program to (1) students enrolled in baccalaureate nursing programs and (2) students enrolled in master's degree programs in community health nursing, clinical nurse midwifery, nurse practitioner training, public health nutrition, medical social work, speech pathology and audiology.

Dated: May 8, 1978.

JOYCE C. LASHOF,
Acting Assistant Secretary for Health.

[FR Doc.78-13208 Filed 5-15-78; 8:45 am]

[4310-03]

DEPARTMENT OF THE INTERIOR

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 May 5, 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 26, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALASKA

Aleutian Islands Division

Light Stations in Alaska, southern and southeastern Alaska (also in Angoon, Cordova-McCarthy, Juneau, Ketchikan, Outer Ketchikan, Skagway-Yakutat, and Wrangell-Petersburg Divisions).

FLORIDA

Lake County

Yalaha vicinity, *Phares, Andrew Jackson, House*, NE of Yalaha.

Leon County

Tallahassee, *Riley, John Gilmore, House*, 419 E. Jefferson St.

Madison County

Madison, *First Baptist Church*, Pickney and Orange Sts.

Okaloosa County

Valparaiso, *Valparaiso Inn*, 331 Bayshore Dr.

LOUISIANA

Natchitoches Parish

Robeline vicinity, *Los Adaes Historic Site*, NE of Robeline off LA 6.

Orleans Parish

New Orleans vicinity, *Fort Macomb*, E of New Orleans at Chef Menteur Pass on U.S. 90.

St. Bernard Parish

Shell Beach vicinity, *Fort Proctor*, N of Shell Beach on Lake Borgne.

St. Landry Parish

Washington vicinity, *Starvation Point*, N of Washington off LA 10/182.

Webster Parish

Minden vicinity, *Germantown*, 7 mi. (11.2 km) NE of Minden off U.S. 79.

MICHIGAN

Lenawee County

Adrian, *Dennis and State Streets Historic District*, Dennis and State Sts. from NYC RR. tracks to Church St. (boundary revision).

NEBRASKA

Hall County

Grand Island, *Hargis, Andrew M., House*, 1109 W. 2nd St.

NEVADA

Nye County

Tonopah, *Mizpah Hotel*, 100 Main St.

NEW JERSEY

Cumberland County

Carmel, *Beth Hillel Synagogue*, Irving Ave.

NEW YORK

Clinton County

Plattsburgh, *Fort Brown Site*, U.S. 9

Schenectady County

Schenectady, *Schenectady City Hall and Post Office*, Jay St.

OKLAHOMA

Harper County

Willard vicinty, *Harmon, Victor, Site*, NE of Willard.

SOUTH DAKOTA

Brookings County

Brookings, *Stock Judging Pavilion* 11th St. and Medary Ave.

TENNESSEE

Warren County

Irving College vicinity, *Irving College Mound*, E of Irving College
Union vicinity, *Cardwell Mountain*, E of Union.

White County

Key vicinty, *Cherry Creek Mound*, S of Key.
Onward vicinity, *Indian Cave*, S of Onward.

TEXAS

Tarrant County

Fort Worth, *Texas and Pacific Terminal Complex*, Lancaster and Throckmorton St.

VERMONT

Chittenden County

Jericho vicinity, *Galusha House*, S of Jericho.

WASHINGTON

King County

Seattle, *Fort Lawton*, Magnolia Bluff.

WISCONSIN

Grant County

Lancaster, *Grant County Courthouse*, 126 W. Maple St.

Iowa County

Dodgeville vicinity, *Mayland Cave*, N of Dodgeville off WI 23.

Jefferson County

Edgerton vicinity, *Crabapple Point Site*, NE of Edgerton.
Fort Atkinson vicinity, *Highsmith Site*, NE of Fort Atkins.

[FR Doc. 78-12721 Filed 5-15-78; 8:45 am]

[4310-84]

Office of the Secretary

[INT DES 78-18]

PROPOSED 500 MW COAL-FIRED GENERATING STATION, NORTH VALMY, NEV.

Availability of Draft and Hearings

In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management has prepared a draft environmental statement on a proposed 500 megawatt (MW) coal-fired, steam-electric generating station near Valmy, Nev.

The statement addresses itself to construction of two 250 MW generating units in Humboldt County, Nev., and construction of two transmission lines to deliver power to substations near Reno and Austin, Nev. The proposal by Sierra Pacific Power Co. also calls for construction of a microwave communications system to service the proposed plant.

Written comments on the environmental impacts of the proposed action will be accepted by the Nevada State Director (N-921), Bureau of Land Management, Room 3008, Federal Building, 300 Booth Street, Reno, Nev. 89509, on or before June 30, 1978.

Copies of this draft statement are available upon request at the above address. Copies may also be obtained by writing the Director (130), Bureau of Land Management, Department of the Interior, Washington, D.C. 20240.

Copies are available for inspection at the following locations:

Nevada State Office, Room 3008, Federal Building, 300 Booth Street, Reno, Nev. 89509.
Carson City District Office, 1050 East Williams Street, Carson City, Nev. 89701.
Ely District Office, Star Route 5, Box 1, Ely, Nev. 89301.
Winnemucca District Office, 705 East Fourth Street, Winnemucca, Nev. 89445.
Battle Mountain District Office, P.O. Box 194, Battle Mountain, Nev. 89820.
Elko District Office, 2002 Idaho Street, Elko, Nev. 89801.
Las Vegas District Office, 4765 West Vegas Drive, Las Vegas, Nev. 89102.

In addition to the above locations, reading copies are available at public and university libraries in Battle Mountain, Carson City, Fallon, Elko, Las Vegas, Lovelock, Reno, Wells, and Winnemucca, Nev.

Public hearings will be held at the following locations and times:

Pioneer Motor Inn, 221 South Virginia Street, Reno, Nev., Thursday, June 15, 1978, 1 p.m.
Humboldt County Library, 85 East Fifth Street, Winnemucca, Nev., Tuesday, June 13, 1978, 7 p.m.

The hearings will provide the Bureau of Land Management, under section 102(2)(C) of the National Environmental Policy Act of 1969, with the opportunity to receive additional comments and views of interested State and local agencies and the public.

Interested individuals, representatives of organizations, and public officials wishing to testify are requested to contact the North Valmy environmental statement team leader, Bureau of Land Management, Room 3008, Federal Building, 300 Booth Street, Reno, Nev. 89509, by 4:15 p.m., June 9, 1978, telephone 702-784-5602, FTS 470-5602. Requests should identify the organization represented and should be signed by the prospective witness. Because of time constraints, oral testimony will be limited to 10 minutes unless additional time is requested in advance.

Oral testiony can be supplemented with written statements at the time oral testimony is presented. Also, speakers with prepared speeches may file their text with the presiding officer whether or not they have been able to finish oral delivery in the allotted time. If time permits following oral testimony by those who have given advance notice, the hearings officer will give others an opportunity to be heard.

Written comments from those unable to attend the hearing should be addressed to the Bureau of Land Management State Director (N-921) at the above address. The Bureau of Land Management will accept written testimony and comments, as well as supplemental materials during the next 45 days from the date of this notice.

Dated: May 11, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary.

[FR Doc. 78-13189 Filed 5-15-78; 8:45 am]

[4310-09]

Office of the Secretary

[INT DES 78-19]

PARADOX VALLEY UNIT, COLORADO RIVER BASIN SALINITY CONTROL PROJECT, COLORADO

Notice of Availability of Draft Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement on a proposed salinity control project that would reduce substantially the salt influx into the Dolores River in southwest Colorado at Paradox Valley. Although all Colorado River Basin water users would benefit from the project, the main beneficiaries would be users in the Lower Colorado River Basin. Written comments may be submitted to the Regional Director (address below) on or before June 30, 1978.

Copies are available for inspection at the following locations:

Office of Communications, Room 7220, Department of the Interior, Washington, D.C. 20240, telephone 202-343-9247.
Office of Assistant to the Commissioner—Ecology, Room 7620, Bureau of Reclamation, Department of the Interior, Washington, D.C. 20240, telephone 202-343-4991.

Division of Engineering Support, Technical Services and Publications Branch, E. & R. Center, Denver Federal Center, Denver, Colo. 80225, telephone 303-234-3006.
Office of the Regional Director, Bureau of Reclamation, Federal Building, 125 South State Street, Salt Lake City, Utah 84147, telephone 801-524-5404.
Bureau of Reclamation, P.O. Box 640, Durango, Colo. 81301, telephone 303-247-0247.

Single copies of the draft statement may be obtained on request to the Commissioner of Reclamation or the Regional Director. Please refer to the statement number above.

Dated: May 11, 1978.

LARRY E. MEIEROTTO,
Deputy Assistant Secretary of the Interior.

[FR Doc. 78-13229 Filed 5-15-78; 8:45 am]

[4710-01]

INTERNATIONAL JOINT COMMISSION

IN THE MATTER OF THE REQUEST BY THE GREAT LAKES POWER CORPORATION, LIMITED FOR PERMISSION TO PROCEED WITH THE REDEVELOPMENT OF THE HYDROELECTRIC GENERATING FACILITIES AT SAULT STE. MARIE, ONTARIO

Public Meeting

Notice is hereby given that the International Joint Commission will conduct a pre-hearing meeting in the matter of the request of Great Lakes Power Corporation, Limited, for permission to proceed with redevelopment of its hydroelectric generating facilities in the St. Marys River at Sault Ste. Marie, Ontario, in accordance with the Commission's 1914 Order of Approval.

Notice of receipt of this request was published by the Commission in the FEDERAL REGISTER, the Canada Gazette, and in newspapers in the area during the last week of April, 1978, and comments on the redevelopment proposal from Governments and all interested persons were invited.

The purpose of this pre-hearing meeting is to: (1) Determine the present status of the study of the redevelopment proposal being conducted by the International Lake Superior Board of Control at the direction of the Commission;

(2) Identify and arrange for any additional information required by the Board and the Commission for completion of its study;

(3) Define the issues for hearing and to hear and determine any other matter that may be appropriate for decision at that time; and,

(4) Set dates, as may be appropriate, for further proceedings as required.

Opportunity will be given to anyone, either on his own behalf or in a representative capacity, to offer pertinent information which may assist the Commission in its inquiry. Statements may be made orally or in writing. If written statements are submitted, it is required that if possible, thirty (30) copies be provided for the Commission's use. Additional copies may be deposited with the Secretaries at the pre-hearing meeting for the use of the news media and others present. Information regarding the request of Great Lakes Power may be obtained direct from H. L. Harris, President Great Lakes Power Company, Sault Ste. Marie, Ontario, telephone 705-949-1378.

TIME AND PLACE OF PRE-HEARING MEETING

Wednesday, May 31, 1978, 10:00 a.m., Holiday Inn, 208 St. Mary's River Road, Sault Ste. Maire, Ontario, P6A 5V4.

W. A. BULLARD,
Secretary, United States Section, International Joint Commission.

D. G. CHANCE,
Secretary, Canadian Section, International Joint Commission.

MAY 9, 1978.

[FR Doc. 78-13219 Filed 5-15-78; 8:45 am]

[7035-01]

INTERNATIONAL TRADE COMMISSION

[Investigation 337-TA-41]

CERTAIN CERAMIC TILE SETTERS

Commission Order and Memorandum Opinion

PROCEDURAL HISTORY

On March 15, 1978, Ceramica Regiomontana, S.A. (hereinafter "Regiomontana"), a party respondent to the instant investigation, filed a motion, pursuant to § 210.51 of the Commission's "Rules of Practice and Procedure"[1] (hereinafter "Rules"), that it be terminated as a party respondent to the investigation.[2] At the preliminary conference held in connection with the instant investigation on March 16, 1978, all parties to the investigation stipulated that Regiomontana would formally withdraw its motion to terminate. In place of that motion, all parties jointly moved to terminate respondent Regiomontana. The Presiding Officer, acting in conformity with §§ 210.51(a), (c) and 210.53 of the Rules,[3] concluded that no violation of Section 337 of the Tariff Act of 1930 (hereinafter "section 337")[4] exists with respect to respondent Regiomontana and recommended, by order of April 6, 1978,[5] that Regiomontana be terminated as a party respondent.

DETERMINATION AND ORDER

Having considered Regiomontana's motion to terminate (Motion Docket No. 41-2) and supporting documents, (2) the transcript of the Preliminary Conference of March 16, 1978, and (3) the Presiding Officer's recommended determination of April 6, 1978, the Commission determines that repondent Regiomontana is not currently in violation of section 337.

Accordingly, the Commission grants the joint motion to terminate and orders that Regiomontana be and hereby is terminated as a party respondent to the instant investigation.

OPINION

Regiomontana's motion to terminate of March 15, 1978, was accompanied by a sworn affidavit of Mr. Jose M. Garcia Barella, Treasurer of Regiomontana, which affirmed that Regiomontana has not in the past nor in the present manufactured, sold or exported the product (certain ceramic tile setters) that is the subject of the instant investigation.

The record of the preliminary conference held on March 16, 1978, in connection with this investigation shows that complainant, Ferro Corp., and the Commission investigative attorney joined in the motion to terminate Regiomontana. The record of that conference also shows that Regiomontana has agreed to cooperate in an expeditious fashion with complainant's discovery requests.

Inasmuch as Regiomontana has not in the past and is not in the present manufacturing, selling or exporting the product that is the subject of this investigation, and in view of the fact that both complainant and the Commission investigative attorney have joined in the motion to terminate Regiomontana as a party respondent, the Commission has determined that Regiomontana is not presently in violation of section 337 and has granted the joint motion that Regiomontana be terminated as a party respondent to the instant investigation.

Issued: May 11, 1978.

By order of the Commissioner.

KENNETH R. MASON,
Secretary.

[FR Doc. 78-13261 Filed 5-15-78; 8:45 am]

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[1] 19 C.F.R. 210.51.
[2] Motion Docket No. 41-2.
[3] 19 C.F.R. 210.51 (a), (c), and 210.53.
[4] 19 U.S.C. 1337.
[5] *See* Order Recommending Termination, issued April 6, 1978.

[4410-01]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES VS. ARROW OVERALL SUPPLY COMPANY, ET AL.

Proposed Final Judgment and Competitive Impact Statement Thereon

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) through (h), that a proposed Final Judgment and a Competitive Impact Statement as set out below have been filed with the United States District Court for the Eastern District of Michigan, Southern Division, Civil No. 571167, *United States* v. *Arrow Overall Supply Company, et al.* The Complaint in this case alleges that four corporations, Arrow Overall Supply Company, Cadillac Overall Supply Company, Central-Quality Services Corporation, and Work Wear Corporation, conspired to divide, allocate, and apportion wholesale and retail accounts for industrial garments and to fix, stabilize, and maintain the prices at which industrial garments were furnished in the lower peninsula of Michigan.

Work Wear Corporation, one of the defendants, has sold its entire laundry operations. The business in the lower peninsula of Michigan is now owned and operated by Mechanics Laundry Company of Detroit, Inc. Mechanics Laundry Company of Detroit, Inc., has been substituted for Work Wear Corporation as a party defendant under the Final Judgment, and its parent, Aratex Services, Inc., has agreed to be bound by the Judgment to the extent it engages in the industrial laundry business in the lower peninsula of Michigan. The proposed Judgment enjoins the defendants from engaging in the alleged activity and prohibits defendants for a period of ten (10) years from using or enforcing certain types of provisions in their customer contracts that would have a tendency to perpetuate customer relationships indefinitely.

Public comment is invited on or before July 17, 1978. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the Court. Comments should be directed to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199 (telephone: 216-522-4070).

Dated: May 5, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations, Office of Operations.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

United States of America, Plaintiff, v. *Arrow Overall Supply Company; Cadillac Overall Supply Company; Central-Quality Services Corporation; and Work Wear Corporation*, Defendants.
Civil No. 571167.
Judge Damon J. Keith.
Filed: May 5, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, by their respective attorneys, that:

1. A Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of either party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to either party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendant and by filing that notice with the Court.

2. In the event plaintiff withdraws its consent or if the proposed Final Judgment is not entered pursuant to this Stipulation, this Stipulation shall be of no effect whatever and the making of this Stipulation shall be without prejudice to plaintiff and defendant in this and any other proceeding.

For the Plaintiff: United States of America, John H. Shenefield, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, John A. Weedon, *Attorneys, Department of Justice;* James K. Robinson, *United States Attorney;* Robert M. Dixon, Jerome C. Finefrock, Susan B. Cyphert, Deborah Lewis Hiller, *Attorneys, Department of Justice;* Antitrust Division, 995 Celebrezze Federal Bldg., Cleveland, Ohio 44199, Telephone 216-522-4077.

For the Defendants: Arrow Overall Supply Company, August, Thompson, Sherr & Miller, By Alan R. Miller, 555 South Woodward, Seventh Floor, Birmingham, Mich. 48011; Cadillac Overall Supply Company, Nederlander, Dodge & McCauley, By Patrick B. McCauley, 1930 Buhl Building, Detroit, Mich. 48226; Central-Quality Services Corporation, Dingell, Hylton & Zemmol, By Allen Zemmol, 100 Renaissance Center, Detroit, Mich. 48243; For Mechanics Laundry Company of Detroit, Inc., and Aratex Services, Inc., Wilmer, Cutler & Pickering, By Arnold Lerman, 1666 K Street NW., Washington, D.C. 20006.

Dated: May 5, 1978.

UNITED STATES DISTRICT COURT, EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

United States of America, Plaintiff, v. *Arrow Overall Supply Company; Cadillac Overall Supply Company; Central-Quality Services Corporation; and Work Wear Corporation*, Defendants.
Civil No. 571167.
Honorable Damon J. Keith.
Filed: May 5, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on June 19, 1975, and the defendants having appeared and filed their answers to the complaint, and the plaintiff and defendants, by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or any admission by any party with respect to any issue of fact or law herein;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby

Ordered, adjudged and decreed:

I

This Court has jurisdiction over the subject matter herein and the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Act of Congress of July 2, 1890, as amended (15 U.S.C. § 1), commonly known as the Sherman Act.

II

As used in this Final Judgment:

(A) "Industrial garment" shall mean any item of work clothing, including but not limited to work pants, work shirts, coveralls, overalls, jackets, coats, uniforms and any other such products, including but not limited to shop towels and dust control materials;

(B) "Industrial laundry business" shall mean the business of renting and/or servicing industrial garments in the lower peninsula;

(C) "Person" shall mean any individual, corporation, partnership, firm, association, or business or legal entity;

(D) "Operator" shall mean any person engaged in the industrial laundry business;

(E) "Lower peninsula" shall mean the geographic area of the State of Michigan south of the Straits of Mackinac;

(F) A corporation "under common control" with a defendant shall mean any corporation (i) which is a subsidiary, directly or indirectly, of a parent corporation of a defendant or (ii) 50 percent or more of whose stock is owned or controlled by a person who also owns or controls 50 percent or more of the stock of a defendant.

III

The provisions of this Final Judgment are applicable to all defendants and to their subsidiaries, officers, directors, agents, employees, successors and assigns and to all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

IV

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan, program, combination, or conspiracy with respect to the industrial laundry business with any operator to:

(A) Fix, raise, stabilize, establish or maintain any price, markup, discount or other

term or condition or contract provision for the rental and/or servicing of any industrial garment.

(B) Divide, allocate or apportion any market territory, customer or potential customer for the rental and/or servicing of any industrial garment.

(C) Refrain from soliciting the business of any customer or potential customer for the rental and/or servicing of any industrial garment.

(D) Refrain from renting and/or servicing any industrial garment to and/or for any customer or potential customer.

(E) Eliminate or prevent any person from engaging in the industrial laundry business.

The provisions of subsections (C), (D), and (E) of this Section IV shall not apply to lawful covenants not to compete which are a part of (i) an employment contract, or (ii) a contract of sale of an industrial laundry or interest therein entered into in good faith and on a nonreciprocal basis between a defendant and another person.

V

Each defendant is enjoined and restrained from directly or indirectly furnishing to or requesting or accepting from any operator

(i) Prices or charges, or

(ii) Terms of bids or offers, or (iii) The identity of customers,

for the rental and/or servicing of any industrial garment in the lower peninsula.

VI

Each defendant is enjoined and restrained, in any contract or agreement for the rental and/or servicing of industrial garments in the lower peninsula, from directly or indirectly entering into, enforcing, furthering, adhering to, maintaining or claiming any right pursuant to any provision:

(A) For the automatic renewal of the contract or agreement;

(B) For liquidated or other formula damages in such unreasonable amount as to constitute a penalty;

(C) Of a contract or agreement which provides for a term longer than thirty months from the date of its execution or last renewal, whichever is later; except that contracts which are in existence on the effective date of this Section of the Final Judgment can continue for no longer than twenty-four months from that effective date; and provided that such a provision shall not be prohibited in a contract or agreement entered into after the sixth anniversary of the date of entry of this Final Judgment, if the defendant at the time of negotiation has furnished its customer clear and conspicuous written notice that the duration of the contract or agreement is subject to negotiation between the parties;

(D) Prohibiting a customer's right to terminate its contract because of a defendant's material breach by substantial failure of performance which the defendant refuses to cure upon proper notice. This subsection (D) shall not apply to a failure of performance or cure outside the control of the defendant.

This Section VI shall become effective sixty days after the date of entry of this Final Judgment and shall remain in effect for a period of ten years from that date. The provisions of this Section VI shall not apply to any written agreement or specification prepared or submitted by a customer.

VII

Each defendant shall require as a condition of the sale or other disposition of all or substantially all of its industrial laundry business in the lower peninsula that the acquiring party agree to be bound by the provisions of this Final Judgment. Any person acquiring all or substantially all of the industrial laundry business of a defendant shall file with the Court and serve upon the plaintiff its consent to be bound by this Final Judgment.

VIII

"(A) For purposes of Sections IV, V, and VI of this Final Jugment a defendant and its direct or indirect parent, or a defendant and a corporation under common control with it, shall be deemed to be one person.

(B) This Final Judgment shall not be construed to prohibit a defendant: (i) acting upon the bona fide belief that one of its contracts is being interefered with by another person, from notifying that person of the existence of the contract; nor (ii) from pursuing in good faith its legal remedies or the resolution of legal claims with respect to tortious interference with a specific contractual relationship.

(C) The provisions of Section IV and V shall not apply to a bona fide transaction between a defendant and an operator (i) for the purchase or sale of an industry laundry or an interest therein; or (ii) for the purchase of goods and services by a defendant, or the sale of goods and services by a defendant; or (iii) for the exchange of information between a defendant and another operator solely for and necessary to such transactions.

(D) The provisions of this Final Judgment shall not be construed to prohibit a defendant from engaging with other operators in joint negotiations, agreements or activity the sole purpose or effect of which is to deal with labor unions or labor disputes except that there shall be no exchange hereunder of prices or other terms of pending bids or offers.

IX

Within sixty days of the entry of this Final Judgment, and annually thereafter for a period of ten years, each defendant shall take affirmative steps to advise each of its officers, directors and employees engaged in sales in the industrial laundry business, of its and their obligations under this Final Judgment and of the criminal penalties for violations of the Judgment and of the antitrust laws. In addition, each defendant shall, for so long as it remains in the industrial laundry business, cause a copy of this Final Judgment to be distributed annually to each of its officers.

X

For a period of ten years from the date of entry of this Final Judgment, each defendant shall file with plaintiff, on each anniversary date of this Final Judgment, a report setting forth the steps it has taken during the preceding year to discharge its obligations under Section IX above. Said report shall be accompanied by copies of all written directives issued by said defendant during the prior year with respect to compliance with the terms of this Final Judgment.

XI

Within sixty days of the entry of this Final Judgment each defendant shall mail or deliver to each of its industrial laundry customers who pay rentals of less than three hundred fifty dollars per week either a copy of the Final Judgment or a notice of its entry, which notice shall set forth, in a form acceptable to the Department of Justice, a summary of the prohibitions of Section VI and an offer to make a copy of the Judgment available upon written request. Where a defendant has contracts with individuals in the same establishment, the copy or notice may be mailed or delivered to the person responsible for administering the contracts.

XII

For the purpose of determining or securing compliance with this Final Judgment and subject to any legally recognized privilege, from time to time:

(A) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to any defendant made to its principal office, be permitted:

(1) Access during the office hours of the defendant to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the defendant, which may have counsel present, relating to any of the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the defendant and without restraint or interference from it, to interview officers, employees and agents of the defendant, who may have counsel present, regarding any such matters.

(B) Upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to any defendant's principal office, the defendant shall submit such written reports, under oath if requested, with respect to any of the matters contained in this Final Judgment as may be requested.

No information obtained by the means provided in this Final Judgment shall be divulged by any representative of the Department of Justice to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the United States is a party, or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

If at the time information or documents are furnished by a defendant to the United States, the defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendant marks each pertinent page of such material, "Subject to Claim of Protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten days' notice shall be given by the United States to such defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

XIII

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or modifica-

tion of any of the provisions thereof, for the enforcement of compliance therewith, and for the punishment of violations thereof.

XIV

Entry of this Final Judgment is in the public interest.

Dated: ————.

————————,

United States District Judge.

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION

United States of America, Plaintiff, v. *Arrow Overall Supply Co.; Cadillac Overall Supply Co.; Central-Quality Services Corp.;* and *Work Wear Corp.*, Defendants.

Civil No. 571167.

Filed May 5, 1978.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. §§ 16(b)–(h), the United States files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

NATURE AND PURPOSE OF THE PROCEEDING

On June 19, 1975, the United States filed a civil antitrust Complaint alleging that four corporations conspired to fix prices and allocate customers in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

The Complaint alleged that beginning at least as early as 1970, and continuing thereafter at least until September of 1974, the defendants had engaged in a combination and conspiracy to (a) divide, allocate, and apportion wholesale and retail accounts for industrial garments, and (b) to fix, stabilize, and maintain the price at which industrial garments were furnished in the lower peninsula of the State of Michigan.

The Complaint sought a judgment by the Court declaring that defendants had engaged in a combination and conspiracy in unreasonable restraint of trade in violation of the Sherman Act and an Order by the Court to enjoin and restrain the defendants from such activities in the future.

The corporations named in the Complaint were: Arrow Overall Supply Co.; Cadillac Overall Supply Co.; Central-Quality Services Corp.; and Work Wear Corp.

All of these defendants to this action have previously pleaded nolo contendere to criminal misdemeanor charges with respect to this alleged conspiracy and a fine of $50,000 was levied against each defendant. The defendants later moved for a Summary Judgment in this civil action, alleging that the Government's case was moot and, therefore, no injunction should issue. On July 1, 1977, the Court denied that motion in a Memorandum Opinion.

On July 26, 1977, Work Wear Corp. sold its entire industrial laundry business. The business in the lower peninsula of Michigan is now owned and operated by Mechanics Laundry Co. of Detroit, Inc. Mechanics Laundry Co. of Detroit, Inc., has been substituted for Work Wear Corp. as a party defendant under the Final Judgment, and its parent, Aratex Services, Inc., has agreed to be bound by the Judgment to the extent that it engages in the industrial laundry business in the lower peninsula of Michigan.

II

DESCRIPTION OF THE PRACTICES GIVING RISE TO THE ALLEGED VIOLATIONS OF THE ANTITRUST LAWS

Employees of commercial and industrial businesses wear and use industrial garments that, for the purposes of this case, include primarily work pants, work shirts, and coveralls, as well as overalls, jackets, coats, uniforms, shop towels, and dust control materials. These industrial garments are usually supplied on a rental basis by industrial laundry companies such as defendants.

Some commercial establishments and factories use large quantities of industrial garments, which are generally delivered to one location. Industrial laundries, including the defendants, commonly refer to such large customers as wholesale accounts. These customers usually obtain industrial garments either by issuing purchase orders or by seeking bids. Customers using lesser amounts of industrial garments, such as gas stations, automobile dealers, and small commercial establishments and factories, are commonly referred to in the trade as retail accounts. These accounts are usually supplied industrial garments under contracts provided by the industrial laundry company.

Defendants are the largest industrial laundry companies that regularly rent industrial garments for use by employees of commercial and industrial businesses in the Metropolitan Detroit area and in the rest of the lower peninsula of Michigan. They are generally the only industrial laundries which have the facilities, resources, and capabilities to serve wholesale accounts.

The Complaint alleges that the defendants engaged in a combination and conspiracy beginning at least as early as 1970 that consisted of a continuing agreement, understanding, and concert of action among themselves, the substantial terms of which were:

(a) To divide, allocate, and apportion wholesale and retail accounts for industrial garments, and

(b) To fix, stabilize, and maintain the price at which industrial garments are furnished.

The Complaint further alleges that the combination and conspiracy had the following effects, among others:

(a) Prices for the furnishing of industrial garments in the lower peninsula and in the Metropolitan Detroit area have been fixed, maintained, and stabilized at artificial and noncompetitive levels;

(b) Competition in the industrial laundry industry in the lower peninsula and in the Metropolitan Detroit area has been restrained and eliminated; and

(c) Customs of industrial laundry companies in the lower peninsula and in the Metropolitan Detroit area have been deprived of the right to purchase industrial garment services in an open and competitive market.

III

EXPLANATION OF THE PROPOSED FINAL JUDGMENT

The United States and the defendants have stipulated that the proposed Final Judgment may be entered by the Court at any time after compliance with the Antitrust Procedures and Penalties Act. The stipulation between the parties provides that there is no admission by any party with respect to any issue of fact or law. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed Judgment is conditioned upon a determination by the Court that the proposed Judgment is in the public interest.

The proposed Final Judgment enjoins any direct or indirect renewal of the type of conspiracy alleged in the Complaint. Specifically, Section IV provides that the defendants are enjoined and restrained from entering into, adhering to, maintaining or furthering, directly or indirectly, any contract, agreement, understanding, plan, program, combination or conspiracy with anyone engaged in the industrial laundry business in the lower peninsula of Michigan to:

(A) Fix, raise, stabilize, establish or maintain any price, markup, discount or other term or condition or contract provision for the rental and/or servicing of any industrial garment.

(B) Divide, allocate or apportion any market territory, customer or potential customer for the rental and/or servicing of any industrial garment.

(C) Refrain from soliciting the business of any customer or potential customer for the rental and/or servicing of any industrial garment.

(D) Refrain from renting and/or servicing any industrial garment to and/or for any customer or potential customer.

(E) Eliminate or prevent any person from engaging in the industrial laundry business.

Section V further injoins each defendant from directly or indirectly furnishing to or requesting or accepting from anyone engaged in the industrial laundry business.

(i) Prices or charges, or

(ii) Terms of bids or offers, or

(iii) The identity of customers for the rental and/or servicing of any industrial garment in the lower peninsula of Michigan. The injunctions in Sections IV and V run perpetually.

For a period to ten (10) years, beginning on an effective date sixty (60) days after the entry of the Judgment, each defendant is enjoined and restrained in any contract or agreement for the rental and/or servicing of industrial garments in the lower peninsula of Michigan from directly or indirectly entering into, enforcing, furthering, adhering to, maintaining or claiming any right pursuant to a provision:

(A) For the automatic renewal of the contract or agreement;

(B) For liquidated or other formula damages in such unreasonable amount as to constitute a penalty;

(C) Prohibiting a customer's right to terminate its contract because of a defendant's material breach by substantial failure of performance which the defendant refuses to cure upon proper notice.

Beginning on an effective date sixty (60) days after the entry of the Judgment and lasting until six (6) years after the entry of the Judgment, each defendant is further enjoined from entering into any contract or agreement which provides for a term longer than thirty (30) months from the date of its execution or last renewal, whichever is later. Contracts which are in existence on an effective date sixty (60) days after the entry of the Judgment cannot continue longer than twenty-four (24) months from that effective date.

There are several limited exceptions to the prohibitions against exchange of information set forth in Sections IV, V, and VI of the Judgment. These exceptions relate to possible tortious interference with a customer contract, bona fide business transactions

involving a defendant, and joint labor negotiations.

The proposed Final Judgment is applicable to each of the defendants and to the officers, directors, agents, and employees of each defendant, as well as to the successors to any defendant corporation.

IV

REMEDIES AVAILABLE TO POTENTIAL PRIVATE PLAINTIFFS

After entry of the proposed Final Judgment, any potential private plaintiffs who might have been damaged by the alleged violations will retain the same right to sue for monetary damages and any other legal and equitable remedies which they may have had if the proposed Final Judgment had not been entered. This Judgment may not be used, however, as prima facie evidence in private litigation pursuant to Section 5(a) of the Clayton Act, as amended, 15 U.S.C. § 16(a).

V

PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT

As provided by the Antitrust Procedures and Penalties Act, any person believing that the proposed Judgment should be modified may submit written comments to John A. Weedon, Chief, Cleveland Field Office, Antitrust Division, United States Department of Justice, 995 Celebrezze Federal Building, Cleveland, Ohio 44199, telephone 216-522-4070, within the 60-day period provided by the Act. These comments, and the Department's responses to them, will be filed with the Court and published in the FEDERAL REGISTER. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Judgment at any time prior to its entry if it should determine that some modification of it is necessary. The proposed Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for such order as may be necessary or appropriate for its modification, interpretation or enforcement.

VI

ALTERNATIVES TO THE PROPOSED FINAL JUDGMENT

The alternative to the proposed Judgment considered by the Antitrust Division was a full trial of the issues on the merits and on relief. The Division considers the substantive language of the Judgment to be of sufficient scope and effectiveness to make litigation on the issues unnecessary, as the Judgment provides appropriate relief against the violations charged in the Complaint.

In reaching an agreement on the proposed Final Judgment, three matters were the subject of intense negotiation. The first was whether the scope of the Judgment should be local or national. The second matter was how to modify the standard form customer contracts utilized by defendants when doing business with smaller customers in order to give such customers greater freedom in selecting their supplier. The third matter was how to allow the defendants to continue joint labor negotiations while at the same time not allowing negotiations to be used to circumvent the purposes of this Judgment.

The first matter, concerning the local or national scope of the Judgment, arose because both Work Wear Corporation and Cadillac Overall Supply Company conduct industrial laundry businesses in a number of other places in the United States. The Government had proposed making the Judgment national for that reason but ultimately decided to make it local for the following reasons. (A) Both Work Wear and Cadillac are defendants in a similar lawsuit brought by the Government in Florida. The Government reached the conclusion that, because the Judgment in Florida needed to be tailored to that situation, the Judgment entered in Michigan would not be appropriate to cover Florida. (B) Work Wear has sold its laundry operations to Aratex Services, Inc., including those in Michigan and Ohio. To prevent the laundries of Aratex outside of the Michigan area from violating the Judgment as it relates to the lower peninsula of Michigan, Aratex has agreed to be bound by the terms of this Judgment insofar as other Aratex laundries compete there. Cadillac has also disposed of some its laundry operations outside of Michigan which substantially lessened the necessity of a national decree. (C) Finally, the Government concluded that the alleged violations which it was prepared to prove in this case had occurred only in the lower peninsula of Michigan.

The second matter related to the standard form customer contracts which the Government asserted had been utilized to prevent smaller customers from changing suppliers. The defendants agreed to a ten-year injunction against three types of contract provisions to which the Government objected, namely, provisions for automatic renewal, provisions for liquidated damages or other formula damages that amounted to penalties for termination, and provisions that prohibit a customer from terminating the contract because of defendant's breach by substantial failure of performance. The defendants were unwilling to agree to the Government's proposal concerning the maximum term for such customer contracts. The defendants had insisted that such contracts should be allowed to continue for thirty-six (36) months, whereas the Government urged that the maximum contract length should be twenty-four (24) months. Section VI of the proposed Final Judgment contains the settlement agreed upon by the Government and the defendants. That Section contains an effective date which is sixty (60) days after the entry of the Final Judgment. Any contracts existing on that effective date cannot continue longer than twenty-four (24) months from that effective date. Beginning on that effective date and lasting until six (6) years after the entry of the Final Judgment, the defendants will be forbidden from making any customer contract with a length in excess of thirty (30) months. This represents a compromise between the defendants' position and the Government's position. It insures that within the next six (6) years there will be at least two (2) supply contracts negotiated with any customer who continues to be supplied by any defendant. The Government believes that this will insure arm's length negotiation between customer and supplier. A related matter which was in dispute between the Government and defendants was what customers should be notified of this part of the Judgment. Standard form contracts are used by defendants for their smaller customers. The defendants had maintained that notification of the Judgment provision should be required to be given only to those customers that did $150 a week business or less. The Government had proposed that notice be given to all customers doing $450 a week business or less. A compromise was reached at $350 per week or less. The Government believes that this will reach a preponderance of the customers that are parties to standard form contracts. It is not necessary that such notice be sent to larger customers because, in most cases, such customers purchase their laundry requirements in conformity to their own purchase order agreements, rather than defendants' standard form contracts.

The third matter, concerning joint labor negotiations, arose because the defendants wanted to continue to conduct their union labor negotiations collectively. The defendants had conducted such joint negotiations for many years. During such negotiations, defendants, in the past, have found it necessary to exchange information. The Government does not wish such exchange of information to be used as part of a plan to fix prices or allocate customers. In resolving this matter, the proposed Final Judgment provides that the defendants may engage in joint negotiations so long as the sole purpose or effect is to deal with the labor unions or labor disputes. Defendants are prohibited, in such negotiations, from exchanging prices or other terms of pending bids or offers. The Government believes that these provisions will preclude the use of labor negotiations as a means of price fixing or allocation of customers.

VII

Determinative Materials and Documents

No other material or document of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16) was considered in formulating this proposed Judgment. Consequently, none is submitted pursuant to that Section.

David F. Hils, *Attorney, Department of Justice;* Robert M. Dixon, Jerome C. Finefrock, Susan B. Cyphert, Deborah Lewis Hiller, *Attorneys, Department of Justice;* Antitrust Division, 995 Celebrezze Federal Bldg., Cleveland, Ohio 44199, telephone 216-522-4077.

MAY 5, 1978.

[FR Doc. 13172 Filed 5-15-78; 8:45 am]

[4410-18]

Law Enforcement Assistance Administration

LEAA ANTI-FENCING PROGRAM

Notice of Solicitation

The National Institute of Law Enforcement and Criminal Justice announces a competitive solicitation for an evaluation of the LEAA Anti-Fencing Program. The solicitation asks for submission of preliminary grant proposals for the evaluation of undercover business-front fencing operations of the Anti-Fencing Program. Twenty-four sites which have completed their undercover fencing operations will be studied.

Preliminary grant proposals will be reviewed by a peer review process and in accordance with criteria defined in

the solicitation. Upon completion of the reviews of the preliminary grant proposals, formal proposals will be requested. In order to be considered all preliminary proposals must be postmarked no later than June 16, 1978.

The grant is planned for award in September, 1978, for fifteen months with support not to exceed $250,000, because this is a solicitation for an evaluation grant, profit making organizations are prohibited by LEAA policy from applying.

Further information and copies of the solicitation can be obtained by contacting Rosemary Murphy or Paul Lineberry, Office of Program Evaluation, NILECJ, 633 Indiana Avenue, NW., Washington, D.C. 20531 or by calling 202-376-3824.

BLAIR G. EWING,
Acting Director, National Institute of Law Enforcement and Criminal Justice.

[FR Doc. 78-13220 Filed 5-15-78; 8:45 am]

[4510-30]

DEPARTMENT OF LABOR

Employment and Training Administration

STATE OF CALIFORNIA

Availability of Extended Benefits

This notice announces the beginning of a new Extended Benefit Period in the State of California, effective on April 30, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970; Pub. L. 91-373; 84 Stat. 695, 708), as amended (26 U.S.C. 3304 note), established the Extended Benefit Program as part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the Nation, to furnish up to 13 weeks of additional benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. Part 615 of Chapter V, Title 20, Code of Federal Regulations, implements the statute (43 FR 13818; March 31, 1978).

In accordance with section 203(e) (1) of the Act the California unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State unemployment compensation law equalled or exceeded 5.0 percent 20 CFR 615.12(c) (2) (i). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period lasts for a minimum of 13 consecutive weeks.

DETERMINATION OF "ON" INDICATOR

The head of the employment security agency of the State of California has determined that, for the period consisting of the week ending on April 15, 1978, and the immediately preceding 12 weeks, the average rate of insured unemployment (not seasonally adjusted in the State equalled or exceeded 5 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 615.12(c)(2)(i), and as authorized by Secretary of Labor's Order 4-75, dated April 16, 1975 (published in the FEDERAL REGISTER on April 28, 1975, at 40 FR 18515), that there was a State Extended Benefit "on" indicator in the State of California for the week ending on April 15, 1978, and that an Extended Benefit Period therefore commenced in that State with the week beginning April 30, 1978.

INFORMATION FOR CLAIMANTS

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not expire prior to the beginning of the Extended Benefit Period, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the Extended Benefit Period. The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

Persons who believe they may be entitled to Extended Benefits in the State of California, or who wish to inquire about their rights under the Extended Benefits Program, should contact the nearest Unemployment Insurance Office of the California Development Department in their locality.

Signed at Washington, D.C., on May 9, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-13037 Filed 5-15-78; 8:45 am]

[4510-30]

STATE OF IDAHO

Availability of Extended Benefits

This notice announces the beginning of a new Extended Benefit Period in the State of Idaho, effective on April 30, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970; Pub. L. 91-373; 84 Stat. 695, 708), as amended (26 U.S.C. 3304 note), established the Extended Benefit Program as part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the Nation, to furnish up to 13 weeks of additional benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. Part 615 of Chapter V, Title 20, Code of Federal Regulations, implements the statute (43 FR 13818; March 31, 1978).

In accordance with section 203(e) (1) of the Act the Idaho unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State unemployment compensation law equalled or exceeded 5.0 percent 20 CFR 615.12(c) (2) (i). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period lasts for a minimum of 13 consecutive weeks.

DETERMINATION OF "ON" INDICATOR

The head of the employment security agency of the State of Idaho has determined that, for the period consisting of the week ending on April 15, 1978, and the immediately preceding 12 weeks, the average rate of insured unemployment (not seasonally adjusted) in the State equalled or exceeded 5 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 615.12(c)(2)(i), and as authorized by Secretary of Labor's Order 4—75, dated April 16, 1975 (published in the FEDERAL REGISTER on April 28, 1975, at 40 FR 18515), that there was a State Extended Benefit "on" indicator in the State of Idaho for the week ending on April 15, 1978, and that an Extended Benefit Period therefore commenced in that State with the week beginning April 30, 1978.

INFORMATION FOR CLAIMANTS

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not expire prior to the beginning of the Extended Benefit Period, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the Extended Benefit Period. The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

Persons who believe they may be entitled to Extended Benefits in the State of Idaho, or who wish to inquire about their rights under the Extended Benefits Program, should contact the nearest State Employment Office of the Idaho Department of Employment in their locality.

Signed at Washington, D.C., on May 9, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-13038 Filed 5-15-78; 8:45 am]

[4510-30]

STATE OF ILLINOIS

Availability of Extended Benefits

This notice announces the beginning of a new Extended Benefit Period in the State of Illinois, effective on April 30, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970; Pub. L. 91-373; 84 Stat. 695, 708), as amended (26 U.S.C. 3304 note), established the Extended Benefit Program as part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the Nation, to furnish up to 13 weeks of additional benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. Part 615 of Chapter V, Title 20, Code of Federal Regulations, implements the statute (43 FR 13818; March 31, 1978).

In accordance with section 203(e) (1) of the Act the Illinois unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State unemployment compensation law equalled or exceeded 5 percent. 20 CFR 615.12(c)(2)(i). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period lasts for a minimum of 13 consecutive weeks.

DETERMINATION OF "ON" INDICATOR

The head of the employment security agency of the State of Illinois has determined that, for the period consisting of the week ending on April 15, 1978, and the immediately preceding 12 weeks, the average rate of insured unemployment (not seasonally adjusted in the State equalled or exceeded 5 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 615.12(c)(2)(i), and as authorized by Secretary of Labor's Order 4-75, dated April 16, 1975 (published in the FEDERAL REGISTER on April 28, 1975, at 40 FR 18515), that there was a State Extended Benefit "on" indicator in the State of Illinois for the week ending on April 15, 1978, and that an Extended Benefit Period therefore commenced in that State with the week beginning April 30, 1978.

INFORMATION FOR CLAIMANTS

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not expire prior to the beginning of the Extended Benefit Period, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the Extended Benefit Period. The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

Persons who believe they may be entitled to Extended Benefits in the State of Illinois, or who wish to inquire about their rights under the Extended Benefits Program, should contact the nearest local office of the Illinois Department of Labor in their locality.

Signed at Washington, D.C., on May 9, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-13039 Filed 5-15-78; 8:45 am]

[4510-30]

STATE OF MASSACHUSETTS

Availability of Extended Benefits

This notice announces the beginning of a new Extended Benefit Period in the State of Massachusetts, effective on April 30, 1978.

BACKGROUND

The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of the Employment Security Amendments of 1970; Pub. L. 91-373; 84 Stat. 695, 708), as amended (26 U.S.C. 3304 note), established the Extended Benefit Program as part of the Federal-State Unemployment Compensation Program. The Extended Benefit Program takes effect during periods of high unemployment in a State or the Nation, to furnish up to 13 weeks of additional benefits to eligible individuals who have exhausted their rights to regular benefits under permanent State and Federal unemployment compensation laws. Part 615 of Chapter V, Title 20, Code of Federal Regulations, implements the statute (43 FR 13818; March 31, 1978).

In accordance with section 203(e) (1) of the Act the Massachusetts unemployment compensation law provides that there is a State "on" indicator in the State for a week if the head of the State employment security agency determines, in accordance with 20 CFR 615.12(e), that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State unemployment compensation law equalled or exceeded 5 percent. 20 CFR 615.12(c)(2)(i). The Extended Benefit Period actually begins with the third week following the week for which there is an "on" indicator. A benefit period lasts for a minimum of 13 consecutive weeks.

DETERMINATION OF "ON" INDICATOR

The head of the employment security agency of the State of Massachusetts has determined that, for the period consisting of the week ending on April 15, 1978, and the immediately preceding 12 weeks, the average rate of insured unemployment (not seasonally adjusted) in the State equalled or exceeded 5 percent.

Therefore, I have determined in accordance with the Act and 20 CFR 615.12(c) (2) (i), and as authorized by Secretary of Labor's Order 4-75, dated April 16, 1975 (published in the FEDERAL REGISTER on April 28, 1975, at 40

FR 18515), that there was a State Extended Benefit "on" indicator in the State of Massachusetts for the week ending on April 15, 1978, and that an Extended Benefit Period therefore commenced in that State with the week beginning April 30, 1978.

INFORMATION FOR CLAIMANTS

The duration of Extended Benefits payable in the new Extended Benefit Period, and the terms and conditions on which they are payable are governed by the Act and the State unemployment compensation law. The State employment security agency will furnish a written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not expire prior to the beginning of the Extended Benefit Period, and who has exhausted all rights under the State unemployment compensation law to regular benefits before the beginning of the Extended Benefit Period. The State employment security agency also will provide such notice promptly to each individual who exhausts all rights under the State unemployment compensation law during the Extended Benefit Period, including exhaustion by reason of the expiration of the individual's benefit year.

Persons who believe they may be entitled to Extended Benefits in the State of Massachusetts, or who wish to inquire about their rights under the Extended Benefits Program, should contact the nearest State Employment Office of the Massachusetts Division of Employment Security in their locality.

Signed at Washington, D.C., on May 9, 1978.

ERNEST G. GREEN,
Assistant Secretary for Employment and Training.

[FR Doc. 78-13040 Filed 5-15-78; 8:45 am]

[4510-43]

Mine Safety and Health Administration

[Docket No. M-78-67-C]

ANGUS MINING CO.

Petition for Modification of Application of Mandatory Safety Standard

Notice is hereby given that Angus Mining Co., P.O. Box 85, Coalwood, W. Va. 24824, has filed a petition to modify the application of 30 CFR 75.1710-1 (cabs and canopies), to its 1 Rt NE Mains Mine, located in McDowell 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) Coal heights are too restrictive to operate Petitioner's shuttle cars and Gallis 300 Roof Drill with canopies in the 1 Rt NE Mains because of the danger of collision with roof, roof support devices and overhanging cables in low operating heights.

(2) Shuttle cars have no capacity for cutting their own roadway and require greater clearance and visibility for safe operation.

(3) The machine operator and coworkers could be injured if a collision or electrocution from a damaged cable should occur in the low points.

(4) For the reasons set forth above, Petitioner requests to continue operating shuttle cars and the Gallis 300 Roof Drill without canopies.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before June 12, 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: May 4, 1978.

ECKEHARD MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-13041 Filed 5-15-78; 8:45 am]

[4510-28]

Office of the Secretary

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 26, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 26, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 3d day of May 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: (union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
Amax Specialty Metals Corp. (Oil, Chemical & Atomic Workers International Union).	Akron, N.Y.	Apr. 20, 1978	Apr. 15, 1978	TA-W-3,563	Melt and fabricate zirconium sponge metals.
Amityville Broadway Production (workers).	West Babylon, N.Y.	do.	Apr. 10, 1978	TA-W-3,564	Ladies' coats.

APPENDIX

Petitioner: (union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
Brook Manufacturing Co., Inc. (ACTWU).	Old Forge, Pa	do	Apr. 17, 1978	TA-W-3,565	Men's slacks.
Brunswick Pulp & Paper Co. (Paper Workers Union).	Brunswick, GA	Apr. 19, 1978	Apr. 18, 1978	TA-W-3,566	Bleached pulp and paper board.
FMC Corp. (ACTWU)	Fredericksburg, Va	do	March 30, 1978	TA-W-3,567	Cellophane film used in packaging.
Lebanon Steel Foundry (U.S.W.A.L.U.).	Lebanon, Pa	Apr. 20, 1978	Apr. 15, 1978	TA-W-3,568	Rough steel castings (components).
Pen-Jay, Inc. (workers)	Fall River, Mass	do	Apr. 14, 1978	TA-W-3,569	Ladies' vests, slacks, and skirts.
Raymond International, Inc. metals products facility (USWA).	Baltimore, Md	Apr. 19, 1978	do	TA-W-3,570	Steel piling for construction purposes.
Simmons Co. (workers)	Medford, Mass	Apr. 20, 1978	Apr. 18, 1978	TA-W-3,571	Mattresses and boxsprings.

[FR Doc. 78-13042 Filed 5-15-78; 8:45 am]

[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 26, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 26, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 27th day of April 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Ace Knitting Mills (workers).	Long Island City, N.Y	Apr. 17, 1978	Apr. 10, 1978	TA-W-3,547	Knitted fabrics.
Airco Welding Products, Division of Airco, Inc. (IAM).	Union, N.J	do	Apr. 4, 1978	TA-W-3,548	Welding and cutting torches, regulators, valves, and electrical welding equipment.
Anaconda Co., Butte Operations, Montana Mining Division (USWA).	Butte, Mont	Mar. 31, 1978	Mar. 30, 1978	TA-W-3,549	Copper ore and copper concentrates.
Bags By Trudy (workers)	New York, N.Y	Apr. 11, 1978	Apr. 5, 1978	TA-W-3,550	Ladies' vinyl handbags.
Brier Manufacturing Co. (company).	Providence, R.I	Apr. 17, 1978	Apr. 11, 1978	TA-W-3,551	Costume jewelry and hair goods for retail chain stores.
Bo Mar Fashions, Inc. (workers).	Deer Park, N.Y	do	Apr. 12, 1978	TA-W-3,552	Ladies' rainwear.
Coats & Clark, Inc. (workers).	Jamesville, N.C	Apr. 14, 1978	Apr. 10, 1978	TA-W-3,553	Domestic zippers.
Do	Newport News, Va	do	Mar. 30, 1978	TA-W-3,554	Domestic and industrial zippers.
Dorel Steel Corp. (workers)	Quincy, Mass	do	do	TA-W-3,555	Construction work.
Eva Fisher Dress Co. (ILGWU).	Los Angeles, Calif	Apr. 10, 1978	Apr. 6, 1978	TA-W-3,556	Contractor of ladies' better dresses.
Garland Corp. (workers)	Brockton, Mass	Apr. 14, 1978	Apr. 10, 1978	TA-W-3,557	Ladies' knitted outerwear.
M & D Coat Co., Inc. (ILGWU).	Huntington Long Island, N.Y.	Apr. 18, 1978	do	TA-W-3,558	Ladies' coats, suits, and rainwear.
Milt Posner Fur Corp. (Furriers Joint Council).	New York, N.Y	Apr. 17, 1978	Apr. 11, 1978	TA-W-3,559	Ladies' split cowhide jackets and coats.
R & W Enterprises, Inc., Griffith-Custer Steel (workers).	Johnstown, Pa	Apr. 14, 1978	Mar. 30, 1978	TA-W-3,560	Fabricate structural steel, plate and angles.
St. Louis, San Francisco RR. Co., Birmingham Terminal Division (United Transportation Union).	Birmingham, Ala	do	Apr. 10, 1978	TA-W-3,561	Transporting all types of commodities.
Webster Sportswear Corp. (workers).	Franklin, N.H	do	Apr. 11, 1978	TA-W-3,562	Ladies' dresses, skirts, pants and tops.

[FR Doc. 78-13043 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2504]

ANTHRACITE SHIRT CO., SHAMOKIN, PENNSYLVANIA

Determinations 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-2504: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 26, 1977 in response to a worker petition received on October 14, 1977, which was filed by the Amalgamated Clothing and Textile Workers Union on behalf of workers and former workers producing ladies' blouses and men's shirts at Anthracite Shirt Co., Shamokin, Pa.

The notice of investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59133). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Anthracite Shirt Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, 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 the other criteria have been met, the following criterion has not been met, with respect to workers engaged in employment related to the production of ladies' blouses:

that increases of imports of articles like or directly competitive with those produced at the firm, or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales and/or production.

U.S. imports of women's, misses' and children's blouses and shirts increased from 26,113,000 dozen in 1975 to 30,273,000 dozen in 1976. For the first three quarters of 1977, imports increased to 24,036,000 dozen, compared to 24,016,000 dozen in the first three quarters of 1976. The ratio of imports to domestic production increased from 70.4 percent in 1975 to 74.8 percent in 1976.

All of the manufacturers of ladies' blouses surveyed, except for one, increased contracts to the subject firm in 1976 compared to 1975 and in the first nine months of 1977 compared to the first nine months of 1976. The one manufacturer that decreased contracts with the subject firm slightly in 1976 did not import ladies' blouses nor use foreign contractors.

With respect to workers engaged in employment related to the production of men's and boys' shirts, it is concluded that all of the criteria have been met.

U.S. imports of men's and boys' woven dress and business shirts were recorded at 64,283,000 units in 1976, representing an increase of 108.7 percent compared to 30,800,000 units in 1975. During the first three quarters of 1977, imports were recorded at 48,918,000 units, which represent an increase of 5.8 percent compared to 46,238,000 units in the first three quarters of 1976. The ratio of imports to domestic production increased from 36.2 percent in 1975 to 67.1 percent during 1976.

U.S. imports of men's and boys' woven sport shirts increased from 61,008,000 units in 1975 to 79,820,000 units in 1976, representing an increase of 30.8 percent. During the first three quarters of 1977, imports were recorded at 56,784,000 units and represented a decline of 3.8 percent compared to 59,001,000 units in the first three quarters of 1976. The ratio of imports to domestic production increased from 38.7 percent in 1975 to 48.6 percent in 1976.

A survey of the major manufacturer that contracts with Anthracite Shirt Co. for the production of men's shirts showed that contract work had decreased with the subject firm in 1976 and 1977. Customers of this manufacturer surveyed had increased their purchases of imported men's shirts in 1976, while decreasing purchases from this manufacturer.

Workers at this manufacturer have been certified eligible to apply for adjustment assistance.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's and boys' shirts produced by Anthracite Shirt Co. Shamokin, Pa. contributed importantly to the decline in production and to the total or partial separations of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of men's and boys' shirts at Anthracite Shirt Co. Shamokin, Pa. who became totally or partially separated from employment on or after October 6, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that workers engaged in employment related to the production of ladies' blouses be denied eligibility.

Signed at Washington, D.C. this 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13044 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2600]

BEL SPORTSWEAR, INC., HAMMONTON, 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-2600: 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 14, 1977 in response to a worker petition received on November 4, 1977, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' blazers, skirts and slacks at Bel Sportswear, Inc., Hammonton, N.J. During the course of the investigation it was

revealed that only skirts and slacks were produced.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63484). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bel Sportswear, Inc., its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, 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 competitve with those produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A survey of the major manufacturers that contract with Bel Sportswear indicated that they did not use foreign contractors. The survey revealed that the manufacturers either decreased purchases of imported ladies' sportswear or did not purchase imports in 1976 compared to 1975 and in 1977 compared to 1976. Sales of the manufacturers increased in 1976 compared to 1975 and in 1977 compared to 1976.

CONCLUSION

After careful review I conclude that all workers at Bel Sportswear, Hammonton, 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 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13045 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2664]

CAMBRIDGE CO., INC., FALL RIVER, MASS.

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-2664: 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 21, 1977 which was filed on behalf of workers and former workers producing women's and children's sportswear, at Cambridge Co., Inc., Fall River, Mass.

The Department's investigation revealed that Cambridge Co. produces women's and children's skirts, slacks and jumpers.

The Notice of Investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63486). No public hearing was requested and none held.

The information upon which the determination was made was obtained principally from officials of Cambridge Co., Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the National Cotton Council of America, 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 skirts increased from 517,000 dozens in 1975 to 791,000 dozens in 1976, then declined to 654,000 dozens in 1975 to 11,040,000 dozens in 1976, and to 11,622,000 dozens in 1977. The ratio of imports to domestic production for women's, misses', and children's skirts increased from 10.8 percent in 1975 to 11.2 percent in 1976.

Imports of women's, misses', and children's slacks increased from 10,067,000 dozens in 1977. The ratio of imports to domestic production for women's, misses', and children's slacks increased from 35.2 percent in 1975 to 36.4 percent in 1976.

Imports of women's, misses', and children's dresses, which includes jumpers, increased from 645,000 dozens in 1975 to 659,000 dozens in 1976, then declined to 587,000 dozens in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1975 to 7.9 percent in 1976.

A survey of Cambridge Co.'s customers revealed that customers who decreased purchases from Cambridge Co. in 1976 and 1977 increased their purchases of imports.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases in imports of articles like or directly competitive with women's and children's skirts, slacks and jumpers produced by Cambridge Co., Inc., Fall River, Mass. contributed importantly to the decrease 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 Cambridge Co., Inc., who became totally or partially separated from employment on or after November 18, 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 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13046 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2774]

CRESCENT GLASS CO., INC., WELLSBURG, W. Va.

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-2774: 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 14, 1977 in response to a worker petition received on December 7, 1977, which was filed by the American Flint Glass Workers' Union of North America on behalf of workers and former workers producing glass candle holders and glass lamp parts at Crescent Glass Co., Inc. of Wellsburg, W. Va.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1555). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Crescent Glass Co., 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.

The Department's investigation revealed that imports of handmade table, kitchen, art and novelty glassware increased in value from $56,477,000 in 1975 to $70,334,000 in 1976, an increase of 24.5 percent, and increased to $77,183,000 in 1977, for an increase of 9.7 percent compared to 1976. The ratio of imports to domestic production in value increased from 88.4 percent in 1975 to 89.5 percent in 1976.

Imports of exterior and interior lighting glassware increased from $12,175,000 in 1975 to $17,777,000 in 1976, a 46.0 percent increase, and in-

creased to $19,314,000 in 1977, for an 8.6 percent increase compared to 1976. The ratio of imports to domestic production in value increased from 19.0 percent in 1975 to 23.0 percent in 1976.

Customers representing a substantial proportion of sales of Crescent Glass Co., Inc. indicated that they increased imports of glass candle holders and glass lamp parts while decreasing purchases from Crescent in 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 glass candle holders and glass lamp parts produced by Crescent Glass Co., Inc., Wellsburg, W. Va. contributed importantly to the decline in sales and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Crescent Glass Co., Inc. of Wellsburg, W. Va. who became totally or partially separated from employment on or after January 21, 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 3rd day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13047 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2843]

EGGIE MOTOR CO., INC., OAKLYN, N.J.

Negative Determination Regarding Application for Reconsideration

On April 10, 1978, the petitioner, requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Eggie Motor Co., Inc., of Oaklyn, N.J. The determination was published in the FEDERAL REGISTER on April 4, 1978 (43 FR 14168).

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 appears to claim that the employees produced a product. Eggie Motors was an independently owned automobile dealership engaged in the sale and service of American Motor Corporation's passenger cars, trucks and parts for those vehicles. Some AMC workers have been certified eligible to apply for adjustment assistance (41 FR 48801, 52558, and 56413). Eggie was independent of AMC. Neither firm owns, controls, or has any financial interest in the business of the other.

The Department has earlier determined that services, such as the sale and servicing of automobiles, 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 or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 3rd day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13048 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2654]

FLORSHEIM SHOE CO., HERMANN, MO.

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-2654: 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 23, 1977, in response to a worker petition received on November 14, 1977, which was filed by the United Shoe Workers of America on behalf of workers and former workers producing men's leather boots and low-cut shoes at the Hermann, Mo. plant of the Florsheim Shoe Co.

The Notice of Investigation was published in the FEDERAL REGISTER on December 6, 1977 (42 FR 61695). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Florsheim Shoe 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. It is concluded that all of the requirements have been met.

Imports of men's dress and casual footwear increased, in absolute terms, 23.6 percent from 1975 to 1976, and declined 1.6 percent in the first 9 months of 1977, compared to the same period of 1976. The ratios of imports to domestic production and consumption increased from 58.7 percent and 37 percent, respectively, in 1975, to 70.4 percent and 41.3 percent, respectively, in 1976. The same ratios increased from 69.1 percent and 40.9 percent, respectively, in the first 9 months of 1976, to 75 percent and 42.8 percent, respectively, in the same period of 1977.

The U.S. International Trade Commission recently found that certain footwear articles, including men's dress and casual shoes, are being imported into the United States in such increased quantities as to be a substantial cause of serious injury to the domestic industry producing such articles. In the case of men's dress and casual footwear, the ratio of imports to domestic production has been greater than 50 percent in each of the past 5 years, reaching a peak level of 75 percent in the first 9 months of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's boots and low-cut shoes produced at the Hermann, Mo. plant of the Florsheim Shoe Co. contributed importantly to the decline in 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 the Hermann, Mo. plant of the Florsheim Shoe Co. who became totally or partially separated from employment on or after November 8, 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 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13049 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2498]

GREENFIELD COMPONENTS CORP., GREENFIELD, MASS.

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-2498: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 25, 1977, in response to a worker petition received on October 17, 1977, which was filed on behalf of workers and former workers producing glass-to-metal seals for electronic components at Greenfield Components Corp., Greenfield, Mass.

The Notice of Investigation was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 58209). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Greenfield Components 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 Trade Act of 1974 must be met. The investigation has revealed that all of the requirements have been met.

The glass-to-metal seals produced by Greenfield Components are included in a basket category of miscellaneous semiconductor parts. Imports of semiconductor parts declined from $40.7 million in 1974, to $31 million in 1975, then increased to $52.4 million in 1976. Imports increased from $42.8 million in the first ten months of 1976, to $49.5 million in the first ten months of 1977.

A survey of customers revealed that customers decreased purchases from Greenfield Components and increased purchases of imported semiconductor parts.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the glass-to-metal seals for electronic components produced at Greenfield Components Corporation contributed importantly to the decline in sales and production and to the total or partial separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Greenfield Components Corp., Greenfield, Mass., who became totally or partially separated from employment on or after October 7, 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 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13050 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2500]

IRWIN TOYS, INC., MULTIPLE TOYMAKERS, BAYSHORE INDUSTRIES, INC., NASHUA, N.H.

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-2500: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on October 25, 1977, in response to a worker petition received on October 17, 1977, which was filed by the International Retail and Department Store Workers on behalf of workers and former workers producing children's toys at Irwin Toys, Inc., Nashua, N.H. The investigation was expanded to include Multiple Toymakers and Bayshore Industries, Inc. also of Nashua, N.H. Irwin Toys and Bayshore Industries were subsidiaries, and Multiple Toymakers a division, of Miner Industries, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on November 8, 1977 (42 FR 582209). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Miner 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.

The Department's investigation revealed that imports of molded plastic toys for children up to the age of 8 years have increased annually from 1973 through 1977. The ratio of imports to domestic production increased form 19.5 percent in 1976 to 33.9 percent in 1977.

Customers of Miner Industries (of products made by Irwin, Multiple, and Bayshore) who were surveyed increased purchases of imports while reducing purchases from Miner Industries. Customers increased purchases of imports either directly or indirectly through 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 children's plastic toys produced by Irwin Toys, Inc., Multiple Toymakers, and Bayshore Industries, Inc., Nashua, N.H. contributed importantly to declines in sales and production and to the separation of workers at those firms. In accordance with the provisions of the Act, I make the following certification:

All workers at Irwin Toys, Inc., Bayshore Industries, Inc. and Multiple Toymakers, Nashua, N.H. who became totally or partially separated from employment or after October 11, 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 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13051 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2672]

JACOB FINKELSTEIN AND SONS, INC., SAMOSET PROCESSING CO., INC., SPORTS APPAREL, INC., WOONSOCKETT, R.I.

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-2672: 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 Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's and boys' outer coats and jackets at Jacob Finkelstein and Sons and at the Samoset Processing Co., Woonsocket, R.I. The investigation was expanded to include Sports Apparel, Inc., Woonsocket, R.I., a division of Jacob Finkelstein and Sons.

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 Jacob Finkelstein and Sons, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. It is concluded that all of the requirements have been met.

United States imports of men's and boys' outer coats and jackets increased in 1976 to 22,060 thousand units from 20,034 thousand units in 1975 and increased to 20,344 thousand units in the first nine months of 1977 compared to 16,055 thousand units for the same period in 1976.

The ratio of imports to domestic production for men's and boys' outer coats and jackets increased from 28.1 percent in 1975 to 31.3 percent in 1976.

Samoset Processing Co. and Sports Apparel are manufacturing divisions of Jacob Finkelstein and Sons. Purchases of imported outer coats and jackets by Jacob Finkelstein increased in 1977 compared to 1976. The ratio of import purchases to total sales increased from 5 percent in 1976 to 12 percent in 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 the men's and boys' outer coats and jackets produced at Samoset Processing Co. and Sports Apparel contributed importantly to the declines in sales at Jacobs Finkelstein and Sons and to the total or partial separation of the workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers at Jacob Finkelstein and Sons, Inc., Samoset Processing Co., Inc., and Sports Apparel, Inc., all in Woonsockett, R.I. who became totally or partially separated from employment on or after November 14, 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 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13052 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2728]

LACLEDE STEEL CO., MADISON, ILL.

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-2728: investigation regarding certification of eligibility to apply for worker adjusment assistance as prescribed in section 222 of the Act.

The investigation was initiated on December 6, 1977 in response to a worker petition received on November 23, 1977, which was filed by the United Steelworkers of America on behalf of workers formerly producing concrete reinforcing bar at the Madison, Ill. plant of the Laclede Steel Co.

The notice of investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65307). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Laclede Steel Co., 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.

U.S. imports of concrete reinforcing bar increased from 1975 to 1976, from 142 thousand tons to 192 thousand tons. For the first three quarters of 1977 imports decreased to 69 thousand tons from 143 thousand tons for the same period in 1976, a decrease of 51.7 percent. The imports to domestic shipments ratio increased from 3.9 percent in 1975 to 5 percent in 1976. For the first three quarters of 1977, the imports to domestic shipments ratio declined to 2.2 percent compared to 4.8 percent for the same period in 1976.

None of the customers of the Madison, Ill. plant of the Laclede Steel Co. that were surveyed during the course of the investigation purchased imported concrete reinforcing bar.

CONCLUSION

After careful review I conclude that all workers at the Madison, Ill. plant of the Laclede 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 3d day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13053 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2801]

LUKENS STEEL CO., COATESVILLE, PA.

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-2801: 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 9, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing speciality steel plate products at the Lukens Steel Co., Coatesville, Pa. During the course of the investigation it was established that carbon and low alloy steel plate and steel plate shapes are the products produced at Lukens and that Lukens also performs conversion services for domestic stainless steel producers.

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 Lukens Steel Co., its customers, the American Iron and Steel Institute, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. 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 subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that although imports of carbon steel plate are a factor in the domestic carbon plate steel market, Luken's

overall sales and production of carbon steel plate increased in 1977 compared to 1976. Industry statistics show the same trend as both U.S. production of carbon steel plate and imports of carbon steel plate increased in 1977 compared to 1976.

A survey of Luken's customers revealed that customers who increased their purchases of imported carbon steel plate in 1977 compared to 1976 also increased their purchases of carbon steel plate from Lukens in 1977 compared to 1976.

Additional evidence developed during the course of the investigation further revealed that the impact of imports in the domestic market for steel plate shapes has been insignificant over the past 5 years. From 1972 through the first 9 months of 1977, annual imports of fabricated platework, a category which includes steel plate shapes, have been consistently under 1 percent of annual domestic shipments.

A survey of Luken's customers for steel plate shapes reflect the relatively insignificant influence of imported fabricated platework in the market served by Lukens. Customers responding to the survey indicated that they purchased no imported steel plate shapes in 1975, 1976 or 1977.

Further evidence developed during the course of the investigation revealed that imports of articles like or directly competitive with the stainless steel plates produced by Lukens did not increase, either absolutely or relative to domestic production. Imports of stainless steel plate decreased from 18.6 thousand short tons in 1976 to 7.6 thousand short tons in 1977, a decline of 59.1 percent. The ratio of imports to domestic shipments declined from 23.8 percent in 1976 to 8.9 percent in 1977. On June 14, 1976 the President imposed a quota on imports of stainless steel plate. This quota was a major factor in the decline of imports of stainless steel plate in 1977 compared to 1976.

CONCLUSION

After careful review I conclude that all workers at Lukens Steel Co., Coatesville, Pa. 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. 78-13054 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2847]

OLIN CORP., ECUSTA PAPER AND FILM GROUP, ENDLESS BELT DEPARTMENT, PISGAH FOREST, N.C.

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-2847: 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 4, 1978, in response to a worker petition received on December 15, 1977, which was filed on behalf of workers and former workers producing woven textile conveyer belts used in the tobacco industry at Olin Corp., Fine (Ecusta) Paper and Film Group, Endless Belt Department, Pisgah Forest, N.C.

The Notice of Investigation was published in the FEDERAL REGISTER on January 27, 1978 (43 FR 3777). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from Olin 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 endless belts increased 14 percent from 1975 to 1976 and 33 percent from 1976 to 1977. The ratio of imports to domestic production increased from 1975 to 1976 and from 1976 to 1977.

Customers who purchased endless belts from Olin were surveyed. Customers indicated that their purchases of endless belts from Olin decreased while their purchases of imports either increased or remained stable from 1976 to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with endless belts produced at Olin Corp., Ecusta Paper and Film Group contributed importantly to the decline in sales and production and to the total or partial separations of the workers at the Endless Belt Department, Pisgah Forest, N.C. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of endless belts in the Endless Belt Department, Ecusta Paper and Film Group, Olin Corp., Pisgah Forest, N.C. who became totally or partially separated from employment on or after December 1, 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 3rd day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13055 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-3390, 3391, 3396, 3397]

PARAGON WIRE & CABLE CORP., BUFFALO, N.Y., AND LONGWOOD, FLA. AND COMPOSITE ELECTRICAL ASSEMBLIES, INC., BUFFALO, N.Y., AND LONGWOOD, FLA.

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-3390, 3391, 3396, and 3397: Investigations regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigations were initiated on March 29, 1978, in response to worker petitions received on March 16, 1978, which were filed by the company on behalf of workers and former workers producing wire and wire assemblies at the Buffalo and Longwood plants of Paragon Wire & Cable Corp. and Composite Electrical Assemblies, Inc.

The Notices of Investigations were published in the FEDERAL REGISTER on April 11, 1978 (43 FR 15207). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from an official of Paragon and Composite, their customers, the U.S. Department of Commerce, 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 insulated electronic wire increased from $11.5 million in 1975 to $25.4 million in 1976. They further increased to $26.7 million in 1977.

A significant share of Paragon's output of wire and cable was used by Composite in producing assemblies. The major customer of Composite switched purchases of assemblies to a manufacturing affiliate abroad and ceased its purchases from Composite.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude

that increases of imports of articles like or directly competitive with wire and cable assemblies produced by the Buffalo and Longwood plants or Paragon Wire & Cable Corp. and Composite Electrical Assemblies, Inc., contributed importantly to the decline in sales and production and to the separation of workers at these facilities. In accordance with the provisions of the Act, I make the following certification:

All workers at the Buffals, N.Y., and Longwood, Fla., plants of Paragon Wire & Cable Corp. and at the Buffalo, N.Y., and Longwood, Fla., plants of Composite Electrical Assemblies, Inc., who became totally or partially separated from employment on or after March 10, 1977, are eligible to apply for adjustment assistance under Title, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13056 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-3284]

PUBLIX MERIDIAN, INC., MERIDIAN, MISS.

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-3284: 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 1, 1978, in response to a worker petition received on February 21, 1978, which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's dress shirts at Publix Meridian, Inc., Meridian, Miss.

The Notice of Investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10649). No public hearing was requested and none held.

The information upon which the determination was made was obtained principally from Publix Meridian, Inc., Publix Shirt 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 men's and boys' dress shirts increased from 30,800 thousand in 1975, to 64,283 thousand in 1976. Imports increased from 46,283 thousand in the first nine months of 1976, to 48,918 thousand in the first nine months of 1977. The ratio of imports to domestic production increased from 36.2 percent in 1975 to 67.1 percent in 1976.

All of Publix Meridian's shirt production was for its owner, Publix Shirt Corp. Customers representing a substantial proportion of Publix Shirt Corp.'s production increased purchases of imported dress shirts directly and from domestic sources supplying imported shirts while reducing purchases from Publix Shirt in the first nine months of 1977 compared to the same period in 1976.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with men's dress shirts produced at Publix Meridian, Inc., Meridian, Miss., contributed importantly to the decline in sales or production and to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at Publix Meridian, Inc., Meridian, Miss., who became totally or partially separated from employment on or after July 15, 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 5th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13057 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2804]

QUANEX CORP., MICHIGAN SEAMLESS TUBE DIVISION, SOUTH LYON, 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-2804: 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 9, 1977, which was filed by the United Steelworkers of America on behalf of workers former workers producing seamless tube for use in automobiles at Quanex Corp., Michigan Seamless Tube Division, South Lyon, Mich. During the course of the investigation it was revealed that the subject plant produces seamless steel tube for the exhaust pipe and tail pipe components of new automobile exhaust systems and for new auto gas tank necks.

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 the Michigan Seamless Tube Division of Quanex 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. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number of proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated or are threatened to become totally or partially separated.

The Department's investigation revealed that there have been no involuntary separations of workers and no reduction in hours worked at the South Lyon, Mich. facility of Quanex Corp. during the year prior to the date of the petition.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that all workers at the Michigan Seamless Tube Division of Quanex Corp., South Lyon, Mich. 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. 78-13058 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2615]

ST. JOSEPH STRUCTURAL STEEL CO., ST. JOSEPH, MO.

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-2615: 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 15, 1977, in response to a

worker petition received on November 7, 1977, which was filed by the International Association of Bridge, Structural and Ornamental Iron Workers on behalf of workers and former workers producing fabricated structural steel at the St. Joseph, Mo. plant of the Saint Joseph Structural Steel Co.

The Notice of Investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1557). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of St. Joseph Structural Steel Co., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The investigation has revealed that all of the criteria have been met.

Imports of fabricated structural steel declined from 99,300 tons in 1975 to 94,400 tons in 1976 before increasing 52.1 percent from 77,500 tons in the first three quarters of 1976 to 117,900 tons in the first three quarters of 1977. The ratio of imports to domestic shipments of fabricated structural steel increased from 2.3 percent in 1975 to 2.5 percent in 1976 and then almost doubled from 2.7 percent in the first three quarters of 1976 to 4.5 percent in the first three quarters of 1977.

Company sales and production of fabricated structural steel increased in 1976 compared to 1975 and continued to increase in the first quarter of 1977 compared to the like 1976 period before declining in the April through November period of 1977 compared to the like 1976 period.

All of the company's business is procured through a competitive bid. The company, which was the lowest domestic bidder, lost a major contract to a foreign fabricator in 1977. This contract would have provided a substantial amount of work for the company.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases in imports of articles like or directly competitive with the fabricated structural steel produced at the St. Joseph, Mo. plant of the St. Joseph Structural Steel Co. contributed importantly to the sales and production declines and to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the St. Joseph, Mo. plant of the St. Joseph Structural Steel Co., 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 4th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13059 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2972]

Y & S CANDIES, INC., BROOKLYN, 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-2972: 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 19, 1978 in response to a worker petition received on December 20, 1977, which was filed on behalf of workers and former workers producing a variety of candies at the Brooklyn, N.Y. plant of Y & S Candies, Inc. During the investigation it was determined that licorice and licorice type candies were produced.

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 Y & S Candies, 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. 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 subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the Department's investigation revealed that the management of Y & S Candies was faced with the alternatives of modernizing the Brooklyn, N.Y. facility which was built in 1902 or of constructing a new facility. Management decided it was more cost effective to build a new facility in Lancaster, Pa. than to renovate the Brooklyn facility. The Lancaster facility began operations in May 1977. As soon as the Lancaster plant came on stream, the Brooklyn plant was phased out and finally closed down in October 1977.

Total sales of all the domestic plants of Y & S Candies increased in 1977 compared to 1976 and in the first 2 months of 1978 compared to the same period of 1977.

CONCLUSION

After careful review I conclude that all workers at the Brooklyn, N.Y. plant of the Y & S Candies 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. 78-13060 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2172]

ADVENT CORP., CAMBRIDGE, MASS.

Determinations 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-2172: Investigation regarding certification of eligibility to apply for adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 27, 1977 in response to a worker petition received on June 23, 1977 which was filled on behalf of workers and former workers producing televisions and stereos at the Advent Corp., Cambridge, Mass. During the course of the investigation, it was determined that the following products are produced at the plant:

1. Video Projection Televisions.
2. Loudspeakers.
3. Cassette Tape Decks.
4. FM Monaural Radios.
5. Stereo Receivers.

The notice of investigation was published in the FEDERAL REGISTER on July 12, 1977 (42 FR 35904). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Advent Corp., it's customers, the U.S. International Trade Commission, U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. With respect to workers

producing loudspeakers, 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 enclosed loudspeakers increased from 14,067 thousand units in 1975 to 29,363 thousand units in 1976 and increased from 12,599 thousand units in the first six months of 1976 to 13,689 thousand units in the first six months of 1977. The ratio of imports to domestic production increased from 539.6 percent in 1975 to 651.1 percent in 1976 and then decreased from 614.6 percent in the first six months of 1976 to 580.5 percent in the first six months of 1977.

The evidence developed during the Department's investigation revealed the most of Advent's customers do not purchase imported high fidelity loudspeakers. These customers indicated that Advent's line of loudspeakers are superior in quality to imported loudspeakers. They further stated that the stringent quality requirements of high fidelity sound systems and the high freight costs incurred in the shipping of large, wood-encased loudspeakers have discouraged foreign firms from entering the U.S. loudspeaker market. These results are consistent with industry trends which show that imports dominate the small, inexpensive plastic-encased, loudspeaker market, but have had little effect in the large, wood-encased, high fidelity loudspeaker market. The average value of imported loudspeakers in 1976 was 2.61 dollars; in comparison, the average value of loudspeakers produced domestically in 1976 was 49.41 dollars, reflecting the predominance of the larger, more expensive, wood-encased loudspeakers made in the United States.

With respect to workers engaged in employment related to the production of chassis for video projection televisions all of the group eligibility requirements of section 222 of the Act have been met.

U.S. imports of chassis for video projection televisions are represented by Advent Corp.'s imports of these chassis in that Advent is virtually the only importer of this product. Advent's imports of chassis increased in the first six months of 1977 compared to the same period in 1976.

Advent began importing in July 1976 the chassis for use in a new video projection television model, the 750A, which is priced substantially below the model 1000A produced domestically by Advent. Models 750A as a proportion of total Advent video screen production increased from 46.6 percent in the last six months of 1976 to 90.1 percent in the first six months of 1977.

With respect to workers engaged in employment related to the production of cassette tape decks all of the group eligibility requirements of section 222 of the Act have been met.

Imports of audio tape recorders/players increased from 5,704.4 thousand units in 1975 to 9,149.5 thousand units in 1976 and increased from 3,559.1 thousand units in the first six months of 1976 to 4,240.5 thousand units in the same period of 1977. The ratio of imports to domestic production increased from 3,349.6 percent in 1975 to 6,828.0 percent in 1976.

A Departmental survey of Advent's major customers revealed that a significant number of these customers decreased their purchases of tape decks from Advent in 1976 and 1977 compared to previous years while increasing their purchases of imported products. Additionally, Advent began importing printed circuit boards for use in the production of its tape decks in October 1976. These printed circuit boards were previously assembled at Advent's Cambridge, Mass. plant.

With respect to workers engaged in employment related to the production of FM monaural radios all of the group eligibility requirements of section 222 of the Act have been met.

Imports of household radios increased from 26,823.3 thousand units in 1975 to 33,618.7 thousand units in 1976 and increased from 13,582.1 thousand units in the first six months of 1976 to 15,443.8 thousand units in the same period of 1977. The ratio of imports to domestic production increased from 3,122.3 percent in 1975 to 4,025.2 percent in 1976 and increased from 3,578.0 percent in the first six months of 1976 to 4,185.3 percent in the same period of 1977

Printed circuit boards are used in the production of radios. Imports of printed circuit boards were discussed in the above section on cassette tape decks.

In November 1976 Advent began importing printed circuit boards for use in its monaural radio production. These printed circuit boards were previously assembled at Advent's Cambridge, Mass. plant. The impact of these imports on production is evidenced by the decline in the value of production of FM radios at the Cambridge, Mass. plant in 1976 compared to 1975 and in the first six months of 1977 compared to the same period of 1976.

With respect to workers engaged in employment related to the production of stereo receivers all of the group eligibility requirements of section 222 of the Act have been met.

Imports of stereo receivers increased from 1,121.6 thousand units in 1975 to 1,527.0 thousand units in 1976 and increased from 368.3 thousand units in the first four months of 1976 to 622.2 thousand units in the same period of 1977. The ratio of imports to domestic production increased from 399.1 percent in 1975 to 436.3 percent in 1976 and increased from 315.6 percent in the first four months of 1976 to 499.8 percent in the same period of 1977.

Advent stopped all stereo receiver production at its Cambridge, Mass. plant in February 1977 and transferred assembly operations to Mexico.

CONCLUSIONS

After careful review of the facts obtained in the investigation, I make the following conclusions.

Increased imports of articles like or directly competitive with the products as listed below have contributed importantly to the decline in sales and production and to the total or partial separations of workers producing those products at the Cambridge, Mass,. plant of the Advent Corp. on or after the corresponding impact date listed below:

Product and impact date

Chassis for video projection televisions—October 1, 1976.
Cassette tape decks—June 9, 1976.
FM monaural radios—June 9, 1976.
Stereo receivers—February 1, 1977.

In accordance with the provisions of the Act, I make the following certifications:

All workers engaged in employment related to the production of chassis for video projection televisions at the Cambridge, Mass., plant of the Advent Corp. who became totally or partially separated from employment on or after October 1, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers engaged in employment related to the production of cassette tape decks at the Cambridge, Mass., plant of the Advent Corp. who became totally or partially separated from employment on or after June 9, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers engaged in employment related to the production of FM monaural radios at the Cambridge, Mass., plant of the Advent Corp. who became totally or partially separated from employment on or after June 9, 1976 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All workers engaged in employment related to the production of stereo receivers at the Cambridge, Mass., plant of the Advent Corp. who became totally or partially separated from employment on or after February 1, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that workers engaged in employment related to the production of loudspeakers are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 8th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13231 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2688]

AMERICAN BILTRITE, INC., CHELSEA, MASS., AND LEOMINSTER, MASS.

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-2688: 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 22, 1977, which was filed on behalf of workers and former workers producing slabs of soling material from rubber and other compositions at American Biltrite, Inc., Chelsea, Mass. The investigation was expanded to include workers producing similar products at American Biltrite, Inc., Leominster, Mass.

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 American Biltrite, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, the Rubber Manufacturers Association, 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 non-leather bottom stock materials for footwear (rubber soling) in absolute terms, declined 16 percent from 1975 to 1976 and then increased 123 percent in the first nine months of 1977 compared to the same period in 1976. The ratios of imports to domestic production and consumption increased from 3.8 percent and 3.7 percent, respectively, in the first nine months of 1976 to 11.1 percent and 10 percent, respectively, in the first nine months of 1977.

Industry analysts note that the recent reversal in the import trend, as evidenced by the large rise in bottom stock imports in 1977, can be partially attributed to the purchase of a major bottom stock importer by a domestic footwear manufacturer. American Biltrite's customers are footwear manufacturers.

A survey of customers who purchased rubber soling from American Biltrite indicated that customers increased purchases of imported rubber soling in 1977 and reduced purchases from American Biltrite.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with rubber soling produced at American Biltrite, Inc. contributed importantly to the decline in sales and to the total or partial separations of the workers at the Chelsea and Leominster, Mass. plants of the firm. In accordance with the provisions of the Act, I make the following certification:

All workes of the Chelsea and Leominster, Mass. plants of American Biltrite who became totally or partially separated from employment on or after May 1, 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 8th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13232 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2726]

BETHLEHEM STEEL CORP., STEELTON, PA.

Determinations 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-2726: 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 6, 1977 in response to a worker petition received on November 23, 1977, which was filed by the United Steelworkers of America on behalf of workers and former workers producing various steel products at the Steelton, Pa. plant of Bethlehem Steel Corp. The investigation revealed the plant produced rails and accessories, welded pipes, water pipes, carbon bars, alloy bars and reinforcing bars. Workers producing welded pipes and rebars were previously denied eligibility to apply for adjustment assistance under TA-W-1497.

The Notice of Investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65307). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Bethlehem 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 Trade Act of 1974 must be met. With respect to workers engaged in the production of one of the following products: welded pipes, water pipes, carbon bars, alloy bars or reinforcing bars, 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 conducted separate surveys of some of the customers buying one of the above products from the Steelton plant. In each survey, except for carbon bars, customers indicated they did not purchase any imported products in 1976 or 1977. In addition, an analysis of the pipe and tubing industry revealed that the recent slump in the construction industry has had an adverse effect on U.S. shipments and consumption of pipe and tubing. From 1974 to 1976, U.S. shipments and consumption declined steadily.

In reference to the survey on carbon bars, several of the customers indicated they purchased some imports in 1976 and 1977. These same customers, however, also increased their purchases from Bethlehem Steel during the same periods.

Sales and production of carbon bars, alloy bars, and rebars increased in 1977 compared to 1976.

With respect to the workers producing rails and accessories, all of the group eligibility requirements of section 222 of the Act have been met.

Imports of steel rails increased from 42,300 tons in 1972 to 96,200 tons in 1975. Imports decreased to 71,800 tons in 1976 compared to 1975. In the first three quarters of 1977, imports increased to 53,000 tons compared to 48,500 tons for the same 1976 period. This represented an increase of 9.3 percent.

The ratio of imports of steel rails relative to domestic shipments increased in each year from 4.4 percent in 1972 to 7.7 percent in 1975. The ratio declined to 5.4 percent in 1976 compared to 1975. In the first three quarters of 1977 the ratio increased to 6.2 percent compared to 4.8 percent for the same 1976 period.

Imports of tie plates and joint bars declined in each year from 7,100 tons in 1972 to 3,200 tons in 1975 before increasing to 9,700 tons in 1976. In the first three quarters of 1977, imports increased to 48,100 tons compared to 8,400 tons in the same 1976 period.

The ratio of imports of tie plates and joint bars relative to domestic shipments decreased in each year from 3.3 percent in 1972 to 1.3 percent in 1975 and increased to 3.6 percent in 1976. The ratio increased to 20.5 percent in the first three quarters of 1977 compared to 4.5 percent for the same 1976 period.

The Department conducted a survey of some of the customers buying rails and accessories from the Steelton plant. Several of the customers indicated they reduced purchases from Bethlehem Steel and increased purchases from foreign sources 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 the rails and accessories produced at the Steelton, Pa. plant of the Bethlehem Steel Corp. contributed importantly to the decline in sales or production and to the total or partial separation of the workers of that plant. In accordance with the provisions of the Act, I make the following certification.

All workers at the Steelton, Pa. plant of the Bethlehem Steel Corp. engaged in employment related to the production of rails and accessories, who became totally or partially separated from employment on or after April 1, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

In further conclude that all workers engaged in employment related to the production of one of the following products: welded pipes, water pipes, carbon bars, alloy bars or reinforcing bars are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C. this 9th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13233 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2824]

THE CHICAGO, MILWAUKEE, ST. PAUL & PACIFIC RAILROAD CO, MILWAUKEE, WIS.

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-2824: 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 28, 1977, in response to a worker petition received on December 9, 1977 which was filed on behalf of workers and former workers, engaged in transporting freight at Milwaukee Road, Milwaukee, Wis. During the course of the investigation it was determined the name of the firm is the Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

The notice of investigation was published in the FEDERAL REGISTER on January 10, 1978 (43 FR 1554). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Chicago, Milwaukee, St. Paul & Pacific Railroad 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 Trade Act of 1974 must be met. 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 firm provides services cannot be considered to be the "workers' firm."

The Department's investigation revealed that the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., subsidiary of the Chicago Milwaukee Corp., is a rail transport firm. The railroad is headquartered in Chicago and operates in sixteen States, serving the northern tier of States west of Chicago and reaching Omaha, Nebr., and Kansas City, Mo.

The Chicago, Milwaukee, St. Paul & Pacific Railroad Co., including all divisions and subdivisions thereof, is licensed and regulated by the Interstate Commerce Commission as a rail common carrier. Workers at the firm are engaged in transport operations and perform no production operations.

The Chicago, Milwaukee, St. Paul & Pacific Railroad Co. is not corporately, financially, or otherwise involved in the business of any of its customers. The workers on whose behalf this petition was filed were hired by and are paid by and subject to the control of Chicago, Milwaukee, St. Paul & Pacific Railroad Co. personnel only. All employment benefits enjoyed by the workers are provided and maintained by the Chicago, Milwaukee, St. Paul & Pacific Railroad Co.

Thus, the Chicago, Milwaukee, St. Paul & Pacific Railroad Co. must be considered the workers' firm.

CONCLUSION

After careful review, I conclude that all workers at the Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Milwaukee, Wis., 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 8th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13234 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-3448]

HY-GAIN DE PUERTO RICO, HUMACAO, P.R.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 30, 1978, in response to a worker petition received on that date which was filed on behalf of workers and former workers producing citizen band radios, base stations, mobile sets, hand-held sets, and mobile antennas.

Notice of investigation was published in the FEDERAL REGISTER on April 25, 1978 (43 FR 17551). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of Hy-Gain de Puerto Rico, Inc., Humacao, P.R., were previously certified eligible to apply for adjustment assistance on April 13, 1978.

Since workers newly separated, totally or partially, are covered by the existing certification, provided such separations occurred on or after the impact date (January 11, 1977) and on or before the certification expiration date (April 13, 1980), a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 1st day of May 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-13235 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2701]

IDARADO MINING CO., INC., OURAY, COLO.

Determinations 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-2701: 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 5, 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 producing zinc, lead, copper, gold, and silver at Idarado Mining Co., Inc., Ouray, Colo.

The notice of investigation was published in the FEDERAL REGISTER on December 16, 1977 (42 FR 63487). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Idarado Mining Co., Inc., its customers, the U.S. Department of the Interior, the American Bureau of Metal Statistics, *Metals Week, Metal Bulletin,* the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criteria has not been met, with respect to workers engaged in employment related to the production of lead concentrate, gold and silver:

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 aboslute decline in sales or production.

U.S. imports of lead concentrate increased from 45,206 short tons in 1975 to 88,988 short tons in 1976 and to 97,862 short tons in 1977. The ratio of imported lead concentrate to domestic production increased from 3.5 percent in 1975 to 6.7 percent in 1976 and to 7.4 percent in 1977.

Idarado exports all of its lead concentrate. Company production of gold and silver is negligible.

With respect to workers engaged in employment related to the production of zinc concentrate and copper concentrate, it is concluded that all of the criteria have been met.

U.S. imports of slab zinc, a further stage of processing for zinc concentrate, increased from 380,437 short tons in 1975 to 714,489 short tons in 1976 and then declined to 555,147 short tons in 1977. The ratio of imports to domestic production increased from 76.7 percent in 1975 to 127.0 percent in 1976 and incresed to 127.9 percent in 1977.

U.S. imports of refined copper, a further stage of processing for copper concentrate, increased from 147 thousand short tons in 1975 to 384 thousand short tons in 1976 and further increased to 391 thousand short tons in 1977. The ratio of imports to domestic production increased from 8.6 percent in 1975 to 21.0 percent in 1976 and increased to 22.2 percent in 1977.

Imports of both zinc and copper are affected by the differential between the domestic producers price for those commodities and their respective prices on the London Metals Exchange (LME). Domestic suppliers of zinc can remain competitive with foreign supplers as long as the domestic producers price is within 5 cents of the LME price.

In the fourth quarter of 1976 the LME price for zinc was 8.6 cents lower than the domestic producers price. The average LME price for zinc in 1977 was 7.6 cents lower than the average domestic producers price for zinc in 1977. During several months of 1977 the price differential was closer to 10 cents.

With respect to copper, when the LME price drops more than the estimated transportation costs of 5-8 cents per pound below the domestic producers price the demand for imported copper increases. The yearly average LME price for copper in 1977 was 10 cents below the yearly average domestic producers price in 1977. In July and August 1977, the LME price was almost 12 cents below the domestic producers price.

Another factor affecting the price for both zinc and copper are high inventory levels. An oversupply of zinc in 1975 and 1976 coupled with the slack demand for zinc based products in those years contributed to record inventory levels. Inventories of domestic and imported zinc on consignment at smelters increased from 42,897 short tons in December 1974 to 67,449 short tons in 1975 and to 88,807 short tons in 1976.

While imports of refined copper had increased by 161 percent in 1976 compared to 1975, domestic demand increased at only a fraction of that rate. Inventory levels of domestic and imported copper at domestic refineries in December 1976 were 31.4 percent above December 1975 levels and were 143.2 percent above December 1974 levels.

Abundant supplies of both zinc and copper in the foreseeable future provide no reason for domestic consumers of zinc and/or copper to maintain ties with domestic producers for purposes of a guarantee against zinc and/or copper shortages.

Idarado and other producers of both zinc and copper lost sales in 1977 because of the excessive inventories of domestic and imported zinc and copper.

Price pressure from imported zinc and copper has reduced the ability to profitably mine domestic ore and convert it to zinc concentrate and copper concentrate. Comments made by customers purchasing zinc concentrate from Idarado substantiate the influence of imported zinc on the price which Idarado can obtain for its concentrate. One customer has lowered its price for slab zinc four times since October 1976, resulting in reductions in the price paid to Idarado for its concentrate. Another customer stopped purchasing zinc concentrate from Idarado in 1977 and substantially increased its purchases of imported zinc concentrate in the same year.

With respect to copper, industry sources state that the weighted average production costs of the lowest cost domestic copper mines are 63 cents per pound, while the weighted average costs for the highest cost domestic copper mines are $1.05 per pound. Thus, with a current market price of 60 cents per pound domestic producers lose, on the average, 3 to 45 cents on each pound of copper they chose to sell.

Idarado's decision to layoff workers in October 1977 and further reduce production was based on an attempt to minimize losses which the company could not avoid were it to run at normal production levels at the current market prices for zinc and copper.

CONCLUSION

After careful review I conclude that increased imports of articles like or directly competitive with zinc concentrate and copper concentrate produced at Idarado Mining Co., Ouray, Colo. contributed importantly to the decline in sales and to the total or partial separations of workers at that facility. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of zinc concentrate and copper concentrate at Idarado Mining Co., Ouray, Colo. who became totally or partially separated from employment on or after September 17, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further conclude that workers engaged in employment related to the production of lead concentrate, gold and silver are denied eligibility.

Signed at Washington, D.C., this 8th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 13236 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-3286]

RAIN DUCKER INC., DULUTH, MINN.

Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on March 1, 1978 in response to a worker petition received on February 23, 1978 which was filed on February 17, 1978 on behalf of workers and former workers producing outerwear at Rain Ducker Inc., Duluth, Minn.

Notice of investigation was published in the FEDERAL REGISTER on March 14, 1978 (43 FR 10649). No public hearing was requested and none was held.

Evidence developed during the investigation indicates that Rain Ducker, Inc., ceased to function as a corporate entity on September 1, 1976 more than one year from the signature date February 17, 1978 of this petition.

Section 223(b)(1) of the Trade Act of 1974 states that a certification may not apply to any worker whose last total or partial separation occurred more than one year from the filing date of this petition. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 27th day of April, 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-13237 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2585]

S. D. SALES CORP., GARNERVILLE, 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-2585: 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 November 2, 1977 which was filed on behalf of workers formerly engaged in textile printing on cloth for the apparel industry at S. D. Sales Corp., Garnerville, N.Y.

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 S. D. Sales Corp., its customers, the American Textile Manufacturers Institute, the National Cotton Council of America, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files. 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 absolutely in quantity in 1976 compared to 1975, then decreased 2 percent in 1977 compared to 1976. The ratios of imports to domestic production and consumption of finished fabric were below 2 percent each year from 1974 through 1976.

Customers (fabric converters) of S. D. Sales Corp., who were surveyed, did not purchase imported fabric in the 1975-77 period.

Customers (apparel manufacturers) of these converters in a second-tier survey, revealed that manufacturers which increased purchases of imported fabric also increased purchases from domestic sources.

CONCLUSION

After careful review I conclude that all workers at S. D. Sales Corp., Garnerville, N.Y., 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 8th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13238 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2535]

SELMER CO., ELKHART, IND.

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-2535: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 31, 1977, in response to a worker petition received on October 26, 1977, which was filed by Local No. 612 of the United Automobile Workers of America on behalf of workers and former workers producing flutes, clarinets, and saxophones at the Selmer Division, Elkhart, Ind. of the Magnavox Corp. During the course of the investigation, it was established that the Selmer Co. is an independent subsidiary of North American Philips Corp., New York, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on November 15, 1977 (42 FR 59131). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the Selmer Co., 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 woodwind instruments, including clarinets, saxophones, flutes, piccolos, oboes, and bassoons, declined from 56,117 units in January-September 1976 to 54,383 units in January-September 1977. The ratio of imports to domestic production increased from 22.6 percent in January-September 1976 to 23.3 percent in January-September 1977.

A survey of Selmer's customers revealed that from 1976 to 1977 some customers had reduced their purchases of Selmer's woodwind instruments and had increased their purchases of imported woodwind instruments.

Unit production of Selmer's flutes, student model clarinets, and professional model clarinets and saxophones decreased from 1975 to 1976 and declined in January-October 1977 compared to the like period in 1976. Employment of production workers at Selmer's Main Street Plant, Case Plant, and Plant No. 2 decreased from 1975 to 1976 and declined in January-October 1977 compared to the like period in 1976. Since the carrying cases produced at the Case Plant are sold along with the woodwind instruments produced at Elkhart, workers at the Case Plant are engaged in employment related to the production and sale of Selmer's woodwind instruments.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with woodwind instruments produced at the Main Street Plant, Case Plant, and Plant No. 2 of the Selmer Co., Elkhart, Indiana contributed importantly to the decline in sales and production and to the total or partial separations of workers at those plants. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Main Street Plant, Case Plant, and Plant No. 2 of the Selmer Co., Elkart, Ind., who became totally or partially separated from employment on or after October 17, 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 8th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research

[FR Doc. 78-13239 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2677]

ST. CROIX CORP., PARK FALLS, 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-2677: 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 United Paper Workers' International Union, Local No. 883 on behalf of workers and former workers producing fiberglass fishing rods, tubular fiberglass blanks, solid fiberglass blanks and other fiberglass products at the Park Falls, Wis. plant of the St. Croix Corp., a part of the Schaper-St. Croix Corp. group of manufacturers in Minneapolis, Minn. During the investigation, company data revealed that the only major products were tubular and solid fiberglass fishing rods.

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 from officials of the St. Croix Corp., its customers, the U.S. International Trade Commission, the U.S. Department of Commerce, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibilty 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 fishing rods and poles increased from 3.8 million units in 1975 to 4.5 million units in 1976, and rose to 6.7 million units in 1977, an increase of 49 percent over 1976. The ratio of imported fishing rods and poles to domestic production increased from 44.7 percent in 1975 to 47.9 percent in 1976 and to 59.8 percent in 1977.

A survey of customers of the St. Croix Corp. revealed that several had increased purchases of imported fishing rods, directly or from other domestic sources, while reducing purchases from St. Croix in 1976 and the first nine months of 1977.

As a result of competitive pressure from lower-priced imports, Schaper-St. Croix Corp. began to market a Fishing Machine in the last quarter of 1976. The Fishing Machine combines an imported telescoping fiberglass rod and an imported reel with a St. Croix Rangefinder/Depthfinder. The Fishing Machine is assembled at the Schaper-St. Croix Corp. plant in Minneapolis and is sold in the United States. Sales of the Fishing Machine increased 93.6 percent in the fourth quarter of 1977 compared to the fourth quarter of 1976. The success of the Fishing Machine, which incorporates an imported rod, prompted Schaper-St. Croix to abandon its traditional fishing rod business and close the Park Falls facility.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with fiberglass fishing rods produced by the Park Falls, Wis. plant of the St. Croix Corp. contributed importantly to the total or partial separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Park Falls, Wis. plant of the St. Croix Corp. who became totally or partially separated from employment on or after February 27, 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 9th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13240 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2740]

STUTZ PRODUCTS CORP., HARTFORD CITY, IND.

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-2740: 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 7, 1977 in response to a worker petition received on November 28, 1977, which was filed by Directly Affiliated Local 24694 (AFL-CIO) on behalf of workers and former workers producing meat slicing and meat chopping knives at Stutz Products Corp., Hartford City, Ind.

The Notice of Investigation was published in the FEDERAL REGISTER on December 30, 1977 (42 FR 65308). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Stutz Products 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 adjustments 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.

There were no imports of meat slicing and meat chopping knives for commercial food machines from 1973 to 1977. In 1978, a major domestic user of chopping and slicing knives, a customer of Stutz who accounted for a large proportion of Stutz sales, began purchasing imported knives and reducing orders from Stutz Products.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with meat slicing and meat chopping knives produced at Stutz Products Corp., Hartford City, Ind., contributed importantly to the decline in sales and separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers at Stutz Products Corp., Hartford City, Ind. who became totally or partially separated from employment on or after October 16, 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 9th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-13241 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2784]

U.S. STEEL CORP., VANDERGRIFT PA.

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-2784: 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 14, 1977, in response to a worker petition received on December 9, 1977, which was filed by the United Steelworkers of America on behalf of workers producing carbon steel products at the Vandergrift, Pa. plant of the U.S. Steel Corporation. The investigation revealed the electrical sheet is produce at the plant.

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 the U.S. Steel Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Trade Act of 1974 must be met. Without regard to whether any of the other criteria have beeen 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 thereof, have become totally or partially separated, or are threatened to become totally or partially separated

Average plant employment increased in each quarter of 1977 compared to the respective like 1976 quarters. The average hours worked per worker per week increased in 1977 compared to 1976. There are no threatened reductions in employment.

CONCLUSION

After careful review I conclude that all workers at the Vandergrift, Pa. plant of the U.S. Steel Corporation are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of May 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration, and Planning.

[FR Doc. 78-13242 Filed 5-15-78; 8:45 am]

[TA-W-3143]

VALLEY MANUFACTURING CORP., SALTVILLE, VA.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 15, 1978, in response to a worker petition received on February 2, 1978, which was filed by the International Ladies Garment Workers Union on behalf of workers and former workers producing nurses' and waitresses' uniforms at the Saltville, Va. plant of Valley Manufacturing Corp.

Notice of investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8862). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers were separated from employment at the Saltville, Va. plant of Valley Manufacturing Corp. in July, 1976. Section 223 (b) (1) of the Trade Act of 1974 states that a certification under this section shall not apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than twelve months before the date of filing under Title II, Chapter 2 of the Trade Act of 1974.

The filing date of the petition in this case is February 2, 1978. Since workers separated from employment at the Saltville, Va. plant of Valley Manufacturing Corp. prior to February 2, 1977, are not eligible for program benefits under Title II, Chapter 2, Subchapter B of the Trade Act of 1974, continuation of this investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C., this 1st day of May 1978.

MARVIN M. FOOKS,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 78-13243 Filed 5-15-78; 8:45 am]

[4510-28]

[TA-W-2304]

WESTERN ELECTRIC CO., KEARNEY, 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-2304: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on August 29, 1977 in response to a worker petition received on August 25, 1977 which was filed by the International Brotherhood of Electrical Workers on behalf of workers and former workers producing telephone and telegraph (wire) apparatus, components and equipment at the Kearney, N.J. plant of Western Electric Co.

The Notice of Investigation was published in the FEDERAL REGISTER on September 20, 1977 (42 FR 47270). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Western Electric Co., 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.

Evidence developed during the course of the investigation revealed that imports of telephone and telegraph (wire) apparatus, equipment and components did not exceed two percent of domestic production in 1975, 1976 or in the first nine months of 1977. Imports of telephone and telegraph (wire) apparatus increased annually from 42.5 million dollars in 1975 to 57.5 million dollars in 1976. Imports increased from 43.2 million dollars in the first nine months of 1976 to 48.3 million dollars in the first nine months of 1977.

The Kearney plant sold over 90 percent of its output in 1976 and 1977 to the Bell System, which did not purchase imported cables.

The Kearney, N.J. plant is one of the oldest Western Electric manufacturing facilities. Declines in production and employment at Kearney in 1976 and 1977 were due to a transfer of cable production operations to other U.S. Western Electric plants.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that workers at the Kearney, N.J. plant of Western Electric Co. are denied eligibility to apply for trade adjustment assistance.

Signed at Washington, D.C. this 8th day of May 1978.

HARRY J. GILMAN,
Acting Director, Office of
T3Foreign Economic Research.

[FR Doc. 78-13244 Filed 5-15-78; 8:45 am]

[7555-01]

NATIONAL SCIENCE FOUNDATION

SUBCOMMITTEE ON NEUROBIOLOGY

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 Neurobiology of the Advisory Committee for Behavioral and Neural Sciences.

DATE AND TIME: May 31, June 1, and 2, 1978: 9 a.m. to 5 p.m. each day.

PLACE: Room 321, May 31; room 338, June 1 and 2; National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON:
Dr. Janett Trubatch, Program Direc-

tor, Neurobiology Program, room 320, National Science Foundation, Washington, D.C. 20550, telephone 202-634-4036.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in Neurobiology.

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 determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

MAY 10, 1978.

[FR Doc. 78-13191 Filed 5-15-78; 8:45 am]

[7555-01]

ADVISORY COUNCIL; TASK GROUP NO. 2

Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92-463, the National Science Foundation announces the following meeting:
NAME: Task Group No. 2 of the NSF Advisory Council.

PLACE: Room 421, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

DATE: Wednesday, May 31, 1978.

TIME: 9 a.m. until 5 p.m.

TYPE OF MEETING: Open.

CONTACT PERSON:
Ms. Margaret L. Windus, Executive Secretary, NSF Advisory Council, National Science Foundation, Room 518, 1800 G Street NW., Washington, D.C. 20550, telephone: 202-632-4368.

PURPOSE OF TASK GROUP: The purpose of the Task Group, composed of members of the NSF Advisory Council, is to provide the full Advisory Council with a mechanism to consider numerous issues of interest to the Council that have been assigned by the National Science Foundation.

SUMMARY MINUTES: May be obtained from the Committee Management Coordinator, Division of Financial and Adminstrative Management, National Science Foundation, room 248, 1800 G Street NW, Washington, D.C. 20550.

AGENDA: To identify and review the ways non-scientists now participate in the formation of the nation's science policy, the present arrangements for involving the public in the development of Foundation policies, and suggest possible new approaches or improvements in NSF practices.

Dated: May 10, 1978.

M. REBECCA WINKLER,
Committee Management Coordinator.

[FR Doc. 78-13192 Filed 5-15-78; 8:45 am]

[7555-01]

ADVISORY COMMITTEE FOR MINORITY PROGRAMS IN SCIENCE EDUCATION

Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

NAME: Advisory Committee for Minority Programs In Science Education.

DATE AND TIME: June 1 and 2, 1978—9 a.m. each day.

PLACE: Room 651, National Science Foundation, 5225 Wisconsin Avenue NW., Washington, D.C. 20550.

TYPE OF MEETING: Open.

CONTACT PERSON:
Mrs. Fran Watts, Staff Assistant, Science Education Directorate, National Science Foundation, room W-600, Washington, D.C. 20550, telephone: 202-282-7930.

SUMMARY MINUTES: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, room 248, National Science Foundation, Washington, D.C. 20550.

PURPOSE OF COMMITTEE: To assist in the evaluation and assessment of activities in the ethnic minority-focused Foundation programs.

AGENDA:

Thursday, June 1. Update on FY 1979 Budget; Committee Working Session; Program Review of Minority Programs; Progress Report on Program Development.

Friday, June 2. Junior High School Thrust; Information on MISIP Curriculum Conference; Committee Working Session.

M. REBECCA WINKLER,
Committee Management Coordinator.

MAY 10, 1978.

[FR Doc. 78-13193 Filed 5-15-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON MOLECULAR BIOLOGY

Notice of 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 Molecular Biology, Group B, of the Advisory Committee for Physiology, Cellular and Molecular Biology.

DATE AND TIME: June 1 and 2, 1978; 9 a.m. to 5 p.m. each day.

PLACE: Room 421, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON:
Dr. Frederick I. Tsuji, Program Director, Biochemistry Program, room 330, National Science Foundation, Washington, D.C., 20550, telephone: 202-632-4260.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in Molecular 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. 552 b(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 10, 1978.

[FR Doc. 78-13194 Filed 5-15-78; 8:45 am]

[7555-01]

SUBCOMMITTEE ON DEVELOPMENTAL BIOLOGY

Notice of 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 Developmental Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

DATE AND TIME: May 31, June 1 and 2, 1978; 9 a.m.

PLACE: Room 543, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

TYPE OF MEETING: Closed.

CONTACT PERSON:

Dr. Mary E. Clutter, Program Director, Developmental Biology Program, Room 326. National Science Foundation, Washington, D.C. 20550, telephone: 202-632-4314.

PURPOSE OF SUBCOMMITTEE: To provide advice and recommendations concerning support for research in developmental 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 determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management Coordinator.

MAY 5, 1978.

[FR Doc. 78-13195 Filed 5-15-78; 8:45 am]

[7590-01]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REACTOR SAFETY RESEARCH

Notice of Meeting

The ACRS Subcommittee on Reactor Safety Research will hold an open meeting on May 31, 1978, in room 1046, 1717 H Street NW., Washington, D.C. 20555.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that apropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, May 31, 1978—2 p.m. until the conclusion of business.

The subcommittee will meet in executive session to discuss review efforts for the ACRS 1978 report to Congress on NRC reactor safety research.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Thomas G. McCreless, telephone 202-634-1374, between 8:15 a.m. and 5 p.m., e.d.t.

Dated: May 11, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer.

[FR Doc. 78-13359 Filed 5-15-78; 8:45 am]

[7590-01]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON REGULATORY ACTIVITIES

Notice of Meeting

The ACRS Subcommittee on Regulatory Activities will hold an open meeting on May 31, 1978 in Room 1046, 1717 H Street NW., Washington, D.C. 20555.

In accordance with the procedures outlined in the FEDERAL REGISTER on October 31, 1977, page 56972, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows:

Wednesday, May 31, 1978.—The meeting will commence at 8:45 a.m.

The Subcommittee will hear presentations from the NRC Staff and will hold discussions with this group pertinent to the following:

(1) Proposed Regulatory Guide 1.XX, "Auditing of Quality Assurance Programs for Nuclear Power Plants"

(2) Regulatory Guide 1.133, Revision 1, "Loose-Part Detection Program for the Primary System of Light-Water-Cooled Reactors"

(3) Regulatory Guide 1.136, Revision 1, "Material for Concrete Containments"

Other matters which may be of a predecisional nature relevant to reactor operation or licensing activities may be discussed following this session.

Persons wishing to submit written statements regarding Regulatory Guides 1.133, Revision 1 and 1.136, Revision 1, may do so by providing a readily reproducible copy to the Subcommittee at the beginning of the meeting. However, to insure that adequate time is available for full consideration of these comments at the meeting, it is desirable to send a readily reproducible copy of the comments as far in advance of the meeting as practical to Mr. Gary R. Quittschreiber (ACRS), the Designated Federal Employee for the meeting, in care of ACRS, Nuclear Regulatory Commission, Washington, D.C. 20555 or telecopy them to the Designated Federal Employee, 202-634-1925, as far in advance of the meeting as practical. Such comments shall be based upon documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street NW., Washington, D.C. 20555.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee, Mr. Gary R. Quittschreiber, telephone 202-634-1374, between 8:15 a.m. and 5 p.m., e.d.t.

Dated May 11, 1978.

JOHN C. HOYLE,
Advisory Committee Management Officer

[FR Doc. 78-13358 Filed 5-15-78; 8:45 am]

[7590-01]

[NUREG-0430 Vol. 1, No. 1]

FUEL CYCLE FACILITIES

Issuance and Availability

The U.S. Nuclear Regulatory Commission has issued the first semi-annual report, "Licensed Fuel Facility Status Report" NUREG-0430, dated May 1978. The report contains (a) general facility data such as plant location, type of operation and Special Nuclear Material (SNM) authorization limits; (b) plant operating status; (c) a summary of NRC inspection results; and (d) licensee reports involving plant effluent data, inventory difference data, and reportable events.

In one respect this status report constitutes the second report on inventory accounting differences at NRC-licensed facilities possessing significant quantities of highly enriched uranium, plutonium and uranium-233. The first NRC report of inventory difference data, which was issued in August 1977 (NUREG-0350), covered the period from January 1, 1968 through September 30, 1976. The status report covers inventory difference data from October 1, 1976 through September 30, 1977, and includes inventory difference data for low enriched uranium as well as highly enriched uranium, plutonium and uranium-233.

This new report, which is planned to be issued on a semi-annual basis in the future, also contains information on licensed uranium mills, and conversion facilities as well as fuel fabrication plants.

NUREG-0430 is available for inspection at the Commission's Public Document Room at 1717 H Street NW, Washington, D.C. Copies may be purchased for $5.25 per copy from the National Technical Information Service, Springfield, Va. 22161.

Dated at Bethesda, Md., this 10th day of May 1978.

For the Nuclear Regulatory Commission.

JOHN G. DAVIS,
Deputy Director, Office of Inspection and Enforcement.

[FR Doc.78-13360 Filed 5-15-78; 8:45 am]

[7555-02]

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

REVIEW PANEL ON DAM SAFETY PROGRAMS

Notice of Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the Office of Science and Technology Policy announces the following meeting:

NAME: Review Panel on Dam Safety Programs.

DATE: June 1, 1978.

TIME: 9:30 a.m. to 4 p.m.

PLACE: Room 3025, New Executive Office Building, Washington, D.C. 20500.

TYPE OF MEETING: Open.

CONTACT PERSON:
Mr. William Montgomery, Executive Office of the President, Office of Science and Technology Policy, Washington, D.C. 20500, telephone 202-395-4692.

SUMMARY MINUTES: May be obtained from the Office of Science and Technology Policy, Washington, D.C. 20500.

PURPOSE OF REVIEW PANEL: The Office of Science and Technology Policy, in accordance with the statutory mandate to analyze and interpret significant developments and trends in science and technology and relate these to their impact on the achievement of national goals and objectives, is reviewing the activities and plans appropriate to the Federal, State, local governmental units, and the private sector to insure the safety of dams which are in any way affected by a Federal role.

AGENDA: 9:30 a.m. to 4 p.m.—a discussion of draft materials prepared as part of the policy review process for the President.

WILLIAM J. MONTGOMERY,
Executive Officer.

[FR Doc. 78-13201 Filed 5-15-78; 8:45 am]

[8025-01]

SMALL BUSINESS ADMINISTRATION

[License No. 04/05-0011]

VICKSBURG SMALL BUSINESS INVESTMENT CO.

Filing of Application for Approval of Conflict of Interest Transaction

Notice is herby given that Vicksburg Small Business Investment Company (Vicksburg), 302 First National Bank Building, Vicksburg, Miss. 39180, a Federal Licensee under the Small Business Investment Act of 1958, as amended (Act), (15 U.S.C. 661 et seq.) has filed an application with the Small Business Administration (SBA), pursuant to section 107.1004 of the SBA's rules and regulations governing Small Business Investment Companies (13 CFR 107.1004 (1977)), for approval of a conflict of interest transaction falling within the scope of the above section of the Act and Regulations.

Subject to such approval, Vicksburg proposes to provide financing to T & J Utility, Inc. (T & J).

The principal owner of T & J are Messrs. Ernest Thomas and George Jabour, Jr. Each owns 50 percent of the issued stock of T & J.

The proposed financing is brought within the purview of section 107.1004 of the regulations since Mr. Thomas will own one-half of T & J's stock and is a director of Vicksburg. Mr. Thomas owns less than one percent of Vicksburg stock. The financing is no more favorable in regard to its terms and conditions than other financings provided by Vicksburg to other small concerns.

Notice is hereby given that interested persons may, on or before may 31, 1978, submit to SBA, in writing, relevant comments on the proposed transaction. Any such communication should be addressed to the Associate Administrator for Finance and Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416. After expiration of the fifteen days, SBA may dispose of this application on the basis of the information contained in the application, the comments (if any) which are receivd, and other relevant data.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: May 9, 1978.

PETER F. MCNEISH,
Deputy Associate Aministrator for Investment.

[FR Doc. 78-13190 Filed 5-15-78; 8:45 am]

[4810-22]

DEPARTMENT OF THE TREASURY

Customs Service

OLEORESINS FROM INDIA

Receipt of Countervailing Duty Petition and Initiation of Investigation

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

ACTION: Initiation of Countervailing Duty Investigation.

SUMMARY: This notice is to advise the public that a satisfactory petition has been received and that a countervailing duty investigation has been started to determine if benefits are paid by the Government of India to

manufacturers or exporters of oleoresins which constitute the payment of a bounty or grant within the meaning of the U.S. Countervailing Duty Law. A preliminary determination will be made not later than September 21, 1978, and a final determination not later than March 21, 1979.

EFFECTIVE DATE: May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

William Trujillo, Operations Officer, Technical Branch, Duty Assessment Division, Office of Operations, United States Customs Service, 1301 Constitution Avenue NW, Washington, D.C. 20229, 202-566-5492.

SUPPLEMENTARY INFORMATION: A petition in satisfactory form was received on March 21, 1978, alleging that benefits conferred by the Government of India upon the manufacture, production or exportation of oleoresins from India constitute the payment or bestowal of a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended (19 U.S.C. 1303).

For purposes of this notice, "oleoresins" means flavoring extracts, and fruit flavors, essences, esters, and oils, not containing alcohol, and not in ampoules, capsules, tablets, or similar forms, classifiable under item number 450.20 of the Tariff Schedules of the United States (TSUS). An oleoresin is a thick liquid extract of the flavor of a spice used primarily as a seasoning in the food industry.

The alleged bounties or grants as provided in the petition include (1) cash grants provided by the Government of India which are calculated as a fixed percentage of the value of exports and (2) import permits.

The oleoresins from India specified in the petition are eligible for duty-free treatment under the Generalized System of Preferences. In the event that it becomes necessary to refer this matter to the United States International Trade Commission pursuant to section 303(a)(2), Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(2)), there is evidence on record concerning injury or likelihood of injury to, or prevention of the establishment of, an industry in the United States. Information contained in the petition indicates increased imports of oleoresins from India both absolutely and as a share of the U.S. market, declining sales by domestic producers and reduced profit margins.

Pursuant to section 303(a)(4) Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(4)), the Secretary of the Treasury is required to issue a preliminary determination as to whether or not any bounty or grant is being paid or bestowed within the meaning of that statute within 6 months of receipt, in satisfactory form, of a petition alleging the payment or bestowal of a bounty or grant. A final determination must be issued within 12 months of the receipt of such petition.

Therefore, a preliminary determination on this petition will be made no later than September 21, 1978, as to whether or not the alleged payments or bestowals conferred by the Government of India upon the manufacture, production or exportation of the merchandise described above constitute a bounty or grant within the meaning of section 303, Tariff Act of 1930, as amended. A final determination will be issued no later than March 21, 1979.

This notice is published pursuant to section 303(a)(3) of the Tariff Act of 1930, as amended (19 U.S.C. 1303(a)(3)).

Pursuant to Reorganization Plan No. 26 of 1950 and Treasury Department Order 190 Revision 15, March 16, 1978, provisions of Treasury Department Order No. 165, Revised, November 2, 1954 and §159.47(c) of the Customs Regulations (19 CFR 159.47(c)), insofar as they pertain to the initiation of a countervailing duty investigation by the Commissioner of Customs, are hereby waived.

ROBERT H. MUNDHEIM,
General Counsel of the Treasury.

MAY 9, 1978.

[FR Doc.78-13182 Filed 5-15-78; 8:45]

[7035-01]

INTERSTATE COMMERCE COMMISSION

[Notice No. 660]

ASSIGNMENT OF HEARINGS

MAY 11, 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.

MC 59856 (Sub-76), Salt Creek Freightways, now assigned June 12, 1978, at Missoula, MT, will be held in the Clark Room, Red Lion-Edgewater, 100 Madison.

No. MC 134922 (Sub-No. 181), B. J. McAdams, Inc. Extension Kosciusko, MS and No. MC-C-9847, B. J. McAdams, Inc., Freeman Truck Lines, Inc., Transcon Lines, Eugene D. Anderson John Paul Jones, and Wentworth E. Griffin—Investigation—Shipper Support Misrepresentation and Coercion, now assigned May 15, 1978, at Washington, DC are postponed to June 27, 1978, at the Offices of the Interstate Commerce Commission, Washington, DC.

MC 110393 (Sub-36), GEM, Transport, Inc., now being assigned July 24, 1978, at the Offices of the Interstate Commerce Commission in Washington, DC.

No. MC 121683 (Sub-No. 2), Jackson Express, Inc., now being assigned May 30, 1978 (4 days), at Jackson, TN, at the Ramada Inn, U.S. Hwy 45 Bypass.

MC 720 (Sub-41), Bird Trucking Co., Inc., is now assigned for hearing July 11, 1978 (1 day) at Chicago, IL, at a location to be later designated.

MC 27089 (Sub-4), Chi-Waukee Truck Lines, Inc., is now assigned for hearing July 12, 1978 (1 day) at Chicago, IL, at a location to be later designated.

MC 115730 (Sub-43), The Mickow Corp., is now assigned for hearing July 13, 1978 (1 day) at Chicago, IL, at a location to be later designated.

MC 82492 (Sub-176), Michigan & Nebraska Transit Co., Inc., is now assigned for hearing July 14, 1978 (1 day) at Chicago, IL, at a location to be later designated.

AB 7 (Sub-49), Chicago, Milwaukee, St. Paul & Pacific Railroad Co. Abandonment near Monroe and Mineral Point, in Greene, Lafayette and Iowa Counties, WI, is now assigned for hearing July 17, 1978 (1 week) at Darlington, WI, at a location to be later designated.

H. G. HOMME, Jr.
Acting Secretary.

[FR Doc. 78-13246 Filed 5-15-78; 8:45 am]

[7035-01]

[Docket No. AB-3 (Sub-No. 16F)]

MISSOURI PACIFIC RAILROAD CO.

Abandonment Near Mount Vernon in Jefferson County, Ill.; Findings

Notice is hereby given pursuant to section 1a of the Interstate Commerce Act (49 U.S.C. 1a) that by Certificate and Decision, dated May 1, 1978, a finding, which is administratively final, was made by the Commission, Review Board No. 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 ICC 76 (1977) and for public use as set forth in said order, the present and future public convenience and necessity permit the abandonment by the Missouri Pacific Railroad Co. of a line of railroad known as segment of the Pinckneyville Subdivision, extending from at or about milepost 121.6, near Mount Vernon, IL, to a point at or about milepost 125.2, in Mount Vernon, IL, a total distance of approximately 3.6 miles, all in Jefferson County, IL. A certificate of public convenience and necessity permitting abandonment was issued to the Missouri Pacific Railroad Co. Since no investigation was instituted, the requirement of §1121.38(a) of the regulations that publication of notice of abandon-

ment decisions in the FEDERAL REGISTER be made only after such a decision becomes administratively final was waived.

Upon receipt by the carrier of an actual offer of financial assistance, the carrier shall make available to the offeror the records, accounts, appraisals, working papers, and other documents used in preparing Exhibit I (§ 1121.45 of the regulations). Such documents shall be made available during regular business hours at a time and place mutually agreeable to the parties.

The offer must be filed and served no later than June 7, 1978. The offer, as filed, shall contain information required pursuant to § 1121.38(b) (2) and (3) of the regulations. If no such offer is received, the certificate of public convenience and necessity authorizing abandonment shall become effective 45 days from the date of this publication.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-13250 Filed 5-15-78; 8:45 am]

[7035-01]

[Docket No. AB-15 (Sub-No. 1)]

PETALUMA AND SANTA ROSA RAILROAD CO.

Abandonment Between Sebastopol and Turner in Sonoma County, Calif.; Findings

Notice is hereby given pursuant to section 1a(6)(a) of the Interstate Commerce Act (49 U.S.C. 1a(6)(a)) that by a decision entered on January 19, 1978, a finding, which is administratively final, was made by the Commission, Review Board No. 5, stating that, subject to the conditions for the protection of railway employees prescribed by the Commission in *Oregon Short Line R. Co.—Abandonment—Goshen*, 354 ICC 76 (1977) and for public use as set forth in said decision, the present and future public convenience and necessity permit the abandonment by the Petaluma & Santa Rosa Railroad Co. (P&SR, a wholly-owned subsidiary of Northwestern Pacific Railway Co. which, in turn, is a wholly-owned subsidiary of the Southern Pacific Transportation Co. (SP)) of a line of railroad extending from railroad milepost 16.660 near Sebastopol in a southerly direction to the end of the line at railroad milepost 11.138 near Turner, a distance of 5.522 miles in Sonoma County, CA. A certificate of abandonment will be issued to the appliant based on the above-described finding of abandonment, 30 days after publication of this notice, unless within 30 days from the date of publication, the Commission further finds that:

(1) A financially responsible person (including a government entity) has offered financial assistance (in the form of a rail service continuation payment) to enable the rail service involved to be continued; and

(2) It is likely that such proffered assistance would:

(a) Cover the difference between the revenues which are attributable to such line of railroad and the avoidable cost of providing rail freight service on such line, together with a reasonable return on the value of such line, or

(b) Cover the acquisition cost of all or any portion of such line of railroad.

If The Commission so finds, the issuance of a certificate of abandonment will be postponed for such reasonable time, not to exceed 6 months, as is necessary to enable such person or entity to enter into a binding agreement, with the carrier seeking such abandonment, to provide such assistance or to purchase such line and to provide for the continued operation of rail sevices over such line. Upon notification to the Commission of the execution of such an assistance or acquisition and operating agreement, the Commission shall postpone the issuance of such a certificate for such period of time as such an agreement (including any extensions or modifications) is in effect. Information and procedures regarding the financial assistance for continued rail service or the acquisition of the involved rail line are contained in the Notice of the Commission entitled "Procedures for Pending Rail Abandonment Cases" published in the FEDERAL REGISTER on March 31, 1976, at 41 FR 13691. All interested persons are advised to follow the instructions contained therein as well as the instructions contained in the above-referenced order.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-13251 Filed 5-15-78; 8:45 am]

[7035-01]

[Notice No. 75]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 10, 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 25798 (Sub-No. 314TA), filed April 4, 1978. Applicant: CLAY HYDER TRUCKING LINES, INC., P.O. Box 1186, 502 E. Bridgers Avenue, Auburndale, FL 33823. Applicant's representative: Tony G. Russell, P.O. Box 1186, Auburndale, FL 33823. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Motor oil*, in containers, from the facilities of Quaker Supreme Corp., at Montgomery, AL, to those points in FL on, east, and south of a line beginning at the junction of Interstate Hwy 75 and the GA-FL Line and extending in a southerly direction along Interstate Hwy 75 to its junction with FL Hwy 24, at or near Gainesville, FL, and thence extending in a westerly direction along FL Hwy 24 to Cedar Key, FL, for 180 days. There is no environmental impact involved in this application. Supporting shipper(s): Quaker Supreme Chemical Corp., Suite 7, Building A, Executive Park, Montgomery, AL 36101. Send protests to: Donna M. Jones, Transportation Assistant, Interstate Commerce Commission, Monterey Building, Suite 101, 8410 NW., 53rd Terrace, Miami, FL 33166.

No. MC 26396 (Sub-No. 174TA), filed April 11, 1978. Applicant: POPELKA TRUCKING CO., d.b.a. THE WAGGONERS, 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: *Plastic pipe and plastic pipe fittings*, from McPherson, KS, 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): Robert L. Thompson, General Traffic Manager, Certain Teed Corp., P.O. Box 860, Valley Forge, PA 19482. Send protests

to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

No. MC 30837 (Sub-No. 479TA), filed April 11, 1978. Applicant: KENOSHA AUTO TRANSPORT CORP., 4200 39th Avenue, Kenosha, WI 53140. Applicant's representative: Albert P. Barber (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Trucks, truck tractors and truck chassis,* in initial movements, in driveaway service, from Oshkosh, WI, to points in the United States (including AK, but excluding HI), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Oshkosh Truck Corp., 2307 Oregon Street, Oshkosh, WI (Wm. J. Dougherty). 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 41404 (Sub-No. 144TA), filed April 11, 1978. Applicant: ARGO-COLLIER TRUCK LINES CORP., P.O. Drawer 440, Fulton Highway, Martin, TN 38237. Applicant's representative: Mark L. Horne, P.O. Drawer 440, Fulton Highway, Martin, TN 38237. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* (except in bulk), from the facilities of Rich Products Corp. at or near Murfreesboro, TN, to points in AL, FL, GA, IL, IN, KY, LA, MN, MS, MO, NC, OH, and SC, 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: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, 100 North Main Building, Suite 2006, 100 North Main Street, Memphis, TN 38103.

No. MC 55896 (Sub-No. 73TA), filed April 3, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI. 48180. Applicant's representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Aluminum castings and automotive parts,* from Bedford, IN, to points in MI and OH; and (2) *scrap metals and materials and supplies* used in the production and transportation of aluminum castings and automotive parts, from points in MI and OH; to Bedford, Needmore and Wabash, IN, restricted in (1) and (2) above, to traffic originating at or destined to the plantsite and storage facilities of General Motors Corp. at the named origins and the named destinations, for 180 days. Supporting Shipper(s): Central Foundry Division, GMC 77 West Center Street, Saginaw, MI 48605. (D. B. Pietrzak Divisional Traffic 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 93840 (Sub-No. 38TA), filed April 11, 1978. Applicant: GLESS BROS., INC., P.O. Box 216, 34 Genesco Street, Blue Grass, IA. 52726. Applicant's representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA. 50309. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Gypsum and limestone,* in bulk), from the facilities of American Pelletizing Corp. in Marion County, IA, to points in IL, MN, NE, MO, SD, KS, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper(s): American Pelletizing Corp., P.O. Box 3628, Des Moines, IA 50322. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 99610 (Sub-No. 31TA), filed April 20, 1978. Applicant: ROSS NEELY EXPRESS, INC., 1500 Second Street, Pratt City, Birmingham, AL 35214. Applicant's representative: Edward G. Villalon, 1032 Pennsylvania Bldg., Washington, D.C. 20004. Robert S. Richard, P.O. Box 2069, Montgomery, AL 36103. Authority sought to operate as a *common carrier,* by motor vehicle, over regular routes, transporting: *General commodities,* except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities requiring special equipment, and commodities in bulk, in tank vehicles, over regular routes:

1. Between Centre, AL, and Rome, GA: From Centre, AL over AL Hwy 9 to the AL-GA State line, then over GA Hwy 20 to Rome, GA, and return over the same route, serving all intermediate points. 2. Between Centre, AL, and Atlanta, GA, serving all points within 15 miles of Atlanta, GA, as off-route points. From Centre, AL over U.S. Hwy 411 to the junction of U.S. Hwy 411 and U.S. Hwy 41, then over U.S. Hwy 41 to Marietta, GA, then over Interstate Hwy 75 to Atlanta, GA, and return over the same route, serving all intermediate points between Centre, AL, and Rome, GA, and serving all points within 15 miles of Atlanta, GA as off-route points. Applicant proposes to join the authority in paragraphs 1 an 2 above with its existing authority in AL. 3. Between Gadsden, AL and Atlanta, GA, serving all points within 15 miles of Atlanta, GA, as off-route points: From Gadsden, AL, over U.S. Hwy 411 to the junction of U.S. Hwy 411 and U.S. Hwy 41, then over U.S. Hwy 41 to Marietta, GA, and then over Interstate Hwy 75 to Atlanta, GA, and return over the same route, serving all intermediate points between Gadsden, AL, and Atlanta, GA, and serving all points within 15 miles of Atlanta, GA, as off-route points. 4. Between Gadsden, AL, and Atlanta, GA: From Gadsden, AL, over U.S. Hwy 278 to Atlanta, GA, and return over the same route, serving all intermediate points in AL. 5. Between intersection of U.S. Hwy 78 and U.S. Hwy 431 in AL, and Atlanta, Ga: From the intersection of U.S. Hwy 78 and U.S. Hwy 431, in AL, over U.S. Hwy 78 to Atlanta, GA, and return over the same route, serving all intermediate points in AL. 6. Between intersection of Interstate Hwy 20 and U.S. Hwy 431, in AL, and Atlanta, GA: From the intersection of Interstate Hwy 20 and U.S. Hwy 431, in AL, over Interstate Hwy 20 to Atlanta, GA, and return over the same route, serving all intermediate points in AL. 7. Between intersection of U.S. Hwy 29, and Interstate Hwy 85, in AL, and Atlanta, GA: From the intersection of U.S. Hwy 29 and Interstate Hwy 85, in AL, over Interstate Hwy 85 to Atlanta, GA, and return over the same route, serving all intermediate points in AL. In conjunction with Paragraphs 3 through 7, applicant proposes to serve all points in AL not on applicant's existing regular routes north of the southern boundaries of Russell, Bullock, Pike, Crenshaw, Butler, Wilcox, Clarke, and Choctaw Counties; also, Dothan, Andalusia and Mobile County, AL, and points in that part of Baldwin County, AL, described as beginning at Stockton, AL, then south along AL Hwy 59 to junction Baldwin County Hwy 64, then in a westerly direction along Baldwin County Hwy 64 to junction Baldwin County Hwy 27, then in a southerly direction along Baldwin County Hwy 27 to junction U.S. Hwy 98, then west and north along U.S. Hwy 98 to junction Baldwin-Mobile County line to the closest point in Chastang, AL, then over the imaginary line from Chastang to Stockton, AL on the one hand, and, on the other, all points in AL north of the southern boundaries of Russell, Bullock, Pike, Crenshaw, Butler, Wilcox and Clarke and Choctaw Counties, AL, as off-route points for 180 days.

NOTE.—Applicant intends to tack the authority here applied for to other authority held by it and intends to interline with other carriers at points where applicant concurs with other carriers.

Applicant has also filed an underlying ETA seeking up to 90 days of oper-

ating authority. Supporting shipper(s): There are approximately (350) statements of support attached to the application which may be examined at the field office named below. Send protests to: Mabel E. Holston, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, room 1616, 2121 Building, Birmingham, AL 35203.

No. MC 106674 (Sub-No. 316TA), filed April 11, 1978. Applicant: SCHILLI MOTOR LINES INC., U.S. Hwy 24 West, P.O. Box 123, 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: *Foodstuffs,* from the warehouse facilities of the Pillsbury Co. in Fort Wayne, IN, to Detroit, MI and suburbs including East Detroit, Plymouth and Livonia, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Pillsbury Co., 608 Second Avenue South, Minneapolis, MN. 55402. 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 109397 (Sub-No. 406TA), filed April 11, 1978. Applicant: TRI-STATE MOTOR TRANSIT CO., P.O. Box 113, East on Interstate Business Route 44, Joplin, MO 64801. Applicant's representative: Max G. Morgan, 223 Ciudad Building, 3000 United Founders Blvd., Oklahoma City, OK 73112. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Radioactive materials,* from Felder Uranium operation near George West, Live Oak County, TX, to Sequoyah facilities of Kerr McGee near Gore, OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Exxon Minerals Co., U.S.A., Division of Exxon Co., U.S.A., Division of Exxon Corp., Houston, TX. Send protests to: John V. Barry, District Supervisor, Interstate Commerce Commission, 600 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 112801 (Sub-No. 201TA), filed April 11, 1978. Applicant: TRANSPORT SERVICE CO., 2 Salt Creek Lane, Hinddale, IL 60521. Applicant's representative: Gene Smith (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Beef digest,* (in bulk, in tank vehicles), from Kankakee, IL, to Topeka, KS, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Gold Pak Bone Co., Bruce R. Boyer, Plant Manager, 1655 W. Court, Kankakee, IL 60901. Send protests to: Patricia A. Roscoe Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Bldg., 219 S. Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 113908 (Sub-No. 433TA), filed April 11, 1978. Applicant: ERICKSON TRANSPORT CORP., P.O. Box 3180 G.S.S., 2105 East Dale Street, Springfield, MO 65804. Applicant's representative: B. B. Whitehead (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Alcohol, alcoholic liquors, neutral spirits, distilled spirits, wine and wine products* (in bulk) (except whiskey, from KY), from points in KY and FL, to Chicago, IL, and the commercial zone thereof (except whiskey, from points in KY), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mar-Salle Chicago Co., Chicago, IL 60610. Send protests to: John V. Barry, District Supervisor, Interstate Commerce commission, 600 Federal Building, 911 Walnut Street, Kansas City, MO 64106.

No. MC 114273 (Sub-No. 361TA), 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: *Glass containers and container accessories, materials and supplies* used in the manufacture and distribution of glass containers, (except commodities in bulk, in tank vehicles), from the facilities of Brockway Glass Co., Inc., located in Washington County, PA; Muskingum County, OH; and Madison County, IN; to points in Johnson, Linn, Clinton, Scott, and Muscatine Counties, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brockway Glass Co., Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: Herbert W. Allen, District Supervisor, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309

No. MC 114969 (Sub-No. 74TA), filed April 11, 1978. Applicant: PROPANE TRANSPORT, INC., State Route 131, P.O. Box 232, Milford, OH 45150. Applicant's representative: James H. Roudebush (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Nitrogen fertilizer solution* (in bulk, in tank vehicles), from Fulton and Kitchell, IN, to points in MI and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kaiser Agricultural Chemicals, Division of kaiser Aluminum & Chemical Corp., David C. Cowart, Manager of Transportation, P.O. Box 246, Savannah, GA 31402. Send protests to: Paul J. Lowry, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 5514-B Federal Building, 550 Main St., Cincinnati, OH 45202.

No. MC 114969 (Sub-No. 75TA), filed April 11, 1978. Applicant: PROPANE TRANSPORT, INC., State Route 131, P.O. Box 232, Milford, OH 45150. Applicant's respresentative: James M. Roudebush (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Liquid fertilizer solution,* (in bulk, in tank vehicles), from Burns Harbor, IN., to MI, IN, IL and OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Agrico Chemical Co., J. J. Stefanec, Director, Tansportation Legislation and Research, P.O. Box 3166, Tulsa, OK 74101. 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 115311 (Sub-No. 277TA), filed April 6, 1978. Applicant: J & M Transportation Co., Inc., P.O. Box 488, Milledgeville, GA 31061. Applicant's representative: Paul M. Daniell, Atlanta Gas Light Tower, Suite 1200, 235 Peachtree Street NE., Atlanta, GA 30303. 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 Robins, GA, to points in Rockingham, Guilford, Randolph, Chatham, Alamance, Caswell, Person and Orange Counties, NC, and Franson, Carroll, Patrick, Henry, Pittsylvania, Halifax, Floyd, Franklin, Campbell, Bedford and Montgomery Counties, VA, and Martinsville, VA, (an independent city), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Midland Glass Co., Inc., P.O. Box 557, Cliffwood, NJ 07721. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 W. Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 115331 (Sub-No. 456TA), filed April 11, 1978. Applicant: TRUCK TRANSPORT INC., 29 Clayton Hills Lane, St. Louis, MO 63131. Applicant's representative: J. R.

Ferris, 230 St. Clair Avenue, East St. Louis, IL 62201. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Alcoholic liquors, wine, brandy, sherry and fruit juice concentrates*, in bulk, from points in CA, to Cleveland, OH and Conesus, NY, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Cribari Vineyards, Inc., P.O. Box 8125, Fresno, CA 93727. 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 115730 (Sub-No. 50TA), filed April 11, 1978. Applicant: THE MICKOW CORP., 531 SW., Sixth Street, P.O. Box 1774, Des Moines, IA 50306. Applicant's representative: Cecil L. Goettsch, 1100 Des Moines Building., Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from the plantsite of Inland Steel Co., East Chicago, IN, to points in IA and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s) Inland Steel, 30 West Monroe, Chicago, IL 60603. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 120866 (Sub-No. 4TA), filed April 11, 1978. Applicant: THE TIMLAPH CORP., OF VIRGINIA, P.O. Box 3596, 217 Maury Street, Richmond, VA 23213. Applicant's representative: Stanley E. McCormick, Suite 1301, 1600 Wilson Boulevard, Arlington, VA 22209. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Petroleum products*, (in bulk, in tank vehicles), from the facilities of Exxon Company, U.S.A., located at or near Wilmington, NC, to Buena Vista, Hopewell, Elkton, Dublin, Orange, Bedford, Brookneal, and Richmond, VA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Exxon Company, U.S.A., Thomas A. Ellaby, Traffic Advisor, P.O. Box 2180, Houston, TX 77001. Send protests to: Paul D. Collins, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 10502 Federal Building, 400 North 8th Street, Richmond, VA 23240.

No. MC 123744 (Sub-No. 36TA), filed April 11, 1978. Applicant: BUTLER TRUCKING COMPANY, P.O. Box 88, Woodland, PA 16881. Applicant's representative: E. Steward Butler, P.O. Box 88, Woodland, PA 16881. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from points on the International Boundary at Buffalo, NY, to points in PA, OH, DE, WV, MD, VA, NC and SC, for Empire Wholesale Lumber, Arkon, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Empire Wholesale Lumber Co., Miami & Gault Street, Akron, OH 44311. 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 124160 (Sub-No. 17TA), filed March 20, 1978, and published in the FEDERAL REGISTER issue of April 21, 1978, and republished as corrected this issue. 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: *Fly ash*, (in bulk), from points in WY, to points in UT and ID, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pozzolan Products Co., P.O. Box 7006, Salt Lake City, UT 84107. (L. K. Bradley, 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. The purpose of this republication is to correct the territorial description.

No. MC 126358 (Sub-No. 20TA), 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 iregular routes, transporting: *Lumber*, (except plywood and veneer), (A) from Union Spring, Dothan and Glenwood, AL, to all points in the States of GA, FL, SC and TN, (B) from Albany, Bainbridge, Preston, Thomaston, Mitchell, Damascus, Buena Vista, La Grange, and points in Peach and Crawford Counties, GA, to all points in the States of AL, FL, NC and TN, and (C) from Blountstown, FL, to all points in the States of AL, GA, MS, NC and TN, for 180 days. Supporting shipper(s): Jack B. Thigpen Lumber Co., Inc., Box 185, Chattahoochee, FL 32324. 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 135410 (Sub-No. 20TA), filed April 10, 1978. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, 700 South Main, Monmouth, IL 61462. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Glass containers, container accessories and materials, equipment and supplies* used in the manufacture and distribution of glass containers and container accessories (except commodities in bulk), between the facilities of Brockway Glass Co., Inc., located in Washington County, PA, Muskingum County, OH; and Madison County, IN, on the one hand, and, on the other, points in Clinton, Johnson, Linn, Muscatine and Scott Counties, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): J. W. Pennington Corp., Transportation Manager, Brockway Glass Co., Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Building, 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 138420 (Sub-No. 27TA), filed April 10, 1978. Applicant: CHIZEK ELEVATOR & TRANSPORT, INC., P.O. Box 147, Cleveland, WI 53063. Applicant's representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (1) *Malt beverages and related advertising materials and supplies and malt beverage dispensing equipment*, when moving therewith, from Detroit, MI, to St. Louis, MO, and (2) *rejected shipments and empty, used malt beverage containers*, from St. Louis, MO, to Detroit, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mid-America Beer Distributor, Inc., 4400 Gustine Avenue, St. Louis, MO 63116. (Gerald R. Woodward.) 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 139420 (Sub-No. 32TA), filed April 10, 1978. Applicant: ART GREENBERG, d.b.a. GLACIER TRANSPORT, P.O. Box 428, Grand Forks, ND 58201. Applicant's representative: James B. Hovland, P.O. Box 1680, Fargo, ND 58102. Authority sought to operate as a *common carri-*

er, by motor vehicle, over irregular routes, transporting: (1) *Ground, mixed and blended spices, and mustard and mustard products,*(except in bulk), from Grand Forks, ND, to points in the United States, (except Alaska and Hawaii); and (2) *materials and supplies* used in the manufacture of ground, mixed and blended spices and mustard and mustard products, from Baltimore, MD, St. Clair, MI, Hammond, IN, and Chicago, IL, to Grand Forks, ND. Restriction: Restricted to the transportation of traffic originating at or destined to the facilities of the Baltimore Spice Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Baltimore Spice Co., P.O. Box 5858, Baltimore, MD 21208. Send protests to: Ronald R. Maud, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 268, Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

No. MC 139534 (Sub-No. 3TA), filed April 11, 1978. Applicant: BLALOCK WAREHOUSE, INC., 7412 Northwest, 43d Street, Bethany, OK 73008. Applicant's representative: G. Timothy Armstrong, 6161 North May Avenue, Oklahoma City, OK 73112. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Dry fertilizer,* (except in bulk, in tank vehicles), (restricted against the transportation of petroleum based fertilizer), from the facilities of Olin, Inc., at Houston, TX, to points in OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Smith-Souglass Division of Borden Chemical, 180 East Broad Street, Columbus, OH 43215. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 139999 (Sub-No. 27TA), filed April 11, 1978. Applicant: RED-FEATHER FAST FREIGHT, INC., 2606 North 11th Street, Omaha, NE 68110. Applicant's representative: Arlyn L. Westergren, Suite 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* from Kenosha, WI, and North Chicago, IL, to Kansas City, MO; Wichita, Topeka, Elwood and Liberal, KS; Tulsa and Oklahoma City, OK; Dallas, Fort Worth, Houston, San Antonio, El Paso, Lubbock and Amarillo, TX, 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): Florence Quick, Traffic Manager, Kenosha Facility, Ocean Spray Cranberries, Inc., 7800 South 60th Avenue, Kenosha, WI 53142. Send protests to: Carroll Russell, District Supervisor, Interstate Commerce Commission, Suite 620, 110 North 14th Street, Omaha, NE 68102.

No. MC 143083 (Sub-No. 4TA), filed April 11, 1978. Applicant: C.T.S. LINES, INC., 602 Airport Road, Greenville, SC 29615. Applicant's representative: Robert E. Born or Jeffrey Kohlman, Suite 508, 1447 Peachtree Street NE., Atlanta, GA 30309. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *New furniture,* from Rome, GA, to points in MO, KS, OK and TX, under a continuing contract, or contracts, with Fox Manufacturing Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Fox Manufacturing Co., Inc., P.O. Drawer A, Rome, GA, 30151. Send protests to: E. E. Strotheid, District Supervisor, Interstate Commerce Commission, Room 302, 1400 Building, 1400 Pickens Street, Columbia, SC.

No. MC 143163 (Sub-No. 8TA), filed April 5, 1978. Applicant: RICHARDSON TRUCKING, INC., 330 East 8th Street, P.O. Box 967, Greeley, CO 80631. Applicant's representative: Wm. Fred Cantonwine (same address as applicant). Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Meat and meat by-products and materials distributed by packinghouses,* from the facilities of Peppertree Beef Co., in Denver, CO, and its commercial zone, to city of Industry, Los Angeles, Sacramento, San Francisco and Vernon, CA, Clackamas and Portland, OR; and Seattle, WA, and their respective commercial zones, under a continuing contract, or contracts, with Peppertree Beef Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Peppertree Beef Co., 5300 Franklin Street, Denver, CO 80216. Send protests to: Roger L. Buchanan, District Supervisor, Interstate Commerce Commission, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

No. MC 144563 (Sub-No. 1TA), filed April 5, 1978. Applicant: D/K TRUCKING, 412 Oak Street, St. Charles, IL 60174. Applicant's representative: Walter Kobos, 1016 Kehoe Drive, St. Charles, IL 60174. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Fabric, patterns and such merchandise* as dealt in by fabric stores, between Florence, KY, and points in the Chicago, IL, commercial zone as described in MC-C-37 Sub 26, 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: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 144584 (Sub-No. 1TA), filed April 5, 1978. Applicant: WASHINGTON-CALIFORNIA EXPRESS, INC., 919 McGarry Street, Los Angeles, CA 90021. Applicant's representative: Joseph F. Hoary, 121 South Main Street, Taylor, PA 18517. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* in vehicles equipped with mechanical refrigeration, from Westfield, NY, and North East, PA, to Kennewick, WA, from the facilities of Welch Foods, Inc., located in Benton and Yakima Counties, WA, to OR, CA, NV and AZ, under a continuing contract, or contracts, with Welch Foods, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Welch Foods, Inc., Portage Street, Westfield, NY 17487. 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 144601TA, filed April 3, 1978. Applicant: CHEVALLEY MOVING & STORAGE OR ALTUS, INC., 615 South Grady, Altus, OK 73521. 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: *Used household goods,* between points in Beckham, Greer, Harmon, Jackson, Custer, Dewey, Ellis, Roger Mills, Washita, and Beaver Counties, OK, and Childress, Collingsworth, Donley, Hall, Gray, Wheeler, Roberts, Hemphill, Ochiltree and Lipscomb Counties, TX, restricted to operations authorized to transportation of traffic having a prior or subsequent movement, in containers, beyond the points authorized, and further restricted to the performance of pickup and delivery service in connection with packing, crating and containerization or unpacking, uncrating and decontainerization of such traffic, for 180 days. Supporting shipper(s): Altus Air Force Base, OK, 443 Maw/LGP, Altus AFB, OK 73521. Send protests to: Haskell E. Ballard, District Supervisor, Interstate

Commerce Commission, Box H-4395 Herring Plaza, Amarillo, TX 79101.

PASSENGER CARRIERS

No. MC 109736 (Sub-No. 40TA), filed April 4, 1978. Applicant: CAPITOL BUS CO., 1061 South Cameron Street, Harrisburg, PA 17104. Applicant's representative: S. Berne Smith, 100 Pine Street, P.O. Box 1166, Harrisburg, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle, in round-trip charter service, from the Borough of Chambersburg and Quincy Township (Franklin County), Silver Spring Township (Cumberland County), Susquehanna and Upper Paxton Townships, (Dauphin County), Muhlenburg Township (Berks County), York Township (York County), and the city of Lancaster (Lancaster County), PA, to the Mormon Temple, Bethesda, MD, and return. Restriction: Service is limited to persons originating at and destined to the above named points and who are members of the Church of Jesus Christ of Latter Day Saints, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Church of Jesus Christ of Latter-Day Saints, Gettysburg, PA, Stake, York, PA 17404. Send protests to: Charles F. Myers, District Supervisor, Interstate Commerce Commission, P.O. Box 869, Federal Square Station, Harrisburg, PA 17108.

No. MC 143578 (Sub-No. 3TA), filed April 10, 1978. Applicant: WILSON BUS CO., INC., 314 Alexander Street, Fayetteville, NC 28301. Applicant's representative: Wilmer B. Hill, Suite 805, 666 11th Street, NW., Washington, DC 20001. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Passengers and their baggage*, in the same vehicle with passengers, in round-trip charter operations, and in special operations, in round-trip sightseeing and pleasure tours, beginning and ending at points in Bladen, Cumberland, Edgecombe, Greene, Harnett, Johnston, Nash, Pitt, Sampson, Wayne, and Wilson Counties, NC, and extending to points in the United States, (except AK and HI), for 180 days. Supporting shipper(s): There are approximately (136) 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: Archie W. Andrews, District Supervisor, Interstate Commerce Commission, 624 Federal Building, 310 New Bern Avenue, P.O. Box 26896, Raleigh, NC 27611.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary

[FR Doc. 78-13247 Filed 5-15-78; 8:45 am]

[7035-01]

[Notice No. 73]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 9, 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, specifiying 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 othewise 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 13267 (Sub-No. 2TA), filed March 22, 1978. Applicant: MOUNTAINSIDE TRANSPORT, INC., 130 Davidson Avenue, Somerset, NJ 08873. Applicant's representative: Michael R. Werner & A. David Millner, P.O. Box 1409, Fairfield, NJ 07006. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: (1) *Such merchandise* as is dealt in by wholesale, retail, and chain grocery foodbusiness houses, and (2) *Equipment, materials, and supplies* used in the conduct of the business described in (1), restricted in (2) above against the transportation of commodities in bulk, for the account of the Great Atlantic & Pacific Tea Co., Inc., between Baltimore, MD, on the one hand, and, on the other, points in New Castle County, DE, Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Hunterdon, Mercer, Middlesex, Monmouth, Ocean, Salem, Somerset, and Warren Counties, NY; and points in Berks, Bucks, Carbon, Chester, Delaware, Lancaster, Lehigh, Monroe, Montgomery, Northampton, Philadelphia, and Schuylkill Counties, PA, under a continuing contract, or contracts, with Carl L. Haderer, Assistant to Vice President, of National Distrubution, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting Shipper(s): Carl L. Haderer, Assistant to Vice President of National Distribution, 2 Paragon Drive, Montvale, NJ 07645. Send protests to: William L. Hughes, District Supervisor, Interstate Commerce Commission, 814-B Federal Building, Baltimore, MD 21201.

No. MC 35227 (Sub-No. 7TA), filed March 23, 1978. Applicant: EDSON EXPRESS, INC., P.O. Box 925, Longmont, CO 80501. Applicant's representative: Richard P. Kissinger, 50 South Steele Street, Suite 330, Denver, CO 80209. Authority sought to operate as a *common carrier*, by motor vehicle, over *regular routes*, transporting: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment between Denver, CO (including its commercial zone), and Ft. Collins, CO (including its commercial zone), over regular routes as follows: From Denver over U.S. Hwy 87 (I-25), to junction U.S. Hwy 36 (Denver-Boulder Turnpike) then over U.S. Hwy 36 to junction U.S. Hwy 287, then over U.S. Hwy 287 to Ft. Collins and return serving no intermediate points; from Denver over U.S. Hwy 87, (I-25), to junction CO Hwy 14, then over CO Hwy 14 to Ft. Collins and return, serving no intermediate points; from Denver over U.S. Hwy 87 (I-25), to junction CO Hwy 68, then over CO Hwy 68 to junction U.S. Hwy 287, then over U.S. Hwy 287 to Ft. Collins and return serving no intermediate points, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (42) statements of support attached to the application which may be examined at the field office named below. Send protests to: District Supervisor, Roger L. Buchanan, Interstate Commerce Commission, 721 19th Street, 492 U.S Customs House, Denver, CO 80202.

No. MC 56637 (Sub-No. 15TA), filed March 22, 1978. Applicant: R. C. A. TRUCK LINES, INC., P.O. Box 1027, Cartersville, GA 30120. Applicant's representative: Paul M. Daniell, 235 Peachtree Street, Suite 1200, Atlanta, GA 30301. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities*, except those of unusual value, class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, (1) Between Chattanooga, TN and Huntsville, AL. From Chattanooga, TN over U.S. Hwy 72 to Huntsville, AL and return over the same route, serving no intermediate points. (2) Between Huntsville, AL and Corinth, MS. From Huntsville, AL over U.S. Hwy 72 to Corinth, MS and return over the same route, serving all intermediate points, and serving the Tennessee Valley Authority Yelow Creek Nuclear Plant in Tishomingo County, MS as an off-route point. (3) Between Huntsville, AL and Florence, AL. From Huntsville, AL over Alt U.S. Hwy 72 to its intersection with U.S. Hwy 43, then over U.S. Hwy 43 to Florence, AL and return over the same route, serving all intermediate points on the described route and all points in Colbert County, AL not on the described route as off-route points. (4) Between Decatur, AL and Rome, GA. From Decatur, AL over U.S. 31 to Cullman, AL, then over U.S. Hwy 278 to Gadsden, AL, then over U.S. Hwy 411 to Rome, GA (also from Gadsden, AL over U.S. Hwy 411 to Centre, AL, then over AL Hwy 9 to the AL-GA State line, then over GA Hwy 20 to Rome, GA) and return over the same route, serving all intermediate points. (5) Between Chattanooga, TN and Birmingham, Al. From Chattanooga, TN over U.S. Hwy 11 (also over Interstate Hwy 59) to Birmingham, AL and return over the same route, serving all intermediate points between Gadsden, AL and Birmingham, AL, including Gadsden, AL. For 180 days. Supporting shipper(s): There are approximately (76) statements of support attached to the application which may be examined at the field office named below. Send protests to: Sara K. Davis, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, 1252 West Peachtree Street NW., Room 300, Atlanta, GA 30309.

No. MC 87717 (Sub-No. 9TA), filed March 21, 1978. Applicant: FANELLI BROTHERS TRUCKING CO., Centre and Nichols Streets, Pottsville, PA 17901. Applicant's representative: S. Berne Smith, P.O. Box 1166, Harrisburgh, PA 17108. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Beverage container caps*, from the facilities of Zapata Industries, Inc., at Butner, NC to points in the United States (except AK and HI). *Perforated steel sheets*, From the facilities of Zapata Industries, Inc., at Butner, NC to Miami and Tampa, FL; New Albany, IN; Sparks, NV; Crooksville and Millersport, OH; Dallas TX; and Richmond, VA. *Steel sheets*, From Gary and Portage, IN; Sparrows Point, MD; Aliquippa, Fairless, and Irvin, PA; and Weirton, WV to the facilities of Zapata Industries, Inc., at Butner, NC. *Machinery, materials, and supplies* used in the manufacture, production, and shipping of beverage container caps, between the facilities of Zapata Industries, Inc., at Butner, NC, Muskogee, OK, and West Mahanoy Township, Schuylkill County, PA. *Protective shipping materials*, From Timonium, MD and Cincinnati, OH to the facilities of Zapata Industries, Inc., at Butner, NC, for 180 days. Applicant has also filed an underlying ETA seeking up to days of operating authority. Supporting shipper(s): Zapata Industries, Inc., P.O. Box 2, Frackville, PA 17931. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, 314 U.S. Post Office Bldg., Scranton, PA 18503.

No. MC 107403 (Sub-No. 1069TA), filed March 21, 1978, and published in the FEDERAL REGISTER issue of April 21, 1978, and republished as corrected this issue. Applicant: MATLACK, INC., 10 W. Baltimore Avenue, Landdowne, PA 19050. Applicant's representative: Martin C. Hynes, Jr. (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Rum*, (in bulk, in tank vehicles) from South Boston, MA, to Allen Park, MI; Durhan and Greensboro, NC; Hartford, CT; Owensboro, KY; and Menlo Park, CA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Felton & Son, Inc., 156 E. 2nd Street, S. Boston, MA 02127. Send protests to: T. M. Esposito, Transportation Assistant, 600 Arch Street, Room 3238, Philadelphia, PA 19106. The purpose of this republication is to correct the territorial description.

No. MC 121437 (Sub-No. 5TA), filed March 22, 1978. Applicant: CARROLL E. FLYNN, d.b.a. A-1 MOBILE HOME MOVERS, an individual, 2923 W. Montebello, Phoenix, AZ 85017. Applicant's representative: Lewis P. Ames/ Phil B. Hammond, Shimmel, Hill, Bishop & Gruender, P.C., 10th Floor, 111 W. Monroe, Phoenix, AZ 85003 602-257-5500. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: A. Mobile homes and trailers designed to be drawn by passenger automobiles (except travel trailers and camping trailers) and buildings in sections mounted on wheeled undercarriage equipped with hitchball connectors, in secondary movements between points in AZ, NV, NM and TX. B. Mobile homes and trailers designed to be drawn by passenger automobiles (except travel trailers and camping trailers) and buildings in sections mounted on wheeled undercarriages equipped with hitchball connectors, in initial movements: (1) from points in AZ to points in NV and NM; (2) between the facilities of Charter Industries at Henrietta, TX, on the one hand, and, on the other, points in AZ, NM and NV; (3) from the facilities of Cliff Industries at or near Burrowson and Cleveland, TX, to points in AZ, NM, and NV; and (4) from Murray, UT, to points in AZ, NV, and NM, for 180 days. Supporting shipper(s): There are approximately (6) statements of support attched to the application which may be examined at the field office named below. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room. 2020 Federal Building, 230 N. First Avenue, Phoenix, AZ 85025.

No. MC 124947 (Sub-No. 103TA), filed March 15, 1978. Applicant: MACHINERY TRANSPORTS, INC., an Oklahoma corporation, 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: (1) *Plastic battery boxes*, (2) *Plastic battery covers*, (3) *Plastic battery vents*, and (4) *Parts for items (1), (2), and (3) above*, except in bulk, between Milwaukee, WI; Vicksburg, MS; Swainsboro, GA; and Wichita, KS; on the one hand, and, on the other, City of Industry, CA; Farmers Branch, TX; Dunsmore, PA; Leavenworth, KS; Lynchburg, VA; Memphis, TN; Salem, OR; Orlando, FL; Shreveport, LA; Zanesville, OH; Milwaukee, WI; and Vicksburg, MS. Restricted to shipments originating at or destined to the facilities of Gould, Inc. located at or near the above-named cities, for 180 days. Supporting shipper: Gould, Inc, P.O. Box 43140, St. Paul, MN 55164, (T.A. Bentley, Manager of Physical Distribution). Send protests to: District Supervisor, Lyle D. Helfer, Interstate Commerce Commission, Bureau of Operations, 5301 Federal Building, 125 South State Street, Salt Lake City, UT 84138.

No. MC 125113 (Sub-No. 5TA), filed March 17, 1978. Applicant: CHRISTMAN TRUCKING CORP., P.O. Box 776, Washington, PA 15301. Applicant's representative: Robert E. McFarland, McFarland & Bullard, 999 West Big Beaver Road, Suite 1002, Troy, MI 48084. Authority sought to

operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *General commodities,* limited to individual articles not exceeding 100 pounds in weight, moving as shipments not exceeding 500 pounds in weight, from one consignor to one consignee in a single day, on bills of lading of surface, interstate freight forwarders, between points in Green, Washington, Allegheny, Beaver, Lawrence, Fayette, Somerset, Westmoreland, Butler, Armstrong and Indiana Counties, PA; WV; Monroe, Washington, Jefferson, Belmont, and Columbiana Counties, OH; Garret, Allegany, and Washington Counties, MD; and Frederick County VA, for 180 days. As required by the supporting freight forwarder, applicant expects to receive shipments originating outside this territory at Hagerstown, MD; Washington, PA; Steubenville, OH; and Charleston, WV, for delivery in the subject territory, as well as picking up shipments destined beyond the subject territory, for interlining at these or other points in the subject territory with other agents of the forwarder. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): American Delivery Systems, Inc., 300 East Seven Mile Road, Detroit, MI. Send protests to: J. A. Niggemyer, District Supervisor, Interstate Commerce Commission, 416 Old Post Office Building, Wheeling, WV 26003.

No. MC 125996 (Sub-No. 60TA), filed March 22, 1978. Applicant: ROAD RUNNER TRUCKING, INC., P.O Box 37491, 13080 Renfro Circle, Omaha, NE 68137. Applicant's representative: Bruce A. Bullock, Suite 530 Univac Building, 7100 West Center Road, Omaha, NE 68106. 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 Carroll, Iowa Falls, Des Moines, Fort Dodge, Cherokee, Sioux City, and Denison, IA and Omaha, NE to points in AZ, CA, CO, ID, MT NV, NM, OR, TX, UT,WA, WY, for 180 days, Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Dean D. Wilson, Traffic Manager, 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 St., Omaha, NE 68102.

No. MC 133928 (Sub-No. 16TA), filed March 17, 1978. Applicant: OSTERKAMP TRUCKING, INC., 1049 North Glassell Street, Orange, CA 92667. 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: *Lumber, lumber products, plywood particleboard, and wood products,* from the plantsites and facilities of Willamette Industries, Inc., and its wholly owned subsidiary, Bend-Willamette Corp., located at or near Albany, Bend, Dallas, Foster, Griggs, Lebanon, Millersburg, Springfield, Sweet Home, Waterloo, and Wilsonville, OR to points in CA. Restriction: Restricted to a transportation service to be performed under a continuing contract, or contracts, with Wilamette Industries, Inc. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Willamette Industries, Inc., P.O. Box 907, Albany, OR 97321. Send protests to: Edward P. Henry, District Supervisor, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, CA 90012.

No. MC 134300 (Sub-No. 20TA), filed March 17, 1978, and published in the FEDERAL REGISTER issue of April 12, 1978, and republished as corrected this issue. Applicant: TRIPLE R EXPRESS, P.O. Box 12866, 498 First Street SW., New Brighton, MN 55112. Applicant's representative: Samuel Rubenstein, 310 North Third Street, Minneapolis, MN 55403. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Meat, meat products, meat byproducts, dairy products, and articles* distributed by meat packing-houses, as described in sections A, B 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 plantsite and storage facilities of Armour Food Co. at or near Mason City, IA, and its commercial zone, to points in WV, VA, PA, (except Erie), CT, MA, VT, NH and NY, (except Buffalo), for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Armour Food Co., Phoenix, AZ. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building, U.S. Courthouse, 110 South 4th Street, Minneapolis, MN 55401. The purpose of this republication is to correct the territorial description.

No. MC 139083 (Sub-No. 2TA), filed March 27, 1978. Applicant: BUILDING SYSTEMS TRANSPORTATION, INC., Box 142, Washington Court House, OH 43160. Applicant's representative: Paul F. Beery, Esq., 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Steel buildings, knocked down,* and *fabricated metal products,* from the plantsite of Armco Steel, located within 3 miles of Washington Court House, OH, to points in NC, TN, MD, VA, NY, MI, IL, WI, that part of WV south of U.S. Hwy 60, that part of IN north of a line beginning at the OH-IN State line and extending along IN Hwy 37 to Indianapolis, IN, and then along U.S. Hwy 40 to the IL-IN State line, and that part of PA east of U.S. Hwy 15. (2) *Iron and steel,* and *iron and steel articles,* from Greenfield, IN, and Ashland and Junction City, KY, to the plantsite of Armco Steel Corp. located within 3 miles of Washington Court House, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Armco Steel Corp., Middletown, OH 45043. 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 139482 (Sub-No. 52TA), filed March 22, 1978. Applicant: NEW ULM FREIGHT LINES, INC., P.O. Box 347, County Road No. 29 West, New Ulm, MN 56073. Applicant's representative: James F. Ballenthin, 630 Osborn Building, St. Paul, MN 55102. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Redwood furniture, redwood furniture components, and parts and accessories* intended for use therewith, between North Sioux City, SD, Fremont, OH, and Eureka, CA, on the one hand, and, on the other, points in the U.S. (except AK and HI); (2) *materials, equipment and supplies* used in the manufacture and asembly of redwood furniture and redwood furniture components, from: (a) Eureka, CA (redwood furniture framing components) to North Sioux City, SD and Fremont, OH, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Humboldt County Seats, Inc., 221 West 78th Street, Minneapolis, MN 55420. Send protests to: Delores A. Poe, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, 414 Federal Building and U.S. Court House, 110 South Fourth Street, Minneapolis, MN 55401.

No. MC 139577 (Sub-No. 19TA), filed March 24, 1978. Applicant: ADAMS TRANSIT, INC., P.O. Box 338, 204 East Winnebago Street, Friesland, WI 53935. Applicant's representative: Wayne W. Wilson, 150 East Gilman Street, Madison, WI 53703. Authority sought to operate as a *common carri-*

er, by motor vehicle, over *irregular routes,* transporting: A. *Foodstuffs* (except commodities in bulk) originating at the facilities utilized by the Green Giant Co. located in the counties of Dodge, Fond du lac, Jefferson, Waushara, Milwaukee, and Columbia, WI, destined to all points in the States of IL, IN, OH, MI, KY, TN, and MO. B. *Foodstuffs* (except commodities in bulk) originating at the facilities of the Green Giant Co. located at or near Belvidere, IL, destined to all points in the States of OH, IN, MI, KY, WV, WI, MO, TN, MS, Sharon, PA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Green Giant Co., Le Sueur, MN 56058. Send protests to: Ronald A. Morken, District Supervisor, Interstate Commerce Commission, 139 West Wilson Street, Room 202, Madison, WI 53703.

No. MC 141776 (Sub-No. 23TA), filed March 23, 1978, and published in the FEDERAL REGISTER issue of May 2, 1978, and republished as corrected this issue. Applicant: FOODTRAIN, INC., Spring & South Center Streets, Ringtown, PA 17967. Applicant's representative: Pauline E. Myers, Suite 407, Walker Building, 734 15th Street, NW., Washington, D.C. 20005. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Frozen foods,* in mechanically refrigerated equipment, (except in bulk), from the facilities of Ore-Ida Foods, Inc., at Greenville, MI, to points in the States of CT, DE, MA, MD, NH, NJ, NY, PA, VA, VT, WV and DC for 180 days. Applicant has also filed an underlying ETA seeking up to 25 days of operating authority. Supporting shipper(s): Ore-Ida Foods, Inc., P.O. Box 10, Boise, ID 83707. Send protests to: Paul J. Kenworthy, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 314 U.S. Post Office Building, Scranton, PA 18503. The purpose of this republication is to correct the territorial description.

No. MC 142059 (Sub-No. 20TA), filed March 8, 1978, and published in the FEDERAL REGISTER issue of April 12, 1978, and republished as corrected this issue. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, P.O. Box 911, Joliet, IL 60436. Applicant's representative: Jack Riley, 1830 Mound Road, Joliet, IL 60436. Authority sought to operate as a *common 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 AL, AR, CA, DE, GA, IL, IN, KY, MD, MA, MI, MO, NJ, NY, OH, PA, TN, VA, WV, WI, and the ports of entry on the International Boundary Line between the United States and Canada located in MI and NY, for 180 days. Supporting shipper(s): Iowa Beef Processors, Inc., Robert E. Gillespie, Manager, Rates and Regulatory Affairs, Dakota City, NE 68731. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604. The purpose of this republication is to correct the territorial description.

No. MC 143268 (Sub-No. 4TA), filed March 17, 1978. Applicant: TROCHU TRUCKING SERVICES, LTD., 915 48th Avenue SE., Calgary, AB, Canada T2G2A7. Applicant's representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Soda ash* from Green River, WY to ports of entry on the International Boundary line between the U.S. and Canada located in MT. Restriction: Restricted to a transportation service to be performed under a continuing contract, or contracts, with Johns-Manville, Ltd., and Fiberglas Canada, Ltd., and destined to Clover Bar and Innisfail, AB, Canada, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): E. R. McPherson, Traffic Manager, Johns-Manville, Ltd., 9146 125th Avenue, Edmonton, AB, Canada T5J2L1. N. J. Klingspon, Plant Purchasing Manager, Fiberglas Canada, Ltd., Box 595, Edmonton, AB, Canada T5J2L1. Send protests to: District Supervisor, Paul J. Labane, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

No. MC 143610 (Sub-No. 8TA), filed March 17, 1978. Applicant: PAUL YATES, INC., 6601 West Orangewood, Glendale, AZ 85301. Applicant's representative: Edward N. Button, 1329 Pennsylvania, Hagerstown, MD 21740, 301-797-6060. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Hair care toiletries, and hair care accessories and equipment, materials, supplies, and ingredients* used in packaging, manufacturing, and distribution of toiletry equipment (except in bulk) in temperature controlled vehicles. From: Stamford, CT and its comercial zone to: Dallas, TX, Portland, OR, La Mirada, and Camarillo CA, under a continuing contract, or contracts, with Clairol Inc., for 180 days. Applicant has also filed an underlying ETA seeding up to 90 days of operating authority. Supporting shipper(s): Clairol Inc., One Blachley Road, Stamford, CT 06902. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020, Federal Building, 230 N. First Avenue, Phoenix, AZ 85025.

No MC 143910 (Sub-No. 2TA), filed March 22, 1978. Applicant: NEW HAMPSHIRE CONTINENTAL EXPRESS, INC., P.O. Box 4956, Manchester, NH 03103. Applicant's representative: Charles E. Creager, 1329 Pennsylvania Avenue, P.O. Box 1417, Hagerstown, MD 21740. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: (1) *Foods, foodstuffs, food treating compounds, chemicals, and additives,* (except in bulk), and *advertising paraphernalia, and materials, equipment and supplies* used in the manufacture, preparation, sale and distribution of spices, extracts, convenience foods, products, salad dressing, and foodstuffs (except in bulk), and (2) *commodities,* the transportation of which is exempt from regulation under the provisions of section 203(b)(6) of the Interstate Commerce Act, in mixed loads with the commodities described in (1) above, for the account of McCormick & Co., Inc., between Hunt Valley and Cockeysville, MD, and their respective commercial zones, on the one hand, and, on the other, points in ME. Subject intends to apply for corresponding regular temporary and permanent authorities, under a continuing contracts, or contract, with McCormick & Co., Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): McCormick & Company, Inc., 11350 McCormick Road, Hunt Valley, MD 21031, Attention: John W. Highfield, Manager, Distribution. Send protests to: District Supervisor, Ross J. Seymour, Bureau of Operations, Interstate Commerce Commission, Room 3, Six Louden Road, Concord, NH 03301.

No. MC 144378 (Sub-No. 1TA), filed March 27, 1978, and published in the FEDERAL REGISTER issue of April 28, 1978, and republished as corrected this issue. Applicant: SKY CORP., P.O. Box 838, Bismarck, ND 58501. Applicant's representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58501. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Building materials,* (except in bulk) and lumber, lumber products and wood products, from MT, ID, WA and OR, to ND, SD and MN, under a continuing contract, or contracts, with Lavelle Lumber Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shippers(s): Lavelle Lumber Co., 115 South 31st, Fargo, ND 58102. Send protests to: Ronald R. Mau, District Supervisor, Bureau of Operations, Interstate Com-

merce Commission, Room 268, Federal Building and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102. The purpose of this republication is to reflect only the bulk commodities were excepted

No. MC 144480TA, filed March 21, 1978. Applicant: UNTIED SUPPLIERS, INC., P.O. Box 538, Eldora, IA 50627. Applicant's representative: James M. Hodge, 1980 Financial Center, Des Moines, IA 50309. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Livestock confinement systems and buildings, and materials, equipment and supplies* used in the manufacture, construction, operation and distribution of livestock confinement systems and buildings, (except commodities in bulk); (1) between Eldora, IA, on the one hand, and, on the other, points in CO, IL, IN, KS, KY, MI, MN, MT, MO, NE, ND, PA, SD, WI and WY: and (2) between points in IA, CO, IL, IN, KS, KY, MI, MN, MT, MO, NE, ND, OH, PA, SD, WI and WY. Restriction: Restricted in Part (2) above to shipments moving in mixed loads with shipments originating at or destined to Eldora, IA., and further restricted in Parts (1) and (2) above to transportation performed under continuing contract or contracts with Confinement Livestock Systems, Inc., of Eldora, IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Confinement Livestock Systems, Inc., P.O. Box 497, Eldora, IA 50627. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 144500TA, filed March 23, 1978. Applicant: WALSH TRUCKING CO., INC., 311 17th Street, Jersey City, NJ 07307. Applicant's representative: Piken & Piken, One Lefrak City Plaza, Flushing, NY 11368. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in or used in the operation of retail department stores. Between the facilities of Abraham & Strauss of Brooklyn, NY, Rego Park, Hempstead, Manhasset, Huntington, Babylon, Smithtown, White Plains and Carle Place, NY; Paramus, Woodbridge, and Eatontown, NJ. Condition: Authority is limited to service rendered under contract or continuing contracts with Abraham & Strauss of Brooklyn, NY, For 180 days, Supporting shipper(s): Abraham & Strausse, 470 Fulton Street, Brooklyn, NY. Send protests to: Robert E. Johnston, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 9 Clinton St., Room 618, Newark, NJ, 07102.

No. MC 144524 (Sub-No. 1TA), filed March 23, 1978. Applicant: GK TRUCKING CORP., 500 West Putnam Avenue, Greenwich, CT 06830. Applicant's representative: Morton E. Kiel, Suite 6193, World Trade Center, New York, NY 10048. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Such commodities* as are dealt in by a manufacturer of wire and cable, and consumer and industrial products, and material supplies and equipment used in the conduct of such business (except in bulk) between the facilities of General Cable Corp. located at or near: Blackinton, MA; Bonham, TX; Brandon, MS; Carrollton, TX; Des Plaines, IL; Erie, PA; Frederick, MD; Garwood, NJ; Huntsville, AL; Indianapolis, IN; Kingman; AZ; Lawrenceburg, KY; Lincoln, NB; Lindsay, CA; Memphis, TN; Monticello, IL; Muncie, IN; New Brunswick, NJ; North Adams, MA; Perth Amboy, NJ; Pomona, CA; Pownal, VT; San Carlos, CA; Sanger, CA; St. Louis, MO; Tampa, FL; Tukwila, WA; Warrenton, MO; Westminster, CO; Williamstown, MA; on the one hand, and, on the other, all points in the United States except AK and HI. And *such commodities* as are dealt in by a manufacturer of wire and cable, and material supplies and equipment used in the conduct of such business (except in bulk) between facilities of Pirelli Cable Corp. located at or near: Abbeville, SC; Bayonne, NJ; Camden, NJ; Colusa, CA; Elkton, MD; Hopkins, MN; Hot Springs, AR; Leetsdale, PA; Morrow, GA; Oakland, CA; Salt Lake City, UT; Tulsa, OK; on the one hand, and, on the other, all points in the United States except AK and HI under a continuing contract, or contracts, with Pirelli Cable Corp., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Pirelli Cable Corp., 245 Park Avenue, New York, NY 10017. General Cable Corp., 800 Rahway Ave., Union, NY 07083. Send protests to: J. D. Perry, Jr., Interstate Commerce Commission, 135 High Street, Room 324, Hartford, CT 06101.

No. MC 144586 (Sub-No. 1TA, filed March 27, 1978. Applicant: FRANK HAMILTON WAREHOUSES, INC., 605 North Wayne Avenue, Cincinnati, OH 45215. Applicant's representative: Boyd B. Ferris, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier,* by motor vehicle over irregular routes, transporting: *Such commodities* as are dealt in by manufacturers and distributors of hospital and medical supplies, from Lockland, OH, to points in IN, KY, and OH, under a continuing contract, or contracts, with Baxter-Travenol Laboratories, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Baxter-Travenol Laboratories, Thomas A. Jordan, Manager, Corporate Traffic Operations, 6301 Lincoln Avenue, Morton Grove, IL 60053. Send protests to: Paul J. Lowry, District Supervisor, Interstate Commerce Commission, 5514-B, Federal Building, 550 Main Street, Cincinnati, OH 45202.

PASSENGER CARRIER

No. MC 45626 (Sub-No. 70TA), filed March 17, 1978. Applicant: VERMONT TRANSIT CO., INC., 135 St. Paul Street, Burlington, VT 05401. Applicant's representative: John J. Dwyer, 135 St. Paul Street, Burlington, VT 05401. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Passengers and their baggage, in special operations.* (1) In round-trip sightseeing and pleasure tours, beginning and ending at points in Clinton County, NY and points in Franklin County, NY which are on or north of U.S. Hwy 11, and extending to points in the United States (including AK but excluding HI). (2) In one-way sightseeing and pleasure tours, from points in Clinton County, NY and points in Franklin County, NY, which are on or north of U.S. Hwy 11 to points in the United States (including AK but excluding HI). Restriction: The operations authorized in (2) above are restricted to the transportation of passengers and their baggage having a subsequent movement wholly by air, or partially by air and partially by motor vehicle to points in Clinton County NY, and points in Franklin County, NY, which are on or north of U.S. Hwy 11. (3) In one-way sightseeing and pleasure tours, from points in the United States (including AK but excluding HI) to points in Clinton County, NY and points in Franklin County, NY, which are on or north of U.S. Hwy 11. Restriction: The operations authorized in (3) above are restricted to the transportation of passengers and their baggage having a prior movement wholly by air, or partially by air and partially by motor vehicle to points in Clinton County NY, and points in Franklin County, NY, which are on or north of U.S. Hwy 11, for 180 days. Supporting shipper(s): There are approximately (7) statements of support attached to the application which may be examined at the field office named below. Send protests to: District Supervisor, David A. Demers, Interstate Commerce Commission, P.O. Box 548, Montpelier, VT 05602.

By the Commission.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-13248 Filed 5-15-78; 8:45 am]

[7035-01]

[Notice No. 74]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

MAY 9, 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 2253 (Sub-No. 81TA), filed April 5, 1978. Applicant: CAROLINA FREIGHT CARRIERS CORP., P.O. Box 697, Highway 150 East, Cherryville, NC 28021. Applicant's representative: J. S. McCallie, P.O. Box 697, Cherryville, NC 28021. 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 Broward and Dade Counties, FL, on the one hand, and, on the other, Monroe County, FL, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): There are approximately (11) 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: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

No. MC 3252 (Sub-No. 101TA), filed April 10, 1978. Applicant: MERRILL TANSPORT CO., 1037 Forest Avenue, Portland, ME 04103. Applicant's representative: Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Authority sought to operate as *common carrier,* by motor vehicle, over irregular routes, transporting: *Crushed glass,* in bulk in dump vehicles, from Saco, ME, to Salem, MA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Saco Steel Co., Water Street, Saco, ME 04072. Send protests to: Donald G. Weiler, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 76 Pearl Street, Room 305, Portland, ME 04111.

No. MC 55896 (Sub-No. 71TA), filed April 5, 1978. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Road, Taylor, MI 48180. Applicant's representative: George E. Batty, 20225 Goddard Road, Taylor, MI 48180. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Malt beverages, empty bottles, barrels and cans, can ends, and returned shipping materials,* between St. Louis, MO, and Columbus, OH, for 180 days. Supporting shipper(s): Anheuser-Busch, Inc., 721 Pestalozzi Street, St. Louis, MO, 63118. (Raymond J. Hellwig, Assistant General Traffic 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 69322 (Sub-No. 7TA), filed April 6, 1978. Applicant: DOBSON CARTAGE AND STORAGE CO., 1006 East Indiana Street, Bay City, MI 48706. Applicant's representative: Martin J. Leavitt, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. 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 Midland, MI; 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., 14955 Sprague Road, P.O. Box 36000, Strongsville, OH 44135. Send protests to: C. R. Flemming, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 225 Federal Building, Lansing, MI 48933.

No. MC 79687 (Sub-No. 14TA), filed April 4, 1978. Applicant: WARREN C. SAUERS CO., INC., 200 Rochester Road, Zelienople, PA 16063. Applicant's representative: Henry W. Wick, Jr., Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Containers, container accessories, and materials, equipment and supplies* used in the manufacture and distribution of glass containers and container accessories, from the facilities of Brockway Glass Co., Inc., located in Muskingum County, OH, to points in IN, KY, and MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brockway Glass Co., Inc., McCullough Avenue, Brockway, PA 15824. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 79687 (Sub-No. 15TA), filed April 4, 1978. Applicant: WARREN C. SAUERS CO., INC., 200 Rochester Road, Zelienople, PA 16063. Applicant's representative: Henry M. Wick, Jr., Wick, Vuono & Lavelle, 2310 Grant Building, Pittsburgh, PA 15219. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Containers, materials, equipment and supplies* used in the manufacture, sale or distribution of containers, from the facilities of Foster-Forbes Glass Co., at Cornplanter Township, Venango County, PA, to points in IL, IN, KY, MI, OH, and WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Foster-Forbes Glass Co., cornplanter Township, Venango County, Oil City, PA 16301. Send protests to: John J. England, District Supervisor, Interstate Commerce Commission, 2111 Federal Building, 1000 Liberty Avenue, Pittsburgh, PA 15222.

No. MC 82079 (Sub-No. 61TA), filed April 4, 1978. Applicant: KELLER TRANSFER LINE, INC., 5635 Clay Avenue SW., Grand Rapids, MI 49508. Applicant's representative: Edward Malinzak, 900 Old Kent Building, Grand Rapid, MI 49503. Authority sought to operate as a *common carrier,* By motor vehicle, over irregular routes, transporting: *Foodstuffs* in mechanically refrigerated vehicles, (except in bulk), from facilities of Continental Freezers, Inc., in Chicago, IL,

to points in MI and IN, restricted to traffic originating at the named origin points and destined to the named destination points, for 180 days. Supporting shipper(s): Continental Freezers, Inc., 4220 South Kildare Boulevard, Chicago, IL 60632. Send protests to: C. R. Flemming, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 225 Federal Building, Lansing, MI 48933.

No. MC 103051 (Sub-No. 433TA), filed April 3, 1978. Applicant: FLEET TRANSPORT CO., INC., 934 44th Avenue, P.O. Box 90408, Nashville, TN 37209. Applicant's 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: *Black liquor skimmings* (in bulk, in tank vehicles), from New Johnsonville, TN, to Durham, IA, and points in KY and VA for 180 days. Supporting shipper(s): American Pelletizing Corp., P.O. Box 3628, Des Moines, IA 50322. Send protests to: Glenda Kuss, Transportation Assistant, Bureau of Operations, Interstate Commerce Commission, Suite A-422, U.S. Courthouse, 801 Broadway, Nashville, TN 37209.

No. MC 112989 (Sub-No. 63TA), filed April 5, 1978. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Applicant's representative: John A. Anderson, Suite 1440, 200 Market Building, Portland, OR 97201. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Charcoal briquettes and hickory chips,* from the plantsite of the Kingsford Co. at Springfield, OR, to points in the State of WA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): The Kingsford Co., 3315 Marcola Road, Springfield, OR 97477. Send protests to: A. E. Odoms, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 114 Pioneer Courthouse, 555 SW., Yamhill Street, Portland, OR 97204.

No. MC 114045 (Sub-No. 497TA), filed April 4, 1978. Applicant: TRANS-COLD EXPRESS, INC., P.O. Box 61228, D/FW Airport, TX 75261. Applicant's representative: J. B. Stuart (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Foodstuffs,* (except commodities in bulk), from the facilities of Welch Foods, Inc., at or near Lawton, MI, to points in AR, KS, LA, MS, MO, NM, OK, TN and TX, for 180 days. Supporting shipper(s): Welch Foods, Inc., 2 South Portage Street, Westfield, NY 14787. Send protests to: Opal M. Jones, Transportation Assistant, Interstate Commerce Commission, 1100 Commerce Street, Room 13C12, Dallas, TX 75242.

No. MC 115904 (Sub-No. 98TA), filed April 10, 1978. Applicant: GROVER TRUCKING CO., 1710 West Broadway, Idaho Falls, ID 83401. Applicant's representative: Timothy R. Stivers, P.O. Box 162, Boise, ID 83701. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Iron and steel and iron and steel articles,* between the facilities of Nucor Steel, a division of Nucor Corp., at or near Norfolk, NE, on the one hand, and, on the other, points in CA, OR, WA, ID, UT, MT, WY, CO, and TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Nucor Steel, Division of Nucor Corp., P.O. Box 59, Norfolk, NE 68701. Send protests to: B. L. Hardin, District Supervisor, Interstate Commerce Commission, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

No, MC 116300 (Sub-No. 38TA), filed April 10, 1978. Applicant: NANCE & COLLUMS, INC., P.O. Drawer J, Fernwood, MS 39635. Applicant's representative: Harold D. Miller Jr., 1700 Deposit Guaranty Plaza, P.O. Box 22567, Jackson, MS 39205. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: (1) *Dry fertilizer and fertilizer ingredients* (in bulk, in dump vehicles, and in packages), from Hattiesburg, Pascagoula, and Yazoo City, MS, and Donaldsonville, LA, to points in AL, FL, and MS; and (2) *Dry fertilizer and fertilizer ingredients* (in bulk, in tank vehicles), from Hattiesburg and Pascagoula, MS, to points in LA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Mississippi Chemical Corp. P.O. Box 388, Yazoo City, MS 39194. Send protests to: Alan C. Tarrant, District Supervisor, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson MS 39201.

No, MC 117344 (Sub-No. 272TA), filed April 10, 1978. Applicant: THE MAXWELL CO., 10380 Evendale Drive, P.O. Box 15010, 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: *Corn syrup, sugar and blends thereof* (in bulk), from Cincinnati, OH, to points in IL, MI, MS, NC, TN, VA, WV, and St. Louis, MO, for 180 days. Supporting shipper(s): Mid America Sweeteners, William Gordon, Manager and Operations, 1400 Gest Street, Cincinnati, OH 45203. 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 125708 (Sub-No. 148TA), filed April 10, 1978. Applicant: THUNDERBIRD MOTOR FREIGHT LINES, INC., 425 West 152d Street, East Chicago, IN 46312. Applicant's representative: Anothy C. Yance, 1307 Dolley Madison Boulevard, McLean, VA 22101. Authority sought to operate as a *common carrier,,* by motor vehicle, over irregular routes, transporting: *Pipe, cable, conduit and attachments therefor,* from Glendale, WV, to points in TX, restricted to traffic originating at the facilities of Triangle PWC, Inc., at Glendale, WV, and destined 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): Triangle PWC, Inc., P.O. Box 711, New Brunswick, NJ 08903. 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 126930 (Sub-No. 18TA), filed April 10, 1978. Applicant: BRAZOS TRANSPORT CO., P.O. Box 2746, Lubbock, TX 79408. Applicant's representative: Richard Hubbert, P.O. Box 10236, Lubbock, TX 79408. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Gypsum products,* from Medicine Lodge, KS, to National City, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Gold Bond Building Products Division of National Gypsum Co., 325 Delaware Avenue, Buffalo, NY, 14202. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Box H-4395 Herring Plaza, Amarillo, TX 79101.

No. MC 127303 (Sub-No. 38TA), filed April 10, 1978. Applicant: ZELLMER TRUCK LINES, INC., P.O. Box 343, Granville, IL 61326. Applicant's representative: E. Stephen Heisley, 666 11th Street NW., No. 805, Washington, DC 20001. Authority sought to operate as a *common carrier,,* by motor vehicle, over irregular routes, transporting: *Malt beverages,* from Milwaukee, WI, to Norfolk, NE, and empty containers on return, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Jim Pile's Falstaff, Jim Pile President, P.O. Box 1243, Norfolk, NE 68701. 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 127705 (Sub-No. 55TA), filed April 10, 1978. Applicant: KREVDA BROS. EXPRESS, INC., 501 South Broadway, Gas City, IN 46933. Applicant's representative: 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 the facilities of Kerr Glass Manufacturing Co., at Dunkirk, IN, to Dearborn, Flint, Grand Rapids and Holland, MI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Kerr Glass Manufacturing Co., P.O. Box 97, Sand Springs, OK 74063. 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 134419, filed April 13, 1978. Applicant: T.L.T. CO., INC., 173 Forest, NE., Warren, OH 44483. Applicant's representative: Beery & Spurlock Co., 275 East State Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Rubber tires*, from the plantsite of Denman Rubber Manufacturing Co., at Warren, OH, to points in MS and TN, under a continuing contract, or contracts, with Denman Rubber Manufacturing Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Denman Rubber Manufacturing Co., P.O. Box 951, Warren, OH 44482. Send protests to: James Johnson, District Supervisor, Interstate Commerce Commission, 731 Federal Building, 1240 East Ninth Street, Cleveland, OH 44199.

No. MC 135326 (Sub-No. 10TA), filed April 6, 1978. Applicant: BILLY R. ALMAND, d.b.a. ALMAND TRUCKING CO., P.O. Box 7959, Shreveport, LA 71107. Applicant's representative: J. D. Haynes, P.O. Box 7959, 4277 North Market Street, Shreveport, LA 71107. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer*, in bags, from Shreveport, LA, to points in TX (except points in Chambers, Montgomery, Harris, Fort Bend, Galveston, Liberty and Brazoria Counties, and from Shreveport, LA, to all points in OK, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Swift Agricultural Chemicals Corp., P.O. Box 338, East St. Louis, IL 62202. 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 135410 (Sub-No. 21TA), filed April 10, 1978. Applicant: COURTNEY J. MUNSON, d.b.a. MUNSON TRUCKING, 700 South Main, Monmouth, IL 61462. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Frozen foods*, from the facilities of Continental Freezers of Illinois at Chicago, IL, to points in IN, KY, the Lower Peninsula of MI, OH, and St. Louis, Scotts City, and Sikeston, MO, and points in their commercial zones, restricted to the transportation of shipments originating at the named origins and destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Roger H. Shay, Traffic Manager, Continental Freezers of Illinois, 4220 S. Kildare Blvd., Chicago, IL 60632. Send protests to: Charles D. Little, District Supervisor, Interstate Commerce Commission, 414 Leland Office Bldg., 527 East Capitol Avenue, Springfield, IL 62701.

No. MC 135744 (Sub-No. 6TA), filed April 10, 1978. Applicant: FRONTIER TRANSPORT, INC., 4100 South 5th West, P.O. Box 15751, Salt Lake City UT 84115. Applicant's representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Decorative stone*, (in bulk), from Filmore, UT; Wheatland, WY; Phoenix, AZ; Los Angeles, San Francisco, and Sacramento, CA, to points in CA, AZ, NM, UT, OR, WA, ID, CO, WY, NE and MT, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Filmore Products, Inc., P.O. Box 253, Filmore, UT 84631. (Evan B. Anderson, 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 136640 (Sub-No. 12TA), filed April 10, 1978. Applicant: ROBERT L. ALLEN, d.b.a. R. ALLEN TRANSPORT, P.O. Box 456, Pocomoke City, MD 21851. Applicant's representatives: S. Michael Richards, Raymond A. Richards, P.O. Box 225, Webster, NY 14580. Authority sought to operate as a *contract carrier*, by motor vehicles, over irregular routes, transporting: *Canned vegetables*, from Parksley, VA, to all points in Chicago, IL, and the commercial zone of Chicago, IL, under a continuing contract, or contracts, with Byrd Foods, Inc., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Byrd Foods, Inc., P.O. Box 318, Parksley, VA 23421. Send protests to: W. C. Hersman, District Supervisor, Interstate Commerce Commission, 12th and Constitution Avenue, N.W., Room 1413, Washington, DC 20423.

No. MC 138375 (Sub-No. 22TA), filed April 6, 1978. Applicant: J. H. WARE TRUCKING, INC., 909 Brown Street, P.O. Box 398, Fulton, MO 65251. Applicant's representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Meats, meat products, meat by-products, and articles* distributed by meat packing houses, as described in sections A and C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 MCC 209 and 766, (except hides, skins, and commodities in bulk), from Peppertree Beef Co. at Denver, CO, to NJ, NY, PA, MD, IL and MI, for 180 days. Supporting shipper(s): Peppertree Beef Co., 5300 Franklin Street, Denver, CO 80216. Send protests to: Vernon V. Coble, District Supervisor, Interstate Commerce Commission, 600 Federal Bldg., 911 Walnut Street, Kansas City, MO 64106.

No. MC 138469 (Sub-No. 69TA), filed April 10, 1978. Applicant: DONCO CARRIERS, INC., P.O. Box 75354, 2025 S. Nickolas, Oklahoma City, OK 73107. Applicant's representative: Jack H. Blanshan, Suite 200, 205 West Toughy Avenue, Park Ridge, IL 60068. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Paper, paper articles, and polyethylene articles*, (except commodities in bulk), from the facilities of Jemco Packaging Products Co. at or near Jackson, TN, to points in OK, KS, CO and TX, restricted to the transportation of shipments originating at the named origins and destined to the named destinations, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Jemco Packaging Products Co., Bonwood Industrial Park, Jackson, TN 38301. Send protests to: Connie Stanley, Transportation Assistant, Room 240 Old Post Office and Court House Bldg., 215 NW., 3rd, Oklahoma City, OK 73102.

No. MC 138627 (Sub-No. 30TA), filed April 10, 1978. Applicant: SMITHWAY MOTOR XPRESS, INC., P.O. Box 404, Route 4, Fort Dodge, IA 50501. Applicant's representative: Russell Hilken (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Iron and steel articles*, from Portage,

IN, to points in IA, NE, MO and points in IL on and south of U.S. Hwy 36, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Midwest Steel Division of National Steel Corp., P.O. Box No. 1, Portage, IN 46368. Send protests to: Herbert W. Allen, District Supervisor, Bureau of Operations, Interstate Commerce Commission, 518 Federal Building, Des Moines, IA 50309.

No. MC 138652 (Sub-No. 2TA), filed April 4, 1978. Applicant: BAKER TRUCK SERVICE, INC., 2906-29 Street North, P.O. Box 535, Lewiston, ID 83501. Applicant's representative: George R. LaBissoniere, 1100 Norton Building, Seattle, WA 98104. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Particleboard,* from plantsite of Collins Pine Co., Chester, CA, to plantsite of Browning Cut Stock, Juliaetta, ID, for 180 days. Applicant does not intend to tack or interline authority. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Browning Cut Stock, P.O. Box 419, Juliaetta, ID 83535. Send protests to: Barney L. Hardin, District Supervisor, Interstate Commerce Commission, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

No. MC 141402 (Sub-No. 11TA), filed April 10, 1978. Applicant: LINCOLN FREIGHT LINES, INC., Box 332, Indiana State Highway 32, Lapel, IN 46051. Applicant's representative: Norman R. Garvin, 815 Merchants Bank Building, Indianapolis, IN 46204. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Corrugated paper cartons,* between Zanesville, OH, on the one hand, and, on the other, Lapel, IN, under a continuing contract, or contracts with Brockway Glass Co. for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Brockway Glass Co. Lapel, IN 46051. 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 141448 (Sub-No. 2TA), filed April 7, 1978. Applicant: DUNCAN SALES & LEASING CO. INC., 714 East Baseline, Buckeye, AZ 85326. Applicant's representative: Donald W. Powell, Carmichael, McClue, Stephens & Toles, 1833 North Third Street, Phoenix, AZ 85004. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Expanded plastic bottles,* in 4,000 cubic foot, or larger jumbo van trailers, from Phoenix, AZ, to all points and places in NM and El Paso County, TX, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Stewart-Walker Co. 2426 South Seventh Street, Phoenix, AZ 85034. Send protests to: Andrew V. Baylor, District Supervisor, Interstate Commerce Commission, Room 2020 Federal Building, 230 North First Avenue, Phoenix, AZ 85025.

No. MC 142059 (Sub-No. 31TA), filed April 5, 1978. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, P.O. Box 911, Joliet, IL 60436. Applicant's representative: Jack Riley, (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Shortening, margarine and salad dressing* in vehicles equipped with mechanical refrigeration (except commodities in bulk), from the facilities of Anderson-Clayton Foods, Inc., at or near Jacksonville, IL, to points in CT, DE, MA, MD, ME, NH, NJ, NY, PA, RI, VT, WV, VA, and DC, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Anderson-Clayton Foods, Inc., D. Glassmeyer, Traffic Manager, 7839 Churchill Way, P.O. Box 6165, Dallas, TX. 75222. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 142059 (Sub-No. 32TA), filed April 5, 1978. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet IL Applicant's representative: Jack Riley (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Honeycomb,* from Michigan City, IN, to Batesville, MS.; Amana and Newton, IA; and Buffalo, NY, and Syracuse and Rochester, NY, for 180 days. Supporting shipper(s): Hexcel Corp., John A. Ray, Sales Manager, 2125 E. U.S., 12, Michigan City, IN. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 142059 (Sub-No. 33TA), filed April 5, 1978. Applicant: CARDINAL TRANSPORT, INC., 1830 Mound Road, Joliet IL 60436 Applicant's representative: Jack Riley (same address as applicant). Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Furniture parts, steel furniture frames, knocked down and chair frames,* set up in packages, from Edwardsburg, MI, to Asheville, NC; Blue Springs, MO; Newton, MN and Junction City, KS; Denver, CO; Los Angeles, CA; and Forest City IA, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Voyager Products, Inc., James P. Haher, President, 51 Krause, Road, Edwardsburg, MI 49112. Send protests to: Patricia A. Roscoe, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 S. Dearborn Street, Room 1386, Chicago, IL 60604.

No. MC 144201 (Sub-No. 3TA), filed April 4, 1978. Applicant: V.M.P. ENTERPRISES, INC., 3006 South 40th Street, Milwaukee, WI 53215. Applicant's representative: Wm. C. Dineen, 710 N. Plankinton Avenue, Milwaukee, WI 53203. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Buses,* in initial movements, in driveaway service, from San Benito, TX, to points in the United States, including AK and HI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Eagle International, Inc., 2045 Les Mauldin, Brownsville, TX (Lee R. Vandaveer). Send protests to: Gail A. Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Bldg. and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

No. MC 144381 (Sub-No. 1TA), filed April 7, 1978. Applicant: JOHN BITTNER, d.b.a. BITTNER TRUCKING, No. 5 Hermitage, Imperial, MO. 63052. Applicant's representative: B. W. LaTourette, Jr., 11 S. Meramec, Suite 1400, St. Louis, MO 63105. Authority sought to operate as a *common carrier,* by motor vehicle, over irregular routes, transporting: *Automobile mufflers, exhaust pipe, parts and accessories* used in the installation of automobile mufflers and exhaust pipes, from the warehouse facility of Midas International Corp., located at Chicago, IL, on the one hand, to points in St. Louis, MO, St. Louis County, MO, the warehouse facility of Midas International Corp., located at Chicago, IL, on the one hand, to points in St. Louis, MO, St. Louis County, MO, and St. Charles County, MO, on the other, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Midas International Corp., 15 various shops in St. Louis, MO, area. Send protests to: P. E. Binder, District Supervisor, 210 N. 12th Street, Room 1465, St. Louis, MO 63101.

No. MC 144436 (Sub-No. 1TA), filed April 4, 1978. Applicant: JOHN PRINCE TRANSPORTATION, INC., P.O. Box 440, Forsyth, MT 59327. Applicant's representative: Jerome An-

derson, Anderson, Symmes, Brown, Gerbase, Cebull & Jones, 100 Transwestern Building, Billings, MT 59101. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Brick, building block, sewer tile and allied clay products*, from Billings, MT, to Phoenix, AZ, under a continuing contract, or contracts, with the Lovell Clay Products Co., for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Ralph Stewart, President and General Manager, the Lovell Clay Products Co., 1312 Lockwood Road, Billings, MT 59101. Send protests to: Paul J. Labane, District Supervisor, Interstate Commerce Commission, 2602 First Avenue North, Billings, MT 59101.

No. MC 144511 (Sub-No. 1TA), filed April 5, 1978. Applicant: ED O'GRADY, R.R. 2, Falls City, NE 68355. Applicant's representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Fertilizer solution*, from the facilities of Quad-State Terminals, at or near Mound City, MO, to points in the States of IA, KS and NE, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Darrel Yocum, Manager, Quad-State Terminals, Box 128, Mound City, MO 64470. Send protests to: Max H. Johnson, District Supervisor, 285 Federal Building and Courthouse, 100 Centennial Mall North, Lincoln, NE 68508.

No. MC 144560 (Sub-No. 1TA), filed April 10, 1978. Applicant: RAY'S AUTO REPAIR, 6321 West Roosevelt Road, Berwyn, IL 60402. Applicant's representative: Ray Hule (same address as applicant). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Wrecked or disabled U-Haul vehicles*, from Berwyn, IL, to Milwaukee, WI, for 180 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): U-Haul Co., of Chicago, Jerome Moore, 6058 South Honore, Chicago, 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 144594TA, filed April 10, 1978. Applicant: WILLIAM MASSARO & EDWARD COHEN, 194 Atlantic Street, Central Islip, NY 11722. Applicant's representative: Lawrence E. Lindeman, 1032 Pennsylvania Building, 425 13th Street, NW., Washington, DC 20004. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Such commodities* as are sold by drug stores, between Nassau and Suffolk Counties, NY, on the one hand, and, on the other, points in CT, NY and NJ, under a continuing contract, or contracts, with Genovese Drugs, for 90 days. Applicant has also filed an underlying ETA seeking up to 90 days of operating authority. Supporting shipper(s): Genovese Drugs, 80 Marcus Drive, Melville, NY 11746. Send protests to: Maria B. Kejss, Transportation Assistant, Interstate Commerce Commission, 26 Federal Plaza, New York, NY 10007.

By the Commission.

H. G. Homme, Jr.,
Acting Secretary.

[FR Doc. 78-13245 Filed 5-15-78; 8:45 am]

sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6712-01]

1

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, May 17, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special open Commission meeting.

MATTERS TO BE CONSIDERED:

Agenda, Item No. and Subject

Broadcast—1—Minority Ownership Task Force Report.

Broadcast—2—Petition for rulemaking, permitting licensees under certain circumstances to sell their stations at "distress sale" prices to minority groups, filed by Congressional Black Caucus (RM-2811).

Broadcast—3—Petition filed by National Association of Broadcasters for declaratory ruling on use of tax certificates to promote broadcast ownership by minorities.

Broadcast—4—Notice of inquiry regarding public notice of intent to sell broadcast station (Docket No. 21352).

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC Public Information Office, telephone 202-632-7260.

Issued: May 10, 1978.

[S-1021-78 Filed 5-12-78; 2:34 pm]

[6714-01]

2

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 the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:30 a.m. Friday, May 19, 1978, to consider the following matters:

Disposition of minutes of previous meetings.

Applications for Federal deposit insurance:

Valley Bank of Helena, a proposed new bank to be located at 3030 North Montana Avenue, Helena, Mont., for Federal deposit insurance.

Morgan County State Bank, Inc., a proposed new bank to be located at 102 South Washington Street, Berkeley Springs, W. Va., for Federal deposit insurance.

Request for a report on the competitive factors involved in a proposed merger:

Request by the Comptroller of the Currency for a report on the competitive factors involved in the proposed merger of the First National Bank of Monroe, Monroe, Mich., with Monroe County Bank of Dundee, Dundee, Mich.

Recommendations with respect to payment for legal services rendered and expenses incurred in connection with receivership and liquidation activities:

Bronson, Bronson & McKinnon, San Francisco, Calif., in connection with the receivership of United States National Bank, San Diego, Calif.

Schall, Boudreau & Gore, Inc., San Diego, Calif., in connection with the receivership of United States National Bank, San Diego, Calif.

Bronson, Bronson & McKinnon, San Francisco, Calif., in connection with the liquidation of First State Bank of Northern California, San Leandro, Calif.

Kaye, Scholer, Fierman, Hays & Handler, New York, N.Y., in connection with the liquidation of Franklin National Bank, New York, N.Y.

J. Randolph Pelzer, P.A., North Charleston, S.C., in connection with the liquidation of American Bank & Trust, Orangeburg, S.C.

Fulbright & Jaworski, Houston, Tex., in connection with the liquidation of Northeast Bank of Houston, Houston, Tex.

Appeal, pursuant to the Freedom of Information Act, from the Corporation's earlier denial of a request for records.

Reports of committees and officers:

Minutes of the actions approved by the Committee on Liquidations, Loans and Purchases of Assets pursuant to authority delegated by the Board of Directors.

Reports of the Director of the Division of Bank Supervision with respect to applications or requests approved by him and the various Regional Directors pursuant to authority delegated by the Board of Directors.

Reports of security transactions authorized by the Chairman.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan R. Miller, Executive Secretary of the Corporation at 202-389-4446.

Dated: May 12, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-1016-78 Filed 5-12-78; 11:46 am]

[6714-01]

3

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 19, 1978, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors pursuant to sections 552b(c) (2), (4), (6), (8), (9)(A)(ii), (9)(B), and (10) of title 5, United States Code, to consider the following matters:

Applications for Federal deposit insurance:

First Guaranty Savings Bank, a proposed new bank to be located on South Broadway, opposite the entrance to Rockingham Race Track, Salem, N.H., for Federal deposit insurance.

State Bank of Towner, an operating noninsured bank located at 202 Main South, Towner, N.D. for Federal deposit insurance.

Applications for consent to establish branches:

Westlands Bank, Santa Ana, Calif., for consent to establish a branch at 3215 West Warner Avenue, Santa Ana, Calif.

Village Bank of New Jersey, South Orange, N.J., for consent to establish a branch in the Ivy Plaza Shopping Center, Newark, N.J.

Request pursuant to section 19 of the Federal Deposit Insurance Act for consent to service of a person convicted of an offense involving dishonesty or a breach of trust as a director, officer, or employee of an insured bank:

Name of person and of bank authorized to be exempt from disclosure pursuant to the provisions of subsection (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

Application for consent to merge and to establish branches:

Lincoln Bank, Lincoln City, Oreg., an insured State nonmember bank, for consent to merge under its charter and title with Yamhill County Bank, McMinnville, Oreg., also an insured State nonmember bank, and for consent to establish the sole office of Yamhill County Bank as a branch of the resulting bank.

Application for consent to merge, to establish branches, and to issue and retire capital notes:

Franklin Bank & Trust Co., Franklin, Ind., an insured State nonmember bank, for consent to merge under its charter and title with the Edinburg State Bank, Edinburg, Ind., also an insured State nonmember bank; for consent to establish three branches; and for consent to issue and retire capital.

Application for consent to consolidate, to redesignate the main office, and to establish branches:

Southwest Mississippi Bank, Magnolia, Miss., an insured State nonmember bank, for consent to consolidate under its charter, and with the title of "First Bank of Southwest Mississippi," with Bank of McComb, McComb, Miss., also an insured State nonmember bank; for consent to redesignate the main office of the resultant bank to the present main office site of Bank of McComb; and for consent to establish four branches.

Recommendations regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 43,496-SR—Farmers State Bank of Carlock, Carlock, Ill.

Case No. 43,497-L—American Bank & Trust, Orangeburg, S.C.

Case No. 43,499-L—Northern Ohio Bank, Cleveland, Ohio.

Case No. 43,500-L—Franklin National Bank, New York, N.Y.

Case No. 43,501-L—Franklin National Bank, New York, N.Y.

Case No. 43,502-SR—Sharpstown State Bank, Houston, Tex.

Case No. 43,503-L—Banco Credito y Ahorro Ponceno, Ponce, P.R.

Case No. 43,504-L—The Drovers' National Bank of Chicago, Chicago, Ill.

Case No. 43,506-L—Northern Ohio Bank, Cleveland, Ohio.

Case No. 43,507-L—American City Bank & Trust Co., National Association, Milwaukee, Wis.

Case No. 43,508-SR—Sharpstown State Bank, Houston, Tex.

Case No. 43,509-L—American Bank & Trust, Orangeburg, S.C.

Case No. 43,510-NR—San Francisco National Bank, San Francisco, Calif.

Case No. 43,511-L—The Hamilton Bank & Trust Co., Atlanta, Ga.

Case No. 43,512-NR—United States National Bank, San Diego, Calif.

Case No. 43,514-L—The Hamilton Bank & Trust Co., Atlanta, Ga..

Memorandum re Birmingham Bloomfield Bank, Birmingham, Mich.

Recommendations with respect to the initiation or termination of cease-and-desist proceedings, termination-of-insurance proceedings, or suspension or removal proceedings against certain insured banks or officers or directors thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(8)(9)(A)(ii)).

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6)).

The meeting will be held in Room 6135 of the FDIC Building located at 550 17th Street NW., Washington, D.C.

Requests for information concerning the meeting may be directed to Mr. Alan R. Miller, Executive Secretary of the Corporation, at 202-389-4446.

Dated: May 12, 1978.

FEDERAL DEPOSIT INSURANCE CORPORATION,
ALAN R. MILLER,
Executive Secretary.

[S-1017-78 Filed 5-12-78; 11:47 am]

[6701-02]

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 10:30 a.m., May 18, 1978.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

Limited facility application—First Federal Savings & Loan Association of Fort Myers, Fort Myers, FLA.

Branch office application—Eureka Federal Savings & Loan Association of San Francisco, San Francisco, Calif.

Application for insurance of accounts—Amigo Savings & Loan Association, Brownsville, Tex.

Consideration of association request for extension of time to establish a branch office—First Federal Savings & Loan Association, Sanford, N.C.

Branch office application—La Jolla Federal Savings & Loan Association, La Jolla, Calif.

Consideration of amendments to the nondiscrimination in lending regulations.

No. 151, May 11, 1978.

[S-1022-78 Filed 5-20-78; 3:15 pm]

[6720-01]

5

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 90, page 19986, May 9, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 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. Frank O. Bolling, 202-377-6677.

CHANGES IN THE MEETING: The following item has been added to the agenda for the open portion of the meeting:

Appointment of President—Federal Home Loan Bank of San Francisco.

No. 153, May 12, 1978.

[S-1023-78 Filed 5-20-78; 3:15 pm]

[6702-02]

6

FEDERAL HOME LOAN MORTGAGE CORPORATION.

TIME AND DATE: May 12, 1978, at the conclusion of the open meeting to be held at 2:30 p.m.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Closed.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Henry Judy, 202-624-7107.

MATTERS TO BE CONSIDERED: Consideration of appointment of Corporate Officer.

No. 152, May 12, 1978.

Announcement is being made at the earliest practicable time.

RONALD A. SNIDER,
Assistant Secretary.

[S-1024-78 Filed 5-20-78; 3:41 pm]

[6210-01]

7

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 10 a.m., Friday, May 19, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: Summary Agenda: Because of their

routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Request by the Federal Trade Commission for the Board to consider 16 proposals relating to the Equal Credit Opportunity Act, including amendments to Regulation E, changes in the procedure for issuing official interpretations, and rescission of a board interpretation.

2. Proposed simplification of annual percentage rate computation for graduated payment mortgages, as required by Regulation Z (Truth in Lending).

3. Proposed amendment to Regulation Y (Bank Holding Companies) to permit bank holding companies to act as general insurance agents in towns of less than 5,000 population.

4. Proposed expansion of the System's computer hardware monitoring program.

Discussion Agenda:

1. Proposed guidelines for enforcement of Regulation B (Equal Credit Opportunity).
2. Petition by Consumers Union requesting the Board to amend § 226.6(i) of Regulation Z (Truth in Lending) affecting record retention by creditors potentially subject to the uniform enforcement guidelines.
3. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

CATHY E. MINEHAN,
Assistant Secretary of the Board.

Dated: May 10, 1978.

[S-1019-78 Filed 5-12-78; 2:43 pm]

[7020-02]

8

INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 2 p.m. (e.d.t.), Thursday, May 25, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda.
2. Minutes.
3. Ratifications.
4. Petitions and complaints (if necessary): (a) Wood, spring clothespins (Docket No. 511).
5. Zinc (Inv. TA-201-31)—Staff briefing.
6. Conversion of specific and compound rates (Inv. 332-99)—Approval of report.
7. Molded golf balls (Inv. 337-TA-35)—Consideration of procedural matters.
8. Rescinding of action of August 16, 1978—See action jacket [03-78-4].
9. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-1014-78 Filed 5-12-78; 11:04 am]

[7590-01]

9

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of May 8, 1978.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

Wednesday, May 10, 1:30 p.m.—Discussion of testimony on proposed licensing legisation is rescheduled to May 18, 9:30 a.m.

NOTE.—The two meetings scheduled this week on this subject were both held in public session.

Thursday, May 11, 9:30 a.m.—Discussion of OIA/OGC Inquiry (CLOSED—Exemption 1). Rescheduled from May 10.

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

WALTER MAGEE,
Office of the Secretary.

MAY 10, 1978.

[S-1015-78 Filed 5-12-78; 11:04 am]

[7590-01]

10

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: Week of May 15, 1978.

PLACE: Comissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

WEDNESDAY, MAY 17, 9:30 A.M.

1. Discussion of amendments to 10 CFR Part 73 to upgrade security personnel qualifications, training and equipment requirements (approximately 1 hour—public meeting).
2. Briefing on Anticipated Transients Without Scram (ATWS) (approximately 1 hour—public meeting).

WEDNESDY, MAY 17, 1:30 P.M.

1. Briefing on assessment of relative differences in class 9 accident risks in evaluations of alternatives to sites with high population densities (approximately 1 hour—public meeting).
2. Discussion of Procedural questions in Clearance Rule Public Hearing (approximately 1 hour—public meeting).
3. Affirmation Items (approximately 10 minute—public meeting). (a) FEDERAL REGISTER notice cancelling the dollar per manrem rulemaking.

THURSDAY, MAY 18, 9:30 A.M.

1. Discussion of proposed licensing legislation (Tentative). Rescheduled from May 10 (approximately 1 hour—public meeting).
2. Discussion of personnel matter (Tenative) (approximately 1½ hours—Closed—Exemption 6).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

MAY 10, 1978.

[S-1018-78 Filed 5-12-78; 11:47 am]

[8010-01]

11

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 19331, May 4, 1978.

STATUS: Open meeting and closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

PREVIOUSLY ANNOUNCED TIME AND DATE: 10 a.m., Thursday, May 11, 1978.

CHANGES IN THE MEETING: Additional items to be considered:

The following additional item will be considered by the Commission at the open meeting scheduled for Thursday, May 11, 1978, at 10 a.m.:

Proposed transmittal of comments to the Office of Management and Budget concerning H.R. 7485, a bill to authorize national banks to underwrite and deal in certain municipal revenue bonds.

The following additional items will be considerd by the Commission at the closed meeting scheduled immediately following the open meeting:

Freedom of Information Act appeals.
Regulatory matters bearing enforcement implications.
Consideration of requests for stay of order.
Other litigation matters.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meeting may be so considered pursuant to one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4)(8)(9)(A) and (10) and 17 CFR 200.402(a)(8)(9)(i) and (10).

Commissioners Loomis, Evans, and Pollack determined that Commission business required consideration of these items and that no earlier notice thereof was possible.

MAY 10, 1978.

[S-1020-78 Filed 5-12-78; 2:34 pm]

Federal Register

TUESDAY, MAY 16, 1978
PART II

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

Special Projects of Regional or National Significance

[4110-84]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 51a—GRANTS TO STATE AGENCIES FOR MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

Special Projects of Regional or National Significance

AGENCY: Public Health Service, HEW.

ACTION: Final rule.

SUMMARY: This rule establishes regulations governing grants to State agencies for special projects of regional or national significance which may contribute to the advancement of maternal and child health or crippled children's services.

EFFECTIVE DATE: This amendment takes effect on June 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Vince L. Hutchins, Associate Bureau Director, Office for Maternal and Child Health, Bureau of Community Health Services, Health Services Administration, Room 7-39, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2170.

SUPPLEMENTARY INFORMATION: On November 29, 1977, a notice proposing the addition of subpart B to part 51a was published in the FEDERAL REGISTER (42 FR 60761). The notice of proposed rulemaking sets forth the policies governing grants to State agencies for special projects of regional or national significance which would contribute to the advancement of maternal and child health and crippled children's services under sections 503(2) and 504(2) of the Social Security Act (42 U.S.C. 703(2) and 704(2)). (These sections also authorize such project grants to institutions of higher learning. Regulations covering these grants have been promulgated as Subpart D of Part 51a of Title 42, Code of Federal Regulations.) The policies proposed are essentially those which were developed jointly with the States and which have been in operation over the years.

The regulations set forth five criteria for judging whether a project is of regional or national significance. One commenter inquired whether a project must meet all five criteria to be determined to be a project of regional or national significance. A project meeting any one of the criteria will be considered as having regional or national significance. A change has been made in § 51a.203(b) to clarify this point. The commenter also requested that the regulation clearly provide that a special project may serve a single State if it would have regional or national significance. An appropriate modification to § 51a.203(b) has been made to provide such clarification.

This commenter also requested a more definitive statement with respect to required cost sharing on the part of State agencies. The commenter stated that because of the financial problems of the States, it might be difficult for a State initially to support a project of regional or national significance. This could discourage applications for innovative projects that could have great impact.

Traditionally, States have been required to participate in the costs of such projects. The amounts or percentages involved have varied depending on such factors as the ability of the grantee to share in the costs, the type of project, the services provided, and the length of the project period. Also, there have been cost sharing variations within the project period, with the Federal Government generally assuming a lesser share of the costs after the initial year or years of a project.

The regulation does not preclude full funding of such special projects by the Federal Government under appropriate circumstances. The regulation does, however, set forth criteria for determining the amount of cost of sharing, if any, to be required. The criteria relate to the financial ability of the applicant and the need for the project. Therefore, cost sharing should not discourage applications for innovative projects. No change in the regulations has been made.

The second commenter requested information about the length of time for which a project may be initially approved, and the number of extensions permitted. The regulations have been reworded to state this policy clearly: An approved initial project may not exceed 5 years, and a project may then compete for additional extensions not to exceed 5 years each. There is no limit to the number of extensions for which a project may compete.

The third commenter supported the regulation and made no recommendations for change.

In addition to the revisions mentioned above, minor technical and clarifying changes have been made in the regulations. In § 51a.212, a line inadvertently omitted in the November 29, 1977, FEDERAL REGISTER issuance has been inserted. The section now reads: "(b) In addition to the unallowable costs included under Subpart Q, 45 CFR Part 74, Appendix C, funds may not be used for academic or vocational education for children, * * *".

Accordingly, part 51a of title 42 is amended by adding a new Subpart B, 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 Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and OMB Circular A-107.

Dated: March 31, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: May 5, 1978.

HALE CHAMPION,
Acting Secretary.

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AUTHORITY: Sections 503(2) and 504(2) of the Social Security Act; 81 Stat. 922 (42 U.S.C. 703(2) and 704(2)); section 1102 of the Social Security Act, 49 Stat. 647 as amended (42 U.S.C. 1302).

Subpart B—Project Grants to State Agencies

§ 51a.201 Applicability.

The regulations of this subpart are applicable to grants authorized by sections 503(2) and 504(2) of the Social Security Act [42 U.S.C. 703(2) and 704(2)] to State agencies for projects of regional or national significance which may contribute to the advancement of maternal and child health or crippled children's services.

§ 51a.202 Definitions.

As used in this subpart: (a) "Act" means the Social Security Act, as amended (42 U.S.C. Chapter 7).

(b) "Crippled children's services" means (1) the early location of crippled children; (2) the provision for such children of preventive, diagnostic and treatment services, including medical care, hospitalization and other institutional care and aftercare, appliances and facilitating services directed toward the diagnosis of the condition of such children or toward the restoration of such children to maximum physical and mental health; (3) the development, strengthening, and improvement of standards and techniques relating to the provisions of such care and services; (4) the training of personnel engaged in the provision, development, strengthening, or im-

provement of such care and services; and (5) necessary administrative services in connection with the foregoing.

(c) "Facilitating services" means transportation, subsistence away from home, drugs, biologicals, communications, supplies and equipment as may be necessary for the provision of maternal and child health or crippled children's services.

(d) "Maternal and child health services" means (1) the provision of educational, preventive, diagnostic and treatment services, including medical care, hospitalization and other institutional care and aftercare, appliances and facilitating services directed toward reducing infant mortality and improving the health of mothers and children; (2) the development, strengthening and improvement of standards and techniques relating to such services and care; (3) the training of personnel engaged in the provision, development, strengthening, or improvement of such services and care; and (4) necessary administrative services in connection with the foregoing.

(e) "Secretary" means the Secretary of Health, Education, and Welfare and any other officer or employee of the Department of Health, Education, and Welfare to whom the authority involved has been delegated.

(f) "State" means the several States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(g) "State agency" means the official agency of a State administering or supervising the administration of a State plan for maternal and child health or crippled children's services under Subpart A of this Part.

§ 51a.203 Eligibility.

(a) Any State agency is eligible to apply for grants under this subpart for special projects of regional or national significance which may contribute to the advancement of maternal and child health or crippled children's services including mental retardation services.

(b) a project (including a project which serves only one State or part of a State) may be of regional or national significance if it meets any one of the following objectives:

(1) Increases the availability of services for improving the health of mothers and children, including crippled children, on a regional or national level or both;

(2) Develops and demonstrates a broad range of preventive, diagnostic, and treatment services which will improve the health of mothers and children, including crippled children on a regional or national level or both;

(3) Develops and demonstrates innovative methods which will improve and increase the provision of maternal and child health and crippled children's services on a regional or national level or both;

(4) Promotes more effective utilization of personnel providing health services to mothers and children; or

(5) Increases the scope and availability of information for use (or potential use) in the provision of maternal and child health and crippled children's services on a regional or national level or both.

§ 51a.204 Application for a grant.

An application, to be approvable under this subpart, shall be submitted to the Secretary at such time and in such form and manner as the Secretary may prescribe, and shall contain the following:

(a) A full description of the intended project, including the activities which the applicant intends to carry out, and the manner in which the applicant intends to conduct the project and carry out the requirements of this subpart;

(b) A description of the objectives to be accomplished within specified time periods, and a description of the methodology to be used to measure achievement of such objectives;

(c) An assessment of need for the proposed activities, including, as appropiate.

(1) A description of existing resources to meet these needs on a regional level; or

(2) A description of existing resources to meet these needs on a national level.

(d) An assessment of the regional or national significance of the project's objections as specified in § 51a.203(b).

(e) A plan for the utilization and dissemination of information gained by the project which may contribute to the advancement of maternal and child health and/or crippled children's services;

(f) A budget and a fiscal plan for assuring effective utilization of grant funds and a justification of the amount of funds requested;

(g) A description of the proposed staffing pattern which will be employed to carry out the project, and a time-phased plan for hiring staff to meet the requirements of this part;

(h) A statement indicating how and the extent to which the project plans to meet each of the applicable requirements of § 51a.205;

(i) Evidence that the applicable requirements of Office of Management and Budget Circular No. A-95 have been satisfied;

(j) For projects which propose to provide or arrange for the provision of direct health, services, evidence that such applications have been forwarded to the affected health systems agency(s) designated under Title XV of the Public Health Service Act with a request for review and comment; and

(k) The signature of the individual authorized to act for the State agency and to assume on behalf of the State agency the obligations imposed by the Act, the provisions of this subpart, and any additional conditions of the grant award.

§ 512.205 Project elements.

(a) Each project supported under this subpart shall: (1) Provide or arrange for the provision of those maternal and child health and/or crippled children's services which are necessary to achieve project objectives and which are specified in the grant award;

(2) Evaluate its progress toward the achievement of project objectives within time periods as specified in the grant award;

(3) Recruit personnel necessary to meet the requirements of this part in accordance with the plan submitted pursuant to § 51a.204(g);

(4) Assure that staff professionals and other staff meet all applicable licensure, certification or other legal requirements for the practice of their professions; and are in substantial accordance with national standards as accepted by the Secretary or standards prescribed by the Secretary;

(5) Provide in-service and/or short-term training programs, as appropriate, for project personnel;

(6) Make reasonable efforts to obtain local participation (e.g., health professionals, service providers, consumers, representatives from public or nonprofit private agencies) in the development and operation of the project;

(7) Coordinate project activities with other health, education, and welfare programs to ensure that currently available resources are not duplicated;

(8) Utilize other Federal, State, local, and private resources available for support of the project prior to the use of grant funds under this subpart;

(9) Establish basic statistical data cost accounting, management information, and reporting systems which shall enable the project to provide statistics and other information as the Secretary may reasonably require, and to make such reports to the Secretary in a timely manner with such frequency as the Secretary may reasonably require; and

(10) Operate the project in a manner which preserves human dignity;

(b) Each project which provides or arranges for the direct provision of health services shall:

(1) Make services available without the imposition of any durational residency or specific referral requirement (except as may be described in a project application and approved by the Secretary);

(2) Have prepared a schedule of fees and payments for the provision of its

services in accordance with the schedule of the Title V State plan of the State in which the project is located. *Provided,* That charges are not a barrier to the delivery of services and that preventive and diagnostic services are made available without charge to the patient or family; and

(3) Review the quality of health care provided by the project;

(4) Assure that facilities meet all applicable safety or other legal requirements;

(5) Provide or arrange for facilitating services as may be necessary to achieve the objectives of the project;

(6) Provide services (such as health education, outreach, and interpreters) which promote and facilitate optimal use of the services of the project.

§ 51a.206 Grant evaluation and award.

(a) Within the limit of funds determined by the Secretary to be available for such purposes, the Secretary will award grants under this subpart to applicants whose projects will, in his judgment, best promote the purposes of sections 503(2) and 504(2) of the Act, taking into account:

(1) The extent of regional and/or national significance of the activities to be carried on by the project as reflected by the objectives set for the project pursuant to § 51a.203;

(2) The need for services to be provided by the project in the region in which the project is located, and/or in the Nation;

(3) The reasonableness of the budget and the soundness of the fiscal plan for assuring effective utilization of grant funds;

(4) The capability of the applicant to perform the activities proposed in the application, the qualifications of the staff or proposed staff in relation to the activities to be carried out, and the adequacy of the facilities available for the project; and

(5) The extent to which the application provides for implementing each of the requirements of § 51a.205.

(b) The amount of any award under this subpart will be determined by the Secretary on the basis of his estimate of the sum necessary for a designated portion of project costs; except that no grant shall be made for an amount in excess of the total cost as found necessary by the Secretary for the carrying out of the project.

(1) In determining the share of project costs to be borne by the grantee, the Secretary will consider the following factors:

(i) The ability of the grantee to finance its share of project costs from non-Federal sources; and

(ii) The need of the area served by the project for the services to be provided.

(2) At any time after approval of an application under this subpart, the Secretary may retroactively agree to a lower share of project costs to be borne by the grantee than that determined pursuant to paragraph (b) of this section where he finds that changed circumstances justify a smaller contribution.

(3) In determining the grantee's share of project costs, if any, costs borne by Federal grant funds, or costs used to match other Federal grants, may not be included except as otherwise provided by law.

(c) All grant awards shall be in writing, and shall set forth the amount of funds granted, the project period, and the period for which support is recommended. The initial project period or each competitive extension thereof for which support is recommended shall not exceed 5 years.

(d) Neither the approval of any project nor any grant award shall commit or obligate the United States in any way to make any additional, supplemental, or other award with respect to any approved project or portion thereof. For continuation support, grantees must make separate application.

§ 51a.207 Use of project funds.

(a) Any funds granted pursuant to this part, as well as other funds to be used in performance of the approved project, may be expended solely for carrying out the approved project in accordance with Sections 503(2) and 504(2) of the Act, the regulations of this part, the terms and conditions of the award, and the applicable cost principles prescribed in Subpart Q of 45 CFR Part 74.

(b) Project funds awarded under this part to operate a special project of regional or national significance may be used for, but need not be limited to, the following:

(1) The costs of obtaining technical assistance to develop the project, to improve its management capability, to establish an adequate data collection system, and to develop methodology for evaluation; and

(2) The cost of providing diagnostic and/or preventive health services to individuals in accordance with the regulations of this subpart.

(c) Prior approval by the Secretary of revisions of the budget and project plan is required whenever there is to be a significant change in the scope or nature of project activities.

§ 51a.208 Grant payments.

The Secretary shall, from time to time, make payments to a grantee or all or a portion of any grant award, either in advance or by way of reimbursement for expenses incurred in the performance of the project, to the extent he determines such payments necessary to promote prompt initiation and advancement of the approved project.[1]

§ 51a.209 Confidentiality of information.

All information as to personal facts and circumstances obtained by the project staff in connection with the provision of services or other activities under the project shall be treated as privileged communication, shall be held confidential, and shall not be divulged without the individual's consent, except as may be otherwise required by applicable law (including this subpart) or necessary to provide services to the individual. Such information may be disclosed in summary, statistical, or other form which does not identify particular individuals.

§ 51a.210 Grantee accountability.

(a) *Accounting for grant award payments.* All payments made by the Secretary shall be recorded by the grantee in accounting records separate from the records of all other grant funds, including funds derived from other grant awards. With respect to each approved project the grantee shall account for the sum total of all amounts paid by presenting or otherwise making available evidence, satisfactory to the Secretary, for expenditures for direct and indirect costs meeting the requirements of this part. However, when the amount awarded for indirect costs was based on a predetermined fixed-percentage of estimated direct costs, the amount allowed for indirect costs shall be computed on the basis of such predetermined fixed-percentage rates applied to the total, or a selected element thereof, of the reimbursable direct cost control.

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[1] Attention is called to the requirements of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d *et seq.*) and in particular section 601 of such Act which provides that no person in the United States shall, on the grounds of race, color, or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. A regulation implementing Title VI, which applies to grants under this part, has been issued by the Secretary of Health, Education, and Welfare, with the approval of the President (45 CFR Part 80). In addition, no person shall, on the grounds of age, sex, creed, or marital status (unless otherwise medically indicated), be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity so receiving Federal financial assistance.

Attention is called to the requirements of Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

(b) *Copyright royalties.* Copyright royalties shall be accounted for as provided in 45 CFR 74.44.

(c) *Grant closeout.*—(1) *Date of final accounting.* A grantee shall render, with respect to each approved project, a full account, as provided herein, as of the date of the termination of grant support. The Secretary may require other special and periodic accounting.

(2) *Final settlement.* There shall be payable to the Federal Government as final settlement with respect to each approved project the total sum of:

(i) Any amount not accounted for pursuant to paragraph (a) of this section; and

(ii) Any other amounts due pursuant to Subparts F, M, and O of 45 CFR Part 74. Such total sum shall constitute a debt owed by the grantee to the Federal Government and shall be recovered from the grantee or its successors or assignees by setoff or other action as provided by law.

§ 51a.211 Performance report.

A grantee shall submit a performance report meeting the requirement of 45 CFR 74.82(c), and a financial status report at the end of each budget period and the assigned project period.

§ 51a.212 Applicability of 45 CFR Part 74.

(a) The provisions of 45 CFR Part 74, establishing uniform administrative requirements and cost principles, shall apply to all grants under this part.

(b) In addition to the unallowable costs included under Subpart Q, 45 CFR Part 74, Appendix C, funds may not be used for academic or vocational education for children, food (except that provided in connection with institutional care, and that provided for demonstration purposes or for special dietary products used for the treatment of inborn errors of metabolism), sanitation (except in demonstrations which have had prior approval), or clothing (such as gowns and aprons used by physicians, nurses, and other staff at clinics), or individual membership dues in any society or organization.

§ 51a.213 Additional conditions.

The Secretary may, with respect to any grant award, impose additional conditions, prior to or at the time of the award, when, in his judgment, such conditions are necessary to assure or protect advancement of the approved project, the interest of the public health, or the conservation of grant funds.

[FR Doc. 78-13090 Filed 5-15-78; 8:45 am]

Federal Register

TUESDAY, MAY 16, 1978
PART III

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

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CERTAIN LIVE WARMBLOODED ANIMALS UNDER THE ANIMAL WELFARE ACT

Revision of Transportation Standards

[3410-34]

Title 9—Animals and Animal Products

CHAPTER I—ANIMAL AND PLANT HEALTH INSPECTION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—ANIMAL WELFARE

PART 3—STANDARDS

Revision of Standards for Transportation, and the Handling, Care, and Treatment in Connection Therewith, of Dogs, Cats, Rabbits, Hamsters, Guinea Pigs, Nonhuman Primates, and Certain Other Warmblooded Animals.

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends the transportation standards governing certain live warmblooded animals under the Animal Welfare Act, published in the FEDERAL REGISTER on June 21, 1977 (42 FR 31556-31571). The amendments concern compliance with standards for primary enclosures used to transport certain animals in commerce by carriers and intermediate handlers, the optional use of certificates of animal acclimation to temperature extremes, the use of primary enclosures with ventilation openings on three walls for transporting dogs and cats, and the standards for the animal holding area of terminal facilities. The revisions contained herein are the result of various petitions for reconsideration received by the Department after publication of the transportation standards in the FEDERAL REGISTER on June 21, 1977, which made new facts and evidence available to the Department which appeared to warrant this action.

DATE: Effective date May 16, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Dale F. Schwindaman, Senior Staff Veterinarian, Animal Care Staff, Veterinary Services, Animal and Plant Health Inspection Service, United States Department of Agriculture, Room 703, Federal Building, 6505 Belcrest Road, Hyattsville, Md. 20782, 301-436-8271.

SUPPLEMENTARY INFORMATION: On October 14, 1977, APHIS published a notice of proposed rulemaking containing changes and additions to Part 3 of Subchapter A, Chapter I, Title 9 of the Code of Federal Regulations (42 FR 55221-55226) which would (1) revise the requirements for accepting for transportation and transporting in commerce by carriers and intermediate handlers of certain warmblooded animals, by allowing them to accept and to rely on certification by consignors of such animals of (a) animal acclimation to temperature extremes and (b) compliance with the standards for the primary enclosure or shipping container, when such certification is presented by U.S. Department of Agriculture (USDA) licensees and registrants or any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals; (2) provide for the use of primary enclosures with ventilation openings located on three walls to transport dogs and cats; and (3) revise the requirements for the animal holding area in transportation terminal facilities concerning the commingling of general cargo with animal shipments and clarify terminology associated with temperatures.

A total of 10 comments were received within the comment period in response to the proposed changes. Although the number of comments received was relatively small, they represented many interest groups; i.e., carriers, the biomedical community, zoological parks and aquariums, an animal shipping container manufacturer, pet animal dealers, humane groups, and a Member of Congress. Many of the comments raised questions or made suggestions which, because of their validity, warranted some changes of the proposed standards. Certain other editorial changes were also made for clarification.

DISCUSSION OF MAJOR PROPOSED ITEMS AND COMMENTS

CERTIFICATES OF COMPLIANCE FOR PRIMARY ENCLOSURES

The present transportation standards (9 CFR 3.11 et seq.) require that no carrier or intermediate handler accept for transportation or transport, in commerce, any animal in a primary enclosure that does not conform to the requirements set forth in the standards. As a result of petitions for reconsideration received by the Department, APHIS proposed to review the standards to give the option to carriers and intermediate handlers to accept for transportation and transport, in commerce, any dog, cat, rabbit, guinea pig, hamster, nonhuman primate, and certain other warmblooded animals in a primary enclosure when consigned by any licensed or registered dealer, research facility, exhibitor, operator of an auction sale, or by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals, if such consignor certifies that the primary enclosure meets the requirements of the standards for such animals. Such certification would make the consignor responsible for assuring that the primary enclosure complies with the standards, unless the enclosure is so obviously defective or damaged that it cannot reasonably be expected to safely contain an animal.

One comment, while acknowledging the benefits of a certificate of compliance for primary enclosures, questioned the anticipated confusion, delay, and compromise of the purpose of its use if a standard form for certification is not provided by the Department of Agriculture. APHIS believes that a certificate of compliance which is consistent in format and includes an appropriate certifying statement relative to the required standards for a shipping container for live warmblooded animals can be provided by the regulated carriers or intermediate handlers for use by USDA licensees and registrants and Federal departments, agencies, and instrumentalities having laboratory animals or exhibiting animals; therefore, APHIS does not intend to provide such a form at this time. However, the information required to complete an acceptable certificate is explained in this amendment.

Another comment expressed concern that a consignor could falsely certify that a primary enclosure is in compliance with the standards and, in such cases, questioned the Department's legal authority for followup regulatory action. Since certification of primary enclosures will be limited to consignors who are subject to the Animal Welfare Act, any violation which might be perpetrated by such consignors of live animal shipments is subject to penalties as provided by the Act.

CERTIFICATES OF ANIMAL TEMPERATURE ACCLIMATION

The present transportation standards provide for a range of ambient temperatures which would be allowed within primary enclosures and other areas involved in the transportation of live animals. APHIS recognizes, however, that certain warmblooded animals can withstand temperatures above the prescribed limits of the ambient temperature ranges for short periods of time. APHIS also recognizes the fact that certain animals can withstand temperatures below the prescribed limits for a longer period of time. The air carriers criticized APHIS for not indicating a specific acceptable procedure whereby the carriers or intermediate handlers could accept certain species of warmblooded animals which had spent their lives in an outdoor environment and were acclimated to temperatures less than 45° F for transportation in commerce when the carrier's or intermediate handler's facilities fail to provide the minimum allowed temperature in the animal holding areas.

APHIS is, therefore, amending §§ 3.11(b), 3.35(b), 3.60(b), and 3.85(b)

relative to consignments to carriers and intermediate handlers of live dogs or cats, hamsters, rabbits, nonhuman primates, and certain other warmblooded animals, with the exception of guinea pigs, which allows carriers and intermediate handlers whose facilities fail to provide the minimum allowed temperature in the animal holding areas, the option of accepting for transportation and transporting such animals consigned by any licensed or registered dealer, research facility, exhibitor, operator of an auction sale or by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals, if such consignor furnishes a certificate executed by a licensed veterinarian on a specified date, which shall not be more than 10 days prior to delivery for transportation, stating that such live animal is acclimated to air temperatures lower than 7.2° C (45° F). Guinea pigs are excepted because they are not tolerant of low temperatures. Information required to complete an acceptable certificate of animal temperature acclimation for dogs, cats, hamsters, rabbits, nonhuman primates, and certain other warmblooded animals is indicated in these amendments. Such certification of temperature acclimation is limited to consignors who are subject to the Animal Welfare Act, and any violation which may be committed by such consignors of live animal shipments is subject to penalties provided by the Act. Other persons, such as private pet owners, are not subject to the Act or the regulations and standards.

LIVE ANIMAL SHIPPING CONTAINERS WITH VENTILATION OPENINGS ON THREE SIDES

Comments received supported the proposed amendments to the standards concerning ventilation of live animal shipping containers for dogs and cats having ventilation openings on three sides. Therefore, in addition to the present standards for shipping containers having ventilation openings located either on each of two opposite walls or on each of four walls, APHIS is providing herein that primary enclosures having ventilation openings located on three sides shall have such ventilation openings of at least 8 percent of the total surface area of two opposite walls and at least 50 percent of the total surface area of the third wall.

ANIMAL HOLDING AREAS OF TERMINAL FACILITIES

In its proposed amendments of the present standards APHIS provided that carriers and intermediate handlers shall maintain all animal shipments in one holding area of a terminal facility at any one time and that animal shipments shall not be commingled with inanimate cargo at any terminal facility. This proposal was an amendment to the present standards which require carriers to designate an indoor animal holding area within terminal facilities which shall not be used for general cargo, but may be located within the general cargo area. Carriers commented that the proposal for a single animal holding area would establish an unduly cumbersome procedure for processing animal shipments through terminal facilities in that both "inbound" and "outbound" live animal shipments would be maintained in the same area. The resulting confusion in the terminal area would impair expeditious processing of animal shipments, especially since carriers also have to segregate "outbound" shipments from "inbound" shipments to make accurate calculations relative to aircraft weight and balance requirements. Other comments indicated possible problems of the proxmity of incompatible species of animals to each other if all live animal shipments are kept in one single area. Therefore, this amendment does not require that all live animal shipments be maintained in the one animal holding area of a terminal facility of any carrier or intermediate handler. However, the standards do indicate that an animal holding area is where live animal shipments are maintained and that an effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for such animal holding area.

The proposed amendments to the standards for terminals contained requirements for auxiliary ventilation when the atomospheric temperature within the animal holding area is 29.5° C. (85° F.), or higher, and also contained requirements relative to the ambient temperature around the live animal in the holding area. Several comments were critical of the usage of different modifying terms, i.e., "atmospheric" and "ambient," relative to the term "temperature" in the proposed amendments to the standards for the animal holding area in the terminal and labeled such usage as "confusing." APHIS is, therefore, in §§ 3.16, 3.40, 3.65, 3.90, and 3.116, substituting the term "air" for the words "atmospheric" and "ambient" used to describe the temperature requirements for the animal holding area in the terminal. Also, for the sake of simplicity, APHIS is changing the term "atmospheric temperature" to "outdoor air temperature" in §§ 3.17(a)(3), 3.41(a)(3), 3.66(a)(3), 3.91(a)(3), and 3.117(a)(3).

The proposed amendments to the standards indicated that the animal holding area shall be provided with fresh air by means of windows, doors, vents, or air conditioning. Further, in order to minimize drafts, odors, and moisture condensation in the animal holding area, the proposed amendments indicated that ventilation or air circulation be accomplished by fans, blowers, or an air conditioning system. APHIS did not intend, however, that minimizing drafts, odors, and moisture condensation be accomplished only by fans, blowers, or an air conditioning system, but intended that these mechanical methods could be used for this purpose at the option of the carriers and intermediate handlers. Therefore, this amendment reflects the optional use of such equipment by the term "may be" rather than "shall be."

One comment indicated that the proposed amendments to the standards would require carriers and intermediate handlers to provide auxiliary ventilation equipment in the animal holding areas even if the temperature within such animal holding areas never reached 85° F. APHIS acknowledges that the proposal as written could be interpreted to require auxiliary ventilation equipment for transportation terminal animal holding areas when the air temperature reaches 85° F. or higher, even though there could be terminals located in climates where such auxiliary ventilation would never be needed. APHIS has therefore clarified this part of the standards for terminal facilities by indicating that auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live animals when the air temperature within such animal holding area is 29.5° C. (85° F.), or higher.

Accordingly, the standards (9 CFR 3.1 et seq.) are amended in the following respects:

§ 3.11 Consignments to carriers and intermediate handlers. [Amended]

1. Section 3.11(b) of the standards (9 CFR 3.11(b)) is amended to read as follows:

* * * * *

(b) Any carrier or intermediate handler shall only accept for transportation or transport, in commerce, any live dog or cat in a primary enclosure which conforms to the requirements set forth in § 3.12 of the standards: *Provided, however,* That any carrier or intermediate handler may accept for transportation or transport, in commerce, any live dog or cat consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals, or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale, if such consignor furnishes to the carrier or intermediate handler a certificate, signed by the consignor, stating that the primary enclosure complies with

§ 3.12 of the standards, unless such primary enclosure is obviously defective or damaged and it is apparent that it cannot reasonably be expected to contain the live dog or cat without causing suffering or injury to such live dog or cat. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

(1) Name and address of the consignor;

(2) Tag number or tattoo assigned to each dog or cat pursuant to §§ 2.50 and 2.54 of the regulations;

(3) A certifying statement (e.g., "I hereby certify that the ——— (number) primary enclosure(s) which are used to transport the animal(s) in this shipment complies (comply) with USDA standards for primary enclosures (9 CFR Part 3)."); and

(4) The signature of the consignor, and date.

* * * * *

2. Section 3.11(c) of the standards (9 CFR 3.11(c)) is amended to read as follows:

* * * * *

(c) Carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the standards, may accept for transportation or transport, in commerce, any live dog or cat consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate executed by a licensed veterinarian on a specified date which shall not be more than 10 days prior to delivery of such dog or cat for transportation in commerce, stating that such live dog or cat is acclimated to lower air temperatures than prescribed in §§ 3.16 and 3.18. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

(1) Name and address of the consignor;

(2) Tag number or tattoo assigned to each dog or cat pursuant to §§ 2.50 and 2.54 of the regulations;

(3) A certifying statement (e.g., "I hereby certify that the animal(s) in this shipment is (are), to the best of my knowledge, acclimated to air temperatures lower than 7.2° C. (45° F.)."); and

(4) The signature of the licensed veterinarian, and date.

* * * * *

3. A new § 3.11(d) (9 CFR 3.11(d)) is added to the standards as follows:

* * * * *

(d) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live dog or cat at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier of intermediate handler and on a copy of the shipping document accompanying the animal shipment.

4. Section 3.12(a)(4) of the standards (9 CFR 3.12(a)(4)) is amended to read as follows:

§ 3.12 Primary enclosures used to transport live dogs and cats.

* * * * *

(a) "* * * (4) except as provided in paragraph (h) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings on three walls of the primary enclosure and the ventilation openings on two opposite walls of the primary enclosure shall be at least 8 percent of the total surface area of each such wall and the ventilation openings on the third wall of the primary enclosure shall be at least 50 percent of the total surface area of such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure; * * *."

* * * * *

5. Section 3.16 of the standards (9 CFR 3.16) is amended to read as follows:

§ 3.16 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.7 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live dogs or cats shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live dogs and cats when the air temperature within such animal holding area is 29.5° C. (85° F.) or higher. The air temperature around any live dog or cat in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 35° C. (95° F.) at any time: *Provided, however,* That no live dog or cat shall be subjected to air temperatures in excess of 29.5° C. (85° F.) for more than 4 hours at any time.

6. Section 3.17 of the standards (9 CFR 3.17) is amended to read as follows:

§ 3.17 Handling.

(a) Carriers and intermediate handlers shall move live dogs and cats from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility as expeditiously as possible. Carriers and intermediate handlers holding any live dog or cat in an animal holding area of a terminal facility or in transporting any live dog or cat from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live dogs and cats from the direct rays of the sun.

(2) *Shelter from rain or snow.* Live dogs and cats shall be provided protection to allow them to remain dry during rain or snow.

(3) *Shelter from cold weather.* Transporting devices shall be covered to provided protection for live dogs and cats when the outdoor air temperature falls below 10° C. (50° F.).

(b) Care shall be exercised to avoid handling of the primary enclosure in

such a manner that may cause physical or emotional trauma to the live dog or cat contained therein.

(c) Primary enclosures used to transport any live dog or cat shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

§ 3.35 Consignments to carriers and intermediate handlers. [Amended]

7. Section 3.35(b) of the standards (9 CFR 3.35(b)) is amended to read as follows:

* * * * *

(b) Any carrier or intermediate handler shall only accept for transportation or transport, in commerce, any live guinea pig or hamster in a primary enclosure which conforms to the requirements set forth in § 3.36 of the standards: *Provided, however,* That any carrier or intermediate handler may accept for transportation or transport, in commerce, any live guinea pig or hamster consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals, or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale, if such consignor furnishes to the carrier or intermediate handler a certificate, signed by the consignor, stating that the primary enclosure complies with § 3.36 of the standards, unless such primary enclosure is obviously defective or damaged and it is apparent that it cannot reasonably be expected to contain the live guinea pig or hamster without causing suffering or injury to such live guinea pig or hamster. A copy of such certificate shall accompany the shipment to destination. The certificate of compliance shall include at least the following information:

(1) Name and address of the consignor;

(2) The number of guinea pigs or hamsters in the primary enclosure(s);

(3) A certifying statement (e.g., "I hereby certify that the —— (number) primary enclosure(s) which are used to transport the animal(s) in this shipment complies (comply) with USDA standards for primary enclosures (9 CFR Part 3)."); and

(4) The signature of the consignor, and date.

* * * * *

8. Section 3.35(c) of the standards (9 CFR 3.35(c)) is amended to read as follows:

* * * * *

(c) Carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the standards may accept for transportation or transport, in commerce, any live hamster consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate executed by a licensed veterinarian on a specified date which shall not be more than 10 days prior to delivery of such hamster for transportation in commerce, stating that such live hamster is acclimated to lower air temperatures than prescribed in §§ 3.40 and 3.42. A copy of such certificate shall accompany the shipment to destination. The certificate shall include the following information:

(1) Name and address of the consignor;

(2) The number of hamsters in the shipment;

(3) A certifying statement (e.g., "I hereby certify that the animal(s) in this shipment is (are), to the best of my knowledge, acclimated to air temperatures lower than 7.2° C. (45° F.)."); and

(4) The signature of the licensed veterinarian, and date.

* * * * *

9. A new § 3.35(d) (9 CFR 3.35(d)) is added to the standards as follows:

* * * * *

(d) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live guinea pig or hamster at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

10. Section 3.36(a)(5) of the standards (9 CFR 3.36(a)(5)) is amended to read as follows:

§ 3.36 Primary enclosures used to transport live guinea pigs and hamsters.

* * * * *

(a) * * * (5) except as provided in paragraph (i) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure; * * *."

* * * * *

11. Section 3.40 of the standards (9 CFR 3.40) is amended to read as follows:

§ 3.40 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.31 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal helding areas. Any animal holding area containing live guinea pigs or hamsters shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. The air temperature around any live guinea pig or hamster in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time.

12. Section 3.41 of the standards (9 CFR 3.41) is amended to read as follows:

§ 3.41 Handling.

(a) Carriers and intermediate handlers shall move live guinea pigs and hamsters from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility as expeditiously as possible. Carriers and intermediate handlers holding any live guinea pig or hamster in an animal holding area of a terminal facility or in transporting any live guinea pig or hamster from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of

the terminal facility, including loading and unloading procedures, shall provide the following:

(1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live guinea pigs and hamsters from the direct rays of the sun.

(2) *Shelter from rain or snow.* Live guinea pigs and hamsters shall be provided protection to allow them to remain dry during rain or snow.

(3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live guinea pigs and hamsters when the outdoor air temperature falls below 10° C. (50° F.).

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live guinea pig or hamster contained therein.

(c) Primary enclosures used to transport any live guinea pig or hamster shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

§ 3.60 Consignments to carriers and intermediate handlers. [Amended]

13. Section 3.60(b) of the standards (9 CFR 3.60(b)) is amended to read as follows:

* * * * *

(b) Any carrier or intermediate handler shall only accept for transportation or transport, in commerce, any live rabbit in a primary enclosure which conforms to the requirements set fourth in § 3.61 of the standards: *Provided, however,* That any carrier or intermediate handler may accept for transportation or transport, in commerce, any live rabbit consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale, if such consignor furnishes to the carrier or intermediate handler a certificate, signed by the consignor, stating that the primary enclosure complies with § 3.61 of the standards, unless such primary enclosure is obviously defective or damaged and it is apparent that it cannot reasonably be expected to contain the live rabbit without causing suffering or injury to such live rabbit. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

(1) Name and address of the consignor;

(2) The number of rabbits in the primary enclosure(s);

(3) A certifying statement (e.g., "I hereby certify that the —— (number) primary enclosure(s) which are used to transport the animal(s) in this shipment complies (comply) with USDA standards for primary enclosures (9 CFR Part 3)."); and

(4) The signature of the consignor, and date.

* * * * *

14. Section 3.60(c) of the standards (9 CFR 3.60(c)) is amended to read as follows:

* * * * *

(c) Carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the standards may accept for transportation or transport, in commerce, any live rabbit consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate executed by a licensed veterinarian on a specified date which shall not be more than 10 days prior to delivery of such rabbit for transportation in commerce, stating that such live rabbit is acclimated to lower air temperatures than prescribed in §§ 3.65 and 3.67. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

(1) Name and address of the consignor;

(2) The number of rabbits in the shipment;

(3) A certifying statement (e.g., "I hereby certify that the animal(s) in this shipment is (are), to the best of my knowledge, acclimated to air temperatures lower than 7.2° C. (45° F.)."); and

(4) The signature of the licensed veterinarian, and date.

* * * * *

15. A new § 3.60(d) (9 CFR 3.60(d)) is added to the standards as follows:

* * * * *

(d) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live rabbit at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

16. Section 3.61(a)(4) of the standards (9 CFR 3.61(a)(4)) is amended to read as follows:

§ 3.61 Primary enclosures used to transport live rabbits.

* * * * *

(a) "* * * (4) except as provided in paragraph (h) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure; * * *."

* * * * *

17. Section 3.65 of the standards (9 CFR 3.65) is amended to read as follows:

§ 3.65 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.56 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live rabbits shall be provided with fresh air by means of windows, doors, vents, or air-conditioning and may be ventilated or air circulated by means of fans, blowers, or an air-conditioning system so as to minimize drafts, odors, and moisture condensation. The air temperature around any live rabbit in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 29.5° C. (85° F.) at any time.

18. Section 3.66 of the standards (9 CFR 3.66) is amended to read as follows:

§ 3.66 Handling.

(a) Carriers and intermediate handlers shall move live rabbits from the

animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility as expeditiously as possible. Carriers and intermediate handlers holding any live rabbit in an animal holding area of a terminal facility or in transporting any live rabbit from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live rabbits from the direct rays of the sun.

(2) *Shelter from rain or snow.* Live rabbits shall be provided protection to allow them to remain dry during rain or snow.

(3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live rabbits when the outdoor air temperature falls below 10° C. (50° F.).

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live rabbit contained therein.

(c) Primary enclosures used to transport any live rabbit shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

§ 3.85 Consignments to carriers and intermediate handlers. [Amended]

19. Section 3.85(b) of the standards (9 CFR 3.85(b)) is amended to read as follows:

* * * * *

(b) Any carrier or intermediate handler shall only accept for transportation or transport, in commerce, any live nonhuman primate in a primary enclosure which conforms to the requirements set forth in § 3.86 of the standards: *Provided, however,* That any carrier or intermediate handler may accept for transportation or transport, in commerce, any live nonhuman primate consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate, signed by the consignor, stating that the primary enclosure complies with § 3.86 of the standards, unless such primary enclosure is obviously defective or damaged and it is apparent that it cannot reasonably be expected to contain the live nonhuman primate without causing suffering or injury to such live nonhuman primate. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

(1) Name and address of the consignor;

(2) The number of nonhuman primates in the primary enclosure(s);

(3) A certifying statement (e.g., "I hereby certify that the ——— (number) primary enclosure(s) which are used to transport the animal(s) in this shipment complies (comply) with USDA standards for primary enclosures (9 CFR Part 3)."); and

(4) The signature of the consignor, and date.

(c) Carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the standards may accept for transportation or transport, in commerce, any live nonhuman primate consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate executed by a licensed veterinarian on a specified date which shall not be more than 10 days prior to delivery of such nonhuman primate for transportation in commerce, stating that such live nonhuman primate is acclimated to lower air temperatures than prescribed in §§ 3.90 and 3.92. A copy of such certificate shall accompany the shipment to destination. The certificate shall include the following information:

(1) Name and address of the consignor;

(2) The number of nonhuman primates in the shipment;

(3) A certifying statement (e.g., "I hereby certify that the animal(s) in this shipment is (are), to the best of my knowledge, acclimated to air temperatures lower than 7.2° C. (45° F.)."); and

(4) The signature of the licensed veterinarian, and date.

* * * * *

21. A new § 3.85(d) (9 CFR 3.85(d)) is added to the statements as follows:

* * * * *

(d) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live nonhuman primate at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

22. Section 3.86(a)(6) of the standards (9 CFR 3.86(a)(6)) is amended to read as follows:

§ 3.86 Primary enclosures used to transport live nonhuman primates.

* * * * *

(a) "* * * (4) except as provided in paragraph (4) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure; * * *."

23. Section 3.90 of the standards (9 CFR 3.90) is amended to read as follows:

§ 3.90 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.81 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin infestation, and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing nonhuman primates shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or blowers or air conditioning shall be used for any animal holding area containing live nonhuman primates when the air temperature within such animal holding area is 29.5° C. (85° F.) or higher.

The air temperature around any live nonhuman primate in any animal holding area shall not be allowed to fall below 7.2° C. (45° F.) nor be allowed to exceed 35° C. (95° F.) at any time: *Provided, however,* That no live nonhuman primate shall be subjected to air temperatures in excess of 29.5° C. (85° F.) for more than 4 hours at any time.

24. Section 3.91 of the standards (9 CFR 3.91) is amended to read as follows:

§ 3.91 Handling.

(a) Carriers and intermediate handlers shall move live nonhuman primates from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility as expeditiously as possible. Carriers and intermediate handlers holding any live nonhuman primate in an animal holding area of a terminal facility or in transporting any live nonhuman primate from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live nonhuman primates from the direct rays of the sun.

(2) *Shelter from rain or snow.* Live nonhuman primates shall be provided protection to allow them to remain dry during rain or snow.

(3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live nonhuman primates when the outdoor air temperature falls below 10° C. (50° F.).

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live nonhuman primate contained therein.

(c) Primary enclosures used to transport any live nonhuman primate shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

§ 3.111 Consignments to carriers and intermediate handlers. [Amended]

25. Section 3.111(b) of the standards (9 CFR 3.111(b)) is amended to read as follows:

* * * * *

(b) Any carrier or intermediate handler shall only accept for transportation or transport, in commerce, any live animal in a primary enclosure which conforms to the requirements set forth in § 3.112 of the standards: *Provided, however,* That any carrier or intermediate handler may accept for transportation or transport, in commerce, any live animal consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate, signed by the consignor, stating that the primary enclosure complies with § 3.112 of the standards, unless such primary enclosure is obviously defective or damaged and it is apparent that it cannot reasonably be expected to contain the live animal without causing suffering or injury to such live animal. A copy of such certificate shall accompany the shipment to destination. The certificate shall include at least the following information:

(1) Name and address of the consignor;

(2) The number of animals in the primary enclosure(s);

(3) A certifying statement (e.g., "I hereby certify that the ——— (number) primary enclosure(s) which are used to transport the animal(s) in this shipment complies (comply) with USDA standards for primary enclosures (9 CFR Part 3)."); and

(4) The signature of the consignor, and date.

(c) Carriers or intermediate handlers whose facilities fail to meet the minimum temperature allowed by the standards may accept for transportation or transport, in commerce, any live animal consigned by any department, agency, or instrumentality of the United States having laboratory animal facilities or exhibiting animals or any licensed or registered dealer, research facility, exhibitor, or operator of an auction sale if the consignor furnishes to the carrier or intermediate handler a certificate executed by a licensed veterinarian on a specified date which shall not be more than 10 days prior to delivery of such animal for transportation in commerce, stating that such live animal is acclimated to lower air temperatures than prescribed in §§ 3.116 and 3.118. A copy of such certificate shall accompany the shipment to destination. The certificate to include at least the following information:

(1) Name and address of the consignor;

(2) The number of animals in the shipment;

(3) A certifying statement (e.g., "I hereby certify that the animal(s) in this shipment is (are), to the best of my knowledge, acclimated to air temperatures lower than 7.2° C. (45° F.)"); and

(4) The signature of the licensed veterinarian, and date.

* * * * *

27. A new § 3.111(d) (9 CFR 3.111(d)) is added to the standards as follows:

* * * * *

(d) Carriers and intermediate handlers shall attempt to notify the consignee at least once in every 6 hour period following the arrival of any live animals at the animal holding area of the terminal cargo facility. The time, date, and method of each attempted notification and the final notification to the consignee and the name of the person notifying the consignee shall be recorded on the copy of the shipping document retained by the carrier or intermediate handler and on a copy of the shipping document accompanying the animal shipment.

28. § 3.112(a)(4) of the standards (9 CFR 3.112(a)(4)) is amended to read as follows:

§ 3.112 Primary enclosures used to transport live animals.

* * * * *

(a) "* * * (4) except as provided in paragraph (g) of this section, there are ventilation openings located on two opposite walls of the primary enclosure and the ventilation openings on each such wall shall be at least 16 percent of the total surface area of each such wall, or there are ventilation openings located on all four walls of the primary enclosure and the ventilation openings on each such wall shall be at least 8 percent of the total surface area of each such wall: *Provided, however,* That at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the lower one-half of the primary enclosure and at least one-third of the total minimum area required for ventilation of the primary enclosure shall be located on the upper one-half of the primary enclosure; * * *."

* * * * *

29. Section 3.116 of the standards (9 CFR 3.116) is amended to read as follows:

§ 3.116 Terminal facilities.

Carriers and intermediate handlers shall not commingle live animal shipments with inanimate cargo. All animal holding areas of a terminal facility of any carrier or intermediate handler wherein live animal shipments are maintained shall be cleaned and sanitized in a manner prescribed in § 3.106 of the standards often enough to prevent an accumulation of debris or excreta, to minimize vermin

infestation, and to prevent a disease hazard. An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained for all animal holding areas. Any animal holding area containing live animals shall be provided with fresh air by means of windows, doors, vents, or air conditioning and may be ventilated or air circulated by means of fans, blowers, or an air conditioning system so as to minimize drafts, odors, and moisture condensation. Auxiliary ventilation, such as exhaust fans and vents or fans or blowers or air conditioning shall be used for any animal holding area containing live animals when the air temperature within such animal holding area is 29.5° C (85° F) or higher. The air temperature around any live animal in any animal holding area shall not be allowed to fall below 7.2° C (45° F) nor be allowed to exceed 35° C (95° F) at any time: *Provided, however,* That no live animal shall be subjected to air temperatures in excess of 29.5° C (85° F) for more than 4 hours at any time.

30. Section 3.117 of the standards (9 CFR 3.117) is amended to read as follows:

§ 3.117 Handling.

(a) Carriers and intermediate handlers shall move live animals from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility as expeditiously as possible. Carriers and intermediate handlers holding any live animal in an animal holding area of a terminal facility or in transporting any live animal from the animal holding area of the terminal facility to the primary conveyance and from the primary conveyance to the animal holding area of the terminal facility, including loading and unloading procedures, shall provide the following:

(1) *Shelter from sunlight.* When sunlight is likely to cause overheating or discomfort, sufficient shade shall be provided to protect the live animals from the direct rays of the sun.

(2) *Shelter from rain or snow.* Live animals shall be provided protection to allow them to remain dry during rain or snow.

(3) *Shelter from cold weather.* Transporting devices shall be covered to provide protection for live animals when the outdoor air temperature falls below 10° C (50° F).

(b) Care shall be exercised to avoid handling of the primary enclosure in such a manner that may cause physical or emotional trauma to the live animal contained therein.

(c) Primary enclosures used to transport any live animal shall not be tossed, dropped, or needlessly tilted and shall not be stacked in a manner which may reasonably be expected to result in their falling.

(Secs. 3, 5, 6, 10, 11, 12, 13, 14, 16, 17, 21, 80 Stat. 351, 352, 353, 84 Stat. 1561, 1562, 1563, 1564, 90 Stat. 416, 419, 420, 423 (7 U.S.C. 2133, 2135, 2136, 2140, 2141, 2142, 2143, 2144, 2146, 2147, 2151); 37 FR 28464, 28477, 38 FR 19141.)

It is to the benefit of the public and the regulated industries that these amendments to the regulations be made effective at the earliest practicable date. The changes effected by these regulations will not require extensive preparation by those affected in that the amendments relax certain of the requirements contained in the current, regulations. In view of the foregoing, it is hereby found and determined that good cause exists for making these regulations effective on the date of publication in the FEDERAL REGISTER, and that it would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication. (Section 553(d), Administrative Procedures Act, 5 U.S.C. 551-559.)

Done at Washington, D.C., this 9th day of May 1978.

NOTE.—The Animal and Plant Health Inspection 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.

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

[FR Doc. 78-13111 Filed 3-15-78; 8:45 am]

Federal Register

TUESDAY, MAY 16, 1978
PART IV

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

■

COMMERCIAL TANNER CRAB FISHERY OFF COAST OF ALASKA

Fishery Management Plan and Proposed Regulations

[3510-22]

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Parts 611, 671]

COMMERCIAL TANNER CRAB FISHERY OFF THE COAST OF ALASKA

Fishery Management Plan and Proposed Regulations

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Fishery management plan and proposed regulations.

SUMMARY: This document proposes regulations to govern domestic and foreign fishing for Tanner crab off the coast of Alaska. These regulations are proposed to implement the Fishery Management Plan for Tanner Crab Off Alaska which was adopted by the North Pacific Fishery Management Council, and approved by the Secretary on April 18, 1978, under the Fishery Conservation and Management Act of 1976. This document also contains the "Fishery Management Plan for Tanner Crab off the Coast of Alaska". Comments are solicited on the plan as well as the proposed regulations.

DATE: Comments will be received until June 30, 1978.

ADDRESS: Comments should be addressed to: Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry L. Reitze, Director, Alaska Region, National Marine Fisheries Service, Box 1668, Juneau, Alaska, 99802, 907-586-7221.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Fishery Conservation and Management Act of 1976 as amended, 16 U.S.C. 1801-1882 (the "Act"), authorizes the Secretary of Commerce (the "Secretary") to promulgate regulations implementing fishery management plans prepared by the Regional Fishery Management Councils for their areas of jurisdiction within the 3-200 mile Fishery Conservation Zone (FCZ) established by the Act.

Pursuant the Title III of the Act, the North Pacific Fishery Management Council adopted and submitted to the Secretary a Fishery Management Plan (FMP) for Tanner crab off the coast of Alaska. A Draft Environmental Impact Statement (DEIS) for the plan was published on July 11, 1977 by the National Marine Fisheries Service. For notice of availability of the DEIS, see 43 FR 37026. The FMP and implementing regulations in combination, are published herein.

This FMP supersedes that portion of the Preliminary Management Plan (PMP) for king and Tanner crab of the eastern Bering Sea applicable to Tanner crab (42 FR 9520, February 16, 1977). It covers all Tanner crab throughout the Fishery Conservation Zone (FCZ) adjacent to Alaska.

PURPOSE OF THE PLAN

Three major objectives control the philosophy of management of the Tanner crab fishery off Alaska:

1. Minimize fluctuations in stock abundance due to harvest by maintaining the full reproductive potential of the Tanner crab stocks;
2. Insofar as possible, prevent industry overcapitalization and minimize economic distress due to extreme fluctuations in harvest based on naturally fluctuating stock abundance; and
3. Integrate management of Tanner crab stocks with those of other fisheries to maximize economic returns and minimize adverse impact on other stocks.

REGULATIONS TO IMPLEMENT THE PLAN

Accordingly, the regulations (50 CFR Part 671) set forth immediately below, applicable to all domestic fishers, are proposed to implement the fishery management plan developed by the North Pacific Fishery Management Council published herein. Final regulations for foreign fishers of Tanner crab have already been published (March 14, 1978, 43 FR 10566-10567) to implement the preliminary fishery management plan, and these regulations continue in effect. The Service proposes to implement the present FMP for Tanner crabs with these identical regulations (Part 611, Subpart G) which are reprinted herein and upon which public comment is solicited.

An important element of the FMP is the flexibility built into the management system. This flexibility is in the form of in-season adjustments of those areas which may be fished and the times in which fishing may occur. These proposed regulations seek to provide for such flexibility by proposing that the Alaska Regional Director of the National Marine Fisheries Service, in close coordination with the Alaska Department of Fish and Game, adjust season opening and closing dates, based upon catch statistics and biological and other data, for conservation purposes. In-season adjustments will be accomplished by issuance of a field order by the Regional Director.

PUBLIC COMMENT

Interested parties, Councils and government agencies are encouraged to submit written comments, views or data concerning the plan and these proposed regulations, including the foreign fishing regulations appearing on March 14, 1978, (See 50 CFR 611, 34 FR 10566—10567) to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration, 3300 Whitehaven Street NW., Washington, D.C. 20235. Written comments may be submitted to the Assistant Administrator until June 19, 1978.

NOTE.—The appropriate amended environmental impact statement has been filed with the Environmental Protection Agency. The National Marine Fisheries Service 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.

Signed at Washington, D.C., this 3d day of May 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

50 CFR Part 611 is amended as follows:

§ 611.20 [Amended]

1. In § 611.20 Table I, the second and third entries from the bottom are deleted and the following entries are inserted: 017 and 018 * * * Tanner crab * * * Bering Sea * * * 15,000 * * * DO 099 * * * Other species * * * Aleutians and Bering Sea * * * 93,600 * * * DO.

2. Section 611.91 is added to read as follows:

§ 611.91 Tanner crab fishery.

(a) *Purpose.* This section regulates foreign fishing for snow (Tanner) crabs (*Chionoecetes bairdi* and *Chionoecetes opilio*) in the Bering Sea.

(b) *Authorized fishery.* (1) *TALFF.* The 1978 TALFF for snow (Tanner) crab is 15,000 metric tons. (2) *National allocations.* Foreign vessels may engage in the fishery for snow (Tanner) crab in accordance with TALFF set forth in paragraph (b)(1) of this section and the following national allocations:

(i) Japan: 15,000 metric tons.

(c) *General restrictions.* No foreign fishing vessel may retain any female or soft shell snow (Tanner) crab. All female or soft shell crabs shall be immediately returned to the sea in a manner which minimizes handling mortality, and in accordance with § 611.13.

(d) *Gear restrictions.* It shall be unlawful for a foreign fishing vessel fishing for snow (Tanner) crab to use gear other than pots. A pot is defined as a portable structure designed and constructed to capture and retain crabs alive in the water.

(e) *Open area.* Foreign fishing vessels may fish for snow (Tanner) crab in the Bering Sea, except as restricted in § 611.91(f).

(f) *Closed area.* No foreign fishing vessel may fish for snow (Tanner) crab:

(1) Within 12 nautical miles of the baseline used to measure the U.S. territorial sea; or (2) south of a straight line drawn along 58° N. latitude, and east of a straight line drawn along 164° W. longitude.

(g) *processing.* No foreign fishing vessel operating with a factory ship may process crabs. (The permits for such vessels will specifically exclude from the authorized activities the processing of crabs.) All crabs taken by such vessels must be processed solely by a factory ship permitted in the crab fishery.

(h) *Loading and off-loading.* Crabs must be taken aboard factory ships in a manner in which an observer can verify the total weight of crabs taken aboard. Crabs off-loaded within the fishery conservation zone from fishing vessels not operating with a factory ship must be transferred in a manner in which an observer can verify the total weight of crabs off-loaded.

(i) *Pre-departure inspection.* No foreign crab catching vessels, other than those operating with a factory ship, may depart from the fishing area until its catch of crabs onboard is checked by an observer, or an authorized officer.

(j) *Additional reports.* (1) *Daily reports:* Foreign crab catching vessels, other than those operating with a factory ship, shall report daily to the Regional Director:

(i) Its 12 noon (G.m.t.) position,

(ii) The preceding day's catch by species (*C. bairdi, C. opilio,* and hybrids), and

(iii) Its cumulative catch.

(2) *Weekly catch report.* (i) The weekly catch report (required by Section 611.9(e) shall be submitted to the Regional Director within 6 days following each 7-day fishing period, and contain additional information concerning:

(A) Effort in total pot lifts during the 7-day period, and

(B) Catch in metric tons and the number of crabs of the type *C. opilio* and *C. bairdi* caught during the 7-day period. Hybrids shall be reported as *C. opilio.*

(ii) The requirement of § 611.9(e)(1) that the weekly catch report be on a vessel-by-vessel basis is waived for vessels operating with a factory ship. The required data for such vessels may be consolidated and reported by factory ship.

(3) *Annual report.* Each nation whose vessels engage in this fishery shall report by May 30, of the following year annual catch and effort statistics as follows: Effort in pots hauled and hours pots soaked; catch in metric tons, and the number of snow (Tanner) crabs of the species *C. opilio, C. bairdi,* and hybrid. Each of these requirements is to be supplied by vessel class, by month by ½° (lat.) by 1° (long.) statistical area by the following species grouping: *C. bairdi, C. opilio.*

50 CFR Part 671 is added as follows:

PART 671—TANNER CRAB OFF ALASKA

Sec.

671.1 Purpose.
671.2 Definitions.
671.3 Registration areas.
671.4 Optimum yield table.
671.5 Prohibitions.
671.6 Size and sex restrictions.
671.7 Vessel registration.
671.8 Vessel inspection.
671.9 Landing requirements.
671.10 Season and gear restrictions.
671.11 Reporting requirements.
671.12 In-season adjustment of seasons and areas.
671.13 Notice requirements.

AUTHORITY: Sec. 305, Fishery Conservation and Management Act of 1976; 16 U.S.C. 1855.

§ 671.1 Purpose.

This part regulates fishing for Tanner crab (*C. bairdi* and *C. opilio*) by vessels of the United States within that portion of the Bering Sea and Gulf of Alaska over which the United States exercises exclusive fishery management authority.

§ 671.2 Definitions.

As used in this Part:

(a) *"Act"* means the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801–1882.

(b) *ADF & G* means the Alaska Department of Fish and Game.

(c) *Authorized Officer* means:

(1) Any commissioned, warrant, or petty officer of the Coast Guard;

(2) Any certified enforcement or special agent of the National Marine Fisheries Service;

(3) Any officer designated by the head of any Federal or State agency which has entered into an agreement with the Secretary or the Commandant of the Coast Guard to enforce the provisions of the Act; or

(4) Any Coast Guard personnel accompanying and acting under the direction of any person described in subparagraph (1) of this paragraph.

(d) *Vessel* means any vessel, boat, ship, or other craft which is used for, equipped to be used for, or of a type which is normally used for fishing for Tanner crab for the purpose of sale or barter.

(e) *Fishery conservation zone (FCZ)* means that area adjacent to the United States which, except where modified to accommodate international boundaries, encompasses all waters from the seaward boundary of each of the coastal States to a line on which each point is 200 nautical miles from the baseline from which the territorial sea of the United States is measured.

(f) *Fishing* means any activity, other than scientific research, which:

(1) Does, is intended to, or can reasonably be expected to result in the removal from the sea of Tanner crab.

(2) Results in the processing including freezing of Tanner crab or Tanner crab products at sea; or

(3) Results in the transfering or transporting at sea of Tanner crab or Tanner crab products.

(g) *Person* means any individual, corporation, partnership, association, or other entity.

(h) *Regional Director* means the Director of the Alaska Region of the National Marine Fisheries Service, or his designee.

(i) *Ring Net* means a bag-shaped net suspended from a circular or rectangular frame.

(j) *Tanner Crab* means all species of the genus *Chionoecetes* including *C. bairdi* and *C. opilio.*

(k) *Tanner Crab Pot* means a portable structure designed and constructed to capture and retain fish and shellfish alive in the water. The Tanner crab pot has rigid tunnel eye openings which individually are a maximum of five (5) inches (13 cm) in one dimension, and tunnel eye opening perimeters which individually are larger than thirty (30) inches (76 cm); or the pot tapers inward from its base to a top consisting of one horizontal opening of undescribed size.

§ 671.3 Registration areas.

(a) For purposes of this part the FCZ off the coast of Alaska is divided into four Federal registration areas identified and described as follows:

(1) *Registration Area A* (Southeastern Alaska-Yakutat) is that portion of the FCZ north of 54°30' N. latitude and east of 143°53.6' W. longitude;

(2) *Registration Area E* (Prince William Sound) is that portion of the FCZ which has as its western boundary a line extending south from Cape Fairfield (150° W. longitude), and as its eastern boundary a line extending south from Cape Suckling (143°53.6' W. longitude);

(3) *Registration Area H* (Cook Inlet) is that portion of the FCZ which has as its eastern boundary a line extending south from Cape Fairfield (150° W. longitude), and as its southern boundary a line extending east from Cape Douglas at 58°51' N. latitude;

(4) *Registration Area J* (Westward) is that portion of the FCZ which has as its northern boundary a line at 58° N. latitude, as its eastern boundary a line extending south from Cape Fairfield 150° W. longitude, and as its western boundary a line 172° E. longitude.

(5) The inner boundary of each Federal registration area is a line coterminous with the seaward boundary of

the State, and the outer boundary, except for Registration Area H (Cook Inlet), is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the territorial sea is measured. The outer boundary for Registration Area H (Cook Inlet), is a line extending east from Cape Douglas at 58°51' N. latitude.

(b) *Exclusive and Non-Exclusive Areas.* Federal Registration Areas E and H, as defined in subsection (a) are exclusive Registration Areas. Federal Registration Areas A and J, as defined in subsection (a) are non-exclusive registration areas.

(c) *State Registration Areas.* For purposes of this part there shall be four State registration areas which shall be designated A, E, H, and J to correspond to the Federal registration areas. The State areas adjoin the corresponding Federal areas at the common boundary which separates territorial waters from the FCZ.

§ 671.4 Optimum yield table.

(a) The optimum yield for Tanner crab in each Federal registration area is as follows:

Registration area	Optimum yield (in metric tons)	Species
Registration Area A (Southeast-Yakutat).	2,495	*C. bairdi*
Registration Area E (Prince William Sound).	1,361–3,175	*C. bairdi*
Registration Area H (Cook Inlet).	2,404	*C. bairdi*
Registration Area J, Kodiak district only (Kodiak).	6,804–11,340	*C. bairdi*
Subdistricts of Area J:		
(1) Area between 157°27' W. longitude (Cape Kumlik) and 172° E. longitude, south of the South Peninsula and Aleutian Islands:		
(South Peninsula)	9,072–13,608	*C. bairdi*
(Aleutian)	907	*C. bairdi*
(2) Bering Sea waters north of 54°36' N. latitude.	40,381	*C. bairdi*
(3) Bering Sea waters south of 58° N. latitude.	10,000	*C. opilio*
(4) Bering Sea waters north of 58° N. latitude and west of 164° W. longitude.	1,360–2,269	*C. opilio*

§ 671.5 Prohibitions.

(a) *Vessel registration certificate.* No vessel shall fish for Tanner crab in any Federal registration area unless authorized by a registration certificate issued pursuant to § 671.6.

(b) *Vessel inspection.* No vessel shall fish for Tanner crab unless it is inspected as required by § 671.8.

(c) *Landings.* No Tanner crab shall be landed except pursuant to § 671.9.

(d) *Retention of Tanner crab.* No Tanner crab shall be retained except pursuant to § 671.6.

(e) *Gear.* Tanner crab may be taken only by Tanner crab pot or ring nets, except as otherwise provided in § 671.10 of these regulations.

(f) *Seasons.* Tanner crab may be taking only during the seasons provided in § 671.10.

(g) No person shall possess, have custody or control of, ship, transport, offer for sale, sell, purchase, import, export, or land, any Tanner crab taken in violation of the Act and these regulations.

(h) No person shall fish for Tanner crab in violation of the Act and these regulations.

(i) No person shall fish for Tanner crab or possess unprocessed Tanner crab aboard a vessel within any registration area unless the vessel is validly registered for the area and the season is open, or unless the person is acting pursuant to the authorization of § 671.9(b) of these regulations.

§ 671.6 Size and sex restrictions.

(a) No female Tanner crab may be retained.

(b) No male Tanner crab measuring less than 5½ inches (140 mm) across the greatest width of the carapace may be retained, except that male Tanner crabs in Federal Registration Area E (Prince William Sound) may be retained if they measure 5.3 inches (135 mm) across the greatest width of the carapace. The width measurement of Tanner crab shall be determined by measuring the greatest straight line distance across the carapace, including the spines, perpendicular to an imaginary line drawn between a point midway between the eyes and the midpoint of the posterior portion of the carapace.

(c) All female and undersized male Tanner crabs must be returned to the sea immediately with a minimum of injury, regardless of their condition.

§ 671.7 Vessel registration.

(a) *Vessels not registered by the State.* This subsection provides procedures for the registration of vessels which are not registered by the State to fish for Tanner crab as provided in subsection (b).

(1) *Application.* The owner, or the owner's authorized agent, of any vessel may apply to the Regional Director for a registration certificate to fish for Tanner crab in a Federal registration area. All applications shall be submitted on a form obtained from the Regional Director.

(2) *Time.* Application forms must be completed by the applicant and received by the Regional Director within 30 calendar days prior to the scheduled date for the opening of fishing as provided for in § 671.10.

(3) *Approval.* The Regional Director shall issue the registration certificate to the vessel if he determines that the requirements of paragraphs (1) and (2) of this section are met.

(4) *Waiver.* If an application is received after the date specified in paragraph (2) of this section the Regional Director may, for good cause shown, waive the 30 day time requirement.

(5) *Certificates.* The registration certificate issued to the vessel shall be signed by the registrant, kept on board the vessel at all times during fishing operations, and presented to any authorized officer upon request.

(6) *Inspection.* A registration certificate shall not become valid until the vessel has complied with the inspection requirements contained in section 671.8 of these regulations.

(7) *Fees.* There shall be no fee for the issuance of a registration certificate.

(8) *Expiration.* A registration certificate shall expire 72 hours after the closure of the season in the Federal registration area for which it was issued.

(b) *Vessel registered by the State of Alaska.* (1) Vessels registered by the State to fish for Tanner crab in a State registration area may only register for the corresponding adjacent Federal registration area of the same letter. Such registration can be accomplished by obtaining at the time the vessel is registered by the State a stamp issued by a local representative of the ADF&G designated by the Regional Director for such purpose. The stamp shall indicate registration for the corresponding adjacent Federal registration area of the same letter.

(2) Vessels registered by the State to fish for Tanner crab in an exclusive State registration area may only register in the corresponding Federal exclusive registration area of the same letter.

(c) *Exclusive and nonexclusive areas.* (1) No vessel registered to fish for Tanner crab in an exclusive Federal registration area may be registered to fish for Tanner crab in any other Federal registration area (exclusive or nonexclusive). A vessel may be registered to fish for Tanner crab in either or both of the non-exclusive Federal registration areas.

(2) No operator of a vessel registered for an exclusive Federal registration area may operate any other vessel registered for any other exclusive Federal registration area.

§ 671.8 Vessel inspection.

(a) *Inspection requirement.*—(1) *Time.* Within 72 hours prior to a season opening or at any time during the open season prior to fishing, each registered vessel must have its holds or live tanks inspected by an authorized officer, at inspection points specified in subsection (b) of this section.

(2) *Requirement.* No Tanner crab shall be onboard the vessel at the time of inspection. This requirement must be met to validate the registration certificate for the Federal registration area concerned under section 671.7.

(3) *Certificate.* No vessel shall be given an inspection certificate unless a current registration certificate for the Federal registration area is displayed to the authorized officer conducting the inspection. The inspection certificate shall be signed by the current vessel operator and shall be presented to any authorized officer upon request at any time.

(4) *Landings.* A vessel landing Tanner crab pursuant to § 671.9(b) of these regulations, in a State registration area other than the area adjacent to the Federal registration area for which the vessel is registered, shall attach the inspection certificate to the back of the ADF&G copy (yellow copy) of the State fish ticket at the time the Tanner crab are landed.

(b) *Inspection Points.* Inspection points shall be those established by ADF&G for State purposes. Additional inspection points for inspection required by this section may be authorized by the Regional Director if he finds that:

(1) Existing inspection points are imposing an unusual and material hardship which affected fishermen cannot themselves mitigate; or

(2) The ADF&G has no practical means of making special administrative accommodations regarding existing inspection points; and

(3) Authorization of additional inspection points would not result in a significant likelihood of unauthorized fishing or other management or enforcement problems.

§ 671.9 Landing requirements.

(a) Except as provided in subsection (b) of this section, all Tanner crab landed in the State must be landed in the corresponding State registration area adjacent to the Federal registration area of the same letter for which the vessel is registered.

(b) A vessel operator who desires to land Tanner crab outside the State, or in a State registration area other than the adjacent corresponding State registration area of the same letter, shall contact by radio or other means an authorized officer prior to leaving the Federal registration area for which the vessel is registered, and shall state to the authorized officer the amount of Tanner crab on board at the time. A vessel acting pursuant to this authorization shall submit to inspection at such location as the authorized officer may require and land no greater amount of Tanner crab than were present at the time of any inspection.

(c) When a vessel lands Tanner crab pursuant to the authorization in subsection (b) of this section, the registration under which the vessel is operating becomes invalid. In order to again become registered for a Federal registration area, the vessel must comply with § 671.8.

§ 671.10 Season and gear restrictions.

(a) *Season dates.* All season dates are inclusive. Time periods begin at 12:01 a.m. and end at 11:30 p.m. of the dates specified, based on local zone time, unless otherwise specified in these regulations.

(b) *General requirements.* (1) At least one buoy on each Tanner crab pot or ring net shall be legibly marked with the permanent registration number of the vessel fishing gear. The buoy shall bear a single registration number and this number shall be that of the vessel used in operating the gear. Registration numbers shall be painted on the top one-third of the buoy in numerals at least 4 inches in height and ½ inch in width in contrasting color to that of the buoy. The buoy markings shall be legibly inscribed and visible on the buoy above the water surface when attached to the Tanner crab pot, and maintained in a legible condition.

(2) During the closed season for Tanner crab in any given area, Tanner crab pots shall either be removed from the water or stored in 25 fathoms (46 m) of water or less, with all doors secured fully open and all bait and bait containers removed, with the following exceptions:

(i) In the Kamishak Bay and Southern districts of the Cook Inlet area, the maximum pot storage depth is 15 fathoms (27 m);

(ii) Tanner crab pots with all doors secured fully open and with all bait containers removed may be stored in water depth greater than the maximum permissible storage depth for 72 hours prior to the opening of the Tanner crab season, and for 72 hours after the season closure where the pots are fished;

(iii) Tanner crab pots may be stored in waters deeper than 25 fathoms (46 m) if so provided in section 671.11 of these regulations.

(c) *Registration Area A.*—(1) *Seasons.* Tanner crab may be taken from September 1 through May 15, subject to adjustment by the Regional Director pursuant to sections 671.12 and 671.13 of these regulations.

(2) *Gear.* (i) South of the latitude of Cape Fairweather Tanner crab pots shall have a seam in the mesh of one vertical wall from top frame to bottom frame laced in with untreated cotton twine, or have one wall of synthetic fiber attached to the frame with untreated cotton twine.

(d) *Registration Area E.*—(1) *Districts.* The following districts within Federal Registration Area E are established:

(i) *Northern District:* All waters west and north of a line from the southern entrance of Port Nellie Juan at 60°36' N. latitude to Point Eleanor to the eastern tip of Smith Island to Johnstone Point, and north of a line from Point Bentinck to Point Whitshed.

(ii) *Western District:* All waters east of the longitude of Cape Fairfield (148°53' W. longitude) south of a line from the southern entrance of Port Nellie Juan at 60°35' N. latitude to Point Eleanor to the eastern tip of Smith Island to Montague Point, west of a line from Zaikof Point to Seal Rocks (60°10' N., 145°50' W. longitude) and west of longitude of Seal Rocks (60°10' N. latitude, 145°50' W. longitude).

(iii) *Eastern district:* All waters east of longitude of Seal Rocks (60°10' N. latitude, 146°50' W. longitude), east of a line from Seal Rocks (60°10' N. latitude, 146°50' W. longitude), to Cape Hinchinbrook, south of a line from Point Bentinck to Point Whitshed, and west of the longitude of Cape Suckling (59°59' N. latitude, 143°53' W. longitude).

(iv) *Hinchinbrook district:* All waters east of a line from Montague Point to the eastern tip of Smith Island, south of a line from the eastern tip of Smith Island to Johnstone Point, north and east of a line from Cape Hinchinbrook to Seal Rocks (60°10' N. latitude, 146°50' W. longitude), and east of a line from Seal Rocks (60°10' N. latitude, 146°50' W. longitude) to Zaikof Point.

(2) *Seasons.* Tanner crab may be taken in Registration Area E from November 15 through May 31, subject to change by the Regional Director pursuant to section 671.12 and 671.13 of these regulations.

(3) *Gear.* Only Tanner crab pots may be used to fish for Tanner crab. Tanner crab taken by any other means must be immediately returned to the sea, with a minimum of injury, regardless of their condition.

(e) *Registration Area H.—(1) Districts:* The following districts within Registration Area H are established:

(i) *Central District;* Between a line extending from Boulder point at 60°46'23" N. latitude, to Shell Platform C, then to a point on the west shore at 60°46'23" N. latitude, and the latitude of Anchor Point light.

(ii) *Northern District:* All waters north of a line extending from Boulder Point at 60°46'23" N. latitude, to Shell Platform C, then to a point on the west shore at 60°46'23" N. latitude.

(iii) *Southern District:* All waters within a line from Anchor Point west to 59°46'15" N. latitude, 152°20' W. longitude, then south to 59°04'15" N. latitude, 152°20' W. longitude, then in a northeasterly direction to Cape Elizabeth, then from Cape Elizabeth to Point Adam, including Kachemak Bay.

(iv) *Kamishak Bay District:* All waters within a line from 59°46'15" N. latitude, 153°00'30" W. longitude, then east to 59°46'15" N. latitude, 152°20' W. longitude, then south 59°04'15" N. latitude,152°10' W. longitude, then southwesterly to Cape Douglas, including Kamishak Bay.

(v) *Barren Islands District:* All waters within a line from Cape Douglas to Cape Elizabeth, then south to 58°52' N. latitude, 151°53' W. longitude, then west to Cape Douglas.

(vi) *Outer District:* All waters within a line from Point Adam to Cape Elizabeth, then south to 58°52' N. latitude, 151°53' W. longitude, then east to the longitude of Aligo Point (149°44'33" w. longitude), then north to the mainland of Alaska.

(vii) *Eastern District:* All waters east of the longitude of Aligo Point (149°44'33" W. longitude), west of the longitude of Cape Fairfield (148°40' W. longitude), and north of 58°52' N. latitude

(2) *Seasons:* Tanner crab may be taken in Registration Area H from December 1 through April 30, except that the Kamishak Bay district will remain open through May 31, subject to adjustment by the Regional Director pursuant to sections 671.12 and 671.13 of these regulations.

(3) *Gear:* During any king crab season established by the State an aggregate of not more than 75 king and Tanner crab pots (including Tanner crab pots used in State waters) may be fished from any registered Tanner crab vessel.

(f) *Registration Area J.*—(1) *Districts.* The following districts within Registration Area J are established:

(i) *Kodiak district:* South of 53° N. latitude, west of 150° longitude and east of the longitude of Cape Kumlik (157°17.0' W. longitude).

(ii) *South Peninsula District:* Between the longitude of Cape Kumlik and the longitude of Scotch Cap light (154°44.6' W. longitude).

(iii) *Aleutian district:* Between the longitude of Scotch Cap light (164°44.6' W. longitude and 172° E. longitude, and south of 54°36' N. latitude.

(iv) *Bering Sea District:* Bering Sea waters north of 54°36' N. latitude.

(A) The following subdistricts within the Bering Sea District are established:

(*1*) *Southeastern district:* East of 168° W. longitude, and south of the latitude of Cape Newenham (58°39' N. latitude), including Bristol Bay waters.

(*2*) *Pribilof subdistrict:* West of 168° W. longitude and south of the latitude of Cape Newenham (58°39' N. latitude).

(*3*) *Northern subdistrict:* North of the latitude of Cape Newenham (58°39' N. latitude).

(*i*) *Nome section:* All waters of Norton Sound between the longitude of Penny River and the longitude of Topkok Head.

(*ii*) *General section:* All other waters of the Northern subdistrict.

(2) *Seasons.* Subject to adjustment by the Regional Director pursuant to sections 671.12 and 671.13 of these regulations, Tanner crab may be taken:

(i) In the Kodiak district from January 1 through April 30;

(ii) In the South Peninsula district from November 1 to 12 noon, May 15;

(iii) In the Aleutian district from November 1 to 12 noon, June 15;

(iv) In the Bering Sea district from November 1 to 12 noon, June 15.

(3) *Gear.*—(i) During any king crab season established by the State of Alaska in the Kodiak and South Peninsula districts an aggregate of not more than 75 king and Tanner crab pots (including Tanner crab pots used in State waters) may be fished from any registered Tanner crab vessel.

(ii) During the closed season for Tanner crab, Tanner crab pots may be stored west of 172° W. longitude in 30 fathoms (55 m) of water or less, or by removal from the water.

§ 671.11 Reporting requirements.

(a) The operator of any vessel subject to these regulations shall, for each sale or delivery of any Tanner crab caught within any Federal registration area, submit an accurately completed State fish ticket. The fish ticket shall be submitted to the Regional Director within 72 hours after such Tanner crab were sold or delivered.

(b) Each such fish ticket shall contain the following information:

(1) Type and quantity of fishing gear used;

(2) Catch by species in numbers of crab or weight thereof;

(3) Areas in which fishing was engaged in;

(4) Time of fishing; and

(5) Number of hauls.

§ 671.12 In-season adjustment of seasons and areas.

(a) The Regional Director may, following consultation with the A.D.F. & G., amend the season opening and closing dates specified in section 671.10 if he determines that an emergency exists. Such determination shall be based upon data which relates to the following factors:

(1) The effect of overall fishing effort within the registration area;

(2) Catch per unit of effort and rate of harvest;

(3) Relative abundance of Tanner crab within the area in comparison with pre-season predictions;

(4) The proportion of immature or soft shell Tanner crab being handled;

(5) General information on the condition of Tanner crab within the area;

(6) Information pertaining to the optimum yield within the Registration area; or

(7) Any other factors relevant to the conservation and management of the Tanner crab resource.

(b) If the Regional Director decides to close any area, or to open any area previously closed pursuant to the provisions of this section he shall issue a fielw order which includes the following information:

(1) The reason for the opening or closure;

(2) A description of the area to be opened or closed: and

(3) The effective date of such opening or closing.

§ 671.13 Notice requirements.

(a) No field order issued by the Regional Director pursuant to § 671.12 of these regulations shall be effective until:

(1) It has been posted for 48 hours, and otherwise made available to the public in accordance with procedures customarily used by the A.D.F. & G. for posting and publicizing similar notices of closure;

(2) It has been broadcast for 48 hours at those time intervals, channels and frequencies customarily used by the A.D.F. & G. to broadcast similar notices of closure; and

(3) A notice of such closure has been published in the FEDERAL REGISTER.

TANNER CRAB FISHERY OFF THE COAST OF ALASKA

FISHERY MANAGEMENT PLAN

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Fishery Management Plan and Proposed Regulations.

EFFECTIVE DATE: May 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Harry L. Rietze, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668, Juneau, Alaska 99802, telephone 907-586-7221.

SUMMARY: A fishery management plan for the Tanner crab fishery off the coast of Alaska has been reviewed and approved in accordance with Section 304 of the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq., as amended (the Act). The plan was prepared and submitted by the North Pacific Fishery Management Council. This action has been taken under a delegation of authority from the Secretary of Commerce to the Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration. The plan has been found to be consistent with the national standards in Section 301 of the Act, the other provisions of the Act and other applicable law.

SUPPLEMENTARY INFORMATION: Proposed regulations to implement the plan are being published, concurrently with the publication of this plan, in the FEDERAL REGISTER. These proposed regulations will be open for public comment for a period of 45 days from the date of publication.

The commercial fishery for Tanner crab has only recently developed and is expanding rapidly, partly as a result of declining stocks of king crab and a subsequent shift in catch efforts to Tanner crab stock. There is much concern that without proper conservation and management measures, Tanner crab stocks will be overfished. The North Pacific Fishery Management Council, recog-

nizing the need for management of the Tanner crab fishery off Alaska, has developed a fishery management plan with three major objectives:

1. Minimize fluctuations in stock abundance due to harvest by maintaining the full reproductive potential of the Tanner crab stocks;
2. Insofar as possible, prevent industry overcapitalization and minimize economic distress due to extreme fluctuations in harvest based on naturally fluctuating stock abundance; and
3. Integrate management of Tanner crab stocks with those of other fisheries to maximize economic returns and minimize adverse impact on other stocks.

To achieve these objectives, the North Pacific Fishery Management Council has proposed that the Secretary of Commerce implement the fishery management plan through regulations providing for season, area, gear, sex, size, and harvest level restrictions for domestic fisheries, and through regulations governing foreign fishing which are identical to those published implementing the preliminary management plan for Tanner crab (see 50 CFR Part 611, 43 FR 10566-10567, March 14, 1978).

Signed at Washington, D.C., this 3d day of May, 1978.

FISHERY MANAGEMENT PLAN FOR TANNER CRAB OFF THE COAST OF ALASKA

PREPARED BY: NORTH PACIFIC FISHERY MANAGEMENT COUNCIL, P.O. BOX 3136DT, ANCHORAGE, ALASKA 99510, AND NATIONAL MARINE FISHERIES SERVICE, P.O. BOX 1669, JUNEAU, ALASKA 99802

MAY 1978.

EXECUTIVE SUMMARY OF THE FISHERY MANAGEMENT PLAN FOR TANNER CRAB OFF ALASKA

This plan represents the initial step in the development of a comprehensive management program for Tanner crab off Alaska in response to the requirements of the Fisheries Conservation and Management Act of 1976 (U.S. Pub. L. 94-265). The necessity for having a management plan in force by March 1978 that permits continuation of the fishery without disruption to the fishery industry mandates that the existing tested and familiar management measures and mechanisms be adopted.

The plan proposes that the Secretary adopt the relevant Alaska statutes and regulations currently in force. These statutes and regulations require registration, designate zones where fishing is permitted, establish limitation on sex and size of Tanner crab which may be retained, limit the type and amount of gear which may be employed, and employ other mechanisms to facilitate the administration and enforcement of the necessary and appropriate measures to manage Tanner crab.

This plan sets forth the measures necessary to conserve and manage Tanner crab resources as a unit throughout their range. It provides for a consideration of social and economic influences affecting the allocation of the resource confined only by conservation limits. The plan identifies mechanisms designed to minimize costs and unnecessary duplication and proposes enforcement aids. Together, these interrelated considerations constitute a system of Tanner crab management, consistent with the National Standards set forth in the Fisheries Conservation and Management Act of 1976.

I.A. CONSERVATION AND MANAGEMENT MEASURES

The measures necessary to achieve the optimal yield from this fishery, while perpetuating sufficient brood stock to maintain the resource at a level capable of sustaining the optimal yield, include a system of fishing seasons, area closures, gear regulations, restrictions on sex of crab harvested, harvest levels, and minimum size limits.

(1) *Fishing seasons* expressed as periods of time when fishing is permitted can be manipulated to:

(a) permit economically efficient harvesting while assuring that necessary brood stock will be preserved.

(b) selectively protect weak stocks.

(c) protect sensitive periods of crab life cycles, e.g., egg hatching, soft shell and mating periods.

(d) effect greater dispersion of excessive fishing efforts.

(2) *Area closures* delineate the area where fishing may not be conducted and often complement seasonal regulation. Subareas such as bays may be closed to protect female, immature, or soft-shell Tanner crab from excessive handling. In-season closures are necessary when the appropriate harvest level has been taken.

(3) *Fishing gear regulation* involves defining permissible gear types and amounts.

(a) *Legal gear* is restricted to Tanner crab pots and where appropriate, to ring nets and scuba diving.

(b) *Limitations on numbers of pots* is required in some areas to provide compatibility with pot limits in the king crab fishery for enforcement purposes.

(4) *Sex limitation regulation* protects the reproductive potentials of Tanner crab stocks by restricting the harvest to males only.

(5) *Size limits and harvest levels* are used in concert to optimize the annual harvest and to avoid industry dependence on maturing male crab in the fishery. These measures operate to establish a sufficiently broad spectrum of legal size crab in sufficient quantities and are determined by or concerned with:

(a) Size at maturity and growth per molt after maturity;

(b) Age dependent mating behavior;

(c) Avoiding dependence on a "recruits only fishery";

(d) Maintaining productivity of all segments of brood stocks.

Inseason adjustments to anticipated harvest levels are made as the fishery provides a real-time measure of the status of stocks.

The current statewide size limit is 5.5 inches (140 mm), except for Prince William Sound where it is 5.3 inches (135 mm).

I.B. MECHANISMS TO IMPLEMENT MANAGEMENT MEASURES AND FACILITATE ENFORCEMENT

The expanse of Alaska's coast precludes the capability of directly patrolling all of the potential Tanner crab fishing grounds for enforcement of the conservation and management measures. Clearly, indirect measures are necessary so that the regulations implementing the necessary management measures are enforceable. This section outlines a system that minimizes the need and cost of direct enforcement. This system consists of a landing law approach, area landing/loading laws, area registration and inspection, and description and marking of Tanner crab gear.

(1) *The Landing Law Approach:* The landing law system prohibits the *landing*, including the possessing, vending, trading, transporting, or purchasing of all Tanner crab taken contrary to regulations, and it applies to the possession of Tanner crab gear in operable condition in areas or at times contrary to regulation. The immediate alternative to this form of conservation program is direct enforcement—a costly, inefficient program.

(2) *Area Registration and Inspection: Area registration* is designed to implement the landing law concept for individual registration areas and thereby facilitates management of individual Tanner crab fisheries according to local conditions. Area registration provides an important information base for instituting conservation measures and for dispersing the fleet. The regulation areas generally conform to the biological boundaries of the stocks within each area. The function of registration is to limit the number of areas in which a vessel may operate and to determine the size and capacity of the fleet that will be operating in a given area. The registration areas are composed of two kinds—exclusive and nonexclusive. *Exclusive registration areas* are generally areas of developing Tanner crab fisheries, or relatively unexplored areas or areas where fishing effort is encouraged in order to gain further information concerning the resource in that area.

Inspection is used to validate the registration of vessels immediately prior to fishing. A vessel may only be validly registered for *one area* at a time in order to insure accurate reporting of catch location. The combined purpose of registration, inspection, and landing restrictions, through practical limitations on operations, is to allow only those landings of Tanner crab where it is highly probable that such crab were not taken from unauthorized areas. In order to minimize the impact of limiting markets for fishermen in that area, provisions are made for landing in other areas by radio contact.

(3) *Catch Reporting:* Catch reporting by the fishermen and the buyers is necessary for proper management, revenue collection, value determination and fishery enforcement. When a Tanner crab fisherman lands his catch, a report in the form of a "fish ticket" must be made. The information requested provides a statistical data base of the fishery.

(4) *Description and Marking of Crab Pot Gear:* Tanner crab buoys must be marked in a manner to identify the vessel fishing the gear. Tanner crab pots should also be described, by regulation, in a manner which will separate them from pot gear being fished for other species of shellfish or bottomfish and the use of pots described as Tanner crab pots should be prohibited in waters closed to Tanner crab fishing. Storage of pots in non-fishing condition in shallow water can be permitted. The purpose of these requirements is to preclude fishing of Tanner crab in closed waters.

I.C. MANAGEMENT MEASURES AND RATIONALE FOR FOREIGN FISHING

This section of the plan governing foreign fishery conditions, including details of necessary regulations and statistical reporting requirements, is closely patterned after the stipulations in the 1977 Preliminary Fishery Management Plan for the eastern Bering Sea king and Tanner Crab. It identifies a portion of the Bering Sea where foreign fisheries will be confined largely to the Tanner crab species *Chionoecetes opilio*.

Crab fishing is prohibited south of 58° N. latitude and east of 164° W. longitude. The allocation to foreign pot fisheries directed at Tanner crab in 1978 will be set 20 percent higher than the 1977 catch level of 27,550,000 pounds (12,500 metric tons). The 1978 FAC has been set at 15,000 mt (33,060,000 lbs.).

II. DESCRIPTION, CONDITION AND CAPACITY OF THE FISHERY

Major Alaskan Tanner crab fisheries are located in the area extending around the Gulf of Alaska rim, from southeastern Alaska westward to the Bering Sea. The target specie in all major areas is the *Chionoecetes bairdi*. Alaska's Tanner crab resources are generally judged to be in healthy condition and will support an acceptable biological catch (ABC) of 139.8-163.8 million pounds (63,430-74,319 mt) of *C. bairdi* and 333 million pounds (151,050 mt) of *C. opilio*. Harvest capacity (DAC), processing capacity, maximum sustainable yield (MSY), ABC, optimal yield (OY), expected domestic harvest (DAH) and foreign allowable catch (FAC) for each management area are summarized in Table A.

TABLE A.—*Alaska Tanner crab domestic annual capacity of fleet (DAC), processing capacity, maximum sustainable yield (MSY), acceptable biological catch (ABC), optimum yield (OY), expected domestic annual harvest (DAH), and foreign allowable catch (FAC) by management area for the 1977-78 season.*

	DAC		Processing capacity		MSY		ABC		OY		DAH		FAC	
	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT
Southeastern:														
Southeast	8	3,739	30	13,608	2.5	1,134	2.5	1,134	2.5	1,134	2.5	1,134	0	0
Yakutat	5	2,029	30	13,608	3	1,361	3	1,361	3	1,361	3	1,361	0	0
Prince William Sound	11	4,808	20	9,072	7.2	3,266	3-7	1,361-3,175	3-7	1,361-3,175	3-7	1,361-3,175	0	0
Cook Inlet	38	17,237	30	13,608	5.3	2,404	5.3	2,404	5.3	2,404	5.3	2,404	0	0
Kodiak	38	17,237	162	73,440	21.5	9,752	15-25	6,804-11,340	15-25	6,804-11,340	15-25	6,804-11,340	0	0
South Peninsula/Aleutian:														
South Peninsula	44	20,049	24	11,057	20	9,072	20-30	9,072-13,608	20-30	9,072-13,608	20-30	9,072-13,608	0	0
Aleutian	28	12,474	135	61,236	2	907	2	907	2	907	2	907	0	0
Bering Sea:														
C. bairdi	135	61,055	180	81,648	89	40,381	89	40,381	89	40,381	89	40,381	0	0
C. opilio:														
S. of 58° N. Lat.					225.0	102,000	225.0	102,000	22.04	10,000	22.04	10,000	0	0
N. of 58° N. Lat. and W. of 164° W. Long.					225.0	102,000	225.0	102,000	36.06-38.06	16,360-17,268		1,360-2,268	33.06	15.0

*A minor portion of this allocation of Tanner crab may be comprised of *C. bairdi* and hybrids.
**Foreign fishing for Tanner crab is prohibited south of 58° North Latitude to protect the stocks of *C. bairdi* which will be fully utilized by the U.S. fishery.

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2.0 INTRODUCTION

This document is a comprehensive management plan for Tanner crab off Alaska in response to the requirements of the Fisheries Conservation and Management Act of 1976 (U.S. Pub. L. 94-265). This plan incorporates, consistent with the national standards, the other provisions of the Act, and the Federal regulations governing foreign fishing in the conservation zone, the management measures and regulations of the State of Alaska.

2.1 GOALS AND OBJECTIVES FOR MANAGEMENT PLAN

This management plan is designed to meet the requirements of the Fisheries Conservation and Management Act and the National Standards by achieving the following objectives:

1. Promote conservation while providing for the optimal yield from the Tanner crab resource in terms of: Providing the greatest overall benefit to the Nation with particular reference to food production and recreational opportunities; avoiding irreversible or long-term adverse effects on fishery resources and the marine environment; and insuring availability of a multiplicity of options with respect to the future uses of these resources.

2. Promote, where possible, efficient utilization of the Tanner crab resource except that no conservation or management measures shall have economic allocation as their sole purpose.

3. Promote fair and equitable allocation of identified available resources in a manner such that no particular group acquires an excessive share of the privileges.

4. Base the plan on the best scientific information available.

In accomplishing these broad objectives a number of secondary objectives are considered:

a. Conservation and management measures should take into account the unpredictable characteristics of future resource availability and socio-economic factors influencing the viability of the industry.

b. Where possible, individual stocks of fish should be managed as a unit throughout their range, but such management should be in due consideration of other potentially impacted resources.

c. In such instances when stocks have declined to levels below that capable of producing MSY, management measures should promote rebuilding the stocks. In considering the rate of rebuilding, factors other than biological considerations should be taken into account.

d. Management measures, while promoting efficiency where practicable, should seek to avoid disruption of existing social and economic structures where fisheries appear to be operated in reasonable conformance with the Act and have evolved over a period of years as reflected in community characteristics, processing capability, fleet size and distribution. These systems and the resource upon which they are based are not static, but change in the existing regulatory regime should be the result of considered action based on data and public input.

e. Management measures should contain a margin of safety in recommending allowable biological catches when the quality of information concerning the resource and the ecosystem is highly limited. The management plan should provide for assessing biological and socio-economic data in such instances where the information base is inadequate to effectively establish the biological parameters of the resource or to reasonably establish optimum yield. The plan should identify information and research required for further plan refinement.

f. Fishing strategy should be designed in such a manner as to have minimal impact on other fisheries and the environment in which they operate.

2.2 OPERATIONAL DEFINITIONS OF TERMS USED

The North Pacific Fisheries Management Council has adopted the following working

definitions of terms used in the development of management plans.

A. DETERMINANTS OF CATCH LEVELS

1. *Maximum Sustainable Yield* (MSY) is an average over a reasonable length of time of the largest catch which can be taken continuously from a stock under current environmental conditions. It should normally be presented with a range of values around its point estimate.

Where sufficient scientific data as to the biological characteristics of the stock do not exist or the period of exploitation or investigation has not been long enough for adequate understanding of stock dynamics, the MSY will be estimated from the best information available

2. *Equilibrium Yield* (*EY*). The annual or seasonal harvest which maintains the resource at approximately the same level of abundance (apart from the effects of environmental variation) in succeeding seasons or years.

3. *Acceptable Biological Catch* (ABC) is a seasonally determined catch that may differ from MSY for biological reasons. It may be lower or higher than MSY in some years for species with fluctuating recruitment. It may be set lower than MSY in order to rebuild overfished stocks.

4. *Optimum Yield* (OY) may be obtained by a plus or minus deviation from ABC for purposes of promoting economic, social or ecological objectives as established by law and public participation processes. Ecological objectives, where they primarily relate to biological purposes and factors, are included in the determination of ABC. Where ecological objectives relate to resolving conflicts and accommodating competing uses and values, they are included as appropriate with economic and/or social objectives.

OY may be set higher than ABC in order to produce higher yields from other more desirable species in a multi-species fishery. It might be set lower than ABC in order to provide larger sized individuals or a higher average catch per unit effort.

B. DETERMINATION OF DOMESTIC ANNUAL CAPACITY AND EXPECTED HARVEST

1. *Domestic Annual Fishing Capacity* (DAC) is the total potential physical capacity of the fleets, modified by logistic factors. The components of the concept are:

a. An inventory of total potential physical capacity, defined in terms of appropriate vessel and gear characteristics (e.g., size, horsepower, hold capacity, gear design, etc.)

b. Logistic factors determining total annual fishing capacity, (e.g., variation in vessel and gear performance, trip length between fishing locations and landing points, weather constraints, etc.).

2. *Expected Domestic Annual Fisheries Harvest* (DAH) is the domestic annual fishing capacity modified by other factors which will determine estimates of what the fleets will harvest (e.g., how fishermen will respond to price changes in the subject species and other species, etc.).

These concepts should be placed in a dynamic context of past trends and future projections. For example, physical fleet capacity should not simply be last season's inventory of vessels and hold measurements (although this is appropriate for present interim planning), but also next year's projected movement into and out of the fishery. Vessels under construction should be included and an estimate of attrition made.

The determination of domestic annual fishing capacity and expected harvest should be made on the best available information.

C. *Determination of Foreign Allowable Catch* (FAC). The foreign allowable catch is determined by deducting the domestic annual expected harvest from the optimum yield (OY-DAH=FAC).

3.0. DESCRIPTION OF FISHERY

3.1. AREAS AND STOCKS

The Tanner crab fishery in Alaskan waters is located from Southeastern Alaska to the Bering Sea. Two species of the genus *Chionoecetes*, *C. bairdi* and *C. opilio*, are the target species of this fishery. *C. bairdi* is the principal target and has comprised 90–95 pecent of the commercial catch.

Alaska Tanner crab stocks are managed in specific administrative fishery units called management areas (Fig. 1). Each management area is described in this plan and the reader will be referred to these sections for specific area information. The present regulations governing conduct of these fisheries are organized into "statistical areas" in the 1977 regulations of the Alaska Board of Fisheries for commercial shellfish fishing in Alaska (Appendix 11.2). The correlation between management areas and statistical areas is show below.

Management area	Statistical area
Southeastern	A
Prince William Sound	E
Cook Inlet	H
Kodiak	J
South Peninsula/Aleutian	(westward) Do.
Bering Sea	Do.

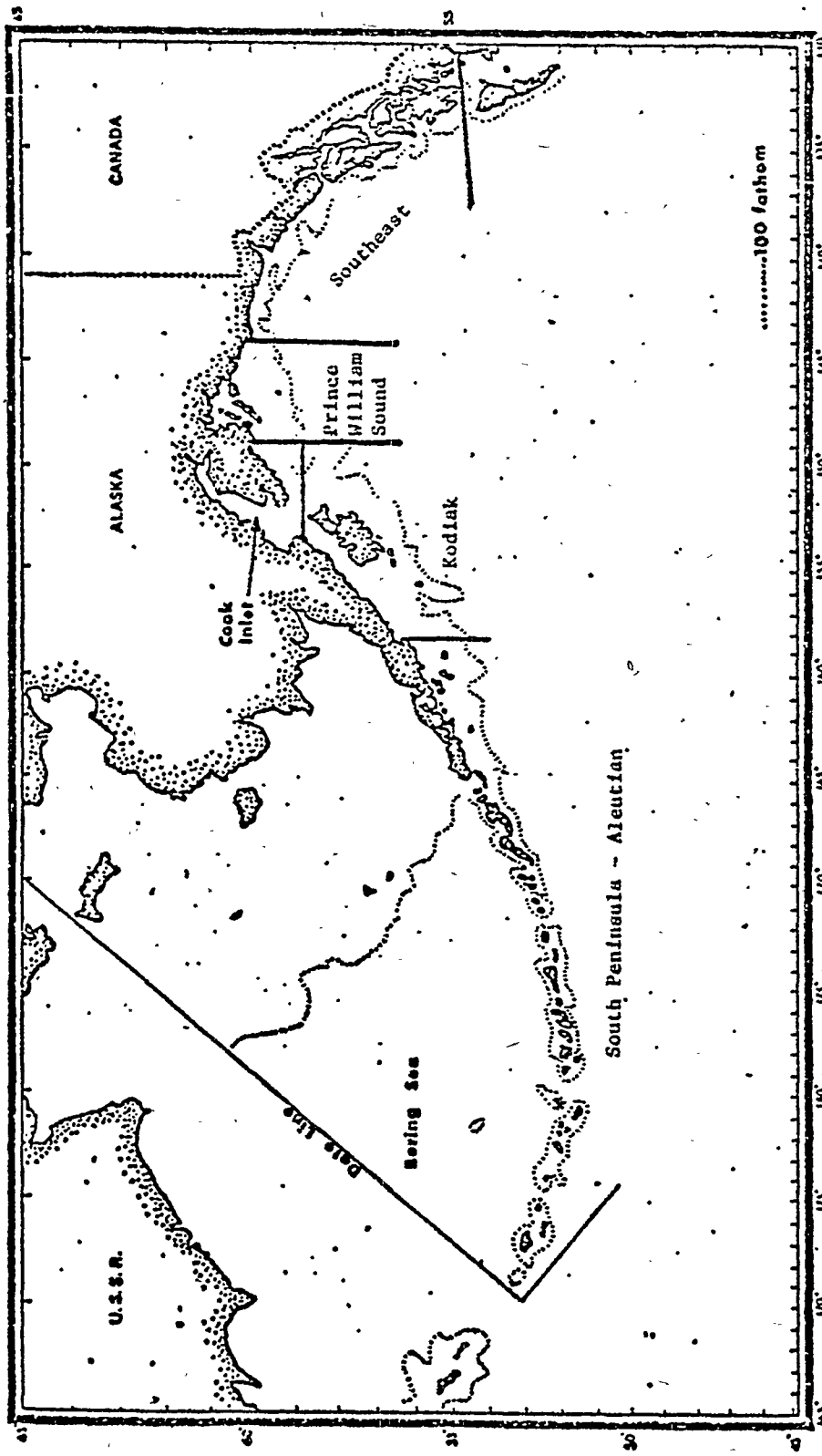


Fig 1. THE SIX TANNER CRAB MANAGEMENT AREAS IN ALASKAN WATERS.

3.2 HISTORY OF EXPLOITATION

3.2.1 Domestic Fishery

The Tanner crab resource in Alaska was first utilized by the fishing fleet in 1961 with a harvest of 6,800 pounds (3.18 mt) valued at $680. The harvest increased to 61,344,454 pounds (27,826 mt) in 1973 with a value of $11,072,449 (Table 1). The 1977 harvest of over 94 million pounds (42,800 mt) was the largest catch recorded for the State.

Several factors contributed to the rapid development of this fishery. The king crab (*Paralithodes camtschatica*) harvest suffered a steady 4-year decline from its peak of nearly 160 million pounds (72,560 mt) in 1966 to about 50 million pounds (22,675) in 1970. In this same period, the Tanner crab harvest increased by over 100 fold. This increase is attributed to a change in fishing effort from king crab and salmon toward Tanner crab and an apparent increase in abundance of Tanner crab related to the declining abundance of king crab, except in the eastern Bering Sea (Gulland 1972). Tanner crab fishing provides additional income to fishermen during the winter months when king crab and salmon are not being harvested in most areas of the State.

The 1976 domestic Tanner crab fishery centered around Kodiak Island and the Bering Sea with harvests of 23.4 and 22.3 million pounds (10,614 and 10,115 mt), respectively. The Alaska Peninsula/Aleutian area produced 17.8 million pounds (8,081 mt), Cook Inlet produced 5.9 million pounds (2,692 mt) and Southeastern produced 3.5 million pounds (1,593 mt). Total Alaskan harvest of Tanner crab was 79 million pounds (35,850 mt) in 1976. Preliminary data for the Bering Sea indicates a 1977 harvest of 51.5 million pounds (23,360 mt), ranking this area as the most productive in the State.

3.2.1.1 *Description of User Groups*

Tanner crab in Alaska are harvested primarily for commerical purposes by domestic fishermen (resident and non-resident) and Japanese nationals fishing in the eastern Bering Sea.

There is no licensed recreational fishery for Tanner crab. Local residents, however, catch Tanner crab for their own use in a subsistence fishery.

3.2.1.2 *Fishing Effort*

Data are not available which will allow a quantitative summary of directed effort in this fishery in terms of pot lifts or standardized vessel days of fishing on a statewide basis. Within the various portions of this plan dealing with the specific management areas, estimates of these parameters have been made when data were available. Statewide, during 1976, over 350 vessels participated in the commercial harvest making 3,743 individual landings for which fish tickets were issued. Table 1 provides catch, value, number of vessels, and number of landings for 1969 to 1976.

TABLE 1. - ALASKA TANNER CRAB CATCH, VALUE, AND PARTICIPATION BY AREA AND YEAR (not by season).

COMPILED BY COMMERCIAL FISHERIES ENTRY COMMISSION. (Domestic fishery only)

YEAR	MANAGEMENT AREA	NO. of VESSELS	NO. OF LANDINGS	TOTAL POUNDS	METRIC TONS	TOTAL EX-VESSEL VALUE
1969	Southeastern	40	359	267,500.00	121	26,750.00
	Prince William Sound	19	245	944,881.97	429	103,937.03
	Cook Inlet	29	405	1,432,869.12	650	157,615.58
	Kodiak	116	973	6,861,700.44	3,112	686,170.16
	S.Peninsula/Aleutian	43	190	670,285.98	304	67,027.64
	Bering Sea	42	131	1,014,835.92	460	101,483.76
	TOTAL		2303	11,192,073.43	5,077	$ 1,142,984.17
1970	Southeastern	27	203	583,153.02	265	64,133.37
	Prince William Sound	13	270	1,292,423.99	586	129,242.36
	Cook Inlet	27	319	1,328,694.03	603	132,869.43
	Kodiak	82	668	7,710,455.08	3,497	771,045.18
	S.Peninsula/Aleutian	33	311	2,093,648.04	950	188,428.35
	Bering Sea	28	82	1,464,394.12	664	131,795.44
	TOTAL		1853	14,472,768.28	6,565	$ 1,417,514.13
1971	Southeastern	17	319	251,082.01	114	25,108.15
	Prince William Sound	20	130	642,340.00	291	70,657.40
	Cook Inlet	44	615	2,116,848.80	960	211,684.88
	Kodiak	56	443	7,536,060.96	3,418	831,936.56
	S.Peninsula/Aleutian	18	265	2,140,754.94	971	214,075.44
	Bering Sea	9	23	166,037.04	75	14,943.33
	TOTAL		1795	12,853,123.75	5,830	$ 1,368,405.76
1972	Southeastern	30	336	790,146.90	358	108,556.20
	Prince William Sound	47	858	8,550,709.06	3,878	1,026,085.20
	Cook Inlet	54	1096	4,779,234.90	2,168	716,885.10
	Kodiak	64	662	11,933,107.20	5,413	1,431,973.12
	S. Peninsula/Aleutian	32	281	3,941,933.94	1,788	433,612.76
	Bering Sea	13	37	111,664.02	51	11,166.35
	TOTAL		3270	30,106,796.02	13,656	$ 3,728,278.73
1973	Southeastern	50	411	1,893,086.00	859	323,894.00
	Prince William Sound	51	1036	12,696,850.86	5,759	2,158,464.84
	Cook Inlet	92	1525	8,134,274.76	3,690	1,382,827.16
	Kodiak	135	1648	32,437,983.60	14,714	5,838,836.40
	S. Peninsula/Aleutian	53	435	5,880,391.01	2,667	943,138.65
	Bering Sea	22	50	301,867.94	137	51,317.64
	TOTAL		5105	61,344,454.17	27,826	$ 11,072,448.85
1974	Southeastern	54	451	3,087,512.10	1,401	584,708.22
	Prince William Sound	54	648	9,597,758.04	4,354	1,919,551.50
	Cook Inlet	90	1169	7,660,895.40	3,775	1,532,178.90
	Kodiak	136	1542	29,562,133.68	13,409	6,208,047.76
	S.Peninsula/Aleutian	65	504	9,057,068.97	4,108	1,818,142.46
	Bering Sea	26	100	5,044,197.08	2,288	1,059,281.34
	TOTAL		4414	64,009,565.27	29,034	$ 14,207,919.30
1975	Southeastern	41	296	3,032,249.00	1,375	439,676.00
	Prince William Sound	34	396	5,016,655.00	2,276	702,332.00
	Cook Inlet	54	520	4,952,428.00	2,646	693,340.00
	Kodiak	102	825	17,540,580.00	7,956	3,095,546.00
	S.Peninsula/Aleutian	52	359	8,628,427.00	3,914	1,206,545.00
	Bering Sea	27	101	7,028,378.00	3,188	913,689.00
	TOTAL		2497	46,188,712.00	20,951	$ 7,051,128.00
1976	Southeastern	28	234	3,511,528.00	1,593	772,536.00
	Prince William Sound	39	491	6,000,444.00	2,722	1,200,089.00
	Cook Inlet	72	872	5,935,299.00	2,692	1,246,413.00
	Kodiak	105	1119	23,446,245.00	10,635	4,924,284.00
	S. Peninsula/Aleutian	84	630	17,816,045.00	8,081	3,560,162.00
	Bering Sea	66	397	22,324,490.00	10,126	4,353,276.00
	TOTAL		3743	79,034,051.00	35,850	$ 16,056,760.00

During 1977 effort in the Bering Sea doubled, remained constant in Kodiak, Cook Inlet, and Southeastern and declined slightly in the South Peninsula/Aleutian and Prince William Sound Management areas.

3.2.1.3 Catch Trends

The Alaska catch of Tanner crab has shown a steady yearly increase from a 1961 harvest of 6,800 pounds (3.1 mt) to a 1977 preliminary harvest of 94 million pounds (42,800 mt).

3.2.1.4 Description of Vessels and Gear

Vessels. The size and configuration of the vessels engaged in Alaska's Tanner crab fishery vary between regions and are described in the management area sections. Most vessels participating in the Tanner crab fishery in the Bering Sea, Kodiak and South Peninsula/Aleutian area are large, efficient, combination vessels capable of fishing open waters under adverse weather conditions. As such, these vessels have the potential of moving to and fishing in any management area in the State.

Types of Gear. Pots are the only type of commercial fishing gear in the Tanner crab fishery. Three pot designs are currently in use: (1) modified variation of the conventional king crab pots; (2) specially designed "pyramid" shaped pots; and (3) Japanese conical pots. Ring nets and scuba are also legal gear, but are used in the subsistence fishery.

3.2.2 History of Foreign Exploitation

3.2.2.1 Description of User Groups

Fishermen from two major foreign nations, Japan and the Soviet Union, have harvested Tanner crab in areas of the Bering Sea which now fall within the boundaries of the U.S. Conservation Zone.

3.2.2.2 and 3.2.2.3 Catch Trends and Description of Fishing Effort

Tanner crab harvested in the eastern Bering Sea prior to 1964 were caught incidentally in the king crab fisheries. Bilateral agreements with Japan and the U.S.S.R., in 1964, when the combined Soviet and Japanese king crab fisheries were at their peak, resulted in immediate reductions in the foreign production of king crab. Foreign emphasis then shifted to Tanner crab and the combined Japanese-Soviet Tanner crab catch increased rapidly to about 24 million crab in 1969 and 1970 (Table F1, p. 235). Since 1970, quotas for Tanner crab have sharply reduced foreign landings. The Japanese quotas for Tanner crab in 1977 is 27,550,000 pounds (12,500 mt). As was the case for king crab, the Soviet Tanner crab fishery ended after 1971.

Japanese trawlers incidentally catch substantial numbers of Tanner crab annually in the eastern Bering Sea. According to U.S. observer data, 155 million Tanner crab were caught incidentally in 1974 (French et al., 1976). Preliminary data indicate a decreased catch in 1975 of 58 million crab, owing primarily to a lower observed incidental catch rate. Although these crab must be returned to the ocean, mortality is estimated to be 60-70 percent. Taking into consideration the best available data on the time span between size at incidental capture and at recruitment and the rate of natural mortality, it is estimated that the total loss of Tanner crab to the fishable population generated by the 1974 incidental catch is 31 million pounds (14,100 mt); by the 1975 catch, 15 million pounds (6,800 mt). These losses, estimated to be approximately 85 percent *C. opilio,* approach the annual magnitude of the directed catch.

3.2.2.4 Vessels and Gear Types Employed

No Soviet crab fishery has occurred in the eastern Bering Sea since 1971. Two factoryships have been utilized by Japan to process crab in recent years, supplied by six catcher boats each. A Japanese landbased fleet has operated generally north and west of the factoryship fleet for Tanner crab since the early 1970's. In 1976, 31 vessels operated while for the 1977 season only 11 were licensed. These vessels are 2—5 times the size of the factoryship catcher boats and utilize identical gear. Further detail on vessels and gear will be found in the Bering Sea section of this plan.

3.3 History of Management

3.3.1. Domestic Management Institutions, Policies, Jurisdictions

Institutions. The state organizational act of 1959 provided for Alaska Statutes, Title 16, which deals with Alaska Fish and Game Resources. Article 1 provides for a Department of Fish and Game whose principal executive officer is the Commissioner of Fish and Game. The Commissioner is appointed by the Governor for 5 years. Functions of the Commissioner are:

1. Supervise and control the department, and he may appoint and employ division heads, enforcement agents, and the technical, clerical, and of the assistants necessary for the general administration of the department;

2. Manage, protect, maintain, improve, and extend the fish, game and aquatic plant resources of the state in the interest of the economy and general well-being of the state;

3. Have necessary power to accomplish the foregoing including, but not limited to, the power to delegate authority to subordinate officers and employees of the department.

The Commercial Fisheries Division was established to manage all commercially harvested fish species in Alaska. The division is headed by a director who supervises four regional supervisors. The regions are further separated into management areas. Area management biologists are responsible for collecting catch data and monitoring fisheries in their areas.

Research biologists within the divison work on projects which have direct application to management procedures. Research studies are currently conducted on Tanner crab life history, migration patterns and population abundance.

The enforcement of fish and game laws and regulations is provided by the Department of Fish and Game and Public Safety. The Fish and Wildlife Protection Officers of the Department of Public Safety operate independently of the Department of Fish and Game. Communication between the two departments is maintained and activities are coordinated.

The Fisheries Regulatory Process. The Alaskan system has a seven-member Board of Fisheries, composed of fishermen and other businessmen appointed by the Governor, which considers both public and staff regulatory proposals in deciding on regulatory changes.

The Alaska Board of Fisheries is required by Law to meet or hold a hearing at least once a year in each of the following areas of the state: (1) Upper Yukon-Kuskokwim-Arctic, (2) Western Alaska (including Kobiak), (3) South Central, (4) Prince William Sound (including Yakutat), and (5) Southeast, in order to assure all people of the state ready access to the Board.

Since the late 1960's the Alaska Board of Fisheries and, before it, the Alaska Board of Fish and Game have held a minimum of two meetings annually to adopt changes in the fisheries regulations. The fall Board meeting, traditionally held in early December, considers proposals for changes in sport fishing regulations and in commercial and subsistence finfish regulations. A spring Board meeting, usually held in late March or early April, considers commercial and subsistence shellfish regulatory proposals.

Regulations which may be adopted by the Board of Fisheries cover seasons and areas, methods and means of harvesting, quotas, and times and dates for issuing or transferring licenses and registrations.

Advisory committees, composed of people informed on the fish and game resources of their locality, serve as local clearinghouses and sources of proposals for Board consideration.

Following submission of public proposals, department staff members review the proposals and redraft the wording, when necessary, to conform to the style required. The Department of Fish and Game also submits proposals for the Board's consideration.

In adopting new regulations, the Board of Fisheries follows Alaska's Administrative Procedure Act. This act has several requirements: At least 30 days prior to the adoption of new regulations, a notice giving the time and place of the adoption proceedings, reference to the authority under which the regulations are proposed, and a summary of

the proposed action must be published in a newspaper of general circulation and sent to all interested people who have asked to be informed of the proposals. During the proceedings, the public must be given an opportunity to testify on the proposed changes. If a new regulation is adopted, it must be submitted to the lieutenant governor through the attorney general's office. Thirty days after being filed with the lieutenant governor, the new regulation becomes effective. Because of these requirements, new regulations usually do not become effective until about two months after being adopted by the Board of Fisheries.

Regulatory flexibility is given to the Commissioner of Fish and Game and to his authorized designees to adjust seasons, areas, and weekly fishing periods by emergency order.

The requirements of the preceeding paragraph do not apply in the case of emergency regulations, which may be adopted if needed for the immediate preservation of public peace, health, safety, or general welfare. An emergency regulation remains in effect 120 days unless it is permanently adopted according to the procedures outlined in the preceding paragraph.

This authority has the same force and effect as regulations promulgated by the Board of Fisheries.

Policies. Policies governing fisheries management in Alaska are issued by the Board of Fisheries and the Commissioner.

Jurisdiction. The Alaska Department of Fish and Game has sole management authority over all migratory fish and shellfish species which enter and leave territorial waters of the state during any given year including the migratory fish and shellfish taken from state waters which are indistinguishable, in most instances, from those taken from adjacent high seas areas. Regulations governing migratory fish and migratory shellfish apply in both areas and are enforced by the landing law explained in section 3.4 of this plan.

3.3.2 Domestic

3.3.2.1 & 3.3.2.2 Regulatory Measures and Purpose of Measures

The Tanner crab resource in Alaska is managed by a complex of regulatory measures that have been developed as the commercial fishery has increased its capacity to harvest the resource. The fishery is managed by fishing season, specification of type and quantity of gear, sex limitation, size limits, fishing area restrictions, and harvest levels.

The common pattern of fisheries development world-wide is one of increasing resource exploitation followed by research and increasingly restrictive regulations to prevent or arrest declines in stock abundance. All too often, adequate funding is not made available for biological research until the resource shows some signs of distress. The result in many cases is intensive exploitation with accompanying industry overcapitalization based on harvest of virgin stocks followed by a decline in resource abundance of varying degrees and economic distress to the industry.

Significant harvests of Tanner crab in most areas date back only to the late 1960's, followed by a rapid increase to the present. There is no history of the effects of harvest of varying sizes on the stocks. Research in most areas is not adequate to define with precision natural variations in stock abundance, stock recruit relationships, age, growth, mortality parameters and discrete stock units.

In the absence of these data, the Alaska Board of Fisheries and the Alaska Department of Fish and Game have adopted a conservative approach to the development of this fishery. This approach is reflected in the regulatory regime that has been imposed. These regulations are designed to allow expansion of harvest in this developing fishery while, insofar as possible, preventing decline in abundance due to overfishing and minimizing economic disclocation. For reference, a copy of the current State of Alaska Tanner Crab Regulations have been appended (Appendix 11.2).

Research programs are being expanded within the constraints of available funding and as new information becomes available, regulatory measures may be modified. The lack of precision in defining stock parameters requires that a degree of flexibility be maintained so that the manager can expand or restrict harvests by area during a fishing season.

The current State of Alaska regulatory regime emphasizes three primary objectives and procedures to accomplish them:

1. Maximize yield from harvestable surpluses: This is accomplished by seasons and gear restrictions to increase meat yield per individual crab and reduce mortality on sublegal crab.

2. Maximize reproductive potential of the Tanner crab stocks by: (a) imposing seasons, gear restriction, size and sex limits and harvest levels to protect crab during reproduction; (b) minimizing mortality on female crab due to handling or harvest: and (c) assuring full female fertilization by providing adequate numbers of males of all sizes for breeding.

3. Seek economic stability in the Tanner crab industry. Avoiding over-capitalization based on levels of population abundance which may not be sustained over time by; (a) regulating annual harvest to discourage too rapid expansion of harvesting and processing capability until resource potential can be better evaluated and; (b) by stabilizing harvest levels within the range of natural recruitment fluctuation if not precluded by excessive natural mortality beyond the first year at maturity.

Fishing Seasons. To sustain optimum levels of Tanner crab production, seasonal closures are required during certain periods of their life cycle. Closed seasons encompass molting, peak breeding of oldshell females (assuming they remate) and egg hatching periods. Seasonal closures assumedly allow time preceding peak breeding periods so that male breeders are not over harvested as schooling occurs immediately prior to breeding. Seasonal openings are delayed following molting periods until shell condition has hardened enough to allow handling with minimum mortality and damage to nonlegal crabs that must be returned to the waters, and to legal crabs so that they are delivered in a marketable condition. Seasons' opening dates should be set after molting and after adequate growth to take advantage of weight gain, thereby increasing the amount of meat recovered from each animal.

Type of gear. Legal gear for Tanner crab is defined as pots, ring nets, or scuba. These gear types are all selective in that non-legal crab may be released unharmed. Non-legal crab are females and undersized male crab. If non-selective gear were employed (trawls, tangle nets) many non-marketable crab would be harvested with high mortalities occurring during the catching procedure. Pots provide the fishermen with an efficient selective gear type which does the least amount of damage to the non-harvestable portion of the stocks.

Quantity of gear. Limitations on the units of gear per vessel are applied in four management areas to avoid conflicts with established pot limits for king crab during overlapping portions of fishing seasons for king and Tanner crab. In one management area (Southeastern) a pot limit has been established for small inside populations isolated geographically from major stocks.

Sex limitations. Protection of the female Tanner crab population from harvest, if accompanied by the maintenance of a mature male population adequate to insure total fertilization of mature females, should guarantee that there will be no adverse effects due to harvest on the reproductivity of the Tanner crab stock. The harvest has therefore been restricted to only males above a certain size limit.

Females do not grow beyond the molt to maturity and are not currently demanded by processors due to their relatively smaller size. Thus, the male-only fishery restriction does not impose an adverse economic impact on the fishery.

Size limits. The major species of Tanner crab (*C. bairdi*) in the Alaskan fisheries can probably be harvested profitably at the size of maturity for males (see section 4.0). However, a fishery operating on male crab just reaching maturity could reduce the reproductive potential of the stocks, since a portion of the males would be harvested before having an opportunity to mate. This could result in less than total fertilization of the available mature female population. It is possible that full female fertilization might be achieved utilizing less than 100 percent of the male population being allowed to breed for one season before being exposed to harvest. This determination would require data on the number of mature males and females (and male breeding efficiency) by stock unit. In the absence of such information, the conservative policy of obtaining full female fertilization is best served by the imposition of the minimum legal size that will allow male crab at least one opportunity to breed before being recruited into the fishery. Nearly all Tanner crab males has been found to be mature at 5.3 inches (130 mm) carapace width in populations studied. To allow for annual area fluctuations, a 5.5 inch (140 mm) minimum shell width limit has been imposed statewide with the exception of Prince William Sound where the limit is 5.3 inches.

Harvest levels. The rapid expansion of Tanner crab harvests in advance of adequate biological assessment programs coupled with a lack of good definition of stock units could lead to over exploitation of some stocks and under exploitation of others. A lack of knowledge of variations in annual recruitment could also lead to industry overcapitalization and dependence on stocks currently at a high level of abundance which in fact may not sustain a given level of harvest.

The Board of Fisheries has further indicated a conservative approach to the development of this fishery by adopting guideline harvest levels for most areas. These harvest levels serve to inform the industry that unrestricted harvest expansion (even of crab above a certain size limit) may not be desirable. These harvest levels are nor-

mally expressed as ranges to give the manager the flexibility to adjust the harvest during the season based on catch per unit effort by geographical area, indexes of abundance research results, or variation in shell condition by date.

Fishing area restrictions. Fishing areas are generally designed for manageable stocks or aggregates of stock units. Areas may be further subdivided into districts for statistical and regulatory purposes.

Exclusive registration areas have also been designated. These areas help to reduce the rate of harvest and serve to prevent economic dislocation of a certain segment of the industry dependent on a stock(s), particularly if the character of the fishing fleet and the industry that depends on it would not allow movement to another area.

3.3.3. Foreign

3.3.3.1. & 3.3.3.2. Regulatory Measures and Purpose of Measures

Prior to 1964, there were no U.S. regulations for the foreign crab fisheries of the eastern Bearing Sea. In 1964, the United States ratified the 1958 Continental Shelf Convention and declared king and Tanner crab (among other species) as "Creatures of the Continental Shelf". In that same year, bilateral arrangements were concluded with both Japan and U.S.S.R. in which quotas and a minimum size limit were applied to their king crab catches. In addition, only hard-shell male crabs could be retained. Catch quotas were first applied to foreign Tanner crab fisheries in 1969 and use of tangle net gear was restricted in later bilaterals. These bilateral agreements were modified at 2 year intervals, resulting in progressively lower foreign quotas for both king and Tanner crabs.

Initially, regulation of the foreign fishery emphasized conservation of an apparent declining king crab resource. Later regulations limited foreign fishing to permit expansion of developing U.S. fishery on these resources.

Since 1973, separate Tanner crab quotas have applied to each of two quota areas in the Bering Sea. The quota areas were further defined in the 1975–76 bilateral to eliminate the foreign fishery east of 164° W. longitude and south of 55°30' N. latitude—the principal area fished by the United States to that time.

The Preliminary Management Plan (PMP 1977) of the Secretary of Commerce, in effect for the 1977 season, further restricted foreign fishing on hardshell male Tanner crab by moving the southern boundary of the open fishing area from 55¼°30' N. to 56° N. latitude. Details of regulation may be found in the FEDERAL REGISTER of February 11, 1977 and the Bering Sea section of this plan.

3.3.4. Effectiveness of Management Measures

Fishing Seasons. The restricting of the commercial harvest of Tanner crab to that interval of time after the crab have mated, molted and filled their new shells in the beginning of the new cycle has effectively protected breeding stocks, reduced handling mortality, and has resulted in a high quality product being harvested and marketed.

Type of Gear. Restricting commercial harvest of Tanner crab to the use of pots has resulted in low handling mortality of crab on the fishing grounds. It provides for fishing with an efficient selective gear type that allows the escapement of many sub-legal and female crabs.

Quantity of Gear. Limiting the number of Tanner crab pots to the equivalent number of pots which may be fished in the king crab fishery has been required for enforcement purposes during the period of time that the seasons for these two species overlap.

Sex Limitations. The harvesting of only mature males only has not shown any adverse effects on the reproductive potential of the stocks and is therefore an effective means of protecting the reproductivity of the resource.

Size limits. The 5.5 inch (140 mm) size limit is in effect for all management areas of the State except for Prince William Sound where a 5.3 inch (135 mm) size limit applies. The results of the size limit will not be known for some time in terms of the reproductive potential of the stock. However, female Tanner crab ovigerity can be monitored and related to the abundance of mature male Tanner crab.

Harvest Levels. Harvest levels for other shellfish have had a definite effect in stabilizing the catch. Applicability to maintaining stability in the Tanner crab industry will only be substantiated by measuring the results in terms of harvest ranges which can be sustained over a broad range of natural fluctuations in stock abundance. The effect on maintaining full female fertilization can only be assessed by comparing female ovigerity over time with stock levels of newly mature and older male crab. Quotas on foreign catch have effectively provided for expansion of the U.S. effort for Tanner crab in the eastern Bering Sea.

Fishing areas. Regulating by geographical areas has allowed selective application of conservation measures based on stock differences such as variations in time of molting, breeding and softshell condition. Area restrictions on the foreign fishery in the eastern Bering Sea have minimized conflicts between domestic and foreign harvesting in terms of gear interference and competition for concentrations of crab. Rapid expansion of U.S. effort on *C. bairdi* in the Bering Sea will require further restrictions in the future.

3.4. HISTORY OF RESEARCH

Research on Tanner crab in Alaskan waters has been conducted by several agencies and groups: The National Marine Fisheries Service, State of Alaska Department of Fish and Game, universities, domestic industries, and foreign nations.

National Marine Fisheries Service (NMFS). The first NMFS biological research program on Tanner crab in Alaskan waters occurred as an adjunct to two king crab cruises in the southeastern Bering Sea in 1968, followed by three similar research cruises in 1969. Data from these cruises yielded a first approximation of the distribution and abundance of Tanner crab in the southeastern Bering Sea (Karinen, 1969) as well as information on molting seasons, reproduction, size frequency distribution, larval release and abundance, associated fauna and physical environment (Hoopes 1969). Since 1969, annual crab stock assessment cruises have been conducted to monitor the populations in the southeastern Bering Sea. In 1975 and 1976, NMFS conducted OCS related surveys as far north as the southeastern Chuckchi Sea.

Experiments in Tanner crab processing were done at the Service's Technological Laboratory at Ketchikan in 1961 and 1962. In 1969, the Technological Laboratory (by that time located in Kodiak) began a research program on holding Tanner crab alive in tanks to determine methods of reducing mortality while crab are held on vessels and in processing plants.

State of Alaska. The Alaska Department of Fish and Game began studies on Tanner crab as an adjunct to its king crab research early in 1969. The state agency's shellfish research program was established to more comprehensively study the Tanner and Dungeness Crab resources being harvested in the Kodiak Island area. In July, 1973, monies obtained from the Commercial Fisheries Research and Development Act and the State of Alaska were used to create a project oriented solely towards the commercially exploited Tanner crab, *Chionoecetes bairdi.* The objective of this research project was the development of parameters which would aid in ascertaining the optimum annual yield for the fishery. Specific areas investigated were: (1) growth and age at size; (2) frequency of molt; (3) reproductive biology; (4) distribution and relative abundance of Tanner crab with respect to size and sex; (5) assessment of the effects of the commercial fishery upon the population; and (6) documentation of inter-relationships between Tanner Crab and other marine organisms (Donaldson 1977a).

Universities. Graduate student studies from the University of Alaska and the University of Washington have focused on developing life history models for both *C. bairdi* and *C. opilio.* Cooperation between university studies and the State of Alaska's research program have resulted in improved management capabilities.

Industry. Industry has done much to develop techniques of processing, storing, and marketing Tanner crab. Commercial fishermen have aided studies on the distribution and movement of Tanner crab by returning tagged crab with catch information.

Foreign Nations. Much of the current knowledge of the life history of *C. opilio* is the result of investigations by foreign nations. Research by the Japanese and Soviets has provided a great deal of information on life history aspects of the crab (Fukataki 1965). Through the auspices of the International North Pacific Fisheries Commission the Japanese initiated studies on Tanner crab in the Bering Sea in 1968 (Ito 1968; Kon 1974; Sinoda 1968).

3.5. SOCIO-ECONOMIC CHARACTERISTICS

3.5.1. Output of Subject Domestic Tanner Crab Fishery

3.5.1.1 Value of Catch (Ex-vessel)

Total ex-vessel value of the Tanner crab fishery in 1976 was $16,056,760. Totals by management area and statewide for the years 1969 through 1976 may be found in Table 1 on page 17.

3.5.1.2 Description and Value of Product (Wholesale)

Nineteen Seventy-Five is the latest year for which Tanner crab production and wholesale data available. (ADF&G 1975 Catch & Production Leaflet). In that year, the product forms and values were: canned Tanner crab $2,282,354; frozen whole $14,795,354; frozen section $1,672,972; and meats $621,897, totaling $19,372,577 at the first wholesale level. The wholesale value of Tanner crab products for years prior to 1976, peaked in 1973 when $33,687,678 was realized at first wholesale.

Table 2 contains the 1975 shellfish production and wholesale values.

TABLE 2 - 1975 Shellfish Production with Wholesale Values

PRODUCTS	SOUTHEASTERN[1] POUNDS	SOUTHEASTERN[1] VALUE ($)	CENTRAL[2] POUNDS	CENTRAL[2] VALUE ($)	WESTERN[3] POUNDS	WESTERN[3] VALUE ($)	TOTAL POUNDS	TOTAL VALUE ($)
King crab								
Frozen								
Whole/dressed	501,152	574,922	14,618,834	26,281,738	15,376,870	33,917,998	30,487,856	60,774,658
Sections/tails	---	---	1,511,535	1,979,478	2,689,707	5,323,343	4,201,242	7,302,821
Meat	---	---	1,665,320	1,213,008	2,921,655	10,279,648	4,586,975	11,492,656
Canned	---	---	1,074,397	4,266,922	---	---	1,074,397	4,266,922
Total	501,152	574,922	18,870,086	33,742,146	20,979,232	49,520,989	40,350,470	83,837,057
Dungeness crab								
Frozen								
Whole/dressed	788,178	682,002	1,400,301	1,297,901	1,641	2,051	2,190,120	1,981,954
Sections/tails	389	447	247,863	214,808	---	---	248,252	215,255
Total	788,567	682,449	1,648,164	1,512,709	1.641	2,051	2,438,372	2,197,209
Tanner crab								
Frozen								
Whole/dressed	844,020	751,786	12,230,326	9,518,849	4,025,600	4,524,719	17,099,946	14,795,354
Sections/tails	---	---	1,047,416	1,672,972	---	---	1,047,416	1,672,972
Meat	---	---	242,526	621,897	---	---	242,526	621,897
Canned	---	---	705,071	2,282,354	---	---	705,071	2,282,354
Total	844,020	751,786	14,225,339	14,096,072	4,025,600	4,524,719	19,094,959	19,372,577
Shrimp								
Frozen								
Whole/dressed	349,094	591,546	10,084,660	13,039,460	1,274,995	1,681,460	11,708,749	15,312,466
Sections/tails	8,501	17,288	405	347	603,060	1,453,765	611,966	1,471,398
Meat	---	---	---	---	510,420	1,722,667	510,420	1,722,667
Canned	---	---	3,652,986	6,903,208	---	---	3,652,986	6,903,208
Total	357,595	608,832	13,738,051	19,943,015	2,388,475	4,857,892	17,484,121	25,409,749
Clams								
Frozen								
Shucked	---	---	11,596	34,408	---	---	11,596	34,408
Bait	---	---	11,811	2,898	---	---	11,811	2,898
Total	---	---	23,407	37,306	---	---	23,407	37,306
Scallops								
Frozen								
Whole/dressed	---	---	409,688	635,016	---	---	409,688	635,016

1/ Southeastern management area
2/ Prince William Sound, Cook Inlet, and Kodiak management areas
3/ S. Peninsula/Aleutians, and Bering Sea management areas

Source - ADF&G Catch and Production Leaflet

3.5.1.3. Markets, Domestic and Foreign

In 1975 approximately 19 million pounds of Tanner crab products were available for distribution in frozen and canned forms from Alaska, with a wholesale value of $19.4 million. This comprises about 15 percent of the total wholesale value of shellfish in Alaska.

Tanner crab catches in 1975 and 1976 were 46 and 79 million pounds with ex-vessel values of $7 and $16 million respectively (Table 1). The composition of total Tanner crab wholesale value in Alaska by product form shows that 76.4 percent is in whole/dressed (frozen) form, 11.8 percent in canned, 8.6 percent in section/tail (frozen), and 3.2 percent in meat (frozen) form.

Adequate information dealing with domestic market channels and consumption patterns is not available. According to the Bearing Sea Tanner crab study conducted by the University of Alaska (Orth, Frank et al., 1977) 27 percent of Alaska's Tanner crab production was distributed in California. The resturant trade purchased 36 percent of the Tanner crab meats marketed in California in 1976 and only 2 percent of the legs, claws and sections. Retail supermarkets and grocery stores purchased 67 percent of the in-shell products and only 8 percent of the meats. Table 3 shows the distribution of frozen Tanner crab by type of market and product form in Southern California.

Alaska production of canned and fresh/frozen Tanner crab meat has a firm domestic market primarily in coastal areas and most of Alaska sections are exported to Japan. Tables 3a and 3b show an estimated U.S. and Japan Tanner crab consumption by year, respectively.

Table 3. Percent of Distribution of Frozen Tanner Crab Categorized by Type of Market and Product Form 1975 and 1976

(Southern California)

		1975	1976
In shell	Restaurants	0.3	2.0
	Retail outlets	88.4	67.6
	Intermediate distributors	11.3	30.4
	Total	100.0	100.0
Frozen Meat	Restaurants	11.6	36.2
	Retail outlets	9.5	8.1
	Intermediate distributors	78.9	55.7
	Total	100.0	100.0

Source: Orth, Frank et al., The Bering Sea Tanner Crab Resource: U.S. Production Capacity and Marketing, University of Alaska, 1977.

Table 3a Estimated U.S. Tanner Crab Consumpton

	Catch	Ex-vessel Price	Imports	Exports to Japan	Change in Frozen Holdings	Consumption
68	3,248	.10			NA	
69	11,207	.10			"	
1970	14,473	.10	16,269		"	30,742
71	12,880	.11	25,089	253	"	37,716
72	30,135	.12	18,467	175	"	48,427
73	61,719	.17	15,658	51,230	"	26,147
74	63,906	.20	13,492	28,779	"	48,619
75	46,857	.15	14,286	15,525	"	45,618
76	80,712	.20	10,555	36,799	-3,000	57,468

All quantities in thousand lbs. live weight.
Tanner crab conversion factors: section/live = .55; meat/live = .15

Source: Orth, Frank et al., The Bering Sea Tanner Crab Resource: U.S. Production Capacity and Marketing, University of Alaska, 1977.

Table 3b. Estimated Japanese Tanner Crab Consumption

	Catch	Ex-vessel Price	Imports from U.S.	Canned Exports	Inventory Change	Consumption	Catch of "Other" Crabs
68	135,978	48			NA		56,676
69	115,325	79			"		40,642
1970	117,428	89		11,613	"	105,815	41,933
71	93,369	117	253	21,373	"	72,249	67,672
72	91,998	115	175	10,700	"	81,473	59,705
73	73,592	179	51,230	933	"	123,839	84,762
74	66,284	184	28,779	3,367	"	91,696	121,392
75			15,525	2,947	"		
76			36,799		"		

All quantities in thousand lbs. live weight.
Tanner crab conversion factors: section/live = .55; meat/live = .15

Source: Orth, Frank et al., The Bering Sea Tanner Crab Resource: U.S. Production Capacity and Marketing, University of Alaska, 1977.

U.S. Tanner crab consumption has been increasing and one problem for the developing Tanner crab market is a shortage of domestic supply. The above study (Orth, Frank et al., 1977) further shows that most firms originally got into Tanner crab marketing to fill the Japanese demand for high quality products (frozen and sections). The domestic market started with the selling of the remaining sections and meat to the U.S. customers.

Ex-vessel price of Tanner crab is determined by negotiation at the beginning of the season. In Kodiak this price negotiation is carried out between the Fishermen's Association, the United Fishermen's Marketing Association, and the large processors.

The significant limiting factors for Tanner crab processing are the availability of raw crab, labor and housing for labor, frozen storage capacity, and the problem of transportation of finished products. For the Westward plants, the most important limiting factor is the problem of transportation. Most plants in Westward are floaters rather than shore-based plants and have limited cold storage facilities.

An average annual ex-vessel price for Tanner crab by management area can be seen in Tables A4 and B3. Consumption patterns and market channels for foreign countries can not be established because of lacking reliable data.

3.5.2. Domestic Commercial Harvesting Characteristics

See Table 4 and section 3.2.1.4. of each management area plan for a description of the vessels and gear participating within each management area's Tanner crab fishery.

TABLE 4 VESSEL CHARACTERISTICS OF ALASKAN TANNER CRAB COMMERCIAL FLEET

1976/77 SEASON (VALUES ESTIMATED BY AREA SHELLFISH BIOLOGISTS)

Management area	Number Vessels	Hold Capacity Per Vessel		Keel Length Mean		Keel Length Range		Net Tonnage Mean		Net Tonnage Range	
		Pounds	MT	Feet	M	Feet	M	Tons	MT	Tons	MT
SOUTHEASTERN:											
Southeast	30	94,200	42.7	80	24.4	32-103	9.8-31.4	107	97	23-197	21-179
Yakutat	6	24,000	10.9	49	14.9	32-85	9.8-25.9	30	27	5-67	5-61
PRINCE WILLIAM SOUND	23	23,000	10.4	52	15.8	26-82	7.9-25.0	34	31	4-147	4-133
COOK INLET	66	38,000	17.2	50	15.2	27-92	8.2-28.0	37	34	5-146	5-132
KODIAK	98	39,000	17.7	56	17.1	30-134	9.1-40.8	50	45	4-198	4-180
S. PENINSULA/ ALEUTIAN:											
S. Peninsula	42	50,000	22.7	65	19.8	34-112	10.4-34.1	68	62	11-198	10-180
Aleutian	9	170,000	77.1	86	26.2	78-108	23.8-32.9	139	126	111-199	101-181
BERING SEA	66	170,000	77.1	93.6	28.5	58-158	17.7-48.2	140	127	40-281	36-255

3.5.2.1. Total Gross Income of the Tanner Crab Fleet from Subject Fishery and All Other Fisheries, and Average Per Fleet Unit.

Statewide, the total gross income for Tanner crab fisherman from all fisheries that they participated in (King crab, salmon, Tanner crab, etc.) was $74,800,000 in 1976. The average income per vessel was $190,000.

Tanner crab ex-vessel value, total gross income of the fleet, and gross income per vessel for each management area in 1976 is shown in Table 5.

TABLE 5. VALUE OF TANNER CRAB CATCH AND TOTAL GROSS INCOME (all fisheries) FOR FLEETS BY MANAGEMENT AREA. 1976 1/

MANAGEMENT AREA	TANNER CRAB VALUE ($)	TOTAL GROSS INCOME ($)	AVERAGE GROSS INCOME PER VESSEL ($)
Southeastern	772,536	3,408,467	121,731
Pr. Wm. Sound	1,200,089	2,186,800	56,072
Cook Inlet	1,246,413	7,314,954	101,597
Kodiak	4,924,284	18,448,798	175,703
S. Pen./Aleutian	3,560,162	13,078,715	155,699
Bering Sea	4,353,276	30,362,900	463,044
Total	16,056,760	74,800,674	189,849

1/ Annual (not seasonal) values.
Vessel assigned to area with largest Tanner crab landing.

Source: Commercial Fisheries Entry Commission

3.5.2.2. Investment in Vessels and Gear

During the 1976-77 Tanner crab season 339 vessels, fishing approximately 40,000 pots, participated in the fishery. There are no data currently available to estimate the total investment in capital equipment. Some vessels involved in this fishery have a current market value as small as a few thousand dollars, while others are worth well over one million dollars. However, given a current approximate value of a Tanner crab pot with buoy and line of $400, it can be estimated that with 40,000 pots in the 1976-77 fishery, fishermen have an investment of $16,000,000 in pots alone.

A major research effort is being conducted by the Alaska Commercial Fisheries Entry Commission, under NMFS funding, to develop an economic profile of the shellfish fisheries. A component of this research will be an estimate of the total investment in capital equipment. Upon completion of this study, data will be available to provide an estimate of investment directed towards each Tanner crab fishery.

3.5.2.3. Annual Participation in the Tanner Crab Fishery

During 1976, 394 vessels made 3,743 landings for which individual fish tickets were issued. There is currently no data available to develop summary statistics in terms of standardized vessel days or pot lifts. However, where possible (see sections 3.5.2.3. within the various management area sections of this plan), estimates of participation have been made by the area shellfish biologist based upon his familiarity with the activities of the fleet.

3.5.2.4. Total Employment in the Tanner Crab Fishery Harvesting Sector

Statewide summary statistics for employment in the Tanner crab harvesting sector are not available. There is currently no state of Alaska or Federal agency collecting employment data on an annual basis which is discrete enough to break out employment by species. The Alaska Department of Labor does publish employment statistics quarterly by major industrial classification. However, the source of this information is the employer's contribution report for unemployment insurance, and therefore does not reflect total employment nor can the employment be related to species. Area shellfish biologists have provided an estimated total fishing employment of 1,183 during the 1976-77 season (see Table 6).

TABLE 6. POTENTIAL HARVESTING AND PROCESSING CAPABILITIES IN THE ALASKAN COMMERCIAL TANNER CRAB FISHERIES, 1976/77 SEASON

(Values Estimated By Area Shellfish Biologists)

MANAGEMENT AREA	HARVESTING SECTOR: NUMBER VESSELS	CREW	NUMBER POTS	FLEET LIVE TANK CAPACITY 10³ lbs	MT	SEASONAL TANK CAPACITY 10³ lbs	MT	PROCESSING SECTOR: NUMBER PLANTS	NUMBER EMPLOYED	DAILY PROCESS CAPACITY 10³ lbs	MT	SEASONAL PROCESS CAPACITY 10⁶ lbs	MT
Southeastern													
Southeast	33	90	3000	0.72	327	8	3739	9	450	0.20	90.7	30	13608
Yakutat	6	24	900	0.57	256	5	2029						
Prince William Sound	23	72	1840	0.52	237	11	4508	3	175	0.11	47.7	20	9072
Cook Inlet	66	231	5000	2.50	1134	38	17,237	4	250	0.20	90.7	30	13608
Kodiak	93	340	9000	3.78	1716	38	17,237	17	1500	1.35	612	162	73448
S. Peninsula/ Aleutian													
S. Peninsula	42	126	5200	2.11	955	44	20,049	3	225	0.13	56.7	24	11057
Aleutians	9	36	1800	1.53	694	28	12,474	14	1120	0.90	408.	135	61236
Bering Sea	66	264	14300	11.22	5089	135	61,055	17	1505	1.20	544.	130	81548
TOTAL	343	1183	43740	22.35	10138	307	139,628	67	5225	4.09	1343.8	681	253669

3.5.2.5. Economic Viability

To specify the economic condition of this fishery as an average net return over the whole fleet, or by appropriate subcategories of vessels, within the fleet, several kinds of data are required. In addition to the gross income from this fishery and all other fisheries in which these vessels participate (most are multi-product firms), cost of production information is required as well as the development of an analysis of the production function. Further, in order to determine how efficient the firms are, estimates of least cost production and maximum potential net returns must be derived and compared with current earnings. This requires estimating maximum sustainable economic yield (MSEY). To estimate MSEY requires a biological yield function, product demand curves, production function analysis and input costs. Currently most of this information is not available. Again, there are research efforts in progress which should provide quantitative data for several of the parameters in the system. These studies include those being conducted by the Commercial Fisheries Entry Commission, University of Alaska and Sea Grant.

3.5.3. Domestic Commercial Processing Characteristics

3.5.3.1. Total Gross Income of Area Processors

In 1975, Tanner crab processors realized a gross income (at first wholesale level) of $19,372,377 from Tanner crab (ADF&G 1975 Catch and Production Leaflet). At this time there are no summary statistics providing the total gross or average income received by processors combining all species.

3.5.3.2. Investment in Plant and Equipment

There are no summary statistics available on processor's investment in capital.

3.5.3.3. Total Employment and Labor Income

Employment statistics related to the processing of Tanner crab are not available nor is total annual employment by these firms. However, area shellfish biologists have estimated employment in the processing of Tanner crab during 1976-77 to be 5,225 (see Table 6).

No statistics on total labor income related to processing of Tanner crab are available.

3.5.3.4. Economic Viability (Net Income and Efficiency)

There is currently no information available related to the profitability of processing Tanner crab. Data required to address this question are similar to that needed for the harvesting sector. However, with respect to the economic activities of the processing

firms there are no known studies underway which will provide data for this sector of the industry.

3.5.4. and 3.5.5. Recreation and Subsistence Fishing Characteristics

There is no Tanner crab fishery in Alaska which is defined or regulated as a recreational fishery. There is, however, a "subsistence" fishery which for many subsistence fishermen represents a recreational activity. Currently, there are no data relative to the number of man days of participation in the subsistence Tanner crab fishery, the quantity of gear used or the catch.

3.5.6. Indian Treaty Fishing Characteristics

There are no Indian treaty rights associated with the Alaskan Tanner crab fishery.

3.5.8. Area Community Characteristics

3.5.8.1. Total Population

Alaska's 1976 population statistics show the state as having a population of 413,289. (Department of Labor 1977). Table 7 provides population by management area.

TABLE 7. TOTAL RESIDENT POPULATION (CIVILIAN & MILITARY) BY AREA AND YEAR

	1960	1970	1971	1972	1973	1974	1975	1976
Statewide	226,167	302,361	311,070	322,115	330,365	351,159	404,634	413,289
S.E.	35,403	42,565	43,088	44,475	46,417	50,232	50,438	51,172
P.W.S.	7,559	7,291	7,440	7,696	7,996	8,476	14,791	18,748
C.I.*	6,079	14,250	14,204	13,830	13,800	13,962	15,621	16,753
Kod.	7,174	9,409	9,665	8,645	8,868	9,232	8,801	9,366
S. Pen.	6,011	8,057	7,849	7,197	6,914	7,714	7,086	8,282
Ber.Sea	4,024	4,632	4,202	4,663	4,858	5,114	5,761	4,752

* Exclusive of Anchorage

Source: Alaska Dept. of Labor, Employment Security Division

3.5.8.2. Total Employment

Third quarter 1976 statistics (Department of Labor section 3.5.2.4) show that total employment in seafood processing and in fishing were 7,772 and 1,734 respectively. Employment data are not available for fishery related secondary employment statewide. Where possible, estimates of employment have been made within the management area sections of this plan. Employment statistics, including rates of unemployment from first quarter 1974 to third quarter 1976 are given in Table 8.

TABLE 8. STATEWIDE EMPLOYMENT STATISTICS.*

		ALL INDUSTRIES				SEAFOOD PROCESSING				FISHING			
Year & Quarter	State Pop.	Number Employed	% Un-Employed	Average Monthly Wage	Total Payroll	Number Employed	% Un-Employed	Average Monthly Wage	Total Payroll	Number Employed	% Un-Employed	Average Monthly Wage	Total Payroll
76-3	413,289	189,519	5.9	$2166	$1,118,496,072	7772	6.5	$1100	$25,675,008	1734		$1944	$10,113,228
76-2		176,010	8.1	1899	1,002,499,383	4760	12.2	941	13,459,874	830		1535	3,821,580
76-1		155,699	11.6	1673	781,367,088	2956	15.6	832	7,364,618	672		1247	2,512,964
75-4		167,978	8.1	1782	898,010,798	3725	12.2	863	9,644,299	812		1977	4,818,387
75-3	404,634	179,020	5.6	1730	928,996,223	6413	6.3	806	17,061,541	1509		1194	5,407,668
75-2		161,814	8.4	1538	739,301,730	3633	15.4	690	7,521,211	730		1049	2,299,245
75-1		136,424	11.4	1458	587,378,468	1874	19.3	824	4,633,361	269		1164	941,051
74-4		137,731		1381	570,497,431	2275		908	7,839,976	716		1773	3,806,848
74-3	351,169	142,889		1252	536,553,529	6074		844	15,395,046	1605		1695	8,161,655
74-2		126,136		1115	421,826,322	4060		750	9,145,777	628		1535	2,856,870
74-1		105,951		1029	327,187,457	2744		622	5,125,678	509		1168	1,784,728

* Significant excluded segments: self-employed persons, unpaid family help, domestic, and most persons employed in agriculture.

Source: "Statistical Quarterly" Alaska Dept. of Labor, Employment Security Division

3.5.8.3. Total Work Force

Third quarter 1976 employment stood at 189,519 with an unemployment rate of 5.9 percent for all industries within the State of Alaska. Total payroll for that same period was $1,118,496,072, with an average of $2,166 per/mo. Seafood processing employed 7,772 persons receiving an average wage of $1,100 per/mo. for a total payroll of $25,675,008. Unemployment in seafood processing was slightly higher than for all industries, at 6.5 percent. In the fishing sector 1,734 persons received an average monthly wage of $1,944, resulting in total payroll of $10,113,228. Unemployment rates for fishing are not available. Table 8 provides employment and payrolls for all industries, seafood processing, and fishing from the first quarter 1974 through the third quarter 1976.

3.6. INTERACTIONS AMONG USER GROUPS

There are three distinct users of the Tanner crab resource in Alaska; domestic commercial fishermen (both Alaska residents and non-residents), subsistence fishermen, and commercial fishermen who are Japanese nationals. There is essentially no conflict between domestic commercial and subsistence Tanner crab fishermen and there has been no attempt to develop regulatory methods to allocate the resource between the two users. There are conflicts however, between foreign commercial and domestic commercial users of the resource

in terms of competing for the crab on the same fishing grounds. As a result, regulations have been developed to allocate the resource between the two users and to reduce gear conflicts. (Refer to sections 3.3.3. and 8.2.3. and see the 1977 Tanner crab PMP).

3.7. FEDERAL AND STATE REVENUES DERIVED FROM FISHERY

Table 9 provides information on revenues derived by the State of Alaska from fish taxes and the sale of permits and licenses from 1969 to 1976. However, only the processors taxes and the Commercial Fisheries Entry Commission's permits can be directly linked to Tanner crab. These two sources accounted for $101,752 in 1975. Revenues derived from other taxes, such as personal Federal and State income taxes associated with net earnings in the Tanner crab fishery, are not available.

TABLE 9. STATE REVENUES RELATED TO TANNER CRAB

	1969	1970	1971	1972	1973	1974	1975	1976
1/ Processor Taxes	$ 11,689	20,362	17,162	36,985	113,399	132,145	73,357	N.A.
2/ C.F.E.C. Permits	$ --	--	--	--	--	108,360	28,395	14,710
3/ Processor licenses	$ 500	500	400	875	1,225	1,100	825	1,675
4/ Com. Fish licenses	$315,630	375,240	334,400	346,520	358,130	325,020	334,510	391,550
5/ Vessel licenses	$146,898	161,863	156,490	156,624	164,194	152,486	158,704	163,180
6/ Gear Pot licenses	$ 17,430	18,225	14,415	17,685	29,025	35,445	28,875	31,410

Source: Alaska Dept. of Revenue; except C.F.E.C. permits are from Commercial Fisheries Entry Commission

1/ Taxes are for Tanner crab industry.
crab canneries - - 2% of raw crab value
shore-based fish processors - - 1% of raw fish value
floating fish processors - - 4% of raw fish value

2/ Commercial Fisheries Entry Commission - table values are specific to Tanner crab fishery.
pot gear for vessel length 50 ft. or less - -$50.
" " more - -$100.
except for poverty income levels - -$5.

3/ General licenses not specific to just Tanner crab - -$25. per facility

4/ & 5/ Table values apply to all fisheries - -i.e. not specific to Tanner crab
$10 resident, $30 nonresident

6/ Table values apply to all types of shellfish pots - -i.e. not specific to Tanner pots.
100 pots or less - $15 resident, $45 nonresident
each additional 100 pots - $15 resident, $45 nonresident

Federal revenues from the foreign industry and fishing fleet are based on a system of permits and taxes: 3.5 percent tax based on ex-vessel value of the harvest ($441 per metric ton for Tanner crab); $1 per gross ton of fishing vessels; $0.50 per gross ton of processing vessels up to $2,500; $200 per support vessel (transport, water, fuel, etc.). Total revenue statistics for the 1977 Japanese Tanner crab fishery are:

Ex-vessel value tax	$193,000
Fishing vessels	10,776
Processing vessels	6,377
Support vessels	N/A
Total	$210,153

Source: NMFS—Juneau, Alaska.

4.0. BIOLOGICAL DESCRIPTIONS

4.1. AND 4.2. GENERAL LIFE HISTORY AND STOCK UNITS

Taxonomy. The Tanner crab is a member of the brachyuran crabs or true crab. Garth (1958) has described the taxonomy as:

Class: Crustacea;
Sub-class: Malacostraca;
Order: Decapoda;
Sub-order: Brachyura;
Super-family: Oxyrhyncha;
Family: Majidae;
Sub-family: Oregoniinae;
Genus: *Chionoecetes.*

The genus of *Chionoecetes* actually consists of two polytypic species, *C. opilio* and *C. angulatus. C. opilio* may have given rise to *C. opilio elongatus* and *C. bairdi;* while *C. angulatus* may have given rise to *C. tanneri* and *C. japonicus* (Garth 1958).

Common names associated with species of this genus include "Tanner crab", "snow crab" and "queen crab". The name "Tanner" is most commonly used in Alaska. Its origin is related to Lt. Commander A. L. Tanner, commander of the Bureau of Fisheries' steamer Albatross, whose exploration produced the early records of this genus. Snow crab is the official trade name for these species.

Distribution. The genus has a circumarctic distribution, extending into the temperate waters on the east and west coast of North America and Eurasia. Garth (1958) has described the geographic and depth distribution (Table 10).

TABLE 10. CHIONOECETES spp. AND THEIR DISTRIBUTION

SPECIES	(METERS)	(FATHOMS)	GEOGRAPHIC DISTRIBUTION
C.opilio (O. Fabricius)	13-454	7-248	Bering Sea, Arctic Ocean, North Atlantic Ocean from west coast Greenland to Casco Bay, Maine
C. elongatus Rathbun	to 2222	to 1215	Sea of Japan, Okhotsk Sea
C. bairdi Rathbun	shoalwater to 474	shoalwater to 259	Bering Sea to California (Hosie and Gaumer 1974)
C. tanneri Rathbun	53-1942	29-1062	Washington to lower California
C. angulatus Rathbun	90-2972	49-1625	Bering Sea to Oregon
C. japonicus Rathbun	411-2103	225-1150	Sea of Japan (Watson 1969; Fukataki 1965)

C. japonicus is the only species not found in the eastern Pacific. *C. opilio* has the widest geographic distribution, it occurs in the Sea of Japan and the Okhotsk Sea where it is classed as the subspecies *C. opilio elongatus*, north through the Bering Sea and into the Chukchi Sea and south into Central Alaska. *C. opilio* also occurs in the North Atlantic as far south as Casco Bay, Maine.

Three species of this genus have been reported from Alaskan waters. *C. bairdi* and *C. opilio* are encountered on the continental shelf to a depth of 473 meters (259 f) and 454 meters (248 f) respectively. *C. angulatus* occurs most frequently at greater depths and has been recorded at depths to 2972 meters (1625 f). Of the three species occurring in Alaskan waters, two, *C. bairdi* and *C. opilio*, are commercially harvested, with *C. bairdi* comprising 90-95 percent of the catch. Off the coasts of Washington and Oregon, *C. tanneri* is the dominant species with *C. bairdi* and *C. angulatus* present. *C. tanneri* would probably be the target species if a fishery began. *C. opilio elongatus* is harvested in the Sea of Japan. *C. opilio* has been harvested by Japanese and Russian fishermen in the Bering Sea and by Canadians in the northwest Atlantic.

Adult Tanner crab are intolerant to and restricted in their distribution by low salinities and high temperatures. Laboratory experiments in Canada have demonstrated that *C. opilio* will die within 24 hours if kept in salinities less than 22.5 0/00. At salinity of approximately 31 to 32 0/00 McKeese (1968) determined that *C. opilio* reaches the 50 percent mortality point after 18.8 days when held at 16 degrees C. Thus it is reasonable to expect that the southern range of Tanner crab distribution may be limited if water temperatures exceed 16° C. (61° F).

Size at Sexual Maturity. The attainment of sexual maturity for Tanner crab is accompanied by characteristic changes in external morphology which are acquired at the molt to maturity. The molt to maturity for males includes a disproportionate increase in the growth of the chelae in relation to the carapace. This change is not always visually evident. Individual males with mature gonads do not always display large chelae and crab which have completed the puberty molt are not always physiologically mature (vasa deferntia does not contain large numbers of spermatozoa enclosed in spermatophores. Brown and Powell 1972; Watson 1970). The method of allometry (the growth of an organ in relation to the rest of the body) has been used to predict the average size at maturity for males and seems to approximate the state of physiological maturity as well.

Research studies conducted in the Kodiak management area by Donaldson, in the Bering Sea by Somerton, and in Prince William Sound by Hilsinger have concluded little difference between the areas of average size at sexual maturity for male (110-115 mm) and female (83 mm) Tanner crab. Commercial catch sampling from all management areas shows size variation between the catch in different areas to be negligible in male Tanner crab.

The molt to maturity for females is much more evident. It is accompanied by characteristic change in the shape and size of the abdominal flap (sternum) and pleopods. Hartnoll (1969) states that it is very exceptional for females to copulate prior to the molt to puberty and this molt can therefore be regarded as reliably indicating the onset of maturity. Female Tanner crab display a large size range at which the puberty molt occurs suggesting that maturity is not associated with a specific age or molt class but is variable.

Growth and Age. Crustaceans grow by shedding the exoskeleton (ecdysis). The term molting has been used to include all the processes of preparation for withdrawal from the old integument, ecdysis and post-ecdysis, increase in linear size, as well as subsequent tissue growth (Passano 1960). The intervals between molts increase with age and growth and often vary between populations of crab. All hard parts are cast off during ecdysis leaving no visible aging technique such as annual growth rings as aids to age determination. Estimation of age therefore is very difficult.

Male and female *C. bairdi* have similar growth rates until they approach sexual maturity. The females undergo a terminal molt at the molt to maturity. No further growth occurs (Hartnoll 1969; Holsinger 1975). The male continues to grow; however, the inter-molt period may increase "skip-molt" (Donaldson 1975a). Males may reach a point where growth ceases. This has been found for *C. opilio* in the northeast Atlantic (Miller and Watson 1976).

Knowledge of the age-size relationship is necessary for identifying prerecruit crab by year class and determining the number of year classes in the fishery, length of time in the fishery and growth rate. Figure 2 gives the results from studies in the Kodiak area.

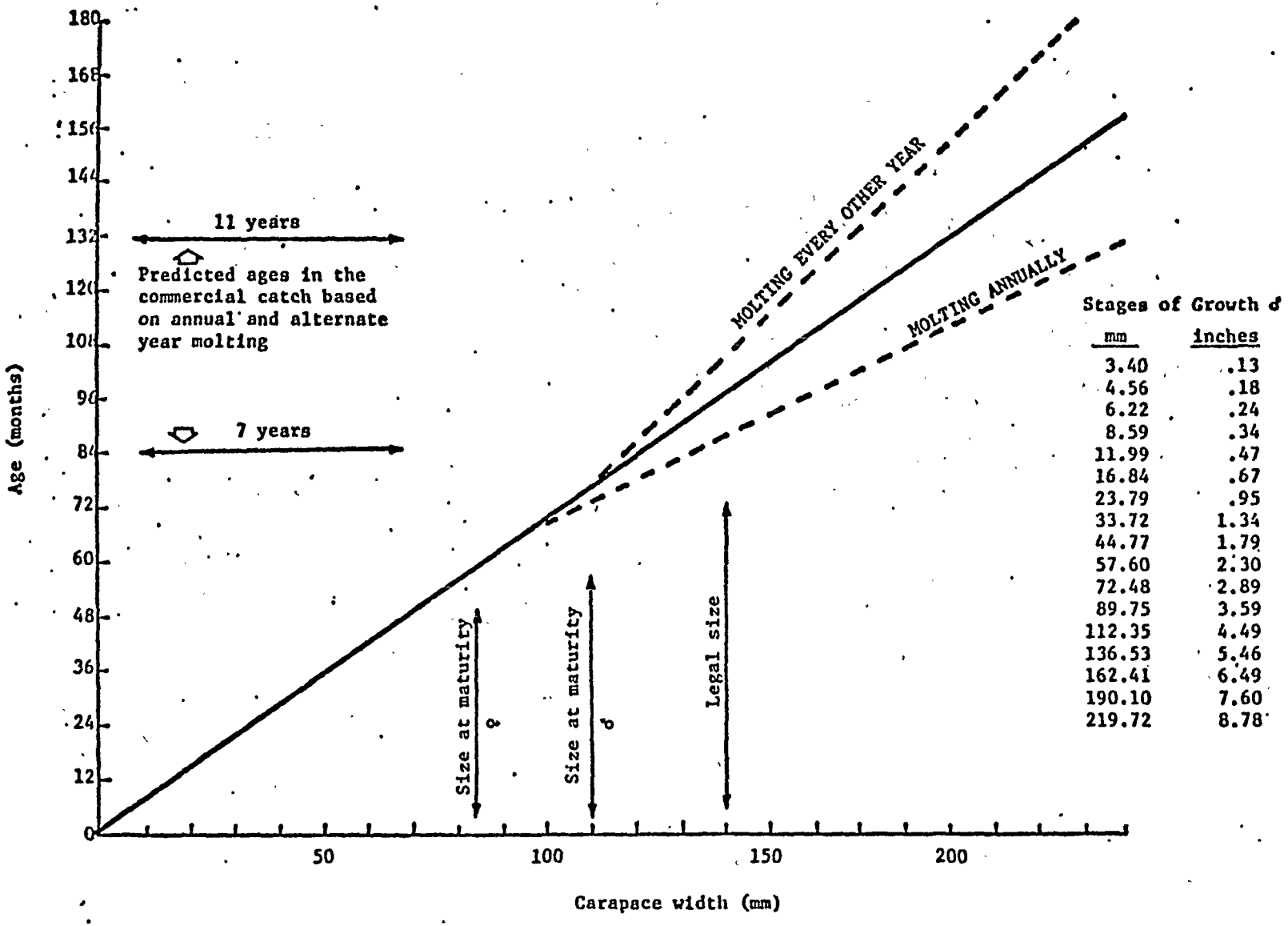


FIG. 2 Tanner crab (C. bairdi) growth model

Source: Kodiak Alaska Tanner Crab C. bairidi Research Completion Report 1/77 William Donaldson

Reproduction. Female Tanner crab mate for the first time at the molt to maturity. Females are attended by a male during the molting process and are mated in the soft shell condition. The attraction of the male to the female is accomplished by a pheromone (chemical attractant) released by the female. Female brachyuran crabs have the ability to store sperm in the spermathecae which is used to fertilize successive egg clutches in the absence of a male. It is presently not known how many egg clutches can be fertilized by one mating. If a female is unattended by a male at the molt to maturity, she will not ovulate (Donaldson 1975).

Courtship and mating behavior has been documented for *C. opilio* (Watson 1970) and *C. bairdi* (Donaldson 1975) and is similar for both species.

Primiparous females of *C. bairdi* mate and deposit egg clutches from mid-winter to early spring while multiparous females hatch clutches and deposit new eggs in the spring. Egg development is slowed in the primiparous females and coincides with that of the multiparous females. Spring egg hatch is then sychronized to spring food availability. This is also the situation with *C. opilio* (Watson 1970) and *C. opilio elongatus* in the Sea of Japan (Ito 1967).

There has been much discussion concerning mating beyond the initial copulation at the molt to maturity (last molt for females) in the Majidae. There are records of species in the family Majidae mating while the female is soft in some instances and hard in other (*Hayas coarctatos* Leach and *Maja squinoda* Herbst) while other species have been observed mating only while hard (Hartnoll 1969). Literature dealing with the Majidae (Carlisle 1957, Knudsen 1964, Yoshida 1941 and Hilsinger 1975) supports the hypothesis that the molt to maturity is a terminal molt for females. "Those females seen mating when soft must have been doing so for the first time, immediately following the molt of puberty. Any further copulations must of necessity occur when the females are hard" (Hartnoll 1969). It has been observed that hardshell females of *C. opilio* and *C. bairdi* are capable of producing fertile egg clutches with sperm stored in the spermathecae, in the absence of males. Watson states that mating in the hardshell condition for *C. opilio* is rare or nonexistent. Research biologists have documented a mating involving an oldshell adult female. (Donaldson 1977)

The number of eggs a female can carry has been described as a linear function of her carapace width (Kon 1974, Hilsinger, 1975). Fecundity estimates are listed below (after Somerton, unpublished data).

Fecundity estimates for *Chionoecetes* spp.

Species	Egg Number × 1000	Carapace Width (mm)	Reference
C. opilio	20-140	50-90	Watson 1969, Gulf of St. Lawrence
C. opilio elongatus.	34-138	57-90	Kon 1974, Sea of Japan
C. bairdi	85-231	78-110	Hilsinger 1975, Gulf of Alaska
	89-424	75-124	Haynes et al. 1976, Bering Sea

Male Tanner crab are capable of participating in mating at the size at which they reach maturity (Donaldson 1975). Watson (1972) reported that a male *C. opilio* fertilized six females.

Seasonal distribution by depth for mating purposes has been described for *C. tanneri* (Pereyra 1966, 1968) and *C. opilio elongatus* (Kon 1969). With both species there seems to be a demonstrated segregation by size and sex (large males with old adult females, small males with new adult females) for breeding purposes.

The mating season is composed of three significant events: (1) molt to maturity and mating of primiparous females, (2) peak of egg hatch, (3) deposition of new egg clutch by multiparous females. Management strategy must incorporate these factors to ensure the reproductive vigor of the populations. Monitoring the percent of egg-bearing (ovigerous) females is an important management tool in a male-only fishery to ensure an adequate male-female ration by size for reproductive purposes. Hatching of the eggs (larval release) appears to coincide with the plankton blooms. The free-swimming larvae molt and grow through several distinct stages before settling to the bottom as juveniles where they cover themselves with debris and begin feeding on detritus. The growth rate from larval to juvenile stage is dependent upon water temperature, with warmer temperatures producing faster growth. At water temperatures of 11 to 13° C (52 to 55° F) the free-swimming developmental period between the larval and juvenile stages may last approximately 63 days for *C. opilio* (Kon 1970).

Plankton studies in the Sea of Japan indicate that the free-swimming larvae of Tanner crab undergo diurnal vertical migrations. The migration is a feeding response to the diurnal movements of plankton blooms.

Predation. Adult Tanner crab appear to have few predators, although it is likely that during molting they may be vulnerable to large fish and perhaps larger crustaceans such as king crab.

Migrations. Pereyra (1966) reported that the population structure of *C. tanneri*, male and female, changes quite dramatically with depth. From Washington to California "Females are fairly stationary, with the apparent abundance of the population centered between 640 and 686 meters (350 and 375 f). In contrast, the males are quite migratory and exhibit a seasonal movement pattern that repeats itself for all years studied. In the spring and summer the population of males in centered at 503 to 549 meters (275 to 300 f), but as winter approaches the entire male group shifts downward and occupies the same depth interval as the females. Following a short period of aggregation with the female group, the males return to the shallower environment, separating the sexes again". The timing of intermingling of the sexes and egg release and ovulation coincide so as to strongly suggest that the movement of adult males is a prerequisite to breeding and can therefore be referred to as a breeding migration. Kon (1970) describes a migration pattern for *C. opilio elongatus* similar to that described for *C. tanneri* with segregation by size group and migrations for reproduction. Somerton (unpublished) has described segregation by size groups for *C. bairdi* in the Bering Sea while vertical migrations were not as obvious.

4.3. CATCH AND EFFORT DATA

The catch and effort data is presented in each management area section of this plan and Table 1, p. .

4.4. SURVEY AND SAMPLING DATA

Annual quantitative crab indexing surveys were initiated by the Alaska Department of Fish and Game in 1972 around Kodiak Island. The survey area has expanded to include the Adak, Dutch Harbor, Sand Point, Kodiak, Cook Inlet and Prince William Sound areas. Data gathered allow fishery managers to assess: (1) the relative abundance of the various size/maturity group; (2) percent ovigerity; (3) the effects of the commercial fishery upon the population; and (4) optimum harvest levels in advance of the commercial fisheries. The surveys are conducted utilizing State of Alaska research vessels and chartered crab fishing vessels.

National Marine Fisheries trawl surveys in the eastern Bering Sea allow assessment of those parameters for *C. bairdi* and *C. opilio.*

4.5. HABITAT

There is very little published material covering the habitat and distribution of juvenile Tanner crab. Exploratory work in the Sea of Japan indicated that juveniles settle out along the sea bottom at depths between 298 and 349 meters (163 to 349 f) (Ito 1968). Alaska Department of Fish and Game biologists in Kodiak, using scuba gear, have collected juvenile *C. bairdi* as small as 6.5 mm in 18 meters (10 f). The National Marine Fisheries Service has records of juvenile Tanner crab as small as 12 mm caught in shrimp trawls off Kodiak in 55 to 146 meters (30 to 80 f). This information suggests that distribution of juvenile Tanner crab is widespread. The actual diet of the juveniles is uncertain, but they are believed to feed primarily on dead and decaying mollusks and crustaceans which accumulate in the detritus along the sea floor. Fish remains and small planktonic organisms are also utilized.

4.6. QUALITY OF DATA

The management of the domestic Tanner crab fishery is primarily based on commercial catch monitoring which includes fishermen interviews, catch sampling, and catch per unit effort data obtained from fish tickets. The quality of this data is considered adequate for all management areas with exception of Southeastern where catch per pot lift needs to be determined.

The life history features of Tanner crab have been studied primarily in the Prince William Sound, Kodiak, and Bering Sea areas. Data from these areas has been assumed applicable to other populations in the State.

Estimates of size at sexual maturity for both sexes and female ovigerity are documented in the literature. Research concerning the reproductive scheme and periods of molting by size class are recent and require additional work. The duration and timing of fishing seasons is therefore based on available knowledge. Size at sexual maturity for males has been documented by Somerton (1977) and Donaldson (1977) at 4.3-4.5 inches (110-115 mm).

The Board of Fisheries set a statewide size limit of 5.5 inches (140 mm) (except Prince William Sound where it is 5.3 inches (135 mm) which would protect nearly all newly mature male crab, believing that manipulation of annual harvest of newly matured males was not adequate to protect the stock from overfishing.

The Board's size limit of 5.5 inches (140 mm) is a conservative approach. Somerton examined the possibility of alternate size

limits and theorizes what harvest could be expected from lower size limits. Observation over time of the effect of harvesting males of various sizes on the reproductive potential of the stocks will be required to adequately evaluate the degree of protection required.

The degree of female ovigerity is used in all areas as an indicator of reproductive potential and is closely monitored. The observation of non-ovigerity in the population could mean an over harvest of newly matured or older age classes of males.

Inadequate life history features for which more information is needed to manage the fishery are distribution, age class identification based on shell characteristics, natural mortality, and mating characteristics of old shell females.

The identification of stock units within management areas is not defined and studies are needed in all areas of the State.

Population abundance surveys are presently being conducted in the Bering Sea by NMFS. Relative population abundance surveys are being conducted by ADF&G in all other management areas, except Southeastern. The data collected in the Bering Sea is presently being used to manage the population while in other areas, the data base is too limited to quantitatively forecast recruit abundance. More information on population abundance is required for all management areas.

4.7. CURRENT STATUS OF STOCKS

4.7.1. *Maximum Sustainable Yield*

Data on stock abundance and resultant harvest levels are not available for this developing fishery with which to estimate maximum sustainable yield by stock with any degree of precision. The estimates presented in Table 11 are derived from recent average harvests and trends and serves only as a first approximation against which to judge acceptable biological catch and optimum yield.

Exception to this situation occurs in the Bering Sea where National Marine Fisheries Service Trawl survey data have allowed an estimate of maximum sustained yield for *C. bairdi* and OCS surveys permit an MSY estimate for *C. opilio*. Again, these estimates of stock abundance, while better than for other areas, are over a relatively short period of time and may not truly reflect the potential long-term maximum average sustainable yield from this fishery.

4.7.2. *Equilibrium Yield*

Data are not available at this time for any of the management areas to derive estimates of equilibrium yield. Potential variation in natural stock abundance is unknown.

4.7.3. *Acceptable Biological Catch (ABC)*

In the absence of forecasts of annual recruitment for most areas acceptable biological catch has been based on recent harvest trends of male crab over 5.5 inches (140 mm) carapace width (Prince William Sound 5.3 inches (135 mm). Due to the lack of definitive information on stock abundance, in-season flexibility of management is desirable, and these catch levels serve simply as a guideline to industry and fishermen of the general harvest level to be expected. In terms of the Act, they also serve as the basis for optimum yield and the further determination of whether there should be any foreign allowable catch. One exception to this is for the Bearing Sea where MSY and ABC estimates in a more refined fashion are available based on trawl survey results. Table 11 gives the ABC compared to MSY for each of the management areas discussed in this plan.

4.8. ESTIMATE OF FUTURE STOCK CONDITION

The outlook for Tanner crab is summarized by management areas as follows:

Bering Sea: Healthy stock condition capable of supporting current production is indicated by the available survey and harvesting data.

South Peninsula/Aleutian: Healthy stock condition is indicated by available survey and harvesting data.

Kodiak: Healthy stock condition capable of supporting current production levels is indicated by the available data.

Prince William Sound: Healthy reproductive stock condition. Harvestable stocks should recover from present low levels and be capable of supporting MSY in the future.

Cook Inlet: Healthy stock condition is indicated by the available data. A relatively weak recruit year class appears to be entering the Kachemak Bay fishery.

Southeastern: Healthy stock condition is indicated by available harvest data.

5.0. CATCH AND CAPACITY DESCRIPTORS

See Table 6 and area management sections for detailed analysis.

6.0. OPTIMUM YIELD

In the absence of any socio-economic objectives which would require a specification of OY to deviate from ABC, optimum yield is set equal to ABC, with the exception of the Bering Sea (see section F.6.0.). It should be noted that the ABC does, to some degree, reflect social and economic considerations since it has been based partially on achieving stability in the fishing industry. Additionally, the Prince William Sound management area's 5.3 inch (135 mm) size limit instead of the 5.5 inch (140 mm) size limit common to the rest of the state was adopted to reduce the economic dislocation of the fleet in this area which was already operating on smaller sized crab than in other areas. Optimum yields by management area are given in Table 11.

TABLE 11.—*Alaska Tanner crab domestic annual capacity of fleet (DAC), processing capacity, maximum sustainable yield (MSY), acceptable biological catch (ABC), optimum yield (OY), expected domestic annual harvest (DAH), and foreign allowable catch (FAC) by management area for the 1977-78 season.*

	DAC		Processing capacity		MSY		ABC		OY		DAH		FAC	
	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT	10⁶ lbs	MT
Southeastern:														
Southeast	8	3,739	30	13,608	2.5	1,134	2.5	1,134	2.5	1,134	2.5	1,134	0	0
Yakutat	5	2,029	30	13,608	3	1,361	3	1,361	3	1,361	3	1,361	0	0
Prince William Sound	11	4,808	20	9,072	7.2	3,266	3-7	1,361-3,175	3-7	1,361-3,175	3-7	1,361-3,175	0	0
Cook Inlet	38	17,237	30	13,608	5.3	2,404	5.3	2,404	5.3	2,404	5.3	2,404	0	0
Kodiak	38	17,237	162	73,440	21.5	9,752	15-25	6,804-11,340	15-25	6,804-11,340	15-25	6,804-11,340	0	0
South Peninsula/Aleutian:														
South Peninsula	44	20,049	24	11,057	20	9,072	20-30	9,072-13,608	20-30	9,072-13,608	20-30	9,072-13,608	0	0
Aleutian	28	12,474	135	61,236	2	907	2	907	2	907	2	907	0	0
Bering Sea:														
C. bairdi	135	61,055	180	81,648	89	40,381	89	40,381	89	40,381	89	40,381	0	0
C. opilio:														
S. of 58° N. Lat.					225.0	102,000	225.0	102,000	22.04	10,000	22.04	10,000	0	0
N. of 58° N. Lat. and W. of 164° W. Long.					225.0	102,000	225.0	102,000	36.06-38.06	16,360-17,268		1,360-2,268	33.06	15.0

*A minor portion of this allocation of Tanner crab may be comprised of *C. bairdi* and hybrids.

**Foreign fishing for Tanner crab is prohibited south of 58° North Latitude to protect the stocks of *C. bairdi* which will be fully utilized by the U.S. fishery.

7.0. TOTAL ALLOWABLE LEVEL OF FOREIGN FISHERY (FAC) FOR 1978

Portion of optimum yield available for foreign harvest. In a rapidly developing fishery, such as for Tanner crab in Alaska, there may be areas where the total harvestable surplus is not taken in a given year due to price negotiations, market conditions, or annual variations in the availability of processing and harvesting facilities. In fisheries where this is only an occasional occurrence, and where MSY and ABC are imprecisely defined, this may not be a predictable circumstance and will not justify any preseasons allocation to foreign fishermen. Such allocation would simply preclude further development of the U.S. industry. Similarly, where natural fluctuations in stock abundance are extreme and not completely defined, occasional surpluses beyond the U.S.'s ability to harvest should not be the basis for foreign allocation. Based on these considerations, no portion of the *C. bairdi* optimum yield for the 1978 fishing season is available for foreign harvest. The U.S. industry expects to harvest the optimum yield of this species and foreign fishing would compete directly with the U.S. industry's desire to expand its harvest of *C. bairdi* in the U.S. Fishery Conservation Zone.

8.0. MANAGEMENT REGIME

8.1. MANAGEMENT OBJECTIVES

Within the guidelines provided in the Act and the goals and objectives stated in section 2, this plan provides for the optimal use of the Alaskan Tanner crab resources by:

1. Minimizing fluctuations in stock abundance due to harvest by maintaining the full reproductive potential of the Tanner crab stocks.

2. Insofar as possible preventing industry overcapitalization and minimizing economic distress due to extreme fluctuations in harvest based on naturally fluctuating stock abundance.

3. Integrating management of Tanner crab stocks with those of other fisheries to maximize economic returns and minimize adverse impact on other stocks.

Considering the status of the data available on the Tanner crab stocks, and the social and economic institutions which depend on them, these objectives may be best met by avoiding substantive changes in the current and historical system of regulation and management until the consequences of such changes are quantified in terms of the potential costs and benefits.

8.2. AREAS, FISHERIES AND STOCKS INVOLVED

Refer to section 3.1 of this plan.

8.3. MANAGEMENT MEASURES AND RATIONALE

8.3.1 Domestic

With respect to the domestic fishery, it is the objective of the management plan to: (1) adopt a management regime which results in the implementation of conservation and management measures for Tanner crab which will result in achieving the optimum yield; (2) avoid disruption in the Tanner crab fishery during the implementation phase; and (3) select management measures which are consistent with the National Standards and applicable law.

The existing State regulatory system for Tanner crab was developed by the Alaska Board of Fisheries over years of analysis and deliberation, and through the use of public proposals, written and oral testimony, and input from advisory committees. It has been augmented and refined by recommendations of ADF&G biologists responsible for management of Tanner crab, and has proven itself to be effective and workable.

Therefore, in order to establish a management regime for the domestic Tanner crab fishery, this management plan adopts the management system presently employed by the State of Alaska, consistent with the FCMA (including the National Standards) and other applicable laws. The current State management measures are described in Section 3.3.2 of this Plan, and are set forth in detail in the State statutes and regulations, which are contained in Appendix 11.2.

This approach is dictated by several very important factors:

1. Elsewhere in this Plan, the biological, economic, and social requirements for successful management of the Tanner crab resource are discussed in detail. There is unquestionably a lack of information respecting many facets of this resource which demands further research and evaluation in the future. However, on the basis of existing knowledge and data, the Alaska management system is well suited to meet these requirements. Particularly important is the recognition in this system that the inevitable discovery of new information relating to Tanner crabs, which may be wholly unanticipated at the present time, will require adjustments in management measures and philosophies. By permitting a controlled increase in harvesting while closely monitoring resource conditions and trends, a margin of error is built in to protect against unsuspected miscalculations which could damage sustained production.

2. Any modern regulatory system is necessarily complex. However, the Alaskan management system has been developed gradually over the years with the full participation of the users who are subject to the regulations. Consequently, the Alaska regulations and the policies behind them are both understood and supported by fishermen.

3. The familiarity of user groups with the present Alaska regulations is complemented by the background and expertise of the management staff of the Alaska Department of Fish and Game. Field biologists have been working with this program for a number of years; their research and recommendations have assisted in its formulation. To the maximum extent possible, the management system adopted should avoid duplicating, at the Federal level, the structure currently existing at the State level.

4. Enforcement in Alaska is extremely difficult due to substantial variations in local conditions (which is reflected in the regulations), the size of the area which must be covered, and the mobility and efficiency of fishing vessels. The existing Alaska regulations were developed to accommodate considerations of enforceability as well as optimum conservation and management measures. Moreover, enforcement would be vastly complicated if State regulations (applicable in waters of the State) and Federal regulations (applicable offshore) are not identical, or substantially similar, since most Tanner crab vessels will move through both areas of jurisdiction and all Tanner crabs look alike.

8.3.1.4. In-season Adjustment of Time and Area

Management of shellfish fisheries by the State of Alaska in recent years compares very favorably with management of most other fisheries in the United States and elsewhere. The shellfish resources are in a good biological condition and the dependent user groups are in an economically viable condition. The success of this management program may be largely attributed to the deliberate flexibility built into the governing system by State law and the resultant ability of the Board of Fisheries and the Department of Fish and Game to undertake timely changes in the regulations to meet changing needs and conditions. This flexibility, which is realized through annual revision of the regulations by the Board together with emergency orders and regulations issued in-season by the Department, results in many benefits:

(a) New information and data relating to resource management can be immediately incorporated into the management program, even when the fishery is in progress.

(b) The management approach adopted by the Board before the season can be adjusted and refined during the season on the basis of assessments of actual resource conditions.

(c) Unanticipated resource conditions can be reacted to immediately to prevent both underfishing and wasteful underutilization.

(d) The dangers posed by high effort levels and efficient harvesting units (such as where fleet tank capacity equals or exceeds an OY) can be closely controlled.

(e) Unexpected development with respect to economic and social factors (natural disaster, changes in marketing, conditions, cannery fires, etc.) can be accommodated so the shellfish resources are distributed and allocated in a manner which maximizes overall public benefits.

(f) Management philosophies and policies formulated through legislative and administrative processes may be carried out in

the field by biologists familiar with local conditions.

(g) Management approaches which are proving unworkable or which are imposing undue hardships on users may be changed at once.

(h) Necessary in-season refinements in management programs can be accomplished primarily in the field with the advice and assistance of the users most directly affected.

Similar management flexibility should be an integral part of the Federal Regulatory System which will be applicable to the Tanner crab fishery pursuant to this plan.

NPFMC FINDING ON THE SPECIFICATION OF THE OPTIMUM YIELD AND THE ISSUANCE OF FIELD ORDERS

The Council finds that the Optimum Yields in this plan, which are based upon projections of the status of the stocks, economic and other conditions several months in advance of the actual conduct of the fishery, may be found to be mis-specified in light of unpredicted and unanticipated adverse or favorable stock conditions which are revealed in-season. Under such circumstances, the Council further finds it appropriate, for conservation purposes only, that the Regional Director of the National Marine Fisheries Service, Alaska Region, in close coordination with the Commissioner of the Alaska Department of Fish and Game, take immediate action by issuing field orders adjusting time and/or area restrictions; therefore, this plan provides that seasons and areas shall be subject to in-season adjustment by the Regional Director of the National Marine Fisheries Service. The Regional Director or his designee may adjust season opening and closing dates based upon the following considerations:

1. The effect of overall fishing effort within the registration area;

2. Catch per unit effort and rate of harvest;

3. Relative abundance of Tanner crab within the area in comparison with preseason expectation;

4. The proportion of immature or soft shell Tanner crab being handled;

5. General information on the condition of Tanner crab within the area;

6. Information pertaining to the optimum yield for Tanner crab within the registration area; or

7. Any other factors necessary for the conservation and management of the Tanner crab resource.

In order to assume effective management of the Tanner crab resource as a unit throughout its range, in-season adjustments made by the Regional Director must be coordinated with similar actions taken by the State regarding waters under state jurisdiction. It is necessary that the Regional Director, to the extent possible, act in conjunction with the Alaska Department of Fish and Game in order to effect uniformity of management in State waters and the Fishery Conservation Zone. As a result, any changes proposed by the Regional Director will be accompanied by advance notice to the State to allow for opportunity to maintain such uniformity. In most cases, the Regional Director will exercise his authority on the basis of recommendations received from the Department, and will rely on the Department for season data, reports, and assessments necessary to make a determination as to the advisability of any action contemplated. In all cases, continuous consultation between ADF&G and the Regional Director will be maintained.

It is expected that the actual opening and/or closing dates for the seasons prescribed in this plan will be adjusted by the Regional Director pursuant to the Authority described in this section. Such action is not considered emergency action that would require amendment of the plan, or regulations implementing the plan; adjusting the season opening and closing dates is meant to be an inherent part of the seasons themselves. For this reason, any adjustments made by the Regional Director or his designee will be effected by the issuance of a field order and announcement in the manner currently utilized by the State of Alaska.

Any in-season amendment of the Plan's season or area or other implementing regulations beyond the scope of the above described authority will be accomplished by emergency regulation, as provided by section 305(e) of the Act, in accordance with the recommendation of the Regional Director following consultation with the Commissioner of the Department of Fish and Game. It is understood that time will often be of the essence in making effective the aforementioned adjustments and changes.

8.3.2. Foreign

That portion of the *Preliminary Management Plan for King and Tanner Crab of the Eastern Bering Sea* which deals with the Tanner crab fishery will remain in force except that: (1) the area of legal fishing shall be north of 58° N. latitude and west of 164° W. longitude in the Bering Sea; and (2) for the Bering Sea management area, see section F.8.3.2. of this Plan. (The referenced Preliminary Management Plan appeared in the Federal Register on February 11, 1977. See appendix 11.6.

Further details may be found under the Bering Sea management area. Purpose and rationale for these measures may be found in Sections 3.3.2., 3.3.3., 6.0. and 7.0. and under equivalent sections in the Bering Sea management area.

8.3.3. Relationship of the Recommended Measures to Existing Applicable Laws and Policies

8.3.3.1. Fishery Management Plans Prepared by the Secretary of Commerce

The fishery management plan now in effect was prepared by the National Marine fisheries Service and deals solely with the foreign fishery for Tanner and king crab. This plan was prepared in January of 1977 and adopted by the Secretary in lieu of a council management plan (PMP 1977).

8.3.3.2. Federal Laws and Policies

The Fishery Conservation and management Act of 1976 (the Act, P.L. 94-265) requires that fishery management plans be consistent with the provisions of the Act, including the seven National Standards for fishery conservation and management. The National Standards are:

1. Conservation and management measures shall prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.

2. Conservation and management measures shall be based upon the best scientific information available.

3. To the extent practicable, an individual stock of fish shall be managed as a unit throughout its range, and interrelated stocks of fish shall be managed as a unit or in close coordination.

4. Conservation and management measures shall not discriminate between residents of different States. If it becomes necessary to allocate or assign fishing privileges among various United States fishermen, such allocation shall be (A) fair and equitable to all such fishermen; (B) reasonably calculated to promote conservation; and (C) carried out in such a manner that no particular individual, corporation, or other entity acquires an excessive share of such privileges.

5. Conservation and management measures shall, where practicable, promote efficiency in the utilization of fishery resources; except that no such measure shall have economic allocations as its sole purpose.

6. Conservation and management measures shall take into account and allow for variations among, and contingencies in, fisheries, fishery resources, and catches.

7. Conservation and management measures shall, where practicable, minimize costs and avoid unnecessary duplication.

This plan proposes to adopt the regulatory measures of the State of Alaska to the extent that they are consistent with these National Standards and other provisions of the Act.

8.3.3.3. State Laws and Policies

Adoption of the proposed regulatory regime in this plan will be compatible with the State of Alaska's management program for its citizens outside the Territorial Sea fishing for Tanner crab and all U.S. citizens within the Territorial Sea fishing for the same resource.

8.4 ENFORCEMENT REQUIREMENTS

Domestic. Because of the large areas involved, direct patrol of all potential Tanner crab grounds off Alaska is difficult and expensive. Indirect measures have been, and will be, required to implement the necessary management measures for this resource. The State of Alaska has developed a system described in this section, to minimize the need for and cost of direct enforcement using: 1) landing laws, both general and by management area; 2) area registrations and inspection; 3) descriptions and marking of Tanner crab gear.

1. *Landing laws.* The basic system of regulations used to enforce many of Alaska's conservation laws have prohibited the landing or possession of Tanner crab and Tanner crab gear in order to protect closed areas.

Increasing demand for Tanner crab and the potential ability of the fishing fleet to overharvest the resource require positive controls to prevent overfishing. Landing laws prohibit the landing, including possession, sale, trading, transporting or purchasing of all unprocessed Tanner crab as long as the closure is effective. The prohibition also applies to the possession of Tanner crab gear (in operable condition) in areas or at times contrary to regulation.

2. *Area Landing Laws.* Provisions are necessary to manage individual Tanner crab fisheries with flexibility to accomodate local conditions. Therefore a landing law must be effective within each management area to prevent illegal fishing in closed areas, yet permit landings of crab to processors in closed areas, that were taken in open areas. This is accomplished by:

3. *Area Registration and Inspection.* The Tanner crab fishery is divided into manage-

ment areas ('Statistical areas' in State of Alaska regulations). Fishermen intending to fish Tanner crab are required to specify in advance of Tanner crab seasons that registration area(s) in which they expect to operate.

There are two types of registration areas—exclusive and non-exclusive. Currently there are two exclusive areas (E: Prince William Sound and H. Cook Inlet) and two non-exclusive areas (A: Southeastern-Yakutat and J: Westward). The exclusive areas are small and fished by local fleets while the non-exclusive areas are quite large with developing fisheries and some sections that are not fully explored. The expansion of the fishery is directed, through the non-exclusive provision, to areas that can generally sustain further production.

Registrations must be accomplished prior to the earliest season opening date in any exclusive registration area. Provision is made for late registration for cause.

Fishermen and boats registered for an exclusive area may fish only in that area. Those registered for non-exclusive areas may shift to other non-exclusive areas by re-validating for the new area.

Provision is also made for allowing boats fishing in one area to transport catches caught there into a different registration area for processing. Lack of processing facilities in some areas at times and price differentials between areas requires this provision.

Area registration, pre-fishing validation requirements and provision for flexibility in marketing combine to insure accurate reporting of the areas where catches were made and decrease the likelihood of covert fishing in closed areas, while at the same time allowing the transport of unprocessed crab through other registration areas if the need arise.

4. *Description and Marketing of Crab Pot Gear.* When king crab seasons (regulated by the State of Alaska) and Tanner crab seasons overlap the pot limit in those areas, Tanner crab should be the same as those for king crab to avoid enforcement problems. Gear should be marked to identify the boat fishing it to ensure compliance with pot limits. Pots used for Tanner crab should be described in a manner that separates them from pots used for other types of shellfish or bottomfish to reduce the likelihood of illegal fisheries on other species under the guise of Tanner crab fishing or conversely, fishing for Tanner crab under the guise of fishing for other species. Provisions should also be made for storing pots in shallow water in non-fishing condition.

This plan proposes to implement these enforcement requirements and management measures through regulations modeled, as closely as possible, on those now administered by the State of Alaska for the Tanner crab fishery. Current State enforcement (and management) measures are set forth in detail in the State statutes and regulations, contained in Appendix 11.2 of this plan.

8.5 REPORTING REQUIREMENTS

Domestic

Catch Reporting. Catch reporting by the fishermen and the buyers is necessary for proper management. When a Tanner crab fisherman lands his catch, a report in the form of a "fish ticket" must be made. The information required provides a statistical data base on the fishery and shall include information on: type and quantity of fishing gear used, catch by species in numbers of fish or weight thereof, areas in which fishing was engaged in, time of fishing, number of hauls, and such other information as required by the Secretary of Commerce.

Foreign

Fleet Disposition Reports. The appropriate fleet commander or individual vessel master will report to the Director, Alaska Region, National Marine Fisheries Service, Juneau, by radio prior to the commencement of fishing and the arrival in the Region of each fishing and processing vessel, giving the vessel's name and other identifying marks (such as U.S. permit number, size, intended target species, and intended fishing area). A similar report will be made at the time of departure of each vessel from the area or Region. These reports, augmented with U.S. surveillance observations, observer reports, and monthly catch and effort reports, will be used to monitor adherence to catch limitations.

Observers. Each nation operating in the Region will have available at no cost to the United States, accommodation for 2 U.S. observers on factoryships and one U.S. observer on fishing vessels. Observers will be assigned to individual vessels and for periods at the discretion of the U.S. to monitor catches: estimate species, size and age composition; and collect other biological data as appropriate.

The observer will be accorded the rank of a ship's officer and will be assisted in transmitting messages to the United States Government whenever requested.

All observer programs pertaining to foreign crab fisheries will be administered by the Northwest Fisheries Center, National Marine Fisheries Service. Observer coverage and activity will be scheduled in consultation with the North Pacific Management Council, at the NMFS Alaska Regional Office, and the Commander, U.S. Coast Guard Pacific Area.

Each nation whose fishermen operate in the Region shall report to the Director, Alaska Region. National Marine Fisheries Service, Juneau, by May 30 of the following year annual catch and effort statistics, as follows: *Effort* in pots hauled; *Catch* in metric tons and number of crab. Each to be supplied by vessel class, by 10-day period, by ½° (Lat.)×1° (Long.) statistical area, by the following species: *C. bairdi, C. opilio* and any other crab species.

In addition to the annual statistical report above, each nation will report within 3 days following each 10-day fishing period, provisional 10-day fishery information as follows: *Effort* in total pot lifts; and *Catch* in metric tons and number of crab of *C. opilio* and *C. bairdi.*

Vessel Reporting. The operator of each foreign vessel issued a permit shall notify the director of the appropriate National Marine Fisheries Service region and the commander of the appropriate Coast Guard command of the time and position at which the vessel will begin activities to be conducted under the permit at least 24 hours before beginning any such activity. Similar notice shall be given at least 24 hours prior to completion of the activity or departure from the area.

Vessel Identification. Each foreign fishing vessel for which a permit has been issued shall display its hull number or international radio call sign amidships on the deck house or hull, and on the uppermost weather deck.

Facilitation of Enforcement. The operator of any vessel subject to the provisions of the Act shall immediately comply with instructions issued by authorized officers to facilitate boarding and inspection of the vessel for purposes of enforcing the Act and these regulations.

8.6 COOPERATIVE RESEARCH REQUIREMENTS

Bona fide fishery or fishery-related research (but no exploratory fishing where commercial quantities of fish are retained) by foreign governments will be encouraged. Valid results of such research will be considered in determining total allowable catches and other management measures. Cooperative U.S.-foreign research ventures will be planned and executed when they are found to be in the best interest of the United States.

8.7 PERMIT REQUIREMENTS

Foreign

No foreign vessel shall engage in fishing for fish over which the United States exercises exclusive fishery management authority unless it has on board a permit issued pursuant to the *Preliminary Fishery Management Plan for King and Tanner Crabs of the Eastern Bering Sea* (see Appendix 11.6).

Domestic

Licenses will be required of all domestic vessels in order to engage in the Tanner crab fishery.

Registration will be required of domestic fishermen primarily for the purpose of monitoring the resource and obtaining catch information. The number of permits available will not be limited.

8.8 FINANCING REQUIREMENTS

8.8.1 Management and Enforcement Costs

Currently unavailable, but should be generally of the same level as in 1977 since much of the same management regime is proposed.

8.8.2. Expected State and Federal Revenues, Taxes, Fees

Refer to Section 3.7 of this plan. Revenues will depend to a large degree on the magnitude of the 1978 harvest which is undefined except in the case of foreign quotas.

SOUTHEASTERN MANAGEMENT AREA

A.3.0. DESCRIPTION OF FISHERY

A.3.1. AREAS AND STOCKS INVOLVED

In this plan, the Southeastern management area will be discussed in terms of two districts: Southeast and Yakutat.

The target species is *Chionoecetes bairdi.*

Data to determine stock delineations and boundaries are not available. Additionally, commercial quantities of other Tanner crab species, *C. opilio* or *C. tanneri,* have not been recorded.

The Southeast district encompasses all waters of Southeastern Alaska from the International border at Dixon Entrance to the latitude of Cape Spencer.

Most nearshore areas in the northern portion of the Southeast district contain Tanner crab in sufficient quantities to support commercial harvests. The southern portions of the district contain crab in small numbers and are commercially harvested to a lesser degree.

The Yakutat district encompasses all waters from the latitude of Cape Spencer to the longitude of Cape Suckling.

Most nearshore locations within this district also contain crab in sufficient quantities to support commercial harvests. Major catches are reported from Icy Bay, Yakutat Bay, the Point Manby shore and in the vicinity of Point Riou.

A.3.2. HISTORY OF EXPLOITATION

A.3.2.1. Domestic Fishery

A.3.2.1.1. *Description of User Groups*

Tanner crab are utilized predominately by commercial fishermen. A relatively small amount are utilized by subsistence fishermen although the Alaska Department of Fish and Game does not maintain subsistence harvest statistics.

A.3.2.1.2. *General Description of Fishing Effort*

The Tanner crab and red king crab seasons open currently. During the red king crab season, September 1 through January 31, most Tanner crab effort is secondary to the red king crab fishery. From January 31 through the seasons's end (May 15) effort is concentrated toward the harvest of Tanner crab. In the Icy Strait area, major fishing effort occurs during November, December, and January.

A.3.2.1.3. *Catch Trends*

Southeast District. In 1968, the market demand for Tanner crab products encouraged an exploratory fishery resulting in a small seasonal harvest of 223,000 pounds (101 mt). In the 1969/70 season the fishery expanded, resulting in a harvest of 660,300 pounds (300 mt). An apparent low market demand and resulting price disputes held the 1970/71 seasonal harvest to 167,400 pounds (76 mt). Since the 1971/72 season harvest of 657,700 pounds (298 mt), the harvest generally increased to a peak during the 1975/76 season at 2,158,800 pounds (979 mt). Historic catch is documented in Table A1.

TABLE A1. SOUTHEASTERN MANAGEMENT AREA TANNER CRAB CATCH, NUMBER OF VESSELS, NUMBER OF LANDINGS, AND UNWEIGHTED MEAN CATCH PER LANDING FOR SOUTHEAST AND YAKUTAT DISTRICTS.

SOUTHEAST DISTRICT

SEASON[1]	CATCH POUNDS	CATCH MT	NUMBER VESSELS	NUMBER LANDINGS	UNWEIGHTED MEAN CATCH PER LANDING POUNDS	UNWEIGHTED MEAN CATCH PER LANDING MT
1968/69[2]	223,045	101	27	160	1394	0.63
1969/70[3]	660,337	300	31	360	1834	0.83
1970/71	167,378	76	12	72	2325	1.05
1971/72	656,661	298	23	274	2397	1.09
1972/73	1,339,953	608	30	340	3941	1.79
1973/74	1,309,673	594	46	419	3126	1.42
1974/75	839,304	381	29	241	3483	1.60
1975/76[4]	2,157,752	979	26	369	5448	2.47
1976/77[5]	1,850,380	839	30	290	6392	2.90
TOTAL	7,453,103	3381	224	2235		
MEAN	919,263	417	28	279	3335	1.51

YAKUTAT DISTRICT

1972/73	540,580	245	6	36	15016	6.81
1973/74	1,872,357	849	11	110	17021	7.72
1974/75	1,997,199	906	13	63	31702	14.4
1975/76	1,724,649	782	3	34	50725	23.0
1976/77	827,864	376	6	12	71988	32.7
TOTAL	6,134,785	2783	33	243		
MEAN	1,533,696	696	8	61	25246	11.5

1/ Season: September 1 through May 15 beginning with 1974/75 season
2/ 1968/69 data from ticket log of ADF&G fish tickets (1968) and ADF&G automated annual fish ticket reports hand compiled to seasons (1969).
3/ 1969/70 through 1974/75 data from ADF&G automated annual fish ticket data reports hand compiled to seasons.
4/ 1975/76 data from ADF&G automated annual fish ticket reports (1975) and ADF&G ticket log (1976) hand compiled to seasons.
5/ 1976/77 data from ADF&G ticket log, season in progress

Yakutat District. Historic catch information (Table A1) indicates the initial harvest in this fishery of 540,580 pounds (245 mt) occurred during the 1972/73 season. From 1973/74 through 1975/76, catches have ranged from 1,724,650 pounds (782 mt) during the 1975/76 season to 1,997,200 pounds (906 mt) during the 1974/75 season. The average harvest since the inception of this fishery is 1,533,700 pounds (696 mt).

A.3.2.1.4. Description of Vessels and Gears Employed

Southeast District. During the early development of the fishery in 1968, seine type vessels averaging 51 feet (15.5 m) in keel length and ranging from 32 to 82 feet (9.8 to 25.0 m) participated in the fishery. These vessels had an average net tonnage of 35 tons (32 mt) and a range from 5 to 125 net tons (4.5 to 113 mt). Vessel characteristics have remained fairly consistent since the 1969/70 season. (Table A2).

TABLE A2. SOUTHEASTERN MANAGEMENT AREA TANNER CRAB FLEET CHARACTERISTICS BY SEASON FOR SOUTHEAST AND YAKUTAT DISTRICTS 1/

SOUTHEAST DISTRICT SEASON	NUMBER VESSELS	MEAN KEEL LENGTH FEET	MEAN KEEL LENGTH M	RANGE OF KEEL LENGTH FEET	RANGE OF KEEL LENGTH M	MEAN NET TONNAGE TONS	MEAN NET TONNAGE MT	RANGE NET TONNAGE TONS	RANGE NET TONNAGE MT	MEAN HOLD CAPACITY 2/ LBS	MEAN HOLD CAPACITY 2/ MT
1968/69	27	51	15.5	32-82	9.8-25.0	35	32	5-125	5-113		
1969/70	31	52	15.8	36-74	11.0-22.6	30	27	6-77	5-70		
1970/71	12	49	14.9	36-68	11.0-20.7	26	24	4-50	4-45		
1971/72	23	49	14.9	31-72	9.4-21.9	27	24	4-77	4-70		
1972/73	30	48	14.6	30-86	9.1-26.2	31	28	5-134	5-122		
1973/74	46	44	13.4	27-85	8.2-26.0	22	20	1-64	1-58		
1974/75	29	46	14.0	30-85	9.1-26.0	27	24	5-64	5-58		
1975/76	26	48	14.6	33-85	10.1-26.0	29	26	5-67	5-61		
1976/77	30	49	14.9	32-85	9.8-26.0	30	27	5-67	5-61	24,000	11
YAKUTAT DISTRICT											
1972/73	6	66	20.1	40-80	12.2-24.4	81	73	27-138	24-125		
1973/74	11	55	16.8	30-86	9.1-26.2	41	37	18-89	16-81		
1974/75	13	73	22.3	38-103	8.2-31.4	92	83	32-171	29-155		
1975/76	3	112	34.1	78-167	23.7-50.9	188	171	89-338	81-307		
1976/77	6	80	24.4	32-103	9.8-31.4	107	96	23-197	21-179	94,200	43

1/ Source: ADF&G vessel register and fish tickets
2/ Estimated by area shellfish biologist

During the 1968-69 season a variety of pots, including rectangular king crab pots and round Dungeness crab pots, were utilized. The round Dungeness crab pots are no longer used. In addition to the modified king crab pots, pots of pyramid and conical design have been developed specifically for the Tanner crab fishery and are widely utilized.

Yakutat District. During the first 2 seasons vessel types varied greatly but beginning with the 1974-75 season, participating vessels were designed specifically as king and Tanner crab boats. This trend continued in 1975-76, but by 1976-77 two smaller vessels had entered the fishery. During the 1976-77 season the mean length was 80 feet (24.4 m) with a range from 32 to 103 feet (9.8 to 31.4 m, see Table A2). Mean net tonnage was 107 tons (97 mt) with a range from 23 to 197 net tons (21 to 179 mt) and each vessel had an average hold capacity of 94,200 pounds (43 mt). Vessels producing the majority of the harvest are Westward king and Tanner vessels.

Gear utilized in this fishery is almost exclusively rectangular 6×6 foot (1.8 m) or 7×7 foot (2.1 m) standard king crab pots.

A.3.2.2. History of Foreign Exploitation

There is no record of foreign exploitation of Tanner crab within waters of the Southeastern management area.

A.3.3. HISTORY OF MANAGEMENT

A.3.3.1. Management Institutions, Policies, Jurisdiction

The Southeastern management area is defined in A.3.1. The Division of Commercial Fisheries within the Alaska Department of Fish and Game exercises management control over the fishery. Inseason management responsibility, preliminary management plan development, and management related research is conducted by the regional office in Juneau and the area office in Petersburg. See Section 3.3.1.

A.3.3.2. Domestic

A.3.3.2.1. and A.3.3.2.2. Regulatory Measures and Purpose of Measures

During the first few regulatory years (through 1972) regulations permitted the harvest of only male Tanner crab by pots, ring nets, or shrimp beam trawls (Table A3).

TABLE A3. REGULATORY HISTORY, SOUTHEASTERN MANAGEMENT AREA TANNER CRAB FISHERY -- SOUTHEAST (S.E.) AND YAKUTAT(YAK) DISTRICTS

REGULATION YEAR	FISHING SEASON	MIN. SIZE LIMIT	GUIDELINE HARVEST LEVEL 10^6 lbs	GEAR	AREA REGISTRATION
1969	None	None. males only	None	No pot limit; pots, ring nets, beam trawls.	None
1970	"	"	"	" " "	"
1971	"	"	"	" " "	"
1972	"	"	"	" " "	"
1973	"	"	"	S.E.: 60 pots, king & Tanner combined; ring nets, beam trawls.	"
1974	Sept.1 - May 15	"	"	SE: same as 1973 except cotton escape seam on pots. YAK: 60 pots in Lituya Bay. bouy marking repealed.	Non-exclusive
1975	"	"	"	S.E.: same as 1974 except 60 pots combined during king crab season (Sept.1-Jan 31) 100 pots during remainder of Tanner season. YAK: 100 pots each in Lituya Bay and Yakutat bays.	"
1976	"	5.5 inches (140 mm)	S.E. 1.75 (794 MT) YAK: 3.0 (1361 MT)	S.E.: same as 1975 YAK: " " "	"
1977	"	"	"	S.E.: same as 1975 YAK: " " " (except exclude beam trawls)	"

Sources: ADF&G regulation booklet; 1972 through 1976, Alaska Board of Fisheries action 1977.

Since then, additional restrictions have been initiated; these restrictions and their rationale are described below:

1. *Fishing season:* in the fall of 1973 a fishing season from September 1 through May 15 was established to allow for acceptable meat recovery rates by the processing industry. In the vicinity of Icy Strait, industry representatives indicate that recovery rates are highest during the fall and early winter months.

The season was also applied to the Yakutat district since differing data was not available. Additionally, this fishery still appears to be developmental in nature and restrictions other than protection from fishing during critical life history stages was not deemed appropriate. The season has been maintained to allow for incidental catches and retention of Tanner crab during the king crab season.

The May 15 closure was established to prevent deadloss of softshell crab and to curtail fishing during the breeding and egg hatch season.

2. *Size limit:* A 5.5 inch (140 mm) minimum carapace width size limit was established for the 1976-77 fishing season. The size limit was based on Alaska Department of Fish and Game research conducted in Kodiak which indicates that this size allows male Tanner crab to contribute to stock reproduction before entering the fishery.

3. *Guideline Harvest Level:* A guideline harvest level based on historic catches plus an allowance for continued expansion of the fishery was implemented during the 1976-77 season. The strategy is to prevent overexploitation and allow for orderly development of the fishery.

4. *Gear:*

Southeast District: From 1969 through 1972 crab pots, ring nets, and beam trawls were established as legal commercial fishing gear. During the 1973-74 season the number of crab pots per vessel was established at 60. This coincides with gear regulations for the red king crab fishery to alleviate enforcement problems associates with concurrent fisheries. During the 1974-75 season a requirement for a cotton seam escape panel in each pot was established to reduce the fishability of lost pots. During the 1975-76 season the pot limit was modified to provide for 60 crab pots during the red king crab season (September 1 through January 31) and 100 pots thereafter to the close of the Tanner crab season.

Yakutat District. Prior to regulation year 1974, no pot limits had been established. Also during the 1974-75 season, no limit on units of gear was in effect for the majority of the management area. In Lituya Bay, however, a vessel could only fish a maximum of 60 pots. During the 1975-76 season, no limit on units of gear was in effect for any waters of the district except Lituya Bay and Yakutat Bay where the limit was a maximum of 100 pots per vessel. These pot limits apply only when the red king crab season is closed (February 1 through May 15), during the red king crab season (September 1 through January 31) a maximum of 60 pots only per vessel may be fished.

The pot limits established in the Lituya Bay and Yakutat Bay areas were to reduce the intensity of the fishery for these relatively restricted geographical areas.

5. *Area Registration:* During the 1974-75 fishing season, the Southeastern management area was designated a non-exclusive registration area as a portion of statistical area A.

A.3.3.3. Foreign.

There is no foreign Tanner crab fishery in Southeastern Alaska.

A.3.3.4. Effectiveness of Management Measures

The relatively short history of this fishery makes the evaluation of management measures difficult. The 1976-77 season will be the first season that harvest in the Southeast district is dependent on progeny of previously exploited stocks. It appears that the May 15 season closure date may allow fishing during molting periods in some years. Recent observations indicate that a closure date between April 15 and 30 may be more appropriate. Other management measures appear appropriate to maintain stock conditions considering current information.

A.3.4. HISTORY OF RESEARCH

A.3.4.1. Domestic

The Alaska Department of Fish and Game does not currently conduct a Tanner crab research program in the Southeastern management area. Other than dockside sampling of carapace width which is accomplished on a time-available basis, a limited amount of sampling aboard commercial vessels is accomplished. An analysis of data to estimate size at maturity of male Tanner crab from Auke Bay, Alaska, has been accomplished ADF&G personnel (Donaldson 1977).

A.3.4.2. Foreign

No foreign research is presently being conducted in the Southeastern management area.

A.3.5. SOCIO-ECONOMIC CHARACTERISTICS

A.3.5.1. Output of Subject Domestic Commercial Fishery

A.3.5.1.1. Value of Catch (ex-vessel)

Southeast District. The average ex-vessel price has ranged from 10 cents per pound in 1969 to 32 cents per pound in 1976 (Table A4). The total ex-vessel value has averaged $151,000 per season and ranged from $17,000 during the 1970-71 season to $475,000 during the 1975-76 season (Table A5). Ex-vessel value for the 1976-77 harvest through March 1977 totals $592,122 based on the ex-vessel price of 32 cents per pound.

Yakutat District. The average ex-vessel price has ranged from 14 cents per pound in 1972, to 32 cents per pound at present (Table A4). Total ex-vessel value has averaged $277,000 per season and ranged from $92,000 during the initial season in 1972-73 to $380,000 during the 1975-76 season (Table A5). The 1976-77 season ex-vessel value through March 1977 is $294.916.

TABLE A4.—*Unweighted mean ex-vessel price in dollars per pound, southeastern management area Tanner crab*[1]

Year	ex-Vessel price per pound
1969	$0.10
1970	.11
1971	.10
1972	.14
1973	.17
1974	.19
1975	.14
1976	.22
1977	.32

[1]Computed by dividing total ex-vessel price by annual harvest in pounds. Ex-vessel value and annual harvest provided by Alaska Commercial Fisheries Entry Commission.

TABLE A4.—*Total Ex-vessel value in dollars by season and district for southeastern management area*[1]

Fishing season	Total ex-vessel value Southeast	Yakutat
1968-69	$22,304.50	
191969-70	72,637.07	
191970-71	16,737.80	
191971-72	91,932.54	
191972-73	227,792.01	$91,893.60
1973-74	183,354.22	355,747.83
191974-75	117,502.56	279,607.86
1975-76	474,705.44	379,422.78
1976-77[2]	592,121.60	264,916.48
19Total[3]	1,206,966.14	1,106,677.07
19Mean[3]	150,870.77	276,669.27

[1]Computed by multiplying seasons harvest in pounds by annual ex-vessel price per pound from Table A4. Assume year 1969=season 68-69. Season harvest from Table A1.

[2]Season in progress.

[3]Total and Mean without 1976-77 season data.

A.3.5.1.2. Description and Value of Products (Wholesale)

The Tanner crab harvest is processed into two major products: A frozen meat pack and a frozen section-in-shell pack. The frozen meat pack is further divided into salad packs, and/or leg packs. A portion of the frozen section-in-shell is comprised of "gourmet claws" which are the chelae with a portion of the posterior shell removed.

Southeast District. The wholesale value of the Southeast district Tanner crab products is approximately $1 million from the 1973-74 season harvest, $0.6 million from the 1974-75 season harvest and $1.6 million from the 1975-76 season harvest (Table A6). Wholesale value information from the 1976-77 season harvest is not presently available, but can be approximated at $1.4 million.

TABLE A6.—*First wholesale value of Tanner crab harvests by season for southeastern management area*

Season	Wholesale value (in dollars) Southeast	Yakutat
1973-74	969,158.02	1,385,544.18
1974-75	621,084.96	1,477,927.26
=1975-76	1,596,736.48	1,276,240.26
1976-77[1]	1,369,281.20	612,619.36

[1]Incomplete.

Source: ADF&G Catch and Production. Juneau.

Yakutat District. The wholesale value of the Yakutat district Tanner crab products was approximately $1.4 million from the 1973-74 season harvest, $1.5 million from the 1974-75 season harvest, $1.3 million from the 1975-76 season (Table A6). Wholesale value information is not available from the 1976-77 season. However, an approximation of wholesale value calculated on the catch through March 1977 is $0.6 million.

A.3.5.1.3. Markets, Domestic and Foreign

The bulk of the meat pack is marketed and consumed in the United States and Canada. The major portion of the section pack is marketed in Japan with lesser amounts marketed in England and other European countries. As of December 1976,

United States market demands for Tanner meat products exceeded that for section (U.S.D.C. 1976). Tanner crab market demands are at least partially influenced by the supply of other crab products in the United States. See Section 3.5.1.3.

A.3.5.2. Domestic Commercial Harvesting Characteristics

A.3.5.2.1. Total Gross Income of Fleet (from subject fishery and all other fisheries)

The gross income of the Southeastern Tanner crab fleet from all fisheries (King crab, halibut, salmon, etc.) was $3.4 million in 1976. This compares to a Tanner crab harvest valued at $772,500. The average total gross income per vessel was $121,730. Table 5 shows the value of Tanner crab catch and total gross income for all fisheries by management area.

A.3.5.2.2. Investment in Vessels and Gear

Quantitative information concerning investment in vessels and gear is not available. See Section 3.5.2.2.

A.3.5.2.3. Annual Participation in the Fishery

Southeast District. An estimated 2,583 vessel days were utilized in the harvest of Tanner crab during the 1975-76 season. This figure assumes each vessel made 14 landings and each landing required 6 days fishing and 1 day running time.

Yakutat District. An estimated 408 vessel days were utilized in the harvest of Tanner crab during the 1975-76 season, based on each landing requiring 10 days fishing and 2 days running time.

A.3.5.2.4. Total Manpower Employed

Southeast District. An estimated 90 individuals were employed in the harvest of Tanner crab during the 1976-77 season. This includes skippers and crewmen, and was derived by multiplying the number of participating vessels by three (the average vessel crew).

Yakutat District. An estimated 24 individuals were employed during the 1976-77 season (through March). This estimate includes skipper and crewmen, and was derived by multiplying the number of participating vessels by four (the average vessel crew).

A.3.5.2.5. Economic Viability

Data are not available for the Southeastern management area. See Section 3.5.2.5.

A.3.5.3. Domestic Commercial Processing Characteristics

A.3.5.3.1. Total Gross Income of Area Processors

These data are not available for the Southeastern management area processors. However, first wholesale value has been estimated as previously mentioned (A.3.5.1.2.) and itemized in Table A6.

A.3.5.3.2. Investment in Plant, Equipment, Etc.

Data are not available. See Section 3.5.3.2.

A.3.5.3.3. Total Employment and Labor Income

Total employment is not available. An estimated processor employment is 450 employees. Income of this labor force is not known. See Section 3.5.3.3.

A. 3.5.3.4. Economic Viability

Data are not available. See Section 3.5.3.4.

A.3.5.4. Recreational Fishing Characteristics

There are no regulated sport or recreational fisheries for Tanner crab within the Southeastern management area.

A.3.5.5. Subsistence Fishing Characteristics

A subsistence fishery, which is at least partially recreational in nature, is open throughout the year with no sex, size, or gear restrictions except that pot buoys must be marked with the name and address of the fisherman, and the pot must be attended at least once each 14-day period. The possession limit is 30 crab per person per day and crab may not be sold, traded, or bartered.

A.3.5.6. Indian Treaty Fishing Characteristics

There are no Indian treaty fishing rights for Tanner crab within the Southeastern management area.

A.3.5.8. Community Characteristics

A.3.5.8.1. Total Population

Southeast District. The Southeast district contains four boroughs and 24 cities within its geographic boundaries with a reported population totaling 45,029 individuals (Department of Labor 1977). Tanner crab are landed and processed in five communities with a total population of 26,388. The Tanner crab fishery has a direct effect on these five municipalities (Junea, Sitka, Hoonah, Pelican, and Petersburg) and indirectly affects the remaining boroughs and cities.

Yakutat District. The Yakutat district has a single community located within it (the City of Yakutat) with a reported population of 190 (Department of Labor 1977). Three other communities are affected by the Yakutat fishery since all processing of Yakutat Tanner crab is accomplished in Sitka, Pelican, or Cordova. The City and Borough of Sitka has a population of 6,109 and Pelican has a population of 133. Cordova has a population of 2,406.

A.3.5.8.2. Total Employment

See Section 3.5.8.2.

A.3.5.8.3. Total Work Force

See Section 3.5.8.3.

A.3.6. INTERACTION AMONG USER GROUPS

There are no known interactions among user groups. However, a substantial number of king crab fishermen participate in the Tanner and king crab fisheries concurrently.

A.3.7. FEDERAL AND STATE REVENUES DERIVED FROM FISHERY

These values are not available by management area but are reported on a statewide basis in Section 3.7.

A.4.0. BIOLOGICAL DESCRIPTORS

A.4.1. LIFE HISTORY FEATURES

The general life history of *C. bairdi* is described in the biological history portion of this plan (Section 4.0) from research done in the Kodiak area. Inconsistencies with this information have not been documented in stocks within the Southeastern management area.

A.4.2. STOCK LIMITS

Southeast District. Distinct stock delineations are not possible with present information. However, ADF&G personnel manage Tanner crab as discrete stocks in Lynn Canal, Icy Strait, Frederick Sound, Peril Strait, Seymore Canal, waters adjacent to Juneau, and all waters including and south of Sumner Strait.

Yakutat District. Definitive information concerning distinct stock units is not available. However, information indicates that the Icy Bay crab, the Yakutat Bay crab, and the crab inhabiting the shelf outside the bays all have distinct characteristics indicating the possibility of distinct stocks.

A.4.3. CATCH-EFFORT DATA

Refined catch per unit effort data are presently not collected in the Southeastern Tanner crab fishery. A gross estimate of C.P.U.E. expressed as catch per pounds per vessel landing has been listed by fishing season (Table A1).

A.4.4. SURVEY AND SAMPLING DATA

Relative abundance indices of Tanner crab stocks in the Southeastern management area are not conducted by the Alaska Department of Fish and Game. Dockside sampling of the commercial catch for carapace width frequency distribution has been accomplished since the 1973/74 season and has been summarized by appropriate size classes (Table A7). The dockside sampling data have not been expanded to include shell age and average weight per crab.

Some surveying of the shelf area running north and east of Point Manby has been accomplished by the National Marine Fisheries Service utilizing International Pacific Halibut Commission data (Hughes 1974). However, this report does not attempt to estimate population abundances, and the survey did not include Yakutat Bay which is a major fishing area.

A.4.6. QUALITY OF DATA

Refer to statewide section 4.6.

A.4.7. CURRENT STATUS OF STOCKS

A.4.7.1. Maximum Sustainable Yield (MSY)

Southeast District. Based on the relatively short history of the fishery, the continued increase in gross C.P.U.E. (see Table A1), and the non-availability of population abundance information it appears that historic harvest levels have not approached a MSY level. Therefore, any estimate of MSY should exceed the largest harvest to date of 2,158,000 pounds (979 mt). As such, a tentative weak estimate of 2.5 million pounds (1134 mt) is specified for this district.

All harvests prior to the 1976/77 season were accomplished without a legally imposed minimum size limit. However, preference for crab larger than 5.5 inches (140 mm) is displayed in the dockside sampling summary (Table A7) by season beginning the 1973/74 season.

TABLE A7.—*Tanner crab dockside sampling of carapace width by size class, season, and district for southeastern management area.*

Width frequencies by size class	Season			
	1973-74 (percent)	1974-75 (percent)	1975-76 (percent)	1976-77 (percent)
	Southeast District			
0139 mm	15.9	12.2	8.1	5.2
140-166 mm	68.8	67.5	81.0	80.2

TABLE A7.—*Tanner crab dockside sampling of carapace width by size class, season, and district for southeastern management area.*—Continued

Width frequencies by size class	Season 1973-74 (percent)	1974-75 (percent)	1975-76 (percent)	1976-77 (percent)
	Southeast District			
0167 mm	15.3	20.3	10.9	14.5
Mean width (mm)	152.9	155.4	153.9	154.1
Sample size	1633.0	796.0	1472.0	2276.0
	Yakutat District			
0139 mm	43.0	39.5	29.5	23.4
140-166 mm	56.7	59.8	68.7	75.0
0167 mm	0.3	0.7	1.8	1.6
Mean width (mm)	142.5	142.2	145.7	144.7
Sample size	1472.0	732.0	437.0	320.0

[1]Source: ADF&G unpublished catch statistics. Juneau.

Yakutat District. Based on the short history of the fishery, the continued increase in C.P.U.E. (see Table A1), and the availability of survey data (Hughes 1974), it appears as if historic harvest levels have not approached a MSY level. Therefore, a tentative weak estimate of a MSY of 3 million pounds (1,360 mt) is specified for this district.

A.4.7.2. Equilibrium Yield (EY)

Existing data are insufficient to determine EY.

A.4.7.3. Acceptable Biological Catch (ABC)

Southeast District. Biological data necessary to modify MSY to determine ABC are not available. Therefore, ABC is estimated to be 2,500,000 pounds (1,134 mt) to provide for a continued, orderly development of the fishery in this district.

Yakutat District. Biological data required to modify MSY to determine ABC are not available. Therefore ABC is estimated to be 3 million pounds (1,361 mt) to provide for a continued, orderly development of the fishery in this district.

A.4.8. ESTIMATE OF FUTURE STOCK CONDITIONS

Given a limited data base, only subjective statements are possible: C.U.P.E. indicators of stock abundance are currently high in relation to earlier years, although the 1976-77 catch for the Yakutat district is below average. Therefore, stock conditions are expected to remain healthy, assuming no changes in mating success or other critical life history stages.

A.5.0. CATCH AND CAPABILITY DESCRIPTORS

A.5.1. DATA AND ANALYTICAL APPROACHES

A.5.1.1. Domestic

Southeast District. Table 6, p. 50 lists the potential commercial harvesting capabilities in the Southeast district Tanner crab fishery. The number of vessels is documented through fish ticket returns which indicate landings from the district during the 1976-77 season. Hold capacities were estimated for each vessel by the ADF&G shellfish management biologist and seasonal harvesting capacities were determined by multiplying hold capacity by the average number of trips per vessel. This provides a seasonal capacity of 8,244,000 pounds (3,739 mt).

Yakutat District. Table 6 lists the potential commercial harvesting capabilities of the Yakutat district Tanner crab fishery. Calculated on the same basis as the Southeast district, the seasonal capacity is estimated at 4,473,000 pounds (2,030 mt).

A.5.1.2. Foreign

There is no foreign fishery in the Southeastern management area.

A.5.2. DOMESTIC ANNUAL CAPACITY (DAC)

The DACs for the Yakutat and Southeast districts are 4,472,916 and 8,244,000 pounds (2,029 and 3,739 mt), respectively. These values are discussed in Section A.5.1.1.

A.5.3. EXPECTED DOMESTIC ANNUAL HARVEST (DAH)

Southeast District. The DAC estimate has not been approached during previous seasons due to many influences including (but not limited to) market conditions, fleet availability, vessel type, and the unknown abundance of Tanner crab as the fishery continues to develop.

The market demand for Tanner crab products appear to be relatively firm (U.S.D.C. 1976) and this should have a positive of influence on DAH.

Fllet availability, vessel type, and abundance of Tanner crab are somewhat linked. Most vessels participating in the fishery are limit seine-type vessels or smaller. Hold capacity limits the ability of smaller vessels to expand into location distant from population centers. The available Tanner crab may not provide the economic basis for capitalization to larger vessels. Some of the larger vessels of 60 to 70 foot keel lengths (18.3 to 21.3 m) maintain high catches throughout the season in areas removed from population centers.

Assuming good market conditions, present fleet characteristics, and current harvest characteristics, DAH should reach 2,500,000 pounds (1,134 mt) during the 1977-78 season.

Yakutat District. The DAC has not been achieved in the past due to the same influences encountered in the Southeast district.

Fleet availability and the unknown availability of Tanner crab have negative influences on the expected DAH. More profitable fisheries with known availabilities of Tanner crab divert vessels from the Yakutat fishery, particularly from September through December.

In the past, all of Tanner crab in Yakutat have been processed in Southeastern Alaska cities or in Cordova. Running time from the fishing grounds to the various processors reduces fishing time and has had a negative influence on the DAH. One Yakutat processor has indicated a desire to process Tanner crab next season (1977-78). This could have a positive influence on expected DAH, depending on processing rates and levels.

Assuming good market conditions, the addition of a Yakutat plant to the processing sector, and sufficient vessels, the expected DAH should approach 3,000,000 pounds (1,361 mt) during the 1977-78 season.

A.6.0. OPTIMUM YIELD (OY)

A.6.1. DEPARTURE FROM MSY TO ABC FOR BIOLOGICAL REASONS

MSY and ABC are set equivalent in the absence of any biological data which would require an alternative specification.

A.6.2. DEPARTURE FROM ABC FOR SOCIO-ECONOMIC REASONS

In the absence of any explicit socio-economic objectives which would require that OY differ from the specified ABC, they are set equivalent.

A.6.3. OPTIMUM YIELD (OY)

The OY for the Southeast and Yakutat districts is 2.5 and 3 million pounds (1,134 and 1,361 mt) respectively. Total optimum yield for the Southeastern management area is therefore set at 5.5 million pounds (2,495 mt).

A.7.0. FOREIGN ALLOWABLE CATCH (FAC)

No surplus stocks are available to foreign nations from this management area.

A.8.0. MANAGEMENT REGIME

See Section 8.0 through 8.8.2.

PRINCE WILLIAM SOUND MANAGEMENT AREA

B.3.0. DESCRIPTION OF FISHERY

B.3.1. AREAS AND STOCKS INVOLVED

The Prince William Sound management area encompasses all the waters of Prince William Sound proper, and all the waters of the Northcentral Gulf of Alaska between the longitudes of Cape Suckling and Cape Fairfied (Fig. 1).

Major Tanner crab fishing areas within the Prince William Sound management area are: the eastern portion of Prince William Sound, Hinchinbrook Entrance, the area immediately east of Montague Island, the area between Cape Cleare and Cape Fairfield, the area immediately south of Hinchinbrook Island and the area west of Kayak Island.

Data are not available to determine the existence of different stocks in the management area. Thus, for management purposes, Tanner crab in the area are considered to be one stock.

B.3.2. HISTORY OF EXPLOITATION

B.3.2.1. Domestic Fishery

B.3.2.1.1. Description of User Groups

Commercial fishermen are the only user group of the Tanner crab resource in the Prince William Sound management area.

B.3.2.1.2. General Description of Fishing Effort

For the first few months of the season most of the fishing occurs inside Prince William Sound and Hinchinbrook Entrance by seine type vessels. As the season progresses and the weather conditions improve, larger vessels enter the fishery and the majority of effort shifts to the waters outside Prince William Sound.

B.3.2.1.3. Catch Trends

The fishery began in 1968 and was in an exploratory phase for the first two years with an annual catch of approximately 1.25 million pounds (567 mt). In 1970/71 a price dispute held the catch beneath 5,000 pounds (2.3 mt). The fishery reached its peak harvest in the 1972/73 season with a catch of 14 million pounds (6,350 mt). The 1974/75 season catch (4 million pounds, 1,814 mt) was suppressed by a price dispute which delayed fishing. The 1975/76 catch of 7 million pounds (3,175 mt) showed a decrease from the high seasons; however, because of the short history of the fishery it is difficult

to determine whether or not this was the beginning of a downward trend. Historical catch is shown in Table B1.

TABLE B1.—*Prince William Sound Tanner crab catch*

[Fishing season]

Seasons	Pounds	Metric tons
1968–69	1,235,613	560
1969–70	1,284,597	582
1970–71	4,159	2
1971–72	7,788,498	3,532
1972–73	13,927,868	6,316
1973–74	10,158,000	4,606
1974–75	3,854,000	1,747
1975–76	7,132,744	3,234
1976–77	2,236,000	1,014
Total	45,385,479	20,586.53
Average	5,673,185	2,573.32

Source: ADF&G catch and production.

The 1976–77 totaled only 2,236,000 pounds (1,014 mt). The recently imposed minimum size, a price dispute which delayed fishing and the exclusive registration area for Prince William Sound may have contributed to this relatively small catch.

B.3.2.1.4. Description of Vessels and Gears Employed

During the exploratory phase of the fishery (1968–70) both seine type, 40 foot (12.2 m) keel lengths, and larger crab vessels, 80 foot (24.2 m) keel lengths, fished large round, 7 foot diameter (2.13 m), Dungeness pots and rectangular king crab pots.

In 1969 7 x 7 feet (2.13 m) pyramid shaped Tanner crab pot was developed and is now used almost exclusively for this fishery.

There were 33 vessels which took part in the 1975/76 Tanner crab fishery. The average keel length was 53 feet (16.2 m), with the majority of the vessels in the 41 to 50 foot (12.5 to 15.2 m) keel length class (14 vessels) and the 61 to 70 foot class (18.6 to 21.3 m) (7 vessels). The smallest vessel had a keel length of 31.7 feet (9.7 m), and the largest keel length was 85 feet (26.2 m).

So far in the 1976/77 fishery, there are 23 vessels which have taken part in the fishery. The average keel length is 52 feet (15.8 m) with 12 of the vessels between 31 and 50 feet (9.4 and 15.2 m) and 5 vessels in the 61 to 70 foot (18.6 to 21.3 m) class.

B.3.2.2. History of Foreign Exploitation

There is no foreign fishery for Tanner crab in the Prince William Sound management area.

B.3.3. HISTORY OF MANAGEMENT

B.3.3.1. Management Institution, Policies, Jurisdictions

The State of Alaska, through the Alaska Board of Fisheries and the Cordova office, Division of Commercial Fisheries, Alaska Department of Fish and Game, is the management institution for the Prince William Sound management area.

B.3.3.2. Domestic

B.3.3.2.1. and B.3.3.2.2. Regulatory Measures and Purpose of Measures

A summary of regulatory measures is presented in Table B2. The first regulated fishing season was in 1971 when the fishery was closed for an area inside Prince William Sound between June 1 and August 31. In 1973/74 the open season was from October 15 to a closure date set by an emergency order. The opening date was based on meat recovery, while the closure was set when soft shelled crab appeared in the deliveries. For 1974/75 the season opening was moved up to November 15. In 1977 a specified closure date of May 31 based on historical appearance of soft shelled crab was set; however, an earlier closure may be enacted by an emergency order if there is unusually early occurrence of soft shelled crab.

Table B2 Major regulations by season specific to the Prince William Sound Management Area

Season	Opening and Closure	Size Limit	Guideline Harvest Level	Area Registration	Gear	Districts
1971/72	Closure of specified area within PWS from 6/1 - 8/31	None	None	None	None	None
1972/73	Oct. 15 to June 22*	None	Inside PWS 3.5 million lb. (1588 mt) Outside PWS 12.0 million lb. (5443 mt)	None	None	None
1973/74	Oct. 15 to May 31*	None	"	Exclusive	None	None
1974/75	Nov 15 to May 31*	None	"	"	None	None
1975/76	" "	None	"	"	None	None
1976/77	Nov 15 to May 10*	5.3 in (135 mm)	3 to 7 million lb. (1,360 to 3,175) metric tons	"	2 escape rings	Establish: Northern, Western, Eastern, Hinchenbrook

*Closure by emergency order when dead loss and softshells approached to 10 percent of deliveries.

Source: ADF&G Shellfish Regulations, Juneau.

Harvest of Tanner crab is limited to males only (see section 3.3.2.1. and 3.3.2.2.), and a minimum size of 5.3 inches (135 mm) was set in 1976. Based on departmental research in the Prince William Sound management area (unpublished Pr. Wm. Sound ADF&G shellfish research data) it was felt that this critical size should be set in order to protect the mature male brood stock which had been severely overharvested prior to 1976 (Pr. Wm. Sound March 1977 Report to the Board of Fisheries).

Guideline harvest levels were originally set for the 1972/73 season. The total figure of 15.5 million pounds (7,031 mt) was based on a weak estimate of what the resource might be expected to sustain.

In 1977 it was determined that the guideline harvest level of 15.5 million pounds was unrealistically high. A range of 3 to 7 million pounds (1,360 to 3,175 mt) was set to anticipate the current season's catch. This range will be adjusted each season if departmental research and early season catches warrant a change.

The Prince William Sound management area was established as an exclusive registration area starting with the 1973/74 fishing season. Vessels that register for the exclusive area may only fish that area. A vessel must declare its intent to fish the area 30 days prior to the season opening.

Exclusive registration areas are established primarily on economic considerations. The fishing fleet was composed largely of relatively small, 50 feet (15.24 m), vessels unsuitable for fishing unprotected waters. These boats were not able to compete sucessfully with a large mobile crab fleet such as the one based in Kodiak. A fleet of this type is capable of harvesting the available crabs in the Prince William Sound are a very rapidly if unrestricted fishing were allowed. This would leave a relatively small catch and short season for the local Prince William Sound fleet and processors.

For the 1976/77 season four districts were established within the management area. Guidelines for establishing these districts were based on the possibility of soft shell appearance not being uniform, with respect to time, over the entire area.

The only gear regulation peculiar to the Prince William Sound management area is the requirement, established prior to the 1976/77 fishery, of two escape rings of 4¾ inches (121 mm) located on the vertical plane of the pot so as to allow escapement of undersized crab from the pot. This regulation was established to reduce handling mortality and limb loss of sub-legal and female crab while they were being sorted on the decks of crab vessels. The actual size of the ring was set by determining that crab which are 5.3 inches (135 mm, the minimum legal size) in carapace width, have an average total carapace length of 4¾ inches (121 mm). Therefore, crab less than 5.3 inches (135 mm) width that move in a side to side manner could pass through these rings. Prince William Sound fishermen have found these rings to be useful in cutting down handling except for two instances: on soak times of 1 day or less, and when the gear in fished in an area where there is a very large percentage of small crab.

B.3.3.3. Foreign

No foreign fisheries.

B.3.3.4. Effectiveness of Management Measures

See section 3.3.4.

B.3.4. History of Research

B.3.4.1. Domestic

The Department of Fish and Game Tanner crab research program did not begin until 1976. Studies completed or in progress are:

1. Size of maturity of male Tanner crab. The minimum size was determined by collecting Tanner crab in Prince William Sound and using the resulting data in determining the average size of maturity as done by Brown and Powell in 1971. One molt, the size of which was determined by Donaldson in Kodiak (Donaldson, 1977), was added to the average size at maturity which resulted in a minimum size of 5.3 inches (135 mm) (unpublished ADF&G Pr. Wm. Sound Shellfish Research).
2. Tagging to describe seasonal movement or migratory patterns.
3. Female breeding success to determine adequacy of minimum size. Preliminary analysis of the May 1977 female Tanner crab cruise conducted by ADF&G Prince William Sound shellfish research indicates that 99.8 percent of all mature females captured were bearing new egg clutches, with 91.1 percent having full clutches (unpublished Alaska Department of Fish and Game Prince William Sound Shellfish Research).
4. Index of abundance to determine recruit and pre-recruit strengths (to be initiated in August 1977).

The University of Alaska sea grant and graduate programs have:

1. Described size at maturity of female Tanner crab.
2. Described breeding success of mature females for 1973 and 1976.

B.3.4.2. Foreign

There has been no foreign research.

B.3.5. Socioeconomic Characteristics

B.3.5.1. Output of Subject Domestic Commercial Fishery

B.3.5.1.1. Value of Catch (Ex-vessel)

The total value to the fishermen of the Prince William Sound Tanner crab fishery has ranged from a season low of $500 in 1970–71 to a high of $2,326,000 for the 1975–76 season. Total value on a yearly basis is shown in table 1. Price per pound is shown in table B3.

Table B3.—*Ex-vessel price of Tanner crab in the Prince William Sound management area by season*

Season	Price per pound
1966–69	$0.10
1969–70	.11
1970–71	.11
1971–72	.12
1972–73	.17
1973–74	.20
1974–75	.17
1975–76	.20
1976–77	.32

Source: Alaska Department of Fish and Game annual management reports.

B.3.5.1.2. Description and Value of Product (Wholesale)

See Table 2. The historic wholesale value of the catch is shown on Table B4.

Table B4.—*Wholesale value of Tanner crab in the Prince William Sound management area by year*[1]

Year	Wholesale value
1968	$10,281
1969	202,867
1970	260,110
1971	142,208
1972	1,819,317
1973	(2)
1974	3,594,927
1975	1,784,695
1976	(3)

[1]Not in season.
[2]No data available.
[3]Incomplete.

Source: Alaska Department of Fish and Game annual management reports.

B.3.5.1.3. Markets, Domestic and Foreign

Very little data is available concerning markets. In 1976 Tanner crab sections and canned meats were sold on both the United States and Japanese markets. See section 3.5.1.3.

B.3.5.2. Domestic Commercial Harvesting Characteristics

B.3.5.2.1. Total Gross Income of Fleet (From Subject Fishery and All Other Fisheries)

The gross income of the Prince William Sound Tanner crab fleet for all fisheries (King crab, salmon, halibut, etc.) was $2.2 million in 1976. This compares to a Tanner crab harvest valued at $1.2 million. The average total gross income per vessel was $56,000. Table 5 compares all management areas for 1976. Table B5 gives a historic sketch since 1968.

Table B5.—*Wholesale value of all fisheries in the Prince William Sound management area, by year*[1]

Year	Wholesale value
1963	$9,244,435
1969	12,953,145
1970	12,508,372
1971	15,487,929
1972	12,698,910
1973	(2)
1974	18,948,220
1975	17,958,290

[1]Not by season.
[2]No data available.

Source: Alaska Department of Fish and Game annual management report.

B.3.5.2.2. Investment in Vessels and Gear

For the 1975–76 season the total value of the 33 participating vessels is estimated at $4.5 million with an average value per vessel of $135,000.

The total value of the gear used in the 1975–76 season is estimated to be $1.3 million for 4,300 pots complete with lines and buoys. The average value of gear per vessel is $40,000. Therefore, the average value of each vessel complete with gear for 1975–76 was $175,000.

For the 1976–77 season the total value of the 23 vessels participating is estimated to be $1.7 million with the average value per vessel being $72,000.

The total value of the gear used in 1976–77 is estimated to be $550,000, an average of

$24,000 per vessel. Therefore, the average value of each vessel complete with gear is estimated to be $96,000.

B.3.5.2.3. Annual Participation in Subject Fishery

In the 1975-76 season 33 vessels fished 2,600 days (approximately 80 days per vessel).

B.3.5.2.4. Total Manpower Employed

There was an estimated 107 fishermen in the fleet in 1975-76, this dropped to 72 in 1976-77. See section 3.5.2.4.

B.3.5.2.5. Economic Viability

See section 3.5.2.5.

B.3.5.3. Domestic Commercial Processing Characteristics

B.3.5.3.1. Total Gross Income of Area Processors (From Subject and All Other Fisheries)

Wholesale value by year for all commercial species is shown on table B5. Also see section 3.5.3.

B.3.5.3.2. Investment in Plant, Equipment, Etc.

Data is not available. See section 3.5.3.2.

B.3.5.3.3. Total Employment and Labor Income

Estimated peak season employment in the processing sector was 175 for both the 1975-76 and 1976-77 seasons. See section 3.5.3.3.

B.3.5.3.4. Economic Viability

See section 3.5.3.4.

B.3.5.4. Recreational Fishing Characteristics

There is no recreational fishery for Tanner crab.

B.3.5.5. Subsistency Fishing Characteristics

There is no subsistency fishery for Tanner crab.

B.3.5.6. Indian Treaty Fishing Characteristics

No Indian treaty rights exist.

B.3.5.8. Area Community Characteristics

B.3.5.8.1. Total Population

The population of the Prince William Sound management area is shown in table 7. Cordova is the only community in the area directly involved in Tanner crab fishing and processing. A 1975 census by the city of Cordova shows a population of 2,406.

B.3.5.8.2. Total Employment (From Subject and All Other Area Fisheries)

Employment statistics are not currently available. See section 3.5.8.2.

B.3.5.8.3. Total Work Force (All Industries)

Statistics are not available. See section 3.5.8.3.

B.3.6. Interaction Among User Groups

There is no foreign fishery for Tanner crab in this area. There is a potential gear conflict between trawl fishing and Tanner crab pots.

B.3.7. Federal and State Revenues Derived From Fishery

See section 3.7. and table 9.

B.4.0. Biological Descriptors

See section 4.0.

B.4.1. Life History Features

The following life history features are known for the Prince William Sound management area:

1. Peak egg hatch period: late April and early May.
2. Average size of male and female sexual maturity: 4.3 in. (110 mm) and 3.1 in. (80 mm) carapace width respectively.
3. Period of soft shell condition: May and June (majority of adults).
4. Likelihood of spatial segregation of sexually mature male and female Tanner crab.
5. Preferred habitat: mud bottom.

B.4.2. Stock Units

Discrete stock units have not been identified.

B.4.3. Catch Effort Data

See table 1 for catch and vessel data.

B.4.4. Survey and Sampling Data

A dockside sampling program began in the 1971-72 season, but because of personnel shortages, it was not given full attention until the 1975-76 season. Prior to 1975, the only data collected was length and width frequencies and fishing area. Beginning in 1975 the sampling program was expanded to collect shell age and average weight per crab. In 1976 the program was further expanded to include data on catch per pot, days fished, and soak time.

Sampling data has shown: a decrease in the size of delivered crab from 5.7 in. (144 mm) in 1971-72 to 5.4 in. (137 mm) in 1975-76; a shift in effort from inside to outside Prince William Sound as the season progresses and weather conditions improve, and varying shell age composition of the catch depending on the area fished.

B.4.6. Quality of Data

See section 4.6.

B.4.7. Current Status of Stocks

B.4.7.1. Maximum Sustainable Yield (MSY)

Due to insufficient biological data, MSY has been estimated using historical catch data and must be considered a weak estimate due to the short history of the fishery and the methodology used.

Including the 1975-76 season, there are 8 years of catch data since the inception of the fishery in 1968. Because of minimal effort during the exploratory phases of the fishery, 1968 through 1971, and a prolonged strike which minimized effort in the 1974-75 season, these seasons are omitted from the MSY estimation. For the remaining four seasons, total seasonal catches have been adjusted by subtracting all crab landed below the new 5.3 inch (135 mm) minimum size. These adjusted totals were averaged to yield MSY (see table B6).

TABLE B6. PRINCE WILLIAM SOUND TANNER CRAB CATCH ADJUSTED FOR SIZE LIMIT

SEASON	CATCH LBS	CATCH MT	% LESS THAN 5.3 in.	ADJUSTED CATCH LBS	ADJUSTED CATCH MT
1971/72	7,788,498	3,532	18.29	6,363,982	2,886
1972/73	13,927,868	6,316	23.57	10,645,070	4,828
1973/74	10,158,000	4,607	29.13	7,198,974	3,265
1975/76	7,132,744	3,235	36.31	4,542,845	2,060

Source: ADF&G Catch & Production

"% less than 5.3 inches" from dockside sampling.

The maximum sustained yield for male *C. bairdi* greater than 5.3 inches (135 mm), based on an average of historical catch data, is 7 million pounds (3,175 mt).

B.4.7.2. Equilibrium Yield (EY)

Statistical data necessary to estimate EY is not available.

B.4.7.3. Acceptable Biological Catch (ABC)

The declining catch trend indicates an ABC of 3-7 million pounds (1,361-3,175 mt).

B.4.8. Estimate of Future Stock Conditions

Although no data is available to predict future stock conditions, the newly imposed minimum size for male Tanner crab should provide an adequate number of males in the breeding population allow for maximum attendance of females, and full reproduction potential.

B.5.0. Catch and Capacity Descriptors

B.5.1. Data and Analytical Approaches

B.5.1.1. Domestic

The 1975-76 season was chosen as an average year for vessel participation. Thirty-three vessels fished with an estimated total

hold capacity of 486 tons (441 mt) and an average hold capacity of 15 tons (14 mt) per vessel.

With the season running from November 15 to May 31, there were approximately 195 fishing days available. If the average vessel filled its hold, delivered, and returned to the fishing grounds every 2.5 days, the total seasonal fleet capacity would be an estimated 38,000 tons (35,000 mt).

B.5.1.2. Foreign

There is no foreign fishery for Tanner crab.

B.5.2. DOMESTIC ANNUAL CAPACITY (DAC)

The domestic annual capacity for the Prince William Sound management area is 38,000 tons (35,000 mt).

B.5.3. EXPECTED DOMESTIC ANNUAL HARVEST (DAH)

Assuming no adverse market conditions or major redistribution of fishing effort, the DAH is expected to be 3-7 million pounds (1,360-3,175 mt).

B.6.0. OPTIMUM YIELD

B.6.1. DEPARTURE FROM MSY TO ABC FOR BIOLOGICAL REASONS

The estimated ABC of 3-7 million pounds (1,360-3,175 mt) includes the estimated MSY, but only at the extreme of the range. Catch trends indicate that the stock may be at a level slightly lower than that capable of sustaining the long-run maximum average yield.

B.6.2. DEPARTURE FROM ABC FOR SOCIO-ECONOMIC REASONS

In the absence of any explicit socio-economic objectives which would require optimum yield to deviate from the ABC, they are set equivalent.

B.6.3. OPTIMUM YIELD (OY)

Optimum yield is estimated to be from 3-7 million pounds (1,361 to 3,175 mt) for the 1977-78 Tanner crab fishery in the Prince William Sound management area.

B.7.0. TOTAL ALLOWABEL LEVEL OF FOREIGN FISHERY (FAC)

Given the estimated MSY and DAH, the FAC for 1977-78 is zero.

B.8.0. MANAGEMENT REGIME

See statewide section 8.0.

COOK INLET MANAGEMENT AREA

C.3.0. DESCRIPTION OF FISHERY

C.3.1. AREAS AND STOCKS INVOLVED

The target species found in this management area is *Chionoecetes bairdi*. The Cook Inlet management area has as its eastern boundary a line extending south from Cape Fairfield and as its southern boundary, a line extending east from Cape Douglas at 58° 52' N. Latitude (Figure C1).

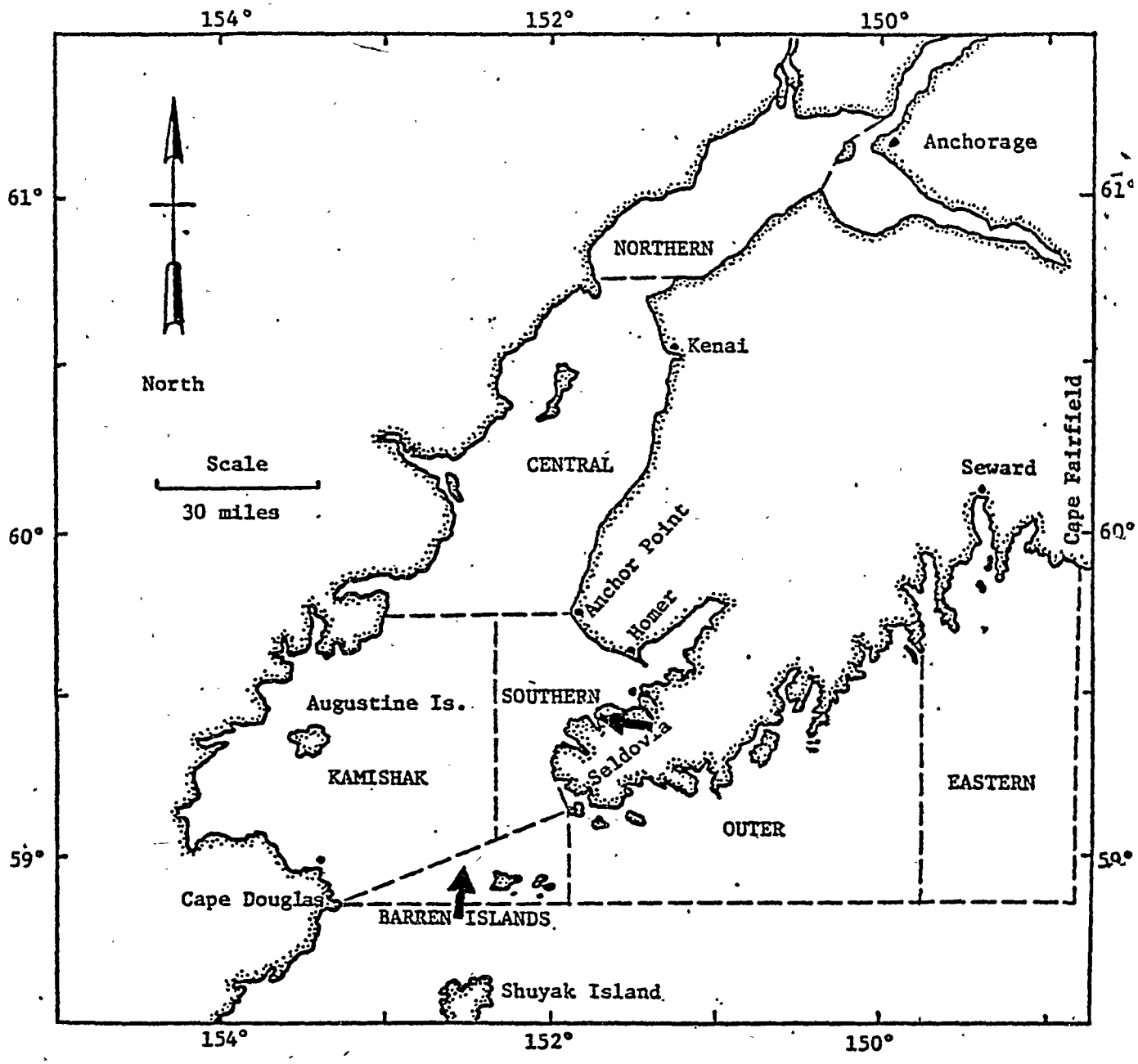


Figure C1 Cook Inlet area district location chart.

There are three geographically distinct Tanner crab fisheries in lower Cook Inlet and along the eastern shore of the Kenai Peninsula. These areas are: (1) the Southern district fishery (Kachemak Bay), (2) the Kamishak Bay-Barren Islands fishery, and (3) the Outer-Eastern districts fishery.

C.3.2. HISTORY OF EXPLOITATION

During the initial years of the fishery, Tanner crab were taken incidentally to king crab during the open king crab season. As price and demand for Tanner crab increased in the early 1970's fishermen began directing their efforts specifically toward this species.

The first substantial effort for Tanner crab in Cook Inlet began in the late 1960's in the Southern district with harvests in the 1.0–1.5 million pound (454–680 mt) range. During the early 1970's, the Tanner crab fleet expanded into the Kamishak-Barren Islands and Outer-Eastern districts. Recent years' catches in these districts have averaged 1.5 million pounds (680 mt) in the Southern, 3.2 million pounds (1,452 mt) in Kamishak-Barren Islands and 0.75 million pounds (340 mt) in the Outer and Eastern districts.

C.3.2.1. Domestic Fishery

C.3.2.1.1. Description of User Groups

Cook Inlet Tanner crab have been exploited almost entirely by the commercial fishery. There has been an unregulated subsistence fishery which harvests less than 1,000 pounds (0.45 mt) annually.

C.3.2.1.2. General Description of Fishing Effort

Tanner crab fishing began in the late 1960's. During 1969, a total of 29 boats made 536 landings. The number of boats and landings increased until 1973 when 92 boats made a total of 1,556 landings, then dropped to 50 boats making 520 landings in 1975.

Table C1 lists Tanner crab boats, landings, and catches by year for the districts in lower Cook Inlet.

TABLE C1. TANNER CRAB BOATS, LANDINGS & CATCHES IN COOK INLET 1969-1976

Year	Boats[1]	SOUTHERN No. Land	SOUTHERN Catch 10^6lbs	SOUTHERN Catch MT	BARREN IS./ KAMISHAK No. Land	BARREN IS./ KAMISHAK Catch 10^6lbs	BARREN IS./ KAMISHAK Catch MT	EASTERN/ OUTER No. Land	EASTERN/ OUTER Catch 10^6lbs	EASTERN/ OUTER Catch MT	TOTAL No. Land	TOTAL Catch 10^6lbs	TOTAL Catch MT
1969	29	523	1.437	652	12	0.018	8	1	0.001	0.45	536	1.456	660
1970	27	298	1.153	523	13	0.070	32	8	0.106	48	310	1.329	603
1971	44	567	1.186	538	41	0.810	367	7	0.121	55	615	2.117	960
1972	56	992	2.942	1134	25	1.159	526	27	0.707	321	1044	4.808	2181
1973	92	1352	3.763	1707	146	3.488	1582	58	1.263	573	1556	8.514	3862
1974	90	897	1.129	512	182	4.641	2105	83	1.891	858	1162	7.661	3475
1975	50	374	1.130	513	105	3.151	1430	41	0.671	304	520	4.952	2246
1976[2]	72	706	1.808	827	133	3.280	1488	33	0.847	384	872	5.935	2692

Source: ADF&G Catch & Production Leaflets

1/ Total boats, some boats fish more than one district

2/ Preliminary data.

TABLE C2. COOK INLET TANNER CRAB CATCHES BY DISTRICT AND FISHING SEASON

Season	SOUTHERN 10^6lbs	SOUTHERN MT	KAMISHAK/BARREN IS. 10^6lbs	KAMISHAK/BARREN IS. MT	OUTER/EASTERN 10^6lbs	OUTER/EASTERN MT	TOTAL CATCH 10^6lbs	TOTAL CATCH MT
1968/69	1.388	630	0.012	5.4	0.001	0.45	1.401	635
1969/70	1.147	520	0.071	32	0.104	47	1.323	600
1970/71	1.047	475	0.541	245	0.003	1.4	1.591	722
1971/72	2.463	1117	0.975	442	0.805	365	4.243	1925
1972/73	2.936	1332	3.361	1525	1.267	575	7.564	3431
1973/74	1.388	630	4.689	2127	1.891	858	7.968	3614
1974/75	0.968	439	3.150	1429	0.657	298	4.118	1868
1975/76	1.339	607	3.281	1488	0.851	386	5.471	2482

Source: ADF&G Area Statistics Homer, Ak

C.3.2.1.3. Catch Trends

The first significant catches of Tanner crab were taken from the Southern District during the 1968-69 fishing season (July-June) and totaled 1.4 million pounds (635 mt, Table C2). Fishing effort spread to other stocks of Cook Inlet Tanner crab (Kamishak-Barren Islands and Outer-Eastern Districts) and peaked at 8.0 million pounds (3,629 mt) during the 1973-74 fishing season.

The Cook Inlet catch during the 1975-76 season was 5.6 million pounds (2,540 mt) with 1.4 million pounds (635 mt) from the Southern district, 3.3 million pounds (1,497 mt) from the Kamishak-Barren Islands district and 0.8 million pounds (363 mt) from the Outer-Eastern District.

These catches were all made during seasons with no size limit. The 5.5 inch (140 mm) carapace width limit was enacted starting with the 1976-77 season. In the Kamishak-Barren Islands and Outer-Eastern districts the new size limit will reduce the number of crab which can be retained from any given catch. This will not affect the Southern district since its size distribution is shifted toward large crab. (Fig. C2).

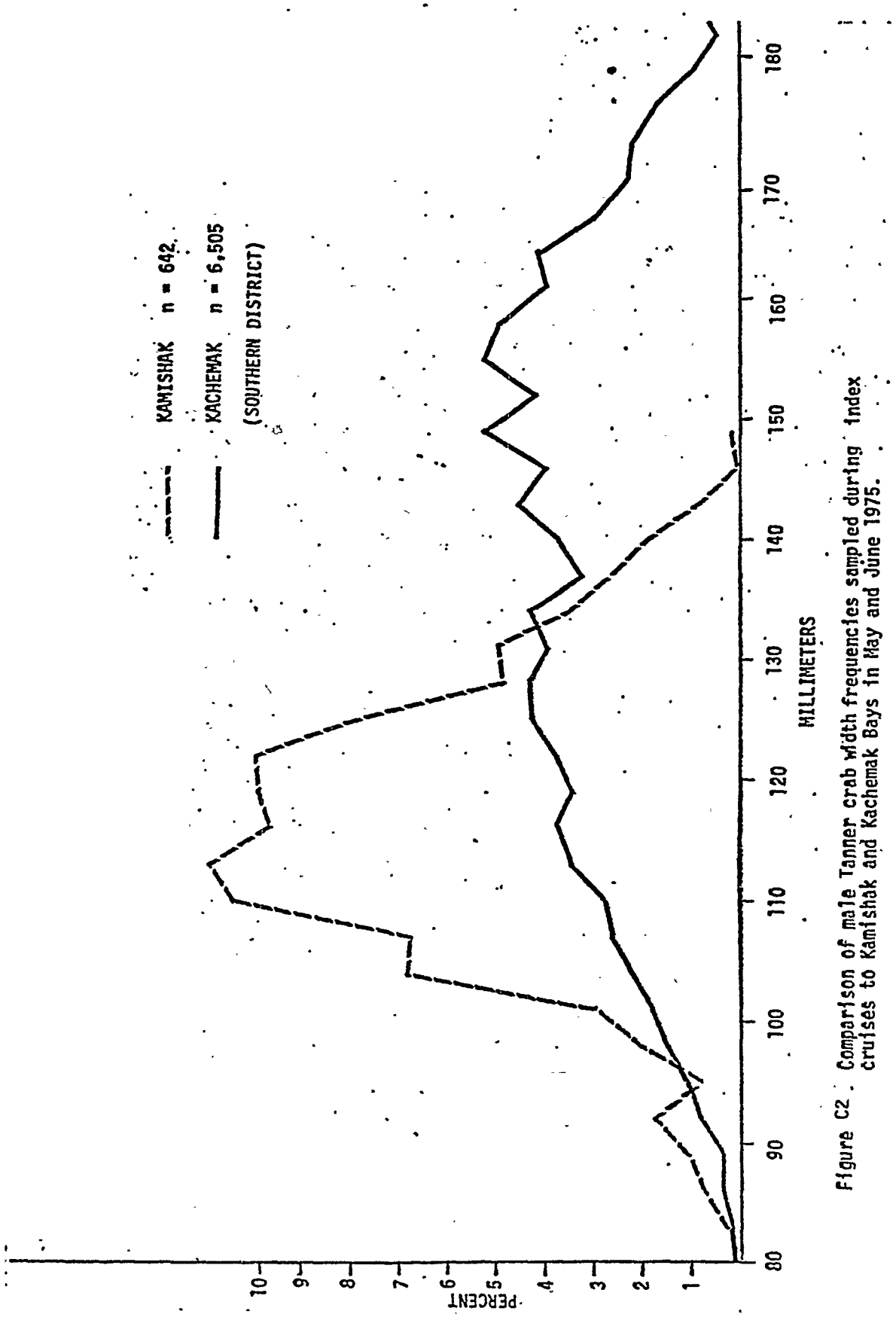


Figure C2. Comparison of male Tanner crab width frequencies sampled during index cruises to Kamishak and Kachemak Bays in May and June 1975.

C.3.2.1.4. Description of Vessels and Gear Employed

Of the 51 boats that landed Tanner crab in the Cook Inlet area in 1975, 21 were over 50 feet (15 m) in length, live-tanked, and designed for crab pot fishing. The remaining 30 boats were converted salmon fishing boats, 30 to 50 feet in length (9 to 15m), generally without live tanks. Because of size and the lack of live tanks, smaller boats are not capable of fishing more than 1 day's travel from the processing plants. Smaller boats participate primarily in the Southern district and larger vessels fish the Kamishak-Barren Islands and Outer-Eastern districts.

The majority of the Tanner crab boats use 7x7 feet (2.1 m) king crab pots with boards installed in the tunnels to reduce the opening height to 5 inches (127 mm). Conical shaped pots have been used occasionally with limited success.

C.3.2.2. History of Foreign Exploitation

There has been no foreign exploitation of Tanner crab in waters of Cook Inlet.

C.3.3. History of Management

C.3.3.1. Management Institutions, Policies, Jurisdictions

Cook Inlet Tanner crab are managed by the Alaska Department of Fish and Game. The management area is described in Section C.3.1. (also see Section 3.3.1.).

C.3.3.2. Domestic

C.3.3.2.1. and C.3.3.2.2. Regulatory Measures and Purpose of Measures

Initially the only regulatory measures employed were a males-only restriction and a measure describing crab pots and ring nets as legal methods of commercially harvesting the species. Regulatory measures are summarized in Table C3.

Table C3 . Major Regulations in Cook Inlet Tanner Crab Fisheries, 1970/71 Season to Present

Season	District	Fishing Season	Size Limit	G. H. L. Million lbs.	M.T.	Area Registration
1970/71	All	Aug 1-Jul 15	None	None		None
1971/72	All	Oct 1-Jun 30	None	None		None
1972/73	All	Nov 1-Jun 30	None	None		None
1973/74	Southern Kamishak/	Nov 1-May 29	None	None		None
	Barren Is. Outer/	Nov 1-May 3	None	None		None
	Eastern	Nov 1-Jun 7	None	None		None
1974/75	Southern Kamishak/	Dec 1-Jun 15	None	3.0	1361	Exclusive
	Barren Is. Outer/	Dec 1-Jun 15	None	4.5	2041	"
	Eastern	Dec 1-Jun 15	None	3.5	1588	"
1975/76	Southern Kamishak/	Dec 1-May 15	None	3.0	1361	Exclusive
	Barren Is. Outer/	Dec 1-May 31	None	4.5	2041	"
	Eastern	Dec 1-May 31	None	3.5	1588	"
1976/77	Southern Kamishak/	Dec 1-Apr 30	5.5 in.	3.0	1361	Exclusive
	Barren Is. Outer/	Dec 1-May 31	5.5 in.	4.5	2041	"
	Eastern	Dec 1-May 31	5.5 in.	3.5	1588	"

Note: There is a 75 pot limit during the open king crab season.

Source: ADF&G Shellfish Regulations

The first fishing seasons were enacted during the 1970/71 fishing year when opening/closing dates of August 1/July 15 were established. The following year (1971/72), the season was further restricted to October 1 thrugh June 30 and now opens December 1. The later date tends to increase meat yields.

Closing dates for districts have varied since 1973 from May 3 to June 30. The dates were established each year by inseason sampling in each district to determine the presence of newly molted male crab. An index program for king and Tanner crab abundances (Davis 1977) was started in the Southern district in 1974 and in the Kamishak district in 1975. Data from these programs have shown that by early June 80 perent of the male Tanner crab in the Southern district and 20 percent in the Kamishak district has recently molted. Based on these data, closing dates were established in 1977 with a May 31 closure for the Kamishak district and an April 30 closure for the rest of the districts.

The Cook Inlet management areas was established as an exclusive registration area starting with the 1974/75 fishing season. Vessels that register for an exclusive area may fish only that area. Intent to fish the exclusive area must be made 30 days prior to the season opening.

The exclusive registration area was established primarily for economic reasons. The fleet was primarily composed of small (under 50 feet, 15.24m) vessels that were not able to compete successfully with a large mobile crab fleet such as the type based in Kodiak. This type of fleet is capable of harvesting the Guideline Harvest Levels in the Cook Inlet area rapidly if allowed unrestricted fishing, leaving relatively small catch and short seasons to the local Cook Inlet fleet.

Guideline Harvest Levels were established in the Cook Inlet area beginning with the 1974-75 season. The levels are as follows:

District	Million pounds	Metric tons
Southern	3.0	1,361
Kamishak/Barren Islands	4.5	2,041
Outer/Estern	3.5	1,588

A size restriction on male Tanner crab was enacted for the 1976/77 fishing season. The regulation stipulates that no male crab with a shell width less than 5.5 inches (140 mm) may be taken commerically. This regulation is based on Kodiak research which indicates that the size limit asssures at least 1 year of sexual maturity before the crab become legal size.

A closed area in the Southern district has been in effect since 1973. Described as the area encompassed by a line south from Anchor Point to the intersection with a line west from the tip of Homer Spit, the closures protest molting-mating king crab from the Tanner crab fishery.

C.3.3.3. Foreign

There has been no foreign fishery.

C.3.3.4. Effectiveness of Management Measures

The exploitation of Tanner crab has a relatively short history. The 1976/77 season will be one of the first years that will see a harvest of progeny of previously exploited stocks.

One indicator suggesting that management measures are assuring a sufficient number of breeding males is the percentage of barren mature females. In the Southern district 1.9 and 0.8 percent were observed barren in June during 1975 and 1976 respectively (Davis 1977). Barren mature females in Kamishak amounted to 1.0 percent of the observed samples during July of 1976. These percentages indicate that sufficient males are available for breeding.

C.3.4. HISTORY OF RESEARCH

C.3.4.1. United States

Prior to 1974, the only Tanner crab data gathered in the Cook Inlet area were commercial harvest statistics and monitoring of the catch length frequencies, average weights, catch per pot and the incidence of recently molted crab.

A pot index program for king and Tanner crab aboundances was initiated in 1974 in the Southern district and 1975 in the Kamishak district. Methodology and results are described in Davis (1977). The program involves fishing standardized pots in a systematic sampling design during similar tie periods each year and comparing relative catch results.

Beginning in 1977 monthly bottom trawl surveys for Tanner and king crab were started in the Southern district to sample depth distribution and condition of the stocks.

C.3.4.2. Foreign

There has been no known foreign research on Tanner crab stocks in Cook Inlet.

C.3.5. SOCIO-ECONOMIC CHARACTERISTICS

C.3.5.1. Output of Subject Domestic Commercial Fishery

C.3.5.1.1. Value of Catch (Ex-vessel)

The annual ex-vessel value of Tanner crab harvested in Cook Inlet has ranged from $158,000 in 1969 to $1.5 million in 1974. In 1976 it was approximately $1.3 million (Table 1). The price per pound to the fishermen has ranged from 10 cents in 1969 to 34 cents in January 1977.

C.3.5.1.2. Description and Value of Produce (Wholesale)

Tanner crab are processed into either frozen meat or sections.

The wholesale value of the Cook Inlet pack was $7.0 million in 1973. During 1974 and 1975 the value was approximately $2.8 million. Value for 1976 is not available. Tables 2 and 3 show 1975 product values.

C.3.5.1.3. Markets, Domestic and Foreign

The pack is marketed in both the domestic and export markets. See section 3.5.1.3.

C.3.5.2. Domestic Commercial Harvesting Characteristics

C.3.5.2.1. Total Gross Income of Fleet (From Subject Fishery and All Other Fisheries)

During 1975 51 boats caught $800,000 worth of Tanner crab in Cook Inlet. The average gross income per boat was $15,800 and ranged from $10 to $87,000. Seventeen of the 51 vessels landed more than $10,000 of Tanner crab in 1975.

The majority of vessels in the 1975 Tanner crab fishery also fished in other commercial fisheries; 44 fished king crab, 16 Dungeness crab, 21 salmon, 5 shrimp (either pot or trawl gear) and 3 herring.

Boats fishing king crab averaged $33,000, those in the Dungeness fishery averaged $7,000.

The gross income for all fisheries (king crab, salmon, halibut, etc.) was $7.3 million in 1976, compared to a Tanner crab harvest of $1.2 million. The average total gross income per vessel was $101,600. Table 5 compares all management areas for 1976.

C.3.5.2.2. Investment in Vessels and Gear

No information available. See section 3.5.2.2.

C.3.5.2.3. Annual Participation in Subject Fishery

An estimated 1,715 vessel days were utilized in the Tanner crab harvest during 1976. This estimate is based on 1 day fishing per landing in the southern district, 7 days in the Kamishak-Barren Islands, and 4 days fishing per landing in the Outer-Eastern districts.

C.3.5.2.4. Total Manpower Employed

An estimated 165 fishermen participated in the Tanner crab fishery during 1975. Labor payments are not available. See section 3.5.2.4.

C.3.5.2.5. Economic viability

No information available. See section 3.5.2.5.

C.3.5.3. Domestic Commercial Processing Characteristics

There are four major Tanner crab processing facilities in the Cook Inlet area. the two plants in Homer and one cannery in Seward process section crab while the plant in Seldovia usually packs a straight meat product.

The processing capacity of the four plants operating in Seldovia, Seward, and Homer is 170,000 pounds (77.1 mt) per day (10-hour shift). There are also several hand pack facilities in the Homer area which produce whole or sectioned crab to the southcentral Alaska fresh seafood markets, primarily in the Anchorage area.

C.3.5.3.1. Total Gross Income of Area Processors

In 1976, the estimated wholesale value of the Tanner crab pack totaled $4.3 million for the four major and two minor processors.

During the same year the wholesale value of shrimp, king crab, and Dungeness crab totaled $1.642, $6.348, and $0.091 million respectively. Some of the processors also operate on finfish. See section 3.5.3.1.

C.3.5.3.2. Investment in Plant, Equipment, Etc.

No information is available. See section 3.5.3.2.

C.3.5.3.3. Total Employment and Labor Income

The four major plants have employed an average of 250 workers processing Tanner crab since 1970 in Cook Inlet. These plants also process king crab. See section 3.5.3.3.

No estimates are available concerning labor income.

C.3.5.3.4. Economic Viability

No information is available. See section 3.5.3.4.

C.3.5.4. Recreational Fishing Characteristics

There are no regulated recreational or sport fisheries for Tanner crab in Cook Inlet.

C.3.5.5. Subsistence Fishing Characteristics

Subsistence fishing for Tanner crab in Cook Inlet is open year-round with no sex, size, or gear restrictions except that explosives or chemicals may not be used. Subsistence caught crab may not be sold or bartered. subsistence fishermen must inscribe their name and address on their buoys.

At times, as many as 100 pleasure boats engage in the southern district fishery. Information concerning actual total harvest is not available; it is estimated that the catch is minimal.

C.3.5.6. Indian Treaty Fishing Characteristics

There are no Indian treaty fishing rights.

C.3.5.8. Area Community Characteristics

C.3.5.8.1. Total Population

The populations of communities directly involved in Tanner crab harvesting and processing are as follows: Homer trade area—4,500; Seward—2,200; and Seldovia—600. (Data source: City Clerks April 1977). Management area comparisons for 1976 are shown in Table 7.

C.3.5.8.2. Total Employment (From Subject and Other Area Fisheries)

It is estimated that 300 workers participate in Tanner crab processing at peak periods. No estimates are available of workers involved in related activities.

C.3.5.8.3. Total Work Force (All Industries Including Fisheries)

See Section 3.5.8.3.

C.3.6. Interaction Among User Groups

A conflict exists between Tanner crab gear and shipping in the Southern district. Voluntary shipping lanes have been established in the district. However, in some instances ships have not complied with the lanes and cut off, dragged, or entangled Tanner crab pot lines and buoys. Some fishermen are reported to have lost as many as 25 pots during one year.

Another minor conflict occurs between shrimp trawl and Tanner crab pot fishermen. In most cases the fishermen are able to maneuver around pots but on occasion pots are dragged away from their original fishing location.

C.3.7. Federal State Revenues Derived From Fishery

These values were estimated for the total state harvest and reported in Section 3.7.

C.4.0. Biological Descriptors

C.4.1. Life History Features

The general life history of Tanner crab is described in the statewide portion of this report, Section 4.1.

C.4.2. Stock Units

There are three Tanner crab stock units within the Cook Inlet area that are separated geographically. These units are the Southern or Kachemak Bay stock, the Kamishak-Barren Island stock and the Outer-Eastern stock. The Outer-Eastern stock is harvested primarily from Harris Bay, Outer Resurrection Bay, and Day Harbor.

C.4.3. Catch Effort Data

Catch sampling is conducted at delivery points in Homer, Seldovia, and Seward. Interviews with fishermen determine areas fished, number of pots pulled, average weight of crab landed, and other pertinent information. A sample of the landing is measured for width frequency.

The unstandardized (e.g. soak times are not consistent) catch per pot and average weight by month for the Southern and Kamishak districts are listed in Tables C4 and C5. There are no data for the Outer-Eastern district.

TABLE C4. CATCH, AVERAGE CATCH PER POT (unstandardized) AND AVERAGE WEIGHT OF TANNER CRAB CAPTURED IN THE COMMERCIAL FISHERY OF COOK INLET'S SOUTHERN DISTRICT. 1974/75 SEASON TO PRESENT.

	1974/75					1975/76					1976/77[1/]				
Month	Catch 10^3lbs	MT	No. Per Pot	Avg. Wt. Lbs.	KG	Catch 10^3lbs	MT	No. Per Pot	Avg. Wt. Lbs.	KG	Catch 10^3lbs	MT	No. Per Pot	Avg. Wt. Lbs	KG
December	29	13	3.42	3.26	1.48	191	87				660	299	16.23	2.85	1.29
January	76	34	3.56	3.08	1.40	236	107	2.53	2.94	1.33	689	313	15.97	2.83	1.28
February	54	25		3.00	1.36	360	163	9.24	2.75	1.25	408	185	9.57	2.91	1.32
March	209	95	14.63	2.85	1.29	172	78	14.7	2.55	1.16	178	81	11.27	2.65	1.20
April	313	142	25.14	2.88	1.31	399	181	21.74	2.42	1.10					
May	260	118	21.8	2.68	1.22	96	44	29.28	2.18	0.99					
June	25	11													
Weighted Ave.			18.94	2.85	1.29			12.68	2.65	1.20			14.27	2.84	1.29

1/ Incomplete season

Source: ADF&G dockside samples

TABLE C5. CATCH, AVERAGE CATCH PER POT (unstandardized) AND AVERAGE WEIGHT OF TANNER CRAB CAPTURED IN THE COMMERCIAL FISHERY OF COOK INLET'S KAMISHAK/BARREN ISLANDS DISTRICTS. 1974/75 SEASON TO PRESENT.

	1974/75					1975/76					1976/77[1/]				
Month	Catch 10^3lbs	MT	No. Per Pot	Avg. Wt. Lbs.	KG	Catch 10^3lbs	MT	No. Per Pot	Avg. Wt. Lbs.	KG	Catch 10^3lbs	MT	No. Per Pot	Avg. Wt. Lbs	KG
December						1	0.45								
January						5	2.3				1				
February						16	7.3				61				
March						199	90	21.8	2.51	1.14	210		25.75	2.35	1.07
April	1032	468	116.19	2.04	0.93	1291	586	86.09	2.20	1.00					
May	1596	724	115.73	1.98	0.90	1765	801	86.68	2.06	0.94					
June	523	237	85.25	1.68	0.76										
Weighted Avg.			110.82	1.95	0.89			82.07	2.14	0.97					

1/ Incomplete season

Source: ADF&G dockside samples

Catch per pot information from the Southern district has remained relatively consistent for 3 years. It is anticipated that the 1976–77 catch per pot of legal sized crab in the Kamishak district will be less than the previous two seasons due to the new size limit restrictions.

C.4.4. SURVEY AND SAMPLING DATA

Relative abundance indices of Tanner crab in the Southern district are made concurrent with the king crab indexing program for the years 1974–1976 (Davis, 1977). The standardized index catch per pot of legal male Tanner crab was 16.2, 19.6, and 9.6 respectively. These data indicate a reduction during the 1976 cruise which may be the result of a weak recruit class.

One thousand carapace dart tagged legal Tanner crab were released in the Southern district just prior to the 1976–77 commercial season. By April 1977, 48 percent of the tags had been returned by commercial fishermen. The harvest at that time totaled 1,950,000 pounds (885 mt). Based on a Peterson mark-recapture estimate (Ricker 1975) a total of 1.426 million legal crab (±65,000 at 67 percent confidence) weighing 4 million pounds (1,814 mt) were available for harvest beginning in December 1976 in the district.

Another indicator of stock status is the percentage of mature barren females in the population. Observations in both the Southern and Kamishak districts have shown that less than 2 percent are barren.

C.4.6. QUALITY OF DATA

Fishery monitoring information from the Kamishak and Southern districts is relatively complete. Abundance surveys have been conducted in the Southern district since 1974. Information from other districts is limited. See Section 4.6.

C.4.7. CURRENT STATUS OF STOCKS

C.4.7.1. Maximum Sustainable Yields (MSY)

The average catch of Tanner crab in Cook Inlet for the past four seasons has been 6.3 million pounds (2,858 mt). Catches have ranged from 4.1 million pounds (1,860 mt) to 8 million pounds (3,629 mt), no size limit. The average catch of crab larger than 140 mm carapace width would have been 5.3 million pounds (2,404 mt). Lacking other data, a weak estimate of MSY is 5.3 million pounds (2,404 mt).

C.4.7.2. Equilibrium Yield (EY)

There is no data base to develop an EY estimate.

C.4.7.3. Acceptable Biological Catch (ABC)

Based upon historic catch levels the ABC is set at 5.3 million pounds (2,404 mt).

C.4.8. ESTIMATE OF FUTURE STOCK CONDITIONS

Future stock abundance cannot be predicted with any degree of accuracy. Gross indicators suggest the reproductive potential of the stock is good.

C.5.0. CATCH AND CAPACITY DESCRIPTORS

C.5.1. DATA AND ANALYTICAL APPROACHES

C.5.1.1. Domestic

Table C2 contains the historic catch for Cook Inlet. Tables 4 and 11 give a description of the Cook Inlet fleet and its capacity.

C.5.2. DOMESTIC ANNUAL CAPACITY (DAC)

The Cook Inlet DAC (seasonal live tank capacity) is estimated at 38 million pounds (17,237 mt).

C.5.3. EXPECTED DOMESTIC ANNUAL HARVEST (DAH)

Assuming no adverse market conditions or major redistribution of fishing effort, the 1977–78 DAH is expected to be 5.3 million pounds.

C.6.0. OPTIMUM YIELD (OY)

C.6.1. DEPARTURE FROM MSY TO ABC FOR BIOLOGICAL REASONS

The ABC for the Cook Inlet management area, in the absence of any biological information that would dictate otherwise, is set equivalent to MSY.

C.6.2. DEPARTURE FROM ABC FOR SOCIO-ECONOMIC REASONS

In the absence of any explicit socio-economic objectives which would require the optimum yield to deviate from the ABC, they are set equivalent.

C.6.3. OPTIMUM YIELD (OY)

The optimum yield is set at 5.3 million pounds (2,404 mt) for the 1977–78 season in Cook Inlet.

C.7.0. TOTAL ALLOWABLE LEVEL OF FOREIGN FISHERY (FAC)

Given the estimated MSY and DAH, the FAC for 1977–78 is zero.

C.8.0. MANAGEMENT REGIME

See statewide section 8.0.

KODIAK MANAGEMENT AREA

D.3.0. DESCRIPTION OF FISHERY

D.3.1. AREA AND STOCKS INVOLVED

The target species is *C. bairdi* in the Kodiak management area. This area consists of the Pacific Ocean waters south of the latitude of Cape Douglas, west of 150° W. longitude and east of the longitude of Cape Kumlik (157°27′ W. longitude). See Figure 1.

D.3.2. HISTORY OF EXPLOITATION

From the initial harvest in 1967, the Tanner crab fishery slowly expanded through 1972 with harvest levels increasing to 9.5 million pounds (4,309 mt) in the 1971–72 season (Table D1). Areas fished initially were the inshore bays and nearshore waters of the east and west side of Kodiak Island with the harvest before 1970 usually incidental to the king crab fishery or as a supplemental income source during the winter and spring months. Increasing restriction on king crab seasons due to reduced population levels speeded development and processing interest in Tanner crab. Late winter and spring months (February-May) were the most productive periods, though the fishery was legally open the entire year with the exception of a 2-week closure prior to the opening of king crab season, August 15.

Table D1 Historic commercial catch and effort of Tanner crab in the Kodiak Management Area, 1967-1977[1/]

Calendar Year	Fishing Year	No Vessels	Catch Pounds	Catch MT	No. Landings	Unweighted mean Catch/Landings Pounds	Unweighted mean Catch/Landings MT	No. Pot Lifts	Ave. No. Crab/Pot
1967			110,961	50.33	83	1,337	.61		
1968			2,560,687	1,161.51	817	3,134	1.42		
1969		85	6,827,312	3,096.82	955	7,149	3.24	72,748	43
	1969-72[2]	67	8,416,782	3,817.79	833	10,104	4.58	78,266	42
	1970-71	82	6,744,163	3,059.10	453	14,888	6.75	60,967	44
	1971-72	46	9,475,902	4,298.20	505	18,764	8.51	65,907	59
	1972-73	105	30,699,777	13,925.20	1,466	20,941	9.50	188,158	67
	1973-74[3]	123	29,820,899	13,526.55	1,741	17,129	7.77	217,523	59
	1974-75[3]	74	13,649,969	6,191.53	471	28,981	13.15	73,826	83
	1975-76[4]	104	27,336,911	12,399.83	1,168	23,405	10.67	199,304	64
	1977[5]	98	21,000,000	9,525.54	950	22,105	10.03	150,539	48
TOTAL (FISHING YEARS)		699	147,144,403	66,743.74	7,587	-	-	1,034,490	-
AVERAGE (FISHING YEARS)		87	18,393,050	8,342.97	948	19,540[6]	8.86[6]	129,311	(weighted avg) 59.4

[1] Data Source: Alaska Department of Fish and Game Annual Board of Fish and Game Reports and Annual Kodiak Area Mgmt. Report.
[2] Fishing year July 1 - June 30.
[3] Legal season November 1 - June 30. Season terminated May 15 due to onset of mating period.
[4] Legal season November 1 - April 30.
[5] Legal season January 1 - April 30 (catch and effort projected)
[6] Weighted averages.

In 1973, a major expansion of the fishery took place due to an extremely short king crab season and favorable Tanner crab marketing conditions. The catch reached 30.7 million pounds (13,926 mt) for the 1972-73 fishing season. This harvest and the discovery of large untapped offshore stocks established Tanner crab as a principal winter-spring fishery providing fishermen with an earning potential similar to the king crab fishery. By 1975, the offshore area of Cape Ikolik to Chirikof Island, Portlock Banks, Shelikof Strait, Chiniak Gully and Albatross Bank were mostly explored. Many of these areas yielded large quantities of Tanner, with numerous loads averaging 3.0 pounds (1.36 kg) per crab.

Commercial harvests totaled 29.8 million pounds (13,526 mt) during the 1973-74 season, 13.6 million pounds (6,169 mt) in the 1974-75 season, and 27.3 million pounds (12,383 mt) in the 1975-76 season.

The 1977 season (January-April) in the Kodiak area had a guideline harvest range of 15 to 25 million pounds (6,804 to 11,340 mt) and a harvest of 20.7 million pounds (9,399 mt).

D.3.2.1. Domestic Fishery

D.3.2.1.1. Description of User Groups

The user group in the Kodiak area Tanner fishery is made up primarily of commercial fishermen. This group is composed of 90 Alaskan residents and 8 nonresident vessel captains. An insignificant subsistence fishery for Tanner crab exists with the catch being less than 10,000 pounds (4.5 mt) annually.

D.3.2.1.2. General Description of Fishery Effort

Fishing effort was incidental to the established king crab fishery prior to the early 1970's. Tanner crab were harvested on a part-time basis during this period with markets slow to develop. Effort data (number of vessels, pots lifted and landings) are available starting with the 1969-70 fishing season (Table D1). For the 1969-70 through 1971-72 seasons an average of 65 vessels fished. Catches ranged from 6.7 to 9.5 million pounds (3,039 to 4,309 mt). Landings averaged about 600 per season with an average of 68,400 pot lifts made yearly. Beginning with the 1972-73 season, a major expansion took place with a total harvest of 30.7 million pounds (13,926 mt) caught by 105 vessels making 1,466 landings and 188,000 pot lifts. The fishery has continued to maintain a similar effort level through the 1977 season with the exception of the 1974-75 season when prolonged price negotiations limited the fishing effort to approximately one-half the normal seasonal effort.

Since 1972, market development and resulting improvements in ex-vessel price has contributed substantially to increasing both vessel effort and size as a character of the fleet.

D.3.2.1.3. Catch Trends

The first year of harvest occurred in 1967 with a catch of 111,006 pounds (50.33 mt). commerical harvest peaked during the 1972-73 fishing season when 30.7 million pounds (13,925 mt) were taken. Though catches have fluctuated since the peak year, the annual harvest for all fishing seasons since the 1969-70 season has averaged 18.4 million pounds (8,356 mt). Since the 1972-73 season when effort, markets, and exploration developed a more fully exploited fishery, the average annual harvest has been 24.5 million pounds (11,114 mt). Starting with the 1972-73 season, a guideline harvest range of 25-30 million pounds 11,340 to 13,608 mt) was established. For the 1977 season, a statewide (with the exception of Prince William Sound) minimum size of 5.5 inches (140 mm) was set. After adjusting the harvest levels in light of this minimum size, a harvest range of 15-25 million pounds (6,804 to 11,340 mt) was set for the 1977 season. Existing stock conditions and catch per unit of effort data indicate that seasonal harvest levels can be sustained in the upper end of the range during the 1978 season (January-April). The catch history is documented in Table D1.

D.3.2.1.4. Description of Vessels and Gear Employed

Historically, the Kodiak Tanner crab fisery has been conducted by salmon limit seiners, small steel hulled vessels and large wood hulled vessels. However, during the past 4-5 years, many newly constructed vessels have entered the fleet. In many cases, these are large steel hulled "combination" vessels capable of trawl and pot fishing. They are also capable of ranging to offshore grounds and harvesting stocks not available to smaller local vessels. Generally, these larger vessels are 60-120 feet (18 to 37 m). The 1977 season fleet (active vessels) averaged 56 feet (17 m) with vessels ranging from 30 to 134 feet (9 to 41 m). Average net tonnage for the fleet is 68 tons (62 mt) with vessels ranging from 3.5 to 197.5 net tons (3.2 to 179.2 mt). Average hold capacity of the 1977 season fleet (per vessel) is 39,000 pounds (17.7 mt).

Gear used in the Tanner fishery consists mainly of conventional rectangular king crab pots with modified tunnel entrances (92 percent) ranging in size from 5x5 feet (1.5 m) to 8x8 feet (2.4 m) pots. Fifty percent of this gear is composed of 7x7 feet (2.1 m) gear. Pyramid style pots composed only 7.2 percent of the total gear used and Japanese longline conical pots constitute the remaining 1 percent. Total gear fished is 9,000 pots as indicated from a fleet survey during the 1977 season.

D.3.2.2. History of Foreign Exploitation

No foreign fishery for Tanner crab exists in the Kodiak management area.

D.3.3. History of Management

D.3.3.1. Management Institutions, Policies, Jurisdictions

The Kodiak management area is defined in Section D.3.1. The Division of Commercial Fisheries within the Alaska Department of Fish and Game exercises management control of the fishery and maintains historical catch and production records at the headquarters in Juneau. Inseason management responsibility, preliminary development of management planning and management related research is conducted out of the regional ADF&G office in Kodiak.

D.3.3.2. Domestic

D.3.3.2.1 and D.3.3.2.2. Regulatory Measures and Purpose of Measures

When the Tanner crab fishery began in 1967, there were no restrictions except for the definition of gear that could be used, i.e. pots, ring nets and diving gear. As the fishery developed and effort increased, seasons, size limits, and harvest guidelines were established (Table D2).

TABLE D2. Historical Development Of Regulatory Measures For Kodiak Management Area Tanner Crab.

YEAR	SEASON 1/	GUIDELINE HARVEST LEVEL	AREA REGISTRATION	SIZE	GEAR
1967	None	None	None	None	Pots, ring nets and diving gear
1968	None	None	None	None	Same plus tunnel height to 4"
1969	1/1-7/31 & 8/15-12/31	None	None	None	"
1970	"	None	None	None	"
1970/71	8/15-7/31	None	None	None	"
1971/72	"	None	None	None	"
1972/73	"	None	None	None	"
1973/74	2/	30 10^6lbs 3/ (13 608 MT)	None	None	"
1974/75	2/	"	None	None	Same except tunnel to 5".
1975/76	11/1 - 6/30	24-30 10^6lbs (11340-13608 MT)	None	None	"
1976/77	1/1 - 4/30	15-25 10^6lbs (6804-11340 MT)	None	5.5 in. (140mm)	"

1/ Seasons may have closed early by emergency order.

2/ North of the latitude of Cape Barnabas and east of the longitude of the northern tip of Shuyak Island: from November 1 through June 30:

North of a line from Cape Ikolik to Kilokak Rocks and west of the longitude of the northern tip of Shuyak Island: from November 1 through June 30;

South of the latitude of Cape Barnabas and south of line from Cape Ikolik to Kilokak Rocks: from January 1 through June 30.

3/ Levels for 1973/74 through 1975/76 are "departmental guidelines" not in the regulation booklets.

Source: ADF&G Shellfish Regulations, Juneau.

Fishing season. Starting in 1969, the season was set from January 1 through July 31, and August 15 through December 31. The two week closure was to provide for an orderly transition into the king crab season that began August 15. By 1973/74, effort levels, rates of harvest, and accumulating biological information combined to shorten the season to November 1 through June 30. However, it became apparent that mating crab and newly molted males were being taken with increasing frequency. Therefore, the 1973/74 season was terminated May 15. The 1974/75 season ran approximately the same time, November 1 through May 31. In the 1975/76 season fishing was allowed from November 1 through April 30 since research information indicated May as one of the peak months of reproductive activities. The current season (1977), was further adjusted to January 1 due to processors' requests to harvest crab during periods of greatest meat recovery.

Guideline harvest levels. During the 1973/74 season the first guideline harvest level was established: not to exceed the 1972/73 harvest of 30.7 million pounds (13,925 mt). The 1974/75 season harvest was reduced by market conditions. The 1975/76 guideline harvest range was 25 to 30 million pounds (11,340 to 13,608 mt). Data gathered from Tanner crab research indexing efforts plus a new size limit was used to establish an area guideline harvest level of 15 to 25 million pounds (6,804 to 11,340 mt).

Size limits. Results of growth per molt studies and size at maturity provided the basis for the 5.5 inch (140 mm) minimum size limit on male Tanners established the 1977 season. Prior to this time no size limit had been imposed on the fishery. See section 3.3.2.2 for purpose and rationale of the 5.5 inch (140 mm) size limit.

Gear. Pots, ring nets and diving gear have constituted legal gear for commerical harvesting of Tanner crab since the fishery's beginning in 1967. In 1968 a tunnel entrance not more than 4 inches (102 mm) was set. In 1974 this was changed to not exceed 5 inches (127 mm). These tunnel restrictions allow Tanner crab free access to a pot while keeping out most larger king crab, thus reducing sorting and handling mortality.

Sex limitation. Only male Tanner crab may be legally harvested. See section 3.3.2.2. for the purpose and rationale of this regulation.

D.3.3.3. Foreign

There is no foreign fishery in the management area.

D.3.3.4. Effectiveness of Management Measures

The recent implementaton of management measures has not allowed sufficient time for them to be evaluated as to their long-term effectiveness. It appears that Tanner crab in the Kodiak management area have not been over exploited by past fishing and that current regulations will adequately protect breeding stock and maintain the general stock health.

D.3.4. History of Research

See Section 3.4.

D.3.5. Social-Economic Characteristics

D.3.5.1. Output of Subject Domestic Commercial Fishery

D.3.5.1.1. Value of Catch (Ex-Vessel)

From 1967 through 1975, ex-vessel value of the Kodiak Tanner catch fluctuated from 7 to 20 cents per pound. Increased demand for Tanner crab sections and meat in U.S. and foreign markets raised the 1977 seasonal price to 34 cents. The 1977 harvest of 20.7 million pounds (9,399) was valued at $7,038,000 and is the greatest value in the history of the Kodiak fishery.

D.3.5.1.2. Description and Value of Product (Wholesale)

See section 3.5.1.2.

D.3.5.1.3. Markets, Domestic and Foreign

See section 3.5.1.3.

D.3.5.2. Domestic Commerical Harvesting Characteristics

See section 3.2.1.4.

D.3.5.2.1. Total Gross Income of Fleet

The gross income of the Kodiak Tanner crab fleet for all fisheries was $18.5 million in 1976. This compares to a Tanner crab harvest valued at $5 million. The average total gross income per vessel was $175,700. Table 5 compares all management areas for 1976.

D.3.5.2.2. Investment in Vessels and Gear

This information is not available for the Kodiak management area. See section 3.5.2.2.

D.3.5.2.3. Annual Participation in Subject Fishery

Data for the 1975/76 fishing season indicates 1,168 landings were made. The 1977 season produced 998 landings. Based on an estimated 5 vessel days per trip, 5,840 and 4,990 vessel days were expended respectively. The number of vessels and effort exerted in the fishery appears in Table D1.

D.3.5.2.4. Total Manpower employed

Employment: harvest and processing sectors. During the 1975/76 season, the estimated employment in the harvesting and processing sectors in the Kodiak management district was 400 to 1,500 persons respectively during the peak of the season.

D.3.5.2.4. Total Manpower Employed

Employment: harvest and processing sectors. During the 1975/76 season, the estimated employment in the harvesting and processing sectors in the Kodiak management district was 400 to 1,500 persons respectively during the peak of the season.

D.3.5.2.5. Economic Viability

Data not available, See section 3.5.2.5.

D.3.5.3. Domestic Commercial Processing Characteristics

D.3.5.3.1. Total Gross Income of Area Processors

Data not available. See section 3.5.3.1.

D.3.5.3.2. Investment in Plant, Equipment, Etc.

Data not available. See section 3.5.3.2.

D.3.5.3.3. Total Employment and Labor Income

Average seasonal employment by Kodiak area processors is estimated to be 1,500. Labor income is not available. See section 3.5.3.3.

D.3.5.3.4. Economic Viability

Data not available. See section 3.5.3.5.

D.3.5.4. Recreational Fishing Characteristics

No regulated sport fishery exists in the Kodiak management area for Tanner crab.

D.3.5.5. Subsistence Fishing Characteristics

A Tanner crab subsistence fishery of minor significance exists with total annual catch not exceeding 10,000 pounds (4.5 mt). Principal gear is ring nets. Crab are also taken for subsistence incidentally while fishing for other commercial species.

D.3.5.6. Indian Treaty Fishing Characteristics

No Indian treaty rights exist.

D.3.5.8 Area Community Characteristics

D.3.5.8.1. Total Population

Kodiak	[1]7758
Port Lions	[2]227
Quzinkie	[2]160
Port Williams	[2]44
Karluk	[2]98
Larsen Bay	[2]109
Akhiok	[2]115
Old Harbor	[2]300
Total population Kodiak Island	8361

[1]Estimated 1977—including military.
[2]1970.

Table 6 shows the yearly total population since 1970.

D.3.5.8.2. Total Employment

Data not available. See section 3.5.8.2.

D.3.6. Interaction Among User Groups

With the exception of the very minor subsistence fishery, the only users of the Tanner crab resource in this management area are U.S. commercial fishermen.

D.3.7. Federal and State Revenues Derived from Fishery

See section 3.7 and Table 9.

D.4.0. Biological Descriptors

D.4.1. Life History Features

See General Life History, section 4.1 for description of biological characteristics of Tanner crab.

D.4.2. Stock Units

Stock units in the Kodiak area are not well defined at this time. However, established fishing grounds, tag release and recovery data, and preliminary analysis from the king crab population assessment studies (captured Tanners were recorded and analyzed) indicate stock differentiation.

D.4.3. Catch Effort Data

Table D1 contains historical catch and effort data for the Kodiak area.

D.4.4. Survey and Sampling Data

ADF&G management sampling data consists of vessel interviews, dockside width frequency samples, crab tag recovery and logbook information (no logbooks in 1977). Research data on Tanner crab, (including sex, age, and size composition, tagging studies,

fecundity and distribution, was conducted during the 1971-76 Kodiak area king crab population studies. Life history studies on growth, size at maturity, mating and seasonal timing of mating have been conducted by research biologists within the management area from 1973 to present.

D.4.6. QUALITY OF DATA.

See section 4.6.

D.4.7. CURRENT STATUS OF STOCKS

D.4.7.1. Maximum Sustainable Yield (MSY)

Because of insufficient research data, no estimate of MSY can be developed using generally accepted population dynamics models. However, a weak estimate of a MSY of 21.5 million pounds (9,752 mt) has been derived by using the average catch of 25.1 million pounds (11,385 mt) for the seasons 1972/73 through 1975/76 reduced by the portion of the catch (14 percent) which was under 5.5 inches (140 mm).

Analysis of commercial catch and assessment data obtained during 4 years of intensive fishing prior to the 1977 season when the average catch was 25.1 million pounds (11,385 mt) indicates that the current exploitation level has not significantly affected brood stock capacity or caused an overall sharp decline in crab abundance.

D.4.7.2. Equilibrium Yield (EY)

Data sufficient to estimate the equilibrium yield are not available.

D.4.7.3. ACCEPTABLE BIOLOGICAL CATCH (ABC)

Based upon the average catch since the 1972/73 season and current biological information, an acceptable biological catch of 15 to 25 million pounds (6,804 to 11,340 mt) has been established.

D.4.8. ESTIMATES OF FUTURE STOCK CONDITIONS

Future Tanner crab stock conditions cannot accurately be determined until a more detailed stock assessment study is completed covering all major area stocks. Available data suggest general healthy stock conditions capable of supporting current production levels.

D.5.0. CATCH AND CAPACITY DESCRIPTORS

D.5.1. DATA AND ANALYTICAL APPROACHES

D.5.1.1. Domestic

Harvesting and processing capacities are listed in Tables 6 and 11 for the 1977 season. The number of vessels is calculated from fish ticket information. Information on capacities was collected through vessel interviews. Processing information was gathered from ADF&G annual reports and interviews with plant managers.

D.5.1.2. Foreign

There is no foreign fishery in the Kodiak area.

D.5.2. DOMESTIC ANNUAL CAPACITY (DAC)

The DAC is estimated at 38,000,000 pounds (17,237 mt).

D.5.3. EXPECTED DOMESTIC ANNUAL HARVEST (DAH)

The DAC is approximately 1,8 times the 1977 harvest of 20.7 million pounds (9,399 mt). The price received per pound and increased handling and sorting costs limited participation in the 1977 fishery. The DAH for the 1978 season could suffer similar limitations unless the price (ex-vessel) is increased.

With an increase in the ex-vessel price to approximately 40 cents per pound, projections for the 1978 season indicate an effort level of 110 to 120 vessels with the capability of harvesting the maximum end of the ABC harvest range of 25 million pounds (11,340 mt). The large Tanner resources in the Bering Sea will probably draw most newly made vessels to that area. However, the fishing period differences make it likely that many of these vessels will participate in the Kodiak fishery in 1978.

D.6.0. OPTIMUM YIELD

D.6.1. DEPARTURE FROM MSY TO ABC FOR BIOLOGICAL REASONS

ABC has been set as a range with its midpoint approximately equivalent to the estimated MSY.

Specifying ABC as a range reflects the inadequacy of the biological data and allows inseason management decisions to be made based upon the current status of the stock.

D.6.2. DEPARTURE FROM ABC FOR SOCIO-ECONOMIC REASONS

In the absence of any explicit socio-economic objectives which would require optimum yield to deviate from the acceptable biological catch, OY is set equivalent to ABC.

D.6.3. OPTIMUM YIELD (OY)

Optimum yield for the Kodiak management area is set at 15 to 25 million pounds (6,804 to 11,340 mt).

D.7.0. TOTAL ALLOWABLE LEVEL OF FOREIGN FISHERY (FAC)

Given the estimated MSY and DAH, the FAC for 1977/78 is zero.

D.8.0. MANAGEMENT REGIME

See statewide section 8.0.

SOUTH PENINSULA/ALEUTIAN MANAGEMENT AREA

E.3.0. DESCRIPTION OF FISHERY

E.3.1. AREA AND STOCKS INVOLVED

The target species is *C. bairdi*. The area consists of three districts. (1) the South Peninsula district is defined as all Pacific Ocean waters of statistical area J [1] between the longitude of Cape Kumlik and the longitude of Scotch Cap light; (2) the Eastern Aleutian district encompasses all waters of statistical area J between the longitude of Scotch Cap light an 172° W. longitude, and south of 54° 36' N. latitude; and (3) the Western Aleutian district includes all waters of statistical area J west of 172° W. longitude and south of 54°36' N. laitude.

E.3.2. HISTORY OF EXPLOITATION

The Tanner crab fishery in the South Peninsula district began in 1967 with a catch of 5,000 pounds (2.3 mt). As in other areas of the Westward region, the early catch was incidental to the king crab harvest. The directed fishery for Tanner crab developed during closed king crab periods. During the 1973/74 season a major increase in fishing effort took place and 13.7 million pounds (6,214 mt) were landed (Table E1). Favorable market conditions, increased processing capacity, and extensive stock exploration helped establish Tanner crab fishing in the South Peninsula district.

[1] Statistical area J has as its northern boundary a line extending east from Cape Douglas, as its eastern boundary 150° W. longitude, as its western boundary 172° E. Longitude, and includes all waters of the Bering Sea east of 172° E. longitude.

Table E1 Historic commercial harvest and effort for the Tanner crab fishery in the South Peninsula district of the South Peninsula/Aleutian Management Area.

Calendar Year	Seasons	No. Vessels	Catch Pounds	Catch MT	No. Landings	No. Pot Lifts	Catch per lift Pounds	Catch per lift MT
1967	-	-	5,000	2.68	11	-	-	-
1968	-	-	131,700	59.74	184	-	-	-
1969	-	-	644,400	292.30	-	-	-	-
1970	-	32	2,096,400	950.91	308	26,975	78	0.035
1971	-	-	2,293,100	1,040.13	238	26,390	87	0.039
1972	-	-	3,645,400	1,653.53	-	-	-	-
1973	-	51	6,363,351	2,886.37	446	61,653	103	0.047
	1973/74 1/	66	13,728,670	6,227.23	631	102,107	134	0.061
	1974/75 1/	45	8,845,244	4,012.14	233	60,828	145	0.065
	1975/76 2/	69	18,128,102	8,222.95	506	111,758	162	0.073
	1976/77 3/	42	12,446,807	5,645.83	293	82,261	151	0.07
TOTAL (Seasons)		222	53,148,823	24,108.15	1,663	365,954	592	0.27
MEAN (Seasons)		56	13,287,206	6,027.04	416	89,239	148	0.07

1/ Fishing Year July 1 - June 30.
2/ Legal Season November 1 - June 1.
3/ Catch and effort preliminary: Season November 1 - May 15.

Data Source: Alaska Department of Fish and Game Annual Reports

The fishery had developed separately in the Chignik and Sand Point-Unimak Bight portions of the district. In the Chignik section prior to 1974 the catch was less tahn 0.8 million pounds (363 mt). Catches had increased to 4.3 million pounds (1,950 mt) in the 1974/75 season. The 1975/76 catch increased to 11.2 million pounds (5,080 mt) with Kodiak based vessels taking the majority of the catch. The 1976/77 season harvest from Chignik was 5.7 million pounds (2,586 mt).

Important fishing grounds in the Chignik section are Mitrofania Island, Seal Cape, Kujulik Bay and Semidi Islands.

Catches in the remaining portion of the South Peninsula district, Kupreanof Point to Scotch Cap, were highest in the 1973/74 season when 9.5 million pounds (4,309 mt) were landed. Landings for the 1974/75 season and the 1975/76 seasons were 5.2 and 6.9 million pounds (2,539 and 3,130 mt) respectively. The highly mobile Dutch Harbor based fleet takes 25-35 percent of the annual catch in the Unimak Bight portion of the district. The 1976/77 season harvest for this portion of the South Peninsula district was 6.8 million pounds (3,084 mt).

Although the harvest of Tanner crab in the South Peninsula District was expected to approach 20 million pounds (9,072 mt) during the 1976/77 season, much of the expected effort did not materialize.

Tanner crab fishing in the Eastern Aleutian district since 1968 has been minimal and sporadic, with 563,500 pounds (256 mt) in 1974 being the largest recorded catch (Table E2). This fishery could gain increased importance in the future as the king crab harvest is divided between more vessels and alternative sources of income are sought.

Table E2. Catch and landings by year of Tanner crab in the Eastern Aleutian district of the South Peninsula/Aleutian Management Area.

Calendar Year	No. Vessels	Catch Pounds	Catch MT	No. Landings
1968	-	3,000	1.36	22
1969	-	21,000	9.53	16
1970	-	0	0	0
1971	-	0	0	0
1972	-	4,000	1.81	0
1973	-	62,128	28.18	3
1974	14	563,500	255.60	15
1975	2	77,164	35.00	3
1976	8	534,295 1/	242.35	11
TOTAL (All Years)		1,264,687	573.83	
AVERAGE (All Years)		180,670	31.95	

Source: Alaska Department of Fish and Game Annual Reports (1968-1975)

1/ Projected harvest.

In the Western Aleutian district, Tanner crab have never been an important commercial species and most landings are incidential to the king crab fishery. Annual catches for the years 1973 through 1976 have not exceeded 168,000 pounds (76 mt) (Table E3).

Table E3 Commercial harvest by year of Tanner crab in the Western Aleutian district of the South Peninsula/Aleutian Management Area.

Calendar Year	No. Vessels	Catch Pounds	Catch MT
1973	-	168,000	76.20
1974	-	70,000	31.75
1975	1	3,320	1.51
1976	0	0	0
TOTAL (All Years)		241,320	109.47
AVERAGE (All Years)		80,440	36.49

Data Source: Alaska Department of Fish and Game Annual Reports.

E.3.2.1. Domestic Fishery

E.3.2.1.1. Description of User Groups

The U.S. commercial fisherman is the only user of the Tanner crab resource in the South Peninsula/Aleutian management area.

E.3.2.1.2. General Description of Fishing Effort

Historically, an average of 56 vessels have fished in the South Peninsula district Tanner crab fishery (1973-74 through 1975-76), while 42 vessels fished in the season (Table E1). Vessel effort in the Aleutian districts is minor with only eight vessels fishing in 1976 (Tables E2 and E3). Peak effort occurred in 1974 when 14 vessels fished in the Eastern Aleutian district.

E.3.2.1.3. Catch Trends

Catches in the South Peninsula district are increasing as new fishing grounds are being exploited (Table E1). Prior to 1974 the commercial harvest did not exceed 6.4 million pounds (2,903 mt). However, since the 1973-74 season, the catch has averaged 13.3 million pounds (6,033 mt). Commercial harvests in the Aleutian districts are sporadic with historical harvests never exceeding 600,000 pounds (272 mt). The average combined harvest (Tables E2 and E3) for the Aleutian districts is only 116,000 pounds (53 mt) annually.

E.3.2.1.4. Description of Vessels and Gear Employed

The South Peninsula fleet consists mainly of modern steel hulled crab vessels of varying size. With the exception of small local vessels at Chignik and Sand Point, most of the larger vessels come from Kodiak and Dutch Harbor. Average hold capacity is 50,000 pounds (22.7 mt). Average keel length (1976-77 season statistics) is 65 feet (19.8 m) with a range of 34 to 112 feet (10.4 to 34.1 m). Vessels weigh an average 68 tons (61.7 mt) with a range of 11 to 198 net tons (10.0-179.6 mt).

Average vessel size fishing the Aleutian districts is 86 feet (26.2 m) and 138.6 net tons (125.7 mt). Ranges appear in Table 4.

E.3.2.2. History of Foreign Exploitation

There has been no foreign exploitation of Tanner crab stocks in waters of the South Peninsula/Aleutian management area.

E.3.3. History of Management

E.3.3.1. Management Institutions, Policies, Jurisdictions

The South Peninsula/Aleutian management area is defined in Section E.3.1.

The Division of Commercial Fisheries within the Alaska Department of Fish and Game exercises management control of the fishery and maintains historical catch and production records at the headquarters in Juneau. In season management responsibility, preliminary development of management planning, and management related research is conducted by the regional ADF&G office in Kodiak and area offices in Sand Point and Dutch Harbor.

E.3.3.2. Domestic

E.3.3.2.1. and E.3.3.2.2. Regulatory Measures and Purpose of Measures

The regulatory structure developed in the South Peninsula/Aleutian management area is similar to that in the Kodiak area. The system has evolved as a result of a mixture of socio-economic considerations within the coastal communities in combination with biological information. Management measures, seasons, harvest levels, size limits and gear are described below and in Table E4.

TABLE E4. Historical Development Of Regulatory Measures For South Peninsula/Aleutian Management Area Tanner Crab.

YEAR	SEASON 1/	GUIDELINE HARVEST LEVEL	AREA REGISTRATION	SIZE	GEAR
1967	None	None	None	None	Pots, ring nets, diving gear.
1968	None	None	None	None	Same, plus a 4" tunnel height
1969	1/1 - 7/31 & 10/1 - 12/31	None	None	None	"
1970	1/1 - 7/31 & 2/ 10/1 - 12/31	None	None	None	"
1970/71	Aleutians - 3/ Chignik-8/15-7/31 S. Pen. - 2/	None	None	None	"
1971/72	Aleutians - 3/ Chignik-8/15-7/31 S. Pen. 2/	None	None	None	"
1972/73	"	None	None	None	"
1973/74	Aleutian 11/1-10/15 Chignik 8/15-7/31 S. Pen 2/	None	None	None	"
1974/75	Aleutian 11/1-10/15 S. Pen. 8/15-7/31 (Chignik)	None	Non-exclusive	None	Same, except tunnel height to 5".
1975/76	"	None	Non-exclusive	None	"
1976/77	"	S.Pen=20-30 million pounds (9072-13608 MT)	Non-exclusive	5.5 inches (140 mm)	"

1/ Seasons may have been closed prematurely by emergency order.

2/ East of longitude of Cape Pankof: 8/15-7/31;
West of longitude of Cape Pankof: 9/15-7/31

3/ East of 172° West longitude: 9/15-7/31;
West of 172° West longitude: 11/1-7/31

Source: ADF&G Shellfish Regulations, Juneau.

Fishing seasons. Prior to 1969 fishing was open year-round. As increased biological information began to better define periods of high handling mortality (soft-shelled condition), mating and breeding periods, periods of egg deposition and peak molting time of males, closures were established to protect the resource during these critical periods of the life cycle. The South Peninsula district now has a November 1 to May 15 season and the Aleutian districts have a November 1 to June 15 season reflecting these biological parameters (table E4).

Guideline harvest levels. No guideline harvest levels were established prior to the 1976–77 season in the South Peninsula district and Aleutian districts. The Tanner crab fishery was slow to develop (see section 3.2) and the catches were well below the potential of either district. During the 1976–77 season, the Alaska Board of Fisheries adopted a 20–30 million pound (9,072–13,608 mt) harvest range for the South Peninsula district. Exploitation rates have not necessitated harvest guidelines in the Aleutian districts. See section 3.3.2.2. for the purpose and rationale of guideline harvest levels.

Size limits. Research results of growth per molt studies and size at maturity provided the basis for the 5.5 inch (140 mm) minimum size limit for male Tanner crab, imposed for the first time during the 1976–77 season. See section 3.3.2.2. for the purpose of this size limit.

Gear. Pots, ring nets, and diving gear have constituted legal gear for commercial harvesting of Tanner crab since the fishery's beginning in 1967. In 1968 a tunnel entrance of not more than 4 inches (102 mm) was set. In 1974 this was changed to not exceed 5 inches (127 mm). These tunnel restrictions allow Tanner crab free access to a pot while keeping out most larger king crab, thus reducing sorting and handling mortality.

Sex limitation. See section 3.3.2.2. for purpose and rational of a male only tanner crab fishery.

E.3.3.3. Foreign

There is no foreign fishery in this management area.

E.3.3.4. Effectiveness of Management Measures

The recent implementation of management measures has not allowed sufficient time for them to be evaluated as to their long term effectiveness. It appears that Tanner crab stocks in the management area have not been over exploited and current regulations will adequately protect breeding stock and maintain the general stock health.

E.3.4. History of Research

Refer to section 3.4. of statewide plan.

E.3.5. Social Economic Characteristics

E.3.5.1. Output of Subject Domestic Commercial Fishery

E.3.5.1.1. Value of Catch (ex-Vessel)

Ex-vessel revenue generated in the 1976–77 Tanner crab fishery for the South Peninsula/Aleutian management area based on an anticipated harvest of 12.4 million pounds (5,646 mt) and average price per pound of 32 cents is $3.97 million. See table 1 for catch and ex-vessel value since 1969.

E.3.5.1.2 Description and Value of Product (Wholesale)

See section 3.5.1.2 and tables 2 and 3.

E.3.5.1.3. Market, Domestic and Foreign

See section 3.5.1.3.

E.3.5.2. Domestic Commerical Harvesting Characteristics

See section E.3.2.1.4. and table 4 for the description of fleet.

E.3.5.2.1. Total Gross Income of Fleet

The gross income of the South Peninsula/Aleutian Tanner crab fleet for all fisheries was $13.1 million in 1976. This compares to a Tanner crab harvest of $3.6 million. The average total gross income per vessel was $156,000. Table 5 compares all management areas for 1976.

E.3.5.2.2. Investment in Vessels and Gear

This information is not available. See section 3.5.2.2.

E.3.5.2.3. Annual Participation in Subject Fishery

In the South Peninsula district 505 landings were made during the 1975–76 season and 525 in the 1976–77 season. Based on an estimated 5 days per trip, 2,523 and 2,625 vessel-days were expended respectively. Only 11 landings were made in 1976 in the Aleutian districts, 55 vessel-days at 5 days per trip.

E.3.5.2.4. Total Manpower Employed

During the 1976–77 season 150 fishermen were employed in the harvesting sector in the South Peninsula district based on 3.5 men per vessel. In the Aleutian districts the larger vessels; averaging 4 men per vessel, employed 36 fishermen.

E.3.5.2.5. Economic Viability

See statewide section 3.5.2.5. For vessels participating within this management area, no data are available relative to the economic returns.

E.3.5.3. Domestic Commercial Processing Characteristics

E.3.5.3.1. Total Gross Income of Area Processors

See statewide section 3.5.3.1.

E.3.5.3.2. Investment in Plants, Etc.

There are no data available on the capitalization of the processing sector in this management area. See statewide section 3.5.3.2.

E.3.5.3.3. Total Employment and Labor Income

Total employment at peak production (all plants) is estimated at 225 for the South Peninsula district and 1,120 in the Aleutian districts. See statewide sections 3.5.3.3.

E.3.5.3.4. Economic Viability

See statewide section 3.5.3.4.

E.3.5.4. Recreation Fishery Characteristic

No recreational fishery exists for Tanner crab in the South Peninsula and Aleutian districts.

E.3.5.5. Subsistence Fishing Characteristics

A subsistence fishery exists for personal use and the level of catch is insignificant compared to commerical harvest. The fishery is open year round with no sex, size, or gear restrictions. Subsistence crab may not be sold or bartered. Subsistence fishermen must inscribe their name and address on their buoys.

E.3.5.6. Indian Treaty Fishing Characteristics

No Indian treaty rights exists.

E.3.5.8. Area Community Characteristics

E.3.5.8.1. Total Population

A 1976 population estimate for the communities within this management area was 8,300. Population trends from 1960 are in table 7.

E.3.5.8.2. Total Employment

See statewide section 3.5.8.2. and table 8.

E.3.6 Interaction Among User Groups

Since there are only U.S. fishermen using the Tanner crab resource in this management area, there are no allocation conflicts.

E.3.7. Federal and State Revenue Derived From Fishery

State revenue derived from the Tanner crab fishery is documented in the general statewide summary of this report, section 3.7 and table 9.

E.4.0. Biological Descriptor

E.4.1. Life History Features

See statewide section 4.1 for description of biological history.

E.4.2. Stock Units

Stock units are not defined for the South Peninsula/Aleutian management area.

E.4.3. Catch Effort Data

Catch and effort data are shown in table E1 for the South Peninsula district and in tables E2 and E3 for the Aleutian districts (Unalaska and Adak-Western Aleutians portions).

E.4.4. Survey and Sampling Data

Tanner crab survey information is collected during the annual king crab population indexing and tagging study cruises in the South Peninsula (Sand Point-Unimak Bight portion only) and Aleutian districts (Unalaska portion). Biological sampling and effort data is collected via dockside sampling.

E.4.6. Quality of Data

See section 4.6.

E.4.7. Current Status of Stocks.

E.4.7.1. Maximum Sustainable Yield (MSY)

Sufficient data to estimate MSY using accepted population models are not available for the South Peninsula Tanner crab stock. During the last four seasons, catch has ranged from 8.8 million pounds (4,012 mt) to 18.1 million pounds (8,210 mt) with a mean of 13.05 million pounds (5,919 mt). This fishery is new and not yet fully developed. To encourage exploration, but at the same time provide industry with some guidance as to the sustainable level of harvest they may be able to expect from this area, the Board of Fisheries has set a guideline harvest range of 20 to 30 million pounds (9,072 to 13,608 mt) for the 1977–78 season. Therefore, a weak estimate of an MSY of 20 million pounds (9,072 mt) is made for the South Peninsula district. This estimate is 2 million pounds (907 mt) greater than the historic peak harvest and at the lower boundary of the guideline harvest range.

For the Aleutian districts there are little data, either biological or in terms of catch,

to make even a weak estimate of the potential long run maximum average yield.

Prior to the 1976–77 season the peak harvest in the Eastern district occurred in 1974 when 563,500 pounds (256 mt) were landed and in the Western district in 1973 when 168,000 pounds (76 mt) were taken, a total of 731,500 pounds (332 mt). the 1976–77 preliminary catch data shows that 1.5 million pounds (680 mt) has been landed and it is projected that at least 2 million pounds (907 mt) will be caught by the close of the season. There are no data which indicate that this rate of harvest cannot be sustained and, therefore, a weak estimate of an MSY of 2 million pounds (907 mt) is made for the Aleutian districts (the Alaska Board of Fisheries has not set a guideline harvest level for the Aleutians).

E.4.7.2. Equilibrium Yield (EY)

Data relative to stock dynamics and total population are unavailable to estimate what potential harvest could be sustained and still maintain the stock at its current level of abundance.

E.4.7.3. Acceptable Biological Catch (ABC)

The ABC for the South Peninsula district is set at 20 to 30 million pounds (9,072 to 13,608 mt). This range encompasses the weak estimate of MSY and allows for expansion of the fishery since it is not yet considered to be fully developed. For the Aleutian districts ABC is set equivalent to the MSY of 2 million pounds (907 mt).

E.4.8 Estimated of Future Stock Condition

Recent catch trends and the abundance estimates from both the commercial fishery and research information indicate a healthy fishery.

E.5.0. Catch and Capacity Descriptors

E.5.1. Data and Capacity Descriptors

E.5.1.1. Domestic

Harvesting and processing capacities are listed in tables 6 and 11. The number of vessels is calculated from fish ticket information. Descriptors relating to crew, vessel, and gear capacities were collected through vessel interviews for ADF&G records. Processing information was gathered from ADF&G annual reports and interviews with plant managers.

E.5.1.2. Foreign

There is no foreign fishery in the South Peninsula/Aleutian management area.

E.5.2. Domestic Annual Capacity (DAC)

With 42 vessels in the 1976–77 fishery having a total tank capacity per trip of 2,106,000 pounds (955 mt), and making 3.5 trips per month for the 6-month season, the South Peninsula district DAC is 44,226,000 pounds (20,061 mt). In the Aleutian districts, (1976–77 season) nine vessels, with a total tank capacity of 1,530,000 pounds (694 mt) making three trips per month (heavy weather factors) during a 6-month season would have a DAC of 27,540,000 pounds (12,492 mt).

E.5.3. Expected Domestic Annual Harvest (DAH)

The 1976–77 seasonal guideline harvest range for the South Peninsula district was approximately three times the catch of 6.7 million pounds (3,040 mt). Ex-vessel price, weather, handling, and sorting due to minimum size limit and successful salmon and king crab seasons may have blunted interest in the fishery. An increase in the ex-vessel price should increase interest for the 1977–78 season with expected effort approximating the 1975–76 level of 69 vessels. Therefore, the DAH for the South Peninsula District is 20–30 million pounds (9,072 to 13,608 mt). The DAH for the 1977–78 season in the Aleutian districts is estimated at 2 million pounds (907 mt).

E.6.0. Optimum Yield (OY)

E.6.1. Departure From MSY to ABC for Biological Reason

The ABC of 22 to 32 million pounds (9,979 to 14,515 mt) encompasses the MSY estimate for the South Peninsula/Aleutian management area. See section 3.4.7.3.

E.6.2. Departure From ABC for Socioeconomic Reasons

Since socioeconomic objectives have not been specified which would require formulization of the OY to deviate from the acceptable biological catch, the OY is set equivalent to the ABC.

E.6.3. Optimum Yield (OY)

In the absence of other data, the OY is set equivalent the ABC of 22 to 32 million pounds (9,980 to 14,515 mt).

E.7.0. Total Allowable Level of Foreign Fishery (FAC)

Given the estimated MSY and DAH, the FAC for 1977–78 is zero.

E.8.0. Management Regime

See statewide section 8.0.

Bering Sea Management Area

F.3.0. Description of Fishery

F.3.1. Species and Location

The Bering Sea management area is defined as all Bering Sea waters north of 54° 36' N. latitude.

The target species is *C. bairdi. C. opilio* is subordinate and currently comprises about 25 percent of the total catch (approximately 3 percent and 60 percent of the domestic and foreign harvests respectively).

F.3.2. History of Exploitation

F.3.2.1. Domestic Fishery

U.S.fishermen entered the Bering Sea in 1947 to harvest red king crab (*Paralithodes camtschatica*). The first reported catches of Tanner crab were made in 1968 and were incidental to the king crab harvest. In 1974, a directed Tanner crab fishery was started with the target species being *C. bairdi.* The period of full scale fishing covers just 3 years in the Bering Sea, but over 34.5 million pounds (15,028 mt) had been landed prior to 1977. The geographic areas fished by the U.S. fishermen during 1976 were predominately International North Pacific Fisheries Commission (INPFC) areas[1] 5564 and 5569 located north and northwest of Unimak Island and INPFC areas 5669 and 5670 near St. George Island.

F.3.2.1.1. Description of User Groups

Seattle-based fishermen, non-resident to the State of Alaska, are the primary user groups of the Tanner crab resource in the Bering Sea. Some Alaskan residents who own larger vessels fish the Bering Sea after first fishing their local area.

F.3.2.1.2. General Description of Fishing Effort

The fishing effort in the Bering Sea is continuing to increase annually in number of vessels and vessel size. In 1973, Tanner crab catches were incidental to king crab. In 1977, a large scale effort is presently underway by both fishermen and processors to harvest the allowable biological catch. During the summer of 1977 there were over 60 large vessels and 15 processors in the Dutch Harbor area capable of processing 750,000 pounds (327 mt) of Tanner crab per day.

F.3.2.1.3. Catch Trends

U.S. fishermen caught 18,000 pounds (8.2 mt) of Tanner crab in 1968 and 22.3 million pounds (10,115 mt) in 1976. Preliminary 1977 figures indicate a catch of $51.5 million pounds (23,400 mt). Annual harvests are shown in Table 1.

F.3.2.1.4. Description of Vessels and Gear

Boats fishing Tanner crab in 1976 were generally steel king crab vessels that averaged 140 net tons (127 mt) and 93.4 feet (28.47 m) in keel length (Table 4 and Table 6).

Gear fished during the 1976/77 season was an estimated 200–300 modified king crab pots per vessel.

F.3.2.2. Foreign Fishery

A foreign fishery in the Bering Sea for king crab started in 1930. Tanner crab harvested prior to 1964 were caught incidentally in this fishery. However, in 1964, when the foreign king crab fishery was at its peak, U.S. bilateral agreements resulted in immediate reductions in foreign production of king crab, emphasis then shifted to Tanner crab. Since 1970, quotas for Tanner crab have sharply reduced foreign landings

F.3.2.2.1. User Groups

The Japanese initiated the Bering Sea king crab fishery in 1930 with the U.S.S.R. entering in 1959. Both nations shifted to Tanner crab in the middle to late 1960's. There has been no Soviet crab fishing since 1971.

F.3.2.2.2. and F.3.2.2.3. General Description of Fishing Effort and Harvest

Foreign catches of Tanner crab are shown in Table F1. The combined Japanese-Soviet catch increased rapidly from 1.7 million crab in 1965 to 24 million crab in 1969 and 1970. Since 1970, quotas have reduced the foreign landings. (Table F2.) Japanese quota allocations are divided between a factory-ship fleet and a landbased fleet by Japanese domestic regulation.

[1]INPFC areas are 1° longitude by 1° latitude rectangles coded by the latitude, longitude coordinate of the southeast corner of each area. For example, area 5564 is that region between 55° and 56° N. latitude and 164° and 165° W. longitude.

Table F1. Catches of Tanner crab, C. bairdi and C. opilio, in the eastern Bering Sea, 1965/76 (millions of crabs).

YEAR	JAPAN (Tangle nets)	JAPAN (Pots)	U.S.S.R. (Tangle nets)	UNITED STATES (Pots)	TOTAL
1965	1.030	-	0.665[a]	-	1.695
1966	1.490	-	0.665[a]	-	2.155
1967	8.320	0.290	3.390[a]	-	12.000
1968	10.100	1.880	3.490[a]	0.006	15.476
1696	9.736	7.855	6.243	0.353	24.187
1970	7.679	10.511	5.724	0.482	24.396
1971	0.851	14.888	4.204	0.061	20.004
1972	0.386	15.207	-	0.043	15.635
1973[b]	-	13.943	-	0.133	14.076
1974[c]	-	13.986	-	2.531	16.518
1975[d]	-	9.228	-	2.760	11.988
1976	-	9.228	-	8.931	18.159

[a] Estimated by applying number of crabs per case in 1969 to case pack figures in indicated year.
[b] Japanese catch in 1973 was 5.992 million crabs in Area A and 7.951 million crabs in Area B.
[c] Japanese catch in 1974 was 5.999 million crabs in Area A and 7.987 million crabs in Area B.
[d] Japanese catch in 1975 and 1976 was about 2.401 million crabs in Area A' and 6.827 million crabs in Area B'.

SOURCES: Statistics for the Japanese and United States fisheries are from INPFC Documents. Statistics for the U.S.S.R. fishery provided to the United States by the U.S.S.R.

TABLE F2. TANNER CRAB QUOTAS ESTABLISHED UNDER BILATERAL AGREEMENTS WITH JAPAN AND THE U.S.S.R.

YEARS	JAPAN	U.S.S.R.
	(NUMBER)	(CASES)[1]
1965-66		
1967-68		
1969-70	16,000,000[2]	40,000
1971-72	15,000,000[3]	35,000
	(NUMBER)	(NUMBER)
1973-74 (Area A)	6,000,000	1,800,000
1973-74 (Area B)	8,000,000	2,400,000
	(METRIC TONS)	(METRIC TONS)
1975-76 (Area A)	2,500	750
1975-76 (Area B)	7,700	2,310

1/ One case is equal to 48 ½-pound cans. In producing frozen meat Japan considers 29.3 pounds of crab meat equivalent to one case.

2/ Plus an allowance of 15 percent

3/ Plus an allowance of 10 percent

Available historical information on Tanner crab catches by the Japanese land-based fleet in the central Bering Sea is scanty. The fishery existed in the early 1970's when annual catches were reported to be 4,630,000 pounds (2,100 mt). In 1975 and 1976, the Japanese agreed to submit daily positions and catches to U.S. officials for all vessels fishing west of 175° W. longitude, north of 58° N. latitude and east of the U.S.-U.S.S.R. Convention Line of 1867. Highlights of these 2 years of data are presented below.

Statistic	1975	1976
Vessels licensed by Japan Fishery Agency.	28	31
Vessels fishing	28	31
First day of fishing	May 5	May 5
Last day of fishing	Oct. 21	Oct. 18
Total vessel days	1,155	1,477
Total catch (number of crab).	2,918,882	2,826,707
Average catch per vessel day.	2,527	1,982

Harvests by the Japanese in 1977 are restricted to a quota of 27,550,000 pounds (12,500 mt). Based on the catch composition in 1975 and 1976, 11,200,000 pounds (5,110 mt) would be expected to be *C. bairdi* and 16,300,000 pounds (7,400 mt) *C. opilio*. The *C. bairdi* catch will be primarily from the factoryship fleet while it is assumed that all crab taken by the land-based fleet will be *C. opilio*. Under conditions of the preliminary fishery management plan for eastern Bering Sea crab, the Japanese are permitted to harvest 9,700,000 pounds (4,400 mt) of their total quota of Tanner crab from the area west of 173° W. longitude and north of 58° N. latitude. Under Japanese domestic regulations the land-based vessels were allotted 4,900,000 pounds (2,222 mt) west of 175° W. longitude and the factoryships were allotted 3,688,300 pounds (1,673 mt) east of 175° W. longitude and west of 175° W. longitude and north of 58° N. latitude.

F.3.2.2.4. Vessels and Gear

There has been no Soviet crab fishery in the eastern Bering Sea since 1971. The two factoryships utilized by Japan to process crab in recent years are the *Keiko Maru* (6,821 mt) and the *Koyo Maru* (6,804 mt). Since 1975, each factoryship has been supplied by six catcher boats each about 100 gross ton (91 mt). Japanese crab fishermen now deploy conical, "top-loading" pots which are fished on a groundline. About 130 pots are fished per line, generally with a 3–4 day soak. Each vessel has about 2,000 pots distributed among 15–18 strings of this gear. The gear is hauled using a longline puller, and crabs are removed, stored dry in sacks in the fish hold, and delivered daily to the factoryship where processing takes place.

The gear used by the land-based vessels is identical to that of the catcher boats delivering to Japanese factoryships, i.e., about 125 individual conical pots fished on a longline. Vessels vary in size from 230 to 250 gross tons (209 to 454 mt) with a crew of 25. The catch is processed on each land-based vessel, usually by butchering, cooking and freezing in sections. The finished product is returned to Japan either by the land-based vessel or by a transport ship. The number of vessels licensed by the Japanese to participate in this fishery has been reduced from 31 in 1976 to 11 in 1977.

F.3.3. History of Management

F.3.3.1. Management Institutions

The Bering Sea Tanner crab stocks have been managed by two agencies. The Alaska Department of Fish and Game manages the domestic fishery with the Alaska Board of Fisheries determining the regulations. The National Marine Fisheries Service has managed the foreign fishing and provided the majority of the research data applicable to both domestic and foreign fleets.

F.3.3.2. Domestic Management

F.3.3.2.1. Regulatory Measures

Regulations governing the Bering Sea Tanner crab fishery in order of implementation were: (1) males-only, (2) gear, (3) season, (4) size limit, and (5) harvest levels by area. The last three measures were promulgated during 1976 by the Alaska Board of Fisheries. Table F3 shows the historical development of the domestic regulations.

TABLE F3. Historical Development Of Domestic Regulatory Measures For Bering Sea Management Area
Tanner Crab

YEAR	SEASON[1/]	GUIDELINE HARVEST LEVEL	AREA REGISTRATION	SIZE	GEAR
1973/74	None	None	None	None	Pots, ring nets, diving gear and tunnel to 4 inches.
1974/75	7/1 - 6/15[2/]	None	Non-exclusive	None	Same except tunnel to 5 inches.
1975/76	7/1 - 6/15	None	Non-exclusive	None	" "
1976/77	7/1 - 6/15	None	Non-exclusive	5.5 in. (140 mm)	" "

1/ Seasons may have been closed prematurely by emergency order.

2/ Season opened by emergency order sometime after 7/1.

Source: ADF&G Shellfish Regulations, Juneau.

F.3.3.2.2. Purpose of Measures

The males-only season concepts discussed in section 3.3.2.2. of the statewide regulations apply to the Bering Sea. Harvest levels and size limits were promulgated by the Board of Fisheries believing that these restrictions would prevent over-exploitation until more scientific knowledge was gathered. It has been the Board's policy that a conservative approach is necessary when the data base to manage a fishery is inadequate (see Sections 3.3.2. and 4.0.).

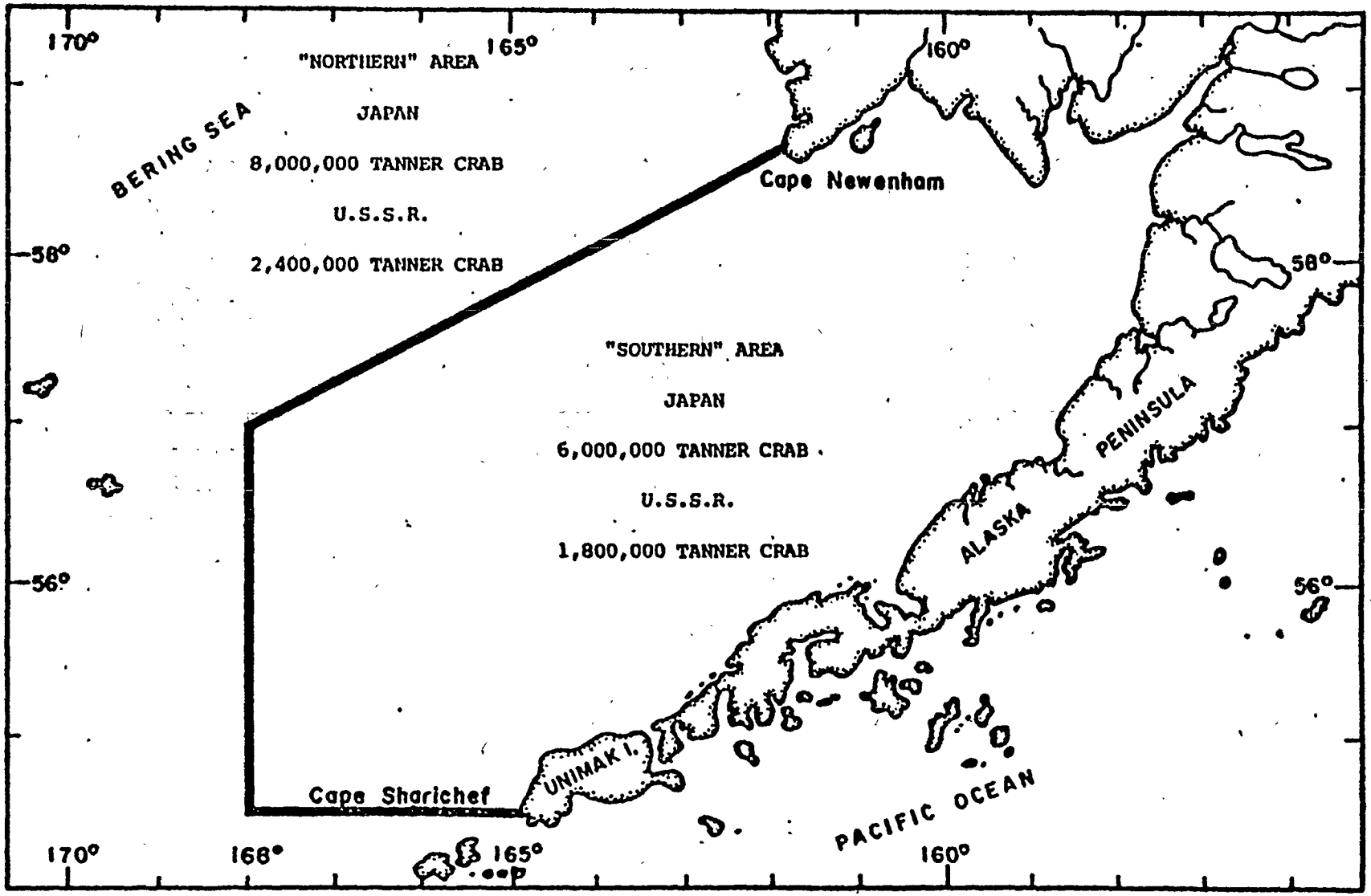
F.3.3.3. Foreign Management

F.3.3.3.1. Regulatory Measures

Prior to 1964 there were no U.S. regulations for the foreign crab fisheries of the eastern Bering Sea. In 1964, the United States ratified the 1958 Continental Shelf Convention and declared king and Tanner crab (among other species) as "Creatures of the Continental Shelf".

Catch quotas were first applied to the foreign Tanner crab fisheries in 1969 (only male crab could be retained), and use of tangle net gear was restricted in later bilaterals. These bilateral agreements have been modified every 2 years, resulting in progressively lower foreign quotas (Table F2.). Since 1973, separate Tanner crab quotas have applied to each of two subareas of the Bering Sea. (Figures F1 and F2). The sub-areas were further defined in the 1975-76 bilateral to eliminate the foreign fishery east of 164° W. longitude and south of 55° 30' N. latitude—the principal area fished by the United States at that time. For the 1977 season the regulations are given in the Tanner crab FMP, January 1977. The foreign quota was increased to 27,550,000 pounds (12,500 mt) with the increase to come primarily from areas of *C. opilio* concentration. Foreign fishing was restricted to the area north of 56° N. latitude and west of 164° 00' W. longitude to further separate the U.S. and Japanese fleets.

Figure F1. EASTERN BERING SEA CRAB QUOTAS FOR 1973 AND 1974
ESTABLISHED BY U.S.-JAPAN CRAB AGREEMENT DECEMBER 1972
AND U.S.-U.S.S.R. CRAB AGREEMENT FEBRUARY 1973



Prepared February 1973
National Marine Fisheries Service
Juneau, Alaska

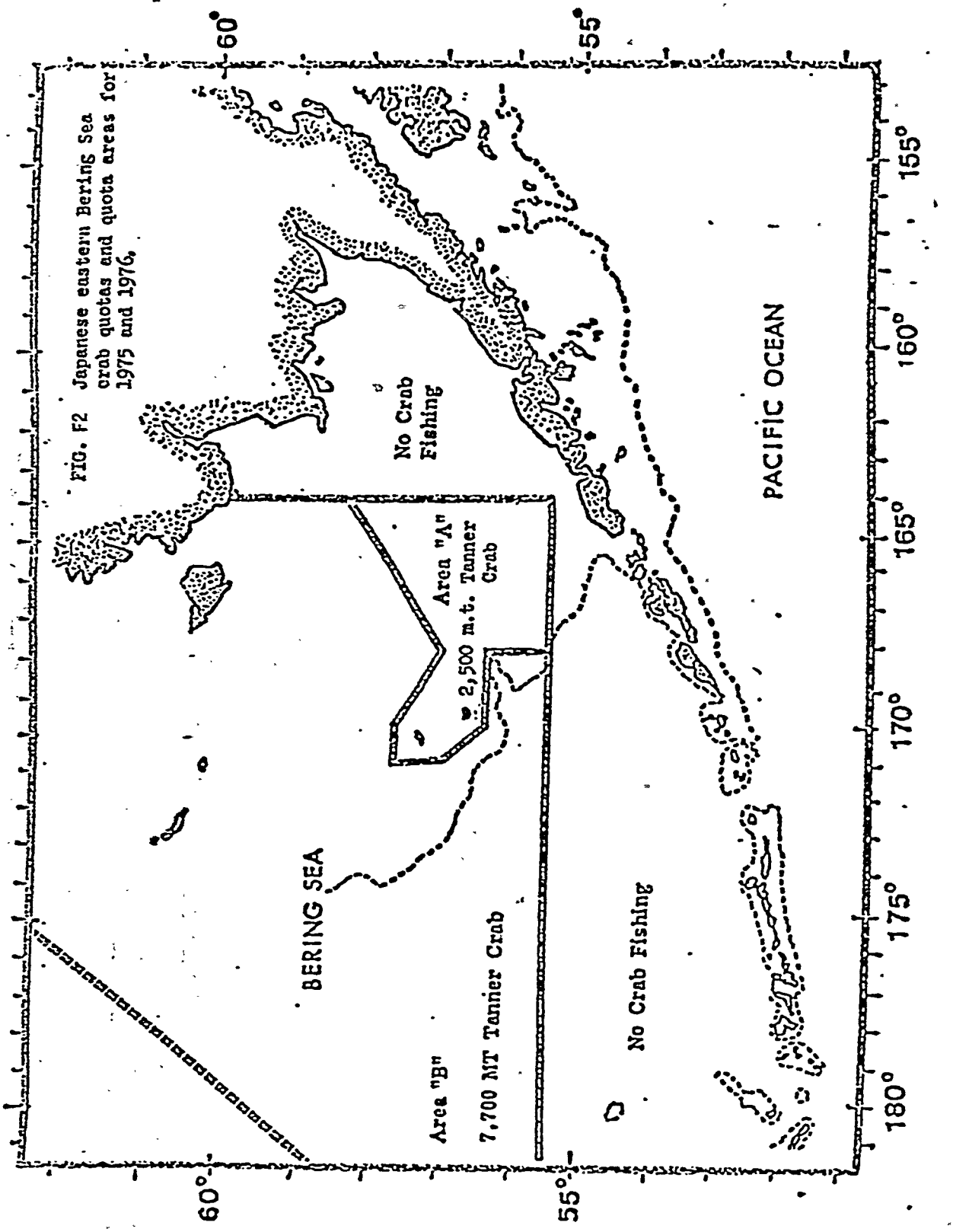


FIG. F2 Japanese eastern Bering Sea crab quotas and quota areas for 1975 and 1976.

The United States initiated an observer program in 1971 aboard the two Japanese crab factoryships to make biological observations and to ascertain Japanese compliance to quota restrictions established in the bilateral agreement. Although observers spent a total of 191 vessel-days at sea during the 1971-73 period, it was not possible to determine Japanese adherence to catch quotas because of a lack of authority to control the unloading operations of the catcher boats and the processing operation.

The observer program was strengthened during bilateral negotiations, and in 1975 and 1976 the U.S. observers positively verified Japanese crab catch statistics.

A pair of U.S. observers are monitoring catches of both Japanese factoryships, the *Keiko Maru* and *Koyo Maru*, throughout the entire 1977 fishery. It is expected they will harvest their allotment of 21,500,000 pounds (9,752 mt). A team of six U.S. observers will also be associated with the land-based fleet during the fishing season which is scheduled to begin in late May. The other observers will travel on a Japanese enforcement vessel patrolling the land-based fleet; they will board vessels at random to document fishing operations and catches.

F.3.3.3.2. Purpose of Measures

Restrictions on legal gear to pots only was established to eliminate non-selective gear that contributed to mortality of females and sublegal size crab. The male only requirement protects the female breeding stock. The quotas reduce the foreign exploitation on *C. bairdi*, the species of Tanner crab preferred by the U.S. industry. The closed areas eliminate foreign fishing in the principal areas fished by the United States.

F.3.3.4. Effectiveness of Management Measures

The general effect of the sex, season and gear limitations are described in Section 3.3.4. of the statewide plan. It is premature to determine the effect that the domestic size limit and harvest levels will have on Bering Sea Tanner stocks. The quotas applied to the foreign fishery have been successful in aiding the development of a larger domestic fishery. Area fishing restrictions have minimized gear conflicts and competition for concentrations of large crab.

F.3.4. History of Research

See statewide Section 3.4.

F.3.5. Socio-economic Characteristics

F.3.5.1. Output of Domestic Commercial Fishing

F.3.5.1.1. Value of Catch (Ex-vessel)

The estimated revenue for Tanner crab caught in the Bering Sea in 1976 was $4.4 million.

F.3.5.1.2. and F.3.5.1.3. Value of Product and Markets

Refer to corresponding sections in statewide section.

F.3.5.2. Domestic Commercial Harvesting Characteristics

Data for the Bering Sea area is not available. Refer to corresponding section in statewide section.

F.3.5.2.1. Total Gross Income of Fleet (from subject fishing and all other fisheries)

The gross income of the Bering Sea domestic Tanner crab fleet for all fisheries (salmon, halibut, king crab, etc.) was $30.4 million in 1976. This compares to a Tanner crab harvest valued at only $4.4 million. The averge total gross income per vessel was $460,044. Table 5 compares all management areas for 1976.

F.3.5.3. Domestic Commercial Processing Characteristics

The majority of Tanner crab caught in the Bering Sea are processed at Dutch Harbor by shore-based plants and floating processing vessels. Some crab is processed on the grounds by catcher-processor vessels and some is transported to processing plants located on the Alaska Peninsula at Sand Point and Chignik. Still other loads are transported to Kodiak and processed. In 1977, 15 processors are handling Tanner crab with a peak daily production of approximately 750,000 pounds (340 mt).

F.3.5.4. Recreational Fishing Characteristics

No recreational fishery exists.

F.3.5.5. Subsistence Fishing Characteristics

No data on subsistence fishing is available for the Bering Sea, but effort is minimal.

F.3.5.6. Indian Treaty Fishing Characteristics

No Indian treaty fishing exists in the Bering Sea.

F.3.5.7. Area Community Characteristics

Refer to statewide Section 3.5.7.

F.3.6. Interaction Among User Groups

This section discussed in statewide Section 3.6.

F.4.0. Biological Descriptors

F.4.1. Life History Features

This section is discussed in statewide Section 4.1.

F.4.2. Stock Units

In the Bering Sea, two species of Tanner crab are harvested with *C. bairdi* being the target species because of its larger size. *C. opilio* is presently undesirable to U.S. processors due to its smaller size, but is harvested by the Japanese and according to NMFS trawl surveys is the most numerous of the two species. The distribution of *C. bairdi* extends from Bristol Bay northward to the Pribilof Islands. Stocks of *C. opilio* have a wider distribution than *C. bairdi* with their center of abundance more to the northwest than that of *C. bairdi*. Discrete stocks of *C. bairdi* have not been documented. However, there appears to be a density separation of *C. bairdi* populations at 168° W. longitude, with concentrations occurring around the Pribilof Islands and east of 168° W. longitude along the Alaska Peninsula.

F.4.3. Catch and Effort Data

The commercial catch is sampled at dockside in Dutch Harbor and skippers are interviewed to determine area fished, number of pots pulled, average weight of crab landed and other relative data. A sample of crab is measured to determine width frequency. Table F1 lists catch data (foreign and domestic) for the Bering Sea.

F.4.4. Survey and Sampling Data

The Bering Sea is surveyed on a yearly basis by the National Marine Fisheries Service. A description of the operating procedures and sampling techniques can be found in "Northwest Fisheries Center Report to Industry 1976". These trawl surveys are used to determine abundance by size, distribution, and other population characteristics.

F.4.5. Other

See statewide section.

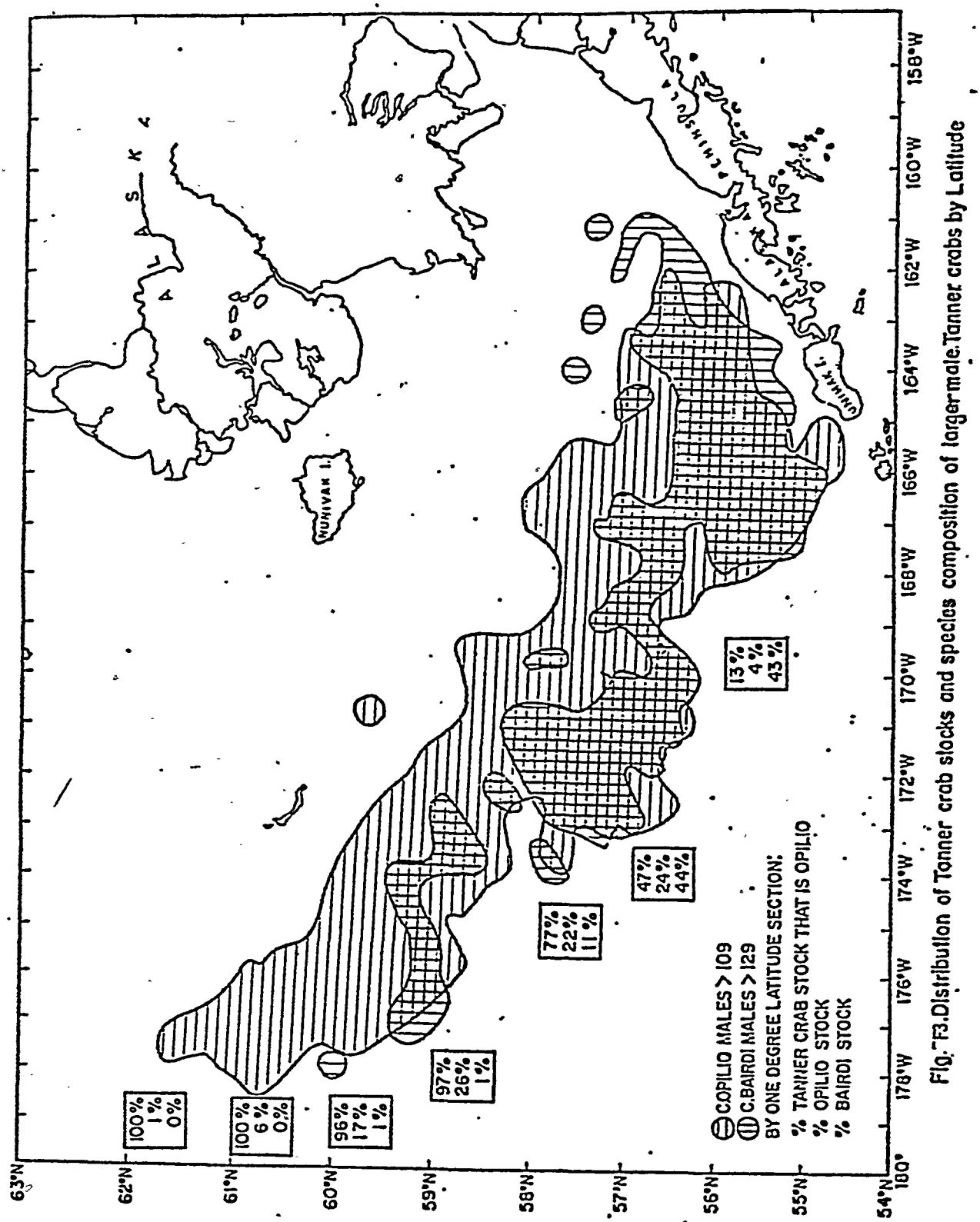


Fig. 73. Distribution of Tanner crab stocks and species composition of largermale Tanner crabs by Latitude

TABLE F4. Annual Abundance Estimates (millions of crabs) for Tanner crabs from NOAA R/V OREGON Surveys in the Eastern Bering Sea.

SEX	Size Group*	1973	1974	1975	1976	1977
C. bairdi						
Males	<85	62.8	200.7	116.3	136.8	192.7
	85-129	140.5	255.0	207.5	131.7	159.6
	>129	66.9	130.5	209.6	157.8	111.1
Total males		270.2	586.2	533.4	426.3	463.4
Females	<85	47.9	210.5	120.8	174.7	328.4
	>84	90.3	175.7	102.2	220.4	215.8
Total females		138.2	386.2	223.0	395.1	544.2
Total population		408.4	972.4	756.4	821.4	1007.6
C. opilio						
Males	<110	115.2	1,480.3	1,916.7	2,221.1	**
	>109	84.7	246.7	274.8	181.6	
Total males		199.9	1,727.0	2,191.5	2,402.7	
Females	<65	26.4	1,415.3	3,213.1	4,867.1	
	>64	26.8	195.9	194.3	697.3	
Total females		53.2	1,611.4	3,407.4	5,564.4	
Total population		253.1	3,338.4	5,598.9	7,967.1	
C. hybrid						
Males	<110			47.4	27.8	
	>109			33.8	16.5	
Total males				81.3	44.3	
Females	<65			190.8	1.1	
	>64			28.9	13.9	
Total females				219.7	15.0	
Total population				301.0	59.3	

* mm, carapace width. ** 1977 survey results for C. opilio were not available at time of publication.

F.4.6. QUALITY OF DATA

Refer to statewide discussion in Section 4.6.

F.4.7. CURRENT STATUS OF STOCKS

Table F3 presents estimates of abundance for Tanner crab based on NMFS Surveys which extended to approximately 58° N. latitude in recent years. (OCS-related survey results of the eastern Bering Sea north to 62° N. latitude in 1975 (figure F3) indicate that these NMFS surveys provide adequate coverage for the *C. bairdi* population.) The 1977 survey results are in line with previous stock estimates, corroborating the estimate of a long range downward trend in recruitment postulated by Somerton & Low (1977). Current stock conditions are relatively high but much reduced levels of harvestable males are forecast by 1980 and continuing for several years thereafter.

TABLE F5.—*Estimates of maximum sustainable yield of male snow (Tanner) crab in the Eastern Bering Sea*

Species	Size group	Millions of crabs	Average weight (pounds)	Million of pounds	Exploitation rate	MSY (millions of pounds)
C. bairdi	*≥135	92	2.41	222	0.40	89
C. opilio	>115	431	1.79	772	.58	**440

*The biological data are based on inside the spine measurements. The legal definition includes the spines in carapace measurements. Therefore, the legal interpretation of the size limit will allow the harvest of crab which are according to the biological measurements up to 5mm smaller. Therefore, when calculating an MSY based on 140mm minimum legal size, all crab≥135mm must be considered.

**225 million pounds available north of 58° N. latitude.

Source: NMFS-Juneau, Alaska.

Survey coverage for *C. opilio* has expanded during the 1973–75 period accounting for at least some of the increase in apparent abundance. However, it is obvious from the OCS survey results that the NMFS standard survey still does not encompass the entire range of the species. The problem of incomplete survey coverage also applies to estimates of abundance for *C. bairdi* × *C. opilio* hybrids, given in Table F4.

F.4.7.1. Maximum Sustainable Yield (MSY)

MSY Values for *C. bairdi* Tanner crabs have been estimated by multiplying stock abundances by conservative exploitation rates derived from the yield per recruit analyses of Somerton & Low (1977).

Estimates of abundance of Tanner crab are available for both species, *C. bairdi* and *C. opilio*, in the eastern Bering Sea. However, the distribution of abundance is different between species (Figure F3). Almost all stock of *C. bairdi* occurs south of 58° N. latitude. *C. opilio* extends farther north, with half of the total stock surveyed during the 1975 OCS-related work north of 58° N. latitude.

Estimates of MSY for *C. bairdi* and *C. opilio* are given in Table F5. For *C. bairdi*, the 1977 NMFS survey abundance estimates are used, since coverage of this species is adequate.

The estimated abundance of legal sized (greater than 140 mm) male crab is 222 million pounds (100,725 mt). An average annual exploitation rate of 0.40 applied to the estimated abundance of legal-sized *C. bairdi* males gives an MSY of 89 million pounds (40,381 mt).

The estimated MSY for *C. opilio* is calculated from the estimated abundance of males greater than 115 mm (772 million pounds—350,000 mt), determined from the 1975 OCS survey. This component of the population is used since no size limit exists for this species and 115 mm is the smallest size significantly present in the current fishery for *C. opilio*.

The calculated exploitation race applied is 0.58 (Sumerton and Low, 1977) and results in an MSY of 448 million pounds (203,000 mt) for *C. opilio*. Half of this estimate, 225 million pounds (102,000 mt), is available from the area north of 58° N. latitude, where large *C. bairdi* occur only rarely (Figure F3).

F.4.7.2. Equilibrium Yield (EY)

A lack of data on the effects of harvest on the populations of *C. bairdi* and *C. opilio* in the Bering Sea precludes any estimate of EY at the present.

F.4.7.3. Acceptable Biological Catch (ABC)

In the absence of modifying data ABC is taken to be equal to MSY for *C. bairdi* (89,000,000 pounds—40,381 mt) and *C. opilio* (448,000,000 pounds—203,000 mt) in the eastern Bering Sea.

F.4.8. ESTIMATE OF FUTURE STOCK CONDITION

Available data indicates that the Tanner crab stock in the Bering Sea should be capable of sustaining current levels of harvest through the 1978 season.

F.5.0 CATCH AND CAPACITY DESCRIPTORS

F.5.1. DATA AND ANALYTICAL APPROACHES

F.5.1.1. Domestic

Data on domestic harvest capcity is found in Table 6 and Table 11.

F.5.1.2. Foreign

Foreign capacity is presently limited by quota allocations and vessel permit limitations.

F.5.2. DOMESTIC ANNUAL CAPACITY (DAC)

See Table 6.

F.5.3. EXPECTED DOMESTIC ANNUAL HARVEST (DAH)

The DAH for *C. bairdi* in the eastern Bering Sea is expected to reach the OY of 89 million pounds (40,381 mt). U.S. harvests have increased approximately eight fold—from 1975–77.

Expected annual domestic harvest of *C. opilio* north of 58° N. latitude will be minimal, though it is expected market demand may increase the catch south of that line to near the estimate of 22 million pounds (10,000 mt) (Table 11, p. 76).

F.6.0 OPTIMUM YIELD

F.6.1. DEPARTURE FROM MSY TO ABC FOR BIOLOGICAL REASONS

In the absence of modifying data, ABC is taken to be equal to MSY for *C. bairdi* and *C. opilio* in the Bering Sea.

F.6.2. OPTIMUM YIELD

Optimum yields for *C. bairdi* and *C. opilio* have been determined taking into consideration the following socio-economic factors:

a. United States policy, through a series of bilateral agreements over the past several years, has been directed at improving the conditions for developing the U.S. Tanner crab industry. As a result of these agreements, foreign nations have been prevented from Tanner crab fishing in the Gulf of Alaska and have either reduced their take of Tanner crab in the eastern Bering Sea or withdrawn from the fishery altogether. The policy has accommodated a favorable investment climate for a growing U.S. catching, procesing, and marketing capacity.

b. The U.S. markets for Tanner crab are in an early stage of development with exports accounting for a substantial portion of U.S. production. Industry representatives have repeatedly drawn attention to the volatility of markets for shellfish and repeatedly stated that increases in foreign allocations of tanner crab will weaken U.S. domestic and export markets. Not enough is currently known about the elasticities of the markets for crabs of various species, the degree of overlap between species, frozen products as opposed to canned, and the affect of fluctuating supplies on world markets to accurately define the precise level at which foreign allocations will adversely impact the U.S. fishing industry. Testimony and evidence on these questions that was considered in arriving at OY and TALFF figures is summarized in Appendix 11.6.

c. The domestic market for Tanner crab has discouraged the delivery of crab less than 5 inches in carapace width. In 1976, a minimum carapace size limit of 5.5 inches was imposed on the domestic Tanner crab fishery in the eastern Bering Sea for *C. bairdi* only. Since only a small portion of the *C. opilio* population exceeds domestic industry size requirements, the U.S. fishery for Tanner crab is therefore primarily for *C. bairdi*.

d. The tanner crab fishery is conducted by heavily capitalized vessels originally constructed for the offshore king crab fishery. Public testimony has revealed that the catch per unit effort (CPUE) must be held fairly high, dependent on price structure, to enable U.S. fishermen to engage in the fishery. The U.S. CPUE in the eastern Bering Sea in 1976 was 63 crab per pot. This criterion would suggest that populations must be maintained at near present abundance to produce an economically acceptable catch per unit effort for U.S. fishermen. Since *C. bairdi* Tanner crab are dispersed over a broad geographic area in the eastern Bering Sea, density levels throughout much of this area are (probably) below that which can be

profitably harvested. Therefore, setting OY at ABC may be optimistic from the standpoint of actually being able to recover that full amount from the stock under the economic parameters within which all commercial fishermen work.

Given the restrictions on the foreign fleet, the availability of the resource south of 58° N latitude, and the intent, desire and capacity of the domestic fleet to develop a fishery on *C. opilio* crab, the harvest which may be realized by the domestic fleet during the 1977/78 season, south of 58° N latitude in the Bering Sea, is expected to be as high as 10,000 Mt (22,000,000 lbs), well within the limits of the acceptable biological catch. Although there is a surplus of *C. opilio* south of 58° N latitude over DAH, allocation to a foreign nation would unavoidably damage the stocks of *C. bairdi*, all of which are expected to be taken by U.S. fishermen.

e. Rational management concerns other than MSY must be taken into consideration in specifying optimum yield. Stability of the fishery should be ensured by maintaining a stock base of various age classes of marketable crab, rather than creating an industry of dependency on a single year class resource. By maintaining a fishery on a broad age group, the variations associated with strong and weak year classes would be reduced.

f. The ecological importance of Tanner crab stocks is not well understood. The rich eastern Bering Sea is inhabited by the largest concentration of sea birds and marine mammals in the world. Millions of seals, important populations of whales, sea otters and other marine mammals, as well as hundred of million of sea birds and other forms of marine life are currently being impacted by the annual removal of more than 5 billion pounds (2,268,600 mt) from the eastern Bering Sea biomass. Optimum yield considerations indicate a cautious approach to additional removals.

Optimum yield for Tanner crab for 1978 are prescribed as follows:

C. bairdi, 89 million pounds (40,381 mt).
C. opilio:
North of 58°, 36.06–38.06 million pounds (16,360–17,268 mt).
South of 58°, 22 million pounds (10,000 mt).

F.7.0 Total Allowable Level of Foreign Fishery

The North Pacific Fisheries Council has determined that the U.S. domestic Tanner crab fishing fleet has the intent, desire, and capacity to fully harvest the OY of *C. bairdi* crab in the eastern Bering Sea. NMFS and OCS surveys show that the vast majority, all but about two percent (2 percent), of the *C. bairdi* stocks are found below 58° N latitude (Fig. F3, page 250). For this reason, and in order to prevent gear conflicts and a foreign by-catch of *C. bairdi* crab, any foreign harvest of Tanner crab has been restricted to the area north of 58° N latitude and west of 164° W longitude.

Approximately half of the *C. opilio* crab stocks found in the eastern Bering Sea are located south of 58° N latitude and have a similar and overlapping distribution with *C. bairdi* (Fig. F3, Page 250). The U.S. Tanner crab fleet has expressed a relatively strong interest in the development of a directed *C. opilio* crab fishery, however, the rate at which this fishery might develop can not be projected at this time with any degree of accuracy. Development of a directed domestic *C. opilio* fishery is considered to be both desirable and beneficial should market conditions and technological advancements make it feasible for domestic fishermen to economically harvest this resource.

About half of the *C. opilio* population would be available north of 58° N latitude for an ABC of approximately 225,000,000 pounds (102,000 mt). Testimony received during the development of this plan and the available evidence[1] indicates that TALFF exceeding 33,000,000 lbs (15,000 mt) will have an adverse effect on the developing U.S. Tanner crab fishery. Though 2,500 mt more than the TALFF set by the FMP for 1977 it is felt the increase is permissible in light of world market conditions and the fact that it will contain a smaller amount of the more desirable *C. bairdi* species than has been taken by foreign nations in the past. Therefore, the TALFF is equal to the OY minus the expected domestic annual catch. (TALFF=33,000,000 pounds, 15,000 mt)

F.8.0 Management Regime

F.8.1. Management Objectives

See statewide section 8.1. The management plan for the Bering Sea seeks to encourage the development of the U.S. fishery in this area by:

1. Ensuring concentrations of crab capable of supporting CPUE levels necessary to support U.S. fishery development are reserved for U.S. fishermen.
2. Preventing gear conflicts between U.S. and foreign fishermen.
3. Reserving crab for the U.S. fishery above the minimum size required by the U.S. industry for market development.

F.8.2. Areas, Fisheries and Stocks Involved

Refer to section 3.1.

F.8.3. Management Measures and Rationale

F.8.3.1. Domestic

See statewide section 8.3.1.

F.8.3.2. Foreign

See statewide section 8.3.2. Regulations governing foreign fishing in the Federal Register of February 11, 1977 part IV, relative to Tanner crab are retained unchanged except:

1. Subpart G, 611.90, crabs, section (b) Area quotas is changed to read: "No more than 15,000 mt of snow (Tanner) crab may be taken by foreign fishing vessels from that portion of the Bering Sea area over which the United States exercises fishing jurisdiction."
2. Eliminate categories I and II from the above Section.
3. Section (d)(2) is changed to read: "It shall be unlawful for any foreign fishing vessel to fish for crab at any time east of 164° W. longitude and south of 58°00' N. latitude in the Bering Sea, throughout the Northeastern Pacific Ocean and within 12 miles of the baselines used to measure the U.S. Territorial Sea.
4. Section (F)(2) is changed by eliminating the reference to reporting by area.

F.8.3.3. Relationship of the Recommended Measures to Existing Applicable Laws and Policies

See statewide section 8.3.3.

[1] A summary of testimony and evidence considered to arrive at an FAC of 15,000 MT is contained in Appendix 11.6.

F.8.4. Enforcement Requirements

See statewide section 8.4.

F.8.5. Reporting Requirements

See statewide section 8.5.

F.8.6. Cooperative Research Requirements

See statewide section 8.6.

F.8.7. Permit Requirements

See statewide section 8.7. for domestic licensing and foreign permits required.

F.8.8. Financing Requirements

See statewide section 8.8.

9.0 Statement of Council Intentions to Review this Plan After Approval by the Secretary

The North Pacific Fishery Management Council will, after approval and implementation of this plan by the Secretary, maintain a continuing review of the fisheries managed under this plan by the following methods:

1. Maintain close liaison with the management agencies involved, usually the Alaska Department of Fish and Game and the National Marine Fisheries Service, to monitor the development of the fisheries and the activity in the fisheries.
2. Promote research to increase their knowledge of the fishery and the resource, either through Council funding or by recommending research projects to other agencies.
3. Conduct public hearings at appropriate times and in appropriate locations, usually at the close of a fishing season and in those areas where the fishery is concentrated, to hear testimony on the effectiveness of the management plans and requests for changes.
4. Consideration of all of the information gained from the first three activities and development, if necessary, of amendments to the management plan. Hold public hearings on the amendments prior to sending them to the Secretary for adoption.

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TUESDAY, MAY 16, 1978
PART V

DEPARTMENT OF AGRICULTURE

Forest Service

■

NATIONAL ENVIRONMENTAL POLICY ACT/PROCESS

Final Guidelines

FEDERAL REGISTER

[3410-11]

DEPARTMENT OF AGRICULTURE

Forest Service

FOREST SERVICE NEPA PROCESS

Pursuant to the guidelines of the Council on Environmental Quality (CEQ), as published in the FEDERAL REGISTER on August 1, 1973 (38 FR 20549), the guidelines of the Department of Agriculture, appearing in the FEDERAL REGISTER on May 29, 1974, and the proposed guidelines of the Forest Service, appearing in the FEDERAL REGISTER November 29, 1977, the Forest Service herewith publishes as final the following guidelines for compliance with the National Environmental Policy Act of 1969 (Pub. L. 91-190, 183 Stat. 853, U.S.C. (2)(C)).

Comments received on the proposed Forest Service guidelines, published in the FEDERAL REGISTER, November 29, 1977, were given full consideration in developing these final guidelines. Forest Service also consulted with CEQ, the Department of Agriculture, and other agencies in finalizing the guidelines. The full test of all comments received are on file and available for public inspection in Room 3210 South Building, U.S. Department of Agriculture, Washington, D.C. 20013.

Most suggestions made for clarification were accepted. Following are the more substantive comments received and the consideration given them.

Respondents who addressed items outside the scope of FSM 1950 will receive individual responses to their concerns.

Contact. For further information, contact: Roy W. Feuchter, Environmental Coordinator, USDA, Forest Service, P.O. Box 2417, Washington, D.C. 20013, phone 202-447-4708.

JOHN R. MCGUIRE,
Chief, Forest Service.

GENERAL COMMENTS

Comment. the proposed manual suffers from an excess of words and is difficult to understand.

Response. Other comments received indicated that the manual was not specific enough and more material should be added. The majority, however, felt, as we, that the revised manual is of appropriate length and clarity. We have made some small revisions to try to address this comment.

Comment. Certain provisions tend to limit the dissemination of information to interested parties.

Response. Agree. The guidelines have been revised to include more dissemination opportunities. See notice of intent, FSM1952.23; finding of no significant effect, FSM 1952.24, 1952.52; record of decision, FSM 1953.3; and distribution, FSM 1952.54b.

Comment. The proposed guidelines will further complicate the system and lead to more inefficiency in the application of NEPA. Also the guidelines should be coordinated with NFMA and the Committee of Scientists.

Response. Although it is true that some additional documentation has been specified, the process itself has actually been streamlined, and is in line with CEQ present thinking in the developent of their new regulations. This should lead to more uniformity and efficiency in agency planning and decisionmaking. Coordination with NFMA and the Committee of Scientists in development of regulations has occurred throughout the development of these guidelines.

Comment. The process is to cumbersome in the event of emergency situations such as damaged timber, flood damage, fire, etc.

Response. Agree. The text has been changed (FSM 1952.1, item 5) to cover specific situations requiring immediate action to prevent or reduce risks or serious resource losses.

Comment. Environmental analysis of oil and gas wells should be reflected in the guidelines.

Response. Disagree. This manual material deals with the overall process and does not cover the specifics of proposals to use national forest lands. It would be impossible in manual guidance to cite specific emphasis covering every use. With proper application of this manual, oil and gas wells will be included as appropriate.

Comment. The environmental review process as outlined in Forest Service guidelines makes no provision for integration with responsibilities under section 106 of the National Historic Preservation Act.

Response. We have added language in the introduction to FSM 1950, last paragraph, "* * * and recognizes that the objectives of NEPA correspond to a great extent with the objectives of the Forest Service under other basic laws * * *." However, there are so many laws under with the Forest Service operates that it would be counterproductive to list them all and the requirements for each in this chapter of the Forest Service Manual. Requirements for compliance with various laws are covered in appropriate functional chapters of the Forest Service Manual and those laws and executive orders that require special coordination with NEPA are referenced in chapter 500 of FSH 1909.15, the NEPA Process Handbook.

Requirements for compliance with section 106 of the National Historic Preservation Act are provided in FSM 2300 (see 2361.31).

Comment. Every effort should be made to minimize the paperwork burden on all parties involved.

Response. Agree. The manual has been structured to eliminate duplication of effort while at the same time require documentation in keeping with the magnitude of issues and decisions being addressed. Direction toward reducting paperwork is specifically covered in FSM 1950.2, 1950.3, paragraphs 6 and 8 and 1952.4.

Comment. Early notification of State and local agencies should be given prior to the preparation of an environmental analysis.

Response. Agree. This direction is stated in FSM 1950.3—Policies and provided for in FSM 1951.

Comment. The outline for the environmental analysis has been oversimplified.

Response. Disagree. The new outline is based on 5 years of experience in working under the requirements of NEPA. We feel the change is an improvement over previous guidelines in that it allows for the documentation to be prepared in the same sequential steps as the environmental assessment which itself is designed to insure that required information is considered in a logical manner. The logical steps lead to identification of a preferred alternative and thereby makes the decision process clearly visible.

SPECIFIC COMMENTS

1950.1—AUTHORITIES

Comment. Reimbursement regulations under the Public Land Administration Act do not allow the Bureau of Land Management to require holders of rights-of-way across government land to reimburse the Bureau for expenses incurred in preparation of environmental statements or analyses of right-of-way applications.

Response. Agree. This has been deleted from the text.

1950.2—OBJECTIVES

Comment. Deemphasis on the environmental statement and emphasis on the process will result in dilution of the National Environmental Policy Act.

Response. Disagree. The emphasis on the process strengthens the application of the NEPA. Emphasis is not only on those actions which may require environmental statements but rather on the broad spectrum of Forest Service activities. It places emphasis on the "means." This does not discount the importance of the statement, the "end." It assures that NEPA concepts are appled to almost all Forest Service actions, not only those requiring environmental statements. (See FSM 1950.2 No. 7.)

1950.3—POLICIES

Comment. (1) State field offices should be contacted directly rather than through the A-95 procedures.

Response. Dealing directly with state departments and local officials is not

precluded in FSM 1952.54b, Contacts with State departments and bureaus would be in accordance with arrangements between individual States and the Forest Service.

Comment. (2) Appropriate agencies involved in or having expertise or responsibility for development of compensation measures for affected resources should be consulted when preparing environmental assessments.

Response. Agree. Covered in FSM 1951.5

Comment. (3) Environmental analyses serve as a basis for decision. All economic, social effects, and other statutory factors may be equally important and should be considered in the decision.

Response. Agree. The definition of environmental assessment includes physical, biological, economic, and social factors which means that environmental assessment is comprehensive in nature. It includes factors other than just natural and biological considerations.

Comment. (4) Strongly urge that a preferred alternative be a requirement in every draft environmental statement.

Response. We expect most draft statements will indicate a preferred alternative. However, in some cases such as RPA or some land management plans, the preferred alternative is not clearly apparent and it would be misleading to artificially select an alternative as "preferred."

1950.4—RESPONSIBILITIES

Comment. (1) The Forest Service should take the lead role or at least a role equal to the extent that national forest lands are involved.

Response. Agree. This has been included in FSM 1950.4

Comment. (2) The preparation of an ES should precede any irreversible action that would limit the choice of reasonable alternatives.

Response. Agree. So provided.

Comment. (3) The environmentally preferred alternative should also be identified.

Response. The environmentally preferred alternatve would be the same as the Forest Service preferred alternative since the Forest Service includes social and economic as well as physical and biological in carrying out the mandates of NEPA. (See FSM 1950.1.)

1951.1—PUBLIC PARTICIPATION

Comment. Public participation *may* be involved in each step of the environmental analysis process. [Emphasis added.]

Response. Agree. The may refers to a decision on the part of the public to become involved. The chart in section 1951 provides for such participation in the process. (See also FSM 1950.2(3).) The public, along with other agencies, will be notified that an ES will be prepared by the "Notice of Intent." (See section 1952.23.)

1951.2—IDENTIFY ISSUES, CONCERNS, AND NEED FOR A DECISION

Comment. (1) Need a "grandfather clause" for projects underway.

Response. The new guidelines approximate that of the previous guidelines. Generally, a new start will not be required but rather an adjustment to comply. Provision is made for special approval in the few cases where it may be necessary.

Comment. (2) The material on alternative development is sparse.

Response. This section has been rewritten (See FSM 1951.5 through 1951.8.)

1951.3—GATHER RELATED INFORMATION

Comment. The Forest Service should include cultural with the other components of the environment.

Response. Cultural components are considered as part of the physical and social factors.

1951.4—DEVELOP EVALUATION CRITERIA

Comment. (1) Some flexibility can be injected by adding two more criteria to evaluation criteria (was 1951.4; now 1951.31).

Response. Agree. We have added the recommendations. Other Federal agency recommendations have been added as well as test of legal feasibility and judicial direction. Ecological has also been included by incorporating physical and biological factors.

Comment. (2) Pre-ES liaison with other Federal agencies needs more emphasis.

Response. Agree. FSM 1950 now emphasizes early involvement, and sections 1950.2, 1951.4, 1951.5, and 1952.4, paragraph 12, all emphasize early involvement.

1951.5—FORMULATE ALTERNATIVES

Comment. (1) The preferred alternative should clearly distinguish between those mitigation measures available and those that will be undertaken.

Response. The intent of section 1951.5 is to insure that any "mitigation measures needed to avoid adverse environmental effects" will be included in alternatives so that the effects of those measures will also be analyzed. Including a list of other possible measures that were not planned to be used would simply add length and confusion.

Comment. (2) Objectives from national programs and policies should be "accomplished" rather than merely "responding to."

Response. Disagree. National policies may conflict with one another, such as objectives in rural area development and energy conservation policy. Objectives are addressed or "responded to" as stated in FSM 1951.3 and 1951.5.

1951.6—ANALYZE IMPLEMENTATION EFFECTS

Comment. (1) Adverse environmental effects should call for estimated duration of the adverse effect.

Response. Agree. Section 1951.6 states "changes are usually described in terms of their magnitude, duration, and significance."

Comment. (2) Costs should include environmental losses which are difficult to quantify financially.

Response. Agree. Section 1951.6 states "effects are expressed in terms of future outputs, expenditure costs, and changes in the physicial, biological, economic, and social components of the environment for each alternative."

Comment. (3) Effects upon wetlands and flood plains should be added to No. 5 under section 1951.6.

Response. Agree. Item 5, 1951.6 now states "if the plan, program, or project is located in, or may affect flood plains or wetlands, special consideration of effects is necessary to comply with E.O. 11988 and E.O. 11990."

Comments. (4) Historic properties must be given consideration in environmental assessment.

Response. Agree. We consider historic properties as a vital segment of both the physical and social segment of the environment.

1952.12—ENVIRONMENTAL STATEMENT(S)

Comment. There is a limited list of actions requiring environmental statements.

Response. Agree. Decisions concerning the need for a statement should be made with the benefit of a systematic assessment process at that level of the organization that is best able to recognize and deal with the situation. We believe this approach is superior to an arbitrary listing.

1952.12a—CHANGES IN INVENTORIED ROADLESS AREA WILDERNESS CHARACTER

Comment. Delays are excessively long between submission of a draft environmental statement and implementation of a decision, particularly if a roadless area is involved.

Response. The 90-day period between submission of draft statements and implementation of decisions is required by current CEQ guidelines. (See 40 CFR 1500.11(b).)

The 90-day delay for implementation of decisions involving roadless areas after the FES is filed is consistent with the Chief's agreement with the Senate and House Subcommittees to provide for a 90-day congressional review period in such cases. (FSM 8260, Interim Directive No. 1, dated March 1, 1977.)

1952.12b—ALL OTHER SITUATIONS

Comment. The "controversial" provision should not have been dropped as a criteria for the need for an ES.

Response. Disagree. Current CEQ guidelines state in 40 CFR, 1500.6(a), proposed major actions, the environmental impact of which is likely to be highly controversial, should be covered in all cases. The controversy provision has been misinterpreted by many to mean that any action involving any degree of "controversy" would require an ES.

We do not view "controversy," per se, as a criteria for judging whether or not an ES is required. The need for an ES should be determined on the basis of whether it is a major Federal action significantly affecting the quality of the human environment as required by NEPA.

The degree of controversy is an important factor to consider in determining the public involvement necessary on sensitive issues. The requirement for early participation by affected Federal, State, and local agencies and other interested persons to determine scope of issues, etc., to be addressed will help responsible officials in arriving at what is necessary and appropriate. (See FSM 1951.2 which includes issues to be addressed through public involvement.)

1952.3—CONCEPTS

Comment. Should include references in the FES as to consideration given to review comments and all public comments should be included in the appendix.

Response. Agree. Change made in text. All substantive comments will be included in the appendix unless the response is exceptionally voluminous. (See FSM 1952.4, Item 12.)

1952.61—FINAL ENVIRONMENTAL STATEMENTS

Comment. The 30-day waiting period before decisions are implemented should not begin until the FES is made public and also received by appropriate clearinghouses.

Response. This will generally be the case. The 30-day waiting period is in conformance with CEQ guidelines. EPA computes the 30-day timeframe for final environmental statements from the date the FES is made available to EPA and the public.

TITLE 1900—PLANNING

CHAPTER 1950—THE FOREST SERVICE NEPA PROCESS

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The Forest Service "NEPA process" includes all measures necessary for compliance with Title I of the National Environmental Policy Act of 1969 (Pub. L. 91-190) (NEPA). It recognizes that environmental assessment is an integral part of the Forest Service planning/decisionmaking/NEPA process and that it is used to insure that decisions conform to other applicable laws under which the Forest Service operates. This chapter describes the assessment/decision process and the environmental documents resulting from this process.

This chapter constitutes Forest Service direction for implementing the National Environmental Policy Act and subsequent regulations.

It is based upon: Legislation, Executive orders, Council on Environmental Quality guidelines, and Secretary of Agriculture memoranda and guidelines and recognizes that the objectives of NEPA correspond to a great extent with the objectives of the Forest Service under other basic laws.

1950.1—Authorities. The Forest Service is authorized and directed by the NEPA to carry out its programs in ways that will create and maintain conditions under which man and nature can exist in productive harmony, and fulfill social and economic needs of present and future generations of Americans.

Several laws require a systematic, interdisciplinary approach to planning and decisionmaking. These include the National Environmental Policy Act, Forest and Rangeland Renewable Resources Planning Act, and the National Forest Management Act. The NEPA requires detailed statements on proposed major Federal actions significantly affecting the quality of the human environment (section 102(2)(C)).

1950.2—Objectives. The purposes of the Forest Service NEPA Process are to:

1. Merge the NEPA requirements and the decisionmaking process.

2. Provide careful and appropriate consideration of environmental concerns in planning and decisionmaking.

3. Provide for early and continuing participation of other agencies, organizations, and individuals having environmental responsibilities, expertise, or interest.

4. Determine if there is a need for an Environmental Statement.

5. Assure that the planning/decisionmaking/NEPA/Process is open and available for public review. Make the sequence of planning and decision steps visible.

6. Emphasize the decisionmaking process rather than the environmental documents.

7. Identify a preferred alternative from a reasonable range of alternative policies, plans, programs, or projects.

8. Document the rationale of the decisionmaker.

9. Provide a basis for determining management requirements, mitigation measures, contract provisions, or stipulations and documentation as appropriate.

1950.3—Policies. An environmental (assessment) will be made for decisions about actions affecting resources, other land uses, or the quality of the physical, biological, economic and social environment. (New regulations and policy changes are included.) Assessments for emergency situations do not need to be documented. The responsible official may also determine that documentation is not needed in certain other specific situations (See FSM 1952.1.).

Assessments will impartially consider a reasonable range of alternatives and the anticipated environmental effects associated with each alternative.

A systematic interdisciplinary approach shall be used to integrate the natural and social sciences, and the environmental design arts in planning and decisionmaking.

The assessment is the decisionmaking process used to determine the significance of environmental effects. This determines which environmental documents are appropriate.

Assessments are documented in either (1) An Environmental Assessement Report (EAR) including a Finding of No Significant Effect or (2) An Environmental Statement (ES), (See FSM 1952). The length and detail of documented assessments varies according to the type of decisions being made and to the judgment of the responsible official. Documents must present a clear, concise, and logical explanation of: (a) The need for the action; (b) the criteria for evaluation of alternatives; (c) the alternatives; (d) the anticipated effects of implementing the alternatives; and, (e) in some cases, the Forest Service preferred alternative.

Environmental documents such as EAR's, ES's, Notices of Intent, and Findings of No

Significant Effect should replace, and not duplicate, other reports that previously were used to serve similar purposes.

Assessments will be conducted as early as possible and will be used for decisions and recommendations, EAR's or ES's will document the assessment, and identify the line officer responsible for the decision.

Environmental Statements should not be prepared for activities whose effects, although of a permanent nature, would not be of serious consequence to the human environment. These activities are more properly addressed in an EAR. (See FSM 1951.31).

Other agencies, organizations, and individuals having environmental responsibilities, expertise, or expressed interest will be consulted as appropriate at the beginning of the assessment activity. The A-95 project notification process shall be used, when appropriate, to notify state and local agencies (FSM 1565). Consultations will be documented.

Costs of environmental assessments and documents for in-service originated programs projects are a part of the regular budgetary process for the program or project. Costs will be borne by the benefiting activity(ies) unless special provision is made at the Washington Office level.

1950.4—Responsibilities. When more than one agency shares the responsibility for the decision, a "lead agency" is identified. The lead agency is the Federal agency having primary authority for committing the Federal Government to an action. The lead agency is responsible for documenting the assessment when more than one agency is involved. (See CEQ Guidelines 1500.7(B)). If the question of lead agency cannot be resolved at field levels, the Chief will work with the Department and the Council on Environmental Quality to resolve the question. When agencies have separate responsibilities but related decisions, a single interagency environmental assessment may be conducted and documented. When this is done, the document will name the responsible official for each agency and will identify their separate responsibilities. Where National Forest System lands are involved, the Forest Service should exert a strong role in the environmental assessment. If the Forest Service is not the lead agency in these cases, it should request to be a "cooperating agency."

Project proponents may be requested to provide data and docmentation.

The Chief is responsible for environmental assessment documentation relating to legislation and selected national policies and programs.

The Regional Forester, or Area Director, or Station Director, or Forest Supervisor, or District Ranger, or Research Project Leader is the responsible official for determining the need for environmental assessment, preparation of environmental documents, and making this decision within their areas of responsibility.

Delegations of authority are specified in FSM 1230. Officials delegated responsibility for proposed actions are responsible for environmental assessments. (Also see FSM 1952.54a).

1950.5—Definitions. In addition to the definitions in this section, also see the Council on Environmental Quality Guidelines.

Activity: Work processes that are conducated to produce, enhance, or maintain outputs or achieve administrative and environmental quality objectives.

Categorical Exclusion: A category of actions which do not individually or cumulatively have a significant effect upon the human environment, and which do not require documentation.

Cooperating Agency: Any Federal agency other than the lead agency which has jurisdiction by law or special expertise with respect to any environmental effect involved in a proposal.

Effects: Changes in environmental conditions, directly or indirectly associated with implementation of alternatives (synonyms "consequences" or "impacts").

Environment: The aggregate interaction of physical, biological, economic, and social factors affecting all organisms in an area. (See also human environment).

Environmental Assessment: All activities related to assessing or analyzing alternatives and their environmental effects. When the term "assessment" is used in FSM 1950, it refers to the environmental assessment. It should not be confused with the "national assessment" required by the RPA (Pub. L. 93-378).

Environmental Assessment Report (EAR): A document prepared by a Federal agency which serves to (1) provide concise but sufficient evidence and analysis for the determination whether to prepare an Environmental Statement or Finding of No Significant Effect; (2) aid in compliance with the NEPA when no Environmental Statement is necessary; and, (3) facilitate preparation of a statement when one is necessary.

Environmental Design Arts: Those disciplines such as architecture, civil and environmental engineering, and landscape architecture which directly influence the physical environment as a result of the design of projects of all kinds.

Environmental Documents: Includes (a) Environmental Assessment Reports, (b) Environmental Statements, (c) Notices of Intent, and, (d) Finding of No Significant Effect.

Environmental Statement (ES): A detailed written statement as required by Section 102(2)(C) of the NEPA.

Evaluation Criteria: Predetermined rules for appraising alternatives.

Finding of No Significant Effect: A statement by a Federal agency briefly presenting the reasons why an action, not otherwise excluded (categorical exclusions) will not have a significant effect on the human environment and for which an Environmental Statement will not be prepared.

Flood Plains: Lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including as a minimum, that area subject to a one percent or greater chance of flooding in any given year. Floodprone wetlands and sinkholes, and sheet flow or shallow flooding areas such as debris cones or alluvial fans built up by material carried by mountain streams, are special flood plain areas.

Goal: A broad but concise statement of the desired state or condition that land and resource management policy and programs are designed to achieve. It is not always quantifiable and is timeless in that it may not have a specific date by which it is to be completed. Goals are the principle statements from which objectives are developed.

Human Environment: The natural and physical environment and the interaction of people with that environment. (See also environment).

Implementation: Those activities necessary to respond to the decision.

Interdisciplinary Approach: The utilization of individuals representing two or more areas of knowledge and skills focusing on the same subject. The participants develop solutions through frequent interaction so that each discipline may provide insights to any stage of the problems and disciplines may combine to provide new solutions. This is different from a multidisciplinary team where each specialist is assigned a portion of the problem and their partial solutions are linked together at the end to provide the final solution.

Issue: A point, matter, or question to be resolved.

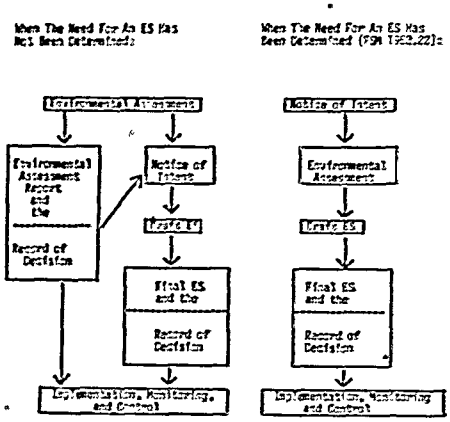
Notice of Intent: A notice that an Environmental Statement will be prepared and considered.

Objective: A clear and specific statement of planned results to be achieved within a stated time period. Objectives are subordinate to goals, are narrower and shorter in range and have an increased probability of attainment, specify time periods for completion and resources and achievements that are measurable and quantifiable.

Record of Decision: A concise public Record of Decision stating how the EAR or ES was considered and used by the agency in its decisionmaking.

Wetlands: Areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction.

The relationships between the environmental assessment, the environmental documents and implementation defined above are shown in diagrams below.



*The Record of Decision is attached to the FES and filed with EPA.

1951—Environmental Assessment (See FSM 1950.3). An assessment must be completed systematically to help insure that required information is considered in a logical manner leading to identification of a preferred alternative. The assessment may be thought of as being carried out in separate, but interrelated steps. The process is iterative with information feeding back through the completed steps. Steps may be combined or expanded depending on the situation.

A systematic, interdisciplinary approach is used because no single scientific discipline is sufficient to adequately identify and address issues, problems, and opportunities. Team member interaction provides the necessary insights in all steps of the process. In each assessment step, use should be made of

earlier document assessment information to avoid duplication of previous effort and to maximize use of available information.

The major steps of assessment and the decision process and usual roles of participants in the NEPA process are shown in the following chart:

USUAL ROLE OF PARTICIPANTS

The NEPA process	The responsible official (See FSM 1950.4)	Interdisciplinary team	Agencies, organizations, and individuals
1. Environmental assessment and decision process:			
A. Identify issues, concerns, and the need for a decision.	Responsible	Recommend	Recommend.
B. Select criteria	do	do	Do.
C. Gather related information	Review	Responsible	Provide information.
D. Formulate alternatives	do	do	Recommend.
E. Analyze effects	do	do	Provide information.
F. Evaluate alternatives	Responsible	Assist	Provide information.
G. Identify the FS preferred alternative.	do	Recommend	Recommend.
2. Documentation*	Review	Responsible	Review.
3. Establish decision date**	Responsible	Recommend	Do.
4. Implementation, monitoring and control).	do	Assist	Assist.

*Documentation refers to preparing the required environmental documents. (See FSH 1909.15, sec. 310, for sample Record of Decision).

**Refers to the action of completing the Record of Decision and not that of identifying the preferred alternative. (See FSM 1953). The Record of Decision establishes the legal date of decision.

1951.1—Public Involvement. Public involvement is an integral part of the planning/decision-making/NEPA Process. Public participation may be involved in each step of the assessment. See FSM 1626 and Inform and Involve Handbook. See Section 111, of FSH 1909. 15, the NEPA Process Handbook for a list of agencies with legal jurisdiction or expertise.

Where flood plains or wetlands are involved, there must be sufficient public participation to satisfy the requirements for early public review as shown in Section 2(A)(4) of E.O. 11988, and Section 2(B) of E.O. 11990. (See FSM 2530).

1951.2—Identify issues, concerns, opportunities, and the need for a decision. The environmental assessment begins by identifying the major issues, concerns, or opportunities and the need for a decision.

Interested or affected agencies, organizations, and individuals often assist in identifying issues, according to their importance, and scope. Public issues and management concerns may originate at national, regional or local levels, or in the implementation of higher-order plans. Forest Service policies, plans, programs, or projects are responses to major issues, concerns, and opportunities.

Early involvement by interested or affected agencies, organizations and individuals may be important in this step to assure that significant issues, concerns, and opportunities are described. Initial descriptions may be changed, modified, or dropped as the assessment proceeds.

See section 141 of FSH 1909.15, the NEPA Process Handbook, for a list of environmental factors that might be involved.

When the action is such that an Environmental Statement is required (FSM 1952.22a), or is highly probable, there shall be an early and open process to facilitate free and open communication with the public.

Through public involvement the responsible official shall:

1. Invite the participation of affected Federal, state, and local agencies, the proponent of the action, and other interested persons (including those might not be in accord with the action).

2. Determine the scope and the signficant issues to be analyzed in depth during the assessment.

3. Identify and eliminate from detailed study issues concerns, and opportunites which are not significant or which have been covered by prior environmental review.

4. Narrow the scope of the assessment to appropriate limits and discuss the information to be included in the statement.

5. Allocate responsibilities for the assessment and statement among the lead and cooperating agencies.

6. Indicate any Environmental Assessment Reports and other Environmental Statements which are being or will be prepared that are related, but are not part of the scope of the statement which is the subject of the public involvement.

7. Indicate the relationship between the timing of the preparation of environmental assessments and the agency's tentative Planning and decisionmaking schedule.

During the public involvement the responsible official may set page and time limits on Environmental Statements.

1951.3—Select criteria. Criteria are standards on which a judgment or decision may be based. These standards must be agreed upon early in the assessment process, as they guide the subsequent steps of the process. As used here, standards and criteria do not refer to the policy type of standards, criteria, and guidelines discussed in section 11 of NFMA. Criteria are frequently needed in regard to the following items:

1. Information collection standards such as: The kind, amount, intensity, and accuracy desired.

2. Alternative fromulation standards such as the kinds of alternatives the responsible official considers to be included in the "reasonable range of alternatives" and monitoring requirements.

3. Analysis standards such as: Time periods to be covered by the analysis, techniques to be used. Discount rates to be applied.

4. Evaluation standards such as: Goals of management, program objectives, and tests of feasibility that will be used to compare alternatives.

5. Documentation standards such as those that will be used in the writing and processing of the EAR or ES.

1951.31-Evaluation criteria. Whereas most of the kinds of criteria lised above are used by the interdisciplinary team in the conduct of their responsibilities, evaluation criteria are used by the responsible official and the team in evaluting the alternatives and identifying preferred alternatives. Evaluation criteria should be developed from sources external to the assessment process. Otherwise, decisions may appear to be made on evaluation criteria which were selected to justify the selection of the preferred alternative.

Develop evaluation criteria on the basis of:

1. Laws, Executive Orders, regulations, and judicial direction.

2. Goals and objectives from higher-order Forest Service plans and policy statements.

3. Program objectives.

4. Test of legal, technical, financial, economic, and political feasibility.

5. Public and other agency recommendations.

Sources of evaluation criteria should be documented.

Evaluation criteria established early in the assessment are subject to revision as the analysis proceeds. Early identification of evaluation criteria assists in formulation of alternatives and analysis of implementation effects. It also provides and opportunity for others to comment, suggest modifications, and recommend criteria that might have been omitted.

Evaluation criteria should not restrict alternative fromulation by prematurely ruling out realistic alternatives. However, they should help eliminate development of infeasible alternatives.

When the need for an ES has not already been established (FSM 1952.22a) the following criteria should be considered in terms of magnitude, duration, and significance of effects in evaluating the need for an ES:

1. Degree of ecosystem disturbance, both onsite and offsite should be recognized.

2. Irreversible or irretrievable commitments of physical and biological resources which preclude future options.

3. Cumulative effects of many small actions.

4. Chain reactions or seconday effects of interrelated activities.

5. Context in terms of global, national, regional or local importance.

6. Uniqueness or rareness of resource.

1951.4—Gather related information. After the issues, concerns, and opportunities are identified, appropriate data must be gathered to provide information relating to them. The type and amount of information depends on the situation, the issues, concerns, opportunities and the scope of anticipated effects. Data collection should focus on the present and expected future conditions of those physical, biological, economic and social factors affecting and affected by the decision. Future environmental conditions will frequently be different than present conditions. Estimates of future conditions should be made without regard to changes in Forest Service direction. The steps that follow will consider Forest Serv-

ice changes. Sources of information should be documented.

1951.5—Formulate alternatives. A reasonable range of alternatives is developed to provide different ways to address major issues, concerns, and opportunities. These are developed consistent with goals, and objectives from legislation or higher-order FS plans, programs, and policies.

The range of alternatives must be broad enough to respond to major issues, concerns, and opportunities. Alternatives should be fully and impartially developed. Care should be taken to insure that the range of alternatives does not prematurely foreclose options which might enhance environmental quality or have fewer detrimental effects. The alternative of taking no action (continuing present course of action or no change) must always be considered.

Public involvement is important in formulating alternatives. The extent of involvement depends on the issues, concerns, opportunities involved, and the kind and magnitude of the decision.

Alternatives are often modified and new alternatives developed as the assessment proceeds.

Alternatives should be formulated to include management requirements and mitigation measures needed to avoid adverse environmental effects and conform to all other applicable laws relating to Forest Service activities. In the development of mitigation measures, it may be desirable to contact other Federal, state, or local agencies responsible for, and with special expertise regarding specific environmental values.

If the plan, program, or project is located in, or may affect, flood plains or wetlands, alternatives must be responsive to E.O. 11988 and E.O. 11990. See FSM 2530.

1951.6—Analyze effects. In this step, the effects of implementing each alternative are estimated. Direct, indirect, and cumulative effects should all be considered. Effects are expressed in terms of future outputs, expenditures, costs, and changes in the physical, biological, economic, and social components of the environment for each alternative. The changes should be those associated with implementation of the alternative, and expressed, when possible, in terms of differences from the expected future condition associated with the "no change" or "no action" alternative. Changes are usually described in terms of their magnitude, duration, and significance.

It is not always necessary to deal with all factors and components of the environment. The effects considered in analysis should be only those of significance to the issues, concerns opportunities and the evaluation criteria.

The following effects should be analyzed for alternatives; although not necessarily under separate headings:

1. The relationship between local, short-term uses of the human environment and maintenance or enhancement of long-term productivity (Section 102 NEPA).

2.Environmental Effects. Adverse effects which cannot be avoided will be identified in evaluation (Section 102 NEPA).

3. Resource commitments that are irreversible and irretrievable (Section 102 NEPA).

The term "irreversible" applies primarily to the use of nonrenewable resources, such as minerals or to those factors which are renewable only over long time spans, such as soil productivity. "Irreversible" also includes loss of future options.

The term "irretrievable" applies to losses of production, harvest or use of renewable natural resources. For example, some or all of the timber production from an area is irretrievably lost while an area is used as a winter sports site. If the use is changed, timber production can be resumed. The production lost is "irretrievable," but the action is not irreversible.

4. Effects upon minority groups and civil rights. (Secretary's memorandum 1662, Supplement 8 and OMB Circular A-19) (See also FSM 1730).

5. Effects upon prime farmland, range, and forest lands.

If the plan, program, or project is located in, or may affect flood plains or wetlands, special considerations of effects are necessary to comply with E.O. 11988 and E.O. 11990. (See FSM 2530).

1951.7—Evaluate alternatives. This step compares current and future outputs, costs and physical, biological, economic, and social changes for each alternative with goals, objectives, and other evaluation criteria. Adverse effects which cannot be avoided will be identified. The rationale for the judgment that an effect is adverse is usually based on generally accepted standards such as those for air, water, endangered species, visual, noise, etc.

This evaluation becomes a basis for identification of the Forest Service preferred alternative. If the need for an ES has not been determined, this step also includes determining if an ES should be prepared (FSM 1952.22b). Because evaluation involves judgment, the line officer is usually responsible for this step. A clear and concise record of the evaluation is necessary.

1951.8—Identification of Forest Service preferred alternative. Based on a comparison of the alternatives, the responsible official identifies a selected alternative in an EAR or FES. A preferred alternative is identified in a DES whenever a clear preference has actually been identified as a result of the assessment process. Chief's approval is required for other situations. The rationale used in identification of preferred alternative must be documented.

1952—Environmental assessment documentation. This section discusses environmental assessment reports, environmental statements, notices of intent, and findings of no significant effect. These documents describe the results of the environmental assessment, and are most often prepared from interim records developed during the various steps of the assessment process.

Environmental assessment reports are prepared in final form to document the rationale of the decisionmaker. They may be supplemented or revised as necessary.

Environmental statements are prepared first in draft form, the draft environmental statement (DES), and are filed with the EPA and distributed for public review and comment. Following the review period, a final environmental statement (FES) is prepared to document the rationale of the decisionmaker. Both draft and final environmental statements may be supplemented or revised.

Both environmental assessment reports and environmental statements should clearly, concisely, and logically describe: (1) Alternative policies, plans, programs, projects, or proposals being considered, (2) their anticipated environmental effects, (3) consultation with others, and (4) the rationale used in the identification of the Forest Service preferred alternative.

When an EA deals with the establishment of standards, criteria, and guidelines as discussed in section 11 of NFMA, the documentation step will record the determinations made and accompanying rationale, regarding the degree of public participation.

1952.1—When not required (categorical exclusions). The following categories of actions normally do not require environmental assessment documents.

1. Organizational changes, personnel actions, and other similar or related types of administrative decisions.

2. Annual budget proposals.

3. Individual actions for which the environmental effect is adequately covered by a timely assessment by a Federal agency on programs or plans which include the individual action.

4. Forest Service data collection or field surveys, not significantly affecting the quality of the human environment.

5. Situations requiring immediate action to prevent or reduce risks to public health, safety, and welfare, or serious resource losses including, but not limited to, wildland fire suppression, search and rescue, reduction of flood loss.

6. Routine operation and maintenance of existing transportation, administrative, fire management, and resource improvements which were constructed prior to the requirement that an environmental assessment be made under the NEPA. If such improvements have been constructed after the NEPA, operation and maintenance will normally be considered in the project EAR or ES.

The responsible official should recognize that there may be extraordinary circumstances when the actions listed above may have a significant environmental effect. When this situation occurs, an environmental assessment should be made to determine if the environmental effect is significant.

1952.2—When required. Whenever an assessment is conducted, it will be documented in either an EAR, or ES, except as provided in FSM 1952.1 (categorical exclusions).

1952.21—Environmental assessment report (EAR). When the assessment determines that an ES is not necessary, the assessment will be documented in an EAR.

1952.22—Environmental statements (ES). Environmental statements shall be prepared on proposals for legislation significantly affecting the quality of the human environment, and for other major Federal actions significantly affecting the quality of the human environment. When emergency circumstances make is necessary to take actions with significant environmental effect before an ES can be prepared, and processed, the Chief will request a waiver from the CEQ.

"Major" actions and "significant" effects are difficult to define precisely and uniformly because of the great variation in social, economic, physical, and biological conditions. The official responsible for taking action must use good judgment in determining when environmental statements are appropriate. (See FSM 1951.31.)

1952.22a—Actions requiring environmental statements. Environmental statements shall be prepared for the following actions:

1. Legislation recommended by Forest Service that would significantly affect the quality of the human environment.

2. Any action that is discretionary on the part of the Forest Service that will permanently change the existing character of inventoried roadless areas—except for those

areas which have been removed from the inventory by an action covered by an environmental statement. (Roadless area review and evaluation environmental statement—1973, and Forest Service stipulation in *Sierra Club* v. *Butz*, Ninth District Court).

3. The national program required by the forest and Rangeland Renewable Resource Planning Act (Pub. L. 93-378).

4. National Forest land and resource management plans as required by regulations issued pursuant to section 6 of the National Forest Management Act of 1976, (Pub. L. 94-588). (See FSM 1920.)

1952.22b—Actions for which the need for an ES is determined by the environmental assessment. The need for an ES for other situations will be determined through an assessment. The assessment should determine if it is a major Federal action having a significant effect upon the quality of the human environment, that has not been adequately addressed in another environmental statement. (Also see FSM 1951.31.)

1952.23—Notice of intent. When it is determined that an ES is needed, the responsible official will publish a notice of intent in a newspaper of general circulation in the area affected by the decision and in the FEDERAL REGISTER. The appropriate State clearinghouse should be notified. A copy of the notice of intent shall be sent to the Washington office when the notice is sent to the FEDERAL REGISTER for publication.

The notice shall briefly: 1. Describe the proposed action.

2. Summarize the determinations made through the public involvement to identify issues and concerns. (FSM 1951.2.)

3. State the name and address of the official responsible for preparing the environmental statement.

Notices of intent will be used to develop lists of environmental statements under preparation by administrative units. A composite list will be maintained by the Washington office. It will be updated to coincide with the management attainment reporting system schedule. See section 231, the NEPA Process Handbook.

1952.24—Finding of no significant effect. If the responsible official determines (based on the environmental assessment) not to prepare a statement, a finding of no significant effect will be prepared.

The finding of no significant effect shall briefly describe the plan, program, or project, its location, and the factors that were considered in making the determination that an ES was not required.

When: (1) the proposed action is, or is closely similar to, one which normally requires preparation of an ES (FSM 1942.22a), (2) the nature of the proposed action is without precedent, or (3) flood plains or wetland are involved, the finding of no significant effect shall be made available for a 30-day public review before the determination not to prepare an ES is effective. In all other situations, the finding of no significant effect will be included as an integral part of the EAR. See section 220, FSH 1909.15, the NEPA Process Handbook, for additional information.

1952.3—Outline. Environmental assessment reports and environmental statements generally will conform to the following outline. The outline follows the sequence of steps in the assessment (FSM 1951).

Sections of the outline may be combined or rearranged in the interest of clarity and conciseness.

EAR OR ES OUTLINE

TITLE PAGE

1. Cover sheet.
2. Summary (optional for EAR).
3. Table of contents.
4. Introduction.
5. Affected environment.
6. Evaluation criteria.
7. Alternatives considered.
8. Effects of implementation.
9. Evaluation of alternatives.
10. Identification of the Forest Service preferred alternative.
11. Management requirements, constraints, and mitigation measures (optional for ES).
12. Consultation with others.
13. Finding of no significant effect (EAR only).
14. Index (optional for EAR).
15. Appendix.

1952.4—Contents. Writers of environmental assessment reports or environmental statements should use section 1.11 of FSH 1109.12 Directives Preparation Handbook as a guide. Writers should be concerned with content, clarity, and brevity. Inclusion by reference should be freely used to reduce size and length of documents. In final environmental statements, the material listed in items 4 through 11 in FSM 1952.3 shall normally not exceed 150 pages (and preferably shorter) or 300 pages for proposals of unusual scope or complexity.

1. Cover sheet (optional for EAR). See section 232.1, FSH 1909.15, the NEPA Process Handbook for a sample cover sheet.

The cover sheet shall not exceed one page. It shall state:

a. The name of the responsible agencies including the lead agency, and cooperating agencies, and responsible official.

b. The name of the proposed action that is the subject of the statement, together with the State(s) or county(ies) where the action is located.

c. The name, address, and telephone number of the person at the agency who can supply further information.

d. A designation of the statement as a draft, final, or draft or final supplement.

e. A one paragraph abstract of the statement.

f. The date by which comments must be received.

2. Summary. A summary is desirable for lengthy and detailed environmental assessment reports. It is required for environmental statements. The responsible official will determine the need for an EAR summary. See section 232.2, FSH 1909.15, the NEPA Process Handbook, for a sample summary. An environmental statement summary will normally be 5 to 15 pages in length.

3. Table of contents. Self-explanatory.

4. Introduction. The introduction briefly describes the nature of the decision to be made. A map showing the general location of the plan or project should be included. Major issues, concerns, and essential background information are presented only if important to understanding the decision.

5. Affected environment. This section describes the current and expected future condition of physical, biological, economic, and social factors in the area affected by the decision.

The description should be limited to information directly related to major issues, concerns, and opportunities. When other published material adequately describes the factors, refer to the publication and summarize, but do not repeat the description in the EAR or ES. The section should clarify, not obscure, understanding. (Also see FSM 1951.2.)

6. Evaluation criteria. This section describes the goals, objectives, and tests of feasibility used to evaluate alternatives. The sources of these criteria should be shown. (Also see FSM 1951.3.)

7. Alternatives considered. This section is usually in two parts: The first briefly describes the process used in formulating the alternatives; and the second describes each alternative. (Also see FSM 1951.5.)

The detail of description should be similar for all alternatives.

8. Effects of Implementation. This section describes consequences of implementing each alternative in terms of outputs, expenditures, costs, and environmental changes. Objectivity is important. Significant differences of opinion should be discussed. (Also see FSM 1951.6.)

The description should:

a. Identify the assumptions used in estimating the effects of implementation.

b. Make use of appropriate analyses, data, and information. Cite sources used instead of including lengthy analyses in EAR's or ES's.

c. Express expected environmental changes in quantitative or qualitative terms as applicable, and as necessary to indicate relative differences between the alternatives in terms of significance, duration, and magnitude of the changes.

d. Indicate the expected outputs, in terms of goods and services, that will result from implementing each alternative. Express the outputs in service-wide standard terminology. See FSH 1309.11 Management Information Handbook. Use RPA program planning time periods.

e. Indicate estimated Forest Service expenditures for implementing each alternative by one or more RPA program planning periods. Other public and private expenditures may be shown, as appropriate.

f. Discuss significant changes in physical, biological, economic, and social components of the environment (effects) associated with implementation of each alternative. This includes direct, indirect, cumulative, and unavoidable effects, long- and short-term relationships, and irreversible and irretrievable resource commitments. It is not mandatory to use separate headings for these items.

9. Evaluation of alternatives. This section discusses how the alternatives compare with each other in terms of the evaluation criteria. This provides the basis for identification of a preferred alternative. (Also see FSM 1951.7.)

10. Identification of the Forest Service preferred alternative. This section identifies the preferred alternative is not identified in the DES, explain why. (Also see FSM 1951.8.)

11. Management requirements and constraints (optional for ES). This section summarizes management requirements and mitigation measures of the preferred alternative for use in project design and permit or contract requirements.

12. Consultation with others. Indicate the methods used to obtain public involvement and list the agencies and groups consulted during the assessment. Individuals may be listed when appropriate. This discussion should relate to substantive information received and used and not be directed solely to responses and rebuttals.

Copies of all substantive comments received on a DES should be included in the

appendix of the FES. If response has been exceptionally voluminous, it may be summarized. Copies, or summaries of all substantive comments should be included in the appendix, regardless of whether or not the comment is thought to merit individual attention in the text of the ES. Copies of all review comments should be available for public review and in-service use, in the office of the responsible official of the administrative unit affected by the policy, plan, program, or project.

Final statements should identify changes in the DES content as a result of substantive review comments. Possible changes are to: (1) modify the proposed action; (2) formulate, analyze, and evaluate alternatives not previously considered; (3) supplement, improve, or modify analyses, or (4) make factual corrections. In addition, it may be desirable to explain why some comments did not warrant changes in the DSES content.

13. Finding of no significant effect (EAR only). When an environmental assessment report documents the determination that an environmental statement is not necessary, the rationale for this finding will be described. See section 220, FSH 1909.15, the NEPA process Handbook, for a sample finding of no significant effect.

14. Index (optional in EAR). Environmental statements should include an index. See section 245, FSH 1909.15, the NEPA Process Handbook.

15. Appendix material should be brief and include only items pertinent to understanding the report or statement. Locations of reference materials or lenghty or detailed analyses referred to in the EAR or ES text but not included in the appendix should be shown in appropriate locations in the text. The appendix of an ES must include a list of people who contributed substantially to the assessment or to the ES, along with a brief description of their disciplines and qualifications. This list will normally not exceed two pages. See item 12 above regarding copies of summaries of comments on the DES.

1952.5—Processing.

1952.51—Environmental Assessment Reports. Regional Foresters, Area and Station Directors shall develop procedures as necessary for processing Envrionmental Assessment Reports. These procedures may include public distribution.

1952.52—Finding of no Significant Effect. See FSM 1952.24 and Section 220, FSH 1909.15, the NEPA Process Handbook, for instructions reguading processing of the Finding Of No Significant Effect.

1952.53—Notice of Intent. See FSM 1952.23 and Section 231 of FSH 1909.15, the NEPA Process Handbook.

1952.54—Environmental Statements. The following steps are taken after a DES has been prepared:

1. File the DES with EPA. Distribute it to agencies and the public.

2. Schedule public participation sessions if necessary.

3. Review, analyze, evaluate, and respond to substantive comments on the DES.

4. Prepare a FES and Record of Decision (FSM 1953.3) and attach to FES. See Section 310, FSH 1909.15, the NEPA Process Handbook for a sample Record of Decision.

5. File the FES with EPA. Distribute it to other agencies and the public.

6. Impement the plan, program, or project. Monitor the effects of implementation.

1952.54a—Filing. Regional Foresters, Station Directors, and Area Directors are authorized to file statements directly with the EPA for actions within their authority.

In cases where the Forest Supervisor or Research Project Leader is the responsible official and has demonstrated competency in the preparation of statements, Regional Foresters and Station Directors may delegate the authority to file statements directly with the EPA.

Statements involving legislation, regulations, multi-agency actions at the national level, and service-wide policy will be filed with the EPA by the Chief's office.

If the Chief is the responsible official, copies of both draft and final statements will be submitted to the Chief for approval before printing.

If the FES deals with plans, programs, or projects which involve inventoried roadless areas, the Chief will file the FES with the EPA. Public distribution will be delayed until the Chief has notified the responsible official that the FES has been filed. Final statements on plans, programs, or projects affecting areas involved in pending legislation for wilderness designation or study are to be approved by the Chief before filing with the EPA or public distribution. See Section 233 of FSH 1909.15, the NEPA Process Handbook for instructions regarding filing procedures.

1952.54b—Distribution. When the DES is filed with the EPA, the responsible official will make a reasonable number of copies of the statement available free of charge. They are sent to appropriate Federal, state, and local agencies, organizations and individuals. State and local agencies should be contacted as described in OMB Circular A-95 (FSM 1565).

Copies of statements will be available for public review at the Washington Office, the office of the responsible official, selected forest, region, area, station offices, and other appropriate locations.

When the FES is sent to the EPA, copies should be sent to other agencies, organizations, and individuals who submitted substantive comments on the DES.

Responsible officials should maintain lists of individuals, groups, organizations, and governmental agencies which may be interested in reviewing Forest Service Environmental Statements. Regions are encouraged to develop specific distribution lists. The Washington Office maintains a list of individuals, groups, organizations, and governmental agencies which may be interested in reviewing Environmental Statements on issues of national importance.

The A-95 Clearinghouses should be used, by mutual agreement, for securing reviews for the DES. The responsible official may also deal directly with appropriate state or local officials or agencies if clearinghouses are unwilling or unable to handle this phase of the process. However, clearinghouses should always receive copies of Environmental Statements.

Section 234 of FSH 1909.15, the NEPA Process Handbook, shows addresses of Federal agencies and the number of ES copies requested by that agency. Statements should be distributed as shown in that Section.

1952.6—Corrections. Either Environmental Assessment Reports or Environmental Statements may be corrected through use of errata sheets, supplements, or revisions. Supplements or revisions are prepared, circulated, filed and reviewed the same as the document being corrected.

1952.61—Environmental Assessment Reports. Additional information may emerge after an EAR has been prepared. If the new information involves minor changes, such as typographical corrections, that would not affect public response or the decision, the corrections should be noted in the file copy of the EAR.

If the new information may change the public response or the decision, the EAR should be supplemented or revised.

1952.62—Draft Environmental Statements. Errata sheets should be used when minor corrections are necessary that will not materially change the public response or the decision. Typical items include terminology and typographical corrections.

Supplements to the DES are used when new or more accurate information may significantly change the public response or the decision. Supplements add substantive information to the original DES.

If it is determined that a DES is so inadequate as to preclude meaningful analysis, a revised DES, or portion thereof, should be prepared, filed, and circulated.

When a supplement or revision is circulated the transmittal letter should establish a review period of at least 60 days from the date of filing the supplement or revision.

1952.63—Final Environmental Statements. Additional information may emerge after a FES has been prepared and circulated. If the new information involves minor changes such as typographical corrections, that would not affect public reaction or the decision, the corrections should be noted in the file copy of the FES.

If the new information might change the decision, a revised DES, a supplement, or revision to the FES should be prepared and circulated.

When the revised DES, supplement, or revision is circulated, the transmittal letter should:

1. Rescind the Record of Decision attached to the original FES.

2. Establish a review period of at least 60 days from the date of filing a revised DES, and notify reviewers that:

a. After review, a revised FES or a final supplement to the FES will be prepared and circulated, and

b. A new Record of Decision will be prepared and circulated.

1952.7—Review.

1952.71—Forest Service Environmental Statements.

1952.71a—Draft Environmental Statements. When the DES has been filed with the EPA, the responsible official should distribute copies of the statement to individuals, organizations, and other Federal, state, and local agencies with expertise and regulatory authority in environmental matters. A time period of not less than 60 days from the date of transmittal to the EPA will be allowed for comment. Extensions of time may be granted by the responsible official.

1952.71b—Final Environmental Statements. A period of not less than 30 days from the date the FES is made available to the EPA and the public will be allowed before decisions are implemented.

In rare cases, emergencies may require that a decision be implemented in a shorter time period. Before taking such action, the Washington Office will consult the CEQ.

Comments received after the FES is filed should be answered on an individual basis.

1952.72—Review of Other Agency Environmental Statements. When requested to do so or prime timber lands are involved, the Forest Service will review and comment on Environmental Statements prepared by

other agencies, as appropriate, because of special expertise. When another agency proposal involves or affects National Forest System lands, the Forest Service will review the Environmental Statement.

Unless otherwise assigned by the Chief, review and comment on legislative or other major policies, regulations, or national program proposals, will be made by the Washington Office. The Regional Forester or Area Director in whose region or area a proposal is located will review other Environmental Statements and submit comments. Where appropriate, statements should be sent to Station Directors or other Forest Service officials for comment.

Comments should be specific, substantive, and factual. It may be appropriate for reviewers to indicate the need for additional information about the proposed action. When unfavorable views or a recommendation against a proposed action is indicated, these will first be discussed with the agency proposing the action before a formal reply is prepared. If an unfavorable recommendation is still indicated, the CEQ referral procedures will be followed.

In some instances, review time may be insufficient because of the absence of key personnel or other unforeseen circumstances. In such cases, additional time for Forest Service review should be requested. The Washington Office Environmental Coordinator should request the extension of time for statements involving more than one region.

A review of other agency Final Environmental Statements should determine whether they are responsive to Forest Service comments on the Draft Environmental Statement. If they are not, the agency should be notified.

Copies of Forest Service comments on other agency Environmental Statements should be sent to the Washington Office Environmental Coordinator and to the EPA.

If the Forest Service review of another agency's ES indicates that the proposed Federal actions will be environmentally unsatisfactory, the Chief will refer the matter to the CEQ.

1953—Recording the Decision.

1953.1—Environmental Assessment Reports. The decision of the responsible official is recorded in the Record of Decision which will be attached to the EAR. This legally establishes the date of the decision. (See FSM 1953.3.)

The responsible official should notify the public of the decision, as appropriate.

When (1) the proposed action is, or is closely similar to one which normally requires preparation of an ES (FSM 1952.22a), (2) the nature of the proposed action is without precedent, or (3) flood plains or wetlands are involved, the Record of Decision shall be made available to the public prior to implementation.

1953.2—Environmental Statements. The decision of the responsible official is recorded in the Record of Decision which will be attached to the FES. This legally establishes the date of the decision. (See FSM 1952.3.)

The decision will not be made or implemented until the conditions in the following chart are met.

EXHIBIT 1

If an ES is required then these conditions must be met— Prior to record of decision		Prior to implementation
Plans, programs, or projects other than land management plans or decisions affecting the wilderness character of inventoried roadless areas.	1. A 60-day period has elapsed since the DES was transmitted to EPA, distributed to the public, and timely comments have been considered.	1. A decision has been announced to approve the plan, program, or project. 2. 30 days have elapsed since the FES was made available to the EPA and the public. 3. A 90-day period has elapsed since the DES was transmitted to EPA and distributed to the public.
Land management or other plans, programs, or projects affecting the wilderness character of inventoried roadless areas.	1. Same as above. 2. If the action is a land management plan, the alternative plans under consideration have been available to the public for a period of at least 3 months before adoption.	1. Same as above. 2. Same as above. 3. Same as above. 4. 90 days while Congress is in session have elapsed since the FES was transmitted to the EPA. 5. An extension of time has not been requested by the appropriate congressional committee chairman. 6. The Washington office has notified the responsible official that conditions 4 and 5 above have been met.
Land management or other plans, programs, or projects affecting areas involved in pending legislation for wilderness designation or study.	1. Same as above. 2. Approval has been received from the Chief.	1. Same as above. 2. Same as above. 3. Same as above. 4. Same as above. 5. Same as above.
Land management plans	1. Same as above. 2. The alternative land management plans under consideration have been available to the public for a period of at least 3 months.	1. Same as above. 2. Same as above. 3. Same as above.

1953.3—Record of Decision.

A Record of Decision should be attached to Environmental Assessment Reports and Final Environmental Statements. The Record of Decision should include what the decision was and how the EAR or ES was used in decisionmaking and the rationale for the decision.

The signed and dated Record of Decision should clearly identify the action or proposal and the decision of the responsible official.

The Record of Decision should also state whether all practicable means to avoid or minimize environmental harm have been adoped. When mitigation measures are decided upon, a monitoring or enforcement program shall be adopted and specified.

The Record of Decision for actions requiring an Environmental Statement should state that implementation will not take place until at least 30 days from the date the FES is made available to EPA and the public.

The Record of Decision should be sent to:

1. Individuals, organizations, or agencies affected by the decision.

2. Others who have requested in writing, such notice, if they have not otherwise been sent a copy of the FES.

In addition, the public may be notified by publishing the Record of Decision in a newspaper of general circulation in the area affected by the decision (36 CFR 211.19d).

See Section 310 of FSH 1909.15. The NEPA Process Handbook, for a sample Record of Decision.

1954—Implementation, Monitoring, and Control.

1954.1—Implementation. See FSM 1953.2 for conditions that must be met prior to implementation of the plan, program, or project when an ES has been prepared.

If flood plains or wetlands are involved, and an EAR has been prepared instead of an ES, the EAR should be available for public review for at least 30 days before the plan, program, or projects is implemented.

Implementation specifically includes any commitments for mitigation or monitoring included in the EAR, FES, or Record of Decision.

1954.2—Monitoring. Actions will be monitored to insure that (1) environmental safeguards are executed according to plan, (2) necessary adjustments are made to achieve desired environmental effects, and (3) anticipated results and projections are re-

viewed. The monitoring costs are a part of project costs.

Monitoring includes making progress reporst to cooperating or commenting agencies on mitigation measures adoped by the Forest Service. The results of monitoring should be made available to the public.

1954.3—Control. Management reviewers (FSM 1410) will discuss the results and environmental effects of plans, projects, and programs as part of activity, program, and general management reviews at all organizational levels. Such a review should compare the actual on-the-ground results with anticipated effects described in the EAR or FES.

[FR Doc. 78-13203 Filed 5-15-78; 8:45 am]

Federal Register

TUESDAY, MAY 16, 1978
PART VI

ENVIRONMENTAL PROTECTION AGENCY

■

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Interim Final Rule

[6560-01]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

[888-3]

PART 124—STATE PROGRAM ELEMENTS NECESSARY FOR PARTICIPATION IN THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

PART 125—NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Interim Final Rule

AGENCY: Environmental Protection Agency.

ACTION: Interim final rule.

SUMMARY: Under sections 301(i) (1) and (2) of the Federal Water Pollution Control Act (commonly referred to as the Clean Water Act), extensions of the 1977 statutory deadline for compliance with certain treatment requirements may be granted by EPA or, if appropriate, the States through permit issuance or modification. These regulations establish criteria for granting these extensions and the method for incorporating these extensions into national pollutant discharge elimination system permits.

DATES: These regulations will become effective May 16, 1978. Comments received on or before July 17, 1978, will be considered before promulgation of these regulations in final form. Because of their importance for permits being issued in the near future, EPA finds good cause exists to make these regulations effective without the 30 day waiting period prescribed under 5 U.S.C. 553(d)(3).

ADDRESS: Interested persons may participate in this rulemaking by submitting written comments or suggestions to Edward Kramer, Permits Division (EN-336), Office of Water Enforcement, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Please cite this FEDERAL REGISTER notice when making comments. A copy of all public comments will be available for inspection and copying at EPA Public Information Reference Unit, Room 2922 (EPA Library), 401 M Street SW., Washington, D.C. 20460. The EPA information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT:

Edward Kramer (EN-336), Office of Water Enforcement, Environmental Protection Agency, Washington, D.C. 20460, 202-755-0750.

SUPPLEMENTARY INFORMATION:

(1) BACKGROUND: THE CLEAN WATER ACT

Under section 301(i) of the Clean Water Act, 33 U.S.C. §1251 et seq., Pub. L. 92-500, 95-217 (also known as the Federal Water Pollution Control Act), the Administrator or the Director of an approved NPDES State may extend the 1977 deadline for the achievement of required treatment under section 301(b)(1) up to July 1, 1983. These time extensions are potentially available only to publicly owned treatment works (POTWs) that require construction to meet 1977 treatment levels and to certain dischargers which have planned to discharge into a presently unavailable POTW ("tie-in"). Section 301(i) extensions are not available if a discharger will not achieve compliance with the statutory treatment requirements by July 1, 1983.

The decision to grant a discharger's request for a time extension under section 301(i) is in the discretion of the permit issuing authority, provided that the discharger satisfies certain threshold criteria. For a POTW to be granted a time extension under this section it must require construction to achieve secondary or more stringent treatment limitations and: (1) Construction could not be completed by the 1977 deadline, or (2) Federal financial assistance in the form of a construction grant was not available in sufficient time to allow compliance by the 1977 deadline.

Similarly, a discharger other than a POTW may be granted a time extension only where it demonstrates that it intended prior to July 1, 1977, to "tie-in" to a POTW in one of four specified ways and where: (1) The POTW cannot accept the discharge without construction; (2) if the discharge is to an existing POTW, the POTW has an extension under 301(i)(1); (3) the discharger has acted in good faith; (4) the POTW will be in operation and available by July 1, 1983, and will meet any applicable treatment requirements after receiving the discharge; and (5) the POTW and the discharger have entered into an enforceable contract which meets certain criteria.

Time extensions under this section are implemented through permit issuance or modification. As with any permit issuance or modification, all the NPDES procedures (e.g., public notice and opportunity to comment, right to request an adjudicatory hearing) are in effect. However, in response to questions and comments raised in the prepublication comment period, these regulations revise existing NPDES procedural regulations to provide that there will be no delay in the effectiveness of a denial of a section 301(i) extension when that denial is contested in an adjudicatory hearing. The processes of State certification for EPA issued permits and EPA opportunity to object to State issued permits are also applicable to permits issued or modified under this section. It is suggested that whenever possible, a new 5-year permit be issued in lieu of modification to the existing permit.

Permits issued or modified under this section must contain certain terms and conditions. In the case of a POTW, the issued or modified permit must contain: (1) A schedule of compliance based on the earliest date by which Federal financial assistance will be available and construction can be completed (no later than July 1, 1983); (2) terms and conditions necessary to carry out sections 201 (b) through (g) of the act (e.g., best practicable waste treatment technology); (3) those terms and conditions necessary to carry out section 307 of the act (toxic effluent standards and prohibitions, pretreatment standards); and (4) interim effluent limitations determined to be necessary by the Regional Administrator or the Director of the State NPDES permitting agency, hereinafter "the Director."

For a discharger other than a publicly owned treatment works the issued or modified permit must contain a schedule of compliance, pretreatment standards, interim effluent limitations, water conservation requirements, and other specified terms and conditions.

(2) WHY ARE THESE REGULATIONS IN INTERIM FINAL FORM?

These regulations are being published in interim final form and take effect immediately upon publication. The usual Agency rulemaking practice is to propose regulations. In this situation EPA believes that there are two reasons it is in the public interest to issue these regulations in interim final form and have them take effect immediately.

Section 301(i)(1) of the amended Clean Water Act requires a request for an extension to be filed within 180 days after enactment of the Clean Water Act Amendments of 1977 (by June 26, 1978). Requests for 301(i)(2) extensions must be filed within 180 days after enactment of the act or the date of filing a 301(i)(1) request, whichever is later. It is in the public interest for these regulations to become effective as soon as possible so that interested persons will have adequate notice as to what constitutes a timely and sufficient request and so that delays associated with incomplete and untimely filed requests may be avoided or minimized. Moreover, because pending or ongoing enforcement actions against dischargers which may qualify for this new time extension may be affected, early publication of

these regulations will clarify the status of these dischargers.

Publishing these regulations in proposed form and allowing a comment period followed by final promulgation would delay the effective date of these regulations. Accordingly, EPA finds, pursuant to 5 U.S.C. section 553(b), that notice and comment on proposed regulations would be impracticable and contrary to the public interest and that there exists cause for promulgation of these regulations in interim final form. However, even though these regulations take effect immediately, all comments received on or before July 17, 1978, will be considered before issuance of final regulations.

Because these regulations are being promulgated in interim final form, significant input from interested parties was solicited by EPA prior to this publication. Draft copies of the regulations were circulated for comment to State, regional, and local officials, as well as to the public and other interested organizations. In response, over 30 written comments were received. Additionally, EPA held numerous meetings in which section 301(i) was presented, issues were raised and comments were received. These included open public meetings in Washington, D.C., several briefings for State officials held at EPA regional offices and a meeting with representatives of the National Governors Association. The regulations were also discussed in depth with representatives from municipal associations and environmental groups in meetings held on March 9 and 14, 1978. All comments received and questions raised were considered before the publication of these interim final regulations.

(3) Effect on EPA Policy to the Clear Water Act

Because the majority of municipal dischargers could not be expected to meet the 1977 statutory deadline as a result of delays in the Federal construction grant process, EPA established the enforcement compliance schedule letter (ECSL) policy for municipal dischargers in a June 3, 1976, memorandum of the Assistant Administrator for Enforcement. This policy authorized the issuance of an ECSL to certain "good faith" dischargers in lieu of enforcement action. In the ECSL itself, EPA agreed not to prosecute violations of the 1977 deadline as long as the discharger adhered to a specified compliance schedule extending beyond July 1, 1977. The ECSL was an exercise of prosecutorial discretion and could not be issued except in conjunction with a permit requiring compliance by July 1, 1977. The use of ECSLs was closely circumscribed to ensure equitable treatment of noncomplying dischargers, i.e., relief from enforcement action for the deserving, and none for the recalcitrant. Many NPDES States also adopted the substance of the ECSL policy, utilizing either ECSLs or other available procedural mechanisms (all of which are referred to here as ECSLs). Over 2,000 municipal ECSLs have been issued by EPA or issued by NPDES States and approved by EPA in the past. In the future no new municipal ECSLs will be issued or approved by EPA because section 301(i) in general was intended by Congress to replace EPA's ECSL policy. Further, all existing ECSLs expire when the underlying permit expires.

In enacting the amendments to the Federal Water Pollution Control Act, Congress dealt with the legitimate needs of municipalities for extensions of the 1977 treatment deadline. Although these amendments largely replace EPA's ECSL policy they do not automatically revoke existing ECSLs. Existing ECSLs continue in effect until a final section 301(i) determination is made, at which time the ECSL is terminated. Thus, if a discharger decides to seek a section 301(i) extension, it must ultimately give up the protection of its ECSL. Since section 301(i) and the ECSL are different solutions to the same noncompliance problem, the discharger currently holding an ECSL must select one as its remedy and abide by its terms. This opportunity to select a remedy for noncompliance has been provided by Congress; a discharger cannot have "two chances" to have its compliance extended, i.e., it cannot request a section 301(i) extension, have it denied, and then retain the alternative protection of an ECSL. In this manner, existing ECSLs ultimately will be replaced whenever a section 301(i) extension is requested.

EPA wants to assist dischargers in requesting section 301(i) extensions and avoid situations where the discharger unintentionally fails to file a request in time. Therefore, if a discharger has an existing ECSL, or has a request for an ECSL outstanding, the permit issuing authority is encouraged to send the discharger a letter informing it that it may request an extension by checking a box marked "request" and returning the letter. The permit issuing authority is also encouraged to inform other dischargers of this section by a similar letter.

A discharger that does not want to be considered for a section 301(i) extension may retain its ECSL. However, it should be noted that such a decision means that the municipal discharger cannot request a section 301(i)(1) extension after June 26, 1978, and if the discharger violates the terms of its ECSL or the ECSL expires before compliance is achieved, the discharger may be subject to enforcement action.

(4) Who Is Eligible for a Time Extension?

A. What is a POTW for purposes of this section?

For purposes of section 301(i) a publicly owned treatment works (POTW) is a treatment works as defined in section 212 of the act, owned or operated by a State or municipality. However, since construction must be required to achieve statutory treatment limitations, the term POTW in effect, does not include collector sewers, admiknistration buildings, or equipment for operation and maintenance, but only the essential parts of the treatment system itself. This ensures that the construction required by the POTW is construction that will lead directly to achievement of the statutory treatment requirements.

B. Section 301(i)(1)

As indicated in the background discussion of the Clean Water Act, a POTW may be eligible for a section 301(i)(1) extension if it requires construction to achieve statutory treatment limitations and it meets one of two other threshold criteria. The legislative history indicates that section 301(i)(1) was not to be a broad exemption but rather, it was to be limited to those POTWs which were not in compliance through no fault of their own. This interpretation of section 301(i)(1) is consistent with the Agency's past enforcement policies regarding noncomplying municipalities, e.g., the ECSL policy.

The first statutory criteria necessary for a section 301(i)(1) extension is that construction must be required to comply with the treatment limitations. If optimum operation and maintenance of the treatment processes of the POTW would result in achievement of the limitations in the POTW's permit, the POTW fails to meet the threshold requirement and is not eligible for an extension.

The other statutory criterion is in the alternative. There are two criteria listed in the act and the POTW must satisfy only one of them. EPA interprets these two criteria consistently with the legislative history to allow eligibility for an extension only in the following circumstances. First, a POTW would be eligible if construction was underway prior to July 1, 1977, and the POTW had made all efforts to start and complete construction as expeditiously as possible, but construction could not physically be completed by July 1, 1977.

Second, a POTW would be eligible if the POTW did not receive Federal financial assistance or did not receive it in time (e.g., step 3 funding) to complete construction necessary to achieve the statutory limitations by July 1, 1977, and the POTW did not

significantly contribute to this unavailability or delay. Insignificant errors may have resulted in some minor delay; however, if in the absence of such errors compliance could still not have been achieved by July 1, 1977, the POTW should not be considered to have significantly contributed to the delay. If a POTW received Federal funding in time and completed planned construction, but is not meeting its permit limitations because of poor operation and maintenance or because it needs to further upgrade its facilities to treat unplanned "tie-ins," it would not be eligible for an extension under this criterion. However, availability of a section 301(i)(1) extension should not be determined by the unilateral actions of the municipality, such as when the municipality was unwilling to take the necessary steps to receive funding. In some cases it will be a close question to decide whether a municipality significantly caused or contributed to the delay in funding. A decision in such a case would be a factual determination to be made by the Director or Regional Administrator.

Municipalities that have requested a modification of the secondary treatment requirement under section 301(h) of the act are encouraged to request section 301(i)(1) extensions if they meet these criteria. However, determinations on these section 301(i)(1) requests will not be made until a final determination on the section 301(h) request has been made.

Because dischargers under section 301(i)(2) must request time extensions within 180 days of the date that its POTW requests an extension, the POTW, as part of its 301(i)(1) request must notify all expected users of the fact and the date of its request. In order to provide flexibility to accommodate both single industry towns and major metropolitan areas, this may be done by placing notice in a local newspaper of general circulation or direct notification by certified mail.

C. SECTION 301(i)(2)

Dischargers which have already "tied-in" to a POTW and thus are not discharging directly into the waters of the United States are not eligible for, and do not need a section 301(i)(2) extension. Dischargers which divert none or only part of their discharge into a POTW, and are therefore still subject to the terms and conditions of an effective NPDES permit, would be eligible for this extension if the criteria discussed below are met.

As indicated in the background discussion on the Clean Water Act, a discharger must demonstrate a preexisting intent to "tie-in" to a POTW to be eligible for a 301(i)(2) extension. The statutory language states that this intent may be indicated in one of the following ways: (1) The discharger was issued a permit before July 1, 1977, based upon a discharge into a POTW; (2) the discharger had a contract before July 1, 1977 (enforceable against the discharger) to discharge into a POTW; (3) a construction grant application made by the POTW before July 1, 1977, clearly demonstrated the discharger was to discharge into the POTW; or (4) engineering or architectural plans or working drawings prepared for the POTW before July 1, 1977, clearly demonstrated that the discharger was to discharge into the POTW.

A demonstration in one of these four ways must be sufficient to show an actual and binding decision to "tie-in" to the POTW; mere intent without further steps toward "tie-in" on the part of the discharger is insufficient. Otherwise, any discharger could formulate an "expression of intent to 'tie-in'" once it became apparent that it might not achieve best practicable control technology currently available by the statutory deadline. The discharger could, in effect, "hedge its bets" by providing itself a way to avoid enforcement for failure to achieve the statutory requirements while at the same time not binding itself to any future action should it somehow manage to achieve these requirements. This is inconsistent with the intent of the act, the legislative history, and Agency policy.

Some further clarification of the necessary intent is warranted. First, if the discharger was issued a permit before July 1, 1977, based upon a discharge into a POTW, or if a construction grant application made by the POTW before July 1, 1977, clearly demonstrated that the discharger was to discharge into the POTW, this is sufficient to demonstrate an actual and binding decision to "tie-in" to a POTW.

Second, "contract" as used in section 301(i)(2)(A)(ii) does not include documents labeled "contract" that impose only nominal or insignificant obligations on the discharger or contracts terminable at the will of either party. The document should accurately represent an actual and binding decision to discharge into the POTW; any contract that the discharger could breach with few or no consequences would not indicate such a decision.

Third, EPA has interpreted "engineering plans, architectural plans or working drawings," to cover plans and drawings, such as those accompanying a bona fide application for Federal construction grants, only to the extent that they were truly representative of the intent of the discharger and the POTW. Such plans may also include approved facility plans which are being implemented or submitted proposed user charge systems or industrial cost recovery systems that clearly demonstrate that the discharger was to "tie-in". Both the documents and the intent to "tie-in" must have been in existence before July 1, 1977, and could not have been created after that date.

(5) ADDITIONAL REQUIREMENTS FOR A SECTION 301(i)(2) EXTENSION

The act specifically requires that several other criteria be met before a discharger can be considered for a section 301(i)(2) extension. These criteria are discussed below.

A. GOOD FAITH

As indicted in the legislative history, the section 301(i)(2) extension is available only to those dischargers which have made all possible good faith efforts to meet the statutory deadline; business as usual may not be enough. Prompt, vigorous, and in many cases, expensive pollution control measures must have been initiated and completed as soon as possible. The permit issuing authority must find good faith on the part of the discharger before an extension may be granted. Such a finding shall include the following: (1) Failure to meet the July 1, 1977, deadline was for reasons beyond the discharger's control; (2) a history of a high degree of commitment to meet the statutory mandate as manifested by cooperation with EPA or the State by the discharger in attempting to resolve disputed issues; (3) no history of unjustified delay (the discharger should have attempted, and continued to attempt to minimize delays, for example, by working to encourage the POTW to complete construction, soliciting support from a board of directors, or taking extraordinary measures to comply with pollution control laws); (4) no past serious or intentional violations of the act; and (5) all reasonable measures are or have been taken to expedite compliance despite pursuit of administrative or judicial appeals.

Clearly, good faith may be lacking if the discharger has made no attempt to minimize pollution prior to 'tie-in" or has not tried to expedite actual "tie-in". Therefore, a finding of good faith may also include consideration of: Whether the discharger has met the requirements of its existing permit; whether the discharger has operated its limited facilities competently and responsibly; and the extent to which the discharger has completed the necessary prerequisites to having its waste treated by the POTW.

B. REQUIREMENTS RELATING TO THE POTW WHICH IS THE INTENDED RECIPIENT OF THE DISCHARGER'S WASTE

The requirements discussed above are contained in paragraph (A) of section 301(i)(2). Paragraphs (A) and (B)

of section 301(i)(2) state that no time modification may be granted unless certain other specific requirements relating to the intended recipient POTW are met. They are: (1) If the discharge is to an existing POTW, such POTW must have an extension pursuant to section 301(i)(1) of the Act; (2) the POTW must be in operation and available to the discharger by July 1, 1983; (3) the POTW must be able to meet statutory treatment requirements after receiving the waste from the discharger; and (4) the POTW and the discharger must have entered into an enforceable contract that requires the discharger to discharge into the POTW, the POTW to accept that discharge and the dixcharger to pay user charges and industrial cost recovery changes required by the Act.

(6) PERMIT TERMS AND CONDITIONS

As indicated in the background discussion of the Clean Water Act, permits incorporating time extensions must contain specified terms and conditions. There are similar requirements for both sections 301(i)(1) and 301(i)(2), such as schedules of compliance, operation and maintenance requirements, and pretreatment requirements. Nevertheless, these requirements differ as to how they are specified in permits. Therefore, permit terms and conditions for each section are discussed separately.

A. SECTION 301(i)(1)

1. *Schedule of Compliance.* For an extension under section 301(i)(1), the permitting agency must specify in the permit that final compliance with the requirements of secondary treatment or more stringent treatment requirements will be achieved at the earliest date by which Federal financial assistance under Title II of the Act will be available and construction can be completed; it may also be based on additional information available to the State or submitted by the POTW.

When Federal financial assistance has been made available, the schedule of compliance should contain specific milestones with dates certain for achieving those milestones. When the dates for Federal funding are not known, the schedule must contain definite dates to the extent that they can be determined from the construction grant process. A trigger-date elapsed-time schedule or "ratchet" schedule may be used if neccessary. A "ratchet" schedule is one which contains an initial action date or series of dates insofar as they are known at the time the schedule is developed. Other dates are contingent. The balance of the schedule contains specified periods of time for the discharger to complete certain actions which are started or triggered by a specified event or change in the discharger's circumstances. When such a schedule is used, the following is required: (a) certification by the State that funding will be available in time to assure compliance by July 1, 1983; and (b) reporting once a year by the POTW as to its progress in obtaining Federal funding. Once a construction grant is awarded, the permit should be modified to eliminate the "ratchet" schedule and incorporate a date-certain schedule. On the other hand, if it later becomes apparent that Federal funding will not be available in time, the extension granted under this section should be terminated.

2. *Requirements under Section 201 (b) through (g) of the Act.* Sections 201 (b) through (g) of the Act are requirements imposed on all permittees receiving construction grants. Any permit issued under section 301(i)(1) should be consistent with and assure compliance with sections 201 (b) through (g) of the Act.

3. *Interim Effluent Limitations.* The permit must contain any other requirements necessary to carry out the Act. These include interim effluent limitations to be achieved by the application of optimum operations and maintenance practices and other noncapital intensive measures (e.g., minor facility modifications which will result in increased pollution control.) These requirements are designed to provide maximum pollution abatement pending completion of the necessary treatment facilities. Operation and maintenance related effluent limitations may be derived from in-depth on-site evaluations performed by the municipality's consulting engineers, which clearly demonstrate the treatment capability of the particular facility if determined to be necessary by the Regional Administrator or Director. However, in most cases sufficient information should already be available to determine these effluent limitations (e.g., operation and maintenance inspections or other available guidance). In some circumstances chemical treatment may be a cost-effective method of improving the quality of the discharge. When the Regional Administrator or the Director determines that this is the case, she or he is encouraged to include in the issued or modified permit the interim effluent limitations that result from chemical treatment. In general, the facility should be required to treat its waste efficiently, leading to the achievement of effluent limitations as close as possible to those required to be met by July 1, 1977.

4. *Pretreatment program for POTWs having industrial users.* When a POTW has industrial contributors, any permit issued or modified under section 301(i)(1) must contain pretreatment requirements. The pretreatment requirements imposed will vary depending on whether new pretreatment regulations have been promulgated in 40 CFR Part 403. It is anticipated that pretreatment regulations will be promulgated in 40 CFR Part 403 before the majority of permits extending the 1977 treatment deadline are issued or modified. Once promulgated, the pretreatment regulations will specify the pretreatment requirements applicable to permits issued or modified under section 301(i)(1) of the Act. There will be a small category of permits issued or modified before the pretreatment regulations are promulgated in 40 CFR Part 403. Permits falling into this category should ensure compliance with existing pretreatment regulations contained in 40 CFR Part 128.

B. SECTION 301(i)(2)

1. *Schedule of Compliance.* The permit must contain a schedule of compliance pending "tie-in". This schedule must contain interim dates for completion of necessary construction, and a final date by which the contributor will cease discharge to waters of the United States and discharge to the POTW. This final date must be as soon as possible but not later than July 1, 1983. In most cases this date should not extend beyond any extension granted to a POTW under section 301(i)(1). The permit must also require the achievement of Best Practicable Control Technology Currently Available (BPT) by the same final date in the schedule of compliance pending "tie-in" in the event that the "tie-in" is not acceptable by that date. Thus, the permit must specify effluent limitations based on BPT as well as a schedule of compliance leading toward "tie-in." These two requirements will ensure that no discharger will be authorized to discharge without complying with the statutory deadline requirements.

2. *Interim Effluent Limitations.* Some conditions are necessary to protect the public interest pending "tie-in". While dischargers should not be forced to build duplicative treatment facilities due to a short delay in the completion of a sewage treatment plant, it is only reasonable that those dischargers which can utilize noncapital intensive measures to improve the quality of their waste should be required to do so as an interim step (e.g., optimum operation and maintenance).

3. *Toxic Effluent Standards and Prohibitions.* Permits presently contain a clause requiring modification to conform to toxic effluent standards and prohibitions after they are promulgated under section 307(a). Permits issued with extended compliance dates must also have a similar clause.

4. *Pretreatment.* There are three pretreatment related requirements that must be included in permits granting section 301(i)(2) extensions: (1) Com-

pliance with any promulgated pretreatment standards under section 307(b); (2) compliance with any requirements imposed by the POTW under the pretreatment program that a POTW must have pursuant to section 124.104(b) of these regulations; and (3) compliance with any other State or local pretreatment requirements.

5. *Water Conservation Requirements.* Water conservation requirements allow the permit issuing authority to encourage the use of technologies or unit operations which use less water, recycle water or replace water with other solvents which can be recycled. This includes any water conservation requirements contained in a contract between the discharger and the POTW executed pursuant to the granting of a request for a section 301(i)(2) extension (see earlier discussion of Requirements relating to the POTW which is the intended recipient of the discharger's waste). Specific examples of water conservation practices includes: (1) Recycle of non-contact cooling water in acid manufacturing plants, (2) partial recycle (multiple use) of water in quenching for metallurgical operations or countercurrent rinsing in electroplating, and (3) in the food industry, replacement of "wet-caustic" processes for peeling vegetables with the "infrared dry-caustic" process.

Generally, dischargers should be required to undertake all in-process adjustments which reduce the volume of water to the POTW, consistent with the maximum concentration of pollutants acceptable by the POTW. It must be emphasized that water conservation measures which are found to disturb the efficient operation of the POTW should not be imposed.

NOTE.—The Environmental Protection Agency has determined that this document does not constitute a major regulation requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and under OMB Circular A-107.

Dated: May 10, 1978.

DOUGLAS M. COSTLE,
Administrator.

1. Part 124 is amended by adding a new Subpart L as follows:

Subpart L—Criteria for Extending Compliance Under Section 301(i) of the Act

Sec.
124.100 Purpose and scope.
124.101 Definitions.
124.102 Requests for permit modification and issuance under Section 301(i)(1) of the Act.
124.103 Criteria for permit modification and issuance under Section 301(i)(1) of the Act.
124.104 Permit terms and conditions under Section 301(i)(1) of the Act.
124.105 Requests for permit modification and issuance under Section 301(i)(2) of the Act.
124.106 Criteria for permit modification and issuance under Section 301(i)(2) of the Act.
124.107 Permit terms and conditions under Section 301(i)(2) of the Act.
124.108 Effect of noncompliance with this Subpart.

AUTHORITY: Sec. 301: (1) and (2) of the Clean Water Act (Dec. 1977), 33 USC 1251 et seq.

Subpart L—Criteria for Extending Compliance Under Section 301(i) of the Act

§ 124.100 Purpose and scope.

Under sections 301(i) (1) and (2) of the Clean Water Act, extensions of the 1977 statutory deadline for compliance with certain treatment requirements may be granted by EPA or, if appropriate the State, through permit issuance or modification. This Subpart establishes criteria for granting these extensions and the method for incorporating these extensions into State issued NPDES permits.

§ 124.101 Definitions.

For purposes of this Subpart:

(a) "Construction" means actual construction or activities so closely related to actual construction that completion of the facility no later than July 1, 1983, is a reasonable expectation. This shall include any placement, assembly, or installation of facilities or equipment (including contractual obligations to purchase such facilities or equipment) at the premises where such equipment will be used, including preparation work at such premises. This shall not include actions which have been abandoned or are so insignificant that they do not lead to the completion of the facility.

(b) "ECSL" means any extension of the July 1, 1977 treatment deadline issued by EPA or an NPDES State, in conjunction with an NPDES permit which requires compliance by July 1, 1977. This term shall include any procedural mechanisms used by the State which are consistent with EPA's Enforcement Compliance Schedule Letter policy.

§ 124.102 Requests for permit modification and issuance under section 301(i)(1) of the act.

(a) Any owner or operator of a publicly owned treatment works (POTW) that requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act may request modification or issuance of a permit extending the date for compliance with these limitations:

(1) This request must be made to the Director on or before June 26, 1978;

(2) A request will be deemed made before June 26, 1978 if:

(i) The owner or operator of a POTW holds a ECSL or has an outstanding request for a ECSL, and has informed the Director by letter before June 26, 1978, that it wishes to request a section 301(i)(1) extension; or

(ii) The owner or operator of a POTW has informed the Director by letter before June 26, 1978, that it wishes to request a section 301(i)(1) extension and briefly states which criteria in § 124.103 it believes it meets.

(3) For a request under this paragraph to be considered, a POTW shall notify all point sources committed to discharge into the POTW by July 1, 1983, of the date of the request and that they have 180 days from that date in which to file requests for section 301(i)(2) extensions. Such notifications shall be made within 30 days from the date of the POTWs request.

(b) The burden is on the POTW to demonstrate that an extension should be granted—

(1) If the POTW does not submit arguments or factual grounds supporting the request within thirty days of such request, a section 301(i)(1) determination shall be based on existing information in EPA and/or State files.

(2) The POTW may submit arguments or factual grounds supporting the request which are relevant to the criteria listed in § 124.103. Any such arguments or factual grounds, including all supporting documentation, must be submitted within thirty days (non-extendable) from the date of the request.

§ 124.103 Criteria for permit modification and issuance under section 301(i)(1) of the act.

No request for a permit modification or issuance under section 301(i)(1) of the Act shall be granted unless the Director finds that the POTW requires construction to achieve limitations under sections 301(b)(1)(B) or 301(b)(1)(C) of the Act and did not complete construction for either of the following reasons:

(a) Actual construction was underway before July 1, 1977, but construction could not physically be completed by July 1, 1977, despite all expeditious efforts of the POTW; or

(b) Federal financial assistance was not available, or was not available in time, for construction required to achieve these limitations, and the POTW did not in any significant way contribute to this unavailability or delay.

§ 124.104 Permit terms and conditions under section 301(i)(1) of the act.

(a) All permits modified or issued by the Director under section 301(i)(1) of the Act shall contain at a minimum the following permit terms and conditions:

(1) The shortest reasonable schedule of compliance for achievement of limitations under sections 301(b)(1) (B)

and (C) but in no event later than July 1, 1983. This schedule shall be based upon the earliest date that Federal financial assistance will be available and construction can be completed and any additional information submitted by the POTW or otherwise available to the State.

(i) When the availability of Federal financial assistance is certain, this schedule shall contain dates certain for the completion of actions leading toward the attainment of statutory treatment limitations.

(ii) When the availability of Federal funding is uncertain, this schedule may require the completion of actions leading toward the attainment of statutory treatment limitations within stated periods of time after the occurrence of events related to the unavailability of Federal financial assistance, e.g., notification that Federal financial assistance is available and that a grant application should be filed, the offering of a grant of Federal financial assistance, etc. The following are requirements for the use of such a schedule:

(A) Certification by the State that funding will be available in time to ensure compliance by July 1, 1983;

(B) Reporting once a year by the POTW as to its progress in obtaining Federal funding and modification of the permit to incorporate a date certain schedule once Federal funding is available; and

(C) A condition in the permit requiring termination of any extension granted if it subsequently is determined that Federal funding will not be available in time to ensure compliance by July 1, 1983.

(2) A statement ensuring compliance with requirements under sections 201 (b) through (g) of the Act consistent with the terms of the POTW's construction grant.

(3) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the existing facilities. These shall include:

(i) Adequate operator staffing and training;

(ii) Adequate laboratory and process controls; and

(iii) Effluent limitations derived from reports of operation and maintenance inspections conducted by EPA or the State, reports of in-depth plant evaluations conducted to determine the treatment capabilities of the particular plant being permitted or other available guidance.

(*Comment:* Only in exceptional circumstances should in-depth plant evaluations be conducted, e.g., when existing information does not represent the true capabilities of the plant.)

(4) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control. This shall include any possible minor facility modifications such as piping changes, additional metering and instrumentation or the use of skimming and vacuuming equipment. When an existing POTW is currently violating limitations imposed under section 301(b)(1)(C) of the Act, interim effluent limitations shall be established to minimize adverse water quality impact; these limitations shall not be made less stringent or allow more pollutants to be discharged than are currently being discharged during the term of an extension granted under section 301(i)(1) of the Act.

(b) If a POTW has industrial users, any permit issued or modified by the Director under section 301(i)(1) of the Act shall contain terms and conditions necessary to ensure compliance with pretreatment regulations promulgated under section 307(b) of the Act.

(1) Permits issued or modified after pretreatment regulations are promulgated at 40 CFR Part 403 shall be consistent with those pretreatment regulations.

(2) Permits issued or modified before pretreatment regulations are promulgated at 40 CFR Part 403 shall be consistent with pretreatment regulations promulgated in 40 CFR Part 128.

§ 124.105 Requests for permit modification or issuance under Section 301(i)(2).

(a) Any owner or operator of a point source other than a POTW that will not achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was committed to discharge into a POTW that is presently unable to accept the discharge without construction, may request modification or issuance of a permit extending the date of compliance with these limitations. This request must be made to the Director on or before June 26, 1978 or not later than 180 days after the filing of a request under section 301(i)(1) of the Act by the POTW into which the point source is committed to discharge.

(b) The burden is on the discharger to demonstrate that an extension should be granted—

(1) If the discharger does not submit arguments or factual grounds supporting the request within thirty days of such request, a section 301(i)(2) determination shall be based upon information in EPA and/or State files.

(2) The discharger may submit arguments or factual grounds supporting the request which are relevant to the criteria listed in section 124.106. Any such arguments or factual grounds, including all supporting documentation, must be submitted within thirty days (non-extendable) from the date of the request.

§ 124.106 Criteria for permit modification and issuance under Section 301(i)(2).

No request for a permit modification or issuance under section 301(i)(2) of the Act shall be granted unless the Director finds that the discharger has failed to achieve the requirements of sections 301(b)(1)(A) and 301(b)(1)(C) of the Act because it was scheduled to discharge into a POTW that is presently unable to accept the discharge without construction, and:

(a) The discharger has indicated an intent to discharge into the POTW before July 1, 1977 in one of the following ways:

(1) The discharger was issued a permit before July 1, 1977 based upon a discharge into a POTW;

(2) The discharger had a contract before July 1, 1977 (enforceable against the discharger) to discharge into a POTW.

This does not include a document labelled as a "contract" that imposes only nominal or insignificant obligations on the discharger;

(3) A construction grant application made by the POTW before July 1, 1977 clearly demonstrated that the discharger was to discharge into the POTW; or

(4) Engineering plans, architectural plans or working drawings prepared for the POTW before July 1, 1977 clearly demonstrated the discharger was to discharge into the POTW. Plans and drawings, such as those accompanying a bona fide application for a Federal construction grant, are sufficient only to the extent that they were truly representative of the intent of the discharger and the POTW;

(b) The Director finds that the discharger has acted in good faith in both its efforts to effectuate discharge into the POTW and its efforts to minimize or abate pollution prior to discharge into the POTW. This shall include the following findings:

(1) Failure to meet the July 1, 1977 deadline was for reasons beyond the discharger's control;

(2) A history of a high degree of commitment to meet the requirements of the Act as manifested by cooperation with the State or EPA in attempting to resolve disputed issues;

(3) No history of unjustified delay;

(4) No past serious or intentional violations of the Act; and

(5) All reasonable measures are being taken to expedite compliance.

(*Comment:* The Director may also consider whether the discharger has operated its facilities competently and responsibly and the extent to which the discharger has completed the necessary prerequisites to having its waste treated by the POTW.)

(c) The POTW will be in operation and available to the discharger by July 1, 1983;

(d) The POTW will be able to meet secondary treatment and water quality standard effluent limitations by July 1, 1983 after receiving the waste from the discharger;

(e) The discharger and the POTW have entered into an enforceable contract providing that:

(1) The discharger agrees to discharge its waste to the POTW;

(2) The POTW agrees to accept and treat that waste by a date certain; and

(3) The discharger agrees to pay all user charges and industrial cost recovery charges required under section 204 of the Act; and

(f) In the case of a discharge into an existing POTW, such POTW has been granted an extension under section 301(i)(1) of the Act.

§ 124.107 Permit terms and conditions under section 301(i)(2) of the Act.

All permits modified or issued by the Director under section 301(i)(2) of the Act shall contain at a minimum the following permit terms and conditions:

(a) The shortest reasonable schedule of compliance leading to discharge into the POTW, not to extend beyond the earliest date practicable for compliance, or beyond the final compliance date of any extension granted to the appropriate POTW under section 301(i)(1) of the Act, but in no event later than July 1, 1983. This schedule shall be based upon the earliest date by which the appropriate POTW can receive the waste from the discharger and the discharger can complete the necessary prerequisites to having its waste treated by that POTW;

(b) Achievement of effluent limitations and standards under sections 301(b)(1)(A) and 301(b)(1)(C) of the Act by the same final date in the schedule established in subparagraph (a) in the event that the permittee does not discharge its wastes to the POTW by the date established under subparagraph (a);

(c) Abatement practices and interim effluent limitations reflecting optimum operation and maintenance of the discharger's existing facilities. These shall include:

(1) Effective performance of facility design removals;

(2) Adequate operator staffing and training; and

(3) Adequate laboratory and process control;

(d) Interim effluent limitations reflecting other non-capital intensive measures for increased pollution control;

(e) Requirements to meet applicable toxic effluent standards and prohibitions after they are promulgated under section 307(a) of the Act;

(f) Requirements to ensure compliance with:

(1) Pretreatment requirements imposed by the POTW pursuant to any extension granted to the POTW under section 301(i)(1) of the Act;

(2) Any State or local pretreatment requirements; and

(3) Pretreatment standards as promulgated under section 307(b) of the Act;

(*Comment:* The legislative history cites the following example: "[I]f an industry is planning on participating in a municipal system which will not be available until January 1983, that industry would still have to install and operate pretreatment facilities within the time specified for compliance at the time the applicable pretreatment standard was promulgated and in no event later than three years from the date of said promulgation. Thus, if the pretreatment regulations are promulgated March 1, 1979 and require compliance within two years, that industry would be required to comply by March 1, 1981," H.R. Rep. No. 95-830, 95th Cong., 1st Sess., 12712 (daily ed. Dec. 6, 1977).)

(g) Any water conservation requirements necessary to carry out the provisions of the Act or imposed by the POTW pursuant to the contract executed between the discharger and the POTW.

(*Comment:* The existence of such a contract is a prerequisite to granting an extension under section 301(i)(2)(B) of the act and § 124.106(e) of this Subpart.)

§ 124.108 Effect of noncompliance with this subpart.

Failure of the State to comply with any of the requirements of this subpart shall be grounds for EPA objection to a proposed State permit under section 402(d)(2) of the Act.

Part 125 National Pollutant Discharge Elimination System, is amended as follows:

2. Section 125.5(a) is amended by adding new paragraph (5) as follows:

§ 125.5 Delegation of authority.

* * * * *

(a)(5) The authority to issue or modify permits pursuant to section 301(i) of the Act.

3. Section 125.26 is amended by adding new paragraph (c) as follows:

§ 125.26 Special categories of permits.

* * * * *

(c) *Time extensions under section 301(i) of the Act.* The Regional Administrator may issue or modify permits containing time extensions under section 301(i) of the Act. Such permits shall be issued or modified in accordance with the regulations in Subpart L of part 124 of this chapter, except that references to "State" or "Director" shall be interpreted to mean "EPA" or "Regional Administrator."

4. Section 125.35 is amended by adding a new sentence to the end of Subparagraph (d)(2) to read as follows:

§ 125.35 Issuance and effective date of permit.

* * * * *

(d)(2) * * * This subparagraph shall not apply to an adjudicatory hearing granted on a permit determination to contest the denial of a permit modification or issuance made pursuant to section 301(i) of the Act.

[FR Doc. 78-13283 Filed 5-15-78; 8:45 am]

Federal Register

TUESDAY, MAY 16, 1978
PART VII

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

■

HEALTH SYSTEMS AGENCY AND STATE AGENCY REVIEWS OF THE APPROPRIATENESS OF EXISTING INSTITUTIONAL HEALTH SERVICES AND OF PROPOSED NEW INSTITUTIONAL HEALTH SERVICES

[4110-83]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Public Health Service

[42 CFR Parts 122, 123]

HEALTH SYSTEMS AGENCY AND STATE AGENCY REVIEWS OF THE APPROPRIATENESS OF EXISTING INSTITUTIONAL HEALTH SERVICES AND OF PROPOSED NEW INSTITUTIONAL HEALTH SERVICES

AGENCY: Public Health Service, HEW.

ACTION: Notice of proposed rulemaking. Extension of comment period and corrections for a previously published proposed rule.

SUMMARY: This Notice sets forth proposed regulations governing health systems agency and State health planning and development agency reviews of the appropriateness of existing institutional health services. These reviews are required by sections 1513(g) and 1523(a)(6) of the Public Health Service Act and are intended to result in careful reviews by these agencies of all existing institutional health services, public findings as to the appropriateness of each service, and recommendations for remedial action when a service is found inapprpriate.

In addition, the period of public comment is extended and certain corrections are made for previously published Notice of Proposed Rulemaking, regarding HSA and State Agency reviews of proposed new institutional health services (43 FR 11229-41, March 17, 1978).

DATES: Comments regarding reviews of existing institutional health services for appropriateness must be recieved on or before June 30, 1978. In addition, the period of public comment on the Notice of Proposed Rulemaking regarding HSA and State Agency reviews of proposed new institutional health services (43 FR 11229-41, March 17, 1978) is hereby extended to May 31, 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:

Harry P. Cain II, Ph. D., 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) added to the Public Health Service Act (hereinafter referred to as "the Act") a new Title XV, "National Health Planning and Development", and a new Title XVI, "Health Resources Development". Among other things, the new Title XV authorizes the Secretary to designate and provide grant assistance to a State health planning and development agency (State Agency) for each State and to a health systems agency (HSA) for each health service area established pursuant to section 1511 of the Act. Among the duties required of State Agencies and HSA's is the periodic review of the appropriateness of all existing institutional health services.

Section 1513(g) of the Act requires that on a periodic basis (but at least every five years) each HSA must review all existing institutional health services in its health service area, and make recommendations regarding the appropriateness of those services to the State Agency. This section also requires that an HSA complete the first review of all the existing institutional health services within three years after the date of its full designation under section 1515(c) of the Act. Section 1523(a)(6) of the Act requires each State Agency to review, on a periodic basis (but not less often than every five years), all existing institutional health services in the State and, after considering the recommendations submitted to it by the HSA's in the State, to make public findings as to the appropriateness of the services. Section 1523(b)(3) of the Act further requires State Agencies to complete their findings with respect to the appropriateness at an existing institutional health service within one year of the receipt of the HSA recommendations. The purposes of the proposed 42 CFR Part 122, Subpart F and Part 123, Subpart G, are to set forth minimum procedures and criteria for HSA and State Agency reviews of the appropriateness of existing institutional health services (hereinafter referred to as "appropriateness reviews"); to describe the manner in which these procedures and criteria must be developed and published; to identify the types of health services subject to appropriateness review; and to establish requirements for coordination between HSA's and State Agencies in the conduct of appropriateness reviews.

The Secretary wishes to note that the development of regulations for appropriateness reviews posed unusually difficult problems due to a number of factors. Notable among these are: (1) The wide divergence of views regarding the nature of the function, (2) the lack of specificity regarding many important aspects of this function in the Act and the legislative history, (3) the absence of pertinent experience upon which to base the proposed rules, (4) the potentially enromous agency workload associated with the function, and (5) the possible impact of the reviews on providers of services, and on the relationships between health planning agencies and providers. While each review function mandated by the Act is affected by some of these factors, in no other case do so many apply. Therefore, in development of these rules, the Secretary has allowed considerable flexibility in the way HSA's and State Agencies conduct appropriateness reviews and relate these reviews to their other health planning responsibilities. Because of the difficulties encountered in developing these regulations, the Secretary wishes to initiate broad public dialogue on the issues associated with this function.

In soliciting public comment, the Secretary wishes to draw attention to certain aspects of the appropriateness review function and the proposed regulations. While all the reviews mandated by the Act are means for implementating State and local health plans, appropriateness review differs in two major respects from other such reviews (e.g., certificate of need reviews). First, the Act does not require the application of sanctions in cases where a finding of inappropriateness has been made by the State Agency. Although publicity surrounding findings of inappropriateness could have an adverse effect on providers, this is at most an indirect sanction. Second, appropriateness review begins at the planning agency's initiative rather than with an applicant's petition for permission to proceed with some activity; thus, the usual role of the planning agency relative to providers of health services is reversed.

These fundamental differences are reflected in the legislative history. The record reveals an evolution of "appropriateness review" from an original concept of periodic recertification of facilities, to periodic determination as to the continuing need for a service (with sanctions not required), to the present requirement for periodic review of services as to their "appropriateness." The reasons for omission of recertification authority included concerns about the possible adverse effect of appropriateness review findings on the outstanding debts of health care facilities and on the future capital market for health facilities. Unfortunately, the substitution of "appropriateness review" for reviews of "continued need" occurred so late in the legislative process that the

record indicates what appropriateness review is meant not to be, but provides virtually no guidance regarding what it is meant to be.

What is clear is that appropriateness review bridges the gap between planning and regulation, embracing elements of both. For this reason it is a tool with unusual potential. It can be used as one step in developing State and local health plans and providing opportunities for specific and productive cooperative planning between providers and planning agencies. It can also be, even without official sanctions, an effective regulatory function. In both cases, appropriateness reviews should be viewed as a positive tool for improving the local or State health care system, either by highlighting areas of excess and duplication or by identifying areas needing additional or improved services.

These proposed regulations place on the function only those restrictions which the Secretary considers necessary to fulfill the statutory requirements and to ensure an adequate level of coordination between HSAs and State Agencies in the performance of the function. The proposed regulations do not require an agency to treat appropriateness review primarily as either a regulatory or a planning function; that determination is left to the agency's discretion. They do, however, require the agency to conduct the function in a manner consistent with its general planning and resource development activities, and outline some specific requirements for inclusion in the appropriateness review portion of the agency work program. The work programs will be used by the Secretary to determine both the agency's readiness to perform appropriateness reviews in an acceptable manner, and how it will carry out the function from year to year.

Of particular concern to the Secretary is the potentially enormous work load involved in this function. While there is very little relevant experience, there is little question that the appropriateness review function could severely tax the resources of a given agency and, therefore, weaken its entire program. Therefore, these regulations permit the gradual assumption of this function in accordance with agency capabilities.

The Secretary also wishes to call attention to the proposed definition of "appropriateness" which has been included in the regulations to give specific definition to the function and to reduce confusion in the performance of the function. The definition requires that the finding of appropriateness be made in accordance with the criteria developed under § 123.607. Further, these criteria focus on six characteristics of services (availability, accessibility, cost, continuity, quality, and acceptability) which have been drawn from sections 1513(a) and (b)(2)(A) and 1535(c) and (d) of the Act where they are cited as primary concerns of the health planning agencies and important aspects of the Secretary's reviews of the performance of the planning agencies. Therefore, since the finding of appropriateness is tied to these characteristics of services which are also contained in the guidelines for health systems plans and State health plans, this definition is consistent with the analytical framework contained in these guidelines. Consequently, this definition should facilitate utilization of these plans in conducting appropriateness reviews and using the results of appropriateness reviews in the development of future plans.

Particular attention is also invited to proposed § 122.503(a), and § 123.603(a) which concern appropriateness review work programs. Appropriateness reviews can result in findings or recommendations as to the appropriateness of a specific service in the aggregate, as it is provided by all institutions in the area or State, or can result in findings or recommendations regarding the appropriateness of that service in a particular institution. The Secretary recognizes that these two levels of reviews have different implications. Reviews which result in institution-specific findings are likely to require substantially more agency manpower, more time (both for analysis of data and for consultation with providers) and, perhaps, more sophisticated and specific data.

Therefore, at this time, the Secretary has chosen to require only that HSAs and State Agencies perform areawide appropriateness reviews (those resulting in findings and recommendations regarding the appropriateness of a service in the aggregate). The conduct of institution-specific reviews, therefore, is left to the option of the agencies. Nevertheless, the Secretary anticipates that the agencies will phase in institution-specific reviews as they become more proficient in appropriateness reviews and as their resources permit. Areawide reviews of all existing institutional health services must be completed within 3 years of full designation for the HSAs and within 5 years of full designation for the State Agencies, as required by the statute. The State Agency also must comply with the statutory requirement to take action within 1 year of its receipt of an appropriateness review recommendation from an HSA. This approach will still allow for successively more detailed reviews, beginning with a screening effort to identify services which may be inappropriate and followed by intensive areawide reviews and, in some cases, institution-specific reviews.

Another important feature is the degree of coordination between the HSA and State Agency required in the conduct of appropriateness reviews. Appropriateness review follows the basic approach of certificate of need review—the HSA makes recommendations and the State Agency is responsible for the final findings. However, stronger provisions for coordination seem necessary for appropriateness reviews than were required for certificate of need reviews, since there is neither a common understanding of the nature of appropriateness review, nor an application around which State Agency and HSA review activities naturally coalesce. It is also clear that the appropriateness review function should be performed in an integrated, coordinated and consistent manner so that the work of the HSAs and State Agencies is complementary. Therefore, the proposed regulations require that the State Agency, after consultation with the HSAs in the State and with the Statewide Health Coordinating Council, establish definitions of services to be reviewed, priorities among those services to be reviewed, and schedules for reviews. The Secretary has not required that the review procedures and criteria used by the HSAs and State Agencies be identical, although consultation on these matters between the HSAs, State Agencies, and SHCCs is required. The Secretary is requiring statewide coordination in order to insure cooperative action by the agencies, and to allow for the development of statewide profiles of health services and comparisons among health service areas within a State. Further, by requiring a leadership role for the State Agency in establishing the review schedules and service priorities a greater measure of accountability for achieving coordination is possible.

The Secretary has selected the State Agency to provide the necessary leadership for several reasons. It is the State Agency which is ultimately responsible for making the findings regarding the appropriateness of services, and it is important that these findings be based on comparable recommendations from the HSAs in the State. In addition, the State Agency has the responsibility to recommend remedial action whenever a service is determined to be inappropriate. Finally, it is the State Agency which is required under the Act to obtain the provider data needed for performance of its health planning responsibilities, including the appropriateness review, and these proposed regulations would require that the State Agency in turn make that data available to the HSA. The Secretary recognizes that the Statewide Health Coordinating Council is an alternative location for all or part of this coordination responsibility

and invites comment on the desirability of using the Statewide Health Coordinating Council as a mediator when the State Agency and HSAs cannot agree.

Although the Secretary has placed the responsibility for establishing the schedule of and priority for reviews with the State Agency, he has required that there be advance consultation with the HSAs and the Statewide Health Coordinating Council. He recognizes that this approach may result in some concern over the pre-emption of local prerogatives or the possibility that a leadership role for one agency could allow a relatively less advanced agency to impede the progress of others. In that light, he is concerned that the consultation process not be a pro forma process: the needs and concerns of the HSAs must be addressed in the determination of the State's priorities and schedule. He, therefore, expects that the work programs submitted by both the HSAs and the State Agencies will reflect an adequate consultation process and he will be monitoring that process to insure that this expectation is met. The statutory emphasis on the independence of the three organizational entities established under this Act is important and the sensitive balance between State and local area prerogatives must be maintained.

The Secretary also wishes to note that to provide the agencies with considerable flexibility in conducting these reviews, the procedural and criteria-related provisions of the proposed regulations generally repeat the language in section 1532 of the Act. In two areas in which the proposed regulations elaborate on the statutory language, adoption of review procedures (§ 122.504 and 123.604) and exceptions to the required procedures (§ 122.506 and 123.606), the agencies are to conform with the requirements of the pertinent sections of the regulations for reviews of new institutional health services (including certificate of need reviews). With respect to the procedures themselves, (§§ 122.505 and 123.605), three statutory provisions not applicable to appropriateness reviews (sections 1532(b)(4), (b)(5), and (b)(11), which concern the submission of applications for Federal financial assistance, provider reports on the development of proposals subject to review and letters of intent for construction projects), have been omitted. In addition, while the Act requires time limits for all reviews which, to the extent practicable, do not exceed 90 days, these time periods seem insufficient for appropriateness review; in their place, the Secretary is requiring that, to the extent practicable, areawide reviews take no longer than 180 days.

With respect to criteria, one statutory provision not applicable to appropriateness review (section 1532(c)(9), dealing with construction projects) has been omitted, and the criterion referring to the relationship of the health service being reviewed to the applicable health systems plans and annual implementation plans now would include reference to the State health plan and State medical facilities plan. In addition, the proposed regulations require that two additional considerations be included in the development of criteria: (1) the special needs and circumstances of national biomedical and behavioral research efforts, and (2) the contribution of the existing institutional health service in meeting the health related needs of minorities, women, and handicapped individuals residing in the health service area in which the service is provided.

With regard to the second of these considerations, the Secretary calls attention to the Notice of Proposed Rulemaking regarding HSA and State Agency reviews of proposed new institutional health services (43 FR 11229-41, March 17, 1978). In addition to the amendments proposed in that document, the Secretary also proposes to amend these regulations by requiring that HSA and State Agency criteria for review of proposed new institutional health services must also include consideration of the contribution of the proposed services in meeting the health related needs of minorities, women, and handicapped individuals residing in the health services area in which the service will be provided. Moreover, the Secretary proposes to expand another review consideration (§ 122.308(a)(3) and 123.409(a)(3)) to require HSAs and State Agencies to consider not only whether services to be added or expanded are needed, but also whether a 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. Because of these changes, the public comment period for that Notice of Proposed Rulemaking is hereby extended to May 31, 1978. A longer extension is not needed in this case because these same provisions are included in the Notice of Proposed Rulemaking for health systems agency reviews of certain proposed uses of Federal health funds (published in the FEDERAL REGISTER on May 9), and the public will have opportunity to comment on them in that context as well. Comments received on these provisions will be considered in preparing both final regulations.

In addition, an error was made in this March 17 Notice of Proposed Rulemaking at § 122.304, § 122.309, § 123.404, and § 123.410. These sections, which deal with the coverage of certificate of need programs and required findings for new inpatient facilities, had been amended on April 8, 1977, subsequent to the issuance of the certificate of need regulations on January 21, 1977. These April 8, 1977, amendments inadvertently were not incorporated into the March 17 Notice of Proposed Rulemaking. Thus, that Notice of Proposed Rulemaking reads as if the Secretary were proposing to revert to the original January 21, 1977, provisions in these sections. This was not intended; rather, the April 8, 1977, amendments to these regulations were intended to be included in the Notice of Proposed Rulemaking. Accordingly, the April 8, 1977, amendments are reprinted below as a correction to the March 17 Notice of Proposed Rulemaking.

To insure that the agencies obtain the data needed to conduct appropriateness reviews, HSAs and State Agencies are required to notify providers of the types of data the agencies need, as is the case in the regulations for certificate of need. In addition, these proposed regulations mandate that State Agencies require that providers submit the data necessary to perform the reviews to the State Agency and to the appropriate HSAs. This latter requirement will be phased in, to allow sufficient time for the identification (and later collection) of the data, starting with hospitals and nursing homes in the first and second years, respectively, of the agency's reviews of appropriateness. As always, the agencies must fully utilize existing data sources before collecting new data, and their data collection efforts should be coordinated with Cooperative Health Statistic System efforts. In addition, to avoid any duplicative data collection requirements, the Department will coordinate the implementation of these data provisions with that of the Medicare-Medicaid Anti-Fraud and Abuse Amendments (Pub. L. 95-142) data requirements.

The Secretary also calls attention to the issue of appropriateness reviews of services provided by health maintenance organizations (HMOs). The Secretary wants to insure that appropriateness reviews of such services do not impair the development of these organizations. While Title XV of the Act requires that existing HMO services be subject to appropriateness reviews, the Secretary wants to insure that HMOs receive the encouragement and special consideration Congress intended in enacting Title XIII of the Act ("Health Maintenance Organizations"), and when it made the development of group practices and HMOs a national priority in section 1502 of the Act, and when it included at section 1532(c)(8) of the Act the requirement that their special needs and circumstances be considered in the criteria developed for any type of review. However, he

also respects the State and local planning process which calls upon health planning agencies to assess the total health needs and resources of their area or State.

The Secretary does not anticipate that appropriateness reviews of a service on an areawide basis will have an impact on HMOs, since findings and recommendations in those reviews will only address the appropriateness of a service as it is delivered in the aggregate by all the health institutions providing the service in the health service area or State. However, when they conduct institution-specific reviews, planning agencies will be making findings and recommendations regarding the appropriateness of a service in individual institutions. It is only in these reviews, resulting in institution-specific findings regarding appropriateness, that HMOs could be affected adversely by HSA and State Agency actions.

Accordingly, §§ 122.507 and 123.607(a)(8) of these proposed regulations elaborate on the language of section 1532(c)(8) of the Act regarding the "special needs and circumstances of health maintenance organizations for which assistance may be provided under Title XIII." These sections include a limited set of specific criteria which HSAs and State Agencies must employ in any institution-specific appropriateness reviews of HMO services and a description of the process to be followed by agencies wishing to obtain the Secretary's approval to use additional criteria.

Sections 122.508(c) and 123.608(c) of these proposed regulations provide that, in an institution-specific review of a service provided by or through an HMO, an HSA may not recommend that a State Agency find an institutional health service to be inappropriate, and a State Agency may not find that an institutional health service is inappropriate, solely because there is an HMO of the same type in the health service area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, State health plan, or State medical facilities plan.

Moreover, §§ 122.508(d) and 123.608(d) of these proposed regulations provide that an HSA or State Agency in conducting an institution-specific review, may not find a service of an HMO which is eligible for Title XIII assistance inappropriate unless it determines (1) that the service is not needed by the enrolled or reasonably anticipated new members of the HMO, or (2) that the service is available from non-HMO providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the HMO, or (3) that the service is inappropriate under criteria based on factors approved by the Secretary.

Furthermore, in the case of an institution-specific review of an existing institutional health service which is provided by or through an HMO and which consists of (or includes) an inpatient health care facility, these proposed regulations provide that, if in addition to making one of the determinations listed in §§ 122.508(d) and 123.608(d) and discussed above, the agency also determines that utilization of the facility by members of the HMO does not account for at least 75 percent of the facility's annual inpatient days, a recommendation or finding of inappropriateness may be made.

It should also be noted that proposed amendments to regulations governing reviews of new institutional health services (42 CFR part 122, Subpart D, and Part 123, Subpart E), recently published in the FEDERAL REGISTER, include, in addition to special provisions regarding criteria and review findings, special procedural requirements for reviews of HMOs. These provisions have not been included in these proposed regulations because reviews of existing services are fundamentally different from reviews of proposed services and these procedural requirements are either not applicable or not necessary for appropriateness reviews of existing institutional health services.

The Secretary wishes to note that the importance of this appropriateness review function is underscored by the fact that the Congress, in its deliberations of the major health care cost containment bills, is considering a much more significant role for appropriateness reviews as a tool for containing costs. Appropriateness reviews might, for example, be used to determine the hospital revenue base or to determine what exceptions to that base might be allowed. In addition, two versions of the legislation have proposed that appropriateness review be utilized as one factor in determining each State's overall capital expenditure limit for certificate of need reviews (and/or under section 1122 of the Social Security Act). Accordingly, the issuance of these regulations, which will allow planning agencies to gain experience with reviews of existing health services, is timely.

However, the pending cost containment bills reflect the variance in the interpretation of the concept of appropriateness review. Some proposals for cost containment legislation would greatly increase the impact of appropriateness reviews; one, for example, would require that the sanctions utilized in certificate of need programs be applied to existing institutional health services which have undergone appropriateness review and been found inappropriate. This same bill would also establish a moratorium on certain capital expenditures from which some exemptions (e.g., for meeting life/safety standards) would be permitted if the expenditures and the facilities which are proposing them have successfully undergone certificate of need and appropriateness reviews. Other bills would provide incentives for the closure of facilities found to be inappropriate; one would give the Secretary authority to make grants for retirement of the outstanding debt of institutions which had discontinued health services after a determination of inappropriateness, and another would provide for a reduction by 5 percent of the Federal reimbursement under Titles V, XVIII, and XIX of the Social Security Act to hospitals designated as having excess services. Since the future role of appropriateness reviews is indeterminate at this time, the Secretary has attempted in these regulations to provide for the establishment of a comprehensive review which will be feasible for the health planning agencies to undertake in the near future and will develop their capacity to perform progressively more sophisticated reviews.

It is therefore proposed to amend Title 42, Code of Federal Regulations, 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 9, 1978.

JULIUS B. RICHMOND,
Assistant Secretary for Health.

Approved: May 8, 1978.

HALE CHAMPION,
Acting Secretary.

PART 122—HEALTH SYSTEMS AGENCIES

1. Section 122.304 of Part 122 of Title 42, proposed at 43 FR 11232, March 17, 1978, is amended by revising paragraph (a)(3) to read as follows:

§ 122.304 New institutional health services subject to review.

(a) * * *

(3) A change in the bed capacity of a health care facility or health maintenance organization which increased the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than 10 beds or more than 10 percent of total bed capacity as defined by the State, whichever is less, over a 2-year period.

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2. Section 122.308 of Part 122 of Title 42, proposed at 43 FR 11231, March 17, 1978, is amended by revising paragraph (a)(3) and by adding paragraph (a)(13) to read as follows:

§ 122.308 Criteria for health systems agency review.

(a) * * *

(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.

* * * * *

(13) The contribution of the proposed new institutional health service in meeting the health related needs of minorities, women, and handicapped individuals residing in the health service area in which the service will be provided.

3. Section 122.309 of Part 122 of Title 42, proposed at 43 FR 11235, March 17, 1978, is revised to read as follows:

§ 122.309 Inpatient facilities; required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a health systems agency shall not recommend that a State grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless:

(a) The health systems agency makes written findings as to:

(1) The efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed; and

(2) The capital and operating costs (and their potential impact on patient charges), efficiency, and appropriateness of the proposed new institutional health service; and

(b) The health systems agency makes each of the following findings in writing:

(1) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable;

(2) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(3) That patients will experience serious problems in terms of cost, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(4) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care, the relationship of the addition of the plans of agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

(Sec. 215, 58 Stat. 690 (42 U.S.C. 216); sec. 1532 of the Public Health Service Act, 88 Stat. 2251-53 (42 U.S.C. 300n-1).)

4. Part 122 of Title 42, is proposed to be amended by adding thereto a new Subpart F, to read as follows:

Subpart F—Health Systems Agency Reviews of Existing Institutional Health Services for Appropriateness

Sec.
122.501 Definitions.
122.502 Purpose and applicability.
122.503 Appropriateness review work program.
122.504 Adoption and public notice of review procedures and criteria.
122.505 Procedures for health systems agency review.
122.506 Exceptions to use of procedures.
122.507 Criteria for health systems agency review.
122.508 Required recommendations.

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sec. 1513 of the Public Health Service Act, 88 Stat. 2235 (42 U.S.C. 300*l*-2); sec. 1532 of the Public Health Service Act, 88 Stat. 2251-53 (42 U.S.C. 300n-1).

Subpart F—Health Systems Agency Reviews of Existing Institutional Health Services for Appropriateness

§ 122.501 *Definitions.*

Terms used in this subpart shall have the meaning given them in Subparts A (Definitions) and D (Procedures and Criteria for Review of New Institutional Health Services) of this Part. In addition, as used in this subpart:

(a) The term "existing institutional health services" or "services" means institutional health services:

(1) Being offered in the health service area at the time of review for appropriateness, or

(2) Offered at any time in the 12 months prior to the review and also planned to be offered at any time in the 12 months following the review.

(b) A finding of "appropriateness" means a finding that a service meets the needs of a population, in accordance with the criteria developed and published under § 122.507.

(c) The term "areawide review" means the review of a specific institutional health service as delivered by all the institutions providing the service in the health service area, which culminates in recommendations regarding the appropriateness of that service over the entire health service area.

(d) The term "institution-specific review" means the review of a specific institutional health service as provided by each institution in the area providing the service which culminates in recommendations regarding the appropriateness of that service in each such institution in the area.

§ 122.502 Purpose and applicability.

Section 1513(g) of the Act requires each health systems agency to review on a periodic basis, but at least every 5 years, all institutional health services offered in its health service area and to make recommendations to the State Agency for each State in which any part of the health systems agency's health service area is located respecting the appropriateness in the area of such services (hereinafter referred to as an appropriateness review). Section 1532(a) of the Act requires that in performing its review functions under section 1513(g) of the Act or in conducting any other reviews of existing health services, each health systems agency shall follow procedures and apply criteria developed and published by the health systems agency in accordance with regulations of the Secretary. This subpart sets forth minimum procedures and criteria to be utilized by health systems agencies in conducting such reviews and the requirements respecting the assumption, conduct, and timing of the appropriateness review function by health systems agencies; requirements respecting the coordination with the State Agency and the Statewide Health Coordinating Council; and such administrative steps as are necessary for the effective performance of the appropriateness reviews.

NOTE.—Under 42 CFR 122.106(c), a health systems agency may not perform the appropriateness review function during its first year of conditional designation, and may not in any event perform such function during its period of conditional designation until such agency has established a health systems plan and annual implementation plan in accordance with sections 1513(b) (2) and (3) of the Act, and the Secretary has in writing authorized the agency to perform such function.

§ 122.503 Appropriateness review work program.

The work program submitted by each health systems agency in accordance with 42 CFR 122.104(a)(3) or (b)(9), whichever is applicable, shall with respect to the assumption and continuing performance of the appropriateness review function:

(a) Provide for the development of procedures and criteria to be applied in performance of appropriateness reviews, in consultation with the Statewide Health Coordinating Council and State Agency of each State in which any part of the health systems agency's health service area is located;

(b) Include an assurance that the health systems agency will abide by the decision of the State Agency with respect to the definitions of services, priorities among services, and the schedule for reviews of such services;

(c) Provide for the establishment of administrative procedures governing the transmittal of appropriateness

review recommendations to the State Agency in accordance with procedural requirements established by the State Agency; and

(d) Provide for the development of plans for completing areawide appropriateness reviews of all existing institutional health services within 3 years of the date of the health systems agency's initial full designation and during each succeeding 5-year period. Review schedule priorities may be established, but such review priority setting shall not result in the exclusion from review of any existing institutional health service during any applicable time period.

§ 122.504 Adoption and public notice of review procedures and criteria.

The provisions of 42 CFR 122.305 apply to the adoption and public notice of review procedures and criteria under this subpart.

§ 122.505 Procedures for health systems agency review.

(a) The procedures adopted and utilized by a health systems agency conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review.

(2) Schedules for review which provide that no review shall, to the extent practicable, take longer than 180 days from the date of notification to affected persons made in accordance with paragraph (a)(1) of this section to the date of submission of the health systems agency's recommendations to the State Agency.

(3) Provision for persons subject to a review to submit to the health systems agency such information as the health systems agency may require concerning the subject of such review, in such form and manner and containing such information as the health systems agency shall prescribe and publish.

(4) Provision for written findings which state the basis for any findings made by the health systems agency.

(5) Notification of providers of health services and other persons subject to the health systems agency review of the status of the health systems agency's review of the institutional health services, findings made in the course of such review, and other appropriate information respecting such review.

(6) Provision for public hearings in the course of the health systems agency review if requested by persons directly affected by the review.

(7) Preparation and publication of regular 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 health systems agency (including a general statement of the findings made in the course of such reviews and the recommendations made to the State agency) since the publication of the last such report.

(8) Access by the general public to all written materials pertinent to any health systems agency review.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the type of health service being reviewed.

(c) The procedures adopted for reviews may provide that the requirements of subparagraphs (1), (3), and (6) of paragraph (a) of this section shall be deemed satisfied for any health service area within the State if the State Agency has provided for a corresponding procedure.

§ 1122.506 Exceptions to use of procedures.

A health systems agency may, with respect to any type or group of reviews, request from the Secretary an exception to the requirement that it utilize review procedures which meet the requirements of § 122.505. The requirements of 42 CFR 122.307 apply to such a request for an exception.

§ 122.507 Criteria for health systems agency review.

The provisions of 42 CFR 123.607 apply to the adoption and utilization of review criteria under this subpart.

§ 122.508 Required recommendations.

(a) After completing its review of an existing institutional health service a health systems agency shall make recommendations respecting the appropriateness of the service in its health service area to the State agency of each State in which all or any part of the health systems agency's health service area is located.

(b) A health systems agency may not recommend that a State agency find an existing institutional health service to be inappropriate unless the health systems agency has stated in writing that the service has not met one or more of the established criteria of the health systems agency and the ways in which the service failed to meet the criteria, including any that are beyond the control of the person(s) providing that service.

(c) A health systems agency, in an institution-specific review, may not recommend that an existing institutional health service provided by or through a health maintenance organization be found inappropriate solely because there is a health maintenance organization of the same type, as specified in section 1310(b) of the act, in the same health service area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, State health plan, or State medical facilities plan.

(d) In the case of an existing institutional health service provided by or through a health maintenance organization for which assistance is or may be provided under title XIII of the act, a health systems agency is an institution-specific review, shall not recommend that the service be found inappropriate.

(1) Unless the health systems agency determines that the service is:

(i) Not needed by the enrolled or reasonably anticipated new members of the health maintenance organization, or

(ii) Available from nonhealth maintenance organization providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization, in accordance with § 123.607(a)(8)(ii), or

(2) Unless the health systems agency determines that the service is inappropriate under criteria based on factors which the Secretary has approved in accordance with § 123.607(c).

(e) In the case of an existing institutional health service which is provided by or through a health maintenance organization for which assistance is or may be provided under title XIII of the act and which consists of (or includes) an inpatient health care facility, the health systems agency in an institution-specific review, may recommend that such service be found inappropriate if, in addition to making one of the determinations set forth in paragraph (d) of this section, it determines that utilization of the facility by members of the health maintenance organization does not account for at least 75 percent of the annual inpatient days of the facility.

(f) When a health systems agency recommends to a State agency that a service be found inappropriate, the health systems agency shall, to the extent practicable, suggest to the State agency a plan for remedial action.

PART 123—STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

1. Section 123.404 of part 123 of title 42, proposed at 43 FR 11237, March 17, 1978, is amended by revising paragraph (a)(3) to read as follows:

§ 123.404 New institutional health services subject to review.

(a) * * *

(3) A change in bed capacity of a health care facility or health maintenance organization which increases the total number of beds (or distributes beds among various categories, or relocates such beds from one physical facility or site to another) by more than 10 beds or more than 10 percent of total bed capacity as defined by the

State, whichever is less, over a 2-year period.

* * * * *

2. Section 122.409 of part 123 of title 42, proposed at 43 FR 11240, March 17, 1978, is amended by revising paragraph (a)(3) and adding paragraph (a)(13) to read as follows:

§ 123.409 Criteria for State agency review.

(a) * * *

(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.

* * * * *

(13) the contribution of the proposed new institutional health service in meeting the health related needs of minorities, women, and handicapped individuals residing in the health service area in which the service will be provided.

3. Section 123.410 of part 123 of title 42, proposed at 43 FR 11240, March 17, 1978, is revised to read as follows:

§ 123.410 Inpatient facilities, required findings.

In the case of any proposed new institutional health service for the provision of health services to inpatients, a State agency shall not grant a certificate of need under its certificate of need program, or otherwise make a finding that such proposed new institutional health service is needed, unless:

(a) The State agency makes written findings as to:

(1) The efficiency and appropriateness of the use of existing inpatient facilities providing inpatient services similar to those proposed; and

(2) The capital and operating costs (and their potential impact on patient charges), efficiency, and appropriateness of the proposed new institutional health service; and

(b) The State agency makes each of the following findings in writing:

(1) That superior alternatives to such inpatient services in terms of cost, efficiency, and appropriateness do not exist and that the development of such alternatives is not practicable;

(2) That in the case of new construction, alternatives to new construction (e.g., modernization or sharing arrangements) have been considered and have been implemented to the maximum extent practicable;

(3) That patients will experience serious problems in terms of costs, availability, or accessibility, or such other problems as may be identified by the reviewing agency, in obtaining inpatient care of the type proposed in the absence of the proposed new service; and

(4) That in the case of a proposal for the addition of beds for the provision of skilled nursing or intermediate care the relationship of the addition to the plans of other agencies of the State responsible for providing and financing long-term care (including home health services) has been considered.

(Sec. 215, 58 Stat. 690 (42 U.S.C. 216); secs. 1523, 1532 of the Public Health Service Act, 88 Stat. 2246, 2251.)

4. Part 123 of Title 42, is proposed to be amended by adding thereto a new Subpart G, to read as follows:

Subpart G—State Agency Reviews of Existing Intstitutional Health Services for Appropriateness

Sec.
123.601 Definitions.
123.602 Purpose and applicability.
123.603 Appropriateness review work program.
123.604 Adoption and public notice of review procedures and criteria.
123.605 Procedures for State agency review.
123.606 Exceptions to use of procedures.
123.607 Criteria for State agency review.
123.608 Required findings.

AUTHORITY: Sec. 215 of the Public Health Service Act, 58 Stat. 690 (42 U.S.C. 216); sec. 1523 of the Public Health Service Act, 88 Stat. 2246 (42 U.S.C. 300m-2); sec. 1532 of the Public Health Service Act, 88 Stat. 2251-53 (42 U.S.C. 300n-1).

Subpart G—State Agency Reviews of Existing Institutional Health Services for Appropriateness

§ 123.601 Definitions.

Terms used in this subpart shall have the meaning given them in subparts A (definitions) and E (certificate of need and review of new institutional health services) of this part. In addition, as used in this subpart:

(a) The term "existing institutional health services" or "services" means institutional health services:

(1) Being offered in the State at the time of review for appropriateness, or

(2) Offered at any time in the 12 months prior to the review and also planned to be offered at any time in the 12 months following the review.

(b) A finding of "appropriateness" means a finding that the service meets the needs of a population in accordance with the criteria developed and published under § 123.607.

(c) The term "areawide review" means the review of a specific institutional health service as delivered by all the institutions providing the service in a health service area or State which culminates in findings regarding the appropriateness of that service over the entire health service area or State.

(d) The term "institution-specific review" means the review of a specific insititutional health service as provided by each institution in a health service area or State which culminates in findings and recommendations regarding the appropriateness of that service in each such institution.

§ 123.602 Purpose and applicability.

Section 1523(a)(6) of the act requires each State health planning and development agency to review on a periodic basis (but not less often than every 5 years) all institutional health services being offered in the State (hereinafter referred to as an appropriateness review) and, after consideration of the recommendations submitted by health systems agencies under section 1513(g) of the act and 42 CFR Part 122, Subpart F, to make public its findings as to the appropriateness of such services. Section 1523(b)(3) of the act requires the State agency to complete its findings as to the appropriateness of any existing insitutional health service within one year after the date a health systems agency has made its recommendation with respect to the appropriateness of the service under section 1513(g) of the act and 42 CFR Part 122, Subpart F. Section 1532(a) of the act requires that in performing its review functions under section 1523 of the act (which includes reviews conducted under section 1523(a)(6)), each State agency shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the State agency in accordance with regulations of the Secretary. This subpart sets forth minimum procedures and criteria to be utilized by State agencies in conducting such reviews; requirements respecting the assumption, conduct, and timing of the appropriateness review function; requirements respecting the coordination with health systems agencies and statewide health coordinating councils and such administrative steps as are necessary for the effective performance of appropriateness reviews.

§ 123.603 Appropriateness review work program.

Each State agency must develop and submit to the Secretary a work program for the orderly assumption and/or continued performance of appropriateness reviews. This work program will be used in the Secretary's determination of the State agency's capability of assuming and performing the appropriateness review function in a satisfactory manner as required by sections 1521(b)(1) (B), (B)(2)(A), and (B)(4) of the act, and shall provide for:

(a) The development of the review procedures and criteria to be applied in the performance of appropriateness reviews, in consultation with the statewide health coordinating council and all the health systems agencies in the State, and the State agency(s) and statewide health coordinating council(s) of any contiguous State(s)

where a health service area is shared by both States.

(b) The establishment of the definitions of services to be reviewed, priorities among services, and the schedule for reviews of such services, after consultation with the statewide health coordinating council and all the health systems agencies in the State, and the State agency(s) and statewide health coordinating council(s) of any contiguous States where a health service area is shared by both States. In establishment of these definitions, priorities, and schedules, the State agency must take into account the statutory time limits applicable to appropriateness reviews by health systems agencies.

(c) The establishment of requirements for submission by providers of data to be used in performance of appropriateness reviews to the State agency and to the health systems agencies, after consultation with the statewide health coordinating council and all the health systems agencies in the State, and the State agency(s) and statewide health coordinating council(s) of any contiguous States where a health service area is shared by both States. At a minimum, the State agency shall establish such data requirements for hospitals and nursing homes during the first and second years, respectively, of its reviews of appropriateness.

(d) Plans for initiating appropriateness reviews:

(1) No later than 6 months after the effective date of these regulations if: (i) The State agency is fully designated prior to the date of publication of these regulations, or (ii) the State agency is conditionally designated and the Secretary has determined that the State agency is capable of performing appropriateness reviews (see 42 CFR 123.105) prior to the effective date of these regulations; or

(2) In the case of a State agency not covered by subparagraph (1) of this paragraph, no later than 6 months after: (i) The date of full designation, or (ii) the date the Secretary determines that the State agency, although conditionally designated, is capable of performing appropriateness reviews, whichever is earlier.

(e) Plans for completing areawide reviews of all existing institutional health services within 5 years of the date of the State agency's initial full designation and during each succeeding 5-year period, but in any event within 1 year of receipt of an appropriate health system agency recommendation. Review schedule priorities may be established, but such review priority setting shall not result in the exclusion from review of any existing institutional health service during any applicable time period.

§ 123.604 Adoption and public notice of review procedures and criteria.

The provisions of 42 CFR 123.406 apply to the adoption and public notice of review procedures and criteria under this subpart.

§ 123.605 Procedures for State agency review.

(a) The procedures adopted and utilized by a State agency for conducting the reviews covered by this subpart shall include at least the following:

(1) Written notification to affected persons of the beginning of a review.

(2) Schedules for review which provide that no review shall, to the extent practicable, take longer than 180 days from the date of notification to affected persons made in accordance with paragraph (a)(1) of this section to the date of the written findings made in accordance with paragraph (a)(4) of this section.

(3) Provision for persons subject to a review to submit to the State agency such information as the State agency may require in accordance with their work program under § 123.603(c) concerning the subject of such review, in such form and manner and containing such information as the State agency shall prescribe and publish.

(4) Provisions for written findings which state the basis for any findings made by the State agency.

(5) Notification of providers of health services and other persons subject to the State agency review of the status of the State agency's review of the institutional health services, findings made in the course of such review, and other appropriate information respecting such review.

(6) Provision for (i) public hearings in the course of the State agency review if requested by persons directly affected by the review; and for (ii) public hearings, for good cause shown, respecting the State agency finding.

(7) Preparation and publication of regular reports by the State agency of the reviews being conducted (including a statement concerning the status of each such review), and of the reviews completed by the State agency (including a general statement of the findings made in the course of such reviews) since the publication of the last such report.

(8) Access by the general public to all written materials pertinent to any State agency review.

(9) Provision that if the State agency makes a finding regarding the appropriateness of an existing insitutional health service which is inconsistent with a recommendation made with respect thereto by the health systems agency making such recommendation pursuant to 42 CFR 122.508: (1) such finding (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, by an agency of the State (other than the State health planning and development agency) designated by the Governor, and (ii) the finding of the reviewing agency shall be considered the final finding of the State agency.

(10) If a State agency (or a reviewing agency, under paragraph (a)(9) of this section) makes a finding regarding an existing institutional health service which the State agency determines is not consistent with the goals of the applicable health systems plan (established under section 1513(b)(2) of the act) or the priorities of the applicable annual implementation plan (established under section 1513(b)(3) of the act, the State agency (or the reviewing agency, as appropriate) shall submit to the appropriate health systems agency a detailed statement of the reasons for the inconsistency.

(b) Procedures adopted for reviews in accordance with paragraph (a) of this section may vary according to the type of health service being reviewed.

(c) The procedures adopted for reviews may provide that the requirements of subparagraphs (1), (3), and (6)(i) of paragraph (a) of this section shall be deemed satisfied for any health service area within the State if the health systems agency has provided for a corresponding procedure.

§ 123.606 Exceptions to use of procedures.

A State agency may, with respect to any type or group of reviews, request from the Secretary an exception to the requirement that it utilize review procedures which meet the requirements of § 123.605. The requirements of 42 CFR 123.408 apply to such a request for an exception.

§ 123.607 Criteria for State agency review.

(a) The State agency shall adopt, and utilize as appropriate, specific criteria for conducting the reviews covered by this subpart. These criteria shall relate to availability, accessibility, acceptability, continuity, cost, and quality and shall include at least the general considerations listed below, but in the case of institution-specific reviews of health maintenance organizations for which assistance may be provided under title XIII, the considerations shall be limited to those set forth in subparagraph (8) of this pargraph.

(1) The relationship of the health services being reviewed to the applicable health systems plans and annual implementation plans, State health plan (or preliminary State health plan prior to adoption of the State health plan) and State medical facilities plan adopted pursuant to sections 1513(b)(2), 1513(b)(3), 1524(c)(2), and 1602(a), respectively, of the act.

(2) The relationship of the services reviewed to the long-range development plan (if any) of the person providing such services.

(3) The need that the population served by such services has for such services.

(4) The availability of less costly or more effective alternative methods of providing such services.

(5) The relationship of the services reviewed to the existing health care system of the area in which such services are provided.

(6) The availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of the services reviewed and the availability of alternative uses of such resources for the provision of other health services.

(7) 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.

(8) The special needs and circumstances of health maintenance organizations for which assistance is provided under title XIII of the act. In the case of an institution-specific review of a health maintenance organization, such needs and circumstances shall be limited to:

(i) The needs of enrolled members and reasonably anticipated new members of the health maintenance organization for the existing institutional health services provided by the organization.

(ii) The availability of the health services from nonhealth maintenance organization providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization. In assessing the availability of these health services from nonhealth maintenance organization providers, the State agency shall consider only whether the services from these providers:

(A) Are available under a contract of at least 5 years duration with a nonhealth maintenance organization provider;

(B) Are available and conveniently accessible through physicians and other health professionals associated with the health maintenance organization. (For example—Whether physicians associated with the health maintenance organization have full staff privileges at a nonhealth maintenance organization hospital);

(C) Cost no more than when the services are provided by the health maintenance organization; and

(D) Are available in a manner which is administratively feasible to the health maintenance organization.

(iii) Any other factors which the State 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.

(9) The specials needs and circumstances of biomedical and behavorial research projects which are designed to meet a national need and for which local conditions offer special advantages.

(10) The contribution of the institutional health service in meeting the health related needs of minorities, women, and handicapped individuals residing in the health service area in which the service is provided.

(b) Criteria adopted for reviews in accordance with paragraph (a) of this section may vary according to the type of health service being reviewed and the purpose of the review. Furthermore, the criteria used in the review of a particular service need not address all six of the characteristics of appropriateness (availability, accessibility, acceptability, continuity, cost, and quality).

(c) Where a State agency proposes under paragraph (a)(8)(iii) of this section that it be permitted to base institution-specific reviews of health maintenance organizations on criteria which consider factors not set forth in paragraph (a)(8) 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 State agency shall base its review solely on the factors set forth in paragraph (a)(8) of this section.

§ 123.608 Required findings.

(a) A State agency shall, in accordance with the requirements of this subpart, make findings with respect to the appropriateness of existing institutional health services.

(b) A State agency may not make a finding that an existing institutional health service is inappropriate unless it has stated in writing that the service has not met one or more of the established criteria of the State agency and the ways in which the service failed to meet the criteria, including any that are beyond the control of the person(s) providing that service.

(c) A State agency, is an institution-specific review, may not make a finding that an existing institutional health service provided by or through a health maintenance organization is inappropriate soley because there is a health maintenance organization of the same type, as specified in section 1310(b) of the act, in the same health service area, or solely because the services being reviewed are not discussed in the applicable health systems plan, annual implementation plan, State health plan, or State medical facilities plan.

(d) In the case of an existing institutional health service provided by or through a health maintenance organization for which assistance is or may be provided under title XIII of the act, a State agency in an institution-specific review shall not make a finding that the service is inappropriate.

(1) Unless the State agency determines that the service is:

(i) Not needed by the enrolled or reasonably anticipated new members of the health maintenance organization; or

(ii) Available from nonhealth maintenance organization providers in a reasonable and cost-effective manner which is consistent with the basic method of operation of the health maintenance organization, in accordance with § 123.607(a)(8)(ii), or

(2) Unless the State agency determines that the service is inappropriate under criteria based on factors which the Secretary has approved in accordance with § 123.607(c).

(e) In the case of an institution-specific review of an existing institutional health service which is provided by or through a health maintenance organization for which assistance is or may be provided under title XIII of the act and which consists of (or includes) an inpatient health care facility, the State agency may make a finding that such service is inappropriate if, in addition to making one of the determinations set forth in paragraph (d) of this section, it determines that utilization of the facility by members of the health maintenance organization does not account for at least 75 percent of the annual inpatient days of the facility.

(f) Where a State agency has made a finding that a service is inappropriate, the State agency shall, at the same time, make recommendations for remedial action.

[FR Doc. 78-13326 Filed 5-15-78; 8:45 am]

Federal Register

TUESDAY, MAY 16, 1978
PART VIII

OFFICE OF MANAGEMENT AND BUDGET

Rescissions and Deferrals

■

CUMULATIVE REPORT MAY 1978

[3110-01]

OFFICE OF MANAGEMENT AND BUDGET

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS, MAY 1978

This report is in fulfillment of the requirements of section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This month's report gives the status as of May 1, 1978, of four rescissions contained in the fourteenth, fifteenth, and seventeenth special messages of fiscal year 1977 and four rescissions and 59 deferrals contained in the first seven special messages for fiscal year 1978. These messages were transmitted to the Congress on July 19 (both the fourteenth and fifteenth messages), July 26, September 23, October 3, November 10, December 15, 1977, January 27, February 23, and March 10, 1978.

RESCISSIONS (TABLE A AND ATTACHMENT A)

As of May 1, there were no rescissions pending before the Congress. Table A summarizes the status of rescissions proposed by the President as of May 1, 1978, while Attachment A shows the history and status of each rescission proposed for fiscal year 1978. Also included are four rescission proposals totalling $643.4 million made in fiscal year 1977 but carried into fiscal year 1978 and a single fiscal year 1978 rescission for $2.7 million which has been reclassified as a deferral.

DEFERRALS (TABLE B AND ATTACHMENT B)

As of May 1, 1978, $3,678.5 million in 1978 budget authority was being deferred from obligation and another $2.3 million in 1978 obligations was being deferred from expenditure. Table B summarizes that status of deferrals reported by the President, and Attachment B shows the history and status of each deferral reported during fiscal year 1978.

INFORMATION FROM SPECIAL MESSAGES

The special messages containing information on each of the rescissions and deferrals covered by the cumulative report are contained in the FEDERAL REGISTERS of:

Friday, July 22, 1977 (Vol. 42, No. 141, Part V (both the fourteenth and fifteenth 1977 special messages)
Friday, July 29, 1977 (Vol. 42, No. 146, Part VIII) (seventeenth 1977 special message)
Thursday, September 29, 1977 (Vol. 42, No. 189, Part IX)
Friday, October 7, 1977 (Vol. 42, No. 195, Part IV)
Thursday, November 15, 1977 (Vol. 42, No. 220, Part IV)
Wednesday, December 21, 1977 (Vol. 42, No. 245, Part IV)
Wednesday, February 1, 1978 (Vol. 43, No. 22, Part VII)
Wednesday, March 1, 1978 (Vol. 43, No. 41, Part VII)
Thursday, March 16, 1978 (Vol. 43, No. 52, Part VII)

JAMES T. MCINTYRE, Jr.,
Director.

TABLE A—STATUS OF 1978 RESCISSION PROPOSALS

	*Amount (in millions of dollars)**
Rescissions proposed by the President	(a) $701.3
Reclassified (from R78-1 to D78-54) (b)	−2.7
Rescinded by the Congress (R77-17, R77-18, R77-19, R78-2, R78-3, and R78-4)	(c) −593.7
Rejected by the Congress (R77-20)	−105.0
Pending before the Congress	0

(a) This amount includes $643.4 million in rescission proposals for fiscal year 1977 which were still pending in fiscal year 1978.

(b) This rescission proposal, originally transmitted in conjunction with a request for transfer for the Department of Justice, was superseded by a deferral (D78-54) submitted to report the extension of this withholding pending final action on the transfer. The transfer was approved in the Supplemental Appropriations Act, 1978, and the deferred funds were made available.

(c) Of this amount, $463.4 million, for B-1 Bomber and SRAM missile procurement, was originally proposed for rescission on July 19, 1977. These funds were made available for obligation on October 5, 1977, following the 45-day Congressional consideration period. Subsequently, the funds were rescinded by the Supplemental Appropriations Act, 1978, (Pub. L. 95-240).

* Detail does not add to total due to rounding.

TABLE B—STATUS OF 1978 DEFERRALS

	Amount (in millions of dollars)
Deferrals proposed by the President	$4,902.6
Routine Executive releases (−$1,144.6 M) and adjustments (−$38.4 M) through May 1, 1977	−1,183.0
Overturned by the Congress	−38.8
Currently before the Congress	*$3,680.8

*This amount includes $2.3 million in outlays for a Department of the Treasury deferral, (D78-283).

AS OF MAY 1, 1978 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
FUNDS APPROPRIATED TO THE PRESIDENT								
International Security Assistance								
Military assistance	BA	R78- 2	40,200a		1 27 78	40,200b		
DEPARTMENT OF DEFENSE-MILITARY								
Procurement								
Aircraft procurement, Air Force	BA	R77-18	462,000		7 19 77	462,000c	c	
Missle procurement, Air Force	BA	R77-19	1,400		7 19 77	1,400c	c	
	BA	R77-20	105,000		7 26 77		105,000	10 14 77
DEPARTMENT OF JUSTICE								
Law Enforcement Assistance Administration								
Salaries and expenses	BA	R78- 1e	2,662		9 23 77	d	d	
DEPARTMENT OF STATE								
International Organizations and Conferences								
Contributions for int l peacekeeping activities	BA	R78- 3	5,000		1 27 78	5,000b		
GENERAL SERVICES ADMINISTRATION								
Real Property Activities								
Federal buildings fund	BA	R77-17	75,000		7 19 77	75,000f		

AS OF MAY 1, 1978 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
OTHER INDEPENDENT AGENCIES								
Federal Home Loan Bank Board								
Federal Home Loan Bank Board revolving fund	BA	R78- 4	10,055		1 27 78	10,055b		
TOTAL	BA		701,323g			593,655	105,000	

FOOTNOTES

a. This amount was initially deferred (D78-47) in a special message transmitted to the Congress on December 15, 1977.

b. P.L. 95-254

c. These funds, originally proposed for rescission on July 19, 1977, were made available for obligation on October 5, 1977, following the 45-day Congressional consideration period. Subsequently, the funds were rescinded by the Supplemental Appropriations Act, 1978, (P.L. 95-240).

d. This rescission proposal was transmitted in conjunction with a request for transfer of the same funds within the Department of Justice (contained in the Supplemental Appropriations Act, 1978, P.L. 95-240). The proposal was superseded by a deferral (D78-54) submitted to report the extension of this withholding pending final action on the transfer. The President signed the Act on March 7, approving the transfer.

e. An opinion issued by the Comptroller General on October 28, 1977, holds that this proposal should have been classified as a deferral.

f. Public Law 95-186.

g. Of this amount $643,400,000 was proposed for rescission in FY 1977.

END OF REPORT

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1978

AS OF 05/03/78 08:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Military assistance	BA	D78-47	131,200		12 15 77			-40,200a	91,000
International military education and training	BA	D78-48	2,000		12 15 77				2,000
Foreign military credit sales	BA	D78-49	673,250		12 15 77	-575,370			97,880
FUNDS APPROPRIATED TO THE PRESIDENT - TOTAL	BA		806,450			-575,370		-40,200	190,880
DEPARTMENT OF AGRICULTURE									
Foreign Agricultural Service									
Salaries & expenses (special foreign currency)	BA	D78- 1	988		10 3 77				
	BA	D78- 1A		52	1 27 78				1,040
Agricultural Stabilization & Conservation Service									
Commodity credit corporation	BA	D78- 2	2,871		10 3 77	-2,871			
Forest Service									
Timber salvage sales	BA	D78-59	4,500		3 10 78				4,500
Permanent appropriations, Expenses, brush disposal	BA	D78- 3	31,312		10 3 77				
	BA	D78- 3A		4,839	3 10 78				36,151
Permanent appropriations, Licenses programs	BA	D78- 4	141		10 3 77				141

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE CMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
DEPARTMENT OF AGRICULTURE									
TOTAL	BA		39,812	4,891		-2,871			41,832
DEPARTMENT OF COMMERCE									
Economic Development Administration									
Local public works program	BA	D78- 5	4,000		10 3 77	-4,000			
Financial and technical assistance	BA	D78- 6	3,900		10 3 77				3,900
Economic development revolving fund	BA	D78-51	123,647		1 27 78				123,647
National Oceanic and Atmospheric Administration									
Operations, research, and facilities	BA	D78- 7	3,750		10 3 77	-3,750			
Promote and develop fishery products and research	BA	D78- 8	5,429		10 3 77				
	BA	D78- 8A		639	1 27 78				6,068
Fisheries loan fund	BA	D78- 9	6,177		10 3 77	-723			5,454
Fishermen's guaranty fund	BA	D78-10	716		10 3 77	-38			678
Maritime Administration									
Ship construction	BA	D78-57	122,000		2 23 78				122,000
DEPARTMENT OF COMMERCE									
TOTAL	BA		269,619	639		-8,511			261,747
DEPARTMENT OF DEFENSE-MILITARY									
Procurement									

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
Shipbuilding and conversion, Navy	BA	D78-44	871,125		11 10 77				871,125
Military Construction									
Military construction, all services	BA	D78-11	438,439		10 3 77	-110,285		1,383	329,537
DEPARTMENT OF DEFENSE-MILITARY TOTAL	BA		1,309,564			-110,285		1,383	1,200,662
DEPARTMENT OF DEFENSE-CIVIL									
The Panama Canal									
Canal Zone Government: Capital outlay	BA	D78-52	309		1 27 78				309
Miscellaneous Accounts									
Wildlife conservation, etc., military reservations	BA	D78-12	458		10 3 77	-12			446
DEPARTMENT OF DEFENSE-CIVIL TOTAL	BA		767			-12			755
DEPARTMENT OF ENERGY /b									
Departmental Operations									
Energy (Plenum fill experiment)	BA	D78-31	1,500		10 3 77				
	BA	D78-31A		800c	11 10 77				2,300
Energy (Clean boiler fuel from coal project)	BA	D78-32	46,660		10 3 77				
	BA	D78-32A		c	11 10 77				46,660
Energy (Molten salt breeder reactor project)	BA	D78-36	1,500		10 3 77				
	BA	D78-36A		c	11 10 77				1,500
Energy (10 MW solar thermal power plant)	BA	D78-45	31,000		11 10 77	-31,000			

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE		DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
DEPARTMENT OF ENERGY /b										
TOTAL	BA		80,660	800			-31,000			50,460
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE										
Office of the Assistant Secretary for Health										
Scientific act. overseas (spec. foreign currency)	BA	D78-53	3,497			1 27 78				3,497
Office of Education										
Higher and continuing education	BA	D78-13	3,740			10 3 77				3,740
Social Security Administration										
Limitation on salaries and expenses	BA	D78-14	13,865			10 3 77				
	BA	D78-14A			d	1 27 78				13,865
DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE										
TOTAL	BA		21,102							21,102
DEPARTMENT OF THE INTERIOR										
Bureau of Land Management										
Oregon and California grant lands	BA	D78-15	31,200			10 3 77				
	BA	D78-15A		1,980		2 23 78				33,180
Bureau of Outdoor Recreation										
Land and water conservation fund	BA	D78-16	30,000			10 3 77				30,000
Geological Survey										
Payments from proceeds, sale of water										

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1978

AS OF 05/03/78 08:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
	BA	D78-17	34		10 3 77				34
Bureau of Mines									
Drainage of anthracite mines	BA	D78-18	3,500		10 3 77				3,500
Office of Territorial Affairs									
Trust territory of the Pacific Islands	BA	D78-19	12,000		10 3 77				12,000
DEPARTMENT OF THE INTERIOR TOTAL	BA		76,734	1,980					78,714
DEPARTMENT OF JUSTICE									
Federal Prison System									
Buildings and facilities	BA	D78-20	42,245		10 3 77				42,245
Law Enforcement Assistance Administration									
Salaries and expenses	BA	D78-54	2,668		1 27 78	-2,668			
DEPARTMENT OF JUSTICE TOTAL	BA		44,913			-2,668			42,245
DEPARTMENT OF LABOR									
Employment and Training Administration									
Advances to unemployment trust fund & other funds	BA	D78-55	1,380,114		1 27 78	-300,000			1,080,114
DEPARTMENT OF LABOR TOTAL	BA		1,380,114			-300,000			1,080,114

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
DEPARTMENT OF STATE									
Other									
Emergency refugee and migration assistance fund /e									
	BA	D78-43	2,000		11 10 77				
	BA	D78-43A		5,800	12 15 77	-6,800			1,000
DEPARTMENT OF STATE TOTAL	BA		2,000	5,800		-6,800			1,000
DEPARTMENT OF TRANSPORTATION									
Coast Guard									
Acquisition, construction, and improvements									
	BA	D78-21	13,031		10 3 77	-13,031		f	
Federal Aviation Administration									
Construction, Metropolitan Washington Airports									
	BA	D78-22	1,010		10 3 77				1,010
Civil supersonic aircraft development termination									
	BA	D78-23	134		10 3 77				
	BA	D78-23A		14	1 27 78				148
Facilities & equip. (Airport & airway trust fund)									
	BA	D78-24	320,650		10 3 77	-68,487			252,163
Federal Highway Administration									
Trust fund share of other highway programs									
	BA	D78-25	74,880		10 3 77	-3,130			71,750
DEPARTMENT OF TRANSPORTATION TOTAL	BA		409,705	14		-84,643			325,071

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
DEPARTMENT OF THE TREASURY									
Office of the Secretary									
Antirecession financial assistance fund									
	BA	D78-26	8,184		10 3 77				
	BA	D78-26A		2,425	11 10 77				
	BA	D78-26B		100	12 15 77				
	BA	D78-26C		439	1 27 78	-8,927			2,221
	O	D78-50	3,406		12 15 77	-3,406			
	O	D78-58	388		2 23 78	-388			
State and local government fiscal assistance fund									
	BA	D78-27	45,996		10 3 77				
	BA	D78-27A		23,905	11 10 77				
	BA	D78-27B		11,831	12 15 77				
	BA	D78-27C		729	1 27 78	-1,237			81,224
	O	D78-28	391		10 3 77				
	O	D78-28A		1,320g	12 15 77				
	O	D78-28B		4,068	2 23 78	-3,961		435	2,253
Bureau of the Mint									
Construction of mint facilities									
	BA	D78-29	5,730		10 3 77				5,730
DEPARTMENT OF THE TREASURY									
TOTAL BA			59,910	39,429		-10,164			89,175
TOTAL O			4,185	5,388		-7,755		435	2,253
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION /h									
Operating Expenses									
Gas cooled reactors	BA	D78-30	15,000		10 3 77		-15,000j		
Plant and Capital Equipment									
Fusion material test facility									

PAGE 8 ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1978 AS OF 05/03/78 08:43

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
	BA	D78-33	7,500		10 3 77		-7,500k		
Intense neutron source facility	BA	D78-34	11,300		10 3 77		-11,300m		
Intersecting storage ring accelerator	BA	D78-35	5,000		10 3 77		-5,000p		
ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION /h TOTAL	BA		38,800				-38,800		
GENERAL SERVICES ADMINISTRATION									
Property Management and Disposal Activities									
Rare silver dollar program	BA	D78-37	1,710		10 3 77				1,710
Federal Preparedness Agency									
State and local preparedness	BA	D78-38	80		10 3 77				80
GENERAL SERVICES ADMINISTRATION TOTAL	BA		1,790						1,790
OTHER INDEPENDENT AGENCIES									
Foreign Claims Settlement Commission									
Payment of Vietnam prisoner of war claims	BA	D78-39	10,738		10 3 77				10,738
Interstate Commerce Commission									
Payment of directed rail service	BA	D78-40	13,700		10 3 77				13,700
National Science Foundation									
Research and related activities	BA	D78-46	4,500		11 10 77	-4,500			

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 05-01-78
	BA	D78-56	6,900		1 27 78				6,900
United States Information Agency /q									
Salaries & expenses (special foreign currency)									
	BA	D78-41	1,153		10 3 77				
	BA	D78-41A		500	1 27 78				1,653
United States Railway Association									
Payment for purchase of Conrail securities									
	BA	D78-42	260,000		10 3 77				260,000
OTHER INDEPENDENT AGENCIES									
TOTAL	BA		296,991	500		-4,500			292,991
TOTAL	BA		4,838,931	54,053		-1,136,829	-38,800	-38,817	3,678,538
TOTAL	O		4,185	5,388		-7,755		435	2,253

FOOTNOTES

a. This amount is included in a rescission proposal (R78-2) transmitted to the Congress on January 27, 1978.

b. See also Energy Research and Development Administration.

c. The supplementary report changed the deferral from the Energy Research and Development Administration to the Department of Energy.

d. The supplementary report changed the budget account title under which this deferral had been previously reported from the Limitation on construction to the Limitation on salaries and expenses.

e. This account, previously displayed in the Funds Appropriated to the President section of this report, was moved to the Department of State section to reflect a corresponding change in its location in the President's budget.

f. Impoundment resolution S. Res. 282 passed the Senate on November 1, 1977, rejecting this deferral. The funds, however,

were made available for obligation on October 31, 1977.

g. This amount is net of a release of $40,000 that was made prior to the transmittal of this supplementary report.

h. See also Department of Energy.

j. Impoundment resolution H. Res. 851 passed the House on November 2, 1977, rejecting this deferral.

k. Impoundment resolution H. Res. 852 passed the House on November 2, 1977, rejecting this deferral.

m. Impoundment resolution H. Res. 853 passed the House on November 2, 1977, rejecting this deferral.

p. Impoundment resolution H. Res. 854 passed the House on November 2, 1977, rejecting this deferral.

q. On April 1, 1978, the functions and budgetary resources of the United States Information Agency were transferred to the International Communication Agency, pursuant to Reorganization Plan No. 2 of 1977 and Executive Order No. 12048 of March 27, 1978. A supplementary report reflecting this change will be transmitted to the Congress shortly.

END OF REPORT

[FR Doc. 78-13424 Filed 5-15-78; 8:45 am]

Federal Register

TUESDAY, MAY 16, 1978
PART IX

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

■

FOOD STAMP PROGRAM

[3410-30]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This delineates procedures for making the July 1, 1978 adjustments in the Food Stamp Program maximum allowable income standards and basis of coupon issuance. Adjustments will be made for the 48 States and D.C., Alaska, Hawaii, Puerto Rico, the Virgin Islands, and Guam, appearing in Appendices A through F to Part 271.

Semi-annual adjustments in coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Act. These adjustments will provide households with coupon allotments sufficient to purchase nutritionally adequate diets.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Acting Deputy Administrator, Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION: This rule lists (1) the Consumer Price Index (CPI) used to make the adjustments in the coupon allotments and the poverty lines, (2) the base month for which the coupon allotment adjustments will be computed, and (3) the appropriate income poverty guidelines.

Consumer Price Index. The Bureau of Labor Statistics (BLS) recently changed its method of computing the Consumer Price Index (CPI). Beginning in January 1978 and ending in June 1978, there will be three CPI's—(1) A new CPI for All Urban Consumers, covering about 80 percent of the noninstitutionalized, civilian U.S. population, (2) a revised CPI for Urban Wage Earners and Clerical Workers, covering about 40 percent of the population, and (3) the unrevised CPI for Urban Wage Earners and Clerical Workers, covering about 40 percent of the population. Beginning in July 1978, only the first two CPI's will be computed.

There are several technical differences between the three CPI's as shown in the BLS fact sheet which appears as Appendix G to this rule. As noted in that comparision, "[t]he CPI revision (1) updates the weights to be assigned to the expenditure groups; (2) updates the sample of items priced; (3) updates the sample of places where the pricing takes place; (4) modernizes the statistical methods employed in calculation of the CPI; and (5) provides for the first time an index which represents the experience of nearly all consumers in contrast to having only one index represent urban wage and clerical workers." [1]

USDA chose the revised CPI for Urban Wage Earners and Clerical Workers for use in the July 1, 1978 adjustments for the 48 States and D.C.[2] The Thrifty Food Plan computations based on the revised CPI are not currently available concerning the outlying areas so the unrevised CPI will continue to be used for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and Guam. The revised CPI for Urban Wage Earners and Clerical Workers is basically a routine updating of the unrevised CPI for Urban Wage Earners and Clerical Workers.[3]

Base month for adjustment. Section 7(a) of the Food Stamp Act of 1964, as amended, requires that the value of the coupon allotment be adjusted to reflect changes in the prices of food published by the Bureau of Labor Statistics. The 1973 amendments to the Act provided for semi-annual adjustments beginning with the allotments of January 1974, which incorporated the changes in the prices of food through August 1973.

Subsequently, the Department made a decision to similarly adjust future coupon allotments. Thereafter, July adjustments were based upon the cost of the Thrifty Food Plan in February, and January adjustments on the cost of the Thrifty Food Plan in August. Generally, February Thrifty Food Plan data are available during late March, and August Thrifty Food Plan data are available in late September.

In preparing for the July 1978 allotment adjustments, the necessity of adjusting the data base to the revised CPI caused a delay in the computation of February 1978 Thrifty Food Plan costs. Those costs were available approximately a month later than usual, at about the same time that March Thrifty Food Plan data were made available. The Department will use the more recent data from March rather than the older February data for this update.[4]

Poverty line. Under the 1970-71 food stamp amendments (P.L. 91-671), income eligibility limits are set at dollar levels where the cost of a nutritionally adequate diet, as defined by the Thrifty Food Plan, equals 30 percent (0.3) of a household's net available income or at the poverty level for that size household, if that poverty level is higher than the dollar level.

In accord with current policy the USDA Poverty Guideline rather than the OMB Poverty Guideline will be used as the net income eligibility cut off for some of the smaller household sizes because the numbers obtained by dividing their coupon allotments by 0.3 are less than the poverty guideline for those household sizes. However, the USDA Poverty Guideline will be modified to avoid publication of two sets of regulations, the first set using the 1977 USDA Poverty Guideline ($262 for the one-person household and $344 for the two-person household in the 48 States and D.C.), and the second set using the 1978 USDA Poverty Guideline which will be higher but not available until early June. To provide State agencies with adequate lead time USDA could not delay publication of the new basis of issuance tables until June. At the same time USDA did not want to make the State agencies reprogram their computers in June to make the adjustment in the eligibility standards and purchase requirements for the one- and two-person households which would have been necessitated by the revision of the USDA Poverty Guideline. To avoid needlessly burdening State agencies, FNS has developed a variant of the USDA Poverty Guideline called the 1978 USDA Adjusted Poverty Guideline, which is updated through

[1] BLS has routinely updated their CPI's over the years. The old index is based on the Consumer Expenditure Survey of 1960-61 and the new indices are based on the 1972-73 Consumer Expenditure Survey.

[2] For the 48 States and D.C. there was no difference in the cost of the Thrifty Food Plan for March 1978 between the unrevised CPI and the revised CPI.

[3] OMB, in a letter dated February 23, 1978, to the Speaker of the House and the President of the Senate proposing legislation to require all Federal agencies to use the All Urban Consumer CPI after July 1, when the unrevised CPI is no longer available, stated: "In the absence of legislation, the revised version of the current CPI for wage earners and clerical workers would apply."

[4] The decision to use the most up-to-date data is consistent with the intent of Congress. One purpose of the 1973 amendments was to base the food stamp allotments on more recent data than had been used in the past; and given the time frame for preparation of the changes, the interpretation that the July allotments should be based upon February data was reasonable. During this transitional phase from the Food Stamp Act of 1964 to implementation of the Food Stamp Act of 1977, which requires the use of March data for adjusting the cost of the Thrifty Food Plan for the July allotments, it is appropriate to use March data.

March 1978. The 1978 Adjusted Guideline is based on the April unrevised CPI for all items in 1977 and adjusted by the March revised CPI for all items in 1978. The 1978 USDA Adjusted Poverty Guideline for Hawaii and Guam is based on the March unrevised CPI for all items in 1977 and adjusted by the February revised CPI for all items in 1978. Data are not reported for March for Hawaii and Guam. The new maximum allowable monthly income standards for the 48 States and D.C. are $277 for the one-person household and $363 for the two-person household; for other areas see Appendices B through F.

The 1978 USDA Adjusted Poverty Guideline will likely be a few dollars lower for the one- and two-person households than the 1978 USDA Poverty Guideline which will be published in June or July for use in the Child Nutrition Programs. The 1978 Adjusted Poverty Guideline will only be employed until the Food Stamp Act of 1977 is implemented and represents a practical and efficient interim methodology. The Food Stamp Act of 1977 also requires that the Department adjust the income poverty guideline each year based on March data. Use of the Adjusted Guideline will not lower coupon allotment levels for participating food stamp households.

In view of the need for placing this notice into effect on July 1, 1978, and the lead time needed by State agencies for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to the notice.

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps.)

Dated: May 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

APPENDIX G—FACTS ABOUT THE REVISED CONSUMER PRICE INDEX

[FR Doc. 78-13461 Filed 5-15-78; 8:45 am]

The Consumer Price Index Revision-1978

U.S. Department of Labor
Bureau of Labor Statistics
1978

Facts About the Revised Consumer Price Index

The Consumer Price Index (CPI) is a statistical measure of change, over time, in the prices of goods and services in major expenditure groups—such as food, housing, apparel, transportation, and health and recreation—typically purchased by urban consumers. Essentially it measures the purchasing power of consumers' dollars by comparing what a sample "market"basket" of goods and services costs today with what the same sample market basket cost at an earlier date.

The CPI revision (1) updates the weights assigned to the expenditure groups; (2) updates the sample of items priced; (3) updates the sample of places where the pricing takes place; (4) modernizes the statistical methods employed in calculation of the CPI; and (5) provides for the first time an index which represents the experience of nearly all consumers in contrast to having only one index representing urban wage and clerical workers. The results of the most recent revision are scheduled for publication in early 1978. The preceding comprehensive revision took place in 1963. The following fact sheet compares aspects of the revised and unrevised CPI.

Comparison of old and new Consumer Price Index series

Item	Old index	New indexes
Title	Consumer Price Index for Urban Wage Earners and Clerical Workers (old series).	1. Consumer Price Index for All Urban Consumers (CPI-U). 2. Consumer Price Index for Urban Wage Earners and Clerical Workers (Revised series) (CPI-W).
Population covered	Urban wage and clerical worker families and single individuals living alone. At least one family member must have been employed for 37 weeks or more during the survey year in wage or clerical worker occupations. More than half of the total family income had to be earned from wage earner or clerical worker occupations.	CPI-U—All urban residents, including salaried workers, self-employed workers, retirees, and unemployed persons, as well as urban wage earners and clerical workers. No length of employment required and no criteria as to family income. CPI-W—Same as old index.
	Excludes farm families, military personnel and persons in institutions.	Same for CPI-U and CPI-W.
Formula (modified Lasperyes)	$I_t = I_{t-1}\left[\frac{\Sigma(p_{i-t}q_s)\,(p_t/p_{i-t})}{\Sigma(p_{i-t}q_s)}\right]$	Same.
Standard reference base	1967=100. Selected series are also published on the 1957-59=100 base.	1967=100, for both the CPI-U and CPI-W.
Duration	Introduced January 1964, replaced with revised CPI series after December 1977. Available for 6-month overlap period.	CPI-U and CPI-W introduced as official indexes with the publication of the January 1978 index. Available indefinitely until next revision.
Expenditure weights reference period	Average annual expenditures of urban wage earner and clerical worker families and single persons, derived from the *1960-61* Consumer Expenditure Survey in 66 areas, adjusted for price change between the survey dates and *December 1963*, except for six cities added in 1966.	CPI-U—Average annual expenditures for all urban residents derived from the *1972-73* Consumer Expenditure Survey in 216 areas, adjusted for price change between the survey date and *December 1977*. CPI-W—Average annual expenditures for urban wage earners and clerical worker families and single persons from 1972-73 Consumer Expenditure Survey in 216 areas, adjusted for price change between the survey date and December 1977. (See BLS Report 448-1, 2, 3; 455-1, 3.)
City coverage		
Geographic coverage	*56* urban areas; 50 metropolitan areas and cities selected to represent all urban places in the United States, with 2,500 inhabitants or more in 1960, Alaska, and Hawaii; six additional areas were added in 1966.	*85* urban areas selected to represent all urban places in the United States, with 2,500 inhabitants or more in 1970, including Alaska and Hawaii. (See table on page 5).
Pricing cycle	Prices of food, fuels, and a few other items collected every month in all cities. Prices of most other commodities and services collected monthly in the five largest cities and every *3 months* in the remaining cities.	Prices of food, fuels, and a few other items collected monthly in all cities. Prices of most other commodities and services collected monthly in the five largest cities and *bimonthly* in the remaining cities.
	Pricing of foods done early in each month on 3 consecutive days.	Pricing of foods done throughout the month.
Published indexes	U.S. index and 5 largest metropolitan areas published monthly; 18 other large metropolitan areas published *quarterly*.	U.S. index and 5 largest metropolitan areas published monthly; 23 other large metropolitan areas published *bimonthly*. Regional and city-size class indexes published *bimonthly*.
	Regional and city-size class indexes also published *quarterly* since 1967.	Regional indexes cross-classified by population size will be published *bimonthly*.

Comparison of old and new Consumer Price Index series—Continued

Item	Old index	New indexes
Item sample		
Item coverage	All goods and services purchased for consumption, including both necessities and luxuries. Excludes personal life insurance, income and personal property taxes, but includes real estate taxes and sales and excise taxes.	Same.
Sample of items priced	Consumer Expenditure Survey (1960-61) data classified into 52 expenditure classes. About 400 items represented in U.S. index and in published city indexes. Certainty items priced in all published cities, other items in one or two sub-samples of other unpublished cities.	Consumer Expenditure Survey (1972-73) data classified into 68 expenditure classes. Expenditure classes contain approximately 265 classes or sets of items, called item strata, represented in the U.S. index and in published city indexes. Item strata further divided into a total of 382 lower level categories called entry-level items. Two samples of item strata priced in each published area except New York which has six samples; each unpublished area has one sample of item strata priced.
Basis of item selection	Probability proportionate to importance in family spending of group covered.	Same.
Reporter samples		
Outlet selection	Selected proportionate to type of ownership, type of outlet, geographic location within area, and in a few instances, sales volume.	A full probability sample of retail stores and other outlets was selected from the results of the Point-of-Purchase Survey. About 23,000 families across the country provided information on the specific retail stores in which they shopped. Data provided from the point-of-purchase survey were used to develop, for the first time, a consistent, objective, and probability-based sample of retail stores and service establishments for the CPI. A number of auxiliary sources used to construct an outlet sampling frame for categories not included in the Point-of-Purchase survey.
Location	In central cities and urbanized places of 56 metropolitan areas (50 areas in 1964 and 1965).	In 85 primary sampling units which include central cities, suburbs, and urbanized places within 25 miles of a selected county or selected group of contiguous counties. Prices also collected outside of the primary sampling units to represent out-of-town purchases.
Number of reporters	About 1,775 food stores. About 40,000 rental units. About 16,000 other reporters of all kinds. About 13,000 housing units for property taxes.	About 2,300 food store outlets. About 18,000 rental units. About 18,500 other reporters as determined from the Point of Purchase Survey. About 18,000 housing units for property taxes. About 3,000 reporters selected from a number of auxiliary sources.
Number of price quotations obtained	Over 1 million food prices per year. About 80,000 rent charges per year. About 362,000 quotations per year for items other than food and rent. About 13,000 property taxes per year.	About 650,000 food prices per year. Over 70,000 rent charges per year. About 350,000 quotations per year for items other than food, rent, and property taxes. About 28,000 property tax quotations per year.
Pricing technique	Personal visit or telephone call by BLS data collector, except for some items collected by mail or from some secondary source.	Same.

Comparison of old and new Consumer Price Index series—Continued

Item	Old Index	New Indexes
Reporter Samples—Continued		
	Specification pricing, but agent is permitted to price deviations from specification under prescribed conditions.	Store-specific pricing. The data collector enters a store with exhaustive definition of a fairly broad category of goods and services called an entry level item and then proceeds systematically through successive stages to select items for pricing on the basis of sales information provided by the respondent at each stage. A specific-in-detail item is thus selected for pricing over time in the retail outlet.
		Data collector continues to collect price quotations for specific item or similar substitute item until it is no longer available.
Uses	Formulation and evaluation of economic policy measures.	Same.
	Escalator of income payments.	Same.
	Deflator of earnings to provide measures of real earnings.	Same.
	Measure of purchasing power of consumer dollar.	Same.

[3410-30]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: 48 States and District of Columbia

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the maximum allowable income standards and basis of coupon issuance for the 48 States and the District of Columbia appearing in appendix A to part 271 which were effective January 1, 1978. Semiannual adjustments in the coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Act. These adjustments will continue to provide households with coupon allotments sufficient to purchase nutritionally adequate diets.

EFFECTIVE DATE: July 1, 1978

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION:

APPENDIX A—48 STATES AND DISTRICT OF COLUMBIA

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semiannually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, an adjustment based on the cost of the Thrifty Food Plan in March 1978 has been made in the coupon allotments for all households.

Prior to the amendment to the act requiring semiannual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the food plan in the preceding December. With the enactment of the semiannual adjustment, the law specified that the first adjustment be made in January 1974 to reflect changes in food prices through August 1973. Similar procedures have been used for subsequent semiannual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the preceding August. It is now possible to base this semiannual adjustment on more current data—the cost of the food plan for March. Therefore, the income standards and coupon allotments to become effective on July 1, 1978, are based on the cost of the Thrifty Food Plan in March 1978.

Households in which all members are included in the federally aided public assistance grant, general assistance grant, or supplemental security income benefit shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance, general assistance, or supplemental security income benefit, in any State (other than Alaska, Hawaii, Puerto Rico, Guam, or the Virgin Islands) or in the District of Columbia shall be as follows:

Household size:	Maximum allowable monthly income standards
1	[1]$277
2	[1]363
3	480
4	607
5	720
6	807
7	953
8	1,093
Each additional member	+140

[1] 48 States and District of Columbia.
[2] 1978 USDA adjusted poverty guideline.

"Income" as the term is used in the notice is as defined in paragraph (c) of § 271.3 of the Food Stamp Program Regulations.

Pursuant to sections 7 (a) and (b) of the Food Stamp Act, as amended (7 U.S.C. 2016, Pub. L. 91-671), the face value of the monthly coupon allotment which State agencies are authorized to issue to any household certified as eligible to participate in the Program and the amount charged for the monthly coupon allotment in the 48 States and the District of Columbia shall be:

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—48 STATES AND DISTRICT OF COLUMBIA

	For a household of—							
	1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
Monthly net income	$54	$100	$144	$182	$216	$260	$286	$328
	and the monthly purchase requirement is—							
$0 to $19.99	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.99	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	16
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	26
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	39	44	46	47	48	49	50	51
$190 to $209.99	42	50	52	53	54	55	56	57
$210 to $229.99	44	56	58	59	60	61	62	63
$230 to $249.99	44	62	64	65	66	67	68	69
$250 to $269.99	44	68	70	71	72	73	74	75
$270 to $289.99	44	74	76	77	78	79	80	81
$290 to $309.99		80	82	83	84	85	86	87
$310 to $329.99		80	88	89	90	91	92	93
$330 to $359.99		80	94	95	96	97	98	99
$360 to $389.99		80	103	104	105	106	107	108
$390 to $419.99			112	113	114	115	116	117
$420 to $449.99			121	122	123	124	125	126
$450 to $479.99			126	131	132	133	134	135
$480 to $509.99			126	140	141	142	143	144
$510 to $539.99				149	150	151	152	153
$540 to $569.99				158	159	160	161	162
$570 to $599.99				158	168	169	170	171
$600 to $629.99				158	177	178	179	180
$630 to $659.99					186	187	188	189
$660 to $689.99					188	196	197	198
$690 to $719.99					188	205	206	207
$720 to $749.99					188	214	215	216
$750 to $779.99						223	224	225
$780 to $809.99						228	233	234
$810 to $839.99						228	242	243
$840 to $869.99						228	250	252
$870 to $899.99							250	261
$900 to $929.99							250	270
$930 to $959.99							250	279
$960 to $989.99								288
$990 to $1,019.99								288
$1,020 to $1,049.99								288
$1,050 to $1,079.99								288
$1,080 to $1,109.99								288

FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULA

A. *Value of the Total Allotment.* For each person in excess of eight, add $42 to the monthly coupon allotment for an eight-person household.

B. *Purchase Requirement.* 1. Use the purchase requirement shown for the eight-person household for households with incomes of $989.99 or less per month.

2. For households with monthly incomes of $990 or more, use the following formula:

For each $30 worth of monthly income (or portion thereof) over $989.99 add $9 to the monthly purchase requirement for an eight-person household with an income of $989.99.

3. To obtain maximum monthly purchase requirements for households of more than eight persons, add $38 for each person over eight to the maximum purchase requirement shown for an eight-person household.

The total monthly coupon allotments for some households are not divisible by four. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

NOTE.—The Food and Nutrition Service has determined that this document contains a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107 and certifies that an Economic Impact Statement has been prepared.

The total monthly coupon allotments for some households are not divisible by four. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107

In view of the need for placing this notice into effect July 1, 1978, and the lead-time needed by the State agency for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to this notice.

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamps.)

Dated: May 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-13462 Filed 5-15-78; 8:45 am]

[3410-30]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: Alaska

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the maximum allowable income standards and basis of coupon issuance for Alaska appearing in Appendix B to Part 271 which were effective January 1, 1978. Semi-annual adjustments in coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Act. These adjustments will continue to provide households with coupon allotments sufficient to purchase nutritionally adequate diets.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION:

APPENDIX B—ALASKA

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semi-annually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, an adjustment based on the cost of the Thrifty Food Plan in March 1978 has been made in the coupon allotment for all households.

Prior to the amendment to the Act requiring semi-annual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the food plan in the preceding December. With the enactment of the semi-annual adjustments, the law specified that the first adjustment be made in January 1974 to reflect changes in the food prices through August 1973. Similar procedures have been used for subsequent semi-annual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the preceding August. It is now possible to base this semi-annual adjustment on more current data—the cost of the food plan for March. Therefore, the income standards and coupon allotments set forth below are based on the allotment table adopted for the continental United States, adjusted for the cost of food in Alaska in March 1978.

Households in which all members are included in the federally aided public assistance grant, general assistance grant, or supplemental security income benefit shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance, general assistance, or supplemental security income benefit, in Alaska, shall be as follows:

Household size	Maximum allowable monthly income standards—Alaska
1	[1]$343
2	460
3	660
4	840
5	1,000
6	1,200
7	1,320
8	1,513
Each additional member	+193

[1]1978 USDA adjusted poverty guideline.

"Income" as the term is used in the notice is as defined in paragraph (c) of § 271.3 of the Food Stamp Program Regulations.

Pursuant to sections 7(a) and (b) of the Food Stamp Act, as amended (7 U.S.C. 2016, Pub. L. 91-671), the face value of the monthly coupon allotment which the State agency is authorized to issue to any household certified as eligible to participate in the Program and the amount charged for the monthly coupon allotment in Alaska shall be as follows:

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—ALASKA

Monthly net income	For a household of— 1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is— $76	$138	$198	$252	$300	$360	$396	$454
	And the monthly purchase requirement is—							
$0 to $19.99	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.99	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	16
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	26
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	39	44	46	47	48	49	50	51
$190 to $209.99	45	50	52	53	54	55	56	57
$210 to $229.99	51	56	58	59	60	61	62	63
$230 to $249.99	57	62	64	65	66	67	68	69
$250 to $269.99	62	68	70	71	72	73	74	75
$270 to $289.99	62	74	76	77	78	79	80	81
$290 to $309.99	62	80	82	83	84	85	86	87
$310 to $329.99	62	86	88	89	90	91	92	93
$330 to $359.99	62	92	94	95	96	97	98	99
$360 to $389.99		101	103	104	105	106	107	108
$390 to $419.99		110	112	113	114	115	116	117
$420 to $449.99		112	121	122	123	124	125	126
$450 to $479.99		112	130	131	132	133	134	135
$480 to $509.99			139	140	141	142	143	144
$510 to $539.99			148	149	150	151	152	153
$540 to $569.99			157	158	159	160	161	162
$570 to $599.99			166	167	168	169	170	171
$600 to $629.99			175	176	177	178	179	180
$630 to $659.99			176	185	186	187	188	189
$660 to $689.99			176	194	195	196	197	198
$690 to $719.99				203	204	205	206	207
$720 to $749.99				212	213	214	215	216
$750 to $779.99				221	222	223	224	225
$780 to $809.99				224	231	232	233	234
$810 to $839.99				224	240	241	242	243
$840 to $869.99				224	249	250	251	252
$870 to $899.99					258	259	260	261
$900 to $929.99					267	268	269	270
$930 to $959.99					268	277	278	279
$960 to $989.99					268	286	287	288
$990 to $1,019.99					268	295	296	297
$1,020 to $1,049.99						304	305	306
$1,050 to $1,079.99						313	314	315
$1,080 to $1,109.99						322	323	324
$1,110 to $1,139.99						324	332	333
$1,140 to $1,169.99						324	341	342
$1,170 to $1,199.99						324	350	351
$1,200 to $1,229.99						324	356	360
$1,230 to $1,259.99							356	369
$1,260 to $1,289.99							356	378
$1,290 to $1,319.99							356	387
$1,320 to $1,349.99							356	396
$1,350 to $1,379.99								405
$1,380 to $1,409.99								410
$1,410 to $1,439.99								410
$1,440 to $1,469.99								410
$1,470 to $1,499.99								410
$1,500 to $1,529.99								410

FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULA

A. VALUE OF THE TOTAL ALLOTMENT

For each person in excess of eight, add $58 to the monthly coupon allotment for an eight-person household.

B. PURCHASE REQUIREMENT

1. Use the purchase requirement shown for the eight-person household for households with incomes of $1,379.99 or less per month.

2. For households with monthly incomes of $1,380 or more, use the following formula: For each $30 worth of monthly income (or portion thereof) over $1,379.99, add $9 to the monthly purchase requirement shown for the eight-person household with an income of $1,379.99.

3. To obtain maximum monthly purchase requirements for households of more than eight persons, add $54 for each person over eight to the maximum purchase requirement shown for an eight-person household.

The total monthly coupon allotments for some households are not divisible by four. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

In view of the need for placing this notice into effect on July 1, 1978, and the lead-time needed by the State agency for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to this notice.

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps.)

Dated: May 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-13463 Filed 5-15-78; 8:45 am]

[3410-30]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: Hawaii

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the maximum allowable income standards and basis of coupon issuance for Hawaii appearing in Appendix C to Part 271 which were effective January 1, 1978. Semi-annual adjustments in coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Act. These adjustments will continue to provide households with coupon allotments sufficient to purchase nutritionally adequate diets.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8289.

SUPPLEMENTARY INFORMATION:

APPENDIX C—HAWAII

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semi-annually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, an adjustment based on the cost of the Thrifty Food Plan in March 1978 has been made in the coupon allotment for all households.

Prior to the amendment to the Act requiring semi-annual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the food plan in the preceding December. With the enactment of the semi-annual adjustments, the law specified that the first adjustment be made in January 1974 to reflect changes in the food prices through August 1973. Similar procedures have been used for subsequent semi-annual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the preceding August. It is now possible to base this semi-annual adjustment on more current data—the cost of the food plan for March. Therefore, the income standards and coupon allotments set forth below are based on the allotment table adopted for the continental United States, adjusted for the cost of food in Hawaii in March 1978.

Households in which all members are included in the federally-aided public assistance grant, general assistance grant, or supplemental security income benefit shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally-aided public assistance, general assistance, or supplemental security income benefit, in Hawaii, shall be as follows:

Household size	Maximum allowable monthly income standards—Hawaii
1	[1]$301
2	440
3	633
4	800
5	953
6	1,149
7	1,260
8	1,440
Each additional member	+180

[1] 1978 USDA Adjusted Poverty Guideline.

"Income" as the term is used in the notice is as defined in paragraph (c) of § 271.3 of the Food Stamp Program Regulations.

Pursuant to sections 7 (a) and (b) of the Food Stamp Act, as amended (7 U.S.C. 2016, Pub. L. 91-671), the face value of the monthly coupon allotment which the State agency is authorized to issue to any household certified as eligible to participate in the Program and the amount charged for the monthly coupon allotment in Hawaii shall be as follows:

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—HAWAII

Monthly net income	For a household of—							
	1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
	$72	$132	$190	$240	$286	$342	$378	$432
	And the monthly purchase requirement is—							
$0 to $19.99	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.99	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	15
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	26
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	39	44	46	47	48	49	50	51
$190 to $209.99	45	50	52	53	54	55	56	57
$210 to $229.99	51	56	58	59	60	61	62	63
$230 to $249.99	57	62	64	65	66	67	68	69
$250 to $269.99	58	68	70	71	72	73	74	75
$270 to $289.99	58	74	76	77	78	79	80	81
$290 to $309.99	58	80	82	83	84	85	86	87
$310 to $329.99	———	86	88	89	90	91	92	93
$330 to $359.99	———	92	94	95	96	97	98	99
$360 to $389.99		101	103	104	105	106	107	108
$390 to $419.99	———	104	112	113	114	115	116	117
$420 to $449.99	———	104	121	122	123	124	125	126
$450 to $479.99	———	———	130	131	132	133	134	135
$480 to $509.99	———	———	139	140	141	142	143	144
$510 to $539.99	———	———	148	149	150	151	152	153
$540 to $569.99	———	———	157	158	159	160	161	162
$570 to $599.99	———	———	166	167	168	169	170	171
$600 to $629.99	———	———	168	176	177	178	179	180
$630 to $659.99	———	———	168	185	186	187	188	189
$660 to $689.99	———	———	———	194	195	196	197	198
$690 to $719.99	———	———	———	203	204	205	206	207
$720 to $749.99	———	———	———	212	213	214	215	216
$750 to $779.99	———	———	———	212	222	223	224	225
$780 to $809.99	———	———	———	212	231	232	233	234
$810 to $839.99	———	———	———	———	240	241	242	243
$840 to $869.99	———	———	———	———	249	250	251	252
$870 to $899.99	———	———	———	———	254	259	60	261
$900 to $929.99	———	———	———	———	254	268	269	270
$930 to $959.99	———	———	———	———	254	277	278	279
$960 to $989.99	———	———	———	———	———	286	287	288
$990 to $1,019.99	———	———	———	———	———	295	296	297
$1,020 to $1,049.99	———	———	———	———	———	304	305	306
$1,050 to $1,079.99	———	———	———	———	———	306	314	315
$1,080 to $1,109.99	———	———	———	———	———	306	323	324

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—HAWAII—Continued

Monthly net income	For a household of—							
	1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
	$72	$132	$190	$240	$286	$342	$378	$432
	And the monthly purchase requirement is—							
$1,110 to $1,139.99						306	332	333
$1,140 to $1,169.99						306	338	342
$1,170 to $1,199.99							338	351
$1,200 to $1,229.99							338	360
$1,230 to $1,259.99							338	369
$1,260 to $1,289.99							338	378
$1,290 to $1,319.99								387
$1,320 to $1,349.99								388
$1,350 to $1,379.99								388
$1,380 to $1,409.99								388
$1,410 to $1,439.99								388
$1,440 to $1,469.99								338

FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULA

A. VALUE OF THE TOTAL ALLOTMENT

For each person in excess of eight, add $54 to the monthly coupon allotment for an eight-person household.

B. PURCHASE REQUIREMENT

1. Use the purchase requirement shown for the eight-person household for households with incomes of $1,319.99 or less per month.

2. For households with monthly incomes of $1,320 or more, use the following formula:

For each $30 worth of monthly income (or portion thereof) over $1,319.99 add $9 to the monthly purchase requirement shown for the eight-person household with an income of $1,319.99.

3. To obtain maximum monthly purchase requirements for households of more than eight persons, add $50 for each person over eight to the maximum purchase requirement shown for an eight-person household.

The total monthly coupon allotments for some households are not divisible by four. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

In view of the need for placing this notice into effect on July 1, 1978, and the lead-time needed by the State agency for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to this notice.

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps.)

Dated: May 12, 1978.

CAROL TUCKER FOREMEN,
Assistant Secretary.

[FR Doc. 78-13464 Filed 5-15-78; 8:45 am]

[3410-30]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: Puerto Rico

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the maximum allowable income standards and basis of coupon issuance for Puerto Rico appearing in Appendix D to Part 271 which were effective January 1, 1978. Semiannual adjustments in coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Act. These adjustments will continue to provide households with coupon allotments sufficient to purchase nutritionally adquate diets.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION:

APPENDIX D—PUERTO RICO

Section 5(b) of the Food Stamp Act requires the establishment of special standards of eligibility and coupon allotment schedules, not to exceed those in the 50 States, which reflect the average per capita income and cost of obtaining a nutritionally adequate diet in Puerto Rico.

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semiannually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, an adjustment based on the cost of the thrifty food plan in March 1978 has been made in the coupon allotment for all except the one-person households. The cost of food did not increase enough for a change in the coupon allotment for the one-person household. Section 7(a) specifies that no such adjustment shall be made unless the increase in the coupon allotment is a minimum of $2.

Prior to the amendment to the Act requiring semiannual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the food plan in the preceding December. With the enactment of the semiannual adjustment, the law specified that the first adjustment be made in January 1974 to reflect changes in the food prices through August 1973. Similar procedures have been used for subsequent semiannual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the preceding August. It is now possible to base this semiannual adjustment on more current data—the cost of the food plan for March. Therefore, the income standards and coupon allotments set forth below are based on the allotment table adopted for the continental United States, adjusted for the cost of food in Puerto Rico in March 1978.

Households in which all members are included in the federally aided public assistance or general assistance grant shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally aided public assistance or general assistance, in Puerto Rico, shall be as follows:

Household size:	*Maximum allowable monthly income standards—Puerto Rico*
1	[1]$277
2	[1]363
3	480
4	607
5	720
6	867
7	953
8	1,093
Each additional member	+140

[1]1978 USDA adjusted poverty guideline.

"Income" as the term is used in the notice is as defined in paragraph (c) of § 271.3 of the food stamp program regulations.

Pursuant to sections 7 (a) and (b) of the Food Stamp Act, as amended (7 U.S.C. 2016, Pub. L. 91-671), the face value of the monthly coupon allotment which the State agency is authorizes to issue to any household certified as eligible to participate in the program and the amounts charged for the monthly coupon allotment in Puerto Rico shall be as follows:

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—PUERTO RICO

Monthly net income	For a household of—							
	1 person	2 persons	3 perons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
	$54	$100	$144	$182	$216	$250	$286	$328
	And the monthly purchase requirement is—							
$0 to $19.99	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.99	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	16
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	25
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	39	44	46	47	48	49	50	51
$190 to $209.99	44	50	52	53	54	55	56	57
$210 to $229.99	44	56	58	59	60	61	62	63
$230 to $249.99	44	62	64	65	66	67	68	69
$250 to $269.99	44	68	70	71	72	73	74	75
$270 to $289.99		74	76	77	78	79	80	81
$290 to $309.99		80	82	83	84	85	86	87
$310 to $329.99		80	88	89	90	91	92	93
$330 to $359.99		80	94	95	96	97	98	99
$360 to $389.99		80	103	104	105	106	107	108
$390 to $419.99			112	113	114	115	116	117
$420 to $449.99			121	122	123	124	125	126
$450 to $479.99			126	131	132	133	134	135
$480 to $509.99			126	140	141	142	143	144
$510 to $539.99				149	150	151	152	153
$540 to $569.99				158	159	160	161	162
$570 to $599.99				158	168	169	170	171
$600 to $629.99				158	177	178	179	180
$630 to $659.99					186	187	188	189
$660 to $689.99					188	196	197	198
$690 to $719.99					188	205	206	207
$720 to $749.99					188	214	215	216
$750 to $779.99						223	224	225
$780 to $809.99						228	233	234
$810 to $839.99						228	242	243
$840 to $869.99						228	250	252
$870 to $899.99							250	261
$900 to $929.99							250	270
$930 to $959.99							250	279
$960 to $989.99								288
$990 to $1,019.99								2888
$1,020 to $1,049.99								288
$1,050 to $1,079.99								288
$1,080 to $1,109.99								288

FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULA

A. VALUE OF THE TOTAL ALLOTMENT

For each person in excess of eight, add $42 to the monthly coupon allotment for an eight-person household.

B. PURCHASE REQUIREMENT

1. Use the purchase requirement shown for the eight-person household for households with incomes of $989.99 or less per month.

2. For households with monthly incomes of $990 or more, use the following formula: For each $30 worth of monthly income (or portion thereof) over $989.99, add $9 to the monthly purchase requirement for an eight-person household with an income of $989.99.

3. To obtain maximum monthly purchase requirements for households of more than eight persons, add $38 for each person over eight to the maximum purchase requirement shown for an eight-person household.

The total monthly coupon allotments for some households are not divisible by 4. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

NOTE.—The Food and Nutrition Service has combined the economic impact statement for Puerto Rico with the economic impact statement for the 48 States and the District of Columbia, and certifies that an economic impact statement has been prepared. An economic impact statement is authorized under Executive Order 11821 and OMB Circular A-107.

In view of the need for placing this notice into effect on July 1, 1978, and the leadtime needed by the State agency for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to this notice.

(Catalog of Federal Domestic Assistance Programs, No. 10.551, Food Stamps.)

Dated: May 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-13465 Filed 5-15-78; 8:45 am]

[3410-30]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the maximum allowable income standards and basis of coupon issuance for the Virgin Islands appearing in Appendix E to Part 271 which were effective January 1, 1978. Semi-annual adjustments in coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Act. These adjustments will continue to provide households with coupon allotments sufficient to purchase nutritionally adequate diets.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8289.

SUPPLEMENTARY INFORMATION:

APPENDIX E—VIRGIN ISLANDS

Section 5(b) of the Food Stamp Act requires the establishment of special standards of eligibility and coupon allotment schedules, not to exceed those in the fifty States, which reflect the average per capita income and cost of obtaining a nutritionally adequate diet in the Virgin Islands.

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semi-annually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, an adjustment based on the cost of the Thrifty Food Plan in March 1978 has been made in the coupon allotment for all households.

Prior to the amendment to the Act requiring semi-annual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the food plan in the preceding December. With the enactment of the semi-annual adjustment, the law specified that the first adjustment be made in January 1974 to reflect changes in food prices through August 1973. Similar procedures have been used for subsequent semi-annual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January allotment based on the cost of the food plan in the preceding August. It is now possible to base this semi-annual adjustment on more current data—the cost of the food plan for March. Therefore, the income standards and coupon allotments set forth below are based on the allotment table adopted for the continental United States adjusted for the cost of food in the Virgin Islands in March 1978.

Households in which all members are included in the federally-aided public assistance grant or general assistance grant shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally-aided public assistance or general assistance, in the Virgin Islands, shall be as follows:

Household size	Maximum allowable monthly income standards—Virgin Islands
1	[1]$277
2	427
3	613
4	780
5	927
6	1,113
7	1,227
8	1,407
Each additional member	+180

[1]1978 USDA Adjusted Poverty Guideline.

"Income" as the term is used in the notice is as defined in paragraph (c) of § 271.3 of the Food Stamp Program Regulations.

Pursuant to sections 7 (a) and (b) of the Food Stamp Act, as amended, (7 U.S.C. 2016, Pub. L. 91-671), the face value of the monthly coupon allotment which the State agency is authorized to issue to any household certified as eligible to participate in the Program and the amount charged for the monthly coupon allotment in the Virgin Islands shall be as follows:

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—VIRGIN ISLANDS

Monthly net income	For a household of— 1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
	$70	$128	$184	$2341	$278	$334	$368	$422
	And the monthly purchase requirement is—							
$0 to $19.99	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.49	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	16
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	26
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	39	44	46	47	48	49	50	51
$190 to $209.99	45	50	52	53	54	55	56	57
$210 to $229.99	51	56	58	59	60	61	62	63
$230 to $249.99	56	62	64	65	66	67	68	69
$250 to $269.99	56	68	70	71	72	73	74	75
$270 to $289.99	56	74	76	77	78	79	80	81
$290 to $309.99	.....	80	82	83	84	85	86	87
$310 to $329.99	.....	86	88	89	90	91	92	93
$330 to $359.99	.....	92	94	95	96	97	98	99
$360 to $389.99	.....	101	103	104	105	106	107	108
$390 to $419.99	.....	102	112	113	114	115	116	117
$420 to $449.99	.....	102	121	122	123	124	125	126
$450 to $479.99	.....	.....	130	131	132	133	134	135
$480 to $509.99	.....	.....	139	140	141	142	143	144
$510 to $539.99	.....	.....	148	149	150	151	152	153
$540 to $569.99	.....	.....	157	158	159	160	161	162
$570 to $599.99	.....	.....	162	167	168	169	170	171
$600 to $629.99	.....	.....	162	176	177	178	179	180
$630 to $659.99	.....	.....	.....	185	186	187	188	189
$660 to $689.99	.....	.....	.....	194	195	196	197	198
$690 to $719.99	.....	.....	.....	203	204	205	206	207
$720 to $749.99	.....	.....	.....	206	213	214	215	216
$750 to $779.99	.....	.....	.....	206	222	223	224	225
$780 to $809.99	.....	.....	.....	206	231	232	233	234
$810 to $839.99	.....	.....	.....	.....	240	241	242	243
$840 to $869.99	.....	.....	.....	.....	246	250	251	252
$870 to $899.99	.....	.....	.....	.....	246	259	260	261
$900 to $929.99	.....	.....	.....	.....	246	268	269	270
$930 to $959.99	.....	.....	.....	.....	.....	277	278	279
$960 to $989.99	.....	.....	.....	.....	.....	286	287	288

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—VIRGIN ISLANDS—Continued

Monthly net income	For a household of— 1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
	$70	$128	$184	$2341	$278	$334	$368	$422
	And the monthly purchase requirement is—							
$990 to $1,019.99						295	296	297
$1,020 to $1,049.99						298	305	306
$1,050 to $1,079.99						298	314	315
$1,080 to $1,109.99						298	323	324
$1,110 to $1,139.99						298	328	333
$1,140 to $1,169.99							328	342
$1,170 to $1,199.99							328	351
$1,200 to $1,229.99							328	360
$1,230 to $1,259.99								369
$1,260 to $1,289.99								378
$1,290 to $1,319.99								378
$1,320 to $1,349.99								378
$1,350 to $1,379.99								378
$1,380 to $1,409.99								378

For issuance to households of more than eight persons use the following formula:

A. VALUE OF THE TOTAL ALLOTMENT

For each person in excess of eight, add $54 to the monthly coupon allotment for an eight-person household.

B. PURCHASE REQUIREMENT

1. Use the purchase requirement shown for the eight-person household for households with incomes of $1,289.99 or less per month.

2. For households with monthly incomes of $1,290 or more, use the following formula:

For each $30 worth of monthly income (or portion thereof) over $1,289.99, add $9 to the monthly purchase requirement shown for the eight-person household with an income of $1,289.99.

3. To obtain maximum monthly purchase requirements for households of more than eight persons, add $50 for each person over eight to the maximum purchase requirement shown for an eight-person household.

The total monthly coupon allotments for some households are not divisible by four. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

In view of the need for placing this notice into effect July 1, 1978, and the lead-time needed by the State agency for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to this notice.

(Catalog of Federal Domestic Assistance, No. 10.551, Food Stamps.)

Dated: May 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 78-13466 Filed 5-15-78; 8:45 am]

[3410-30]

PART 271—PARTICIPATION OF STATE AGENCIES AND ELIGIBLE HOUSEHOLDS

Food Stamp Program; Maximum Monthly Allowable Income Standards and Basis of Coupon Issuance: Guam

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This amendment revises the maximum allowable income standards and basis of coupon issuance for Guam appearing in Appendix F to Part 271 which were effective January 1, 1978. Semi-annual adjustments in coupon allotments, to reflect food price changes published by the Bureau of Labor Statistics, are required by the Food Stamp Act. These adjustments will continue to provide households with coupon allotments sufficient to purchase nutritionally adequate diets.

EFFECTIVE DATE: July 1, 1978.

FOR FURTHER INFORMATION CONTACT:

Nancy Snyder, Acting Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8982.

SUPPLEMENTARY INFORMATION:

APPENDIX F—GUAM

Section 5(b) of the Food Stamp Act requires the establishment of special standards of eligibility and coupon allotment schedules, not to exceed those in the fifty States, which reflect the average per capita income and cost of obtaining a nutritionally adequate diet in Guam.

Section 7(a) of the Food Stamp Act, as amended, requires that the value of the coupon allotment be adjusted semi-annually by the nearest increment that is a multiple of two to reflect changes in the prices of food published by the Bureau of Labor Statistics. Under this provision, an adjustment based on the cost of the Thrifty Food Plan in February 1978 has been made in the coupon allotment for all households. (Food price data for March is not available for Guam.)

Prior to the amendment to the Act requiring semi-annual adjustment of the value of the coupon allotment, the adjustments were made at the beginning of each fiscal year; i.e., in July based on the cost of the food plan in the preceding December. With the enactment of the semi-annual adjustment, the law specified that the first adjustment be made in January 1974 to reflect changes in food prices through August 1973. Similar procedures have been used for subsequent semi-annual adjustments; i.e., the July adjustment based on the cost of the food plan in the preceding February and the January adjustment based on the cost of the food plan in the prededing August. Based on prices provided for Guam, the Science and Education Administration estimated that the allotment table adopted for the continental United States, adjusted for the cost of food in Guam would be higher than in the fifty States. Thus, the income standards (except for the one-person household which is the same as Hawaii) and the coupon allotments set forth for Guam are the same as those which will become effective in Alaska on July 1, 1978.

Households in which all members are included in the federally-aided public assistance grant or general assistance grant shall be determined to be eligible to participate in the program while receiving such grants without regard to the income and resources of the household members.

The maximum allowable income standards for determining eligibility of all other applicant households, including those in which some members are recipients of federally-aided public assistance, general assistance, or supplemental security income benefit, in Guam shall be as follows:

Household size	Maximum allowable monthly income standards—Guam
1	[1]$301
2	460
3	660
4	840
5	1,000
6	1,200
7	1,320
8	1,513
Each additional member	+193

[1] 1978 USDA adjusted poverty guideline.

"Income" as the term is used in the notice is as defined in paragraph (c) of § 271.3 of the Food Stamp Program Regulations.

Pursuant to sections 7 (a) and (b) of the Food Stamp Act, as amended (7 U.S.C. 2016, Pub. L. 91-671), the face value of the monthly coupon allotment which the State agency is authorized to issue to any household certified as eligible to participate in the Program and the amount charged for the monthly coupon allotment in Guam shall be as follows:

MONTHLY COUPON ALLOTMENTS AND PURCHASE REQUIREMENTS—GUAM

Monthly net income	For a household of—							
	1 person	2 persons	3 persons	4 persons	5 persons	6 persons	7 persons	8 persons
	The monthly coupon allotment is—							
	$76	$138	$198	$252	$300	$360	$396	$454
	And the monthly purchase requirement is—							
$0 to $19.90	0	0	0	0	0	0	0	0
$20 to $29.99	1	1	0	0	0	0	0	0
$30 to $39.99	4	4	4	4	5	5	5	5
$40 to $49.99	6	7	7	7	8	8	8	8
$50 to $59.99	8	10	10	10	11	11	12	12
$60 to $69.99	10	12	13	13	14	14	15	16
$70 to $79.99	12	15	16	16	17	17	18	19
$80 to $89.99	14	18	19	19	20	21	21	22
$90 to $99.99	16	21	21	22	23	24	25	26
$100 to $109.99	18	23	24	25	26	27	28	29
$110 to $119.99	21	26	27	28	29	31	32	33
$120 to $129.99	24	29	30	31	33	34	35	36
$130 to $139.99	27	32	33	34	36	37	38	39
$140 to $149.99	30	35	36	37	39	40	41	42
$150 to $169.99	33	38	40	41	42	43	44	45
$170 to $189.99	39	44	46	47	48	49	50	51
$190 to $209.99	45	50	52	53	54	55	56	57
$210 to $229.99	51	56	58	59	60	61	62	63
$230 to $249.99	57	62	64	65	66	67	68	69
$250 to $269.99	62	68	70	71	72	73	74	75
$270 to $289.99	62	74	76	77	78	79	80	81
$290 to $309.99	62	80	82	83	84	85	86	87
$310 to $329.99		86	88	89	90	91	92	93
$330 to $359.99		92	94	95	96	97	98	99
$360 to $389.99		101	103	104	105	106	107	108
$390 to $419.99		110	112	113	114	115	116	117
$420 to $449.99		112	121	122	123	124	125	126
$450 to $479.99		112	130	131	132	133	134	135
$480 to $509.99			139	140	141	142	143	144
$510 to $539.99			148	149	150	151	152	153
$540 to $569.99			157	158	159	160	161	162
$570 to $599.99			166	167	168	169	170	171
$600 to $629.99			175	176	177	178	179	180
$630 to $659.99			176	185	186	187	188	189
$660 to $689.99			176	194	195	196	197	198
$690 to $719.99				203	204	205	206	207
$720 to $749.99				212	213	214	215	216
$750 to $779.99				221	222	223	224	225
$780 to $809.99				224	231	232	233	234
$810 to $839.99				224	240	241	242	243
$840 to $869.99				224	249	250	251	252
$870 to $899.99					258	259	260	261
$900 to $929.99					267	268	269	270
$930 to $959.99					268	277	278	279
$960 to $989.99					268	286	287	288
$990 to $1,019.99					268	295	296	297
$1,020 to $1,049.99						304	305	306
$1,050 to $1,079.99						313	314	315
$1,080 to $1,109.99						322	323	324
$1,110 to $1,139.99						324	332	333
$1,140 to $1,169.99						324	341	342
$1,170 to $1,199.99						324	350	351
$1,200 to $1,229.99						324	356	360
$1,230 to $1,259.99							356	369
$1,260 to $1,289.99							356	378
$1,290 to $1,319.99							356	387
$1,320 to $1,349.99							356	396
$1,350 to $1,379.99								405
$1,380 to $1,409.99								410
$1,410 to $1,439.99								410
$1,440 to $1,469.99								410
$1,470 to $1,499.99								410
$1,500 to $1,529.99								410

FOR ISSUANCE TO HOUSEHOLDS OF MORE THAN EIGHT PERSONS USE THE FOLLOWING FORMULA

A. VALUE OF THE TOTAL ALLOTMENT

For each person in excess of eight, add $58 to the monthly coupon allotment for an eight-person household.

B. PURCHASE REQUIREMENT

1. Use the purchase requirement shown for the eight-person household for households with incomes of $1,379.99 or less per month.

2. For households with monthly incomes of $1,380 or more, use the following formula:

For each $30 worth of monthly income (or portion thereof) over $1,379.99, add $9 to the monthly purchase requirement shown for the eight-person household with an income of $1,379.99.

3. To obtain maximum monthly purchase requirements for households of more than eight persons, add $54 for each person over eight to the maximum purchase requirement shown for an eight-person household.

The total monthly coupon allotments for some households are not divisible by four. This results in total coupon allotments of uneven dollar amounts for those households which choose to purchase one-fourth or three-fourths of their coupon allotment. For such households, the State agency shall round the face value of one-fourth or three-fourths of the total coupon allotment up to the next higher whole dollar amount and shall not change the purchase requirement for such allotment.

NOTE.—The Food and Nutrition Service has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-107.

In view of the need for placing this notice into effect on July 1, 1978, and the lead-time needed by the State agency for implementation, it is hereby determined that it is impracticable and contrary to the public interest to give notice of proposed rulemaking with respect to this notice.

(Catalog of Federal Domestic Assistance, Programs, No. 10.551, Food Stamps.)

Dated: May 12, 1978.

CAROL TUCKER FOREMAN,
Assistant Secretary.

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