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FEDERAL REGISTER

TUESDAY, NOVEMBER 7, 1978

highlights

HOW TO USE THE FEDERAL REGISTER

Pittsburgh, Pennsylvania Workshop

December 2, 1978

See inside cover for details.

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ANTI-INFLATION PROGRAM
Council on Wage and Price Stability proposes to amend its regulations by specifying voluntary standards for noninflationary wage and price behavior; comments by 12-2-78 (Part II of this issue) 51933

COAL LOAN GUARANTEE PROGRAM
DOE/ERA authorizes issuance of guaranty on loans for the developing expanding, or reopening of underground mines; effective 11-7-78 (Part III of this issue) 51956

REQUIREMENTS OF EMERGENCY GENERATOR AND GROUND FAULT INTERRUPTERS
HEW/HCFA revokes condition of coverage for suppliers of end-stage renal disease services; comments by 1-8-79 51822

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Commerce/Census gives notice of intent to conduct a survey for the collection of data covering year-end inventories and annual sales of firms 51825

COMMERCIAL CARRIERS
GSA/FSS proposes to revise the format submitted to Government agencies for consideration of transportation offers; comments by 1-5-79 51817

CABLE TELEVISION ANNUAL FINANCIAL REPORT
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CIVIL AIR PATROL
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STATE'S WORKERS
Labor/OSHA releases final rules on State's protection plan of safety and health; effective 11-7-78 51761

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PITTSBURGH, PENNSYLVANIA WORKSHOP

HOW TO USE THE FEDERAL REGISTER

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

WHO: The Office of the Federal Register in cooperation with the Duquesne University School of Law.

WHAT: Free public workshop (approximately 2½ hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between Federal Register and the Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHEN: December 2, 1978, at 9:30 a.m.

WHERE: Moot Court Room, Duquesne University School of Law, Rockwell Hall (7th Floor), 600 Forbes Avenue, Pittsburgh, Pennsylvania.

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 412-434-6293.

federal register

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reminders

(The items in this list were editorially compiled as an aid to FEDERAL REGISTER users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.)

Rules Going Into Effect Today

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

List of Public Laws

This is a continuing listing of public bills that have become law, the text of which is not published in the FEDERAL REGISTER. Copies of the laws in individual pamphlet form (referred to as "slip laws") may be obtained from the U.S. Government Printing Office.

[Last Listing: November 6, 1978]

H.R. 12605 ..... Pub. 95-567
Public Telecommunications Financing Act of 1978. (Nov. 2, 1978; 92 Stat. 2405) Price: $1.00

H.R. 7577 ..... Pub. L. 95-568
Economic Opportunity Amendments of 1978. (Nov. 2, 1978; 92 Stat. 2425) Price: $.90

S. 1029 ..... Pub. L. 95-569
To authorize the Smithsonian Institution to construct support museum facilities. (Nov. 2, 1978; 92 Stat. 2444) Price: $.60

H.R. 11003 ..... Pub. L. 95-570
To clarify the authority for employment of personnel in the White House Office and the Executive Residence at the White House, to clarify the authority for employment of personnel by the President to meet unanticipated needs, and for other purposes. (Nov. 2, 1978; 92 Stat. 2445) Price: $.70

H.R. 14224 ..... Pub. L. 95-571
To authorize and direct the Secretary of the Interior to acquire certain lands for the benefit of the Mille Laes Band of the Minnesota Chippewa Indians. (Nov. 2, 1978; 92 Stat. 2452) Price: $.60

S. 2075 ..... Pub. L. 95-572
Jury System Improvements Act of 1978. (Nov. 2, 1978; 92 Stat. 2453) Price: $.70

H.R. 14145 ..... Pub. L. 95-573
To amend title 28 of the United States Code to make certain changes in the divisions within judicial districts and in the places of holding court, and to require the Director of the Administrative Office of the United States Courts to conduct a study of the judicial business of the Central District of California and the Eastern District of New York. (Nov. 2, 1978; 92 Stat. 2458) Price: $.60

S. 3081 ..... Pub. L. 95-574
Federal Railroad Safety Authorization Act of 1978. (Nov. 2, 1978; 92 Stat. 2459) Price: $.60

S. 1487 ..... Pub. L. 95-575
To amend title 18 of the United States Code to eliminate racketeering in the sale and distribution of cigarettes, and for other purposes. (Nov. 2, 1978; 92 Stat. 2463) Price: $.60

H.R. 12140 ..... Pub. L. 95-576
To amend the Federal Water Pollution Control Act to provide additional authorizations for certain operating programs under the Act. (Nov. 2, 1978; 92 Stat. 2467) Price: $.60

H.R. 13597 ..... Pub. L. 95-577
To authorize the Architect of the Capitol to install solar collectors for furnishing a portion of the energy needs of the Rayburn House Office Building and House Office Building Annex Numbered 2, and for other purposes. (Nov. 2, 1978; 92 Stat. 2470) Price: $.60

S. 2820 ..... Pub. L. 95-578
Reclamation Safety of Dams Act of 1978. (Nov. 2, 1978; 92 Stat. 2471) Price: $.60

S. 2247 ..... Pub. L. 95-579
Amending section 312 of the Immigration and Nationality Act. (Nov. 2, 1978; 92 Stat. 2474) Price: $.60

S. 1835 ..... Pub. L. 95-580
To establish a Rural Transportation Advisory Task Force, and for other purposes. (Nov. 2, 1978; 92 Stat. 2475) Price: $.60

H.R. 10343 ..... Pub. L. 95-581
To provide for recalculation of the retired pay of individuals who served as sergeant major of the Marine Corps before December 16, 1967. (Nov. 2, 1978; 92 Stat. 2478) Price: $.60

H.R. 12393 ..... Pub. L. 95-582
To provide for nationwide service of subpoenas in all suits involving the False Claims Act, and for other purposes. (Nov. 2, 1978; 92 Stat. 2479) Price: $.60

H.R. 4319 ..... Pub. L. 95-583
To amend subchapter III of chapter 83 of title 5, United States Code, to provide that employees who retire after 5 years of service, in certain instances may be eligible to retain their life and health insurance benefits, and for other purposes. (Nov. 2, 1978; 92 Stat. 2481) Price: $.60

S. 3371 ..... Pub. L. 95-584
To repeal certain provisions of law establishing limits on the amount of land certain religious corporations may hold in any Territory of the United States. (Nov. 2, 1978; 92 Stat. 2483) Price: $.60

H.R. 3185 ..... Pub. L. 95-585
To amend the Act commonly known as the Miller Act to raise the dollar amount of contracts to which such Act applies from $2,000 to $25,000. (Nov. 2, 1978; 92 Stat. 2484) Price: $.60

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-M]

Title 5—Administrative Personnel

CHAPTER I—CIVIL SERVICE COMMISSION

PART 213—EXCEPTED SERVICE

Department of the Navy

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amends part 213 to include under schedule B, § 213.3202, those cooperative education students employed by the Department of the Navy who are preparing for preapprentice and helper positions at the WG-5 level in specified occupations and work locations. The approval of this amendment supports the Department of the Navy's cooperative education programs conducted under the provisions of Executive Order 12015 within shipyards, air rework facilities and other major industrial activities. Students completing such programs will receive skills training necessary to perform helper and preapprentice duties in the marine trades for which the Department has experienced difficulty in recruiting through competitive examinations.

EFFECTIVE DATE: August 22, 1978.

FOR FURTHER INFORMATION CONTACT:

James R. Poole, 202-632-5678.

Accordingly, 5 CFR 213.3202(e) is added as set out below:

§ 213.3202 Entire executive civil service.

* * * * * *

(e) Positions at shipyards, air rework facilities and other major industrial activities in the Department of the Navy which prepare students at the high school level, upon satisfactory completion of a cooperative education program of at least 1,040 hours, for employment in preapprentice positions or in helper positions at the WG-5 level as pipefitters, marine machinist, inside machinist, welder, sheet metal mechanic, and such other occupations where the journeyman level is WG-9 or above as the Director of the Bureau of Recruiting and Examining shall have approved, provided that: (1) Not more than 25 percent of the positions in covered occupations will be filled annually at any single installation through this conversion authority, and (2) the maximum time during which any student will be employed in the program is 18 months, and (3) except for conditions specified in this authority, students will be subject to instructions governing all other high school vocational education students in cooperative education programs, and (4) any student who completes a program without a diploma must have an authenticated certificate from the school indicating satisfactory completion in his/her personnel folder.

(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. 78-31333 Filed 11-6-78; 8:45 am]

[6325-01-M]

PART 300—EMPLOYMENT (GENERAL)

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment to the Commission's regulations reflects changes required by the expiration of the Whitten amendment (5 U.S.C. 3101, note) under Pub. L. 94-412. Specifically, it deletes obsolete and unnecessary provisions relating to permanent ceilings and obligated positions.

EFFECTIVE DATE: September 14, 1978.

FOR FURTHER INFORMATION CONTACT:

Raleigh M. Neville, 202-632-6817.

Accordingly, 5 CFR Part 300 is amended by deleting subparts D and E.

(Pub. L. 94-412.)

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

[FR Doc. 78-31334 Filed 10-6-78; 8:45 am]

[3410-37-M]

Title 7—Agriculture

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

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

Subpart—U.S. Standards for Grades of Processed Raisins[1]

NOVEMBER 1, 1978.

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This rule amends the grade standards for processed raisins. The action is taken at the request of the Raisin Administrative Committee. It establishes a separate moisture allowance for the Monukka variety of seedless raisins.

EFFECTIVE DATE: December 1, 1978.

FOR FURTHER INFORMATION:

Sterling P. Ingram, Jr., Processed Products Branch, Fruit and Vegetable Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C., 202-447-4693.

SUPPLEMENTARY INFORMATION: At the request of the Raisin Administrative Committee, the U.S. standards for grades of processed raisins are being amended to establish a moisture allowance of 19 percent for the Monukka variety of seedless raisins. The Federal marketing agreement and order regulating the handling of California raisins (Part 989) was recently amended to include the Monukka raisins at that moisture level. Being thin-skinned, Monukka raisins pick up more moisture during processing than the other seedless raisin varieties.

The amendment herein reflects the change to the marketing order and

[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.

makes the marketing order and the U.S. standards compatible.

Pursuant to the authority contained in the Agricultural Marketing Act of 1946 (60 Stat. 1087 et seq., as amended; 7 U.S.C. 1621-1627), § 2852.1846 only is amended to read as follows:

§ 2852.1846 Grades of seedless raisins.

(a) "U.S. Grade A" is the quality of seedless raisins that have similar varietal characteristics; that have a good typical color; that have a good characteristic flavor; that show development characteristics of raisins prepared from well-matured grapes with not less than 80 percent, by weight, of raisins that are well-matured or reasonably well-matured; that contain not more than 18 percent, by weight, of moisture for all varieties of seedless raisins except the Monukka variety, which may contain not more than 19 percent, by weight, of moisture; and that meet the additional requirements outlined in table I of this subpart.

(b) "U.S. Grade B" is the quality of seedless raisins that have similar varietal characteristics; that have a reasonably good typical color; that have a good characteristic flavor; that show development characteristics of raisins prepared from reasonably well-matured grapes with not less than 70 percent, by weight, of raisins that are well-matured or reasonably well-matured; that contain not more than 18 percent, by weight, of moisture for all varieties of seedless raisins except the Monukka variety, which may contain not more than 19 percent, by weight, of moisture; and that meet the additional requirements outlined in table I of this subpart.

(c) "U.S. Grade C" is the quality of seedless raisins that have similar varietal characteristics; that have a fairly good typical color; that have a fairly good flavor; that show development characteristics of raisins prepared from fairly well-matured grapes with not less than 55 percent, by weight, of raisins that are well-matured or reasonably well-matured; that contain not more than 18 percent, by weight, of moisture for all varieties of seedless raisins except the Monukka variety, which may contain not more than 19 percent, by weight, of moisture; and that meet the additional requirements outlined in table I of this subpart.

(d) "Substandard" is the quality of seedless raisins that fail to meet the requirements of U.S. grade C.

Notice of proposed rulemaking, public procedure thereon, and the postponement of the effective time of this action later than December 1, 1978 (5 U.S.C 553), are impractical, unnecessary, and contrary to the public interest in that: (1) The coverage of the Monukka variety in the U.S. standards increases the selection of seedless variety raisins available to the consumer, (2) the public was given an extensive period of time to comment upon this raisin variety prior to its inclusion in the marketing agreement and order regulating the handling of California raisins, (3) the addition of Monukka raisins into the U.S. grade standards, effective December 1, 1978, will maintain the compatibility of the U.S. grade standards and the raisin marketing order, and (4) additional time is not required by the users of the grade standards or of the inspection service to comply with the amendment.

NOTE.—The Department of Agriculture has determined that these regulations do not have major economic consequences requiring preparation of a regulatory analysis in accordance with sec. 3 of Executive Order 12044 (Mar. 24, 1978).

Dated to become effective at 12:01 a.m., December 1, 1978.

Done at Washington, D.C., on November 1, 1978.

SYDNEY J. BUTLER,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-31331 Filed 11-6-78; 8:45 am]

[3410-37-M]

Title 9—Animals and Animal Products

CHAPTER III—FOOD SAFETY AND QUALITY SERVICE, MEAT AND POULTRY PRODUCTS INSPECTION, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—MANDATORY MEAT INSPECTION

PART 307—FACILITIES FOR INSPECTION

SUBCHAPTER C—MANDATORY POULTRY PRODUCTS INSPECTION

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

Subpart G—Facilities for Inspection; Overtime and Holiday Service; Billing Establishments

CHANGE IN VETERANS' DAY

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends provisions in the Federal meat inspection regulations and the poultry products inspection regulations listing holidays for Federal employees to reflect that Veterans' Day was changed from the fourth Monday in October to November 11.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. L. V. Sanders, Acting Chief Staff Officer, Issuance Coordination Staff, Technical Services, Meat and Poultry Inspection Program, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3759.

SUPPLEMENTARY INFORMATION: Pub. L. 94-97 (5 U.S.C. 6103(a)) which became effective January 1, 1978, changed the official date for Veterans' Day from the fourth Monday in October to November 11. The provisions in § 307.5(b) of the Federal meat inspection regulations (9 CFR 307.5(b)) and in § 381.38(b) of the poultry products inspection regulations (9 CFR 381.38(b)) listing holidays for Federal employees are hereby amended to reflect this change.

Accordingly, in the first sentence of § 307.5(b) of the Federal meat inspection regulations (9 CFR 307.5(b)) "Veterans' Day the fourth Monday in October" is amended to read "Veterans' Day, November 11.

(Sec. 21, 34 Stat. 1264, as amended, 21 U.S.C. 621; 42 FR 35625, 35626, 35631.)

Further in the first sentence of § 381.38(b) of the poultry products inspection regulations (9 CFR 381.38(b)) "Veterans' Day, the fourth Monday in October" is amended to read "Veteran' Day, November 11."

(Sec. 14, 17 Stat. 441, as amended, 21 U.S.C. 463; 42 FR 35625, 35631.)

These amendments update information due to a legislative act and must be promulgated and implemented without delay in order to avoid confusion concerning whether November 11 would be deemed to be a holiday under the meat and poultry inspection regulations. It does not appear that additional relevant information would be made available by public participation in rulemaking proceedings on these amendments, and it is found upon good cause, under the administrative procedure provisions of 5 U.S.C. 553, that notice and other public procedure with respect to these amendments are impracticable and unnecessary, and good cause is found for making these amendments effective less than 30 days after publication in the FEDERAL REGISTER.

Also, Sydney J. Butler has determined that this document represents an emergency situation requiring immediate program action without a notice and comment period. Further, these amendments have not been classified as "significant," and an impact analysis was not prepared since the amendments are mandated by statute.

Done at Washington, D.C., on November 2, 1978.

SYDNEY J. BUTLER,
Acting Administrator,
Food Safety and Quality Service.

[FR Doc. 78-31484 Filed 11-6-78; 8:45 am]

[3128-01-M]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 205—ADMINISTRATIVE PROCEDURES AND SANCTIONS

1978 Interpretations of the General Counsel

AGENCY: Department of Energy.

ACTION: Notice of Interpretations.

SUMMARY: Attached are the Interpretation and responses to Petitions for Reconsideration issued by the Office of General Counsel of the Department of Energy under 10 CFR Part 205, Subpart F, during the period October 1, 1978, through October 31, 1978. Also attached is a modification of Interpretation 1978-58, issued to Campbell H. Elkins and El Ran, Inc., on September 22, 1978. See appendices below.

FOR FURTHER INFORMATION CONTACT:

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

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

These Interpretations depend for their authority on the accuracy of the factual statement used as a basis for the Interpretation (10 CFR 205.84(a)(2)) and may be rescinded or modified at any time (§ 205.85(d)). Only the persons to whom Interpretations are addressed and other persons upon whom Interpretations are served are entitled to rely on them (§ 205.85(c)). An Interpretation is modified by a subsequent amendment to the regulation(s) or ruling(s) interpreted thereby to the extent that the Interpretation is inconsistent with the amended regulation(s) or ruling(s) (§ 205.85(e)). The Interpretations published below are not subject to appeal.

The responses to Petitions for Reconsideration published herein have been issued in accordance with the provisions set forth in 10 CFR 205.85(f). As DOE has indicated on prior occasions, "it should be emphasized that the reconsideration procedure is not the equivalent of an administrative appeal, but merely provides a mechanism to insure that no inadvertent errors are made which affect the validity of the interpretation."

Also published today is Interpretation 1978-58 which was modified in accordance with 10 CFR 205.85(d). The modification corrects an inaccuracy in the statement of facts and does not alter the decision reached in Interpretation 1978-58.

Issued in Washington, D.C., November 1, 1978.

EVERARD A. MARSEGLIA, Jr.,
Acting Assistant General Counsel for Interpretations and Rulings, Office of General Counsel.

APPENDIX A—*Interpretations*

Number	To	Date and category
1978-60	G. W. Tinnin	October 12, allocation.
1978-58M	Campbell H. Elkins and El Ran, Inc.	October 31, price.

INTERPRETATION 1978-60

To: G. W. Tinnin.
Date: October 12, 1978.
Rules interpreted: 10 CFR 211.9; 211.51.
Code: GCW-AI—Supplier/wholesale purchaser-reseller relationship.

FACTS

G. W. Tinnin (Tinnin) has operated as a consignee of petroleum products (principally motor gasoline), allocated under the Mandatory Petroleum Allocation Regulations, for Texaco, Inc. (Texaco), in Fayetteville, N.C. since 1964. Under the terms of the Consignment Agreement (Agreement), Tinnin obtains motor gasoline and other products from Texaco storage facilities for delivery to retail outlets in and around Fayetteville at prices and terms fixed by Texaco. Title to the products remains with Texaco. The Agreement consists of Texaco standard form S-82 as amended by standard form S-368.

The Agreement provides that Tinnin, as a consignee, is free to sell to any purchasers he selects for cash or properly authorized credit. Tinnin may also extend credit to customers on his own account without authorization from Texaco, but in such cases becomes responsible to Texaco for the amount of the sale.

The Agreement further requires Tinnin to keep records of all sales, deliveries, inventory, and receipts, which are subject to audit by Texaco. He is required to pay for any shortages of products consigned to him by Texaco if such shortages are disclosed in an audit by Texaco. Tinnin carries liability insurance on his business operations, which also covers the petroleum products consigned to him by Texaco. He carries health and life insurance for his employees. Texaco does not withhold Federal income or social security taxes on the commissions it pays to Tinnin.

Since July 1973, Texaco has made direct deliveries to four stations which were served by Tinnin during each month of 1972—the base period for motor gasoline. In addition, Texaco terminated "standby" or "supervisory" commission agreements that it had maintained with Tinnin for three other stations.

ISSUE

Is Tinnin a wholesale purchaser-reseller as that term is defined in 10 CFR 211.51?

INTERPRETATION

It has been concluded that Tinnin, a consignee agent of Texaco, operating pursuant to the Agreement mentioned above, is a wholesale purchaser-reseller as defined in 10 CFR 211.51.

Wholesale purchaser-reseller is defined in 10 CFR 211.51 as:

"any firm which purchases, receives through transfer, or otherwise obtains (*as by consignment*) an allocated product and resells or otherwise transfers it to other purchasers without substantially changing its form." (Emphasis added.)

The use of the term "as by consignment" in the definition of wholesale purchaser-reseller was interpreted in ruling 1975-8, 40 FR 30037 (July 17, 1975). In that ruling, it was determined that firms which obtain and resell or otherwise transfer allocated products are not automatically excluded from the definition of wholesale purchaser-reseller solely on the ground that they fail to take legal title to the allocated product. Those consignees which have a substantial degree of operational independence in conducting their business of transferring and selling a supplier's products (rather than merely providing a distribution service between a supplier and the supplier's customers or functioning like an employee of the supplier) fully qualify as wholesale purchaser-resellers pursuant to § 211.51. These firms are subject to the same benefits and obligations of the Mandatory Petroleum Allocation Program which apply to other wholesale purchaser-resellers.

According to ruling 1975-8, a consignee that qualifies under 10 CFR 211.51 as a wholesale purchaser-reseller will generally have most (but not necessarily all) of the following characteristics: (a) Appropriate facilities and equipment for the conduct of the business of selling and distributing its supplier's product; (b) responsibility, independent of its supplier, for its internal financial management and physical and administrative operations; (c) responsibility to its supplier and others for expenses and liabilities arising from and connected with the business of transfer and sale of its supplier's products; and (d) independent control over the disposition of the allocated product, including the right to enter into and terminate relationships with customers rather than being restricted to distributing products solely to customers designated by the supplier.

The pertinent facts in this case are similar to those in another Texaco consignee case, Warren Stevenson, Interpretation 1978-46,

[1] EDITORIAL NOTE.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Economic Regulatory Administration of the Department of Energy.

43 FR 34437 (August 4, 1978). In Stevenson it was noted at 34438:

"Although the Agreement specifies the status of its distributors as that of 'consignee-agent,' this nomenclature is not determinative of Stevenson's status. It is only necessary that the consignee meet most of the four qualifications contained in ruling 1975-8 to satisfy DOE that the 'consignee' is in fact a wholesale purchaser-reseller as defined in 10 CFR 211.51."

Tinnin, like Stevenson, is responsible for the internal financial management and phyical and administrative operations of his business, is responsible for certain of the expenses and liabilities arising from and connected with the business of transfer and sale of the products, and has independent control to enter into and to terminate supply relationships.

An additional element discussed in Stevenson which has a bearing on this case is the fact that Texaco's Consignment Agreement with Tinnin, like that in Stevenson, is substantially the same as the agreements analyzed in National Association of Consignees, Inc., Interperetation 1975-19, 42 FR 23736 (May 10, 1977) and John Hattenhauer, Interpretation 1977-20, 42 FR 39963 (August 8, 1977). In those two interpretations, also involving Texaco consignment agreements, it was determined that under the terms of the consignee agreement, the Texaco consignees retained sufficient functional autonomy in the distribution and sale of Texaco products to qualify as wholesale purchaser-resellers.

In light of the standards set forth in Ruling 1975-8, as interpreted in Stevenson, National Association of Consignees, Inc., and Hattenhauer, and the facts presented by Tinnin, it has been determined that Tinnin is a wholesale purchaser-reseller as defined by 10 CFR 211.51 of the Mandatory Petroleum Allocation Regulations.

In addition, Tinnin's request for interpretation raises questions involving Texaco's direct supply of four motor gasoline retail outlets that were supplied by Tinnin during the base period. Although, based on the facts presented by Tinnin, it is clear that pursuant to § 211.9 Tinnin is the base period supplier of the four retail outlets (since Tinnin supplied them with motor gasoline during each month of 1972), it is also clear that these retail outlets need not purchase their base period allocation of product from Tinnin. See Swann Oil, Inc., Interpretation 1974-19, 42 FR 25657 (May 18, 1977). Thus, the four retail outlets having a supplier/purchaser relationship with Tinnin may elect to purchase motor gasoline from Tinnin, Texaco, or any other supplier (subject, of course, to the provisions of § 211.10(g)(7) concerning surplus product). However, the only assured source of supply for these four retail gasoline stations is their base period supplier, Tinnin. Texaco's supply of the four retail outlets that are not its base period purchasers does not unilaterally shift the § 211.9 supply obligation for those outlets from Tinnin to Texaco. Texaco must continue to supply or offer to supply Tinnin with its entire base period allocation of motor gasoline, including an amount representing the base period entitlement of product for the four retail stations. See John Hattenhauer, supra.

Finally, the issue of whether Texaco's termination of "standby" or "supervisory" commissions on three other stations violated pertinent provisions of the Mandatory Petroleum Price and Allocation Regulations has been addressed in a prior interpretation. The Federal Energy Administration, a predecessor agency of DOE, held, in R. C. Fresh, et al., Interpretation 1977-8, 42 FR 31144 (June 20, 1977), that "* * * the (requesters) receipt of 'standby' commissions in the base period would not give rise to an allocation entitlement for the volumes of motor gasoline giving rise to those commissions, since the (requesters) performed no distribution functions with respect thereto."

Accordingly, Tinnin is a wholesale purchaser-reseller as defined in § 211.51, and is entitled to receive its entire adjusted base period allocation of product from Texaco.

INTERPRETATION 1978-58M

To: Campbell H. Elkins and El Ran, Inc.
Date:
Rules Interpreted: 10 CFR 212.54 and 212.72.
Code: GCW-PI—Definition of property.

FACTS

In August of 1977, Campbell H. Elkins (Elkins), a crude oil producer, acquired the production rights to oil and gas leases from Westland Energy Corporation (Westland), in a single lease instrument.[1] The leased area had formerly been leased to Sinclair Oil and Gas Co. (Sinclair), which obtained working interest rights in 1967 and 1968 pertaining to a tract of land of approximately 40 acres. Sinclair failed to drill any producing wells on the tract, and all rights thereto were released in 1972 by Atlantic Refining Co., successor to Sinclair.

In 1974, the undivided interest owners leased their interest in the subject tract to Macdonald Oil Corp. and its successor Adobe Oil and Gas Corp. Both companies failed to exercise their rights in the lease, and in 1977, Westland, the present lessee of the tract, exercised the right to assign the lease to Elkins.

El Ran, Inc. (El Ran), a crude oil producer, will operate the crude oil wells which Elkins proposes to drill on the leased acreage.

According to Elkins, crude oil was not produced from the leased area in 1972. Commercial production from the leased area began on January 1, 1978.

ISSUE

1. May crude oil produced from a property that did not produce crude oil in 1972, be treated as "new" crude oil pursuant to 10 CFR Part 212, Subpart D?

2. When would the Elkins property qualify as a stripper well property pursuant to 10 CFR 212.54?

INTERPRETATION

From the information presented by Elkins, it has been determined that the leased acreage acquired by Elkins in 1977, is a single property which did not produce crude oil in 1972.

The term "property" is defined in 10 CFR 212.72, in relevant part, as "the right to produce domestic crude oil, which arises from a lease or from a fee interest." The meaning of the terms "property" and "lease" was reviewed in detail by the Department of Energy (DOE) in ruling 1977-1, 42 FR 3628 (January 19, 1977), in which it was concluded that, for price control purposes in those cases involving an oil and gas lease, "property" is the right to produce crude oil from specific leased premises, rather than the right only as vested in a particular lessee. Thus, since Elkins acquired the right to produce on the leased acreage, which was historically treated as a single tract since the original conveyance to Sinclair, Elkins acquired a "property" for purposes of 10 CFR Part 212, Subpart D. See e.g. Meridian Oil Corp., Interpretation 1977-46, 43 FR 1481 (January 10, 1978).

Moreover, all crude oil produced from the property is "new" crude oil subject to the upper tier ceiling price rule in 10 CFR 212.74. "New crude oil," defined in 10 CFR 212.72, generally consists of the incremental crude oil production above the property's historic base production control level (BPCL)[2] (if any), less any current cumulative deficiency. If no crude oil was produced from a tract in 1972, the BPCL is zero. Therefore, with respect to the Elkins property, all crude oil production will qualify as upper tier crude oil, as defined in 10 CFR 212.74.

In its submission, Elkins also requests guidance concerning the qualification of the property as a stripper well property. "Stripper well property" is defined in 10 CFR 212.54(c) as:

"a 'property' whose average daily production of crude oil (excluding condensate recovered in nonassociated production) per well did not exceed 10 barrels per day during any preceding consecutive 12-month period beginning after December 31, 1972."

"Average daily production" is defined in 10 CFR 212.54(c) as:

"the qualified maximum total production of crude oil (excluding condensate recovered in nonassociated production) produced from a property, divided by a number equal to the number of days in the 12-month qualifying period times the number of wells that produced crude oil (excluding condensate recovered in nonassociated production) from that property in that 12-month qualifying period. To qualify as maximum total production, each well on the property must have been maintained at the maximum feasible rate of production throughout the 12-month qualifying period and in accordance with recognized conservation practices, and not significantly curtailed by reason of mechanical failure or other disruption in production."

Thus, the property would qualify as a stripper well property if crude oil is pro-

[1] This leased acreage is located in the Southeast Quarter, section 34, Township South, Range East in Roosevelt County, N. Mex.

[2] "Base production control level" means:

* * * * *

"(2) with respect to months commencing after Jan. 31, 1976, except as provided in § 212.76, either: (A) the total number of barrels of old crude oil produced and sold from the property concerned during calendar year 1975, divided by 365, multiplied by the number of days in the month in 1975 which corresponds to the month concerned; or (B) if the producer elects to certify crude oil sales for 1972 in accordance with § 212.131(a)(1)[sic], the total number of barrels of crude oil produced and sold from the property concerned during the calendar year 1972, divided by 366, multiplied by the number of days during the month in 1972 which corresponds to the month concerned." (10 CFR 212.72.)

duced from the property at the stripper well levels of less than 10 barrels per well per day for 12 consecutive months. See e.g. *H. H. Weinert Estate,* Interpretation 1978-9, 43 FR 15620 (April 14, 1978); *Rustex Oil, Inc.,* Interpretation 1978-5, 43 FR 12852 (March 28, 1978). Upon its certification as a stripper well property, crude oil produced from the Elkins property is eligible to receive "exempt" prices as set forth in 10 CFR 212.54(a).

Accordingly, since Crown Central Petroleum Corp., has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of Crown's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

[FR Doc. 78-31483 Filed 11-6-78; 8:45 am]

APPENDIX B—*Responses to petitions for reconsideration*

Petitioner	Interpretation	Date of response
Crown Central Petroleum Corp.	Crown Central Petroleum Corp., 1978-39, 43 FR 29545 (July 10, 1978).	September 21.
Warren Stevenson	Warren Stevenson, 1978-46, 43 FR 34437 (Aug. 4, 1978).	October 24.

PETITION FOR RECONSIDERATION OF CROWN CENTRAL PETROLEUM CORP., 1978-39

Petitioner: Crown Central Petroleum Corp.
Date: September 21, 1978.

This is in response to your petition for reconsideration of Warren Stevenson, Interpretation 1978-46, 43 FR 34437 (August 4, 1978), submitted on behalf of Warren Stevenson (Stevenson) and received on August 21, 1978. For the reasons discussed below, I have determined that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the interpretation was erroneous in fact or in law, or that the result reached in the interpretation was arbitrary or capricious. 10 CFR 205.83(f)(3).

In the Interpretation, it was determined that Stevenson is a wholesale purchaser-reseller of petroleum products (primarily motor gasoline) as defined in 10 CFR 211.51. As such, since Stevenson was supplied petroleum products by Texaco, Inc. (Texaco) during the base period which, for motor gasoline is defined in 10 CFR 211.102 as "the month of 1972 corresponding to the current month," the firm remains entitled to its full base period allocation of motor gasoline from Texaco, as provided in 10 CFR 211.9.

The petition for reconsideration reiterates the arguments presented in the initial interpretation request and generally raises no new arguments of fact or of law. Stevenson does not question the basic result reached in the interpretation, but rather requests a further determination that only the base period supplier may continue to supply its base period purchasers with product. As indicated in the interpretation, Stevenson is a wholesale purchaser-reseller of motor gasoline and is the base period supplier of all of those firms which it supplied during the base period. Stevenson, therefore, is entitled to receive its entire adjusted base period allocation of product from Texaco. See John Douglas Hattenhauer, Interpretation 1977-20, 42 FR 39963 (August 8, 1977). However, contrary to Stevenson's assertions, it is well established that under the Mandatory Petroleum allocation Regulations, a base period purchaser may obtain product from a supplier other than Stevenson. See Swann Oil, Inc., Interpretation 1974-19, 42 FR 25657 (May 18, 1977).

Accordingly, since Stevenson has failed to demonstrate that the Interpretation is erroneous in fact or in law, or that the Interpretation is arbitrary or capricious, the petition for reconsideration is hereby denied. The denial of Stevenson's petition for reconsideration is a final order of the Department of Energy from which the petitioner may seek judicial review.

PETITION FOR RECONSIDERATION OF WARREN STEVENSON 1978-46

Petitioner: Warren Stevenson.
Date: October 24, 1978.

This is in response to your petition for reconsideration of Crown Central Petroleum Corporation, Interpretation 1978-39, 43 FR 29545 (July 10, 1978). That petition for reconsideration submitted by Crown Central Petroleum Corp. (Crown) was received on July 19, 1978. For the reasons discussed below, I have concluded that the petition for reconsideration must be denied.

Interpretations issued by the Office of General Counsel of the Department of Energy (DOE) may be reconsidered only in certain limited circumstances. In these cases, the burden is upon the petitioner to demonstrate that the interpretation was erroneous in fact or in law, or that the result reached in the interpretation was arbitrary or capricious. 10 CFR 205.85(f)(3)).

In the Interpretation, it was determined that during the period March 1, 1976, to October 1, 1977, 10 CFR 212.94(b)(2) permitted a refiner-seller to recover all domestic transportation expenses associated with the delivery of crude oil to a refiner-buyer under the domestic crude oil allocation program (the buy/sell program) as set forth in 10 CFR 211.65. Therefore, the Interpretation held that Exxon (a refiner-seller), was permitted by § 212.94(b) to sell its "buy-sell program" crude oil to Crown at the weighted-average landed cost per barrel of its imported crude oil for the 3-month period, plus a handling fee of 5 cents per barrel plus any actual additional transportation expenses which were incurred to move the crude oil to the refiner-buyer's refinery.

Your petition for reconsideration reiterates arguments presented in the initial interpretation request and generally raises no new arguments of fact or law. As the interpretation indicated, § 212.94(b)(2) (as in effect for the quarter in question) permitted a refiner-seller to recoup any actual transportation costs which it incurred in delivering domestic crude oil to a refiner-buyer's refinery. The preamble to the final rulemaking which adopted the revisions to § 212.94(b) at issue in this matter (41 FR 16448-9 (April 19, 1976)), expressly stated that "the rule adopted provides that the refiner-buyer will be charged any actual additional transportation expenses that are incurred to move the crude oil to the refiner-buyer's refinery."

[6750-01-M]

Title 16—Commercial Practices

CHAPTER I—FEDERAL TRADE COMMISSION

SUBCHAPTER A—ORGANIZATION, PROCEDURES, AND RULES OF PRACTICE

PART 2—NONADJUDICATIVE PROCEDURES

PART 3—RULES OF PRACTICE FOR ADJUDICATIVE PROCEEDINGS

Disclosure of Material Pertaining to Consent Order Settlements; Withdrawal of Matter From Adjudication To Consider Consent Agreements

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: These rules amend the Commission's rules governing disclosure of material pertaining to consent order settlements. Because of the burden on the Commission and the lack of public interest, the Commission will no longer automatically make available material submitted to the Commission by the respondent that is not exempt from public disclosure under the Freedom of Information Act. Other steps will be taken, however, to assist those who desire to comment on Commission consent agreements.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Thomas A. Sheehan III, Office of General Counsel, Federal Trade Commission, Washington, D.C. 20580, 202-523-3865.

SUPPLEMENTARY INFORMATION: On August 5, 1977, the Commission published in the FEDERAL REGISTER (42 FR 39658) final rules that made avail-

able for public inspection, at the beginning of the period for public comment on a proposed consent order, material submitted to the Commission that was reasonably related to the order and was not exempt from disclosure under the Freedom of Information Act. At that time the Commission indicated that it would review the effect of the rule change after 1 year. (This rule was revised on January 23, 1978, to clarify that it was intended to apply only to material submitted by a respondent. 43 FR 3088.)

The Commission's experience with the rule demonstrates a lack of public interest in the material being made available (as of August 1, 1978, only one person has been recorded as having looked at material made available under the rule, although 29 consent agreements had been placed on the public record), with the comment process consequently being unaffected by the rule. The rule did have the unfortunate effect of delaying the placement of consent agreements on the public record for comment because of the time required to segregate documents into exempt and nonexempt categories; this consequently resulted in the delay in the consent order becoming effective. The segregation of documents also required significant staff time. In view of the burden of the Commission and the resultant cost in public resources, the delay in consent agreements taking effect, and the minimal public interest in these materials, the Commission is terminating its experiment with this procedure. The Commission believes that the goal that the procedure sought to achieve, i.e., more informed public comment on proposed consent orders, can be obtained by publication of a more complete explanation of the consent order. See Commission rule 2.34, 16 CFR 2.34.

While this rule is effective immediately, the Commission invites comments on it for 30 days after date of publication. Comments should be addressed to the Office of the Secretary. The Commission will review all comments received and take whatever action, if any, it deems appropriate.

Accordingly, and pursuant to 15 U.S.C. 46(g), the Commission hereby amends its rules of practice §§ 2.34 and 3.25(f), 16 CFR 2.34 and 3.25(f), as set forth below.

1. By revising § 2.34 to read as follows:

§ 2.34 Disposition.

Upon receiving an executed agreement conforming with the requirements of § 2.32, the Commission may: (1) Accept it; (2) reject it and issue its complaint; or (3) take such other action as it may deem appropriate. If an agreement is accepted, the Commission will place the order contained therein and any initial report of compliance submitted pursuant to § 2.33 on the public record, and at the same time, will make available an explanation of the provisions of the order and the relief to be obtained thereby, and any other information which it deems helpful in assisting interested persons to understand the terms of the order. The Commission will publish the agreement, order, and explanation in the FEDERAL REGISTER. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments or views concerning the order that may be filed by any interested person. Thereafter, the Commission may either withdraw its acceptance of the agreement and so notify the other party, in which event it will take such other action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

2. By amending § 3.25(f) to read as follows:

§ 3.25 Consent agreement settlements.

* * * * *

(f) After the matter has been withdrawn from adjudication, the Commission may: (1) Accept the agreement, (2) reject it and return the matter to adjudication for further proceedings, or (3) take such other action as it may deem appropriate. If an agreement is accepted, the Commission will place it on the public record, together with any initial report of compliance submitted pursuant to § 2.33, and at the same time, will make available an explanation of the provisions of the order and the relief to be obtained thereby, and any other information which it deems helpful in assisting interested persons to understand the terms of the order. The Commission will publish the agreement, order, and explanation in the FEDERAL REGISTER. For a period of sixty (60) days after placement of the order on the public record and issuance of the statement, the Commission will receive and consider any comments or views concerning the order that may be filed by any interested persons. Thereafter, the Commission may either withdraw its acceptance of the agreement and so notify the other party, in which event it will return the matter to adjudication for further proceedings or take such other action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

* * * * *

By direction of the Commission, dated September 27, 1978. Commissioner Pitofsky did not participate.

CAROL M. THOMAS,
Secretary.

[FR Doc. 78-31490 Filed 11-6-78; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

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

SUBCHAPTER A—GENERAL

[Docket No. 78N-0347]

PART 5—DELEGATIONS OF AUTHORITY AND ORGANIZATION

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

DISCLOSURE OF OFFICIAL RECORDS

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations for delegations of authority for disclosing official records and information. The records of registration of blood product establishments are maintained by the Management and Data Systems staff in the Office of the Director of the Bureau of Biologics. This amendment provides the Chief of that staff the authority to sign affidavits regarding the presence or absence of blood product establishment registration records.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert L. Miller, Office of Management and Operations (HFA-340), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: The amendment to § 5.23 disclosure of official records gives the Chief of the Management and Data Systems staff in the Office of the Director of the Bureau of Biologics the authority to sign affidavits regarding the presence or absence of registration records of blood product establishments. These records are submitted according to part 607 (21 CFR Part 607) of this chapter.

Further redelegation of the authority delegated is not authorized. Author-

ity delegated to a position by title may be exercised by a person officially designated to serve in such position in an acting capacity or on a temporary basis, unless prohibited by a restriction written into the document designating him or her as "acting," or unless not legally permissible.

Therefore, under the Federal Food, Drug, and Cosmetic Act (Sec. 701(a), 52 Stat. 1055 (21 U.S.C. 371(a))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), § 5.23 is amended by adding new paragraph (e) to read as follows:

§ 5.23 Disclosure of official records.

* * * * *

(e) The Chief of the Management and Data Systems staff in the Office of the Director of the Bureau of Biologics is authorized to sign affidavits regarding the presence or absence of records of registration of blood product establishments.

Effective date: This regulation shall be effective November 7, 1978.

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

Dated: October 30, 1978.

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

[FR Doc. 78-31223 Filed 11-6-78; 8:45 am]

[4510-26-M]

Title 29—Labor

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

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Revocation of Selected General Industry Safety and Health Standards; Corrections

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule; Corrections.

SUMMARY: This notice announces corrections to the final Revocation of Selected General Industry Safety and Health Standards which appeared in the FEDERAL REGISTER on October 24, 1978 (43 FR 49726).

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Jerry Purswell, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, Department of Labor, Third Street and Constitution Avenue, NW., Room N3510, Washington, D.C. 20210, Telephone: 202-523-7198.

SUPPLEMENTARY INFORMATION: On October 24, 1978, a document was published in the FEDERAL REGISTER (43 FR 49726) which, with an accompanying explanation, revoked selected general industry safety and health standards. The effective date of the revocations is November 24, 1978. There were a number of inadvertent errors and omissions in the October 24, 1978 document. This document corrects those errors.

Accordingly, FR Doc. 78-30164, appearing at 43 FR 49726, is corrected as follows:

1. Page 49728, column 1, line 22, "607" is corrected to read "606."

2. Page 49729, column 2, line 7, "Table D-4" is corrected to read Table D-2."

3. Page 49731, column 3, line 16, "manufacture" is corrected to read "installation."

4. Page 49732, column 1, last paragraph, line 2, "1910.96(l)(2)(iii)" is corrected to read "1910.96(l)(2)(ii)."

5. Page 49732, column 2, last line, "subparts" is corrected to read "supports."

6. Page 49732, column 3, next to last line, add the words "the second sentence of" before "*1910.106(h)(2)(i).*"

7. Page 49733, column 1, second paragraph, delete the comma at the end of line 1 and, beginning with the words "For example" in line 7, delete the remainder of the paragraph.

8. Page 49733, column 3, second paragraph, line 6, add after "1910.106(b)(2)(vi)(*b*)" the phrase "— the words 'or public ways'."

9. Page 49733, column 3, second paragraph, line 16, "1910.106(b)(2)(vii)(*d*)" is corrected to read "1910.106(b)(2)(viii)(*d*)."

10. Page 49733, column 3, second paragraph, line 17, "1910.106(b)(2)(vii)(*e*)" is corrected to read "1910.106(b)(2)(viii)(*e*)."

11. Page 49733, column 3, second paragraph, line 18, "1910.106(b)(2)(vii)(*f*)" is corrected to read "1910.106(b)(2)(viii)(*f*)."

12. Page 49733, column 3, second paragraph, line 20, "1910.106(d)(5)(ii)(*a*)" is corrected to read "1910.106(d)(5)(vi)(*a*)."

13. Page 49735, column 2, fourth paragraph, line 11, "1910.110(b)(6)(i)(*b*)" is corrected to read "1910.110(f)(6)(i)(*b*)," and a comma is added at the end of line 11.

14. Page 49738, column 1, line 1, "Figure J-7" is corrected to read "Figure J-8."

15. Page 49738, column 2, lines 38 and 39, "Paragraph 1910.145(d)(11)—Symbols" is corrected to read "Paragraph 1910.145(d)(10)—Slow Moving Vehicle Emblem."

16. Page 49738, column 2, line 44, "Figure J-8—Poison/Electricity" is corrected to read "Figure J-7—Slow Moving Vehicle Emblem."

17. Page 49740, column 1, second paragraph, the phrase "the second sentence of" is added before "1910.213(m)(2)" in the second line.

18. Page 49740, column 3, sixth paragraph, "Paragraph 1910.219(m)(2)" is corrected to read "Paragraph 1910.219(m)(2)(i)."

19. Page 49741, column 1, line 11, "Paragraph 1910.219(o)" is corrected to read "Paragraph 1910.219(o)(1)."

20. Page 49741, column 3, add the following at the end of the column: "*1910.244 Other Portable Tools and Equipment.*

"Paragraph 1910.244(a)(2) prescribes regulations for the operation and maintenance of jacks. Upon reexamination of the evidence, OSHA has determined that, in the best interest of worker protection, the following provision in paragraph 1910.244(a)(2) should not be revoked:

"1910.244(a)(2)(v)—Second sentence dealing with manufacturer's lubrication instructions."

21. Page 49742, column 3, second paragraph, line 1, "There was no public comment" is corrected to read "There were several comments."

22. Page 49743, column 2, fifth paragraph under "Subpart R—Special Industries," lines 6 and 7, "two requirements" is corrected to read "following requirement."

23. Page 49743, column 2, seventh paragraph under "Subpart R—Special Industries," after line 7 (ending in "kiln tender room") add the following title line: "*1910.266 Pulpwood Logging.*"

§ 1910.96 [Corrected]

24. Page 49746, column 2, item 180, "Paragraph (r)(4)(iii)" is corrected to read "Paragraph (r)(4)(ii)."

§ 1910.106 [Corrected]

25. Page 49746, column 3, item 210, "Paragraph (b)(2)(vii)(*a*)" is corrected to read "Paragraph (b)(2)(viii)(*a*)."

26. Page 49746, column 3, item 211, "Paragraph (b)(2)(vii)(*b*)" is corrected to read "Paragraph (b)(2)(viii)(*b*)."

27. Page 49747, column 1, item 227, line 2, "revoked" is corrected to read "amended by deleting the second sentence thereof."

§ 1910.145 [Corrected]

28. Page 49749, column 1, item 417, "Figure J-7" is corrected to read "Figure J-8."

§ 1910.219 [Corrected]

29. Page 49750, column 2, item 502, "Paragraph (m)(2)" is corrected to read "Paragraph (m)(2)(i)."

30. Page 49750, column 2, item 514, "Paragraph (o)" is corrected to read "Paragraph (o)(1)."

§ 1910.265 [Corrected]

31. Page 49751, column 2, item 584. Item 584 is deleted. Paragraph (c)(7) of § 1910.265 is not revoked.

§ 1910.1008 [Corrected]

32. Page 49751, column 2, item 597, "Paragraph (d)(10)" is corrected to read "Paragraph (d)(1)."

(Section 6, 84 Stat. 1593 (29 U.S.C. 655); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR Part 1911.)

Signed at Washington, D.C., this 2nd day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31524 Filed 11-6-78; 8:45 am]

[4510-26-M]

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

Revocation of Selected Special Industry Safety and Health Standards; Corrections

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Rule; Corrections.

SUMMARY: This notice announces corrections to the final Revocation of Selected Special Industry Safety and Health Standards which appeared in the FEDERAL REGISTER on October 24, 1978 (43 FR 49751).

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. Jerry Purswell, Directorate of Safety Standards Programs, Occupational Safety and Health Administration, Department of Labor, Third Street and Constitution Avenue NW., Room N3510, Washington, D.C. 20210, telephone: 202-523-7198.

SUPPLEMENTARY INFORMATION: On October 24, 1978, a document was published in the FEDERAL REGISTER (43 FR 49751) which, with an accompanying explanation, revoked selected special industry safety and health standards. The effective date of the revocations is November 24, 1978. There were a number of inadvertent errors and omissions in the October 24, 1978 document. This document corrects those errors.

Accordingly, FR Doc. 78-30165 appearing at 43 FR 49751 is corrected as follows:

1. Page 49752, column 1, second paragraph, line 4, "conerning" is corrected to read "concerning."

2. Page 49752, column 2, second paragraph, line 9, "brevised" is corrected to read "revised."

3. Page 49753, column 2, third paragraph, line 16, "Two Hundred twenty-three" is corrected to read "Two Hundred nineteen."

4. Page 49753, column 3, first paragraph, line 15, "Sixty-four" is corrected to read "Sixty-five."

5. Page 49756, column 1, second paragraph, lines 1 and 2, delete the words "Also, paragraph 1910.212(a)(3). This provision is therefore revoked."

6. Page 49756, column 3, first paragraph, add the following lines after line 25: "1910.263(d)(7)(iii)—Screw conveyor covers. 1910.263(d)(8)(i)—Flour sifter enclosures."

7. Page 49757, column 2, first paragraph, add the following lines after line 2: "1910.263(e)(1)(viii)—Access doors and covers."

8. Page 49757, column 3, third paragraph, line 4, "reviwed" is corrected to read "reviewed."

9. Page 49757, column 3, third paragraph, line 6, "23" is corrected to read "22."

10. Page 49757, column 3, third paragraph, line 7, "Twelve" is corrected to read "Eleven."

11. Page 49758, column 1, first paragraph, line 28, "Pagagraph" is corrected to read "Paragraph."

12. Page 49758, column 1, second paragraph, line 6 & 7, "Paragraph 1910.212(i)(19)(ii)" is corrected to read "Paragraph 1910.263(i)(19)(ii)."

13. Page 49758, column 1, second paragraph, line 11, "Paragraph 1910.212(i)(20)(i)" is corrected to read "Paragraph 1910.263(i)(20)(i)."

14. Page 49758, column 2, line 5, "fire extinguisher for a Class B" is corrected to read "fire extinguishing devices suitable for a Class B."

15. Page 49758, column 2, first paragraph, lines 29 and 30, delete the words "Paragraph 1910.263(i)(8)(i)—Handles for overhead trolley switches."

16. Page 49759, column 1, first paragraph, line 5, "provisions" is corrected to read "provision."

17. Page 49762, column 2, eighth paragraph, add the following lines after line 9: "Paragraph 1910.263(l)(3)(ii)—Oven piping."

18. Page 49763, column 3, seventh paragraph, line 4, "other paragraphs" is corrected to read "following provisions."

19. Page 49763, column 3, seventh paragraph, line 5, the period after the word "revoked" is changed to a colon.

20. Page 49763, column 3, seventh paragraph, add the following lines after line 5: "Paragraph 1910.264(c)(1)(ii)(*b*)—Holding door open on washing machine.

Paragraph 1910.264(c)(2)(iii)(*b*)—Holding door open on drying tumblers.

Paragraph 1910.264(c)(2)(iv)(*b*)(*2*)—Holding door open on shakers.

Paragraph 1910.264(c)(2)(v)—Exception of holding door open for automatic machines.

Paragraph 1910.264(c)(4)(iii)(*a*)—Insulating steam pipes to prevent burns.

Paragraph 1910.264(c)(4)(iii)(*b*)—Safety valves on steam lines."

21. Page 49764, column 1, seventh paragraph, line 4, "other paragraphs" is corrected to read "following provisions."

22. Page 49764, column 1, seventh paragraph, line 5, the period after the word revoked is corrected to a colon.

23. Page 49764, column 1, seventh paragraph, add the following lines after line 5: "Paragraph 1910.264(d)(1)(iii)—Precautions for handling soiled clothes.

Paragraph 1910.264(d)(1)(v)—Employee instruction.

Paragraph 1910.264(d)(2)(i)(*a*)—Prohibition against removing safety guards."

24. Page 49764, column 1, delete last four lines.

25. Page 49764, column 2, delete first eight lines.

26. Page 49764, column 2, delete fifth paragraph, starting with the first word "Upon" to the last word "guards."

§ 1910.263 [Corrected]

27. Page 49765, column 2, item 82, "(d)(6)(iii)" is corrected to read "(d)(6)(iv)."

28. Page 49767, column 1, item 237, "(l)(9)(ix)(*a*)" is corrected to read "(l)(9)(xi)(*a*)."

§ 1910.264 [Corrected]

29. Page 49767, column 2, item 290 "(c)(2)(iv)(*a*)(a2)" is corrected to read "(c)(2)(iv)(*a*)(*2*)."

30. Page 49767, column 3, item 298 "(c)(4)(i)" is corrected to read "(c)(3)(ii)(*d*)."

31. Page 49767, column 3, add the following lines after item 321: "322. Paragraph (a)(3) of § 1910.264 is revoked."

(Section 6, 84 Stat. 1593 (29 U.S.C. 655); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR Part 1911.)

Signed at Washington, D.C. this 2nd day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31525 Filed 11-6-78; 8:45 am]

[4510-26-M]

PART 1953—STATE PLANS FOR THE DEVELOPMENT AND ENFORCEMENT OF STATE STANDARDS

Changes to State Plans for the Development and Enforcement of State Standards

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: State occupational safety and health plans must meet certain criteria for initial approval under the Occupational Safety and Health Act of 1970. State plans are subject to change as a result of Federal program changes and Federal evaluation of State operations. This document amends the regulation to specify a six-month period for the States to complete Federal program and evaluation changes in their State plans in order to adequately protect the safety and health of the State's workers.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles Boyd, Project Officer, Office of State Programs, Occupational Safety and Health Administration, 3rd and Constitution Avenue NW., Washington, D.C. 20210, 202-653-5377.

SUPPLEMENTARY INFORMATION:

BACKGROUND

29 CFR Part 1953 sets forth the process for decisions by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) on changes in State occupational safety and health plans approved under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) (29 U.S.C. 651). Section 18 requires States to meet or give adequate assurances of meeting certain criteria for initial approval. Once these criteria are met, the actual operations of the plan are evaluated to determine whether the plan adequately protects the safety and health of the State's workers.

There are four categories of State plan changes which require review: (1) developmental changes required to meet the plan's developmental schedule as approved under section 18(c); (2) Federal program changes, including, but not limited to, adoption or revision of occupational safety and health standards which require comparable State action; (3) evaluation changes required as a result of Federal evaluation of the State operations, and (4) State-initiated changes.

Under 29 CFR 1953.23(a)(1) and 29 CFR 1953.31(a), the Regional Administrator is required to advise the States of Federal program changes and changes required as a result of State evaluations. Within 30 days after such notification, the States must submit a plan supplement indicating the adoption of the change or a schedule for completing the change. Although the regulation does not explicitly state a definite time limit for the State to complete all types of program changes, standards changes are specifically required to be completed within six months after the promulgation of the Federal Standard and this time frame has generally been applied to other changes. This regulation will formalize this practice, requiring the States to complete Federal program and evaluation changes within a six month time period.

In addition, since the adoption of Part 1953, the title of Assistant Regional Director for Occupational Safety and Health has been changed to Regional Administrator for Occupational Safety and Health. This change in title will be reflected whenever it appears in the regulation.

Accordingly, pursuant to sections 8(g)(2) and 18 of the Occupational Safety and Health Act of 1970 (84 Stat. 1600, 1608, 29 U.S.C. 657, 667) 29 CFR Part 1953 is amended as follows:

1. Sections 1953.2(e), 1953.4, 1953.10(b) 1953.11, 1953.22, 1953.23, 1953.31, 1953.41, 1953.50 and 1953.51 are amended by changing the words "Assistant Regional Director" wherever they appear to "Regional Administrator."

2. Section 1953.23(a)(1) is amended to read as follows:

§ 1953.23 Submission and consideration of Federal Program changes.

(a)(1) Within a reasonable time after the occurrence of a Federal program change, other than promulgation of emergency temporary standards, the Regional Administrator as directed by the Assistant Secretary, shall advise the States of a Federal program change which requires a State supplement. This notification shall also contain a date by which States must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed Federal program change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that a state has made a timely and specific showing that good cause exists to extend the time limitation for that State.

* * * * *

3. Section 1953.31(a) is amended to read as follows:

§ 1953.31 Submission and consideration of evaluation changes.

(a) Within 30 days after an evaluation report has been made, the Regional Administrator shall advise the State of the evaluation findings that require a supplement and the reasons supporting this decision. This notification shall also contain a date by which State must submit the supplement. This date will generally be thirty days from the date of notification, except where the Assistant Secretary determines that the complexity and scope of the change warrants a longer period for submission of the completed change supplement. This extended submission period may not exceed six months, unless the Assistant Secretary determines that the State has made a timely and specific showing that good cause exists to extend the time limitation for that State.

* * * * *

Signed at Washington, D.C., this 1st day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31532 Filed 11-6-78; 8:45 am]

[4510-43-M]

Title 30—Mineral Resources

CHAPTER I—MINE SAFETY AND HEALTH ADMINISTRATION

SUBCHAPTER G—FILING AND OTHER ADMINISTRATIVE REQUIREMENTS

PART 41—NOTIFICATION OF LEGAL IDENTITY

Deferral of Effective Date of Rule

AGENCY: Mine Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: The effective date of the rules for reporting the legal identity of mine operators is deferred to November 30, 1978. Because of unanticipated delays in obtaining the form from the printer, the Mine Safety and Health Administration (MSHA) will be unable to supply form 2000-7 in time for operators to comply with the timetable set forth in the rule. The extension of the effective date will provide sufficient opportunity for MSHA to obtain the form from the printer and to supply the forms to all operators and MSHA field offices.

EFFECTIVE DATE: This amendment is effective on November 7, 1978. The rules contained in part 41 are effective on November 30, 1978.

ADDRESS: Mine Safety and Health Administration, Ballston Tower No. 3, 4015 Wilson Boulevard, Room 631, Arlington, Va. 22203, telephone 703-235-1910.

FOR FURTHER INFORMATION CONTACT:

Frank A. White, Office of Standards, Regulations and Variances, Room 613, Ballston Tower No. 3; 4015 Wilson Boulevard, Arlington, Va. 22203, telephone 703-235-1910.

SUPPLEMENTARY INFORMATION: On July 7, 1978, the Secretary of Labor published final rules in the FEDERAL REGISTER (43 FR 29510), which required each operator of a coal or other mine to file specific information with the Mine Safety and Health Administration (MSHA) and set forth the procedures for filing such notification of legal identity. Section 41.20 of those rules require each mine operator to file the notification of legal identity and any subsequent changes on MSHA form 2000-7, which was to be provided by MSHA for this purpose. Originally, the rule was to become effective on September 5, 1978, and each operator was to have filed the first report within 30 days of that date under § 41.11(a). This effective date was deferred until October 15, 1978, by a notice in the FEDERAL REGISTER of Friday, September 8, 1978. The effective date is further deferred until November 30, 1978.

This amendment is issued under the authority of sections 103(h), 109(d), and 508 of the Federal Mine Safety and Health Act of 1977 (Pub. L. 91-173, as amended by Pub. L. 95-164). In view of the circumstances stated above, it is determined that good cause exists for omitting notice and comment rulemaking procedures. This amendment is effective on date of publication.

Drafting Information: The principal person responsible for drafting this document is Frank A. White, Office of Standards, Regulations and Variances, MSHA.

Dated: November 2, 1978.

ROBERT B. LAGATHER,
Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31487 Filed 11-6-78; 8:45 am]

[4810-25-M]

Title 31—Money and Finance: Treasury

CHAPTER V—OFFICE OF FOREIGN ASSETS CONTROL, DEPARTMENT OF THE TREASURY

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Definition of Authorized Trade Territory; Member of the Authorized Trade Territory

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending § 515.322 of its Cuban Assets Control Regulations, which defines "authorized trade territory" and "member of the authorized trade territory." The purpose of the amendment is to update the list of countries included within the authorized trade territory. The need for this amendment is to take into account the existence of new political entities (e.g., Bangladesh), changes of official names (e.g. Sri Lanka) and similar political changes, as well as to delete from the list certain countries against which embargoes or sanctions are currently maintained (e.g., Cambodia, South Vietnam, and Southern Rhodesia). The effect of this amendment will be to make the definitions reflect the current political status of the entities listed and to harmonize this definition with the other regulations administered by this Office.

EFFECTIVE DATE: October 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Stanley L. Sommerfield, Acting Director, Office of Foreign Assets Control, Department of the Treasury, 202-376-0395.

SUPPLEMENTARY INFORMATION: Since this amendment involves a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date are inapplicable.

31 CFR 515.322 is amended to read as follows:

§ 515.322 Authorized trade territory; member of the authorized trade territory.

(a) The term "authorized trade territory" shall include:

(1) North, South, and Central America, including the Caribbean region, except Cuba;

(2) Africa, except Southern Rhodesia;

(3) Oceania, including Indonesia and the Philippines;

(4) Andorra, Austria, Belgium, Cyprus, Denmark, Ireland, the Federal Republic of Germany, and the Western Sector of Berlin, Finland, France (including Monaco), Greece, Iceland, Italy, Liechtenstein, Luxembourg, Malta, the Netherlands, Norway, Portugal, San Marino, Spain, Sweden, Switzerland, Turkey, the United Kingdom, Vatican City, and Yugoslavia;

(5) Afghanistan, Bangladesh, Bhutan, Burma, Hong Kong, India, Iran, Iraq, Israel, Japan, Jordan, Kuwait, Laos, Lebanon, Macao, Malaysia, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Singapore, South Korea, Sri Lanka, Syrian Arab Republic, Taiwan, Thailand, United Arab Emirates, and Yemen;

(6) Any colony, territory, possession, or protectorate of any country included within this paragraph; but the term shall not include the United States.

(b) The term "member of the authorized trade territory" shall mean any of the foreign countries or political subdivisions comprising the authorized trade territory.

Dated: October 26, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31386 Filed 11-6-78; 8:45 am]

[4810-25-M]

PART 515—CUBAN ASSETS CONTROL REGULATIONS

Remittances to Close Relatives Who Are Nationals of Cuba

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending § 515.563 of its Cuban Assets Control Regulations. The purpose of the amendment is to permit support remittances to be made to blocked Cuban nationals who are residents of countries in the authorized territory. The need for the amendment is to extend the authorization contained in § 515.563 to Cuban residents of third countries, with the effect that such remittances will be permitted.

EFFECTIVE DATE: October 26, 1978.

FOR FURTHER INFORMATION CONTACT:

George F. Hazard, Chief of Licens-

ing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202-376-0428.

SUPPLEMENTARY INFORMATION: Since this amendment relaxes existing restrictions and involves a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and a delay in effective date are inapplicable.

Section 515.563 is amended by revising the section heading and paragraph (a) to read as follows:

§ 515.563 Family remittances to nationals of Cuba.

(a) Remittances to any close relative of the remitter or of the remitter's spouse who is a national of Cuba and who is resident in Cuba or in the authorized trade territory are authorized, provided they are not made from blocked accounts. Such remittances may be made only as follows:

(1) For the support of the payee, or for the support of the payee and members of his household, in amounts not exceeding $500 in any consecutive 3-month period to any one payee or to any one household; and

(2) For the purpose of enabling the payee to emigrate from Cuba, in an amount not exceeding $500 to be made only once to any one payee, provided that the payee is a resident of and within Cuba on the effective date of this section.

* * * * *

Dated: October 26, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31387 Filed 11-6-78; 8:45 am]

[4810-25-M]

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

Remittances to Close Relatives who are Nationals of Vietnam or Cambodia

AGENCY: Office of Foreign Assets Control, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Office of Foreign Assets Control is amending § 500.565 of its Foreign Assets Control Regulations. The purpose of the amendment is to permit support remittances to be made to certain blocked Vietnamese nationals who are residents of countries in the authorized trade territory or of the People's Republic of China and to certain blocked Cambodian nationals who are residents of countries in the authorized trade territory or of Vietnam. The need for the amendment is to extend the authorization contained in § 500.565 to Vietnamese and Cambodian residents of third countries and to Cambodian residents of Vietnam, with the effect that such remittances will be permitted.

EFFECTIVE DATE: October 26, 1978.

FOR FURTHER INFORMATION CONTACT:

George F. Hazard, Chief of Licensing, Office of Foreign Assets Control, Department of the Treasury, Washington, D.C. 20220, 202-376-0428.

SUPPLEMENTARY INFORMATION: The authorization in this amendment permits remittances to close relatives who are Cambodian citizens residing in Vietnam or in countries in the authorized trade territory. However, it does not authorize remittances to persons in Cambodia.

Since this amendment relaxes existing restrictions and involves a foreign affairs function, the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and a delay in effective date are inapplicable.

Section 500.565 is amended to read as follows:

§ 500.565 Family remittances to nationals of Vietnam, and certain Cambodian nationals

(a) Remittances to any close relative of the remitter or of the remitter's spouse, who is a national of Vietnam, are authorized, provided that the recipient is a resident of Vietnam, a country in the authorized trade territory or the People's Republic of China (notwithstanding the provisions of § 500.303), and is not a specially designated national.

(b) Remittances to any close relative of the remitter or of the remitter's spouse, who is a national of Cambodia, are authorized provided that the recipient is a resident of Vietnam (notwithstanding the provisions of § 500.303) or of a country in the authorized trade territory, and is not a specially designated national.

(c) Remittances made pursuant to this section may be made only as follows:

(1) For the support of the payee, or for the support of the payee and members of his household, in amounts not exceeding $300 in any consecutive 3-month period to any one payee or to any one household; and

(2) For the purpose of enabling the payee to emigrate from Vietnam, in an amount not exceeding $750, to be made only once to any one payee, provided that the payee is a resident of and within Vietnam on the effective date of this section.

(d) The term "close relative" used with respect to any person means spouse, child, grandchild, parent, grandparent, uncle, aunt, brother, sister, nephew, niece, or spouse, widow, or widower of any of the foregoing.

(e) The term "member of a household" used with respect to any person means a close relative sharing a common dwelling with such person.

(f) This section does not authorize remittances:

(1) From blocked accounts; or,

(2) To persons in Cambodia.

Dated: October 26, 1978.

STANLEY L. SOMMERFIELD,
Acting Director.

Approved:

RICHARD J. DAVIS,
Assistant Secretary.

[FR Doc. 78-31388 Filed 11-6-78; 8:45 am]

[3910-01-M]

Title 32—National Defense

CHAPTER VII—DEPARTMENT OF THE AIR FORCE

SUBCHAPTER C—PUBLIC RELATIONS

PART 832—EMPLOYMENT OF CIVIL AIR PATROL

Subpart A—General Information

AGENCY: Department of the Air Force, DOD.

ACTION: Final rule.

SUMMARY: The Civil Air Patrol (CAP) is provided support by the Air Force under 10 U.S.C. 9441. This statute directs the Secretary of the Air Force to prescribe regulations applicable to the employment authorized for Civil Air Patrol. This document updates the Air Force agencies that employ CAP and types of missions involved, revises the reimbursement procedures, and identifies the revised accounting needs for reimbursing CAP.

EFFECTIVE DATE: July 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Lt. Col. Hettinger, the Pentagon, room BF655, Washington, D.C., phone: 202-697-2463.

SUPPLEMENTARY INFORMATION: On January 19, 1978, the Department of the Air Force, DOD, published a proposed revision to subpart A of part

832, title 32 CFR (43 FR 2735) inviting public comment. As outlined at that time, this subpart explains the use of Civil Air Patrol (CAP) services employed on Air Force noncombat missions. It applies to Air Force activities only and does not dictate or limit the private activities of CAP. This revision updates the Air Force agencies that employ CAP and types of missions involved, revises the reimbursement procedures, and identifies the revised accounting needs for reimbursing CAP. Since no public comments were received, the subpart is revised to read as follows:

Subpart A—Employment of Civil Air Patrol

Sec.
832.1 Purpose.
832.2 Use of CAP services by the Air Force.
832.3 CAP mission employment by the Air Force.
832.4 Use of Air Force funds.
832.5 CAP accidents or incidents.
832.6 Procedures for reimbursing CAP.
832.7 Accounting procedures for reimbursement funding.
832.8 Cost estimates for CAP reimbursement.
832.9 Training and evaluation of CAP members.

AUTHORITY: 10 U.S.C. 8012, 9441.

NOTE.—This subpart is derived from Air Force Regulations 46-5, July 10, 1978. Part 806 of this chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 832.1 Purpose.

This subpart explains the use of Civil Air Patrol (CAP) services employed on Air Force noncombat missions. It applies to Air Force activities only and does not dictate or limit the private activities of CAP.

§ 832.2 Use of CAP services by the Air Force.

Use of CAP services to support Air Force noncombat missions is provided for by law. CAP participates in these missions on a voluntary basis; therefore, the use of CAP services must be formally requested by a specific Air Force agency.

§ 832.3 CAP mission employment by the Air Force.

CAP members and their available equipment can perform light aircraft operations and provide mobile ground team support and local or long range radio communications from a mobile or stationary site. CAP resources are primarily used on these types of missions:

(a) *Search and rescue.* CAP voluntarily supports the National Search and Rescue Plan. The Aerospace Rescue and Recovery Service (ARRS), Air Force Commanders in Alaska and Hawaii and the Commander, CAP-USAF may request the assistance of CAP for search and rescue missions. These agencies authorize, coordinate, and assist CAP in the conduct of such missions.

(b) *Disaster relief.* CAP resources may be used to assist in the relief of disasters that occur in the United States and Puerto Rico. CAP services are requested and coordinated by one of the numbered Air Force headquarters within the Air Force Reserve.

(c) *Civil defense.* CAP resources may be used in the event of a Civil Defense Emergency. Tasks are assigned by Civil Defense agencies to CAP under the guidelines in Civil Defense Emergency plans. Examples of these tasks are:

(1) Air radiological monitoring,
(2) Air surveillance and reconnaissance,
(3) Light air transport,
(4) Courier service, and
(5) Radio communications.

(d) *Test missions.* The ability of CAP to perform search and rescue, disaster relief, or civil defense tasks is evaluated through test missions. These missions are requested by the Commander, CAP-USAF, and conducted by Air Force liaison members assigned to CAP.

(e) *Other missions for CAP.* An Air Force commander who may need CAP services for other than search and rescue, disaster relief, or civil defense activities must coordinate the use of CAP services through HQ CAP-USAF/DO before any mission activity by CAP members. This is to insure that the requesting major command (MAJCOM) is fully aware of the policies, procedures, and limitations that apply to CAP when performing Air Force missions.

(f) *Basic requirements for CAP missions.* An Air Force agency that authorizes the use of CAP services on any Air Force mission must provide at least this information:

(1) Written authority for the specific mission,
(2) Scope of CAP activity,
(3) Assignment of mission number or designator,
(4) Date and time of start and mission length,
(5) Air Force point of contact for CAP mission coordinator,
(6) CAP wings involved, and
(7) Release of information to news media.

§ 832.4 Use of Air Force funds.

(a) Air Force appropriated funds are authorized only to furnish or reimburse CAP for:

(1) Aviation and automotive fuel and lubricants used to perform an Air Force authorized mission.
(2) Communications expenses used to alert or control CAP resources involved with an authorized mission.

(b) Air Force appropriated funds are not authorized to:

(1) Reimburse CAP for depreciation of privately owned equipment.
(2) Set up indemnity provisions for damage to equipment, or for personal injury or death of CAP members as a result of participation on an Air Force mission.
(3) Set up indemnity claims for equipment or facilities used by CAP or its members that are obtained from private owners by loan, lease, contract, or otherwise.
(4) Pay for personal services or expenses of CAP members engaged in Air Force missions, except as identified in this subpart.

§ 832.5 CAP accidents or incidents.

A CAP accident or incident that occurs on an authorized Air Force mission and that results in damage to or loss of property, or personal injury or death, is reported to the Air Force liaison officer for the CAP wing performing the mission. Part 842 of this chapter, Claims Manual, explains the CAP provisions in these situations.

§ 832.6 Procedures for reimbursing CAP.

CAP members who participate on an authorized Air Force mission are reimbursed for aviation and automotive fuel and lubricants as well as the cost of communications used on such missions. If CAP members are not able to purchase fuel or lubricants during a mission, a local vendor may be used to provide fuel and lubricants to CAP and receive reimbursement by the Air Force.

(a) CAP Form 108, reimbursement document, is used to identify all claims for reimbursement by CAP members or vendors. AFM 177-102, commercial transactions at base level, paragraph 20844, states the certifications needed on any CAP claim for reimbursement. The statement from the CAP wing commander is entered and signed after the last entry on the CAP Form 108.

(b) CAP members or vendors submit all reimbursement claims to the Air Force liaison office that serves the CAP wing participating on the mission. The liaison officer reviews all claims and fills out a standard form (SF) 1034, Public Voucher or Purchases and Services Other Than Personnel, as outlined in AFM 177-102, paragraph 20884.

(c) The liaison officer sends SF 1034 and supporting documents for search and rescue, disaster relief, or civil defense missions, as well as test exercises for these type of missions, to 375

AAW/ACFM, Scott AFB IL 62225 for payment. CAP reimbursement claims for other missions are forwarded to the accounting and finance office specified by the MAJCOM that requested and authorized the mission.

§ 832.7 Accounting procedures for reimbursement funding.

(a) The Military Airlift Command (MAC) is responsible for CAP reimbursement funding on search and rescue, disaster relief, or civil defense missions, as well as test exercises for these types of missions. The following procedures apply:

(1) *Search and rescue missions.* When the ARRS requests a CAP wing to perform a mission, ARRS provides a cost estimate to HQ MAC/ACB. This data includes: The CAP wing, mission number, mission purpose, and estimated cost by category of expense. When a mission is closed or suspended, a letter of authorization for the mission is sent to the CAP wing commander, with copies to HQ MAC/ACB and 375 AAW/ACFM.

(2) *Disaster relief or civil defense missions.* When an Air Force Reserve numbered Air Force headquarters authorizes a CAP mission, it uses the same procedures and data as for a search and rescue mission.

(3) *Test or exercise missions.* The Commander, CAP-USAF may task a CAP wing to perform an exercise or test mission to evaluate its ability to conduct an actual search and rescue, disaster relief, or civil defense mission. HQ CAP-USAF/DO requests funds to support these missions from HQ MAC/ACB, who provides the available funding by category of expense to HQ CAP-USAF/DO and 375 AAW/ACFM. HQ CAP-USAF, as the CAP mission manager, provides the same data as required for actual missions to HQ MAC/ACB and 375 AAW/ACFM.

(b) The Air Force liaison officer enters the proper accounting classifications on the SF 1034. The account classification for MAC-reimbursed mission is:

57(FY)3400—30(FY)6591—(RC/CC)—09(EEIC)S525300.

(1) Fiscal Year (FY)—use eight for fiscal year 1978, nine for fiscal year 1979, etc.

(2) Responsibility Center/Cost Center code (RC/CC).

RC/CC and Description
100901 Actual Search and Rescue missions.
190902 Actual Disaster Relief or Civil Defense Missions.
190903 Search and Rescue or Disaster Relief or Civil Defense test missions.

(3) Element of Expense Investment Code (EEIC).

EEIC and Description
49510 Official toll calls.
601 Aviation fuel and lubricants.
612 Automotive fuel and lubricants.

(c) Other MAJCOMS which use CAP services for noncombat missions must insure enough funds are available to reimburse CAP for fuel, lubricants, and communications costs used on these missions. The using MAJCOM must also provide an account classification to HQ CAP-USAF/DO for liaison officers to complete an SF 1034 for the mission.

§ 832.8 Cost estimates for CAP reimbursement.

HQ CAP-USAF submits these estimates annually to HQ MAC/ACB soon enough for them to be included in the MAC budget request. The estimates identify the number of actual and test missions, their purpose, and projected cost by expense category.

§ 832.9 Training and evaluation of CAP members.

(a) Training for CAP members is the responsibility of CAP commanders and supervisors; however, the Commander, CAP-USAF, through the liaison program for CAP, may give training assistance to CAP members or coordinate training assistance from other Air Force organizations.

(b) The Commander, CAP-USAF, may authorize test missions or exercises as needed to evaluate the ability of the CAP to perform Air Force-requested missions.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc 78-31437 Filed 11-6-78; 8:45 am]

[3910-01-M]

PART 832—EMPLOYMENT OF CIVIL AIR PATROL

Subpart D—Support for Civil Air Patrol

AGENCY: Department of the Air Force, Department of Defense.

ACTION: Final rule.

SUMMARY: The Civil Air Patrol (CAP) is provided support by the Air Force under 10 U.S.C. 9441. This statute directs the Secretary of the Air Force to prescribe regulations applicable to the support authorized for Civil Air Patrol. This document sets forth provisions relating to support functions; limitations on support; acquisition of property, and use of Air Force services and facilities.

EFFECTIVE DATE: April 26, 1978.

FOR FURTHER INFORMATION CONTACT:

Lieutenant Colonel Hettinger, the Pentagon, Room BF655, Washington, D.C., phone 202-697-2463.

SUPPLEMENTARY INFORMATION: On January 5, 1978, the Department of the Air Force, DOD, published a proposed new subpart D of Part 832, Title 32 CFR (43 FR 980) inviting public comment. This new subpart tells how support is set up for the Civil Air Patrol (CAP). It applies to Air Force activities only. Since no public comments were received, the new subpart is added and will read as follows:

Subpart D—Support for Civil Air Patrol

Sec.
832.40 Background information.
832.41 Legal authority.
832.42 Air Force liaison function.
832.43 Limitations on CAP support.
832.44 Screening and acquiring DOD property.
832.45 Accounting and disposing of DOD property.
832.46 CAP use of Air Force services and facilities.

AUTHORITY: 10 U.S.C. 9441.

NOTE.—This subpart is derived from Air Force Regulation 46-6, April 26, 1978.

Part 806 of this Chapter states the basic policies and instructions governing the disclosure of records and tells members of the public what they must do to inspect or obtain copies of the material referenced herein.

§ 832.40 Background information.

This subpart tells how support is set up for the Civil Air Patrol (CAP). It applies to Air Force activities only.

§ 832.41 Legal authority.

Support for CAP is provided for by law, 10 U.S.C. 9441. This law allows the Air Force to assign members to CAP for liaison and training duty; makes CAP eligible to receive DOD excess personal property, and allows CAP to use Air Force services and facilities.

§ 832.42 Air Force liaison function.

The Air Force assigns both active and reserve military members as well as civilians to liaison duty with CAP. Subpart C of this part sets up the organization and responsibilities of the active duty liaison program, and Air Force Regulation 45-10 describes the Reserve Assistance program for CAP.

§ 832.43 Limitations on CAP support.

(a) *Acquiring DOD property for CAP.* DOD property turned over to CAP becomes CAP property. CAP is required to maintain an account of all property it receives from the DOD and obtains CAP-USAF approval prior to disposing of any DOD item.

(b) *Loaning property to CAP.* Headquarters, U.S. Air Force Reserve, through CAP-USAF, sets up the loan of Air Force property to CAP.

(c) *Obligating Government funds.* Air Force commanders must not use appropriated funds for CAP except as set out in this subpart, or other 46 series Air Force regulations.

(d) *Using AF Form 15, USAF invoice.* Air Force liaison officers may use AF Form 15 to obtain fuel or lubricants for approved CAP missions.

(e) *Misusing property.* Should CAP misuse DOD property it receives, or misuse the funds it obtains from an approved sale of such property, the offending CAP unit may be suspended from receiving DOD items.

§ 832.44 Screening and acquiring DOD property.

(a) *Defense Property Disposal Service (DPDS).* DOD personal property no longer needed by a Military Service/Defense Agency is transferred to a Defense Property Disposal Office (DPDO). The DPDO makes sure property turned over to them is made available to meet the needs of all DOD agencies. Once these needs are met, property items are made available to fill the needs of CAP before being offered to Federal civil agencies or donee activities. The DPDS uses two ways to dispose of property:

(1) *Reportable property.* Based on the condition and value of available property, the DPDS publishes declared excess personal property lists. These lists are put together at a central control point for distribution.

(i) Declared excess personal property lists are sent to CAP-USAF and to their regional liaison offices by DPDS. CAP-USAF or the region liaison offices sends a request for changes to the distribution of these lists to DPDS-U, Battle Creek, MI 49016.

(ii) Liaison personnel review property listings to find out what items of property are suitable for CAP. CAP-USAF or the region liaison office sends these requirements to DPDS. When property becomes available for transfer, DPDS tells CAP-USAF or the region liaison office.

(iii) CAP-USAF or the region liaison office sends a Department of Defense Form 1149, Requisition and Invoice/Shipping Document, to the activity which reported the property to pick up the items needed.

(2) *Nonreportable property.* Property not offered in writing is made available for screening at the local DPDO.

(i) Nonreportable property is kept for screening at a disposal facility for 21 calendar days.

(ii) The region liaison office verifies CAP requirements for nonreportable property.

(b) *General Services Administration (GSA).* The regional offices publish lists of property available for disposal within their regional area. These catalogs or bulletins list property from both DOD and Federal civil agencies. These publications tell when the property is available, where it is located, and what the condition of the property is.

(1) *Distributing GSA catalogs/bulletins.* GSA sends their catalogs or bulletins to CAP-USAF or region liaison offices. Any request for change to these publications is forwarded to a GSA regional office.

(2) *Reviewing GSA catalogs or bulletins.* Liaison officers review GSA catalogs or bulletins only for DOD property suitable for CAP. These publications set out DOD items by the location reporting the property.

(3) *Procedure for acquiring property from GSA.* GSA catalogs or bulletins identify the procedures to follow for picking up property items.

(c) *Limitations on property items.* (1) DOD personal property items are acquired to support CAP programs and activities recognized by the Air Force within these limits:

(i) Obtaining DOD property for the purpose of sale is prohibited.

(ii) Property obtained for CAP is to be in usable condition or need only minimum repair.

(iii) DOD property may be acquired for spare parts provided it is used for that purpose only and not as an item by itself.

(2) The Commander, CAP-USAF may delegate authority to liaison region commanders to acquire DOD property for CAP. This does not include aircraft. CAP-USAF screens and acquires excess DOD aircraft for CAP.

(d) *Handling and transportation costs.* (1) The Air Force pays for moving property acquired for CAP to a location approved by CAP-USAF. Property sent from Air Force installations uses funds from that facility.

(2) AFLC pays the handling and transportation costs for property from other military installations.

(3) DOD property acquired for CAP is authorized to be shipped in the Defense transportation system to a location approved by the Commander, CAP-USAF. Property is shipped at the same rates as other military cargoes.

§ 832.45 Accounting and disposing of DOD property.

(a) CAP maintains an account of all property received from the DOD. These basic rules apply:

(1) CAP must maintain an account of all items it receives so that an audit identifies where the item came from, where it is being used in CAP, or tells when and how it was disposed of.

(2) A written release from CAP-USAF is needed for CAP to dispose of any former DOD property. The funds that are received from an authorized sale of such property items are sent to the National Headquarters, CAP, to be used for support of approved CAP programs. CAP-USAF is told when the items are disposed and the amount of funds from any sale.

(3) The Commander, CAP-USAF, must approve any former DOD aircraft that CAP wants to dispose of. He may approve the trade of these aircraft for commercial aircraft that cost less to operate and maintain. The commercial aircraft received in trade are accounted for and disposed of in the same manner as aircraft received directly from the DOD.

(b) CAP-USAF establishes the procedures for control of any Air Force property that is loaned to CAP.

(c) An annual audit of each CAP region and wing supply account is made to determine if DOD property is being properly managed.

§ 832.46 CAP use of Air Force services and facilities.

(a) *Air Force policy.* (i) CAP may use Air Force services or facilities that are needed to assist CAP-approved programs. However, use of any service or facility is not to interfere with the mission assigned to an Air Force unit or installation.

(ii) A request to use any service or facility of the Air Force by CAP members is sent to the appropriate Air Force liaison office.

(b) *Maintenance support.* (1) CAP equipment requiring maintenance that a CAP unit cannot perform, may be done at an Air Force facility. Payment for this service is not required; however, the parts, supplies, or instructions needed to complete the work are to be provided by CAP.

(2) Organizational maintenance is done by the CAP unit.

(3) Field maintenance that a CAP unit cannot do may be done by the nearest Air Force facility.

(4) Depot maintenance may be done at an Air Force facility serving the geographical area of the CAP unit needing this type of assistance.

(c) *Using real property.* CAP uses Air Force real property under the guidelines in the 87-series Air Force regulations on real property management.

(d) *Air Force mission support.* CAP resources may be used on Air Force noncombat missions. The Air Force reimburses CAP for the fuel, lubricants, and communications expenses used on these missions. The procedures used for reimbursing CAP are provided in subpart A of this part.

(e) *Other services.* There are other Air Force services which CAP may use. These services are identified in Air Force regulations and include emergency medical treatment (168 series), temporary billeting (30 series), transportation (DOD 4515.13R) and limited exchange privileges (147 series). In addition to reviewing the regulation that

applies to a service being provided to CAP, an Air Force unit or installation member should contact the nearest Air Force liaison office for CAP to get further assistance.

CAROL M. ROSE,
Air Force Federal Register Liaison Officer.

[FR Doc. 78-31436 Filed 11-6-78; 8:45 am]

[6560-01-M]

Title 40—Protection of Environment

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

SUBCHAPTER C—AIR PROGRAMS

[FRL 989-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Del Norte County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Del Norte County APCD portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On April 3, 1978 (43 FR 13901), EPA published a notice of proposed rulemaking for revisions to the Del Norte County Air Pollution Control District's rules and regulations submitted on November 4, 1977.

The most significant changes to rules being acted upon by this notice are as follows:

(a) Continuous monitoring requirements for certain pollutants from certain stationary sources are added.

(b) Exceptions to the particulate emission limits are added.

(c) Emission limits and compliance verification requirements for sulfur compounds from geothermal operations are added.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking on April 3, 1978 (43 FR 13901). The notice of proposed rulemaking provided 30 days for public comment. No comments were received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as State implementation plan revisions.

Rule 240(e) Mandatory Monitoring Requirements, and appendix D to Regulation 1, Continuous Monitoring, are approved because they partially fulfill the requirements of 40 CFR 51.19(e). It is noted, however, that this rule and appendix do not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

It is the purpose of this notice to approve all changes contained in the November 4, 1977, submittal and to incorporate them into the California SIP, with the exceptions of the rules discussed below.

EPA is disapproving Rules 420(e), Waste Incineration, and 420(f), Geothermal Well Drilling.

Rule 420(e) would exempt from the emission limit of rule 420(a) single chamber incinerators "used for the disposal of approved combustibles subject to permit conditions specified by the control officer after a finding that such use is compatible with the county solid waste management program and will not cause a violation of the control strategy." This rule is disapproved because it relaxes emission control, provides an excessive amount of discretion on the part of the control officer, and as such could interfere with the attainment/maintenance of the national ambient air quality standards (NAAQS).

Rule 420(f) provides an exception to the emission limits of rule 420(d) (including table I), Non-Combustion Sources, for geothermal wells. Without a demonstration that this exception would not interfere with the attainment/maintenance of the NAAQS, rule 420(f) cannot be approved.

No action is being taken at this time on rules concerning emergency episodes, new source review, or sulfide emission standards. Those pertaining to emergency episodes or new source review will be acted upon in separate FEDERAL REGISTER notices.

Rules 450, Sulfide Emission Standards for Kraft Pulp Mills; 455(b), Geothermal Operations—Power Plant Emissions; 455(c), Geothermal Operations—Pre-Power Emissions; and Appendix B to Regulation 1, Sonoma County Geothermal Zone I, are not appropriate for inclusion in the SIP because they would regulate a pollutant for which there is no NAAQS.

The State has submitted revisions to rule 490 and regulation 3, concerning new source performance standards (NSPS). These revisions implement section 111 of the Clean Air Act and are not appropriate for inclusion in the SIP under section 110 of the Act. Therefore, they will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed under the appropriate provisions of section 111, and will be acted upon in a separate FEDERAL REGISTER notice.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110, 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(42)(xv) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(42) * * *

(xv) Del Norte County APCD.

(A) New or amended rules 240(e), 420 (e) and (f), and 455 (a) and (d), and appendix D to regulation 1.

* * * * *

2. Section 52.234, paragraph (e)(9) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *

(9) North Coast Intrastate AQCR.

(i) Del Norte County APCD

* * * * *

3. Section 52.275, paragraph (b)(3)(i)(B) is added as follows:

§ 52.275 Particulate matter control.

* * * * *

(b) * * *

(3) * * *

(i) * * *

(B) Rules 420(e), Waste Incineration, and 420(f), Geothermal Well Drilling, submitted on November 4, 1977.

* * * * *

[FR Doc. 78-31342 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 989-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to disapprove or take no action on changes to the Great Basin Unified Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On August 25, 1978, in 43 FR 38049, EPA published a notice of proposed rulemaking for revisions to the Great Basin Unified APCD's rules and regulations submitted on June 22, 1978, by the California Air Resources Board for inclusion in the California SIP.

The changes contained in this submittal and being acted upon by this notice concern changes in permit assessments and control equipment description for gasoline loading into stationary tanks.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove rules submitted as State implementation plan revisions.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking and can be found in 43 FR 38050 (August 25, 1978). No comments were received during the 30-day public comment period.

Rule 419, Gasoline Loading into Stationary Tanks, has been revised to include reference to regulation IX for a description of proper vapor loss control devices. However, regulation IX is not part of the California SIP, as it was never approved. Therefore, this revision could render the rule unenforceable and must be disapproved. For Federal enforcement purposes, rule 419, submitted April 21, 1976, and previously approved (42 FR 28883), will remain in effect.

Rule 601, Filing Petitions, although listed in the August 25, 1978, notice, will be addressed in a future FEDERAL REGISTER action.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(44)(i) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(44) Revised regulations for the following APCD's submitted on June 22, 1978, by the Governor's designee.

(i) Great Basin Unified APCD.

(A) Amended rule 419.

* * * * *

2. Section 52.269, paragraph (b)(4)(i)(B) is added as follows:

§ 52.269 Control strategy and regulations: photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(B) Rule 419, Gasoline Loading into Stationary Tanks, submitted on June 22, 1978, is disapproved, and rule 419, submitted April 21, 1976, and previously approved in 40 CFR 52.223, is retained.

* * * * *

[FR Doc. 78-31341 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 982-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Mendocino County Air Pollution Control District (APCD)

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Mendocino County APCD portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attn: Wayne A. Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On June 14, 1977 (42 FR 30396), EPA published a notice of proposed rulemaking for revisions to the Mendocino County Air Pollution Control District's rules and regulations submitted on December 13, 1972; July 25, 1973; January 22, 1974; July 19, 1974; January 10, 1975; July 22, 1975; February 10, 1976; and November 10, 1976. Since the November 10, 1976, submittal represents the most recent complete set of rules and regulations for the district, only it will be addressed in this notice.

The rules contained in the November 10, 1976, submittal comprise a complete revision of the Mendocino County APCD's rules and regulations and are identical for four of the five APCD's in the North Coast Air Basin. All rules have been renumbered, and many have been reworded or reorganized. In addition to those changes, the most significant changes to rules being acted upon by this notice are as follows:

(a) Language changes are made to conform with recodification of the State health and safety code and to accommodate the uniform regulations of the North Coast Air Basin.

(b) Procedures are added regarding public records and trade secrets.

(c) Provisions are added regarding severability, intent of the regulations, and liberal construction.

(d) Exceptions to the visible emissions rule are added.

(e) Measures to be taken to control fugitive dust are added.

(f) Controls over incineration of animal matter are added.

(g) A requirement for submerged fill pipes for stationary gasoline tanks is added.

(h) Procedures for issuing orders for abatement are updated and detailed.

(i) Exemptions from open burning prohibitions are added.

(j) Open burning policies are specified.

(k) Use classifications under which open fires are allowed on "permissive-burn" days are specified.

(l) Procedures for notifying the public of "permissive-burn" and "no-burn" days are specified.

(m) Reporting procedures, exceptions to prohibition of burning on "no-burn" days, and agencies that may issue burning permits are specified.

(n) Conditions under which waste may be burned are specified, and an exception to the rule on drying time is provided.

(o) Penalties for violations of open burning rules are established.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking on June 14, 1977 (42 FR 30396). The notice of proposed rulemaking provided 30 days for public comment.

In response to EPA's evaluation reports on the Del Norte County APCD's rules (which are now identical to the Mendocino County APCD's rules), and to a letter dated July 21, 1977, from EPA to the Del Norte County APCD, the Humboldt County APCD sent two letters, dated July 27 and 28, 1977, to EPA. Both letters dealt with regulation 2, Open Burning Procedures, while the July 28 letter also dealt with Rule 240(e), Mandatory Monitoring Requirements.

Regarding regulation 2, and in particular the general prohibitions as set forth at page 1, the July 27 letter noted that certain exceptions would not allow the unregulated burning that EPA had questioned, because of limiting definitions, conditions normally included in the granting of exemptions, and a proposed revision of the general prohibitions. In an August 16, 1977 letter to the Humboldt County APCD, EPA responded to those comments by suggesting ways in which the regulation could be further improved, and pointing out that, until a revision is submitted to EPA by the California Air Resources Board as an official SIP revision, EPA cannot act upon it.

The July 28 letter noted that special burning practices permitted on the basis of economic considerations might "be further conditioned that they will not cause a violation of the SIP control strategy." EPA encourages such conditioning, provided also that a demonstration is made that such permitted burning practices will not prevent the attainment or maintenance of the national Ambient Air Quality Standards (NAAQS).

Regarding rule 240(e), the July 28 letter noted that the Del Norte County APCD has adopted a revised rule 240(e). (The Mendocino County APCD has adopted the same rule.) Although that revised rule was submitted to EPA for both APCD's by the California Air Resources Board on November 4, 1977, it has not yet been evaluated. It will be acted upon in a subsequent FEDERAL REGISTER notice.

In response to EPA's evaluation reports on the Humboldt County APCD's rules, the Humboldt County APCD sent EPA a letter dated February 10, 1978. That letter stated (a) that detailed emergency procedures (rule 140) are required only in priority I regions; (b) that a provision for correlation of emission data with applicable emission limitations (now missing from rule 150) would be proposed to be added to rule 240(d), along with other revisions suggested by EPA; (c) that changes elsewhere would be required to clarify rules 410(c) (2) and (7); (d) that rule 420(e) would be deleted or modified; and (e) that regulation 2 was being completely redrafted.

In an April 27, 1978 letter to the Humboldt County APCD, EPA responded to those comments by noting that some of the proposed revisions would improve the rules and that the revisions would be evaluated in the future. Regarding emergency procedures, rules pertaining to that subject will be acted upon in a separate FEDERAL REGISTER notice.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove these regulations as State implementation plan revisions.

Rule 150, Public Records, provides for the public availability of emission data. The rule does not, however, require the correlation of emission data with applicable emission limitations as required by 40 CFR 51.10(e). Rule 150 is approved since it partially satisfies the requirements of § 51.10(e). However, since the correlation requirement is not met, paragraph (b)(4) of the federally promulgated regulation, 40 CFR 52.224 General Requirements, is retained as applicable to the Mendocino County APCD.

Rule 630, Decisions, is being approved as a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

It is the purpose of this notice to approve all changes contained in the November 10, 1976, submittal and to incorporate them into the California SIP, with the exceptions of the rules discussed below.

EPA is disapproving rules 130(p4), 130(s3), 410(c)(2), and 410(c)(7), and the following portions of Regulation 2, Open Burning Procedures: general prohibitions (all of page 1) (Open Burning Procedures), paragraphs (e) and (f) of article I (Scope and Policy), paragraphs (f) and (g) of article V (Burning Permits and Reports), and paragraph (f) of article VI (Burning Preparation and Restrictions).

Definition (p4), Process Weight Per Hour, of rule 130 is being disapproved because it has been revised to delete a sentence pertaining to continuous processes. That deletion could result in a weakening of the SIP emission limitations and could render Rule 420(d) unenforceable.

Definition (s3), Standard Cubic Meter (Foot) of Gas, of rule 130 is being disapproved because it has been revised to delete a sentence dealing with the adjustment of gas volume to the percent CO_2 or the percent excess air. That deletion could allow, by dilution, excessive emissions with no increase in concentration.

Paragraph (c)(7) of Rule 410, Visible Emissions, would exempt from the opacity limit of rule 410(a) "dust and particulate matter released incident to completing and cleaning out a geothermal well and placing it in production." This paragraph is disapproved because no analysis has been submitted to show that the exemption would not interfere with the attainment/maintenance of the NAAQS.

Paragraph (c)(2) of Rule 410, Visible Emissions, would exempt from the opacity limit of rule 410(a) "smoke from fires set pursuant to regulation 2 (Open Burning Procedures) of the North Coast Air Basin." Several provisions of regulation 2 are being disapproved for the reasons given in the four paragraphs immediately following. Rule 410(c)(2) is disapproved for the same reasons.

The general prohibitions (all of page 1) of regulation 2 would permit the burning of specified substances under certain conditions. These general prohibitions (all of page 1) are disapproved because certain controls have been relaxed and no analysis has been submitted to show that such burning would not interfere with the attainment/maintenance of the NAAQS.

Paragraph (e) of article I of regulation 2 would permit open outdoor fires

"* * * on those days for which satisfactory meteorological burning conditions and adequate area ventilation are predicted to occur * * *". This provision is disapproved because it is too vague to be enforceable.

Paragraph (f) of article I, paragraph (g) of article V, and paragraph (f) of article VI, all of which are contained in regulation 2, are disapproved because each would allow the granting of exceptions from open burning rules if "imminent and substantial economic loss" is threatened by denial of an exception. Economic factors are an impermissible basis upon which to grant such an exception absent a showing that all other requirements of § 110 of the Clean Air Act, as well as the NAAQS, will be met.

Paragraph (f) of article V of regulation 2 would allow, from January 1 until May 31, range improvement or forest management burning on "no-burn" days, provided that more than 50 percent of the land has been "brush treated." This paragraph is disapproved because no analysis has been submitted to show that the allowance would not interfere with the attainment/maintenance of the NAAQS.

No action is being taken at this time on rules concerning emergency episodes, noncriteria pollutants, new source review, exemption from fees, nuisance, particulate standards, sulfide emission standards, malfunction, and open burning (use classification 6). Of these rules, Rule 140, Emergency Conditions; Chapter II, Permits; Rule 300(a), Application Fee; Rule 320, Hearing Board Fees; and Rule 540, Equipment Breakdown, will be or have been acted upon in separate FEDERAL REGISTER notices.

Rule 160, Ambient Air Quality Standards, is being approved with the exceptions of the noncriteria pollutants, which are not appropriate for inclusion in the SIP. For the same reason, EPA is taking no action on the appendix to regulation 1, which indicates the area of applicability of the formaldehyde standard in rule 160(a).

Paragraphs (a) and (c) of Rule 400, Public Nuisance, are not appropriate for inclusion in the SIP because they are not specifically directed at the attainment or maintenance of the NAAQS. Therefore, EPA is taking no action on these paragraphs.

Rule 420, Particulate Matter, has been replaced by a more recent submittal. Therefore, EPA is taking no action on this rule.

Rule 450, Sulfide Emission Standards, is not appropriate for inclusion in the SIP because it would regulate a pollutant for which there is no NAAQS. Therefore, EPA is taking no action on this rule.

Use classification 6 of article III, and paragraph (j) of article VI, both of Regulation 2, Open Burning Procedures, are not appropriate for inclusion in the SIP because they expired on January 1, 1977. Therefore, EPA is taking no action on these rules.

Paragraph (a) of Rule 410, *Visible Emissions,* sets a general opacity limit for the North Coast Air Basin. Since paragraph (b) sets a more stringent limit for Mendocino County, paragraph (a) does not apply to Mendocino County. Appendix A (map: Humboldt Bay Air Basin) to Regulation 2, *Open Burning Procedures,* although included in the uniform regulations of the North Coast Air Basin, also does not apply to the Mendocino County APCD. Therefore, EPA is taking no action on these rules.

The state has submitted rules 490 and 492, and regulations 3 and 4, concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS). These rules and regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in the SIP under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. NSPS and NESHAPS regulations were, however, reviewed under the appropriate provisions of sections 111 and 112, and delegation of authority to implement and enforce the NSPS and NESHAPS standards was made to the State of California, on behalf of the Mendocino County APCD, on March 29, 1976. The FEDERAL REGISTER notice for this delegation of authority was published on July 8, 1976 (41 FR 28006).

Finally, the deletions of Part IV, Officers, Employees, Duties, Hearing Board, Compensation; Part V-5-B, Dustfall or Fallout Particulate Matter; Part VI-1, Maintenance; and Part VI-4, Inspection, previously approved in the February 21, 1972, submittal, are approved because the rules are not required by 40 CFR Part 51, and the deletions will not affect any control regulation.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(35)(xv) (C) and (D) are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(35) * * *
(xv) * * *

(C) New or amended rules 100, 110, 120, 130, 150, 160 (except 160(a) and noncriteria pollutants), 190, 300 (except paragraph (a)), 310, 340, 400(b), 410(b), 410(c), 430, 440, 460, 470, 480, 482, 500, 510, 520, 600, 610, 620, 630, 640, and 650; and the following portions of regulation 2: general prohibitions (all of page 1), articles I and II, paragraphs A1, A2, A3, A4, 5, 7, and 8 of article III, articles IV and V, article VI(a) to (i), article VII, and appendices B and C.

(D) Previously approved and now deleted (without replacement) parts IV, V-5-B, VI-1, and VI-4.

* * * * *

2. Section 52.224, paragraph (a)(2)(iii)(D) is added as follows:

§ 52.224 General requirements.

* * * * *

(a) * * *
(2) * * *
(iii) * * *
(D) Mendocino County APCD.

* * * * *

3. Section 52.236, paragraph (e) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(e) Since the following air pollution control districts have revised definitions so as to render the associated emission control requirements less stringent without a control strategy demonstration, the revisions are disapproved.

(1) North Coast Intrastate Region:

(i) Mendocino County APCD.

(A) Rule 130 (p4), Process Weight Per Hour, submitted on November 10, 1976. Part III-49, Process Weight Per Hour, previously submitted on February 21, 1972, and approved in 40 CFR 52.223, is retained.

(B) Rule 130(s3), Standard Cubic Meter of Gas (Standard Cubic Foot of Gas), submitted on November 10, 1976. Part III-55, Standard Cubic Foot of Gas, previously submitted on February 21, 1972, and approved in 40 CFR 52.223, is retained.

* * * * *

4. In § 52.273, paragraphs (a)(4)(iv) and (b)(3)(iv) are added as follows:

§ 52.273 Open burning.

(a) * * *

(4) * * *

(iv) Mendocino County APCD.

(A) Rule 410(c)(2) and the following portions of regulation 2: general prohibitions (all of page 1), paragraph (f) of article I, paragraphs (f) and (g) of article V, and paragraph (f) of article VI, submitted on November 10, 1976.

* * * * *

(b) * * *

(3) * * *

(iv) Mendocino County APCD.

(A) Paragraph (e) of article I of regulation 2, submitted on November 10, 1976.

* * * * *

5. Section 52.275, paragraph (b)(3)(iv) is added as follows:

§ 52.275 Particulate matter control.

* * * * *

(b) * * *

(3) * * *

(iv) Mendocino County APCD.

(A) Rule 410(c)(7), submitted on November 10, 1976.

* * * * *

[FR Doc. 78-31340 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1002-6]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: San Joaquin County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the San Joaquin County air pollution control district (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street,' San Francisco, Calif. 94105, Attention: Wallace D. Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On June 28, 1978 (43 FR 28003), EPA published a notice of proposed rulemaking for revisions to the San Joaquin County APCD's rules and regulations submitted on November 4, 1977 by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to disapprove certain agricultural burning exemption rules and portions of rules which are now part of the applicable SIP.

The changes contained in the November 4, 1977 submittal and being acted upon by this notice include the following: Addition of an in-stack monitoring rule and revision to the gasoline vapor recovery rule.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

Regulations were submitted concerning emergency episodes. Those regulations will be considered in a separate FEDERAL REGISTER action.

The State also submitted regulations concerning new source performance standards (NSPS) and national emission standards for hazardous air pollutants (NESHAPS) on November 4, 1977. These NSPS and NESHAPS regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State implementation plan under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of sections 111 and 112. Announcement of such delegation would appear in a separate FEDERAL REGISTER notice.

A list of the rules being considered by this action was published as part of the notice of proposed rulemaking and can be found in 43 FR 28003 (June 28, 1978). No comments were received during the public comment period.

It is the purpose of this final rulemaking notice to approve Rule 108, Stack Monitoring, contained in the November 4, 1977 submittal and to incorporate the rule into the California SIP and to disapprove rule 411.2 as discussed below. This rulemaking notice also finalizes the disapproval of certain agricultural burning exemption rules as discussed below:

Rule 108 is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 108 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Rule 411.2, Transfer of Gasoline Into Vehicle Fuel Tanks, revises the previously approved rule submitted on February 10, 1976. The revised rule changes the definition of "motor vehicle". In the previously approved rule, it was defined as "any vehicle registered with the California Department of Motor Vehicles"; it is now defined as "any self-propelled vehicle registered for use on the highway". This is a weakening in the control requirements since the previously approved rule covered all motor vehicles, and the revised rule covers only vehicles used on the highway; thereby exempting off-highway vehicles such as trail bikes, motorcycles, dune buggies, etc. The revised rule is disapproved since a control strategy demonstration has not been submitted indicating that the weakening of the control requirements will not interfere with the attainment and maintenance of the national ambient air quality standards (NAAQS). Rule 411.2, submitted on February 10, 1976 and previously approved under 40 CFR 52.223, will be retained.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning exemption rules; namely, rules 416.1 (D)(1) and (D)(2), submitted on October 23, 1974. These rules are now being disapproved as follows:

Rule 416.1(D)(1), Agricultural Burning, Exceptions, is disapproved since it allows the air pollution control officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Rule 416.1(D)(2), Agricultural Burning, Exceptions, is disapproved because it relaxes the elevation exemption for agricultural burning from 4,000 feet mean sea level to 3,000 feet mean sea level and a control strategy demonstration showing that this relaxation will not interfere with the attainment and maintenance of the NAAQS was not submitted.

In addition, we have reevaluated a rule concerning agricultural burning exemptions and found that a portion of that San Joaquin County APCD rule was approved in error.

Rule 416.1(c)(1), Agricultural Burning, Exceptions, submitted on June 30, 1972 and previously approved under 40

CFR 52.223, allows the air pollution control officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(25)(ii)(C) and (c)(42)(xii) are added as follows:

§ 52.220 Indentification of plan.

* * * * *

(c) * * *

* * * * *

(25) * * *
(ii) * * *
(C) New or amended rules 416.1 (D)(1) and (D)(2).

* * * * *

(42) * * *
(xii) San Joaquin County APCD.
(A) New or amended rules 108 and 411.2.

* * * * *

2. Section 52.234, paragraph (e)(2)(viii) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *
(2) * * *
(viii) San Joaquin County APCD.

* * * * *

3. Section 52.269, paragraph (b)(1)(viii) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

(a) * * *
(b) * * *
(1) * * *
(viii) San Joaquin County APCD.
(A) Rule 411.2, Transfer of Gasoline Into Vehicle Fuel Tanks, submitted on November 4, 1977, is disapproved; and rule 411.2, submitted on February 10, 1976 and previously approved under 40 CFR 52.223, is retained.

* * * * *

4. Section 52.273, paragraphs (a)(3)(i)(B) and (a)(3)(i)(C) are added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(i) * * *
(B) Rule 416.1(c)(1), Agricultural Burning, Exceptions, submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812).
(C) Rule 416.1(D)(1) and Rule 416.1(D)(2), Agricultural Burning, Exceptions, submitted on October 23, 1974.

* * * * *

[FR Doc. 78-31343 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1002-7]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Calaveras County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or takes no action on revisions to the Calaveras County air pollution control district (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations, and to correct certain deficiencies in the SIP.

DATES: Final rulemaking actions taken in this notice will be effective on December 7, 1978. Comments on rule 213 should be submitted no later that December 7, 1978. See supplementary information section for details.

ADDRESS: Comments on Rule 213 should be sent to: Regional Administrator, attention: Air and Hazardous Materials Division, Air Programs Branch, California SIP Section (A-4), U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace Woo, telephone 415-556-7288.

SUPPLEMENTARY INFORMATION: On January 20, 1978, EPA published a notice of proposed rulemaking (43 FR 2897) for revisions to the rules of the Calaveras County APCD submitted on October 13, 1977 by the California Air Resources Board (CARB) as an amendment to the California SIP.

The changes contained in the October 13, 1977 submittal that are being acted on in this notice include the following:

(a) Some definitions are amended.
(b) The list of exceptions to the visible emission control rule is amended.
(c) New rules are added to control pathological incineration, abrasive blasting and malfunction conditions.
(d) The language of the California Health and Safety Code is incorporated into a number of rules.
(e) The rule for controlling particulate matter emissions based on process weight rates is amended.
(f) The equipment coverage of the rule for controlling emissions from fuel burning equipment is changed.
(g) Some of the rules for controlling open burning, including agricultural burning, are amended.
(h) A new rule is added to implement the continous monitoring program.
(i) Fees for permits, analyses, reports and procedures before the hearing board are readjusted.
(j) Some procedures before the hearing board are modified.
(k) Minor wording changes, that do not affect the degree of control, are made to a number of rules.
(l) The sections of the California Health and Safety Code cited in a number of rules are renumbered to conform with the recodification of the code.
(m) A number of rules are renumbered.

A list of the rules considered in this notice was published as part of the January 20, 1978 notice of proposed rulemaking. The proposed rulemaking provided 30 days for public comments. No comments have been received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted rules as SIP revisions. It is the purpose of this notice to approve all of the revisions contained in the October 13, 1977 submittal, and incorporate them into the California SIP, with the ex-

ception of those rules not being acted upon and those rules being disapproved as discussed below.

No action is being taken on Rule 203 (D and G), Exceptions; Rule 307, Exceptions to Rule 306; Rule 409, Public Records; Rule 601, Permit Fees; and Rule 605, Hearing Board Fees, as these rules will be addressed in a future FEDERAL REGISTER notice.

In addition, no action is being taken on Rule 205, Nuisance, and Rule 210(B), Total Reduced Sulfur, because these rules are not specifically directed at the attainment and maintenance of the national ambient air quality standards (NAAQS) and thus are not appropriate for inclusion in the SIP.

Rule 209, Fossil Fuel-Steam Generator Facility, revises Rule 408, Fuel Burning Equipment, previously approved in the June 30, 1972 submittal, by narrowing the equipment coverage of the rule from the more inclusive "fuel burning equipment" to the less inclusive "fossil fuel-stream generator facility." The revision is disapproved because this relaxation in control is not supported by any analysis demonstrating noninterference with the attainment and maintenance of the NAAQS. Rule 408 in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

Rule 211, Process Weight Per Hour, revises an analogous rule under the same number and title, previously approved in the July 22, 1975 submittal, by narrowing the pollutant coverage from the more inclusive "particulate matter" to the less inclusive "dust." The revision is disapproved because no analysis has been submitted to demonstrate that this relaxation in control will not interfere with the attainment and maintenance of the NAAQS. The previously approved Rule 211, Process Weight Per Hour, in the July 22, 1975 submittal is retained and shall remain in effect for Federal enforcement purposes.

No action is being taken on Rule 213, Storage of Petroleum Products, because EPA is now in the process of reevaluating the appropriateness of applying the vapor recovery programs specified in 40 CFR 52.255 and 40 CFR 52.256 to the districts within the area presently known as the Mountain Counties Air Basin. Preliminary information supplied by the Mountain Counties Air Basin Control Council indicates that existing ambient air quality standard excursions for ozone in the Mountain Counties Air Basin are due to transport from the Sacramento Valley and the San Joaquin Valley rather than to the emissions of hydrocarbons within the area. Thus, EPA, by this notice, is inviting public comments on this thesis for the purpose of promulgating final approval or disapproval of rule 213. Comments should be sent to the EPA Region IX office at the address given above. Comments received within thirty (30) days following the publication of this notice will be considered and made available for public inspection at the EPA Region IX office and the EPA public information reference unit. In addition, copies of the proposed rule and preliminary analysis are available for public inspection during normal business hours at the EPA Region IX office and at the following locations:

Calaveras County Air Pollution Control District, Government Center, San Andreas, Calif. 95249.
California Air Resources Board, 1709—11th Street, Sacramento, Calif. 95814.
Public Information Reference Unit, Room 2922 (EPA Library), 401 "M" Street SW., Washington, D.C. 20460.

Rule 304, Exceptions to Rule 303, is disapproved because it exempts open burning of agricultural waste at altitudes above 3,000 feet mean sea level from permit requirements without an adequate demonstration that this exemption will not interfere with the attainment and maintenance of the NAAQS.

Rule 322, Mechanized Burners, is disapproved because it exempts open outdoor fires in mechanized burners from "no-burn day" requirements. Although a visible emission limitation of Ringelmann No. 1 is set, there is no demonstration that this new exemption will not interfere with the attainment and maintenance of the NAAQS.

Rule 404, Upset Conditions, Breakdown or Scheduled Maintenance, is disapproved because it permits the automatic exemption of sources from the applicable emission limitations during equipment malfunction and scheduled maintenance, and therefore could render such limitations unenforceable. In addition, the automatic exemption of sources could interfere with the attainment and maintenance of the NAAQS.

Rule 507, Provision of Sampling and Testing Facilities, is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 507 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Regulation VII revisions (which include rules 700, 702, 703, 710, and 715) are approved as part of a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

Certification has been received from the CARB that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(41)(ix) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(41) * * *
(ix) Calaveras County APCD.
(A) New or amended rules 102, 203 (with the exception of (D) and (G)), 206(B), 207, 208, 209, 211, 215, 216, 217, 301, 302, 303, 304, 319, 320, 321, 322, 323, 324, 402, 404, 407, 507, 602 to 604, 700, 702, 703, 710, and 715.
(B) Previously approved and now deleted (without replacement) rule 203(J).

* * * * *

2. Section 52.234, paragraph (e)(2)(vi) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *
(2) * * *
(vi) Calaveras County APCD.

* * * * *

3. Section 52.271, paragraph (a)(4)(x)(B) is added as follows:

§ 52.271 Malfunction regulations.

(a) * * *
(4) * * *
(x) * * *
(B) Rule 404, Upset Conditions, Breakdown or Scheduled Maintenance, submitted on October 13, 1977.

* * * * *

4. Section 52.273, paragraph (a)(3)(vii) is added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(vii) Calaveras County APCD.
(A) Rule 304, Exceptions to Rule 303; and Rule 322, Mechanized Burners, submitted on October 13, 1977.

* * * * *

5. Section 52.275, paragraph (b)(1)(iii) is added as follows:

§ 52.275 Particulate matter control.

(a) * * *
(b) * * *
(1) * * *
(iii) Calaveras County APCD.
(A) Rule 211, Process Weight Per Hour, submitted on October 13, 1977, is disapproved; and Rule 211, Process Weight Per Hour, previously approved in the July 22, 1975, submittal, is retained and shall remain in effect for Federal enforcement purposes.

* * * * *

6. Section 52.280, paragraph (a)(1)(ii) is added as follows:

§ 52.280 Fuel burning equipment.

(a) * * *
(1) * * *
(ii) Calaveras County APCD.
(A) Rule 209, Fossil Fuel-Steam Generator Facility, submitted on October 13, 1977, is disapproved; and Rule 408, Fuel Burning Equipment, previously approved in the June 30, 1972, submittal, is retained and shall remain in effect for Federal enforcement purposes.

* * * * *

[FR Doc. 78-31344 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-1]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revisions: Great Basin Unified Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Great Basin Unified Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wayne A. Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On February 14, 1978, EPA published a notice of proposed rulemaking for revisions to the Great Basin Unified APCD's rules and regulations submitted on November 4, 1977, by the California Air Resources Board for inclusion in the California SIP.

The State also submitted regulations concerning new source performance standards and national emission standards for hazardous air pollutants; however, no action is being taken at this time as these rules will be acted upon in separate FEDERAL REGISTER notices.

The changes contained in the above submittal that are acted upon by this notice include the following:

(a) Procedural changes,

(b) Old rules deleted, new rules introduced,

(c) Rules granting exceptions for research operations and upset/breakdown situations.

The notice of proposed rulemaking for this submittal was published on February 14, 1978 (43 FR 6266). No comments were received during the comment period.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

It is the purpose of this notice to approve all changes contained in the November 4, 1977, submittal and incorporate them into the California SIP with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

No action is being taken on the repeal of rule 208, Instack Monitoring—Specific Sources, because the rule, although adopted and later repealed by the APCD, was never approved by EPA as a part of the SIP.

The repeal of rule 418, Storage of Petroleum Products, previously approved under 40 CFR 52.223, is disapproved because the rule designated to replace it has the potential to increase emissions and no control strategy demonstration has been submitted to show that this increase would not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS).

Rule 423, Research Operations, and rule 617, Emergency Variance, are disapproved because they allow for exemptions from applicable emission standards and could interfere with the attainment and maintenance of the NAAQS.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraph (c)(42)(ix) as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(42) * * *
(ix) Great Basin Unified APCD.
(A) New or amended rules 300, 423, and 617.
(B) Previously approved and now deleted (without replacement) rules 411 and 418.

* * * * *

2. Section 52.269 is amended by adding paragraph (b)(4) as follows:

§ 52.269 Control strategy: photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *
(4) Great Basin Valleys Intrastate Region.
(i) Great Basin Unified APCD.
(A) Rule 418 submitted on November 4, 1977, is disapproved. Rule 418 submitted on April 21, 1976 remains in effect.

* * * * *

3. Section 52.271 is amended by adding paragraph (a)(5)(i)(B) as follows:

§ 52.271 Malfunction regulations.

* * * * *

(a) * * *
(5) * * *
(i) * * *
(B) Rule 617 submitted on November 4, 1977 is disapproved.

* * * * *

4. Section 52.272 is amended by adding paragraph (a)(5) as follows:

§ 52.272 Research operations exemption.

* * * * *

(a) * * *
(5) Great Basin Valleys Intrastate Region.
(i) Great Basin Unified APCD.

(A) Rule 423, submitted on November 4, 1977 is disapproved.

* * * * *

[FR Doc. 78-31346 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-2]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Amador County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on revisions to the Amador County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations, and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, U.S. Environmental Protection Agency Region IX, 215 Fremont Street, San Francisco, Calif. 94105, Attn: Wallace Woo. Tel: 415-556-7288.

SUPPLEMENTARY INFORMATION: On January 20, 1978, EPA published a notice of proposed rulemaking (43 FR 2896) for revisions to the rules of the Amador County APCD submitted to EPA on October 13, 1977 by the California Air Resources Board (ARB) as an amendment to the California SIP.

The changes contained in the October 13, 1977 submittal that are acted on in this notice include the following:

(a) Some definitions are amended.

(b) The list of exceptions to the visible emission control rule is amended.

(c) The language of the California Health and Safety code is incorporated into a number of rules.

(d) Emission rates for particulate matter are modified.

(e) Fees for permits, analyses and reports are readjusted.

(f) The sections of the California Health and Safety Code cited in a number of rules are renumbered to conform with the recodification of the Code.

(g) Some of the rules for the control of open burning, including agricultural burning, are amended.

(h) A new rule is adopted to implement the continuous monitoring program, and a new rule is adopted to control abrasive blasting.

(i) Some procedures before the hearing board are modified.

(j) Minor wording changes, that do not affect the degree of control, are made to a number of rules.

(k) A number of rules are renumbered.

A list of the rules considered in this notice was published as part of the January 20, 1978 notice of proposed rulemaking. The proposed rulemaking provided 30 days for public comments. No comments have been received.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted rules as SIP revisions. It is the purpose of this notice to approve all the revisions contained in the October 13, 1977 submittal, and incorporate them into the California SIP, with the exception of those rules not being acted upon and those rules being disapproved as discussed below.

No action is being taken on rule 203, Nuisance, because this rule is not specifically directed at the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) and thus is not appropriate for inclusion in the SIP.

Also, no action is being taken on rule 205(B)(1), Exceptions, as the rule will be addressed in a future FEDERAL REGISTER notice.

Rule 207, Particulate Matter, revises rule 10 of regulation V, Particulate Matter, previously approved in the June 30, 1972 submittal, by relaxing the particulate emission limitation for incinerators and wood-fired boilers from 0.1 to 0.2 grains per standard cubic foot. Since no control strategy analysis has been submitted by the District to demonstrate that this relaxation in control will not interfere with the attainment and maintenance of the NAAQS, the revision is disapproved. Rule 10 of regulation V in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

Rule 212, Process Weight Table—Dust and Condensed Fumes, supplements an analogous rule under the same rule number and title, in the April 21, 1976 submittal, by providing equations to the table of allowable emission rates. Rule 212 in the April 21, 1976 submittal was previously disapproved (43 FR 25682) because it revised rule 14 of regulation V, Process Weight Table, previously approved in the June 30, 1972 submittal, by narrowing the pollutant coverage from the more inclusive "particulate matter" to the less inclusive "dust and condensed fumes" without a control strategy analysis demonstrating noninterference with the attainment and maintenance of the NAAQS. Based on the same rationale, rule 212 in the October 13, 1977 submittal is now also disapproved. Thereby, rule 14 of regulation V in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

Rule 304, Open Burning Permitted, allows one additional category of open burning to be carried out, namely, the open burning of unsalable wood waste from property being developed for commercial or residential use. Without any demonstration that this relaxation in control will not cause any interference with the attainment and maintenance of the NAAQS, this relaxation should not be allowed. Thus, rule 304 is disapproved.

Rule 507, Provision of Sampling and Testing Facilities, is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that rule 507 does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Regulation VII revisions (which include rules 701, 703 and 710) are approved as part of a procedure for the granting of variances. Each variance, however, must satisfy the requirements of section 110 of the Clean Air Act and 40 CFR Part 51 in order to be approved by EPA as a revision to the SIP.

Certification has been received from the ARB that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraph (c)(41)(viii) is added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(41) * * *

(viii) Amador County APCD.

(A) New or amended rules 102(C), 102(F), 102(AW), 103, 205(A)(1), 207, 212, 216, 302(A), 304, 305(C), 313(A),

507, 602.1, 604, 605, 701, 703(E) and 710.

* * * * * *

2. Section 52.234, paragraph (e)(2)(v) is added as follows:

§ 52.234 Source surveillance.

* * * * * *

(e) * * *
(2) * * *
(v) Amador County APCD.

* * * * * *

3. Section 52.273, paragraph (a)(3)(iv)(B) is added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(iv) * * *
(B) Rule 304, Open Burning Permitted, submitted on October 13, 1977.

* * * * * *

4. Section 52.275, paragraphs (b)(1)(i) (B) and (C) are added as follows:

§ 52.275 Particulate matter control.

(a) * * *
(b) * * *
(1) * * *
(i) * * *

(B) Rule 207, Particulate Matter, submitted on October 13, 1977 is disapproved; and the analogous rule 10 of Regulation V, Particulate Matter, previously approved in the June 30, 1972 submittal is retained and shall remain in effect for Federal enforcement purposes.

(C) Rule 212, Process Weight Table—Dust and Condensed Fumes, submitted on October 13, 1977 is disapproved; and the analogous rule 14 of Regulation V, Process Weight Table, previously approved in the June 30, 1972 submittal, is retained and shall remain in effect for Federal enforcement purposes.

* * * * * *

[FR Doc. 78-31347 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1002-8]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: San Luis Obispo County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the San Luis Obispo County Air Pollution Control District (APCD) portion of the California State implementation plan (SIP) submitted by the Governor's designee. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wayne A. Blackard, 415-556-7882.

SUPPLEMENTARY INFORMATION: On June 22, 1977, and February 14, 1978, EPA published notices of proposed rulemaking for revisions to the San Luis Obispo County APCD's rules and regulations submitted on November 10, 1976, October 13, 1977, and November 4, 1977, by the California Air Resources Board for inclusion in the California SIP.

The State also submitted rule 213(N) concerning new source review and rule 104, Action in Areas of High Concentration, which will be addressed in separate FEDERAL REGISTER notices.

The changes contained in the abovementioned submittal that are being acted upon by this notice include the following:

(a) Agricultural and open burning amendments,

(b) Organic material emissions amendments,

(c) Continuous emissions monitoring.

The notices of proposed rulemaking for this submittal were published on June 22, 1977 (42 FR 31609), and February 14, 1978 (43 FR 6265). No comments were received during the comment periods.

Under section 110 of the Clean Air Act, as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove the submitted regulations as SIP revisions.

It is the purpose of this notice to approve and, where appropriate, disapprove or take no action on changes contained in the November 10, 1976, October 13, 1977, and November 4, 1977, submittals and to incorporate them into the California SIP as discussed below.

Rules 105(A)(1) and 407 are approved.

No action is being taken on some sections of rule 502, Agricultural Burning. Section G of this rule is a nuisance rule and is not appropriate for inclusion in the SIP since it is not specifically directed at the attainment and maintenance of the national ambient air quality standards (NAAQS). Section J (1)-(4) provides exemptions from this rule in the event of threatened economic loss, burning from January to May, and the burning of empty pesticide sacks or containers. Action will be taken on Section J (1)-(4) in a separate FEDERAL REGISTER notice. No action will be taken on section O(2) because it contains a typographical error. The remainder of rule 502 is approved.

Sections A(7) and B of rule 501, General Burning Provisions, are disapproved because they relax the control of emissions and no control strategy has been submitted to show that this relaxation of control will not interfere with the attainment and maintenance of the NAAQS. The previously approved rule 115(2) remains in effect since it does not permit the additional burning allowed under rule 501(B). The remainder of rule 501 is approved.

Rule 113, Continuous Emissions Monitoring, is approved since it partially satisfies the requirements of 40 CFR 51.19(e). However, this rule does not meet all the requirements of § 51.19(e) and appendix P.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a) of the Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40, of the Code of Federal Regulation is amended as follows:

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(35)(xii)(D), (c)(41)(vi), and (c)(42)(vii) as follows:

§ 52.220 Identification of plan.

* * * * * *

(c) * * *
(35) * * *
(xii) * * *

(D) Amended rules 501, and 502 (sections A-F, H-I, K-N, O(1), P-Q).

* * * * *

(41) * * *

(vi) San Luis Obispo County APCD.

(A) New rule 113.

* * * * *

(42) * * *

(vii) San Luis Obispo County APCD.

(A) New or amended rules 105(A)(1), 407, 501(A)(7), 502(A)(3).

* * * * *

2. Section 52.273 is amended by adding paragraph (b)(1)(ii) as follows:

§ 52.273 Open burning.

* * * * *

(b) * * *

(1) * * *

(ii) San Luis Obispo County APCD.

(A) Sections A(7) and B of rule 501, submitted on November 4, 1977, and November 10, 1976, respectively, are disapproved. The previously approved rule 115(2), submitted in February 1972, remains in effect.

* * * * *

3. Section 52.234 is amended by adding paragraph (e)(7) as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *

(7) South Central Coast Intrastate AQCR:

(i) San Luis Obispo APCD.

* * * * *

[FR Doc. 78-31345 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-3]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Madera County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to disapprove changes to the Madera County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace D. Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On June 29, 1978 (43 FR 28214) EPA published a Notice of Proposed Rulemaking for revisions to the Madera County APCD's rules and regulations submitted on October 13, 1977, by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to disapprove certain agricultural burning exemption rules or portions of rules which were previously not acted upon and which are now part of the applicable SIP.

The October 13, 1977, submittal contained only revisions to Rule 412.1, *Transfer of Gasoline Into Stationary Storage Containers.*

Under section 110 of the Clean Air Act as amended and 40 CFR Part 51, the Administrator is required to approve or disapprove the rule as a State Implementation Plan revision.

A list of the rules being considered by this action was published as part of the Notice of Proposed Rulemaking and can be found in 43 FR 28214 (June 29, 1978). No comments were received during the public comment period.

It is the purpose of this final rulemaking notice to disapprove the change contained in the October 13, 1977, submittal. This rulemaking notice also finalizes the disapproval of certain agricultural burning exemption rules or portions of rules as discussed below.

Rule 412.1, *Transfer of Gasoline Into Stationary Storage Containers,* has been revised by weakening certain control requirements. A new exemption is provided for the transfer of gasoline into storage containers having a capacity of 2,000 gallons or less, which were installed prior to January 1, 1978. This exemption replaces the exemption contained in the previously approved Rule 411.1 submitted on April 10, 1976, for all tanks installed prior to January 1, 1975. The Federally promulgated regulation 40 CFR 52.255, is presently applicable to tanks installed prior to January 1, 1975. Further, section 52.255 provides an exemption for tanks installed prior to July 1, 1975, provided they are installed with permanent submerged fill pipes by May 31, 1977. The effect of approving the new revision contained in Rule 412.1 would be to eliminate the control requirement of 90 percent vapor recovery for storage tanks smaller than 2,000 gallons installed between July 1, 1975 and January 1, 1978.

The previously approved Rule 411.1 provides an exemption for delivery vehicles which exclusively service exempt storage containers. Rule 412.1 contains a revision to this exemption which eliminates the requirement that a delivery vehicle exclusively service exempt accounts. This revision has the effect of potentially exempting delivery vehicles which only service one exempt account, and thereby weakens the current control requirements.

Rule 412.1 has also been revised to exempt loading facilities exempted by Rule 413, and storage containers and delivery vehicles serviced from such loading facilities. This revision has the effect of exempting the loading of storage containers at bulk plants with daily throughputs less than 20,000 gallons, and the storage containers serviced by them. This revision is a weakening of the control requirements contained in the previously approved Rule 411.1, and the control requirements of 40 CFR 52.255.

Since an adequate control strategy demonstration has not been submitted indicating that the weakening of the control requirements will not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS), the rule is disapproved. Rules 411 and 411.1, submitted on June 30, 1972, and April 10, 1976, respectively, will remain the applicable regulations for storage containers installed after January 1, 1975, in Madera County, and the federally promulgated regulation 40 CFR 52.255 will remain applicable to all other sources.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning rules; namely rules 416.1 (c)(1), (e)(1), (e)(3), and (e)(4), submitted on January 10, 1975. These rules are now being disapproved as follows:

Rule 416.1(c)(1), *Agricultural Burning, Prohibitions, Range Improvement Burning,* allows range improvement burning on no-burn days and authorizes the Air Pollution Control Officer to prohibit range improvement burning during the permitted period where "such prohibition is required for maintenance of suitable air quality." This rule is disapproved because (1) "suitable air quality" is not defined, and (2) no data was submitted which demonstrates that this additional exemption would not interfere with the attainment and maintenance of the NAAQS.

Rule 416.1(e)(1), *Agricultural Burning, Exceptions,* is disapproved since it allows the Air Pollution Control Officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Rule 416.1(e)(3), *Agricultural Burning, Exceptions,* is disapproved because it exempts open burning in agricultural operations above 3,000 feet mean sea level and a control strategy demonstration showing that this exemption will no interfere with the attainment and maintenance of the NAAQS was not submitted.

Rule 416.1(e)(4), *Agricultural Burning, Exceptions,* exempts agricultural burning in areas above 6,000 feet mean sea level. Since paragraphs (e)(3) and (e)(4) taken together replace rule 416.1(c)(2) and they are not separable, they both are disapproved. Rule 416.1(c)(2) submitted on June 30, 1972, and previously approved under 40 CFR 52.223 is retained.

In addition, we have reevaluated rules concerning agricultural burning and visible emission exemptions and found that portions of Madera County APCD's rules were approved in error. We are now disapproving rules 402 (c) and (e), *Exceptions* and Rule 416.1(c)(1) *Agricultural Burning,* previously approved under 40 CFR 52.223.

Rules 402 (c) and (e), *Exceptions,* submitted on January 10, 1975, and previously approved exempt "agricultural operations" and "other equipment used in agricultural operations" from the visible emissions rule. The terms "agricultural operations" and "other equipment" are not defined in the rules and regulations. The lack of definitions for these terms renders rule 401, *Visible Emissions,* potentially unenforceable. EPA is therefore disapproving rules 402 (c) and (e).

Rule 416.1(c)(1), *Agricultural Burning, Exceptions,* submitted on June 30, 1972, and previously approved, allows the Air Pollution Control Officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

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

Subpart F—California

1. Section 52.220, paragraphs (c)(26)(xiii)(D) and (c)(41)(xiii) are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *
(26) * * *
(xiii) * * *
(D) New or amended rules 416.1 (c)(1), (e)(1), (e)(3), and (e)(4).

* * * * *

(41) * * *
(xiii) Madera County APCD.
(A) Amended Rule 412.1.

* * * * *

2. Section 52.236, paragraph (b)(3)(v) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(b) * * *
(3) * * *
(v) Madera County APCD.
(A) Rules 402(c) and 402(e), *Exceptions,* submitted on January 10, 1975, and previously approved under 40 CFR 52.223 (42 FR 42219).

* * * * *

3. Section 52.269, paragraph (b)(1)(vii) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *
(1) * * *
(vii) Madera County APCD.
(A) Rule 412.1, *Transfer of Gasoline Into Stationary Storage Containers,* submitted on October 13, 1977, is disapproved; and Rules 411, *Gasoline Storage* and 411.1, *Transfer of Gasoline Into Stationary Storage Containers,* submitted on June 30, 1972, and April 10, 1976, respectively, and previously approved under 40 CFR 52.223 are retained.

* * * * *

4. Section 52.273, paragraphs (a)(3)(ix) and (b)(2)(iv) are added as follows:

§ 52.273 Open burning.

(a) * * *
(3) * * *
(ix) Madera County APCD.
(A) Rules 416.1 (e)(1), (e)(3), and (e)(4), *Agricultural Burning, Exceptions,* submitted on January 10, 1975.
(B) Rule 416.1(c)(1), *Agricultural Burning, Exceptions,* submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

* * * * *

(b) * * *
(2) * * *
(iv) Madera County APCD.
(A) Rule 416.1(c)(1), *Agricultural Burning, Prohibitions—Range Improvement Burning,* submitted on January 10, 1975.

* * * * *

[FR Doc. 78-31348 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-4]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Fresno County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Fresno County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being approved or disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, Attention: Wallace D. Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On July 25, 1978 (43 FR 32151) EPA published a Notice of Proposed Rulemaking for revisions to the Fresno County APCD's rules and regulations

submitted on November 4, 1977 by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to approve/disapprove certain agricultural burning and visible emission exemption rules which were previously not acted upon and portions of rules which are now part of the applicable SIP.

The changes contained in this submittal and being acted upon by this notice include the following: addition of an exemption for the burning of cotton gin wastes and revision to the gasoline vapor recovery rule.

In addition, regulations were submitted concerning new source review. Those regulations will be considered in a separate FEDERAL REGISTER notice.

The State also submitted regulations concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on November 4, 1977. These NSPS and NESHAPS regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State Implementation Plan under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of section 111 and 112. Announcement of such delegation would appear in a separate FEDERAL REGISTER notice.

Under section 110 of the Clean Air Act as amended, and 40 CFR Part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

A list of the rules being considered by this action was published as part of the Notice of Proposed Rulemaking and can be found in 43 FR 32151 (July 25, 1978). No comments were received during the public comment period.

It is the purpose of this final rulemaking notice to disapprove the changes contained in the November 4, 1977 submittal as discussed below. This rulemaking notice also finalizes the approval/disapproval of certain agricultural burning and visible emission exemption rules which is also discussed below.

Rule 411.1, *Gasoline Transfer Into Vehicle Fuel Tanks,* revises the previously approved rule submitted on April 21, 1976. A new subparagraph has been added to the rule which contains exemptions. These exemptions include: (1) the fueling of implements of husbandry; (2) the transfer of gasoline from any stationary storage container having a capacity of 7,570 liters (2,000) gallons or less which was installed prior to July 1, 1975; (3) the transfer of gasoline from any stationary storage container of a capacity of 950 liters (250 gallons) or less; and (4) the transfer of gasoline from any stationary storage container served from loading facilities exempted in rule 411. These exemptions represent a weakening of the control requirements from the currently approved SIP regulation.

The revised rule is disapproved since a control strategy demonstration has not been submitted indicating that the weakening of the control requirements would not interfere with the attainment and maintenance of the National Ambient Air Quality Standards (NAAQS). Rule 411.1 submitted on April 21, 1976 and previously approved under 40 CFR 52.223 will remain the applicable regulation for Fresno County APCD.

Rule 416.1(g), *Cotton Gin Waste Burning,* represents a relaxation in control requirements in that the burning of cotton gin waste was previously prohibited under rule 415, *Open Burning.* A control strategy analysis has not been submitted indicating that this new exemption would not interfere with the attainment and maintenance of the NAAQS, and therefore, is disapproved.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning and visible emission exemption rules; namely, rules 402 (a) to (g), and rules 416.1(c)(1), (e)(1), (e)(3), and (e)(4), submitted on October 23, 1974. These rules are now being approved or disapproved as follows:

Rules 402 (c) and (e), *Exceptions,* exempt "agricultural operations" and "other equipment used in agricultural operations" from the visible emissions rule. The terms "agricultural operations" and "other equipment" are not defined in the rules and regulations. The lack of definitions for these terms renders rule 401, *Visible Emissions* potentially unenforceable. EPA is therefore disapproving rules 402 (c) and (e).

Rule 402(f), *Exceptions,* exempts emissions in excess of established limits due to equipment breakdown from a violation of emission limits. This rule is disapproved because it renders applicable emission limitations potentially unenforceable and as such could interfere with the attainment and maintenance of the national standards.

All other sections of rule 402 (paragraphs a, b, d, and g) are approved as consistent with section 110 of the Clean Air Act.

Rule 416.1(c)(1), *Agricultural Burning, Prohibitions,* allows range improvement burning on "no-burn" days and authorizes the Air Pollution Control Officer to prohibit range improvement burning during the permitted period where "such prohibition is required for maintenance of suitable air quality." This rule is disapproved because (1) "suitable air quality" is not defined, and (2) no data was submitted which demonstrates that this additional exemption would not interfere with the attainment and maintenance of the NAAQS.

Rule 416.1(e)(1), *Agricultural Burning, Exceptions,* is disapproved since it allows the Air Pollution Control Officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Rule 416.1(e)(3), *Agricultural Burning, Exceptions,* is disapproved because it exempts open burning in agricultural operations above 3,000 feet mean sea level and a control strategy demonstration showing that this exemption will not interfere with the attainment and maintenance of the NAAQS was not submitted.

Rule 416.1(e)(4), *Agricultural Burning, Exceptions,* exempts agricultural burning in areas above 6,000 feet mean sea level. Since paragraphs (e)(3) and (e)(4) taken together replace rule 416.1(c)(2) and they are not separable, they both are disapproved. Rule 416.1(c)(2) submitted on June 30, 1972 and previously approved under 40 CFR 52.223 is retained.

In addition, we have reevaluated rules concerning agricultural burning and visible emission exemptions and found that portions of Fresno County APCD's rules were approved in error. We are now disapproving rules 402 (c) and (e), *Exceptions,* submitted on June 30, 1972 and previously approved in 40 CFR 52.223, for the reasons discussed above regarding rules 402 (c) and (e) submitted on October 23, 1974.

Rule 416.1(c)(1), *Agricultural Burning, Exceptions,* submitted on June 30, 1972 and previously approved, allows the Air Pollution Control Officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

It is also the purpose of this action to correct a clerical error that appeared in 40 CFR 52.220. Rule 416.1, *Agricultural Burning,* submitted on January 10, 1975, was inadvertently listed under subparagraph (c)(26)(vii), which indicates that the rule had been acted upon. Since that rule has not and will not be acted upon because it is identical to rule 416.1, submitted on October 23, 1974, it is being eliminated from this list.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act as amended (42 U.S.C. §§ 7410 and 7601(a)).)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

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

Subpart F—California

1. In § 52.220, the following changes are made:

a. Paragraph (c)(25)(i)(C) is added.

b. Paragraph (c)(26)(vii)(A) is revised.

c. Paragraph (c)(42)(xi) is added.

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(25) * * *

(i) * * *

(C) New or amended Rules 402 (a to g), 416.1(c)(1), 416.1(e)(1), 416.1(e)(3), and 416.1(e)(4).

* * * * *

(26) * * *

(vii) * * *

(A) Rules 409, 417, 503, 507, 513, and 515.

* * * * * *

(42) * * *

(xi) Fresno County APCD

(A) New or amended Rules 411.1 and 416.1(g).

* * * * *

2. Section 52.236, paragraph (b)(3)(iii) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(b) * * *

(3) * * *

(iii) Fresno County APCD.

(A) Rules 402(c) and 402(e), *Exceptions,* submitted on October 23, 1974.

(B) Rules 402(c) and 402(e), *Exceptions,* submitted on June 30, 1972, and previously approved under 40 CFR 52.223 (37 FR 19812).

* * * * *

3. Section 52.269, paragraph (b)(1)(v) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and Carbon Monoxide.

* * * * *

(b) * * *

(1) * * *

(v) Fresno County APCD.

(A) Rules 411.1, *Gasoline Transfer Into Vehicle Fuel Tanks,* submitted on November 4, 1977, is disapproved; and Rule 411.1 submitted on April 21, 1976, and previously approved under 40 CFR 52.223, is retained.

* * * * *

4. Section 52.271, paragraph (a)(4)(ii)(C) is added as follows:

§ 52.271 Malfunction regulations.

(a) * * *

(4) * * *

(ii) * * *

(C) Rule 402(f) submitted on October 23, 1974, is disapproved.

* * * * *

5. Section 52.273, paragraphs (a)(3)(viii) and (b)(2)(iii) are added as follows:

§ 52.273 Open burning.

(a) * * *

(3) * * *

(viii) Fresno County APCD.

(A) Rules 416.1 (e)(1), (e)(3), and (e)(4), *Agricultural Burning, Exceptions,* submitted on October 23, 1974.

(B) Rule 416.1(c)(1), *Agricultural Burning, Exceptions,* submitted on June 30, 1972 and previously approved under 40 CFR 52.223 (37 FR 19812).

* * * * *

(b) * * *

(2) * * *

(iii) Fresno County APCD.

(A) Rule 416.1(g), *Cotton Gin Waste Burning,* submitted on November 4, 1977.

(B) Rule 416.1(c)(1), *Agricultural Burning, Prohibitions,* submitted on October 23, 1974.

* * * * *

[FR Doc. 78-31349 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 1003-5]

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

California Plan Revision: Tulare County Air Pollution Control District

AGENCY: Environmental Protection Agency.

ACTION: Final rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) takes final action to approve and, where appropriate, disapprove or take no action on changes to the Tulare County Air Pollution Control District (APCD) portion of the California State Implementation Plan (SIP) submitted by the Governor's designee. In addition, rules or portions of rules which were previously not acted upon or which are now part of the applicable SIP are being disapproved. The intended effect of this action is to update rules and regulations and to correct certain deficiencies in the SIP.

EFFECTIVE DATE: December 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Allyn M. Davis, Director, Air and Hazardous Materials Division, Environmental Protection Agency, 215 Fremont Street, San Francisco, Calif. 94105, attention: Wallace D. Woo, 415-556-7288.

SUPPLEMENTARY INFORMATION: On July 25, 1978 (43 FR 32150) EPA published a Notice of Proposed Rulemaking for revisions to the Tulare County APCD's rules and regulations submitted on October 13, 1977, by the California Air Resources Board for inclusion in the California SIP. In addition, EPA proposed to disapprove certain agricultural burning exemption rules which were previously not acted upon and portions of rules which are now part of the applicable SIP.

The changes contained in this submittal and being acted upon this notice include the following: Addition of an in-stack monitoring rule and revision to the gasoline vapor recovery rule.

Under section 110 of the Clean Air Act, as amended, and 40 CFR part 51, the Administrator is required to approve or disapprove regulations submitted as SIP revisions.

The State also submitted regulations concerning New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAPS) on October 13, 1977. These NSPS and NESHAPS regulations implement sections 111 and 112 of the Clean Air Act, and are not appropriate for inclusion in a State Implementation Plan under section 110 of the Act. Therefore, these regulations will be neither approved nor disapproved by EPA as part of an applicable implementation plan. They will, however, be reviewed in determining whether to delegate authority to implement and enforce the NSPS and NESHAPS regulations in the APCD under the appropriate provisions of sections 111 and 112. Announcement of such delegation would appear in a separate FEDERAL REGISTER notice.

A list of the rules being considered by this action was published as part of the Notice of Proposed Rulemaking

and can be found in 43 FR 32150 (July 25, 1978). No comments were received during the comment period.

It is the purpose of this final rulemaking notice to approve section 108, *Stack Monitoring,* contained in the October 13, 1977, submittal and to incorporate the rule into the California SIP and to disapprove § 412.1 as discussed below. This rulemaking notice also finalizes the disapproval of certain agricultural burning exemption rules as discussed below.

Section 108 is approved since it requires continuous monitoring for specified sources, and thereby partially fulfills the requirements of 40 CFR 51.19(e). It is noted, however, that it does not meet all of the requirements of 40 CFR 51.19(e) and appendix P of part 51.

Section 412.1, *Transfer of Gasoline Into Vehicle Fuel Tanks,* revises the previously approved rule submitted on April 21, 1976. The previously approved rule regulated the transfer of gasoline into motor vehicle fuel tanks. The revised rule only regulates the transfer of gasoline from "stationary storage containers" into motor vehicle fuel tanks. This change constitutes a weakening in that the fueling of vehicles from tank trucks is exempted. This would affect the fueling of emergency vehicles while performing emergency work, such as fire fighting. The control requirement that vapor recovery systems be designed to prevent automotive fuel tank overfills or spillage on fill nozzle disconnect has been eliminated from the new rule. The elimination of this requirement weakens the control requirements for vapor recovery systems and, thereby, has the potential of allowing exceedance of the National Ambient Air Quality Standards (NAAQS). The revised rule is disapproved since a control strategy demonstration has not been submitted indicating that the weakening of the control requirements will not interfere with the attainment and maintenance of the NAAQS. Section 412.1, submitted on April 21, 1976, and previously approved under 40 CFR 52.223, will remain the applicable regulation for Tulare County APCD.

In the FEDERAL REGISTER notice dated August 22, 1977 (42 FR 42219), action was deferred on certain agricultural burning rules; namely, § 417.1 (e)(1), (e)(3), and (e)(4) submitted on January 10, 1975. These rules are now being disapproved as follows:

Section 417.1(e)(1), *Agricultural Burning, Exceptions,* is disapproved since it allows the Air Pollution Control Officer to authorize agricultural burning on no-burn days if denial of such permission would threaten economic loss. Economic factors are an impermissible basis upon which to condition the granting of exceptions from the emission limitations absent a showing that all other requirements of section 110 of the Clean Air Act as well as NAAQS will be met.

Section 417.1(e)(3), *Agricultural Burning, Exceptions,* is disapproved because it exempts open burning in agricultural operations above 3,000 feet mean sea level and a control strategy demonstration showing that this exemption will not interfere with the attainment and maintenance of the NAAQS was not submitted. Section 417.1(e)(4), *Agricultural Burning, Exceptions,* exempts agricultural burning in areas above 6,000 feet mean sea level. Since paragraphs (e)(3) and (e)(4) taken together replace section 417(III)(B) and they are not separable, they both are disapproved. Section 417(III)(B) submitted on June 30, 1972 and previously approved is retained.

In addition, we have reevaluated rules concerning agricultural burning and visible emission exemptions and found that portions of Tulare County APCD's rule were approved in error. We are now disapproving section 402(c), *Exceptions,* submitted on November 10, 1976 and previously approved in 40 CFR 52.223. Section 402(c) exempts "agricultural operations" from the visible emissions rule. The term "agricultural operations" is not defined in the rules and regulations. The lack of definition for this term renders section 401, *Visible Emissions* potentially unenforceable. EPA is therefore disapproving section 402(c).

Section 417(III)(A), *Exceptions,* submitted on June 30, 1972, and previously approved, allows the Air Pollution Control Officer to authorize burning on no-burn days. Since this authority has the potential of allowing exceedance of the NAAQS, it is not consistent with the Clean Air Act and is therefore disapproved.

The California Air Resources Board has certified that the public hearing requirements of 40 CFR 51.4 have been satisfied.

(Secs. 110 and 301(a), Clean Air Act, as amended (42 U.S.C. 7410 and 7601(a)).)

Dated: October 31, 1978.

DOUGLAS M. COSTLE,
Administrator.

Subpart F of part 52 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

Subpart F—California

1. Section 52.220, paragraphs (c)(26)(xi)(B) and (c)(41)(xi) are added as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(26) * * *

(xi) * * *

(B) New or amended rules 417.1(e)(1), (e)(3) and (e)(4).

* * * * *

(41) * * *

(xi) Tulare County APCD.

(A) New or amended rules 108 and 412.1.

* * * * *

2. Section 52.234, paragraph (e)(2)(vii) is added as follows:

§ 52.234 Source surveillance.

* * * * *

(e) * * *

(2) * * *

(vii) Tulare County APCD.

* * * * *

3. Section 52.236, paragraph (b)(3)(iv) is added as follows:

§ 52.236 Rules and regulations.

* * * * *

(b) * * *

(3) * * *

(iv) Tulare County APCD.

(A) Section 402(c), *Exceptions,* submitted on November 10, 1976, and previously approved under 40 CFR 52.223 (42 FR 47556).

* * * * *

4. Section 52.269, paragraph (b)(1)(vi) is added as follows:

§ 52.269 Control strategy and regulations: Photochemical oxidants (hydrocarbons) and carbon monoxide.

* * * * *

(b) * * *

(1) * * *

(vi) Tulare County APCD.

(A) section 412.1, *Transfer of Gasoline Into Vehicle Fuel Tanks,* submitted on October 13, 1977, is disapproved; and Section 412.1, submitted on April 21, 1976, and previously approved under 40 CFR 52.223, is retained.

* * * * *

5. Section 52.273, paragraphs (a)(3)(ii) (B) and (C) are added as follows:

§ 52.273 Open burning.

(a) * * *

(3) * * *

(ii) * * *

(B) Section 417(III)(A), *Exceptions,* submitted on June 30, 1972, and previ-

ously approved under 40 CFR 52.223 (37 FR 19812).

(C) Sections 417.1 (e)(1), (e)(3) and (e)(4), *Agricultural Burning, Exceptions*, submitted on January 10, 1975.

* * * * *

[FR Doc. 78-31350 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 999-1]

PART 65—DELAYED COMPLIANCE ORDERS

CLINTON CORN PROCESSING CO., CLINTON, IOWA

Approval of a Delayed Compliance Order Issued by Iowa Department of Environmental Quality

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by Iowa Department of Environmental Quality to the Clinton Corn Processing Co. (Clinton Corn). The order requires the company to bring air emissions from its Heil Dryers Nos. 1, 2, 3, 4, and 5 at Clinton into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP). Because of the Administrator's approval, Clinton Corn's compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the order is in effect.

DATE: This rule takes effect on November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Mo. 64108.

SUPPLEMENTARY INFORMATION: On September 1, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43 FR 39152, a notice proposing approval of a delayed compliance order issued by Iowa Department of Environmental Quality to Clinton Corn. The notice asked for public comments by October 2, 1978, on EPA's proposed approval of the order. No public comments were received in response to the proposal notice.

Therefore, the delayed compliance order issued to Clinton Corn is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places Clinton Corn on a schedule to bring its Heil Dryers Nos. 1, 2, 3, 4, and 5 at Clinton into compliance as expeditiously as practicable with subrule 400—4.4(7) Iowa Administrative Code, grain handling and processing plants, a part of the federally approved Iowa State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit Clinton Corn to delay compliance with the SIP regulations covered by the order until July 1, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Clinton Corn is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place Clinton Corn on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Iowa State Implementation Plan.

(42 U.S.C. 7413(d), 7601.)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending the table in § 65.201 as follows:

§ 65.201 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Docket No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Clinton Corn Processing Co.	Clinton, Iowa	VII-78-DCO-8	Subrule 400—4.4(7) I.A.C.	Sept. 1, 1978	July 1, 1979

[FR Doc. 78-31351 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 991-7]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by the Department of Ecology to Kaiser Aluminum & Chemical Corp.

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by the Department of Ecology to the Kaiser Aluminum & Chemical Corp. The order requires the company to bring air emissions from its petroleum coke calcining plant at Mead, Wash., into compliance with certain regulations contained in the federally approved Washington State Implementation Plan (SIP). Because of the Administrator's approval, Kaiser Aluminum &

Chemical Corp.'s compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the order is in effect.

DATED: This rule takes effect on November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Kenneth D. Brooks, Environmental Protection Agency, M/S 513, 1200 Sixth Avenue, Seattle, Wash. 98101, telephone 206-442-1387.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: 1200 Sixth Avenue, Seattle, Wash. 98101, 11D, Park Place Building.

SUPPLEMENTARY INFORMATION: On August 23, 1978, the Regional Administrator of EPA's Region 10 Office published in the FEDERAL REGISTER, 40 CFR 37468 (August 23, 1978) a notice proposing approval of a delayed compliance order issued by the Department of Ecology to the Kaiser Aluminum & Chemical Corp. The notice asked for public comments by September 22, 1978, on EPA's proposed approval of the order. No public comments were received.

Therefore, the delayed compliance order issued to Kaiser Aluminum & Chemical Corp. is approved by the Administrator of EPA pursuant to the authority of section 113(d)(2) of the Clean Air Act, 42 U.S.C. 7413(d)(2). The order places Kaiser Aluminum & Chemical Corp. on a schedule to bring its petroleum coke calcining plant at Mead, Wash., into compliance as expeditiously as practicable with the provisions of the Washington administrative code, WAC 18-52-031, a part of the federally approved Washington State Implementation Plan. The order also imposes interim requirements which meet sections 113(d)(1)(C) and 113(d)(7) of the Act, and emission monitoring and reporting requirements. If the conditions of the order are met, it will permit Kaiser Aluminum & Chemical Corp. to delay compliance with the SIP regulations covered by the order until July 1, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Kaiser Aluminum & Chemical Corp. is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the Act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the Act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place Kaiser Aluminum & Chemical Corp. on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Washington State Implementation Plan.

(42 U.S.C. 7413(d), 7601.)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending § 65.521 to read as follows:

§ 65.521 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Order No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Kaiser Aluminum & Chemical Corp.	Mead, Wash	W03	WAC 18-52-031.	Aug. 23, 1978.	July 1, 1979.

[FR Doc. 78-31353 Filed 11-6-78; 8:45 am]

[6560-01-M]

[FRL 999-3]

PART 65—DELAYED COMPLIANCE ORDERS

Approval of a Delayed Compliance Order Issued by Iowa Department of Environmental Quality to Clinton Corn Processing Co., Clinton, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Administrator of EPA hereby approves a delayed compliance order issued by Iowa Department of Environmental Quality to the Clinton Corn Processing Co. (Clinton Corn). The order requires the company to bring air emissions from its gluten dust pickup cyclone at Clinton into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP). Because of the Administrator's approval, Clinton Corn's compliance with the order will preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act for violation(s) of the SIP regulations covered by the order during the period the order is in effect.

DATE: This rule takes effect on November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Peter J. Culver or Henry F. Rompage, Environmental Protection Agency, Region VII, 1735 Baltimore, Kansas City, Mo. 64108, 816-374-2576.

ADDRESS: A copy of the delayed compliance order, any supporting material, and any comments received in response to a prior FEDERAL REGISTER notice proposing approval of the order are available for public inspection and copying during normal business hours at: Environmental Protection Agency, Region VII, Enforcement Division, 1735 Baltimore, Kansas City, Mo. 64108.

SUPPLEMENTARY INFORMATION: On September 1, 1978, the Regional Administrator of EPA's Region VII Office published in the FEDERAL REGISTER, 43 FR 39153, a notice proposing approval of a delayed compliance order issued by Iowa Department of Environmental Quality to the Clinton Corn. The notice asked for public comments by October 2, 1978, on EPA's proposed approval of the order. No public comments were received in response to the proposal notice.

Therefore the delayed compliance order issued to Clinton Corn is approved by the Administrator of EPA

pursuant to the authority of § 113(d)(2) of the Clean Air Act, 42 U.S.C 7413(d)(2). The order places Clinton Corn on a schedule to bring its gluten dust pickup cyclone at Clinton into compliance as expeditiously as practicable with subrule 400—4.4(7) Iowa Administrative Code, grain handling and processing plants, a part of the federally approved Iowa State Implementation Plan. The order also imposes emission monitoring and reporting requirements. It has been determined that interim requirements for emission reduction prior to final compliance as specified in subparagraph A-5, are not feasible. If the conditions of the order are met, it will permit Clinton Corn to delay compliance with the SIP regulations covered by the order until February 15, 1979. The company is unable to immediately comply with these regulations.

Because the order has been approved by EPA, compliance with its terms will preclude Federal enforcement action under section 113 of the Act for violations of the SIP regulations covered by the order during the period the order is in effect. Citizen suits under section 304 of the Act are similarly precluded. If the Administrator determines that Clinton Corn is in violation of a requirement contained in the order, one or more of the actions required by section 113(d)(9) of the act will be initiated. Publication of this notice of final rulemaking constitutes final Agency action for the purposes of judicial review under section 307(b) of the act.

EPA has determined that its approval of the order shall be effective upon publication of this notice because of the need to immediately place Clinton Corn on a schedule which is effective under the Clean Air Act for compliance with the applicable requirement(s) of the Iowa State Implementation Plan.

(42 U.S.C. 7413(d), 7601.)

Dated: October 30, 1978.

DOUGLAS M. COSTLE,
Administrator.

In consideration of the foregoing, chapter 1 of title 40 of the Code of Federal Regulations is amended as follows:

1. By amending § 65.201 to read as follows:

§ 65.201 EPA approval of State delayed compliance orders issued to major stationary sources.

* * * * *

Source	Location	Docket No.	SIP regulation(s) involved	Date of FR proposal	Final compliance date
*	*	*	*	*	*
Clinton Corn Processing Co.	Clinton, Iowa.....	VII-78-DCO-9	Subrule 400—4.4(7) I.A.C.	Sept. 1, 1978..	Feb. 15, 1979.

[FR Doc. 78-31352 Filed 11-6-78; 8:45 am]

[6325-01-M]

Title 45—Public Welfare

CHAPTER VIII—U.S. CIVIL SERVICE COMMISSION

PART 801—VOTING RIGHTS PROGRAM

Appendix A: Alabama, South Carolina, Texas

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: The Attorney General has designated additional counties as coming under the provisions of the Voting Rights Act of 1965, as amended, in the general election on November 7, 1978. This designation requires Federal observers (under the administrative direction of the U.S. Civil Service Commission) to be on site, in the specified county, to monitor the election. This designation also requires the Civil Service Commission to identify the location of a new office for the filing of applications or complaints under the Voting Rights Act of 1965, as amended.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. Joseph A. Norris, Acting Coordinator, Voting Rights Program, U.S. Civil Service Commission, Washington, D.C. 20415, 202-632-4604.

SUPPLEMENTARY INFORMATION: The Attorney General has designated Bullock County, Ala., as coming within the provisions of the Voting Rights Act of 1965, as amended.

Accordingly, 45 CFR Part 801, appendix A, is amended to show an additional place under the heading "Dates, Times and Places" for filing in Alabama, as follows:

ALABAMA

County; place for filing; beginning date.
* * * * *
Bullock; Union Springs—U.S. Post Office, 108 E. Hardaway Street; November 7, 1978.
* * * * *

The Attorney General has also designated Darlington County, S.C., as coming within the provisions of the Voting Rights Act of 1965, as amended.

Accordingly, 45 CFR Part 801, appendix A, is amended to show on additional place under the heading "Dates, Times and Places" for filing in South Carolina, as follows:

SOUTH CAROLINA

County; place for filing; beginning date.
* * * * *
Darlington; Darlington—U.S. Post Office, 201 Pearl Street; November 7, 1978.
* * * * *

In addition, the Attorney General has designated El Paso County, Tex., as coming within the provisions of the Voting Rights Act of 1965, as amended.

Accordingly, 45 CFR Part 801, appendix A, is amended to show an additional place under the heading "Dates, Times and Places" for filing in Texas, as follows:

TEXAS

County; place for filing, beginning date.
* * * * *
El Paso; El Paso—2211 East Missouri Avenue, Suite N300; November 7, 1978.
* * * * *

(Secs. 7, 9, 79 Stat. 440, 441 (42 U.S.C. 1973c, 1973g).)

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

[FR Doc. 78-31614 Filed 11-6-78; 8:45 am]

[4110-92-M]

CHAPTER XIII—OFFICE OF HUMAN DEVELOPMENT SERVICES, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 1350—JUVENILE DELINQUENCY PREVENTION PROGRAMS AND ACTIVITIES

Deletion of Part 1350 of Title 45

AGENCY: Office of Human Development Services, HEW.

ACTION: Notice of deletion from the Code of Federal Regulations.

SUMMARY: This document amends the Code of Federal Regulations by deleting an entire part (Part 1350). The amendment is necessary because the statutory authority for this program has expired. The effect of the amendment will be to update the current regulations of the Office of Human Development Services.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Ms. Sheila Morgenstern, Office of Human Development Services, Youth Development Bureau, ACYF, 330 Independence Avenue SW., Washington, D.C. 20201, 202-245-2840.

SUPPLEMENTAL INFORMATION: The regulations set forth in this part were established pursuant to the Juvenile Delinquency Prevention Act (42 U.S.C. 3801 et seq.). Our authority to make grants under that Act expired on June 30, 1975, and these regulations are now obsolete. Therefore, Part 1350 is removed from Title 45 of the Code of Federal Regulations.

(Catalog of Federal Domestic Assistance Program No. 13610.)

Dated: September 28, 1978.

ARABELLA MARTINEZ,
Assistant Secretary for Human Development Services.

Approved: November 1, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31486 Filed 11-6-78; 8:45 am]

[6820-35-M]

CHAPTER XVI—LEGAL SERVICES CORPORATION

PART 1602—PROCEDURES FOR DISCLOSURE OF INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

Revision of Part

AGENCY: Legal Services Corporation.

ACTION: Final regulations.

SUMMARY: This rule revises the Corporation's regulations issued in accordance with the Freedom of Information Act. The only substantive change is in the fees charged for locating and reproducing materials requested under the Act. The fees have been adjusted to reflect the actual charge to the Corporation. All other changes are merely technical or stylistic in nature.

EFFECTIVE DATE: December 7, 1978.

ADDRESS: Legal Services Corporation, 733 15th Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: On July 28, 1978, the Corporation published for notice and comment certain stylistic and other minor revisions of Part 1602—Procedures for Disclosure of Production of Information Under the Freedom of Information Act. No comments were received. The Corporation's Board of Directors has authorized republication of the proposed revision in final form. Part 1602 of the Legal Services Corporation regulations was repealed and replaced by the following:

Sec.
1602.1 Purpose.
1602.2 Definitions.
1602.3 Policy.
1602.4 Index of records.
1602.5 Central records room.
1602.6 Regional records rooms.
1602.7 Use of records rooms.
1602.8 Availability of records on request.
1602.9 Invoking exemptions to withhold a requested record.
1602.10 Officials authorized to grant or deny requests for records.
1602.11 Denials.
1602.12 Appeals of denials.
1602.13 Fees.

AUTHORITY: Sec. 1005(g) (42 U.S.C. 2996d(g)).

§ 1602.1 Purpose.

This part prescribes the procedures by which records of the Legal Services Corporation may be made available pursuant to section 1005(g) of the Legal Services Corporation Act, 42 U.S.C. 2996d(g), and the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552.

§ 1602.2 Definitions.

As used in this part—

(a) "FOIA" means the Freedom of Information Act, as amended in 1974, 5 U.S.C. 552;

(b) "Records" means books, papers, maps, photographs, or other documentary materials, regardless of physical form or characteristics, made or received by the Corporation in connection with the transaction of the Corporation's business and preserved by the Corporation as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Corporation, or because of the informational value of data in them. The term does not include books, magazines, or other materials acquired solely for library purposes and available through any officially designated library of the Corporation.

§ 1602.3 Policy.

The Corporation will make records concerning its operations, activities, and business available to the public to the maximum extent reasonably possible. Records will be withheld from the public only in accordance with the FOIA and this regulation. Records that may be exempt from disclosure may be made available as a matter of discretion when disclosure is not prohibited by law, and it does not appear adverse to legitimate interests of the public, the Corporation, or any individual. The Corporation will attempt to provide assistance to requesting parties, including information about how a request may be submitted. The Corporation will act on requests for records in a timely manner.

§ 1602.4 Index of records.

The Corporation will maintain a current index identifying any matter within the scope of § 1602.5(b) (1)-(3) which has been issued, adopted, or promulgated by the Corporation, and other information published or made publicly available. The index will be maintained and made available for public inspection and copying at the Corporation's headquarters in Washington, D.C., and at each regional office. The Corporation will provide a copy of the index on request, at a cost not to exceed the direct cost of duplication.

§ 1602.5 Central records room.

(a) The Corporation will maintain a central records room at its headquarters at 733 15th Street NW., Suite 700, Washington, D.C. 20005, 202-376-5100. This room will be supervised by a Rec-

ords Officer, and will be open during regular business hours of the Corporation for the convenience of members of the public in inspecting and copying records made available pursuant to this part. Certain records, described in paragraph (b) of this section, will be regularly maintained in or in close proximity to the records room, to facilitate access thereto by any member of the public.

(b) Subject to the limitation stated in paragraph (c) of this subsection, there will be available in the central records room the following:

(1) All final opinions, including concurring and dissenting opinions, and orders made in the adjudication of cases;

(2) Statements of policy and interpretations adopted by the Corporation;

(3) Administrative staff manuals and instructions to the staff that affect the public;

(4) To the extent feasible, guidelines, forms, published regulations, notices, program descriptions, and other records considered to be of general interest to members of the public in understanding activities of the Corporation or in dealing with the Corporation in connection with those activities;

(5) The current index required by § 1602.4.

(c) Certain types of staff manuals or instructions, such as instructions to auditors or inspection staff, or instructions covering certain phases of contract negotiation, that deal with the performance of functions that would automatically be rendered ineffective by general awareness of the Corporation's techniques or procedures, may be exempt from mandatory disclosure even though they affect or may affect the public. These records will not be maintained in the central records room.

(d) Certain records maintained in the records room or otherwise made available pursuant to this part may be "edited" by the deletion of identifying details concerning individuals, to prevent a clearly unwarranted invasion of personal privacy. In such cases, the record shall have attached to it full explanation of the deletion.

§ 1602.6 Regional records rooms.

(a) Each regional office shall have either a specially designated records room similar to the central records room described in § 1602.5 or, if that is not feasible, a designated area within the office, a principal function of which is to serve the public in accordance with this part. The Corporation will endeavor to maintain and have readily available in its regional offices the records described in § 1602.5(b), and will designate a Records Officer in each regional office to receive and process requests submitted pursuant to this part.

(b) The regional records rooms as of June 15, 1978, are located at the following addresses:

Boston Regional Office, 84 State Street, Room 520, Boston, Mass. 02101.

New York Regional Office, 10 East 40th Street, Room 2010, New York, N.Y. 10016.

Philadelphia Regional Office, 101 North 33rd Street, Suite 404, Philadelphia, Pa. 19104.

Northern Virginia Regional Office, 1730 North Lynn Street, Suite 600—Rosslyn, Arlington, Va. 22209.

Chicago Regional Office, 310 South Michigan Avenue, 24th Floor, Chicago, Ill. 60604.

Atlanta Regional Office, 615 Peachtree Street NE., 9th Floor, Atlanta, Ga. 30308.

San Francisco Regional Office, 177 Post Street, Suite 890, San Francisco, Calif. 94104.

Denver Regional Office, 1726 Champa Street, Suite 500, Denver, Colo. 80202.

Seattle Regional Office, 506 Second Avenue, Room 1621, Seattle, Wash. 98104.

§ 1602.7 Use of records rooms.

(a) Any member of the public who wishes to inspect or copy records regularly maintained in the central or a regional records room may secure access to these records by presenting himself or herself at the records room during business hours. No advance notice or appointment is required, although persons wishing to make extended use of regional office facilities should take account of the possible limitations in these facilities.

(b) Each records room will also be available to any member of the public to inspect and copy records which are not regularly maintained in such room. To obtain such records a person should present his or her request identifying the records to the Records Officer. Because it will sometimes be impossible to produce these records or copies of them on short notice, a person who wishes to use records room facilities to inspect or copy such records is advised to arrange a time in advance, by telephone or letter request made to the Records Officer of the facility which he or she desires to use. Persons submitting requests by telephone will be advised by the Records Officer or another designated employee whether a written request would be advisable to aid in the identification and expeditious processing of the records sought. Persons submitting written requests should identify the records sought in the manner provided in § 1602.8(b) and should indicate whether they wish to use the records room facilities on a specific date. The Records Officer will endeavor to advise the requesting party as promptly as possible if, for any reason, it may not be possible to make the records sought available on the date requested.

§ 1602.8 Availability of records on request.

(a) In addition to the records made available through the records rooms, the Corporation will make such records available to any person in accordance with paragraphs (b) and (c) of this section, unless it is determined that such records should be withheld and are exempt from mandatory disclosure under the FOIA and § 1602.9 of these regulations.

(b) *Requests.* (1) A request will be acceptable if it identifies a record with sufficient particularity to enable officials of the Corporation to located the record with a reasonable amount of effort. Requests seeking records within a reasonably specific category will be deemed to conform to the statutory requirement of a request which "reasonably describes" such records if professional employees of the Corporation who are familiar with the subject area of the request would be able, with a reasonable amount of effort, to determine which particular records are encompassed within the scope of the request, and to search for, locate, and collect the records without unduly burdening or materially interfering with operations because of the staff time consumed or the resulting disruption of files. If it is determined that a request does not reasonably describe the records sought as specified in this paragraph, the response denying the request on that ground shall specify the reasons why the request failed to meet the requirements of this paragraph and shall extend to the requesting party an opportunity to confer with Corporation personnel in order to attempt to reformulate the request in a manner that will meet the needs of the requesting party and the requirements of this paragraph.

(2) To facilitate the location of records by the Corporation, a requesting party should try to provide the following kinds of information, if known: (i) the specific event or action to which the record refers; (ii) the unit or program of the Corporation which may be responsible for or may have produced the record; (iii) the date of the record or the date or period to which it refers or relates; (iv) the type of record such as an application, a grant, a contract, or a report; (v) personnel of the Corporation who may have prepared or have knowledge of the record; (vi) citations to newspapers or publications which have referred to the record.

(3) The Corporation is not required to create a record to satisfy a request for information. When the information requested exists in the form of several records at several locations, the requesting party should be re-

ferred to those sources if gathering the information would unduly burden or materially interfere with operations of the Corporation.

(4) All requests for records under this section shall be made in writing, with the envelope and the letter clearly marked: "Freedom of Information Request." All such requests shall be addressed to the Records Officer at the headquarters of the Corporation or at any regional records office. Any request not marked and addressed as specified in this subparagraph will be so marked by Corporation personnel as soon as it is properly identified, and forwarded immediately to the Records Officer. A request improperly addressed will not be deemed to have been received for purposes of the time period set forth in paragraph (c) of this section until forwarding to the appropriate office has been effected. On receipt of an improperly addressed request, the Records Officer shall notify the requesting party of the date on which the time period commenced to run.

(5) A person desiring to secure copies of records by mail should write to the Records Officer at the headquarters in Washington, D.C. The request must identify the records of which copies are sought in accordance with the requirements of this paragraph, and should indicate the number of copies desired. Fees may be required to be paid in advance in accordance with § 1602.13. The requesting party will be advised of the estimated fee, if any, as promptly as possible. If a waiver of fees is requested, the grounds for such request should be included in the letter.

(c) The Records Officer, upon request for any records made in accordance with this Part, shall make an initial determination of whether to comply with or deny such request and dispatch such determination to the requesting party within 10 days (excepting Saturdays, Sundays, and legal public holidays) after receipt of such request, except for unusual circumstances in which case the time limit may be extended for not more than 10 working days by written notice to the requesting party setting forth the reasons for such extension and the date on which a determination is expected to be dispatched. In determining whether to issue a notice of extension of time for a response to a request beyond the 10-day period, Corporation officials shall consult with the Office of the General Counsel. As used herein, "unusual circumstances" are limited to the following, but only to the extent reasonably necessary to the proper processing of the particular request:

(1) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(3) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request or among two or more components of the Corporation having substantial subject matter interest therein.

(d) If no determination has been dispatched at the end of the 10-day period, or the last extension thereof, the requesting party may deem his request denied, and exercise a right of appeal in accordance with § 1602.12. When no determination can be dispatched within the applicable time limit, the Records Officer shall nevertheless continue to process the request. On expiration of the time limit, he shall inform the requesting party of the reason for the delay, of the date on which a determination may be expected to be dispatched, and of his right to treat the delay as a denial and to appeal to the President in accordance with § 1602.12; and he may ask the requesting party to forego appeal until a determination is made.

(e) After it has been determined that a request will be granted, the Corporation will act with diligence in providing a substantive response.

§ 1602.9 Invoking exemptions to withhold a requested record.

(a) A requested record of the Corporation may be withheld from public disclosure only if one or more of the following categories exempted by the FOIA apply:

(1) Matter which is related solely to the internal personnel rules and practices of the Corporation;

(2) Matter which is specifically exempted from disclosure by statute;

(3) Trade secrets and commercial or financial information obtained from a person and priviledged or confidential;

(4) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the Corporation;

(5) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy;

(6) Investigatory records compiled for enforcing the Act or any other law, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right of a fair trail or an impartial adjudication, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel;

(b) In the event that one or more of the above exemptions applies, any reasonably segregable portion of a record shall be provided to the requesting party after deletion of the portions that are exempt. In appropriate circumstances, subject to the discretion of Corporation officials, it may be possible to provide a requesting party with: (1) a summary of information in the exempt portion of a record or (2) an oral description of the exempt portion of a record. In determining whether any of the foregoing techniques should be employed in accordance with this paragraph or whether an exemption should be waived in accordance with paragraph (c) of this section, Corporation officials shall consult with the Office of General Counsel. No requesting party shall have a right to insist that any or all of the foregoing techniques should be employed in order to satisfy a request.

(c) Records that may be exempted from disclosure pursuant to paragraph (a) of this section may be made available as a matter of discretion when disclosure is not prohibited by law, if it does not appear adverse to legitimate interests of the Corporation, the public, or any person.

§ 1602.10 Officials authorized to grant or deny requests for records.

The General Counsel shall furnish necessary advice to Corporation officials and staff as to their obligations under this Part and shall take such other actions as may be necessary or appropriate to assure a consistent and equitable application of the provisions of this Part by and within the Corporation. Other officials of the Corporation shall consult with the General Counsel before denying requests under this Part, or before granting requests for waiver or modified application of an exemption or for categories of documents which the General Counsel determines may present special or unusual problems. The General Counsel and, subject to consultation with him where required, the Records Officer, each Regional Director, and each Regional Records Officer are authorized to grant or deny requests under this part.

§ 1602.11 Denials.

(a) A denial of a written request for a record that complies with the requirements of § 1602.8 shall be in writing and shall include the following:

(1) A reference to the applicable exemption or exemptions in § 1602.9(a) upon which the denial is based;

(2) An explanation of how the exemption applies to the requested records;

(3) A statement explaining why it is deemed unreasonable to provide segregable portions of the record after deleting the exempt portions;

(4) The name and title of the person or persons responsible for denying the request; and

(5) An explanation of the right to appeal the denial and of the procedures for submitting an appeal, including the address of the official to whom appeals should be sumitted.

(b) Whenever the Corporation makes a record available subject to the deletion of a portion of the record, such action shall be deemed a denial of a record for purposes of paragraph (a) of this section.

(c) All denials shall be treated as opinions and shall be maintained and indexed accordingly, subject only to the necessity of deleting identifying details the release of which would constitute a clearly unwarranted invasion of personal privacy.

§ 1602.12 Appeals of denials.

(a) Any person whose written request has been denied is entitled to appeal the denial within ninety days by writing to the President of the Corporation at the headquarters in Washington, D.C. The envelope and letter should be clearly marked: "Freedom of Information Appeal." An appeal need not be in any particular form, but should adequately identify the denial, if possible, by describing the requested record, identifying the official who issued the denial, and providing the date on which the denial was issued.

(b) No personal appearance, oral argument, or hearing will ordinarily be permitted on appeal of a denial. Upon request and a showing of special circumstances, however, this limitation may be waived and an informal conference may be arranged with the President, or the President's specifically designated representative, for this purpose.

(c) The decision of the President on an appeal shall be in writing and, in the event the denial is in whole or in part upheld, shall contain an explanation responsive to the arguments advanced by the requesting party, the matters described in § 1602.11(a) (1)-(4), and the provisions for judicial review of such decision under section 552(a)(4) of the FOIA. The decision shall be dispatched to the requesting party within twenty working days after receipt of the appeal, unless an additional period is justified pursuant to § 1602.8(c) and such period taken together with any earlier extension does not exceed ten days. The President's decision shall constitute the final action of the Corporation. All such decisions shall be treated as final opinions under § 1602.5(b).

§ 1602.13 Fees.

(a) Information provided routinely in the normal course of doing business will be provided at no charge.

(b) The Records Officer may waive or reduce fees where special circumstances, including but not limited to the benefit of the general public, warrant. A Records Officer shall waive fees where the requesting party is indigent unless the fees would exceed $25 and may waive or reduce fees for the request of an indigent where the fees would exceed $25. These provisions will be subject to appeal in the same manner as appeals from denial under § 1602.12.

(c) There shall be no fee charged for services rendered by the Corporation pursuant to this Part, unless the charges, as calculated in paragraph (e) of this section, exceed $6.50. Where the charges are calculated to exceed $6.50, the fee shall be the difference between $6.50 and the calculated charges.

(d) Ordinarily, no fee shall be levied where the records requested are not provided or made available. However, if the time expended in processing the request is substantial, and if the requesting party has been notified of the estimated cost pursuant to paragraph (f) of this section, and has been specifically advised that it cannot be determined in advance whether any records will be made available, fees may be charged.

(e) The schedule of charges for services regarding the production or disclosure of the Corporation's records is as follows:

(1) Search for records and production of information based on the following schedule of direct labor charges:

(a) Programmer = $6.25/quarter hour
(b) Analyst = $3.50/quarter hour
(c) Processor/Clerical = $1.50/quarter hour

(2) Computer time: Actual charges as incurred.

(3) Reproduction, duplication, or copying of records: $0.10 per page.

(4) Reproduction, duplication, or copying of microfilm: Actual charges as incurred.

(5) Certification of true copies: $1.00 each.

(f) Where it is anticipated that the fee chargeable under this Part will amount to more than $25, and the requesting party has not indicated in advance his willingness to pay so high a fee, the requesting party shall be notified of the amount of the anticipated fee or such portion thereof as can readily be estimated. In such cases, a request will not be deemed to have been received until the requesting party is notified of the anticipated cost and agrees to bear it. Such a notification shall be transmitted as soon as possible, but in any event within five working days, giving the best estimate then available. The notification shall offer the requesting party the opportunity to confer with appropriate representatives of the Corporation for the purpose of reformulating the request so as to meet his needs at a reduced cost.

(g) Where the anticipated fee chargeable under this Part exceeds $25, an advance deposit of 25 percent of the anticipated fee may be required. Where a requesting party has previously failed to pay a required fee, an advance deposit of the full amount of the anticipated fee together with the fee then due and payable may be required.

(h) The Corporation reserves the right to limit the number of copies that will be provided of any document to any one requesting party, or to require that special arrangements for duplication be made in the case of bound volumes or other records representing unusual problems of handling or reproduction.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 78-31479 Filed 11-6-78; 8:45 am]

[6820-35-M]

PART 1609—FEE-GENERATING CASES

Authorized Representation

AGENCY: Legal Services Corporation.

ACTION: Final regulation.

SUMMARY: Under provisions of the Legal Services Corporation Act, legal services lawyers are restricted from undertaking fee-generating cases. In cases of this type, an attempt must be made to refer the client to a private lawyer. In 1977 that particular provision of the Act was amended to exclude those cases which involve clients seeking either social security or supplemental security income benefits. This rule implements that statutory change. It would eliminate the need for a legal services program to attempt to refer eligible clients to private attorneys.

EFFECTIVE DATE: December 7, 1978.

ADDRESS: Legal Services Corporation, 733 Fifteenth Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephan S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION: On August 1, 1978, the Legal Services Corporation published for notice and comment a proposal to amend Part 1609—Fee-Generating Cases, by adding a new § 1609.4(d). The proposal was designed to implement the statutory change permitting the exclusion of Social Security and Supplemental Income Cases from the statutory prohibition on accepting fee-generating cases. After reviewing the comments that were received, the Board of Directors has authorized republication of new § 1609.4(d) in final form.

§ 1609.4 Authorized representation in a fee-generating case.

Other adequate representation is deemed to be unavailable when:

* * * * *

(d) An eligible client is seeking benefits under Title II of the Social Security Act, 42 U.S.C. 401, *et seq.*, Federal Old Age, Survivors, and Disability Insurance Benefits; or Title XVI of the Social Security Act, 42 U.S.C. 1381, *et seq.*, Supplemental Security Income for Aged, Blind, and Disabled.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 78-31480 Filed 11-6-78; 8:45 am]

[6820-35-M]

PART 1620—PRIORITIES IN THE ALLOCATION OF RESOURCES

Revision of Part

AGENCY: Legal Services Corporation.

ACTION: Final rule.

SUMMARY: This rule revises the Corporation's regulations involving priorities in the allocation of resources. This action is taken to implement an amendment to section 1007(a)(2)(C) of the Legal Services Corporation Act which requires that recipients of Corporation resources take into account the relative needs of eligible clients in setting priorities for use of those resources.

EFFECTIVE DATE: December 7, 1978.

ADDRESS: Legal Services Corporation, 733 Fifteenth Street NW., Suite 700, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT:

Stephen S. Walters, 202-376-5113.

SUPPLEMENTARY INFORMATION:

On July 28, 1978, a revised version of Part 1620 was published for notice and comment in the FEDERAL REGISTER. The purposes of the revision were two: first, language was added to implement the amendment to section 1007(a)(2)(C) of the Act. That amendment requires that, in setting priorities for the use of resources, recipients take into account the relative needs of eligible clients "including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems * * *." The revisions to Part 1620 implement this requirement by ensuring that the needs of all significant segments of the client community are considered in the priority-setting process, and that the consideration addresses the need for expanded access to service as well as substantive problems.

Second, the published revision to Part 1620 responded to the concerns of many in the legal services community that recipients should approach priority-setting in a systematic way, and involve clients at every step of the process. These goals are reflected in the requirements that recipients conduct an appraisal of client needs, prepare a publicly-available report regarding their priorities and the manner in which those priorities were developed, and review priorities at least annually. It bears emphasis, however, that these changes maintain the flexible approach to priority-setting that characterized the present regulation. The specific method for setting and reporting priorities, as well as the priorities themselves, remain a matter for decision by the recipients.

The Corporation is now re-publishing Part 1620 in final form. The Regulation contains a number of changes, based on comments received on the proposed version. The changes are as follows:

Section 1620.2(a)(1). As published, this section required that recipients perform an "assessment of the needs" of their client communities based solely on comments from members of that community. Some felt that the quoted language required programs to conduct scientifically validated surveys of their client communities. The revision is designed to clarify this point, and to emphasize that no particular method of appraising client needs is mandated. The revision also reflects the reality that, although direct consultation with clients must be the primary source for any appraisal of their needs, other persons may be sufficiently in touch with the client community that they can provide valuable insight. Discussions with such persons should not be foreclosed, although they may not substitute for direct contact with eligible clients.

Section 1620.2(a)(2). This section originally required recipients to "insure participation by all significant segments of the client community * * *." The comments observed that some persons may ignore a program's priority-setting process, despite good faith efforts to include them. The draft has been revised to reflect that reality. It should be clear, however, that a press release or other general announcement cannot alone satisfy the requirement that all significant segments of the client community have an opportunity to participate. Rather, a program must take affirmative steps to identify and include all significant segments of its client community in the priority-setting process.

Section 1620.2(b). Subsection (1) has been amended to reflect the changes described above. In addition, new subsections (8) and (9) have been drafted. Those provisions require that a program consider the potential effect of its efforts on particular problems when setting priorities, It may make little sense to devote scarce resources to addressing problems, however pressing, that are not susceptible to resolution through the activities of a legal services program.

Section 1620.2(c). This section originally required a recipient to prepare a detailed work plan describing its priorities and the manner in which they would be accomplished. Many commentators observed that developing such a plan might be beyond the capability of some programs, and that the requirement of public availability could require premature disclosure of strategy and tactics. The provision has been redrafted to require programs to report briefly on their priorities, the reasons for adopting those priorities, and the implications of those priorities for the allocation of resources. More detailed work plans setting out specific objectives and strategies for achieving them are desirable for sound planning. The immediate development of such plans, however, should not be required.

Section 1620.3(a). This section required a recipient to consider the extent to which the objectives of its work plan have been achieved in reviewing priorities. It has been revised to conform to the change in section 1620.2(c) discussed above, and to require that priorities be reviewed—but not necessarily revised—at least annually.

Part 1620 is revised as follows:

Sec.
1620.1 Purpose.
1620.2 Procedure.
1620.3 Review.

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

§ 1620.1 Purpose.

This Part is designed to insure that a recipient, through policies and plans adopted by its governing body, takes into account the views of eligible clients, staff and other interested persons in establishing priorities for allocating its resources in an economical and effective manner, consistent with the purposes and requirements of the Act and other provisions of federal law.

§ 1620.2 Procedure.

(a) A recipient shall adopt procedures for establishing priorities in the allocation of its resources. The procedure adopted shall:

(1) Include an appraisal of the needs of eligible clients in the geographic areas served by the recipient, and their relative importance, based on comments from eligible clients solicited in a manner reasonably calculated to obtain the attitudes of all significant segments of the client population, as well as comments from the recipient's employees, governing body members, and other interested persons. In addition to substantive legal problems, the appraisal shall address the need for outreach, training of the recipient's employees, and support services;

(2) Insure an opportunity for participation by all significant segments of the client community and the recipient's employees in the setting of priorities, in the development of the report required by paragraph (c), and in the review required by § 1620.3, and provide an opportunity for comment by interested members of the public.

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

(1) The appraisal described in paragraph (a)(1) of this section;

(2) The population of eligible clients in the geographic area served by the recipient, including all significant segments of that population with special legal problems or special difficulties of access to legal services;

(3) The resources of the recipient;

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

(5) The availability of other sources of training, support, and outreach services;

(6) The relative importance of particular legal problems of the clients of the recipient;

(7) The general effect of the resolution of a particular category of cases or matters on eligible clients in the area served;

(8) The susceptibility of particular problems to solution through legal processes; and,

(9) Whether legal efforts by the recipient will complement other efforts to solve particular problems in the area served.

(c) The recipient shall prepare a brief written report describing its priorities, how they were developed, and the implications of those priorities for the allocation of its resources. The report shall be available to the public.

§ 1620.3 Review.

Priorities shall be reviewed at least annually. The following factors shall be among those considered in determining whether the recipient's priorities should be changed:

(a) The extent to which the objectives of the recipient's priorities have been accomplished;

(b) Changes in the resources of the recipient; and,

(c) Changes in the size or needs of the eligible client population.

ALICE DANIEL,
General Counsel,
Legal Services Corporation.

[FR Doc. 78-31478 Filed 11-6-78; 8:45 am]

[6712-01-M]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

PART 73—RADIO BROADCAST SERVICES

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

Editorial Corrections

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: This action corrects the Zip Code number for the U.S. Department of Commerce, Environmental Research Laboratories at Boulder, Colorado. The Zip Code is found in Sections 73.711(c)(2), 73.1030(b)(2) and 74.12(c)(2) of the FCC's Rules and Regulations in the Title 47, Code of Federal Regulations.

DATE: Effective November 10, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John W. Reiser, Broadcast Bureau, 202-632-9660.

SUPPLEMENTARY INFORMATION:

ORDER

Adopted: October 25, 1978.

Released: October 26, 1978.

In the matter of editorial corrections of §§ 73.711, 73.1030 and 74.12 of the Commission's rules.

1. The U.S. Department of Commerce, Environmental Research Laboratories has notified the Commission that the Zip Code for its facilities at Boulder, Colo., is not correctly printed in §§ 73.711, 73.1030, and 74.12 of the Commission's Rules.

2. The city address Zip Code in §§ 73.711(c)(2), 73.1030(b)(2), and 74.12(c)(2) is corrected to read as follows: Boulder, Colo. 80303

3. We conclude that adoption of the editorial amendment shown in this Order will serve the public interest. Prior notice of rule making, effective date provisions, and public procedure thereon are unnecessary, pursuant to the Administrative Procedure and Judicial Review Act provisions of 5 U.S.C. 553(b)(3)(B), inasmuch as this amendment imposes no additional burdens and raises no issue upon which comments would serve any useful purpose.

4. Therefore, it is ordered, That pursuant to sections 4(i), 303(r) and 5(a)(1) of the Communications Act of 1934, as amended, and Section 0.281 of the Commission's Rules, Parts 73 and 74 of the Commission's Rules and Regulations is amended as set forth in paragraph 2 above, effective November 10, 1978.

(Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; 47 U.S.C. 154, 155, 303)

FEDERAL COMMUNICATIONS COMMISSION,
WALLACE E. JOHNSON,
Chief, Broadcast Bureau.

[FR Doc. 78-31438 Filed 11-6-78; 8:45 am]

[6712-01-M]

[Docket No. 20936; FCC 78-760]

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

Exempting SSB Equipped Vessels Operating Solely in Alaska Waters From Mandatory VHF Capabilities

AGENCY: Federal Communications Commission.

ACTION: Second report and order.

SUMMARY: The Federal Communications Commission amends its regulations relating to stations on shipboard in the maritime services. The amendment extends for one year the present

exemption of single-side-band (SSB) equipped vessels operating solely in Alaskan waters from mandatory VHF capabilities. The amendment adopts a Coast Guard recommendation and will provide an opportunity for the establishment of additional VHF Public coast and U.S. Coast Guard stations in Alaska.

EFFECTIVE DATE: January 2, 1979.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

John Hays, Safety and Special Radio Services Bureau, 202-632-7197.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 83 to exempt SSB equipped vessels operating solely in Alaska waters from mandatory VHF capabilities; Second report and order (Proceeding Terminated). (See also 41 FR 56806, December 30, 1976.)

Adopted: October 24, 1978.

Released: November 2, 1978.

By the Commission: 1. Under the Commission's rules, a ship radio station equipped with a transmitter capable of operating on the radiotelephony frequencies in the band 2000-2850 kHz (2 MHz band) must also have a transmitter capable of transmitting in the VHF band 156-162 MHz. The band 2000-2850 kHz is in the medium frequency (MF) range and provides regional radio coverage to the maritime public as distinguished from worldwide coverage and local VHF coverage, both of which are furnished by other frequency bands.

2. The use of the 2 MHz band for maritime communications preceded the use of the VHF band. As traffic expanded in the 2 MHz band, congestion increased to the point that the communication range of this band was greatly reduced. After VHF became established as a primary means of conducting short range (20-50 miles) marine communications, it was decided to limit the use of the 2 MHz band to reduce this congestion. Under the present rules, ship stations having equipment capable of transmitting in the 2 MHz band must also have equipment capable of VHF transmission. Prior to initiating a call on 2 MHz frequencies, a ship station shall first attempt to communicate on the appropriate VHF frequencies. If no reply is received to the call on VHF, then the frequencies in the band 2000-2850 kHz may be used for authorized communications.

3. Except for vessels operating solely in Alaskan waters, the Commission provided a transitional period of approximately 6½ years, from June 10, 1970, to January 1, 1977, before these rules became fully effective. In Alaska, the Commission extended the transitional period for an additional 2 years, until January 1, 1979, because of the lack of VHF coverage.[1] The extension would provide an opportunity for the establishment of additional VHF public coast and U.S. Coast Guard stations in Alaska.

4. The U.S. Coast Guard has submitted its coverage plan for existing and proposed VHF coverage and has recommended that the present exemption from the requirement for mandatory equipping of VHF in Alaska be extended for an additional year.

5. After considering the present VHF coverage which should be improved in the near future by new U.S. Coast Guard stations, the Commission has decided to adopt the recommendation of the U.S. Coast Guard and extend the present exemption from the requiement for mandatory equipping of VHF in Alaska for one year until January 1, 1980.

6. Regarding questions on matters covered by this document contact John Hays, 202-632-7197.

7. Accordingly, *it is ordered*, That pursuant to the authority contained in Section 4(i) and 303 (c), (d), (f), and (r) of the Communications Act of 1934, as amended, Part 83 of the Commission's rules is amended, as set forth below. Inasmuch as this relieves a restriction, the provisions of 5 U.S.C. 553(d) are not applicable and the rule amendment shall become effective January 2, 1979.

8. *It is further ordered*, That this proceeding is terminated.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Part 83 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

Section 83.351(c)(3)(i) is amended to read as follows and the note deleted.

§ 83.351 Frequencies available.

* * * * * * *

(c) * * *
(3) * * *

(i) The ship station is equipped for use of F3 emissions on frequencies in the band 156-162 MHz, except for vessels bearing Alaska registration or documented vessels with a home port in Alaska and operating solely in waters off Alaska until January 1, 1980.

* * * * * * *

[FR Doc. 78-31476 Filed 11-6-78; 8:45 am]

[1] *Report and Order*, Docket No. 20936, 62 FCC 2d 493 (1976).

[6712-01-M]

[Docket No. 21202; FCC 78-459]

PART 0—COMMISSION ORGANIZATION

PART 76—CABLE TELEVISION SERVICE

Cable Television Annual Financial Report (FCC Form 326)

AGENCY: Federal Communications Commission.

ACTION: Final rule (report and order).

SUMMARY: Amendment of Parts 0 and 76, Subpart F of the Commission's Rules and Regulations with Respect to the Cable Television Annual Financial Report (FCC Form 326). The amendment incorporates the following major features: (1) Disclosure of accounting policies for several critical accounts; (2) Reduced filing burden on small cable operators; (3) Changes in income statement schedule; (4) Elimination of current schedule 4, "Non Recurring Telephone Company Charges"; (5) Expanded explanations in instructions and clarified account definitions.

EFFECTIVE DATE: November 7, 1978.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

R. C. Earnest, Cable Television Bureau, 202-632-9797.

SUPPLEMENTARY INFORMATION: In the matter of amendment of Part 76, Subpart F of the Commission's Rules and Regulations with respect to the Cable Television Annual Financial Report (FCC Form 326) (see also 42 FR 30401, June 14, 1977).

Adopted: June 28, 1978.

Released: November 1, 1978.

By the Commission: [1]

1. On April 14, 1977, the Commission adopted a *Notice of Proposed Rulemaking* in the above titled matter, which was published in the FEDERAL REGISTER on May 9, 1977 (42 FR 23519). The notice proposed revisions of FCC Form 326 to adopt a reporting system which includes partial reporting exemptions for small operators, changes in several financial schedules, and, of most significance perhaps, disclosures of accounting policies that underlie several critical accounts. This reporting system culminates four years of research, coordination, and administrative procedure in an effort

[1] Commissioner Lee concurring in the result; Commissioner Quello absent.

to develop a reporting methodology that not only minimizes the paperwork burdens but provides reliable data that can be useful in the Commission decision making process.

2. Annual financial filings by cable operators are necessary to enable the Commission to keep abreast of cable television developments, fulfill its regulatory responsibilities in this field, and assist Congress in its consideration of related legislative proposals. Since the financial data is indispensable in providing dependable estimates of the economic consequences of many proposed and existing government requirements on cable television systems, it is imperative that the data have a reasonable degree of reliability and accuracy. As stated in the *Notice of Proposed Rulemaking:*

> In rulemakings, for example, it is often essential to determine what constitutes an extraordinary burden on certain cable systems so that exemptions or limitations may be incorporated into the rules, such as the subscriber size exemptions in the nonduplication, exclusivity and cablecasting rules. In special relief requests, where financial showings frequently are used, accurate financial data is required so that normal industry characteristics can be used as a basis for comparison. In the aggregate, financial information is necessary to monitor the effect of Commission rules on the industry as a whole on a year to year basis.

However, the use of financial data has been severely limited primarily because of the dissimilarity in accounting procedures used by reporting units. A variation in accounting procedures, in only a few accounts, can substantially affect the accuracy of critical indicators upon which many regulatory decisions are partly or wholly based. Therefore, the attached financial reporting system incorporates a schedule of disclosure regarding critical accounting policies which allows uniformity in the aggregation and analysis of financial data which, in turn, insures fair and efficient regulation.

3. The Commission's needs for uniform financial data are not unrelated to State and local needs, even though there are generally different objectives in the regulation of cable television at each level of government. In developing the proposed reporting system, the account instructions and form schedules have been designed to satisfy a large number of State and local reporting needs in carrying out their respective responsibilities. There are two major purposes for this design effort. First, it encourages consistency in regulatory reporting and accounting requirements so that unnecessary burdens on cable operators can be avoided. This would be especially true where operators own cable systems in many different State and local areas. Under consistent reporting requirements, these multiple system operators could provide similar types of financial information to the regulatory bodies in each State and local area without the necessity of keeping separate books and using different accounting procedures. The second purpose is that, for regulatory bodies at each level of government, consistent reporting requirements may aid in efficiency and cost reduction. Consistent and uniform financial data, even where displayed in aggregated tables, is extremely useful information in ratemaking determinations. Furthermore, the administrative costs and manpower of developing and maintaining separate reporting and accounting systems in each state and/or each locality are substantially reduced.

4. The *Notice* proposed revisions and additions in the schedules and in the instructions of the Commission's Cable Television Annual Financial Report (FCC Form 326), which, in effect, provides a complete financial reporting system for the industry. The proposed revisions and additions are as follows:

(a) Schedule 4, which requires information pertaining to nonrecurring telephone company charges, would be deleted.

(b) A new schedule would be added which would disclose accounting procedures used in selected accounts such as Deferred System Development Costs, Franchise Costs, Goodwill, Capitalized Interest on System Construction, Overhead Costs Allocated to System, and Original Cost of Purchased Assets. This schedule would also include disclosure of expenses which represent payments to owners and their relatives.

(c) Schedule 2, which requires income statement information, would include several account changes. The revenue format would be more compact, eliminating the need for separate accounts in the "other revenue" category. An account would be added for the copyright fees paid in compliance with the Copyright Act of 1976, Pub. L. 94-553, 90 Stat. 2541. Also, the account items "Total Profit (or Loss)" and "Total Federal and State Income Taxes" would be deleted.

(d) Schedules 1 and 5 would be made public. Although the present form is entirely confidential, it is considered that Schedules 1 and 5 contain informaton that is already available to the public. Schedule 1 requires information regarding communities served, FCC system code, installation fees and subscriber fees. Schedule 5 requires information regarding number of full time and part time employees.

(e) A continuation of the present consolidated reporting, which allows a single reporting entity to include those systems within a 40-mile radius of an owner-designated point, keeping a consolidated set of bookkeeping records, and technologically connected either by private microwave or by cable. However, community units which comprise a cable television system, as defined in the recently amended § 76.5 of the Commission's Rules, must file a consolidated report.

(f) A continuation of fiscal year reporting in lieu of calendar year reporting.

(g) A revised and more complete set of instruction which provides respondents with a detailed definition for each account and the line item number of Form 326 which corresponds to each account.

(h) Guidelines are provided for separating cable from noncable data in consolidated accounts, separating accounts which are consolidated for two or more reporting entities, and allocating corporate overhead costs.

(i) An appendix which simplifies instructions for relatively small privately owned cable operations having uncomplicated accounting procedures.

(j) Small cable operators, who serve 500 or fewer subscribers, would be exempted from filing schedules 3 and 4 (the balance sheet and disclosure schedules).

5. Comments were received from the National Cable Television Association; the New York State Commission on Cable Television; the State of Alaska Public Utilities Commission; Cox Cable Communications, Inc.; the City of Eugene, Oregon; Cablecom-General, Inc.; Storer Broadcasting Co.; the City of Stockton, Calif.; Teleprompter Corp.; Viacom International, Inc.; Warner Cable Corp.; and Service Electric Cable TV, Inc. The comments submitted predominantly supported the Commission's proposed actions to bring about uniformity of reporting.

6. Many comments were received regarding the definition of "original cost" as used in the plant accounts of Schedule 3. Most respondents indicated that there are many problems in reporting "original cost" data. Storer Broadcasting Co., Warner Cable Corp., and the National Cable Television Association commented that when a system is sold which was previously included in a consolidated filing, the buyer has no way of knowing the original costs of the assets for each system since there is no requirement that these costs be separated. Other comments indicated that requiring original cost data for several account items might cause respondents to make subjective judgments in allocating costs. In such cases, the reported figures would be inaccurate. The New York State Commission on Cable Television agrees that the burden of reporting allocated original cost data for ownership transfers may prove very

difficult for many companies, particularly those which were involved in ownership transfers several years ago. The New York Commission's solution to these difficulties would be to exempt from filing original cost data those systems having ownership changes before a specified date. The Commission has reevaluated the needs for this information versus the burden involved. In particular, it is recognized that requiring original cost data for several accounts would lead to issuance of numerous administrative opinions on specific problems. Furthermore, since the Commission does not regulate rates of the cable television industry, there is no predominant need for the Commission to collect original cost data. Considering the burdens indicated by many respondents and the administrative costs in monitoring original cost accounts, the Commission is requiring original cost information only from those operators who are required to report this information to State regulatory bodies. However, there may be exceptions to this requirement where Federal and State reporting entities differ substantially. Because the Commission seeks financial information regarding business operations within specific geographic areas, the Federal consolidated reporting requirements may differ from those of the States. For example, a State may allow all systems within the State, under common ownership, to report as one financial entity. In these instances, cable operators reporting original cost data to the State may be exempted from reporting original cost data on FCC Form 326. The purpose here is to reduce the reporting burden while retaining the information necessary for State and Federal requirements. Uniformity in asset reporting is maintained by adding the "plant adjustment" account to the "total fixed assets" account for those operators reporting original cost. This account will then be comparable with the "total fixed assets" account of those operators who report assets as historical cost rather than at original cost.

7. Another major topic of discussion was the Commission's consolidation requirement for financial filings. The comments on this issue generally indicated that the allocation of costs on the cable system level is a burdensome and expensive task for the cable operators. Service Electric Cable TV, Inc., for example, estimated that making the required allocations for each of its 13 headend cable systems to meet the proposed FCC Form 326 reporting requirements will likely cost very nearly as much as a complete revision of its consolidated bookkeeping procedures. Several comments suggest that the proposed reporting entity has the added disadvantage of potential inaccuracy. The National Cable Television Association commented that individual system figures resulting from the most well-intentioned but nonetheless arbitrary allocations have no guarantee of total accuracy and may, in some instances, present a distorted picture of the system's financial status. The Commission recognizes that there may be occasional problems with respect to situations where the entities in the consolidated reports do not conform to the entities in the corporation's bookkeeping practices, particularly in the allocation of certain line items in the balance sheet schedule. Financial filings are restricted to small geographic areas because the Commission's rules are designed to apply directly to the community level or the cable system level. If reporting entities were allowed to be larger than that currently specified in the FCC Form 326 instructions, the financial data collected would not be useful in evaluating the economic consequences of many proposed or existing rules. If problems should arise in obtaining information for certain line items, the cable operator should use generally accepted cost accounting techniques to estimate the line items, and then should indicate by a footnote which accounts were estimated. This procedure should minimize burden and allow a control for accuracy.

8. Several comments were directed to clarifying and improving the financial schedules and instructions regarding pay cable data. Warner Cable Corp. commented that the instructions for schedule 2, line 3 do not specify whether pay cable revenues should be reported as gross or net of payments to third parties (e.g. movie companies). Warner is of the opinion that these revenues should be reported as net figures. The National Cable Television Association and Viacom International, Inc., suggested that the programing and production costs of pay cable should be included in the origination expense accounts of Schedule 2. Viacom also indicated that the installation charges of pay cable are not specifically requested in the instructions for schedules 2, line 3. Teleprompter Corp. suggested that revenues from connector rentals that are unrelated to pay cable should be specified as regular subscriber revenues rather than per program or channel revenues. We believe that these suggestions would substantially improve the reliability of the collected pay cable data. The instructions and relevant line items of the FCC Form 326 have been revised accordingly. Pay revenues are to be reported as gross amounts in schedule 2, line 3, and payments to pay cable program suppliers are to be reported as a separate account in schedule, 2, line 15. Installation charges for pay cable are to be reported on schedule 2, line 3 along with other pay cable revenues.

9. It was proposed in the *Notice* to exempt "small systems" of fewer than 500 subscribers from filing schedules 3 and 4. Viacom International, Inc. and Warner Cable Corp. have suggested increasing the subscriber size of the "small system" exemption. The New York State Commission on Cable Television and the Public Utilities Commission of the State of Alaska commented that important data needed for regulation will be lost if balance sheet data are not required from all systems. The Commission has studied the exemption proposal and concluded that the "small system" exemption should be expanded to include all financial entities having fewer than 1,000 subscribers. While "1,000" is not considered a magic number, our experience over several years indicates that systems of this size and below do not normally keep sophisticated balance sheet accounts. They often lack the expertise to prepare these account schedules or the funds to hire outside assistance. Additionally, Commission regulations which place a direct fixed asset cost requirement upon cable operators apply only to those systems having 1,000 or more subscribers. For example, the regulations governing nonduplication protection, program origination requirements and nonbroadcast service obligations (access) do not apply to systems with fewer than 1,000 subscribers. Therefore, in an effort to reduce the reporting burden to the maximum extent consistent with meeting its need to monitor regulatory impact, the Commission will expand the "small system" exemption to apply to all financial entities having fewer than 1,000 subscribers. Cable operators of cable television systems serving fewer than 1,000 subscribers are thus exempted from completing schedule 3 and schedule 4. However, these operators must report total assets on line 32 of schedule 2. This exemption only applies to a cable television system as defined in the Commission's *First Report and Order* in Docket No. 20561—FCC 2d—(1977). The exemption, of course, does not preclude State or local regulatory bodies from requiring whatever level of financial detail is necessary to satisfy their own needs.

10. Teleprompter Corp., the National Cable Television Association, and Warner Cable Corp. suggested that Schedule 5 be eliminated since employment data is provided on FCC Form 395. We wish to stress that the employment data required on schedule 5, FCC Form 326, may not correspond with the employment data being reported on FCC Form 395 since the

consolidation requirements of the financial reporting form are not applicable to the definitions of an employment unit. For example, unless permission has been granted for consolidation, a financial entity consists of only one cable television system; whereas an employment unit may consist of more than one system. Additionally, the FCC Form 326 employment data is collected as of the fiscal year-end date of the reporting entity and can thus be directly related to the financial data. The FCC Form 395 employment data does not normally relate to the same reporting period (fiscal year-end). In order to use employment data in financial analysis, the data must be directly related to the financial reporting entity. Finally, cable television operators who employ fewer than five employees do not have to file Form 395 statistics. Since there is very little burden upon respondents to provide this information, Schedule 5 remains unchanged in FCC Form 326.

11. In order to simplify the reporting burden, while also providing detailed information to operators, the Form 326 instructions have been separated into two parts: (1) The General Reporting Instructions and (2) a Reporting Manual containing detailed instructions, definitions, and guidelines. For many operators, the General instructions will provide sufficient information for completing and filing the Form 326. Since the General Reporting Instructions include a simple outline of all instructions, this should ease the burden of filling out the Form for small privately owned cable operators who use uncomplicated accounting procedures. Those operators requiring additional clarification should reference the Reporting Manual for specific line item instructions, precise account definitions and guidelines for allocating costs.

12. Many comments were received which were the result of misinterpreting the instructions. The most common misinterpretation regards the inclusion of cost allocation guidelines in the instructions. These guidelines are included only to assist those respondents who might be unfamiliar with generally accepted cost allocation techniques. Respondents may use any cost allocation technique that complies with generally accepted accounting principles. The guidelines included in the instructions of Appendix B are not mandatory, but these methods are good examples of acceptable techniques. Although the instructions and account definitions have been carefully revised to be clear and complete, many specific or technical questions may arise. In such cases the respondent may contact the Research Division of the Cable Television Bureau for clarification.

13. The revised FCC Form 326 includes a redesigned Schedule 1 which allows direct entry of monthly pay cable charges. Previously, the instructions required an exhibit be attached which listed all per program or per channel pay cable charges. Since the predominant method of pay cable pricing is charged on a per channel monthly basis, the revised schedule 1 allows for direct entry of such charges. In cases where pricing methodology differs from this basis, an exhibit is still required. This revision allows more uniformity in the Commission's data processing procedures.

14. In view of the foregoing, we conclude that the public interest would be served by the adoption of the revised FCC Form 326. Authority for adoption of this form is contained in Sections 4 (i), (j), and (k), 303 and 403 of the Communications Act of 1934, as amended. Set forth below is a related editorial amendment of Part O of the Commission's Rules. The revised Form and General Instructions are set forth in Appendix A, and Appendix B provides a Reporting/Accounting Manual to be used as a reference source for those operators seeking detailed instructions regarding specific accounts.

15. Accordingly, *It is ordered*, That (a) effective November 7, 1978, FCC Form 326 is adopted as modified herein subject to Government Accounting Office clearance. (b) Part O of the Commission's Rules and Regulations is amended as set forth below. Because the amendment of Part 76 of the Rules and Regulations involves a matter of procedure and internal organization, the prior notice and effective date provisions of 5 U.S.C. 553 are inapplicable, and § 0.457(d)(1)(iii) is effective November 7, 1978. (c) All comments, to the extent they have not been accepted herein, are denied. (d) This proceeding is terminated.

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

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 0—COMMISSION ORGANIZATION

In § 0.457, paragraph (d)(1)(iii) is revised as follows:

§ 0.457 Records not routinely available for public inspection.

* * * * *

(d) * * *

(1) * * *

(iii) Schedules 2, 3, and 4 of financial reports submitted for cable television systems pursuant to § 76.403 of this chapter.

* * * * *

PART 76—CABLE TELEVISION SERVICE

Section 76.403, *Cable television system reports*, is amended by revising FCC Form 326 and Instructions to read as set forth in Appendix A.

FEDERAL COMMUNICATIONS COMMISSION

Washington DC 20554

FINANCIAL UNIT IDENT:

DO NOT ALTER THIS AREA

OPERATOR

ANNUAL REPORT OF CABLE TELEVISION SYSTEMS

FINANCIAL UNIT DATA

FCC FORM 326, SCHEDULE 1

▶ This is Schedule 1 of YOUR FCC FORM 326. It must be completed and/or corrected and returned to the Commission with Schedules 2 through 5. If the communities listed do not reflect your present consolidation, add or delete as necessary. If the pay cable fee is a "per program", rather than a "per month" charge, attach a rate schedule. Include cents with all fee data. APPROVED BY GAO B-180227 (R0205) EXPIRES 7-31-81

PREVIOUSLY FILED:

SYSTEM COMMUNITIES COMPRISING THIS FINANCIAL UNIT

IDENT	NAME	TYPE	OPERATIONAL STATUS	INSTALLATION FEE	SUBSCRIBER FEE	MONTHLY PAY CABLE FEE
				$.	$.	$.

Approved by GAO
B-180227 (R0205)
Expires 7-31-81

SCHEDULE 2 — CABLE TELEVISION REVENUES AND EXPENSES

FOR PERIOD BEGINNING: 19 [ ] mo [ ] dy [ ] ENDING: 19 [ ] mo [ ] dy [ ]

Line No.	ITEM	AMOUNT (OMIT CENTS)
	OPERATING REVENUES	
1	Installation Revenue	
2	Regular Subscriber Revenue	
3	Per Program or Per Channel Gross Revenue *(Pay Television)*	
4	Advertising Revenue	
5	Special Service Revenue	
6	Other Revenue	
7	**TOTAL OPERATING REVENUES**	
	OPERATING EXPENSES	
	SERVICE EXPENSES:	
8	Salaries, Wages, and Employee Benefits	
9	Pole Rentals	
10	Duct Rentals	
11	Private Microwave Service (CARS)	
12	Common Carrier Microwave Service	
13	Total Tariff (Leaseback) Charges *(Applies only to Systems receiving telephone company channel service.)*	
14	All Other Service Expenses	
15	**PAYMENTS TO PAY CABLE PROGRAM SUPPLIES**	
	ORIGINATION EXPENSES:	
16	Salaries, Wages, and Employee Benefits	
17	All Other Origination Expenses	
	SELLING, GENERAL, AND ADMINISTRATIVE EXPENSES:	
18	Salaries, Wages, and Employee Benefits	
19	Franchise Fees	
20	Copyright Fees	
21	All Other Selling, General, and Administrative Expenses	
22	**TOTAL OPERATING EXPENSE**	
23	**TOTAL OPERATING INCOME**	
	DEPRECIATION AND AMORTIZATION	
24	Depreciation	
25	Amortization	
	OTHER INCOME AND EXPENSES	
	OTHER INCOME	
26	Total Other Income	
	OTHER EXPENSES:	
27	Interest	
28	Miscellaneous	
29	**TOTAL OTHER INCOME (OR LOSS)**	
30	**EXTRAORDINARY ITEMS**	
31	**TOTAL INCOME (OR LOSS) BEFORE TAXES**	
	TOTAL ASSETS:	
32	To be entered only for those systems (fewer than 1,000 subscribers) exempted from filing Schedule 3.	

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SCHEDULE 3 — BALANCE SHEET INFORMATION

Line No.	ITEM	AMOUNT (OMIT CENTS)
	ASSETS	
	CURRENT ASSETS:	
1	Cash	
2	Accounts Receivable	
3	Other Current Assets	
4	Total Current Assets	
	FIXED ASSETS:	
5	Land and Buildings	
6	Headend	
7	Trunk and Distribution System	
8	Subscriber Devices	
9	Program Origination Equipment	
10	Construction Work in Progress	
11	Other Fixed Assets	
12	Plant Adjustment	
13	Less: Accumulated Depreciation	
14	Total Fixed Assets	
	OTHER ASSETS:	
15	Other Assets	
16	Less: Accumulated Amortization	
17	Total Other Assets	
18	**TOTAL ASSETS**	
	LIABILITIES	
	CURRENT LIABILITIES:	
19	Loans Payable	
20	Accounts Payable	
21	Other Current Liabilities	
22	Total Current Liabilities	
	DEFERRED CREDITS:	
23	Total Deferred Credits	
	LONG TERM DEBT:	
24	Total Long Term Debt	
	OWNER'S EQUITY:	
25	Total Stock Issued	
26	Proprietor's Equity	
27	Retained Earnings	
28	Other Owner's Equity	
29	Total Owner's Equity	
30	**TOTAL LIABILITY AND OWNER'S EQUITY**	
	CHECK METHOD OF DEPRECIATION USED	
31	☐ (1) Straight Line ☐ (2) Declining Balance ☐ (3) Double Declining Balance ☐ (4) Sum-of-the-Years-Digit. ☐ (5) Other	

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SCHEDULE 4 — SUPPLEMENTAL ACCOUNTING INFORMATION

PART A	AMORTIZATION TERM (IN YEARS)	AMORTIZATION METHOD USED (CODE)	AMOUNT CAPITALIZED DURING YEAR	AMOUNT AMORTIZED DURING YEAR
1. Deferred System Development Costs			$	$
2. Franchise Costs *(recorded as assets)*			$	$
3. Goodwill			$	$

CODES: (1) Straight line (2) Declining balance (3) Double declining balance (4) Sum-of-the-years digits (5) Other

PART B	TOTAL CAPITALIZED	AMOUNT CAPITALIZED DURING YEAR	USEFUL LIFE (YEARS)
4. Capitalized Interest on System Construction	$	$	

PART C	TOTAL AMOUNT OF ASSET	AMOUNT NOT BEING AMORTIZED	AMOUNT BEING AMORTIZED
5. Deferred System Development Costs	$	$	$
6. Franchise Costs *(recorded as assets)*	$	$	$
7. Goodwill	$	$	$

PART D	TOTAL AMOUNT OF ALLOCATED COSTS	METHOD USED TO ALLOCATE COSTS TO SYSTEM CODE
8. Overhead Costs Allocated to System	$	

CODES: (1) Per number of subscribers (2) Per gross revenues (3) Per miles of plant (4) Other

PART E	AMOUNT
9. Original Cost of Fixed Assets *(Seller's Book Value)*	$
10. Portion of Purchase Price Allocated to Seller's Book Value	$
11. Recorded Cost of Fixed Assets by Purchaser	$

PART F	FIXED ASSET CLASSIFICATION	AMOUNT	USEFUL LIFE (YEARS)	FIXED ASSET CLASSIFICATION	AMOUNT	USEFUL LIFE (YEARS)
12. Estimated Useful Lives of Fixed Assets		$			$	
		$			$	
		$			$	
		$			$	

PART G	AMOUNT	NUMBER OF PERSONS
13. Salaries to Owners	$	
14. Other Direct Payment Included in Total	TOTAL AMOUNT	TYPE
	$	
15. Expense Payments to Spouse or Relatives	TOTAL AMOUNT	TYPE
	$	

TYPE: (1) Rent (2) Payments for services (3) Payment for equipment (4) Payments for supplies (5) Travel & Entertainment (6) Other

SCHEDULE 5 — EMPLOYMENT

Indicate the number of employees for the workweek in which the last day of the Fiscal Year fell.

NUMBER OF EMPLOYEES	
FULL TIME	
PART TIME	

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CERTIFICATION

THIS REPORT MUST BE CERTIFIED BY THE INDIVIDUAL OWNING THE REPORTING CABLE TELEVISION SYSTEM, IF INDIVIDUALLY OWNED; BY A PARTNER, IF A PARTNERSHIP; BY AN OFFICER OF THE CORPORATION, IF A CORPORATION; OR BY A REPRESENTATIVE HOLDING POWER OF ATTORNEY IN CASE OF PHYSICAL DISABILITY OF AN INDIVIDUAL OWNER OR HIS/HER ABSENCE FROM THE UNITED STATES.

I CERTIFY THAT I HAVE EXAMINED THIS REPORT, AND THAT ALL STATEMENTS OF FACT CONTAINED THEREIN ARE TRUE, COMPLETE, AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF, AND ARE MADE IN GOOD FAITH.

SIGNATURE	TITLE	
PRINTED NAME OF PERSON SIGNING		DATE
LEGAL NAME OF RESPONDENT		
RESPONDENT'S ADDRESS — STREET ADDRESS		
CITY	STATE	DATE

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August 1976

GENERAL INSTRUCTIONS

[FCC Form 326]

1. These General Instructions should provide sufficient information for many respondents to complete FCC Form 326. Schedules 2, 3 and 4 are confidential. Generally Accepted Accounting Principles must be followed in the consolidation of the financial schedules (Schedules 2, 3 and 4). The accounts used in the financial schedules are comparable to those used in normal industry practices. For those operators who require more precise information, a Reporting/Accounting Manual is attached as a reference source. It contains detailed instructions, account definitions, and allocation guidelines.

2. General Instructions for each Schedule:

Schedule 1 requires a listing of all communities which comprise the financial entity. For each community listed, the system code, installation fee, monthly subscriber fee and monthly pay cable charge (if applicable) must be included. For detailed explanations of codes and fees, refer to the Reporting/Accounting Manual.

Schedule 2 is comparable to the income statement used in industry accounting practices. The account definitions are designed to conform to general practices. The financial information entered in this schedule must apply only to these business activities related to the operation of cable television services.

Schedule 3 is comparable to the balance sheet used in industry accounting practices. The account definitions are designed to conform to general practices. Original cost for plant accounts is only required for those cable systems located in States which mandate such accounting standards. The financial information must apply only to those business activities related to the operation of cable television services.

Schedule 4 requires supplemental accounting information regarding disclosures of critical accounting policies. If there has been no deferment of system development costs, franchise costs or good will or if such deferment has been entirely capitalized, then Parts A, B and C should be left blank. If all costs can be identified with the particular reporting system(s) and directly relate to its operation, Part D should be left blank. If the operator is the original owner of the assets of this reporting entity or is not required by a State or local regulatory agency to adhere to the "original cost" concept, then Part E should be left blank. Parts F and G must be filled out by cable operators of systems with 1,000 or more subscribers unless all fixed assets are leased. For line-by-line instructions, refer to the Reporting/Accounting Manual.

Note the following major filing change: Operators of cable television systems with fewer than 1,000 subscribers are not required to file Schedules 3 and 4 of Form 326. These operators are required to list Net Total Assets on line 32 of Schedule 2. Net Total Assets consist of Total Assets less accumulated depreciation/amortization.

3. File one copy of this form with the Federal Communications Commission, Washington, D.C. 20554, Room 6216. Do not return these instructions to the Commission.

4. A Form 325 shall be filed for a cable television system on an annual basis within 90 days after the close of its latest fiscal year. All information contained in the form shall be stated as of the last day of the fiscal year.

A cable system is defined as: A nonbroadcast facility consisting of a set of transmission paths and associated signal generation, reception, and control equipment, under common ownership and control, that distributes or is designed to distribute to subscribers the signals of one or more television broadcast stations, but such terms shall not include (1) any such facility that serves fewer than 50 subscribers, or (2) any such facility that serves or will serve only subscribers in one or more multiple unit dwellings under common ownership, control, and management.

5. This report must be certified by the individual owning the reporting cable television system, if individually owned; by a partner, if a partnership; by an officer of the corporation, if a corporation; or by a representative holding power of attorney in case of physical disability of an individual owner or his/her absence from the United States. Willful false statements made on this form are punishable by fine or imprisonment. (U.S. Code, Title 128, Section 1001.)

6. All pertinent schedules of this form must be completed for every filing. The only exception to this requirement is for cable operators who own a cable television system which serves fewer than 1,000 subscribers. Cable operators who meet these criteria are exempted from completing schedule 3 and schedule 4. The following examples clarify this exemption.

Example 1—A cable television system services 5 communities having a total subscribership of less than 1,000 subscribers. In this case the cable operator is exempt from completing schedule 3 and schedule 4.

Example 2—A cable television system services 5 communities having a total subscribership of more than 1,000 subscribers. However, one of the communities has less than 1,000 homes subscribing to the system. The exemption does not apply in this case because the community with less than 1,000 subscribers is technologically integrated with a cable system of more than 1,000 subscribers.

Incomplete filings will not be accepted and will be returned to the respondent for completion. Copies of income tax returns should not be sent. Financial statements and other such information will not be accepted in lieu of a completed FCC Form 326.

7. The financial information disclosed in Schedules 2 and 3 must present fairly the respondent cable television system's financial position in conformity with "generally accepted accounting principles" on a consistent basis. The term "generally accepted accounting principles" refers to the issued Opinions of the Accounting Principles Board, and the rulings of the Financial Accounting Standards Board. This applies to every account except those affected by the "original cost" definition. It is required that the accrual basis of accounting be used in preparing the financial information for this form. Essentially, accrual accounting differs from cash accounting in that revenue is recognized when earned, not when received; expenses are recognized when incurred, not when paid.

8. Those systems within a 40-mile radius of an owner-designated reference point, keeping a consolidated set of bookkeeping records, and technologically connected either by private microwave or cable may file a consolidated Form 326. However, communities which comprise a cable television system must file a consolidated Form 326. A cable operator may be allowed to consolidate a filing, with prior Commission approval, for systems that are not technologically connected if these systems are within a 40-mile radius of a designated reference point and operationally integrated.

9. There may be financial entities, as defined by a company's bookkeeping practices, which do not conform to the entities allowed for reporting purposes of the Form 326, particularly in the allocation of certain line items in the balance sheet schedule. In cases such as these, the cable operator must use generally accepted cost accounting techniques to estimate the line items, and he must indicate by a footnote which accounts are estimated and what estimating methods are used for each account. Detailed guidelines on allocating accounts are provided in the attached Reporting/Accounting Manual.

10. If the respondent company includes business activity other than cable television service (such as broadcasting), those accounts which include such activities must be properly separated or allocated so that only cable television service financial information is disclosed in the Form 326. For those respondents who cannot separate cable television service-related financial information from other lines of business because of consolidated bookkeeping records, those affected accounts should be separated by generally accepted accounting techniques and footnotes should be included which indicate the affected accounts and allocation methods used. Detailed guidelines on acceptable methods for separating accounts are provided in the attached Reporting/Accounting Manual.

11. Owner's Withdrawals from Business: Cash withdrawals by partners or sole proprietors reduce the assets and proprietor's equity in the business but are not reflected in the income statement. Salaries paid to owners for work performed are not considered as withdrawals and would be reported on the income statement (Schedule 2).

12. Owner's Equity Section (Schedule 3): For a partnership or sole proprietorship, lines 25 (total stock), 27 (retained earnings), and 28 (other owner's equity) would be left blank. The entire amount of owner's equity in the business would appear on line 26 and would consist of the owner's total assets in the business minus total liabilities. Withdrawals or capital distributions would be deducted from the owner's equity account prior to filling in this line.

APPENDIX B—REPORTING/ACCOUNTING MANUAL

[FCC Form 326]

TABLE OF CONTENTS

Schedule 1 Instructions.
Schedule 2 Instructions and Account Definitions.
Schedule 3 Instructions and Account Definitions.
Schedule 4 Instructions.
Schedule 5 Instructions.
Certification Instructions.
Allocation and Consolidation Guidelines.
Additional Assistance.

SCHEDULE 1 INSTRUCTIONS

1.1 Respondents filing Form 326 must complete Schedule 1 by listing each community included in this financial report.

1.2 For each community listed, the system code, installation fee, monthly subscriber fee and monthly pay cable charge (if applicable) must be included.

1.3 The system code number is generally assigned by the Cable Television Bureau at the time of certification. It appears on the Certificate of Compliance as the "System Community Ident". If no number has been assigned, leave blank.

1.4 The installation fee information to be entered in this schedule is the standard fee charged for the initial installation of a single drop for a single television set. (Include cents.)

1.5 The subscriber fee information to be entered in this schedule is the standard monthly charge for basic cable television service. If there are two or more subscriber rates, enter the rate most commonly charged. (Include cents.)

1.6 The pay cable fee to be entered in this schedule applies only to those cable systems which bill pay cable services on a per channel monthly basis. The entered pay cable fee should be the standard monthly charge (please include cents). Those cable systems which bill pay cable services on a per program basis must explain and list the fees in an exhibit attached to the form.

SCHEDULE 2 INSTRUCTIONS AND ACCOUNT DEFINITIONS

INSTRUCTIONS

2.1 The financial information entered in Schedule 2 must apply to only those business activities related to the operation of cable television services.

2.2 Accounts must be entered as defined in this section. If allocations or separations of accounts are necessary because bookkeeping records are consolidated, refer to page 17 of this Manual for guidelines.

2.3 "Proprietor or Partner Withdrawals"—from business operations that are not compensation for work performed must not be reported as an expense nor appear in any account in Schedule 2. Those payments to owners which may be classified as operating expenses directly related to the operation of the cable television system should be reported in Schedule 4, Part G as well as in Schedule 2.

2.4 Schedule 2 Definitions: "Operating Revenues"—All revenue which directly results from the rendering of services connected with the cable television activity.

Line No. 1. "Installation Revenue"—Revenue earned from services rendered to subscribers for connecting subscribers to the cable system (drops), relocating cable connections and installing additional connections.

Line No. 2. "Regular Subscriber Revenue"—Revenue earned from regular, periodic charges for cable television service. This amount should not include pay cable or other service charges that are in addition to the standard monthly charges for basic cable television service.

Line No. 3. "Per Program or Per Channel Revenue"—Revenue earned from charges for per program or per channel services, (commonly called pay cable services). The service must not be obtainable from regular subscriber charges. Revenue from pay cable related lease agreements, converter rentals and other revenue from subscribers that can be directly related to pay cable services, should be included on this line.

Line No. 4. "Advertising Revenue"—Revenue earned from advertisements appearing over cablecasting channels (cable origination).

Line No. 5. "Special Services Revenue"—Revenue (other than pay cable services) earned from the lease or sale of time or studio and cable facilities.

Line No. 6. "Other Revenue"—All revenue derived from operation of the cable television system not included in any other revenue accounts, such as converter rentals that are not related to pay cable services.

Line No. 7. "Total Operating Revenue"—The total amount of revenues as entered on lines one through six of Schedule 2, as defined above.

"Operating Expenses"—All expenses which directly result from rendering of services connected with the cable television activity. This category does not include expenses directly related to construction in progress, which should be entered on Schedule 3, line 10.

"Service Expenses"—All expenses directly related to receiving and distributing signals to the community(s) served by the cable television system.

Line No. 8. "Salaries, Wages, and Employee Benefits"—The expenses for services of all employees of the system engaged in technical activities and maintenance required to receive and distribute signals to the communities listed in Schedule 1. Applicable expenses include: salaries and wages for all hours worked by employees, employer payroll taxes, vacation, bonus, and profit-sharing payments, pension costs and life and health insurance costs. (Does not include salaries, wages and employee benefits that are capitalized in construction accounts.)

Line No. 9. "Pole Rentals"—The rental cost of pole attachments and duct space. Site rentals are to be included in "All Other Service Expenses".

Line No. 10. "Duct Rentals"—The rental cost of duct space.

Line No. 11. "Private Microwave Service"—The expenses of receiving microwave transmissions from private sources of microwave service (not the cost of receiving microwave service from common carriers—see next definition). Costs are included on this line for CARS, or other private microwave services.

Line No. 12. "Common Carrier Microwave Service"—The cost of receiving microwave transmissions from Common Carrier public microwave relay service including service charges, equipment rental or other related costs.

Line No. 13. "Total Tariff Charges"—The cost of receiving channel service from a telephone company. If such services are not obtained, leave this line blank.

Line No. 14. "All Other Service Expenses"—The expense of receiving and distributing cable signals which have not been included on lines 8 through 13. All expenses entered on this line must directly relate to providing cable services. Such expenses include: the cost of expendable maintenance materials, payments to utilities for heat, light, and power, the nonlabor expenses related to operation of service vehicles, rent, supplies and telephone services.

Line No. 15. "Payments to Pay Cable Program Suppliers"—All amounts paid for any products or services received from suppliers of movies, sports, and other entertainment programs for the purpose of pay cable operations.

"Origination Expenses"—The expenses directly related to program origination including automated and nonautomated program origination such as the purchase or production of films, features, local news, weather, sports events or other programing.

Line No. 16. "Salaries, Wages and Employee Benefits"—The expenses for services of all employees engaged in the origination of programing. Applicable expenses include: salaries and wages for all hours worked, employer payments, pension costs, and life and health insurance costs.

Line No. 17. "Other Origination Expenses"—All other origination expenses not included in Salaries, Wages, and Employee Benefits.

"Selling, General and Administrative Expenses"—The expenses directly related to selling, general and administrative activities such as advertising, insurance, property taxes, traveling expenses, utilities and telephone and office supplies.

Line No. 18. "Salaries, Wages, and Employee Benefits"—The expenses of employees engaged in selling, general and administrative activities directly related to the operation of the cable system. Applicable expenses include: Salaries and Wages of employees engaged in promoting and advertising the system as directed towards prospective subscribers and advertisers, system manager's salary, and all other salaries and wages not included as service or origination expenses, employer payroll taxes, vacation, bonus and profit sharing payments, and life and health insurance costs.

Line No. 20. "Copyright Fees"—Copyright fees for broadcast signal carriage (as defined by 17 U.S.C. Section 111) "limitations on exclusive rights: secondary transmission". This account should not include the cost of cablecast and film rights which are classified as assets and are recorded in Schedule 3.

Line No. 21. "All Other Selling, General and Administrative Expenses"—The total of all selling, general and administrative expenses not included in lines 18, 19, and 20 such as utilities and telephone, local property taxes, accounting and legal fees, bad debts expense, insurance, management fees, and corporate overhead allocations.

Line No. 22. "Total Operating Expenses"—The total of lines 8 through 21.

Line No. 23. "Total Operating Income"—The difference of the amount entered on line 7 less the amount entered on line 22 of Schedule 2. This amount is the total operating income (or operating margin) for the system(s) which comprises this report.

Line No. 24. "Depreciation"—The amount provided annually for allocating the cost of the fixed assets that are entered on Schedule 3, including plant adjustment and amortization of leasehold improvements. Depreciation expense allocates the cost of fixed assets over their estimated economic life.

Line No. 25. "Amortization"—The amount provided annually for allocating the cost of the intangible assets entered on Schedule 3 that are normally capitalized. Amortization expense should allocate the cost of intangible assets over the expected periods benefited.

Line No. 26. "Other Income"—The revenue earned from sources not directly related to the operation of a cable system such as interest, dividends, gains from the sale or

disposal of fixed assets, and gains from the sale of marketable securities.

Line No. 27. "Interest Expense"-The amount of the interest expense of obligations, such as notes, bonds, and mortgages payable. This item should not include interest charged to construction in progress, which should appear in Schedule 3, line 10, nor does it include intercompany charges for the use of debt equity capital which should appear in Schedule 2, line 21.

Line No. 28. "Miscellaneous"—The amount of all other expenses not directly related to the operation of a cable television system, such as credits allocated to systems by parent corporations, losses from the sale or disposal of fixed assets, and losses from the sale of marketable securities.

Line No. 29. "Total Other Income (or Loss)"—Line 26 less lines 27 and 28.

Line No. 30. "Extraordinary Items"—The amount of income or (loss) resulting from an event or transaction not reasonably expected to recur in the foreseeable future or an event or transaction that is unusual in nature. Do not include gains or losses from the sale or disposal of fixed assets or from the sale of marketable securities.

Line No. 31. "Total Profit (or Loss) Before Taxes"—The sum of lines 23, 29, and 30 less lines 24 and 25.

Line No. 32. "Total Assets (Net)"—This line item is to be completed only for those cable systems (fewer than 1,000 subscribers) exempted from completing the balance sheet—Schedule 3. Net total assets consist of total assets less accumulated depreciation and amortization. Operators of cable systems having more than 1,000 subscribers would report "Total Assets" with their completion of Schedule 3.

SCHEDULE 3 INSTRUCTIONS AND ACCOUNT DEFINITIONS

INSTRUCTIONS

3.1 The financial information entered in Schedule 3 must apply to only those business activities related to the operation of cable television services.

3.2 Accounts must be entered as defined in this section. If allocations or separations are necessary because bookkeeping records are consolidated, refer to section 3 of these instructions.

3.3 Financial entities serving fewer than 1,000 subscribers need not fill out this schedule. They may enter the amount of total assets on line 32 of Schedule 2.

3.4 Schedule 3 Definitions. "Current Assets"—Those assets which are expected to be converted into cash or consumed in business operations within a short period of time (normally 1 year or less).

Line No. 1. "Cash"—The total amount of cash on hand or on deposit in banks, including interest-bearing certificates of deposit. Do not include amounts resulting from banking arrangements permitting automatic loans by writing overdrafts. These amounts should be classified as loans payable.

Line No. 2. "Accounts Receivable"—The amounts due from subscribers advertisers or other trade accounts. Also any amounts due from employees, officers or any other party. Include only those amounts expected to be collected within 1 year. Include accrued interest if earned but not yet received. Do not include collections made in advance nor accounts deemed uncollectable.

Line No. 3. "Other Current Assets"—All other current assets not included in lines 1 or 2, such as: short-term investments, inventory, prepaid expenses, and the current portion of cablecast and film rights.

Line No. 4. "Total Current Assets"—The total of lines 1 through 3.

"Fixed Assets" Capital Assets used for operation which have a life expectancy of more than one year. Fixed assets items must be reported in terms of original cost, wherever state or local regulatory agencies demand, otherwise report as the current owner's purchase cost i.e. "Historical cost". In cases where the state reporting entity is larger than the federal reporting entity, the cable operator may be exempted from reporting original cost data in FCC Form 326, even if the systems are located in those states which require such data. Original cost is defined as the cost of the fixed item when it is first put in use for cable television service.

Line No. 5. "Land and Buildings"—The cost of real property, its acquisition costs, costs of permanent improvements, office buildings and headend shack.

Line No. 6. "Headend"—The cost of tower, antennae, electronic equipment and all other equipment related to the headend, including time and weather channel equipment. The cost of the headend building should be included on line 5, not on this line.

Line No. 7. "Trunk and Distribution System"—The cost of all trunk and distribution lines in-use to deliver cable signals to subscribers, including rebuilt trunk and distribution plant. This includes the costs of owned poles (including related guys, anchors, messenger cable and pole hardware), trunk and distribution cable (including lashing wire, splices and connectors), amplifiers and power suppliers (including housing and associated hardware and electronic equipment).

Line No. 8. "Subscriber Devices"—The costs associated with connecting a subscriber to the system. This includes costs of installing or placing into service taps, blocks, transformers, cable convertors and other subscriber connection devices.

Line No. 9. "Program Origination Equipment"—The cost of all equipment used for program origination and located at the cable studio or program origination site. Program origination equipment includes cameras, studio equipment, film processing equipment, video recording equipment, editing recorder monitor, and production consoles.

Line No. 10. "Construction Work in Progress"—The cost of uncompleted construction of buildings, improvements and equipment. Once construction of specific assets is completed to the point of use, the associated costs should be transferred to the appropriate fixed asset account.

Line No. 11. "Other Fixed Assets"—The cost of all fixed assets utilized for the operation of the cable system and not included in any other fixed asset account. Examples of fixed assets whose costs should be included in the amount entered on this line are: test equipment, automobiles and trucks (vehicles), office equipment, leasehold improvements and capitalized leased property (if any).

Line No. 12. "Plant Adjustment"—If the accounting records of the cable operator are maintained on the basis of the seller's original cost of purchased cable assets, enter on this line the difference between the original cost of the purchased assets and the appraised fair value of these assets at the time of purchase (called plant adjustment). This does not include any amounts recorded as goodwill or franchise costs; only the excess of the appraised fair value over the seller's book value of purchased, tangible assets, or the excess of the seller's book value over the appraised fair value.

Line No. 13. "Accumulated Depreciation"—The cumulative portions of the cost of all tangible, depreciable assets included in Fixed Assets Accounts (which includes Plant Adjustment if the accounting records of the cable operator are maintained on the original cost basis) in this schedule that have been allocated as an expense for the current year and appropriate preceding years. Common forms of allocating costs of fixed assets to expenses are: the straight line method, the sum-of-the-year's digits method, the declining balance method and the double declining balance method.

Line No. 14. "Total Fix Assets"—The total of lines 5 through 12 less line 13.

Line No. 15. "Other Assets"—The total of the costs of all other assets not included on any previous line of Schedule 3. the assets whose costs should be entered on this line include intangible assets such as goodwill, franchise costs, the costs of licensee, permits or other intangible assets, deferred development costs (startup costs), noncurrent cablecast and film rights, unamortized bond discount, deposits and cash value of life insurance.

Line No. 16. "Accumlated Amortization"—The cumulative portions of the cost of all amortizable assets that have been allocated as an expense for the current year and appropriate preceding years.

Line No. 17. "Total Other Assets"—Line 15 less line 16.

Line No. 18. "Total Assets"—The total of lines 4, 14 and 17.

"Current Liabilities"—Those obligations to be liquidated by the use of existing current assets within 1 year.

Line No. 19. "Loans Payable"—The amount of debt payable within 1 year under terms of an agreement with a financing instituting such as banks and insurance companies. This includes funds received through banking arrangements providing automatic protection of overdrafts.

Line No. 20. "Accounts Payable"—The amount payable for goods and services received from vendors and suppliers and the amounts accrued as expenses for obligations which are due but have not been paid.

Line No. 21. "Other Current Liabilities"—The amount of all current liabilities not included on lines 19 and 20. Examples of current liabilities which would be included on this line are: unearned subscriber revenues (subscriber payments for services to be provided in the future), refundable subscriber deposits, income tax liabilities currently payable, amounts payable within 1 year on cablecast and film rights (contracts), and dividends payable.

Line No. 22. "Total Current Liabilities"—The total of lines 19, 20 and 21.

Line No. 23. "Total Deferred Credits"—Revenues that are deferred into a future operating period. This arises upon the receipt of an asset preceding the period in which the asset is considered to be earned, such as an investment credit or a deferred tax liability. This account also includes any other liabilities not included as current liabilities (on lines 19, 20 and 21) or long-term debt (on line 24).

Line No. 24. "Total Long-Term Debt"—The amount payable after 1 year to all holders of debt securities, notes and agreements and other long-term liabilities for which the cable operator is legally obligated. The amount of liabilities (noncurrent) arising from capitalized leases and unamortized bond premiums is to be included on this line.

Line No. 25. "Total Stock Issued"—The amount of par or stated value of common and preferred stock issued, capital in excess of par and all other capital contributions, less the cost of capital stock repurchased and held in the treasury. This line does not apply to proprietorships or partnerships.

Line No. 26. "Proprietor's Equity"—The amount owned by the proprietor, partners or joint venture members. This amount includes undistributed earnings less the amount of drawings or distributions. This line does not apply to incorporated businesses.

Line No. 27. "Retained Earnings"—The amount should represent the accumulated balance of earnings in prior years which has not been otherwise classified by action of the directors or declared as payable to stockholders as dividends, whether paid yet or not. This amount is often called Earned Surplus or Reinvested Income and does not represent any specific asset. This line does not apply to proprietorships or partnerships.

Line No. 28. "Other Owners Equity"—The amount of all other equity not included on lines 25, 26, or 27. Examples of amounts which should be entered on this line are the fund balances for nonprofit or municipal cable systems.

Line No. 29. "Total Owners Equity"—The total of lines 25, 26, 27 and 28.

Line No. 30. "Total Liability and Owners Equity"—The total of lines 22, 23, 24 and 29.

Line No. 31. "Method of Depreciation Used"—Indicate the depreciation method used by one of the following codes:

CODE NO. AND METHOD

1—Straight line.
2—Declining balance.
3—Double declining balance.
4—Sum-of-the-years' digits.
5—Other.

When more than one depreciation method is used, enter the code number for the method most commonly used.

SCHEDULE 4 INSTRUCTIONS

4.1 *General Instructions:* If there has been no system construction or expansion within 5 years of this filing, Parts A, B and C of Schedule 4 should be left blank. If all costs can be identified with the particular reporting system(s) and directly relate to the operation of this reporting entity, Part D should be left blank. If the operator is the original owner of the assets of this reporting entity or is not required by a State or local regulatory agency to adhere to the "original cost" concept (defined in Part 3.4 of the instructions for Schedule 3), Part E should be left blank. All operators of systems with 1,000 or more subscribers must fill out Part F of Schedule 4 unless all fixed assets are leased. If payments which may be classified as operating expenses are made to system owners or relatives, Part G must be filled out.

4.2 Schedule 4—Explanation of Terms:

Line No. 1 and 5. "Deferred System Development Costs"—include operating promotional, general and administrative costs, net of incidental revenues, incurred prior to becoming "Operational", which are deferred and subsequently amortized over the future periods benefited by these costs (usually 5 to 15 years). Deferral of systems development costs must be based upon relative certainty that they will be recovered, not deferred solely because an operator is in the development stage.

Line No. 2 and 6. "Franchise Costs"—represent the costs of obtaining franchises and include legal expenses and other costs associated with franchises.

Line No. 3 and 7. "Goodwill"—is recorded in the accounting records of cable operators when a cable system is purchased at a price in excess of the fair value of the assets acquired less liabilities assumed and represents that portion of the purchase price that cannot be related to the identifiable assets.

Line No. 4. "Capitalized Interest on System Construction"—Interest costs that are directly related to system construction may be depreciated much the same as other construction costs.

Line No. 8. "Overhead Costs Allocated to System"—are costs which cannot be identified with any particular cable system and are accumulated in corporate accounts. These costs include the salaries, wages, and employee benefits of the corporation's officers and directors, other corporate selling, general and administrative expenses, management fees and federal and state income taxes payable. Overhead costs must be allocated to individual systems, as described in the Allocation Guidelines section of these instructions (p. 17).

Line No. 9. "Original Cost of Purchased Assets"—This concept of cost is generally a bookkeeping requirement of rate base regulation. Its purpose is to reflect original purchase price of plant, buildings and equipment used in providing the regulated services. If used in completing the fixed asset line items of this form, the appropriate state definition of original cost applies.

Line No. 10. "Portion of Purchase Price Allocated to Seller's Book Value"—is that amount of the purchase price allocated to the original cost less the accumulated depreciation of the seller.

Line No. 11. "Recorded Cost of Purchased Assets by Purchaser"—is the entire cost of the purchased assets, incurred by the purchaser.

Line No. 12. "Estimated Useful Life of Fixed Assets"—is the amount, in years, of each asset's estimated economic life.

Line No. 13. "Owners"—Proprietors, partners, or stockholders who own at least 3 percent of the reporting cable television system(s). This does not include payments to a parent company for services performed by the parent company's staff. Such amounts would be included in line 8, "Overhead Costs Allocated to Systems".

"Salaries"—The amount paid to those owners employed by the reporting cable television system(s) as remuneration for their services and which are classified as an operating expense.

Line No. 14. "Other Direct Payments"—The amounts paid to owners (other than salaries) for goods or services rendered which are classified as operating expense.

Line No. 15. "Relatives"—Sons, daughters, sons-in-law, daughters-in-law, mother, father of owners.

4.3 Schedule 4—Line Item Instructions:

PART A

Line No. 1. "Deferred System Development Costs" (Annual)—If system development costs are deferred, enter the number of expected periods benefited in the column entitled "Amortization Term". Indicate method of amortization used by entering one of the following codes: (1—straight line, 2—declining balance, 3—double declining balance, 4—sum-of-the-years' digits, 5—other) in the column entitled "Amortization Method Used". Enter the total amount of deferred costs capitalized during the year in the column entitled "Amount Capitalized During Year". Enter the amount of development cost amortization which applies only to the present accounting period in the column entitled "Amount Amortized During Year".

Line No. 2. "Franchise Costs" (recorded as assets) (Annual)—If the cost of obtaining a franchise is amortized, enter the number of expected periods benefited in the column entitled "Amortization Term". Indicate the method of amortization used by entering one of the following codes: (1—straight line, 2—declining balance, 3—double declining balance, 4—sum-of-the-years' digits, 5—other) in the column entitled "Amount Capitalized During Year". Enter the amount of franchise cost amortization which applies only to the present accounting period in the column entitled "Amount Amortized During Year".

Line No. 3. "Goodwill" (Annual)—If goodwill is recorded, enter the number of expected periods benefited in the column entitled "Amortization Term". Indicate the method of amortization used by entering one of the following codes: (1—straight line, 2—declining balance, 3—double declining balance, 4—sum-of-the-years' digits, 5—other) in the column entitled "Amortization Method Used". Enter the total amount of goodwill capitalized during the year in the column entitled "Amount Capitalized During Year". Enter the amount of goodwill amortization which applies only to the present accounting period in the column entitled "Amount Amortized During Year".

PART B

Line No. 4. "Capitalized Interest on System Construction"—If interest costs on system construction are capitalized, enter the total amount of interest being capitalized in the column entitled "Total Capitalized". Enter the amount capitalized during the year in the column entitled "Amount Capitalized During Year". Enter the number of expected periods benefited in the column entitled "Useful Life".

PART C

Line No. 5. "Deferred System Development Costs"—If system development costs are deferred, enter the entire amount of these costs in the column entitled "Total Amount of Asset". Enter the total amount to be capitalized, if any, in the column entitled "Amount Not Being Amortized". Enter the entire amount of system development costs to be amortized in the column entitled "Amount Being Amortized".

Line No. 6. "Franchise Costs"—If franchise costs are being deferred, enter the entire amount of franchise costs in the

column headed "Total Amount of Asset". Enter the total amount to be capitalized, if any, in the column entitled "Amount Not Being Amortized". Enter the entire amount of franchise costs to be amortized in the column entitled "Amount Being Amortized".

PART D

Line No. 8. "Overhead Costs Allocated to System"—Enter the entire amount of Allocated Costs, if any, in the column entitled "Total Amount of Allocated Costs". Indicate the method of allocation used by entering one of the following codes: (1—per number of subscribers, 2—per gross revenues, 3—per miles of plant, 4—other) in the column entitled "Method Used to Allocate Costs to System".

PART E

Line No. 9. "Original Cost of Fixed Assets"—Enter the total amount of the original cost of fixed assets in the column entitled "Amount".

Line No. 10. "Portion of Purchase Price Allocated to Seller's Book Value"—Enter the amount of the purchase price allocated to the seller's book value in the column entitled "Amount".

Line No. 11. "Recorded Cost of Purchased Assets by Purchaser"—Enter the entire cost to the buyer of purchased assets in the column entitled "Amount".

PART F

Line No. 12. "Estimated Useful Lives of Fixed Assets"—Enter each asset classification (land & buildings, headend, subscriber devices, trunk and distribution system) in the column entitled "Fixed Asset Classification". In the column entitled "Amount", enter each asset's original cost, if mandated by local regulatory authority. If original cost is not necessary, enter each asset's historical cost. Enter the estimated economic life of each asset in the column entitled "Useful Life". When computing the estimated economic life of assets, such as trunk and distribution system and subscriber devices, use a weighted average, if necessary.

PART G

Line No. 13. "Salaries to Owners"—Enter the entire amount of salaries paid to owners of the reporting cable television system(s) in the column entitled "Amount". Enter the number of owners to whom the salaries were paid in the column entitled "Number of Persons".

Line No. 14. "Other Payments to Owners"—Enter the total amount of any other direct payments, which are classified as operating expenses, to owners of the reporting cable television system(s) in the column entitled "Total Amount". Indicate the type(s) of payments made in the appropriate column by entering one or more of the following codes: 1—rent, 2—payments for services, 3—payments for equipment, 4—payments for supplies, 5—travel and entertainment expenses, 6—other.

Line No. 15. "Expense Payments to Spouse or Relatives"—Enter the total amount of payments, which are classified as operating expenses, to a spouse or relative of the owners of the reporting cable television system(s) in the column entitled "Total Amount". Indicate the type(s) of payments made in the appropriate column by entereing one or more of the following codes: 1—rent, 2—payments for services, 3—payments for equipment, 4—payments for supplies, 5—travel and entertainment expenses, 6—other.

SCHEDULE 5 INSTRUCTIONS

5.1 Indicate the number of employees for the work week in which the last day of the Fiscal Year fell. If there are no employees, indicate this fact by entering zeros in the spaces provided.

5.2 If the number of employees is recorded in books which are consolidated for more than one reporting entity, refer to Part C of the Allocation Guidelines section of these Instructions.

CERTIFICATION INSTRUCTIONS

Enter the following in the appropriate spaces: signature of owner, partner, corporate officer or representative holding power of attorney, title of person signing; date of signature; legal name and mailing address of cable television operator. If certification is not complete, FCC Form 326 will not be accepted and will be returned for complete certification.

ALLOCATIONS AND CONSOLIDATIONS GUIDELINES

PART A—SEPARATING CABLE FROM NON-CABLE DATA

In many instances, cable operators are also involved in other lines of business. If the accounting records of the differing "segments" of the businesses are kept separately, there is no problem in filing FCC Form 326. If, however, the accounting records of the business are consolidated, the need for allocation of costs to each business "segment" arises. In order to facilitate the separation of cable related from non-cable related financial information, a step-by-step guideline for the allocation of the cable related financial data is provided herein. However, the cable operator may use an allocation method of his own choosing, provided the method adheres to generally accepted accounting principles and is properly footnoted.

Guideline for Separation of Cable from Non-Cable Financial Data:

Step No. 1. Identify all financial data (balance sheet and income statement data) which directly relate to cable television activities.

Step No. 2. Enter the amounts of all the accounts identified as directly relating to cable television activities on the appropriate lines of Schedules 2 and 3, as indicated in the Schedule 2 and 3 instructions/definitions contained in this Manual.

Step No. 3. For the remaining revenue accounts, obtain the ratio of cable related gross revenues to total gross revenues (cable gross revenues ÷ total gross revenues). Apply this percentage to all revenues that cannot be identified as directly relating to cable television activities or other business activities. Enter the resulting amount(s) on the appropriate line(s) of Schedule 2, as indicated in the instructions for Schedule 2.

Step No. 4. For the remaining expense accounts obtain the ratio of cable related expenses to total expenses (cable expenses ÷ total expenses). Apply this percentage to all expenses that cannot be identified as directly relating to cable television activities. Enter the resulting amount(s) on the appropriate lines of Schedule 2, as indicated in the instructions for Schedule 2.

Step No. 5. For the remaining asset accounts, obtain the ratio of cable related assets to total assets (cable assets ÷ total assets). Apply this percentage to all assets that cannot be identified as directly relating to cable television activities. Enter the resulting amount(s) on the appropriate lines of Schedue 3, as indicated in the instructions for Schedule 3.

Step No. 6. For the liability and equity accounts, apply the percentage obtained in step 5 to the liability and equity accounts. Enter the resulting amounts on the appropriate lines of Schedule 3, as indicated in the instructions for Schedule 3.

Step No. 7. Attach, in appendix form, an explanatory outline of all calculations and their results.

PART B—ALLOCATION OF CONSOLIDATED DATA TO PARTICULAR SYSTEMS

In many instances, cable operators consolidate the financial data of several systems into one set of accounts. If the Commission's consolidation requirements are fulfilled in the consolidation, allocation of financial data is not necessary. However, if the Commission's consolidation requirements are not met, the financial data must be separated for reporting as separate financial entities. In order to facilitate separation of the reporting entities, a step-by-step guideline for the allocation of financial data to particular systems is provided herein. However, the cable operator may use an allocation method of his own choosing, provided the method adheres to generally accepted accounting principles and is properly footnoted.

Guidelines for the Allocation of Consolidated Financial Data to Particular Systems:

Step No. 1. Identify all accounts which can be related to each reporting entity and enter the amounts on the appropriate lines of Schedules 2 and 3 as indicated in the Schedule 2 and 3 instructions/definitions contained in this Manual.

Step No. 2. Obtain the ratio of subscribers per reporting entity to total subscribers to all systems consolidated on the company's books (number of subscribers ÷ total number of subscribers).

Step No. 3. Apply the percentage obtained in step 2 to all accounts which cannot be identified as relating to each reporting entity. Enter the resulting amounts on the appropriate lines of Schedules 2 and 3, as indicated in the instructions for Schedules 2 and 3.

Step No. 4. Apply the percentage obtained in step 2 for determining the number of employees per reporting entity. Enter the resulting figure in the appropriate spaces of Schedule 5.

Step No. 5. Attach, in appendix form, an explanatory outline of all calculations and their results.

PART C—ALLOCATION OF OVERHEAD COSTS

Although the accounting records of individual reporting entities are often kept separately, in many instances there are corporate overhead costs that must be allocated to the reporting entities. In order to facilitate allocation of these costs, examples of acceptable allocation methods are provided herein. However, the cable operator may use an allocation method of his own choosing, provided the method adheres to generally accepted accounting principles and is properly footnoted.

Method 1. "Per Number of Subscribers"—Obtain the ratio of subscribers per reporting entity to total subscribers (subscribers per entity ÷ total subscribers). Apply this percentage to each overhead cost and enter the resulting amount on the appropriate lines of Schedule 2, as designated in the Schedule 2 instructions/definitions contained in this Manual.

Method 2. "Per Gross Revenues"—Obtain the ratio of gross revenues per reporting entity to total gross revenues of all systems consolidated on the company's books (gross revenues per entity ÷ total gross revenues). Apply this percentage to each overhead cost and enter the resulting amount on the appropriate lines of Schedule 2, as indicated in the Schedule 2 instructions.

Method 3. "Per Miles of Plant"—Obtain the ratio of miles of plant per entity to total miles of plant of all systems consolidated on the company's books (miles of plant per entity ÷ total miles of plant). Apply this percentage to each overhead cost and enter the resulting amount on the appropriate lines of Schedule 2, as indicated in the instructions for Schedule 2.

Method 4. Attach, in appendix form, an explanatory outline of all calculations and their results.

ADDITIONAL ASSISTANCE

Should questions arise in the preparation of FCC Form 326, assistance may be obtained from the Research Division of the Cable Television Bureau.

[FR Doc. 78-31330 Filed 11-6-78; 8:45 am]

[7035-01-M]

Title 49—Transportation

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

Agency Relationships; Extension of Time

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time for compliance with reporting requirements of final regulations.

SUMMARY: By decision of July 7, 1978, the Commission issued final under 49 CFR Part 1056 (43 FR 32303, July 26, 1978). Section 1056.19(e) of that part requires that carriers of household goods file certain information with the Commission. By notice to the parties, served October 6, 1978, the compliance date for submission of the required information was extended to November 1, 1978.

In order to ensure that carriers have sufficient time to comply with section 1056.19(e), the date for compliance is extended to January 15, 1979.

DATE: The compliance date for submission of reports required by 49 CFR 1056.19(e) is extended to January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Michael Erenberg, 202-275-7292.

Decided October 31, 1978.

By the Commission, Alan Fitzwater, Director, Office of Proceedings.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31491 Filed 11-6-78; 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.

[1505-01-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

[15 CFR Part 90]

CERTAIN POPULATION AND PER CAPITA INCOME ESTIMATES

Challenge Procedures

Correction

In FR DOC. 78-30775 appearing at page 50696 in the issue of Tuesday, October 31, 1978, on page 50697 in the first column, in the "DATE" paragraph, "January 2, 1978" should read "January 2, 1979."

[3410-30-M]

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR part 225]

SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Correction

In FR Doc. 78-30906 appearing at page 50820 in the issue for Tuesday, October 31, 1978, make the following corrections:

(1) On page 50821, in the first column, first paragraph, the introductory sentence should read *"Use of small and minority-owned businesses".*

(2) Also on page 50821, in the middle column, in the paragraph under the heading, "PROGRAM MANAGEMENT AND ADMINISTRATION PLAN", in the first line, the "3" before the words, *"Additional provisions"* should be deleted.

(3) Also on page 50821, in the third column, in the first full paragraph, in the 16th line, "wuld" should read "would".

(4) On page 50823, in the first column, in the paragraph under the heading, "FOOD SERVICE REQUIREMENTS", in the 12th line, the word "as" should be replaced by the word "at".

(5) On page 50825, in the middle column, in § 225.4(h)(3), in the second line, "utilzed" should read "utilize".

(6) On page 50827, in the third column, in § 225.5(j)(3), in the 20th line, "pereiods" should read "periods".

(7) On page 50831, in the third column, in § 225.7(h), in the 13th line, the date given should be "February 15" and not "November 15".

(8) On page 50832, in the first column, in § 225.8(b), in the 8th line, insert the word "such" between the words "which" and "letter".

(9) Also on page 50832, in the middle column, in § 225.8(g), in the first sentence, "Septemgber" should read "September".

(10) Also on page 50832, in the middle column, in § 225.8(i), in the 18th line, "inspecitons" should read "inspections".

(11) On page 50833, in the middle column, in § 225.9(h)(6), "§ 225.9(k)" should read "§ 255.9(k)".

(12) On page 50834, in the third column, in § 225.11(a), in the 18th line, substitute the word "food" for the word "blood".

(13) On page 50836, in the third column, in § 225.13(e), in the first line, "project" should read "projected".

(14) On page 50838, in the first column, in subparagraph (2), in the fifth line, "exced" should read "exceed".

[1505-01-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 350]

[Docket No. 78N-0064]

ANTIPERSPIRANT DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

Establishment of a Monograph; Notice of Proposed Rulemaking

Correction

In FR Doc. 78-28083 appearing at page 46694 in the issue for Tuesday, October 10, 1978, on page 46694, in the second column, in the third full paragraph, in the 11th line, the date "November 6, 1978" should be "November 9, 1978".

[4310-02-M]

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[25 CFR Part 231]

COLORADO RIVER IRRIGATION PROJECT, ARIZONA

Proposed Revision of Rates and Procedures

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Proposed Revision of Rates and Procedures.

SUMMARY: The purpose of the proposed revision is to increase the four power rate schedules: § 231.51 Rate Schedule No. 1—Residential Rate, § 231.52 Rate Schedule No. 2—Commercial Rate, § 231.53 Rate Schedule No. 3—Irrigation Pumping Rate, and § 231.54 Rate Schedule No. 4—Street and Area Lighting, and to modify the procedure for adjusting power rates.

A rate increase is necessary because the Arizona Public Service Co., a power supplier of the Colorado River Irrigation Project, has increased the cost of wholesale power by 33.5 percent. The increased cost, when averaged with power purchased from the Department of Energy, will be 9 percent. A study has determined that the various classes of customers within the Project contribute revenue in proportion to the cost of serving them; therefore, an approximate 9 percent general increase is proposed to the existing rates. This increase is the minimum required to offset the additional cost of power purchased from Arizona Public Service Co.

The Project purchases its power and energy from the Department of Energy and Arizona Public Service Co. The cost of the power and energy purchased from these entities is subject to change; consequently, the Project power rates in most instances must be adjusted to offset these changes. The present procedure for adjusting Project power rates is through the rulemaking process which is somewhat time consuming. The time delays associated with the rulemaking process have prevented the Project from adjusting its power rates in a timely manner, thus causing economic instability in the operation and maintenance of the power system. A provi-

sion (Section 231.55) has been added to Part 231 of the CFR which will provide for the area director to automatically adjust Project power rates through unilateral action in order to avoid delays associated with the rulemaking process. Rate adjustments due to increased costs of labor, materials and equipment will continue to be initiated through the rulemaking process.

DATE: Comments must be received on or before November 27, 1978, at the Bureau of Indian Affairs, Phoenix Area Ofice, 3030 North Central Avenue, P.O. Box 7007, Phoenix, Ariz. 85011.

FOR FURTHER INFORMATION CONTACT:

Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Ariz. 85011, telephone 602-261-4184.

SUPPLEMENTARY INFORMATION: Authority for this proposed revision has been delegatd by the Assistant Secretary-Indian Affairs to the Area Director by section 3.1 of 10 BIAM.

The principal author of this document is Harold Roberson, Bureau of Indian Affairs, Phoenix Area Office, Phoenix, Ariz. 85011, telephone 602-261-4184.

It is the policy of the Department of Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments, suggestions, or objections with respect to the proposed amendment, to John H. Artichoker, Area Director, Phoenix Area Office, P.O. Box 7007, Phoenix, Ariz. 85011, on or before November 20, 1978.

(Section 2, 49 Stat. 1039; 54 Stat. 422; and 5 U.S.C. Sec. 301.)

It is proposed to amend Part 231, Subchapter U, Chapter 1, of Title 25 of the Code of Federal Regulations as follows:

1. By revising § 231.51 to read as follows:

§ 231.51 Rate Schedule No. 1—Residential.

(a) *Application of schedule.* This schedule applies to electrical service required for residential purposes in individual private dwellings and in individually metered apartments delivered through one meter to a customer at one premise either urban or rural, for domestic use only. The electrical service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of service.* Single phase, 60 cycle, 120/240 volts.

(c) *Monthly rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.2 cents per kilowatt-hour for the next 300.

(3) 4.4 cents per kilowatt-hour for the next 800 kilowatt-hours.

(4) 3.3 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Fuel cost adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to the Project's Power Supplier.

2. By revising § 231.52 to read as follows:

§ 231.52 Rate Schedule No. 2—Commercial rate.

(a) *Application of schedule.* This schedule applies to service required by commercial, industrial and off-reservation irrigation pumping for all uses when such service is supplied at one point of delivery and measured through one meter. The electric service is to be used on the consumer's own premises only and must not be resold.

(b) *Type of service.* Single or three phase, 60 cycle, at one standard voltage (120/240, 120/208, 277/480, or 480 volts).

(c) *Monthly rate.* (1) $6.65 for the first 100 kilowatt-hours or less.

(2) 5.1 cents per kilowatt-hour for the next 900 kilowatt-hours.

(3) 4.1 cents per kilowatt-hour for the next 4,000 kilowatt-hours.

(4) 3.1 cents per kilowatt-hour for all additional kilowatt-hours.

(d) *Demand charge.* (1) None for the first 5 kilowatts.

(2) $2.77 per kilowatt for all billing demand over 5 kilowatts.

(e) *Minimum charge.* (1) $8.50 or $2.77 per kilowatt of billing demand for billing demands over 5 kilowatts, or the amount specified in the contract whichever is greater, except where the Officer in Charge determines that the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill shall not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve (12) times the highest monthly minimum computed for the same 12-month period.

(f) *Billing demand.* The highest 15-minute integrated demand in kilowatt-hours occurring during the month of the demand specified in a contract, whichever is greater.

(g) *Fuel cost adjustment.* An adjustment shall be added to each kilowatt-hour used equal to the estimated average purchased power adjustment (rounded to the nearest 0.0001) paid by the Project to the Project's power suppliers.

3. By revising § 231.53 to read as follows:

§ 231.53 Rate Schedule No. 3—Irrigation pumping rate.

(a) *Application of schedule.* This schedule shall apply to power used on the reservation for pumping of irrigation water for irrigation systems when such service is supplied at one point of delivery and measured through one meter and is approved by the officer in charge. Use must be limited to the customer's premises and must not be resold.

(b) *Type of service.* Single or three phase, 60 cycle at one standard voltage (120/240, 120/208, 277/480, or 480 volts).

(c) *Monthly rate.* (1) Energy charge—1.9 cents per kilowatt-hour.

(2) Demand charge—$1.65 per kilowatt of billing demand.

(3) Minimum charge—$1.65 per kilowatt of billing demand.

4. By revising § 231.54 to read as follows:

§ 231.54 Rate Schedule No. 4—Street and area lighting.

(a) *Application of schedule.* This rate schedule applies to service for lighting public streets, alleys, thoroughfares, public parks, school yards, industrial areas, parking lots, and similar areas where dusk-to-dawn service is desired. The Project will own, operate, and maintain the lighting system including normal lamp and globe replacement.

(b) *Monthly rate.*

Lamps	Per lamp	
	Metered	Unmetered
1. 175 w, mercury vapor (approximately 6,500 lumens)	$5.55	$6.65
2. 250 w, mercury vapor (approximately 10,000 lumens)	7.60	8.50
3. 400 w, mercury vapor (approximately 18,000 lumens)	9.50	12.10

(c) *Minimum term of service.* The minimum term of service will be 12 months, payable in advance. This advance payment may be waived by the officer in charge.

(d) *Installation charges.* The customer will be required to pay the total installation costs including labor and materials as determined by the officer in charge. Ownership of all facilities will remain with the Project including lamp and globe replacement.

5. By adding § 231.55 to read as follows:

231.55 Adjustments due to purchased power cost changes.

The rate schedules given in §§ 231.51, 231.52, 231.53, and 231.54 shall be adjusted as necessary and appropriate to offset changes in costs of power and energy purchased from the power

supplier(s) of the Project. Rate adjustments pursuant to this provision shall become effective upon unilateral action of the area director; however, when a rate adjustment is determined to be necessary, the area director shall give sufficient notice to customers and other interested parties.

NOTE.—It is hereby certified that the economic and inflationary impacts of this proposed action have been carefully evaluated in accordance with Executive Order 11821.

CHARLES D. WORTHMAN,
Acting Area Director.

[FR Doc. 78-31439 Filed 11-6-78; 8:45 am]

[4810-31-M]

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[27 CFR Parts 194, 197, 201, 250, 251 and 252]

[Notice No. 312]

USE OF STRIP STAMPS AND DEVICES OTHER THAN STRIP STAMPS ON CONTAINERS OF DISTILLED SPIRITS

Proposed Rulemaking

AGENCY: Bureau of Alcohol, Tobacco and Firearms.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to: (1) add and amend regulations to implement Pub. L. 94-569 (approved October 20, 1976), which authorizes the use of alternatives to strip stamps; (2) amend the regulations concerning serial numbers on strip stamps; (3) amend the regulations to eliminate blue and white strip stamps and substitute use of green and red strip stamps respectively; and (4) amend the regulations to eliminate the overprinting requirements for domestic bottled in bond spirits. The proposed changes should result in a reduced administrative burden to industry members while providing protection to Federal revenues and to consumers.

DATE: Comments must be received on or before January 8, 1979.

ADDRESSES: Comments may be submitted to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Attention: Chief, Regulations and Procedures Division).

FOR FURTHER INFORMATION CONTACT:

Edward J. Sheehan, Specialist, Research and Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044, 202-566-7626.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking is being issued in keeping with ATF's policy of implementing rules that will pose the least administrative burden to industry members while providing protection to Federal revenues and to consumers.

The proposed regulation changes would permit the Director to authorize the use of devices other than strip stamps as evidence of tax determination or compliance with Federal law on containers of distilled spirits and to eliminate serial numbers on strip stamps. The proposed regulations also drop the use of blue and white strip stamps and eliminate the requirement for overprinting the season and year of production, the season and year of bottling, and the name of the distiller on green bottled in bond strip stamps for domestic use. The added flexibility of alternative devices would allow the Treasury Department and members of the distilled spirits industry to benefit from modern technological advances in the container closure industry, to improve efficiency of operations, and to reduce administrative costs.

DRAFTING INFORMATION

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

PUBLIC PARTICIPATION

Interested persons may submit written comments or suggestions regarding these proposals, in duplicate, to the Director, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, D.C. 20044 (Attention: Chief, Regulations and Procedures Division) on or before January 8, 1979.

Written comments or suggestions which are not exempt from disclosure by the Bureau of Alcohol, Tobacco and Firearms may be inspected by any person upon compliance with 27 CFR 71.22. The provisions of 27 CFR 71.31(b) shall apply with respect to designation of portions of comments or suggestions as exempt from disclosure. All communications received during the 60-day comment period will be considered by the Director before final rules are issued. Any interested person who desires an opportunity to comment orally at a public hearing on these proposed regulations should submit their request, in writing, to the Director within the 60-day comment period. The Director, however, reserves the right to determine, in the light of all circumstances, whether a public hearing should be held. Copies of the proposed changes and any comments received are available for public inspection during normal business hours at the following location: Public Reading Room, Room 4408, Federal Building, 12th and Pennsylvania Avenue NW., Washington, D.C. 20226.

BACKGROUND

Requirements of Law. Under previous requirements of law (sections 5205 and 5235 of the Internal Revenue Code of 1954), evidence of determination of the Federal excise tax or an indication of compliance with Federal law on containers of distilled spirits was shown by attaching to the container what is commonly known as a "strip stamp". This paper stamp is attached to the container in such a way that it is broken (thus voiding it) upon opening the container. Previous requirements of law (section 6801 of the Internal Revenue Code of 1954) also restricted the preparation and distribution of the strip stamps to the Treasury Department.

Under the provisions of Pub. L. 94-569, the Director may by regulation authorize devices other than paper strip stamps to be used on containers of distilled spirits, and may also authorize persons outside the Treasury Department to prepare and distribute these alternative devices under the controls necessary to protect Federal revenues.

Present Regulations. Under present regulations, strip stamps are designed and issued by the U.S. Government for use as evidence of tax determination or compliance with Federal law on containers of distilled spirits. The Federal revenues are collected on the basis of spirits withdrawn from the bonded premises of distillers and bottlers rather than the number of strip stamps used. However, since the strip stamps serve as evidence of tax determination or indicate compliance with Federal Law, control is maintained over all strip stamps by a system involving requisitions, records, and reports. Separate series of stamps have been designed to serve specific needs, as described below.

The strip stamps presently required are identified as red, green, blue, and white strip stamps. Red strip stamps are used on all bottled distilled spirits except alcohol bottled for industrial use and distilled spirits bottled in bond. Strip stamps are issued in two sizes—the "standard" size (for use on bottles of a capacity of 200 ml. or more) and the "small" size (for use on miniatures). Red strip stamps represent by far the greatest quantity of stamps used.

Green bottled-in-bond strip stamps are used on spirits meeting the requirements for bottling in bond for domestic use.

Blue bottled-in-bond strip stamps are used only on spirits which are bottled in bond especially for exportation.

Both green and blue strip stamps are issued in the standard and small sizes.

White strip stamps are used on containers of 190 degrees or more of proof alcohol for industrial purposes bottled in internal revenue bond. These stamps are issued in standard size only.

Standard size strip stamps are serially numbered at the time of printing. Serial numbers are not on small size strip stamps.

In many instances specific information must now be "overprinted" on strip stamps after they have been issued to the bottler or importer. Most of this overprinting is done by commercial printers (the cost paid by the bottler or importer) while the stamps are still in sheets (each sheet contains 50 stamps).

Green strip stamps must be overprinted with the season and year of production, the season and year of bottling, and the name of the distiller. This overprinting must be done in red ink and is done before the stamp is affixed to the bottle. Should spirits originally bottled in bond for demestic consumption be exported with benefit of drawback, the green strip stamp may remain on the bottle, but must additionally be overprinted with the word "EXPORT." This overprinting is, of course, done after the stamp has been affixed to the bottle.

Red strip stamps applied to spirits bottled in the United States after tax determination for the domestic market are not required to be overprinted. Red strip stamps on spirits bottled in the United States after tax determination for export with benefit of drawback must be overprinted with the word "EXPORT." This overprinting may be placed on the stamp either before or after the stamp is affixed, depending on when the decision to export is made.

Blue strip stamps applied to spirits bottled in bond for export with benefit of drawback must be overprinted with the word "DRAWBACK." Those applied to spirits bottled in bond for export without payment of tax need no overprinting as the word "EXPORT" is preprinted on all blue strip stamps.

White strip stamps applied to bottles of alcohol which are to be exported must be overprinted with the word "EXPORT." Those for domestic used need no overprinting.

Red strip stamps to be affixed to imported bottled sprits must be overprinted with the importer's permit number. This overprinting is done after the stamps are issued to the importer and before he affixes them or sends them to a foreign country for affixing to bottles.

All strip stamps must be affixed to the containers in such a manner that on opening the container the stamp will be broken and a portion of the stamp, sufficient to identify the kind of stamp used, will remain attached on the container.

Previous Advance Notice of Proposed Rulemaking (308)

In considering regulations to implement the provisions of Pub. L. 94-569, two appraches were considered in the previous advance notice:

Approach (A) to allow closure manufacturers, distillers, and other qualified persons to produce and distribute approved alternative closure devices, in a finished state, under a system of rigid controls and security, with corresponding bonding, recordkeeping and report filing requirements; or

Approach (B) to allow closure manufacturers, distillers, and other qualified persons to produce and distribute approved alternative closure devices, in an unfinished state, with minimal recordkeeping, controls and security, and with no bonding or report filing requirements. The alternative closure devices would be brought to a finished state and thus become accountable at the premises of distilled spirits producers and bottlers by the addition of a U.S. Treasury indicia of tax determination to the devices. The indicia of tax determination would be affixed to the devices by means of plates or dies prepared to the specifications of the Treasury Department and provided by the manufactuer of the device to the distiller or bottler authorized to use alternative closure devices.

The Director's authorization for production, distribution, and utilization of alternative devices would have limited devices for use on distilled spirits bottled in the United States for the domestic market, and would have been restricted to alternatives only for standard and small size red strip stamps.

The authorization was not extended to foreign distillers or bottlers, to Puerto Rican or Virgin Islands distillers or bottlers, or to importers, because of difficulty in monitoring the use of and the security necessary for the plates or dies bearing U.S. Treasury indicia of tax determination.

Written Comments

More than 45 briefs were received during the period for the filing of comments on proposals in the advance notice. A general summary of the comments received are as follows:

The Bureau received 22 comments from consumers. Of these, 21 were in favor of alternatives to strip stamps, and suggested ways of implementing closure devices on containers of distilled spirits. Most suggestions recommended a pilfer proof cap which would leave a portion of the closure on the container after opening. Several comments suggested imprinting a Treasury indicia on top of the closure. Other comments suggested using a celluloid neck wrap, a cork, or a wax closure with Treasury indicia incorporated. One suggestion did not comment on alternative closures, but recommended a reduction in the size of the present strip stamp. There were no negative comments from consumers, however, consumers did not comment on the manufacture or distribution of alternative devices.

The Bureau received 12 comments from members of the distilled spirits industry, and two comments from industry trade associations. They were generally opposed to the alternative device proposals as outlined in the advance notice. Their main objections were as follows:

(1) Requiring a serial number on the alternative device would be cost prohibitive;

(2) Use of alternative devices would be restricted as an alternative to the standard and small size red strip stamps used on domestically bottled spirits;

(3) Requiring a daily accounting of alternative devices received, used, lost, mutilated and destroyed would pose an administrative burden to the proprietor;

(4) Conversion of equipment to handle alternative devices would be costly; and

(5) Approach A, controlling manufacturers of finished alternative devices would require ATF supervision of an industry not previously regulated.

The Bureau received nine comments from members of the code printing, closure and bottle manufacturing industries. Of these, six comments were in favor of an alternative device, and three comments were opposed. The code printing industry said that ink coding machinery could print a Treasury indicia and a user identification code on the surface of closures. The cost of the code printing machinery would be in the $2,000 to $6,000 price range. One closure manufacturer was in favor of approach "B" in the advance notice, but this manufacturer emphasized the fact that placing serial numbers on alternative devices would be impractical. The main objections in the comments from the closure and bottle manufacturing industries were as follows:

(1) Plastic caps probably could not meet a pilfer proof closure criteria;

(2) Retooling conversion for closure manufacturers from plastic to aluminum closures would be costly;

(3) Glass molds would have to be changed to meet the requirements of aluminum pilfer proof caps;

(4) Retooling conversion for glass manufacturers to change molds would be costly; and

(5) Requiring serial numbers on closures would be cost prohibitive.

SUMMARY OF PROPOSED CHANGES

Proposed regulations to implement the provisions of Pub. L. 94-569 will allow domestic distilled spirits plant proprietors to use devices other than strip stamps on containers of distilled spirits. This authorization is limited to alternatives for standard and small red strip stamps. The authorization is not extended to foreign, Puerto Rican, or Virgin Islands bottlers of distilled spirits, or to importers at this time.

Any distilled spirits plant proprietor desiring to use alternative devices on containers of distilled spirits will file an application with the Director. The application shall contain sufficient information to satisfy the Director that the Federal revenues will not be jeopardized. Use of an alternative device will not be allowed until a proprietor's application is approved by the Director.

Proprietors may continue to use strip stamps, or use approved alternative devices, or use both.

A. *Alternative devices.* Devices used as an alternative to strip stamps will have to meet certain requirements before the Director will consider an application. The device will have to:

(1) Have an identification code applied after the container is filled;

(2) Be securely affixed to containers of distilled spirits; and

(3) Be constructed so that a portion remains on the container upon opening.

B. *Elimination of references to strip stamp serial numbers.* References to serial numbers on strip stamps will be deleted from the regulations. Standard size strip stamps will continue to have serial numbers in the immediate future, but these serial numbers may be later removed from strip stamps. Since a serial number similar to that found on a strip stamp will not be required on an alternative device, a requirement for serial numbers would be inconsistent. In the past, the strongest objections to the elimination of serial numbers on strip stamps were from those citing a need for their stamp accounting, product accounting, and quality control systems. We believe other methods can be easily used by those proprietors. This has already been done with miniature strip stamps with little difficulty to the proprietors concerned. The actual deletion of serial numbers on strip stamps in the future will probably be governed by budget savings for the Bureau.

C. *Elimination of blue and white strip stamps.* The regulations are amended to eliminate the use of blue and white strip stamps, and substitute the use of green and red strip stamps, respectively, as replacements. This step is being taken to simplify the strip stamp program and to reduce an administrative burden to industry members and ATF.

The strip stamps required under proposed regulations would be identified as red and green strip stamps in the standard and small sizes. Red strip stamps would be used on alcohol bottled for industrial use and containers of spirits bottled on bottling premises, except spirits bottled in bond after tax determination. Green strip stamps would be used on containers of distilled spirits bottled in bond for the domestic market and for export.

D. *Elimination of overprinting on bottled in bond strip stamps.* The regulations are proposed to be amended to delete the requirement for overprinting green bottled in bond strip stamps with the season and year of production, the season and year of bottling, and the name of the distiller. A bottler may continue to overprint this information if desired. However, green strip stamps on spirits bottled in bond for export must be overprinted with the word "Export".

This notice of proposed rulemaking is issued under authority of 26 U.S.C. 5205, 5235, and 7805.

SPECIFIC CHANGES TO THE REGULATIONS

In consideration of the foregoing, the following parts of 27 CFR are proposed to be amended and read as set forth below:

PART 194—LIQUOR DEALERS

A. Proposed changes to 27 CFR 194:

Paragraph 1. The table of sections for Subpart P of 27 CFR 194 is amended to read as follows:

* * * * *

Subpart P—Strip Stamps or Alternative Devices

194.251 Strip stamps or alternative devices required on bottles.
194.252 Breaking of strip stamps or alternative devices on opening bottles.
194.253 Mutilated or missing strip stamps or alternative devices.
194.254 Affixing strip stamps on containers found to have mutilated or missing strip stamps or alternative devices.
194.255 Strip stamps or alternative devices found by ATF officer to be multilated or missing.
194.256 Stamp or device replacement not required.

Paragraph 2. §§ 194.251, 194.252, and 194.253 referencing strip stamps are amended to include requirements for alternative devices. These sections read as follows:

Subpart P—Strip Stamps or Alternative Devices

§ 194.251 Strip stamps or alternative devices required on bottles.

Except as provided in §§194.264, 194.271, and 194,272, all distilled spirits in the possession of wholesale or retail dealers in liquors shall be in bottles or similar containers of a capacity of 1 gallon (3.785 liters) or less and shall have the prescribed strip stamps or alternative devices evidencing bottling in compliance with internal revenue law. The strip stamp or alternative device shall be affixed in such a manner as to be broken when the container is opened.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5205))

§ 194.252 Breaking of strip stamps or alternative devices on opening bottles.

The strip stamp or alternative device affixed to a container of distilled spirits (whether affixed over the mouth of the container or in some other authorized manner) shall be broken on opening the container. A portion of the strip stamp or alternative device shall remain attached to the container while any part of the contents remain.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended 26 U.S.C. 5205))

§ 194.253 Mutilated or missing strip stamps or alternative devices.

Any unopened bottle or other approved container of distilled spirits—

(a) From which the strip stamp or alternative device is missing;

(b) On which the strip stamp or alternative device is mutilated to the extent that the genuineness of the stamp or device cannot be determined; or

(c) The contents of which are accessible without breaking the stamp or device, shall be restamped under §§ 194.254-194.255, or be returned to a distilled spirits plant for restamping or to have devices replaced. Where the containers of distilled spirits are to be returned to a distilled spirits plant for restamping or to have devices replaced, the dealer shall record the transaction in his record of disposition and include in this record an accurate description of the containers of distilled spirits to be restamped or to have devices replaced, and the name and address of the proprietor who has agreed to accept the liquors for restamping or for reaffixing alternative devices.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5205))

Parapraph 3. Section 194.254 is amended to include requirements for

alternative devices as exist for strip stamps. As amended, this section reads as follows:

§ 194.254 Affixing strip stamps on containers found to have mutilated or missing strip stamps or alternative devices.

Containers requiring restamping, as described in § 194.253, shall be set aside by the dealer, and application for necessary stamps submitted with Form 428, Requisition for Bottle Strip Stamps, in duplicate, to the regional regulatory administrator. Copies of Form 428 may be obtained from the regional regulatory administrator. In every case the application shall state the cause of mutilation or absence of strip stamps or alternative devices and submit evidence that the spirits are eligible for stamping under 26 U.S.C. 5205(e). The evidence may consist of invoices covering purchase of the spirits, in addition to other available documents. The application shall be signed by the dealer or his authorized agent under the penalties of perjury immediately below a declaration, worded as follows:

I declare under the penalties of perjury that I have examined this application and to the best of my knowledge and belief it is true and correct.

If the regional regulatory administrator is satisfied from the evidence submitted that the mutilation or absence of the strip stamps or alternative devices has been satisfactorily explained, he will approve the requisition for stamps, Form 428, and deliver the strip stamps to the applicant by mail or by a representative of his office, with instructions in regard to affixing them to the containers. If an overprinted stamp is to be replaced by the dealer, the word "Restamped", the name of the dealer, and the date of restamping shall be imprinted, or written in ink, in lieu of overprinting the replacement stamp.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 4. Sections 194.255 and 194.256 are amended to include requirements for alternative devices as exist for strip stamps. The amended sections read as follows:

§ 194.255 Strip stamps or alternative devices found by ATF officer to be mutilated or missing.

When an ATF officer discovers an unopened bottle of distilled spirits which requires restamping or replacement of alternative devices due to conditions specified in § 194.253, the bottle will be set aside. If the officer is satisfied that the spirits are eligible for restamping or for having alternative devices replaced, he will secure from the dealer the application for strip stamps and form 428 required under § 194.254, and forward this information to the regional regulatory administrator. When the ATF officer has reason to believe that the distilled spirits have not been lawfully marked with a strip stamp or alternative device, or that the original contents of the bottle have been replaced or increased by the addition of any substance whatsoever, the spirits will be seized for forfeiture.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1404 (26 U.S.C. 5205, 5613))

§ 194.256 Stamp or device replacement not required.

Where a minor portion of the stamp or alternative device is missing, or where the strip stamp has dropped off a container and may be reaffixed by the dealer, it will not be necessary to restamp the container or to replace the alternative device.

PART 197—DRAWBACK ON DISTILLED SPIRITS USED IN MANUFACTURING NONBEVERAGE PRODUCTS.

B. Proposed changes to 27 CFR 197:

Paragraph 1. Section 197.130(c) is revised to eliminate reference to serial numbers on strip stamps. This section reads as follows:

§ 197.130 Nature of records.

* * * * *

(c) Kind and serial number of container (such as tank car, drum, case of bottles), and the kind and serial number, if any, of the stamp affixed to the container.

* * * * *

PART 201—DISTILLED SPIRITS PLANTS

C. Proposed changes to 27 CFR 201:

Paragraph 1. The table of sections to 27 CFR 201 is amended to read as follows:

* * * * *

Subpart K—Bottling on Bonded Premises

* * * * *

201.344 Stamps or approved alternative devices, and labels.

* * * * *

Subpart N—Operations on Bottling Premises other than Bottling in Bond

* * * * *

201.461 Strip stamps or alternative devices.

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201.466 Rebottling, relabeling, reaffixing alternative devices, and restamping of bottled distilled spirits.

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Subpart P—Containers and Marks and Brands

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201.534 Identification code on devices other than strip stamps.

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Subpart Q—Stamps

STRIP STAMPS AND ALTERNATIVE DEVICES

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201.543 Alternative devices.
201.544 Procurement of strip stamps.
201.545 Affixing stamps or alternative devices.
201.546 Strip stamp accounting.
201.547 Restamping or reaffixing alternative devices on containers of spirits.

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Subpart U—Records and Reports

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201.624 Daily record of strip stamps and alternative devices.

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201.633a Quarterly report of strip stamps, alternative devices, and distilled spirits, Form 2260.

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Paragraph 2. Sections 201.334 and 201.470(1) are revised to eliminate the blue bottled in bond export strip stamps and have green bottled in bond strip stamps for both domestic and export production. As amended these sections read as follows:

§ 201.334 Strip stamps.

The proprietor shall affix a green strip stamp to each bottle of spirits bottled in bond. These stamps shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart Q of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C 5205)).

§ 201.470(1) Strip stamps.

The proprietor shall affix a green strip stamp to each bottle of spirits bottled in bond. These stamps shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart Q of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205)).

Paragraph 3. Section 201.469 is amended to include the same requirements for alternative devices as for

strip stamps. As revised this section reads as follows:

§ 201.469 Spirits not originally intended for export.

Taxpaid spirits, manufactured or produced in the United States, originally intended for domestic use may be exported with benefit of drawback if:

(a) The red strip stamp or alternative device affixed to each bottle is legibly overprinted with the word "EXPORT" by means of a rubber stamp or other suitable method; and

(b) Each case is marked as required by part 252 (Exportation of Liquors) of this chapter. The proprietor may relabel the spirits to show any of the information provided for in § 201.467. Where the proprietor desires to file claim for drawback on spirits prepared for export under this section, the provisions of §252.195a of this chapter shall be followed.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1336, as amended, 1358, as amended (26 U.S.C. 5062, 5205).)

Paragraph 4. Section 201.344 pertaining to strip stamps on containers of alcohol is amended to eliminate the use of white strip stamps and substitute the use of red strip stamps or alternative devices. As revised this section reads as follows:

§ 201.344 Stamps or approved alternative devices and labels.

The proprietor shall affix to each filled bottle of alcohol a red strip stamp or approved alternative device which shall be procured and affixed as provided in Subpart Q of this part. Bottles of alcohol shall have securely affixed a label showing (a) alcohol and (b) the name, address, and plant number of the bottler. In addition, bottled alcohol to be withdrawn on tax determination shall be labeled in accordance with the provisions of Subpart Pa of this part or 27 CFR Part 5, as applicable. The proprietor may place on the label any additional information desired, if it is not inconsistent with the required information.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235).)

Paragraph 5. Sections 201.347 and 201.349 are amended to include requirements for alternative devices. As revised these sections read as follows:

§ 201.347 Alcohol.

The provisions of the subpart relating to the rebottling, relabeling, or restamping of bottled-in-bond spirits shall apply, insofar as applicable, to the rebottling, relabeling or restamping (including reaffixing alternative devices) of alcohol bottled under this subpart.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1369, as amended (26 U.S.C. 5235).)

§ 201.349 Stamp, bottle, and label requirements.

Strip stamps or alternative devices on bottles of spirits to be rebottled shall be destroyed at the time of dumping the bottles, and new strip stamps or alternative devices shall be affixed to the bottles in which the spirits are rebottled. Liquor bottles used for rebottling shall comply with the provisions of §201.328. Where spirits are relabeled, the proprietor shall comply with §201.330, and Subpart Pa of this part. Bottled-in-bond spirits which have been rebottled, relabeled, and restamped (or alternative devices reaffixed in the instance of bottled alcohol) shall be returned to original cases, or placed in new cases. These cases shall be marked in accordance with Subpart P of this part; rebottled spirits shall show the plant number of the rebottler.

Paragraph 6. Sections 201.461 and the first four sentences of 201.466 pertaining to strip stamps and restamping containers are amended to include requirements for alternative devices. As amended, these sections read as follows:

§ 201.461 Strip stamps or alternative devices.

The proprietor shall affix to each bottle of spirits filled on bottling premises under the provisions of this subpart a red strip stamp or an alternative device as authorized by the Director. These stamps or alternative devices shall be procured, overprinted (when required), affixed, and accounted for as provided in Subpart Q of this part.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 201.466 Rebottling, relabeling, reaffixing alternative devices, and restamping or bottled distilled spirits.

Bottlers desiring to rebottle, restamp, reaffix alternative devices or relabel distilled spirits shall make application, in duplicate, to the assigned officer at the plant, if any; otherwise, in triplicate, to the ATF area supervisor. The application shall state specifically: (a) the reason for rebottling, relabeling, restamping, or reaffixing alternative devices; (b) the serial numbers of the cases; and (c) the name of the original bottler. If the spirits were originally bottled by a bottler other than the applicant, the application shall be accompanied by a statement from the original bottler consenting to the rebottling or relabeling of the spirits by the applicant. When spirits are rebottled, the strip stamps or alternative devices on the original bottles shall be destroyed and new strip stamps or alternative devices used. * * *

(Sec. 201, Pub. L. 85-859, 72 Stat. 1356, as amended (26 U.S.C. 5201).)

Paragraph 7. Section 201.532 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.532 Relabeling and restamping off bonded or bottling premises.

The proprietor of a distilled spirits plant may relabel, affix brand labels, reaffix alternative devices, or restamp bottled taxpaid spirits (including taxpaid bottled-in-bond spirits) on wholesale liquor dealer premises or at a taxpaid storeroom on or in the immediate vicinity of the plant, if that wholesale liquor dealer premises or taxpaid storeroom is operated in connection with the plant. A proprietor who desires to relabel, restamp, or affix brand labels shall make an application, in duplicate, to the ATF officer at the plant, if any; otherwise the application shall be submitted, in triplicate, to the ATF area supervisor. Individual bottles, if less than a full case, may be relabled and restamped with labels and stamps or alternative devices without an approved application. The approving officer may give continuing authority to conduct the operations described in applications submitted under this section.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1350, as amended, 1866, as amended (26 U.S.C. 5201, 5233).)

Paragraph 8. A new § 201.534 is added immediately following § 201.533. This section is added to require identification codes on alternative devices.

Section 201.534 reads as follows:

§ 201.534 Identification code on devices other than strip stamps.

Devices approved by the Director as an alternative to strip stamps when affixed to containers of distilled spirits shall be marked with a permanent and legible identification code at the distilled spirits plant as follows:

(a) An abbreviation of the State in which the plant is located;

(b) The plant number; and

(c) The date the bottle is filled, starting with—

(1) An alphabetical designation of "A" through "L" representing January through December;

(2) The digits corresponding to the day of the month; and then

(3) The last digit of the calendar year.

For example, DSP-VA-280 bottling on January 20, 1978, would be identified on the device as "VA280A208".

(Sec. 201, Pub. L. 85-859, 72 Stat. 1350, as amended (26 U.S.C. 5205).)

Paragraph 9. Section 201.541 is amended to eliminate blue and white strip stamps and substitute the use of green and red strip stamps respectively. As revised § 201.541 reads as follows:

§ 201.541 General.

(a) *Spirits bottled in bond.* Each bottle of spirits bottled in bond under Subpart Na or K of this part, except alcohol bottled under Subpart K, shall, when filled, be stamped by the proprietor with a prescribed bottled in bond strip stamp. Green strip stanps are prescribed for spirits bottled in bond for the domestic market and for export. Spirits bottle in bond for export shall be overprinted with the word "EXPORT".

(b) *Distilled spirits bottled on bottling premises, and alcohol bottled under 26 U.S.C. 5235.* Each bottle or other container of less than 5 wine gallons of alcohol bottled under 26 U.S.C. 5235 and distilled spirits bottled on bottling premises, except spirits bottled in bond under Subpart Na of this part, shall be stamped when filled by the proprietor with a prescribed red strip stamp or other device as authorized by the Director. If bottled spirits with red strip stamps or other devices as authorized by the Director, are to be exported, the word "EXPORT" shall be overprinted on the stamps or devices.

(c) *Overprinting.* The word "EXPORT", when required, shall be legibly overprinted on the strip stamp, or other device. Subject to approval by the Director, strip stamps or other authorized devices may be similarly overprinted with the class and type of product or with an appropriate abbreviation or symbol, i.e. "Bbn" for bourbon whiskey.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235).)

Paragraph 10. Section 201.542 is amended to eliminate reference to serial numbers on strip stamps and to delete reference to white strip stamps. Section 201.542 reads as follows:

§ 201.542 Strip stamp format.

All prescribed strip stamps shall be issued in (a) a standard size for bottles or containers of 200 ml capacity or more, and in (b) a small size for bottles or containers of less than 200 ml capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 11. Section 201.543, Procurement of strip stamps, has been redesignated as § 201.544. A new § 201.543, Alternative devices, is added. Section 201.543 reads as follows:

§ 201.543 Alternative devices.

(a) *Application to use alternative devices in lieu of red strip stamps.* Distilled spirits plant proprietors who wish to use devices other than red strip stamps as evidence of tax determination on containers of distilled spirits shall file an application, in triplicate, with the Director. The application shall contain:

(1) The name, address, and distilled spirits plant number;

(2) A description of the alternative device and method of affixing to containers. One sample of the proposed alternative device (including designs and lettering) affixed to an empty container shall accompany the application; and

(3) The signature of the proprietor or authorized agent.

(b) *Alternative devices used as an alternative to red strip stamps.* (1) Alternative devices shall be approved by the Director prior to use;

(2) Alternative devices, after the containers are filled, shall:

(i) Be marked as required by 27 CFR 201.534,

(ii) Be securely affixed, and

(iii) Leave a portion of the device remaining after the container is opened.

(3) Any designs and lettering appearing on the alternative device shall also be approved by the Director prior to use.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 12. Section 201.544, Overprinting of bottled-in-bond stamps, is deleted. Former section 201.543, Procurement of strip stamps, is redesignated as § 201.544. Section 201.544 reads as follows:

§ 201.544 Procurement of strip stamps.

(a) *General.* Strip stamps may be obtained, without charge, by the proprietor, in reasonable anticipation of current needs, from the regional regulatory administrator of the region in which the plant is located, by requisition on Form 428. Such stamps may not be procured by one proprietor from another or transferred to another plant operated by the same proprietor, except on authorization by the regional regulatory administrator. Requisitions shall be for full sheets of stamps. On receipt of the stamps the proprietor shall verify the quantity received and acknowledge receipt, noting any discrepancies, on both copies of Form 428 returned by the regional regulatory administrator, forward one copy of the Form 428 to the regional regulatory administrator and retain one copy on file.

(b) *Alternative method.* When the regional regulatory administrator determines that the interest of the Government will be best served, the stamps may be shipped directly to the proprietor from a location other than the office of the regional regulatory administrator. In that case, the regional regulatory administrator shall notify the proprietor that the strip stamps will be delivered by an alternative method and the minimum quantity, if any, of each size stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the proprietor. Upon receipt of the stamps, the proprietor shall (1) indicate the quantity of stamps received and acknowledge receipt, noting any discrepancies, on both copies of form 428 and (2) return one copy to the regional regulatory administrator, and retain one copy.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 13. Section 201.545 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.545 Affixing stamps or alternative devices.

The proprietor shall affix strip stamps to containers with a strong adhesive. The proprietor shall affix alternative devices to containers of distilled spirits as described in the approved application. Upon opening the container, the stamp or alternative device will be broken and a portion remain attached to the container. Strip stamps or alternative devices affixed to containers shall not be concealed or obscured in any manner except that (a) the Director may authorize labels or State stamps to be so affixed as to partially obscure strip stamps or alternative devices, if a need exists, and the manner of affixing the label or State stamp does not obscure essential information on the strip stamp or alternative device which is not clearly shown on the bottle or on the labels affixed to the bottle, and (b) a stamp or alternative device may be covered by a cup, cap, seal, carton, wrapping, or other means which can readily be removed without injury to the stamp or alternative device or which is sufficiently transparent to permit all data on the stamp or alternative device to be read. If a cup, cap or seal is placed over a stamp, a portion of the stamp must remain plainly visible. If containers are enclosed in sealed opaque cartons or wrappings, the cartons or wrappings must have the words, "This package may be opened for examination by ATF officers." ATF officers have the right to open the cartons and wrappings and examine the containers. Where there is doubt as to the propriety of the use of any cup, cap, or seal, the closure

and container should be submitted to the Director for approval.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

Paragraph 14. Section 201.547 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.547 Restamping or reaffixing alternative devices on containers of spirits.

Bottles of alcohol filled on bonded premises may be restamped or have alternative devices reaffixed under the provisions of Subpart K of this part. Bottles of bottled-in-bond spirits may be restamped under the provisions of Subpart K or Na of this part. Bottles, other than bottles of alcohol filled on bonded premises, to which red strip stamps or alternative devices have been affixed, may be restamped or have alternative devices reaffixed under the provisions of Subpart N of this part. Bottles of alcohol and bottled-in-bond spirits, and bottles or other containers to which red strip stamps have been affixed, may also be restamped under the provisions of § 201.532. Replacement of mutilated or missing strip stamps and alternative devices by persons other than proprietors of distilled spirits plants shall be made in accordance with Part 194 of this chapter.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1366, as amended (26 U.S.C. 5205, 5233))

Paragraph 15. Section 201.624 is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.624 Daily record of strip stamps and alternative devices.

Each proprietor bottling spirits under the provisions of this part shall maintain, for each day a transaction in strip stamps occurs, a daily record of green bottled-in-bond strip stamps and of red strip stamps, by kind (green or red) and by size (small or standard), showing the quantity received, used, lost, mutilated, unaccounted for, destroyed or otherwise disposed of, and on hand at the beginning and at the end of the day. The record shall also show by size of bottle, the quantity of bottles to which each kind of strip stamp (green or red) or alternative device was affixed. The record shall be in sufficient detail to enable proprietors to prepare the required quarterly report.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1361, as amended (26 U.S.C. 5202, 5207).)

Paragraph 16. Section 201.625 is amended to include requirements for alternative devices. As revised this section reads as follows:

§ 201.625 Daily record of wholesale liquor dealer and taxpaid storeroom operations.

Where the proprietor, in connection with the distilled spirits plant, conducts wholesale liquor dealer operations or operates a taxpaid storeroom, on, or near the plant premises, or operates storage premises at another location from which distilled spirits are not sold at wholesale, daily records of the receipt and disposition of all distilled spirits and wines, and of all restamping operations conducted under the provisions of § 201.532 shall be maintained at each location. The records shall contain all data necessary to enable ATF officers to identify and trace receipts and dispositions, and to ascertain whether there has been compliance with all internal revenue laws and regulations, and to provide the proprietor with records to compile data for the semiannual report on Form 338 when required by the regional regulatory administrator. The records shall include:

(a) *As to receipt and dispositions.* (1) The date of the transaction (or date of discovery in the case of casualty or theft),

(2) The name and address of each consignor or consignee, as the case may be,

(3) The brand name,

(4) The kind of spirits,

(5) The actual quantity of distilled spirits involved (proof gallons if in packages, wine gallons or liters if in bottles),

(6) The package identification numbers or serial numbers of packages involved,

(7) The name of the producer, and

(8) The country of origin, if imported spirits.

(b) *As to case dispositions.* In addition to the requirements listed in paragraph (a) of this section, the serial numbers of cases involved; however, the regional regulatory administrator may, upon receipt of an application, in duplicate, and a finding that recording is not necessary to law enforcement or protection of the revenue, relieve a dealer from the requirement of recording case serial numbers.

(c) *As to restamping operations.* (1) The date of the transaction,

(2) The serial numbers of the cases involved,

(3) The total number of bottles,

(4) The name of the bottler, and

(5) The quantity and kind of strip stamps and quantity of alternative devices used.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1343, as amended, 1361, as amended (26 U.S.C. 5114, 5207).)

Paragraph 17. Section 201.633a is amended to include requirements for alternative devices. As revised, this section reads as follows:

§ 201.633a Quarterly report of strip stamps, alternative devices, and distilled spirits stamps, Form 2260.

As of the close of business March 31, June 30, September 30, and December 31, of each year, each proprietor using strip stamps, alternative devices, or distilled spirits stamps shall prepare Form 2260, in accordance with instruction on the form. A separate report shall be prepared for alternative devices and for each kind of stamp used. Copies of the completed report shall be filed as provided in the instructions on the form.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1361, as amended, 1395, as amended (26 U.S.C. 5207, 5555).)

D. Proposed changes to 27 CFR 250:

PART 250—LIQUORS AND ARTICLES FROM PUERTO RICO AND VIRGIN ISLANDS

Paragraph 1. The regulations in 27 CFR Part 250 are amended to eliminate reference to serial numbers on strip stamps. The revised sections read as follows:

§ 250.137 Size of red strip stamps.

Red strip stamps are issued in a standard size for bottles or containers of 200 ml. capacity or more, and in a small size for bottles or containers of less than 200 ml. capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.143 Procurement and custody of red strip stamps.

(a) *General.* The distiller, rectifier, or bottler, or his duly authorized agent, shall submit the original and two copies of an approved Form 428 to the Chief, Puerto Rican Operations, who will issue the quantity of stamps covered by the approved requisition, enter the quantity of stamps issued, and stamp the date of issue on all copies of Form 428. The issuing office will retain the original for its files, send one copy with the strip stamps to the revenue agent at the bottling plant, and one copy to the Secretary. The revenue agent will issue the desired number of stamps to the bottler for affixing to bottles of taxpaid distilled spirits upon application from the proprietor.

(b) *Alternative method.* When the Chief, Puerto Rican Operations, determines that the interest of the Government will be best served, the stamps may be shipped directly to the insular revenue agent at the plant from the Bureau of Engraving and Printing. In that case, orders for standard size red strip stamps shall be in multiples of 100,000 stamps, and orders for small-

size shall be in multiples of 50 stamps (one sheet). After approval by the revenue agent, the applicant shall send the original and two copies to the Chief, Puerto Rican Operations. The latter shall prepare Form 5003 and send the original and two copies to the Bureau of Engraving and Printing; then he shall stamp the date of preparation of From 5003 on all copies of Form 428 and sent them to the revenue agent. When the stamps arrive, the revenue agent shall indicate the quantity of stamps received and acknowledge receipt, noting any discrepancies, on the original and two copies of Form 428 returned from the Chief, Puerto Rican Operations. The revenue agent shall retain one copy of the form and forward the original and one copy to the Chief, Puerto Rican Operations. The Chief, Puerto Rican Operations shall retain the original and send the copy to the Secretary.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.232 Size of red strip stamps.

Red strip stamps shall be issued in a standard size for bottles or containers of 200 ml. capacity or more, and in a small size for bottles or containers of less than 200 ml. capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.240 Approval of requisition and issuance of stamps.

The regional regulatory administrator will approve Form 428 and issue the stamps if:

(a) The importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1; and

(b) The quantity requisitioned is reasonable and necessary; and

(c) There is no information on which a denial of requisition would be made under the provisions of § 250.235.

When satisfied that Form 428 may be appproved, the regional regulatory administrator shall enter the quantity of stamps issued and the date of issue and approve all copies of the form. He shall then deliver the stamps to the applicant, and, if the stamps are mailed, or are delivered to anyone other than the applicant, two copies of the Form 428 shall accompany the stamps. Upon receipt of the stamps, the applicant shall acknowledge receipt on both copies of Form 428 and return one copy to the regional regulatory administrator who issued the stamps and, if an agent, one copy to the importer. In each instance when the regional regulatory administrator approves a requisition which has been submitted by an agent of an importer, the regional regulatory administrator shall immediately forward a copy of Form 428 to the importer, and, if the importer's place of business is located in another region, the regional regulatory administrator shall forward a copy to the regional regulatory administrator of the region in which the importer's place of business is located. If a requisition is disapproved for any reason, the regional regulatory administrator shall return a copy of Form 428 marked "disapproved" to the applicant.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205).)

§ 250.240a Alternative method for issuance of stamps.

(a) *Action by regional regulatory administrator.* When the regional regulatory administrator determines that the interest of the Government will be best served, strip stamps may be shipped directly to the applicant, as shown on Form 428, from a location other than the office of the regional regulatory administrator. In each case, the regional regulatory administrator shall notify the applicant that strip stamps will be delivered by an alternative method and state the minimum quantity, if any, of each size of stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the applicant, and, if the Form 48 was prepared by an agent of an importer, a copy of the form shall be forwarded to the importer and, if applicable, to the regional regulatory administrator of the region in which the importer's place of business is located.

(b) *Action by applicant.* Upon receipt of the stamps, the applicant shall (1) indicate the quantity of stamps received and acknowledge receipt of the stamps on both copies of Form 428, and (2) return one copy to the regional regulatory administrator to whom the Form 428 was submitted for approval and, if an agent, one copy to the importer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 250.252 Destruction or transfer of red strip stamps in the Virgin Islands.

When for any reason a Virgin Islands bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for shipment to the United States, and it is impractical to return the stamps to the importer from whom they were received or to transfer them to another bottler or exporter conducting operations for the importer, the regional regulatory administrator of the region in which the importer's place of business is located may, on application by the importer in duplicate, authorize the destruction of the stamps in the Virgin Islands. The application shall show the size, quantity of stamps, the name and address of the Virgin Islands bottler or exporter who has possession of the stamps, and the reason why destruction in the Virgin Islands is requested. If the regional regulatory administrator approves the application for destruction he will return the original marked APPROVED, to the importer who will forward it, together with Form 1627, with the pertinent entries in Part 1 completed, to the Virgin Islands bottler or exporter. On receipt of the approved application, the stamps may be destroyed provided the destruction is under the supervision of an authorized representative of the Governor of the Virgin Islands or an officer of the Board of Control of Alcoholic Beverages. Upon destruction of the stamps, the Virgin Islands bottler or exporter and the representative shall complete the applicable portions of Part IV of Form 1627. The completed Form 1627 and the approved application shall be returned to the importer who filed the application. The importer may then take credit for the stamps on his strip stamp record and on Form 96.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

E. Proposed changes to 27 CFR 251:

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Paragraph 1. The regulations in 27 CFR Part 251 are amended to eliminate reference to serial numbers on strip stamps. The revised sections read as follows:

§ 251.63 Size of red strip stamps.

Red strip stamps shall be issued in a standard size for bottles or containers of 200 ml. capacity or more, and in a small size for bottles or containers of less than 200 ml. capacity.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.66 Approval of requisition and issuance of stamps.

The regional regulatory administrator will approve Form 428 and issue the stamps if:

(a) The importer is the holder of an importer's permit issued under the Federal Alcohol Administration Act and the regulations in 27 CFR Part 1; and

(b) The quantity requisitioned is reasonable and necessary; and

(c) There is no information on which a denial of a requisition would be made under the provisions of § 251.92.

When satisfied that Form 428 may be approved, the regional regulatory administrator shall enter the quantity of stamps issued and the date of issue

and approve all copies of the form. The stamps shall be delivered to the applicant, and, if the stamps are mailed, or are delivered to anyone other than the applicant, two copies of the Form 428 shall accompany the stamps. Upon receipt of the stamps, the applicant shall acknowledge receipt on both copies of Form 428 and return one copy to the regional regulatory administrator who issued the stamps and, if an agent, one copy to the importer. In each instance when the regional regulatory administrator approves a requisition which has been submitted by an agent of an importer, the regional regulatory administrator shall immediately forward a copy of Form 428 to the importer, and, if the importer's place of business is located in another region, the regional regulatory administrator shall forward a copy to the regional regulatory administrator of the region in which the importer's place of business is located. If a requisition is disapproved for any reason, the regional regulatory administrator shall return a copy of Form 428 marked "disapproved" to the applicant.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.66a Alternative method for issuance of stamps.

(a) *Action by regional regulatory administrator.* When the regional regulatory administrator determines that the interest of the Government will be best served, strip stamps may be shipped directly to the applicant, as shown on Form 248, from a location other than the office of the regional regulatory administrator. In that case, the regional regulatory administrator shall notify the applicant that strip stamps will be delivered by an alternative method and state the minimum quantity, if any, of each size of stamp which may be requisitioned on any particular Form 428. Upon approval of Form 428, two copies of the form shall be returned to the applicant, and, if the Form 428 was prepared by an agent of an importer, a copy of the form shall be forwarded to the importer and, if applicable, to the regional regulatory administrator of the region in which the importer's place of business is located.

(b) *Action by applicant.* Upon receipt of the stamps, the applicant shall (1) indicate the quantity of stamps received and acknowledge receipt of the stamps on both copies of Form 428, and (2) return one copy to the regional regulatory administrator to whom the Form 428 was submitted for approval and, if an agent, one copy to the importer.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

§ 251.89a Destruction or transfer of red strip stamps abroad.

When for any reason a foreign bottler or exporter has on hand a quantity of red strip stamps which are not to be affixed to containers for export to the United States, and it is impractical to return the stamps to the importer from whom they were recieved or to transfer them to another bottler or exporter conducting operations for the importer, the regional regulatory administrator of the region in which the importer's place of business is located, may, on application, in duplicate, by the importer, authorize the destruction of the stamps abroad. The application shall show the size, quantity of stamps, the name and address of the foreign bottler or exporter who has possession of the stamps, and the reasons why destruction abroad is requested. If the regional regulatory administrator approves the applications for destruction, he will return the original, marked APPROVED, to the importer who will forward it, together with Form 1627 with pertinent entries in Part 1 completed, to the foreign bottler or exporter abroad. On receipt of the approved application, the stamps may be destroyed provided the destruction is under the supervision of a Foreign Service officer of the United States of America, or of a Treasury Department officer stationed abroad, or of an excise official of the foreign Government concerned. Upon destruction of the stamps, the foreign bottler or exporter and the officer or official shall complete the applicable portions of Part IV on Form 1627. The completed Form 1627 and the approved application shall be returned to the importer who filed the application. The importer may then take credit for the stamps on his strip stamp record and on Form 96.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended (26 U.S.C. 5205))

F. Proposed changes to 27 CFR 252:

PART 252—EXPORTATION OF LIQUORS

Paragraph 1. Section 252.102 is amended to include requirements for alternative devices and to reflect the use of red strip stamps for bottles of alcohol. As revised, this section reads as follows:

§ 252.102 Bottles to be stamped.

Each bottle containing distilled spirits bottled in bond to be withdrawn under the provisions of this subpart shall have an export strip stamp, procured and affixed in accordance with the provisions of Part 201 of this chapter. Each bottle of alcohol bottled for industrial use on the bonded premises of a distilled spirits plant to be withdrawn under the provisions of this subpart shall have a red strip stamp or alternative device, procured and affixed in accordance with the provisions of Part 201 of this chapter, and the strip stamp or alternative device shall be legibly and permanently overprinted or stamped with the word "EXPORT". Export stamps are not required on cases containing bottles of distillled spirits (including industrial alcohol) filled on bonded premises.

(Sec. 201, Pub. L. 85-859, 72 Stat. 1358, as amended, 1369, as amended (26 U.S.C. 5205, 5235))

Signed: September 21, 1978.

JOHN G. KROGMAN,
Acting Director.

Approved: October 2, 1978.

RICHARD J. DAVIS,
Assistant Secretary,
of the Treasury.

[FR Doc. 78-31477 Filed 11-6-78; 8:45 am]

[4410-02-M]

DEPARTMENT OF JUSTICE

Office of the Attorney General

[28 CFR Part 16]

[AAG/A Order No. 17-78]

PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

Exemption of Records Systems Under the Privacy Act

AGENCY: Department of Justice.

ACTION: Proposed regulation.

SUMMARY: This regulation proposes to exempt the FBI Investigative Support Information System (ISIS) from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) (g) and (m). The purposes of the exemption are to maintain the confidentiality and security of information compiled for purposes of cirminal investigation or civil or regulatory law enforcement, or of reports compiled at any stage of the criminial law enforcement process, and to maintain the confidentiality and security of information that is specifically authorized to be kept secret in the interests of national defense or foreign policy. Some records contained in this system of records may not be subject to exemption. A determination will be made as to the exemption of a specific record at the time a request for notification or access is made.

DATES: All comments must be received by November 24, 1978.

ADDRESS: All comments should be addressed to the Administrative Counsel, Office of Management and Finance, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530.

FOR FURTHER INFORMATION CONTACT:

Mr. William Snyder, The Administrative Counsel, Office of Management and Finance 202-633-4165. The authority for this proposed rule is 5 U.S.C. 552a. Accordingly, it is proposed that 28 CFR 16.96 be amended by adding paragraphs (j) and (k) as follows:

§ 16.96 Exemption of Federal Bureau of Investigation system—limited access.

* * * * * *

(j) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2), and (3), (e)(4)(G) and (H), (e)(8), (f) (g) and (m):

(1) Investigative Support Information System (ISIS) (Justice/FBI-013). These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j) and (k).

(k) Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (c)(3) because the release of accounting disclosures would place the subject of an investigation on notice that he is under investigation and provide him with significant information concerning the nature of the investigation, thus resulting in a serious impediment to law enforcement or background investigations which may involve law enforcement aspects or the compromising of classified material.

(2) From subsection (c)(4), (d), (e)(4) (G) and (H), (f) and (g) because these provisions concern individual access to records and such access might compromise ongoing investigations, reveal investigatory techniques and confidential informants, and invade the privacy of private citizens who provide information in connection with a particular investigation. In addition, exemption from subsections (d) and (e)(4)(G) and (H) is necessary to protect the security of information classified in the interest of national defense and foreign policy. In addition, from subsection (d) because to require the agency to correct or otherwise amend information thought to be incorrect, irrelevant or untimely might, because of the nature of the information collected and the essential length of time it is maintained, create an impossible administrative and investigative burden by forcing the agency to continuously retrograde its investigations in an attempt to resolve questions of accuracy, etc.

(3) From subsection (e)(1) because information may be received in the course of a criminal, civil or background investigation which may involve a violation of law under the jurisdiction of another Government agency, but it is necessary to maintain this information in order to provide leads for appropriate law enforcement and to establish patterns of activity which may relate to the jurisdiction of both the FBI and other agencies. In addition, classified information may be received which relates to the constitutional powers of the President or the jurisdiction of some other agency. Such information is not susceptible to segregation.

(4) From subsection (e)(2) because collecting information from the subject of criminal or national security investigations would usually thwart the investigation by placing the subject of the investigation on notice.

(5) From subsection (e)(3) because supplying an individual with a form containing the information specified would result in a substantial invasion of privacy of the subject of the investigation, would compromise the existence of a confidential investigation, and would inhibit private citizens from cooperating with the FBI.

(6) From (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and the existence of confidential investigations.

(7) From subsection (m) because if the system were ever operated by a contractor it would still be necessary to continue exemption from these same provisions.

KEVIN D. ROONEY,
Assistant Attorney General for Administration.

OCTOBER 26, 1978.

[FR Doc. 78-31475 Filed 11-6-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1001-1]

APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

Utah SO_2 Control Strategy; Extension of Public Comment Period

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Extension of public comment period on the proposed regulation.

SUMMARY: Notice is hereby given that the public comment period to receive comments on regulations proposed to correct deficiencies in Utah's Implementation Plan has been extended until November 20, 1978.

DATES: Comments received by November 20, 1978, will be considered in developing the final rule.

ADDRESSES: Submit written comments to the Regional Administrator, Environmental Protection Agency, Region VIII, Suite 900, 1860 Lincoln Street, Denver CO 80295.

Copies of the proposed regulations (43 FR 35952, August 14, 1978) are available by writing: EPA, Air & Hazardous Materials Division, 1860 Lincoln Street, Denver CO 80295. The docket (8A-78-1) in this matter is available for inspection at the above address as well as at EPA Headquarters, Central Docket Section, 401 M Street SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT:

Marius J. Gedgaudas, 303-837-3711.

DATED: October 27, 1978.

ALAN MERSON,
Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 78-31056 Filed 11-6-78; 8:45 am]

[6820-24-M]

GENERAL SERVICES ADMINISTRATION

Federal Supply Service

[41 CFR Part 101-40]

TRANSPORTATION AND TRAFFIC MANAGEMENT

Rate Tenders to the Government

AGENCY: General Services Administration.

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) proposes to amend the Federal Property Management Regulations (FPMR) to revise a format entitled "Uniform Tender of Rates and/or Charges for Transportation Services." This format is used by commercial carriers to submit to Government agencies for consideration offers of rates, charges, or special provisions for freight transportation and related services. The proposed revised version, developed jointly by GSA and the Military Traffic Management Command, Department of Defense, is designed to provide compatability with automated data systems, simplify preparation of rate tenders by commercial transportation companies, and facilitate evaluation of the tenders by Government transportation offices. Federal agencies and persons representing the carrier industry are requested to review the proposed format (and preparation instructions) contained in this notice for sufficiency of information and indicate to GSA

whether additional items are necessary or desirable.

DATE: Written comments from Federal agencies and persons representing the commercial carrier industry must be submitted on or before January 5, 1979.

ADDRESS: Written comments should be sent to: General Services Administration (FAF), Washington, D.C. 20406.

FOR FURTHER INFORMATION CONTACT:

Mr. John I. Tait, Director, Regulations and Management Control Division, Office of the Executive Director, Federal Supply Service, General Services Administration, Washington, D.C. 20406, 703-557-1914.

SUPPLEMENTARY INFORMATION: Sections 22, 217(b), 306(c), and 405(c) of the Interstate Commerce Act, as amended (49 U.S.C. 22, 317(b), 906(c), and 1005(c)), authorize commercial carriers to provide transportation and related services to the Government at reduced rates. Carriers which intend to furnish services to a Government agency at other-than-published tariff rates or charges must first submit the rates or charges in writing for the agency's consideration. For this purpose, carriers are encouraged, but not required, to use the format "Uniform Tender of Rates and/or Charges for Transportation Services." This format is illustrated in FPMR 101-40.4906-2.

An increased emphasis on automated data and advances in transportation programs and procedures necessitate changes to the current uniform tender format, which has been in use since 1970. The revised format proposed in this notice includes additional information blocks which will serve to more clearly convey the scope and intent of the tendered transportation rate or service and avoid confusion and misunderstanding in the interpretation of the tender by the Government and submitting carrier. Furthermore, the revised format incorporates as standard provisions various items which are now submitted as exceptions or supplemental information.

In consideration of the foregoing, it is proposed to revise § 101-40.4906-2 as follows:

§ 101-40.4906-2 Uniform tender of rates and/or charges for transportation services.

UNIFORM TENDER OF RATES AND/OR CHARGES FOR TRANSPORTATION SERVICES

1. Issuing Carrier, Bureau, Agency, or Conference NAME CARRIER CODE	2. Tender No. ICC Supplement No. Cancels Supplements Nos. contain all changes

3. Tendered to: U.S. GOVERNMENT	4. Issue Date	5. Effective Date	6. Expiration Date

7. Movement Application ☐ From-To ☐ Between	8. Action Code (*supplements only*) ☐ Addition ☐ Deletion ☐ Change	9. Carrier File No.

10. FREIGHT CLASSIFICATION AND COMMODITY DESCRIPTION

NMFC/UFC Item No.	Description of Articles

11. ORIGIN		DESTINATION	
SPLC	Point Name, County, State	SPLC	Point Name, County, State

12. Load Application: ☐ LOAD ☐ LESS LOAD ☐ ANY QUANTITY ☐ OVERFLOW NOT APPLICABLE

13. RATE OR CHARGE	MINIMUM WEIGHT(S)	14. ROUTE (*Carrier Code-Interchange SPLC*)

15. Protective Services				16. Classifications and Exceptions
Service	Charge	Service	Charge	(*Insert exceptions, if any*)
☐ AGS		☐ PSS		The rates, charges, or services shown herein are subject to the rules which at the time of movement, would govern the applicable class rates from and/or to the points and via the routes in this tender, except:
☐ CSS		☐ RSS		
☐ DDPS		☐ SSS		

17. Accessorial Services

Rate or Charge	Description of Service or Governing Publication

18. Operating Authority (*Note Item 20 a.*)

(*Insert appropriate operating authority*)

19. COMBINATION RATES

☐ The rates and charges in this tender may be used as factors in construction of any combination through rates, charges, rules, regulations, or other provisions.

☐ The rates and charges in this tender may be used as factors to make combination rates and charges to and/or from other points of origin and destination, provided that such other points are not more than thirty (30) highway miles distant from the pertinent point of origin or destination named herein. This distance shall be measured from (a) the nearest boundary, in the case of designated commercial zones; (b) the nearest corporate limit, in the case of incorporated communities not in commercial zones; or (c) the nearest post office within other points of origin or destination.

☐ The rates and charges in this tender may not be used in construction of combination rates or charges.

20. GENERAL TERMS AND CONDITIONS

a. LAWFUL PERFORMANCE: OPERATING AUTHORITIES

The carrier(s) represent(s) to the United States that the services provided in the tender making reference hereto will be performed in accordance with applicable Federal, State, and municipal laws and regulations and the carrier(s) possess(es) the required operating authority to transport the commodity from, to, or between the places set forth as embraced in authorized certificates, permits, or temporary operating authorities.

b. CHARGES AND ALLOWANCES

Except as otherwise provided herein, shipments under the provisions of this tender are entitled to such additional services and privileges as are provided in separately published tariffs or tenders to which carrier(s) is (are) party, subject to the tariff or tender charges, allowances, rules, and regulations applicable to such services and privileges.

c. PAYMENT

Except for shipments covered by item 21(c) or 21(d), the carrier shall bill the United States on Standard Form 1113, Public Voucher for Transportation Charges, appropriately supported, and shall submit said bill to the paying office shown on the Government bill of lading.

d. REFERENCES

Where reference is made in this tender to an item, tender, tariff, or classification, such reference shall be deemed to include supplements or amendments thereto or reissues thereof, unless otherwise specified herein.

e. CANCELLATION OR AMENDMENT OF TENDER

This tender may be canceled or amended by the carrier(s) on written notice of not less than thirty (30) days, except as to shipments made from original port of shipment (or port of importation, where involved), before the effective date of such notice, and except as to any accrued rights and liabilities of either party hereunder and, further, except such cancellation or amendment may be accomplished upon shorter notice by mutual agreement of the parties concerned.

f. FILING WITH REGULATORY BODIES

Carrier(s) certifies (certify) that, where required, the requisite number of copies of this tender is being filed concurrently with the Interstate Commerce Commission in accordance with Section 22(2) of the Interstate Commerce Act, or with other regulatory agencies as appropriate.

g. ALTERNATIONS AND VOLUME OF TRAFFIC

This tender will not apply where charges accruing hereunder exceed charges otherwise applicable for the same service. Receipt of this tender shall not be construed as a guarantee by the Government of any particular volume of the traffic hereunder described.

21. I am (we are) authorized to and do hereby offer on a continuing basis to the United States Government, herein called the Government, pursuant to Section 22 of the Interstate Commerce Act or other appropriate authority, the transportation services herein described, subject to the terms and conditions herein stated. The property to which rates herein apply must be shipped by or for the Government (a) on Government bills of lading; (b) on commercial bills of lading endorsed to show that such bills of lading are to be exchanged for Government bills of lading at destination or converted to Government bills of lading after delivery to the consignee; (c) on commercial bills of lading showing that the Government is either the consignor or the consignee and endorsed with the following legend: "Transportation hereunder is for the _____ (name the specific agency, such as U.S. Department of Defense), and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are assignable to and are to be reimbursed by the Government"; (d) on commercial bills of lading endorsed with the following legend: "Transportation hereunder is for the _____ (name the specific agency, such as U.S. Department of Defense), and the actual total transportation charges paid to the carrier(s) by the consignor or consignee are to be reimbursed by the Government, pursuant to cost-reimbursable Contract No. _____. This may be confirmed by contacting such agency at _____."

22. SIGNATURE(S) OF PARTY(IES) REPRESENTING CARRIER(S)

Issuing Carrier, Bureau, Agency, or Conference	Participating Carrier	Participating Carrier
BY(Signature and Title of Authorized Officer or Agent)	BY(Signature and Title of Authorized Officer or Agent)	BY(Signature and Title of Authorized Officer or Agent)
ADDRESS	ADDRESS	ADDRESS

PREPARATION INSTRUCTIONS

SECTION A—GENERAL

1. *Format design.* The uniform tender format is designed to promote speed and orderliness in handling tenders. Sequence and numbering have been programed for computerized processing; therefore, variance from the terms, sequence, or numbering may results in delaying the processing of tenders.

2. *Specifications.* Tenders shall be prepared by any durable process on paper of good quality, 8 by 10½ inches in size, with a left-hand margin of at least ¾ inch.

3. *Availability of sample format.* The U.S. Government does not provide copies of the uniform tender format for use in filing tenders. Informational or sample copies of the format and preparation instructions may be obtained by contacting either the Military Traffic Management Command or the General Services Administration.

4. *Submission requirements.* In addition to the requirements for filing tenders with the Interstate Commerce Commission or other regulatory agency, copies of tenders and supplements shall be submitted as directed below, as applicable.

a. *Military Traffic Management Command.* Submit copies of tenders and supplements in the number specified in (1) or (2), below, to the following:

Commander, Military Traffic Managment Command, attention: Negotiations Division, Washington, D.C. 20315.

(1) *Tenders and supplements covering other than uncrated household goods (personal effects).* Submit 2 signed and 13 unsigned copies.

(2) *Tenders and supplements covering uncrated household goods (personal effects).* Submit two signed and four unsigned copies for a single installation, plus five additional copies for each additional installation from which the tender applies.

b. *General Services Administration.*

(1) *Tenders and supplements covering other than household goods (personal effects).* Submit 5 signed and 10 unsigned copies to the GSA office which initiated the proposal for tender publication. In the absence of a more specific address, the copies may be submitted to the GSA Transportation Services Division, Rate and Routing Branch, at the following mailing address:

General Services Administration (3FZTR), Washington, D.C. 20407.

(2) *Tenders and supplements covering household goods (personal effects).*

(a) *Interstate movements.* Submit 5 signed and 20 unsigned copies to the GSA Transportation Services Division, Traffic Management Branch (located at Crystal Mall Building 4, Room 327, Arlington, Va.), at the following mailing address:

General Services Administration (FZTM), Washington, D.C. 20406.

(b) *Intrastate movements.* Submit 5 signed and 20 unsigned copies to the appropriate regional GSA Transportation Services Division.

c. *Other agencies.* Submit copies of tenders and supplements as directed by the agency.

SECTION B—ABBREVIATIONS

The following is a legend of abbreviations appearing on the uniform tender format and in the preparation instructions:

AGS—Armed Guard Service
AQ—Any quantity
CL—Carload
CSS—Constant Surveillance Service
DDPS—Dual Driver Protective Service
DOD—Department of Defense
GSA—General Services Administration
ICC—Interstate Commerce Commission
LCL—Less than carload
LTL—Less than truckload
M/W—Minimum weight
NMFC—National Motor Freight Classification
PSS—Protective Signature Service
PVU—Per vehicle used
RSS—Rail Surveillance Service
SPLC—Standard Point Location Codes [1]
SSS—Signature Security Service
TL—Truckload
UFC—Uniform Freight Classification

SECTION C—COMPLETION OF FORMAT

Completion of each block is required unless otherwise indicated.

Block 1

Issuing carrier, bureau, agency, or conference: Enter complete name and carrier code. The carrier code is the applicable alphabetical code prescribed in tariff publishing rules.

Block 2

Tender No. ICC and Supplement No.: Enter tender number and, if applicable, supplement number. This number is the discrete, consecutive number assigned to each tender or supplement by the issuer for identification purposes as prescribed by the ICC (49 CFR 20.5(e)).

Cancels—Supplement Nos.—Contain all changes: If this issuance cancels either a tender or a supplement, enter the canceled tender or supplement number. Also, enter the number of each supplement remaining in effect with this issuance.

Block 3

Tendered to: A. (Optional) Carriers are encouraged to make tenders applicable to the U.S. Government. If a specific reason exists for restricting application to a single agency, delete U.S. Government and enter the appropriate agency.

B. GSA only, household goods. Tenders covering household goods under GSA Tender of Service shall be issued as follows: For the account of the U.S. Government except the DOD and the U.S. Coast Guard.

Block 4

Issue date: Enter date of issue. Note information in block 20(e).

Block 5

Effective date: Enter date tender is to become effective. Note information in block 20(e).

Block 6

Expiration date: (Optional) Enter date tender is to expire. Tenders may be supplemented to renew, change, or cancel at any time during the effective period. Note information in block 20(e), and see Section D for special instructions for preparation of supplements.

Block 7

Movement application: Check appropriate box.

Block 8

Action code: Applicable to supplements only. Check appropriate box(es) for this issuance.

Block 9

Carrier file No.: (Optional) For carrier's internal use.

Block 10

Freight classification and commodity description: Enter NMFC or UFC item number(s), and subnumber, if applicable, and description of articles. Item No. 999999 will be used for freight, all kinds, and Item No. 1000 for uncrated household goods and/or personal effects. If this tender is for services only, leave block 10 blank and enter appropriate information under block 17. Regardless of the scope of the NMFC or UFC number, the description of articles shall govern the commodity(ies) covered by the tender.

Block 11

Origin/destination: Enter SPLC and point name (city or Government facility), county, and State for origin and destination. If "Between" movement application is checked in block 7, tender will apply in each direction.

Block 12

Load application: Check appropriate box. If the tender includes both CL–TL and LCL–LTL rates, check both "load" and "less load" boxes. Check "overflow not applicable" only if governing tariff provisions do not provide for overflow or if the tender provisions will supersede the tariff provisions.

Block 13

Rate or charge/minimum weight(s): Enter rate or charge and basis (cents per hundredweight (cwt.), charge per shipment, etc.,) and applicable minimum weights and basis (LCL, LTL, CL, TL, AQ, PVU, etc.).

Block 14

Route: Enter alphabetical code (note block 1 instructions) for each carrier participating in route, and enter SPLC for each interchange point.

Block 15

Protective services: If applicable, check box for appropriate service and enter rate or charge and basis (cents per cwt., charge per shipment, etc.).

Block 16

Classifications and exceptions: If different from printed statement, enter applicable classifications, rules, and exceptions tariffs.

[1] Published by National Motor Freight Traffic Association, Inc., Agent.

Block 17

Accessorial services: If applicable, enter rate or charge and basis (cents per cwt., charge per shipment, etc.) and description of accessorial services to be furnished. If accessorial services are to be furnished at no additional charge, show "No Charge" in rate or charge block.

Block 18

Operating authority: Enter the carrier(s) operating authority references applicable to the services offered. If operating authority is not required, show "none required".

Block 19

Combination rates: Check one box for the applicable provision.

Block 22

Signature(s) of party(ies) representing carrier(s): For issuing carrier, bureau, agency, and conference and all participating carriers print or type required information, including title of authorized officer or agent. Telephone numbers are helpful but not required. The requisite number of signed copies shall be manually signed by the authorized officer or agent of the issuing carrier and all participating carriers.

SECTION D—SPECIAL INSTRUCTIONS FOR COMPLETION OF FORMAT FOR SUPPLEMENTS

1. The minimum information required for issuance of a supplement is listed below.

a. Name of issuing carrier, bureau, agency, or conference, and carrier code (block 1).
b. Tender and supplement numbers (block 2).
c. Issue date (block 4).
d. Effective date (block 5).
e. Action code (block 8).
f. Freight classification and description of commodity or service (block 10).
g. Origin and destination (block 11).
h. Authorized signature(s) (block 22).
i. Description of change to tender unless included in one of above blocks.

2. Particular attention should be given to the following:

a. *Expiration date.* (Block 6) (Optional) If the intent of the supplement is to carry forward an expiration date without change, the expiration date should be entered on the supplement. Leaving this block blank on the supplement will change expiration date to "none."

b. *Partial changes of a block.* If any block containing multiple entries is changed, the block must clearly specify change, such as "Add: (Commodity)," "Delete: (Destination)," "Increase: (Rate, M/W)." Entering changed data only without instructions will change the entire block to read as shown on the supplement.

c. *Blanket supplements.* Blanket supplements will be acceptable if the number of copies specified in item 4, Section A, is furnished for each supplemented tender.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c).)

Dated: October 25, 1978.

WILLIAM P. KELLY, Jr.,
Commissioner,
Federal Supply Service.

[FR Doc. 78-31489 Filed 11-6-78; 8:45 am]

[4110-35-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 405]

FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Conditions for Coverage—Suppliers of ESRD Services; Revocation of Requirements for Emergency Generator and Ground Fault Interrupters

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: These amendments would remove the requirements for emergency generators and ground fault interrupters in end-stage renal dialysis facilities. The purpose is to reduce unnecessary and burdensome requirements without adversely affecting the health and safety of patients.

DATES: Consideration will be given to written comments and suggestions received by January 8, 1978.

ADDRESSES: Address comments to:

Administrator, Health Care Financing Administration, P.O. Box 2381, Washington, D.C. 20013.

In commenting, please refer to HSQ-42-P. Comments will be available for public inspection beginning approximately 2 weeks after publication, in room 5231 of the Department's offices at 330 C Street SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m., telephone 202-245-0950.

FOR FURTHER INFORMATION, CONTACT:

Janet Harryman, 301-594-9712.

SUPPLEMENTARY INFORMATION: The conditions for Coverage of Suppliers of End-Stage Renal Disease Services, which were published on June 3, 1976 (41 FR 22502) are set forth in 42 CFR Part 405, Subpart U. ESRD facilities are currently required to have an alternate power source provided by an emergency generator, and to have ground fault interrupters in electrical circuits. (See 42 CFR 405.2140(a) (4) and (6).)

The existing requirements for emergency generators and ground fault interrupters have received adverse comment since their publication. The comments generally have been that an emergency generator is not necessary to the health and safety of patients and, therefore, that the expense of acquiring a generator is not justified. The comments have also suggested that there is no need for ground fault interrupters in dialysis facilities because these facilities are not normally subject to wet conditions.

The medical directors of 20 hospital-based dialysis units and 38 nonhospital-based dialysis units were informally surveyed with respect to the necessity for an auxiliary electric generator in the event of a power failure. More than half of the respondents indicated that absence of a generator does not adversely affect patient health safety; 44 of the 58 respondents indicated that an adequate staff-patient ratio and patient training were sufficient to obviate the need for an electric generator.

The National Electrical Code requires ground fault interrupters in electrical circuits of units that are subject to continuously wet conditions. The standards promulgated by HEW to implement the Hill-Burton Act classify dialysis facilities among those subject to continuously wet conditions. The present Subpart U requirements that dialysis facilities have ground fault interrupters in electrical circuits was intended to be consistent with the Hill-Burton Act. However, the Health Resources Administration, which administers the Hill-Burton standards, has requested the Secretary to remove dialysis facilities from the list of units that are subject to continuously wet conditions.

Consequently, we are proposing to delete, from Part 405, Subpart U, the requirements for emergency generators and ground fault interrupters.

§ 405.2140 [Amended]

42 CFR 405.2140 is amended by vacating and reserving paragraph (a)(4) and revoking paragraph (a)(6).

(Sections 226g, 1102, 1871, Social Security Act; 42 U.S.C. 426(g), 1302, 1395hh.)

(Catalog of Federal Domestic Assistance Programs No. 13.773, Medicare—Hospital Insurance; No. 13.744, Medicare—Supplementary Medical Insurance.)

Dated: September 18, 1978.

ROBERT A. DERZON,
Administrator, Health Care,
Financing Administration.

Approved: November 1, 1978.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 78-31485 Filed 11-6-78; 8:45 am]

notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6110-01-M]

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

COMMITTEE ON RULEMAKING AND PUBLIC INFORMATION

Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given of two meetings of the Committee on Rulemaking and Public Information of the Administrative Conference of the United States, to be held in the Library of the Conference, 2120 L Street NW., Suite 500, Washington, D.C. One meeting will be held at 10:30 a.m. on December 1, 1978, and the other will be held at 10:30 a.m. on December 14, 1978.

The Conference's project on Federal Trade Commission trade regulation rulemakings will be the subject of both meetings.

Attendance is open to the interested public, but limited to the space available. Persons wishing to attend should notify this office at least two days in advance of each meeting. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meetings; any member of the public may file a written statement with the Committee before, during or after the meetings.

For further information concerning these meetings, contact Stephen L. Babcock 202-254-7020. Minutes of the meetings will be available on request.

RICHARD K. BERG,
Executive Secretary.

OCTOBER 31, 1978.

[FR Doc. 78-31380 Filed 11-6-78; 8:45 am]

[3410-02-M]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

PACKERS AND STOCKYARDS: ST. JOHNS HORSE AUCTION, ASHLEY, MICH., ET AL.

Proposed Posting of Stockyards

Correction

In FR Doc. 78-30519 appearing on page 50488 in the issue for Monday, October 30, 1978, the date given in the 3rd column, 2nd paragraph, 9th line, should be November 14, 1978, instead of November 29, 1978.

[3410-11-M]

Forest Service

CARIBOU NATIONAL FOREST GRAZING ADVISORY BOARD COMMITTEE

Meeting

The Caribou National Forest Grazing Advisory Board Committee will meet at *1:00 p.m., December 5, 1978,* in the *Conference Room, in the basement of the Federal Building at 250 South Fourth Street, Pocatello, Idaho.*

The purpose of this meeting is to secure recommendations for use of the range betterment funds and grazing allotment plans.

The meeting will be open to the public. Persons who wish to attend should notify Frank G. Beitia, Caribou Supervisor's Office, telephone 208-236-6705. Written statements will be filed with the Board before or after the meeting.

The Board has established the following rule for public participation: Non-livestock owners are asked to withhold comments until the close of business.

Dated: October 30, 1978.

FRANK G. BEITIA,
Acting Forest Supervisor.

[FR Doc. 78-31382 Filed 11-6-78; 8:45 am]

[3410-11-M]

MALHEUR NATIONAL FOREST GRAZING ADVISORY BOARD

Meeting

The Malheur National Forest Grazing Advisory Board will meet at 1:00 p.m. PST, December 19, 1978 at Lyons Annex, second building north of Malheur National Forest Headquarters, 139 N.E. Dayton, John Day, OR 97485. The purpose of this meeting is to organize and elect officers, and to advise and make recommendations to the Forest Supervisor pertaining to the development of allotment management plans and the utilization or range betterment funds.

The meeting will be open to the public. Persons who wish to attend should notify the Forest Supervisor, Malheur National Forest, 139 N.E. Dayton, John Day, OR 97845; Phone (503) 575-1731. Written statements may be filed with the committee before or after the meeting.

The committee has established the following rules for public participation: Rules for public participaton will be announced at the beginning of the meeting by the president officer.

DAN E. WILLIAMS,
Forest Supervisor.

OCTOBER 27, 1978.

[FR Doc. 78-31381 Filed 11-6-78 8:45 am]

[3410-15-M]

Rural Electrification Administration

UNITED POWER ASSOCIATION

Final Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration has prepared a final environmental impact statement in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, in connection with a request for a loan guarantee commitment from the Rural Electrification Administration for United Power Association of Elk River, Minn. This loan guarantee commitment is planned to assist in obtaining financing for the construction of a 60 MW supplemental steam generator planned for construction at United Power Association's Stanton Generating Station near Stanton, N. Dak.

Additional information may be secured on request, submitted to Mr. Richard F. Richter, Assistant Administrator-Electric, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250. The Final Environmental Impact Statement may be examined during regular business hours at the offices of REA in the South Agriculture Building, 12th Street and Independence Avenue SW., Washington, D.C., or at the borrower address indicated above.

Final REA action with respect to this matter (including any release of funds) may be taken after thirty (30) days, but only after REA has reached satisfactory conclusions with respect to its environmental effects and after requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 30th day of October 1978.

DAVID A. HAMIL,
Administrator, Rural Electrification Administration.

[FR Doc. 78-31225 11-6-78; 8:45 am]

[6320-01-M]

CIVIL AERONAUTICS BOARD

TEXAS INTERNATIONAL AIRLINES, INC.

Application for Certificate Amendment

OCTOBER 31, 1978.

Notice is hereby given that the Civil Aeronautics Board on October 27, 1978, received an application, Docket 33862, from Texas International Airlines, Inc. for amendment of its certificate of public convenience and necessity for route 82 so as to delete the requirement that one intermediate stop be made on services between Dallas/Fort Worth, Tex., and Lubbock, Tex.

The applicant requests that its application be processed under the expedited procedures set forth in Subpart M of Part 302 (14 CFR Part 302).

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 78-31481 Filed 11-6-78; 8:45 am]

[6335-01-M]

COMMISSION ON CIVIL RIGHTS

ARIZONA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a Planning meeting of the Arizona Advisory Committee (SAC) of the Commission will convene at 10 a.m. and will end at 4 p.m. on December 2, 1978, in the Ramada Inn, 3801 East Van Buren, Phoenix, Ariz. 85008.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street, Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is that the State Advisory Committee will discuss program planning and prioritize activities for fiscal year 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31359 Filed 11-6-78; 8:45 am]

[6335-01-M]

MAINE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maine Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 10 p.m. on December 18, 1978, at the Maine Teachers Association, Augusta, Maine.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to review fiscal year 1981 program.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31360 Filed 11-6-78; 8:45 am]

[6335-01-M]

MASSACHUSETTS ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Massachusetts Advisory Committee (SAC) of the Commission will convene at 3:30 p.m. and will end at 5 p.m. on December 1, 1978, at the Hyatt Regency, Cambridge, Mass.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31361 Filed 11-6-78; 8:45 am]

[6335-01-M]

NEVADA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisons of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Nevada Advisory Committee (SAC) of the Commission will convene at 7:30 p.m. and will end at 10 p.m. on December 1, 1978, in the Marina Hotel, 3800 Las Vegas South, Las Vegas, Nev.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Western Regional Office of the Commission, 312 North Spring Street. Room 1015, Los Angeles, Calif. 90012.

The purpose of this meeting is that the State Advisory Committee will discuss program planning and prioritize activities for fiscal year 1981.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31362 Filed 11-6-78; 8:45 am]

[6335-01-M]

NEW HAMPSHIRE ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Hampshire Advisory Committee (SAC) of the Commission will convene at 12 noon and will end at 2:30 p.m. on December 14, 1978, in the Howard Johnson, Manchester, N.H.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

This meeting will be to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31363 Filed 11-6-78; 8:45 am]

[6335-01-M]

NEW JERSEY ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the New Jersey Advisory Committee (SAC) of the Commission will convene

at 7 p.m. and will end at 9 p.m. on December 11, 1978, Sateway Holiday Inn, Newark, N.J.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31364 Filed 11-6-78; 8:45 am]

[6335-01-M]

NORTH DAKOTA ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the North Dakota Advisory Committee (SAC) of the Commission will convene at 9:30 p.m. and will end at 12 noon on November 30, 1978, in the United Tribes Technical Center, Conference Room, Building 61, 3315 South Airport Road, Bismarck, N.D.

Persons wishing to attend this open meeting should contact the Committee chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colo. 80202.

SAC participants will decide on five or six State projects and/or program that will have priority for fiscal years 1979 and 1980. Also follow-up on "Native American Justice Issues in North Dakota."

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee, Management Officer.

[FR Doc. 78-31365 Filed 11-6-78; 8:45 am]

[6335-01-M]

REGIONAL ADVISORY COMMITTEES

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Arkansas, Louisiana, Oklahoma, Texas, and New Mexico Advisory Committees (SACS) of the Commission will convene at 12 noon and will end at 5 p.m. on November 30, 1978, La Mansion del Norte (Board Rooms 1 and 2) 37 Northeast Loop, 410 San Antonio, Tex. 78216.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main, San Antonio, Tex. 78240.

The Regional SAC planning meeting to discuss fiscal year 1979 pertaining to their prespective States.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31358 Filed 11-6-78; 8:45 am]

[6335-01-M]

SOUTH CAROLINA ADVISORY COMMITTEE

Amendment

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the South Carolina (SAC) of the Commission originally scheduled for November 30, 1978 (FR Doc. 78-29253) on page 47766 has been changed to December 8, 1978.

The meeting place and time will remain the same.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31366 Filed 11-6-78; 8:45 am]

[6335-01-M]

UTAH ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Utah Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9:30 p.m. on November 30, 1978, at 440 East First South, Library, Salt Lake City Board of Education, Salt Lake, Utah.

Persons wishing to attend this open meeting should contact the committee chairperson, or the Rocky Mountain Regional Office of the Commission, 1405 Curtis Street, Suite 1700, Denver, Colo. 80202.

The purpose of this meeting is for the SAC to develop plans for projects to be conducted over the next 2 years.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31367 Filed 11-6-78; 8:45 am]

[6335-01-M]

VERMONT ADVISORY COMMITTEE

Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Vermont Advisory Committee (SAC) of the Commission will convene at 7 p.m. and will end at 9:30 p.m. on November 29, 1978, in the Tavern Motor Inn, Montpelier, Vt.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Northeastern Regional Office of the Commission, 26 Federal Plaza, Room 1639, New York, N.Y. 10007.

The purpose of this meeting is to discuss program planning.

This meeting will be conducted pursuant to the provisions of the Rules and Regulations of the Commission.

Dated at Washington, D.C., October 31, 1978.

JOHN I. BINKLEY,
Advisory Committee Management Officer.

[FR Doc. 78-31368 Filed 11-6-78; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

ANNUAL WHOLESALE TRADE

Notice of Consideration

Notice is hereby given that the Bureau of the Census is planning to conduct in 1979 the Annual Wholesale Trade Survey. This survey will be conducted under Title 13, United States Code, Sections 182, 224, and 225. This survey will be conducted to collect data covering yearend inventories and annual sales of firms engaged in wholesale trade. This survey, which would provide data for 1978, is the only source available on a comparable classification basis for use as a benchmark for statistical estimates of wholesale trade.

Information and recommendations received by the Bureau of the Census indicate that the data will have significant application to the needs of the public, the distribute trades, and governmental agencies, and that the data

are not publicly available from nongovernmental or other governmental sources.

Such a survey, if conducted, shall begin not earlier than December 31, 1978.

Reports will be required only from a selected sample of merchant wholesale firms operating in the United States with probability of selection based on sales size. The sample will provide, with measurable reliability, statistics on the subject specified above.

Copies of the proposed forms and a description of the collection methods are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

Any suggestions or recommendations concerning the subject matter of this proposed survey will receive consideration if submitted in writing to the Director, Bureau of the Census, on or before December 31, 1978.

Dated: November 2, 1978.

MANUEL D. PLOTKIN,
Director, Bureau of the Census.

[FR Doc. 78-31466 Filed 11-6-78; 8:45 am]

[3510-25-M]

Industry and Trade Administration

[Transmittal No. 240; Order No. 41-1 (Amdt. 2); D.O.O. Reference 10-3, 40-1; effective date Oct. 17, 1978]

DEPUTY ASSISTANT SECRETARY FOR ADMINISTRATIVE AND LEGISLATIVE POLICY

Organization and Function Order

This order amends ITA Organization and Function Order 42-1 of December 4, 1977 (43 FR 9184) as follows:

Section 12.02 (Publications Division) is renumbered as section 12.03.

1. Section 12.01 is revised to read:

.01 The *Office of Public Affairs* shall be headed by a *Director* who shall be responsible for furnishing public affairs and information services to the Industry and Trade Administration. The *Business America Staff* within the Office of the Director shall prepare and publish *Business America*. The Director shall direct the following Divisions:

2. The attached organization chart [1] supersedes the organization chart dated December 1977.

FRANK A. WEIL,
Assistant Secretary for Industry and Trade.

[FR Doc. 78-31422 Filed 11-6-78 8:45 am]

[1] Filed as part of the original document.

[3510-25-M]

EXPORTERS' TEXTILE ADVISORY COMMITTEE

Public Meeting

Pursuant to Section 10(a) of the Federal Advisory Committee Act, as amended, 5 U.S.C. App. (1976), notice is hereby given that a meeting of the Exporters' Textile Advisory Committee will be held at 10 a.m., on December 7, 1978, in Room 3817, U.S. Department of Commerce, Main Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

The Committee, which is comprised of 20 members involved in textile and apparel exporting, advises Department officials concerning ways of increasing U.S. exports to textile and apparel products.

The agenda for the meeting is as follows:

1. Review of Export Data.
2. Report on Conditions in the Export Market.
3. Recent Foreign Restrictions Affecting Textiles.
4. Other Business.

A limited number of seats will be available to the public on a first come basis. The public may file written statements with the Committee before or after the meeting. Oral statements may be presented at the end of the meeting to the extent time is available.

Copies of the minutes of the meeting will be made available on written request addressed to the ITA Freedom of Information Officer, Freedom of Information Control Desk, Room 3100, U.S. Department of Commerce, Washington, D.C. 20230.

Further information concerning the Committee may be obtained from Arthur Garel, Director, Office of Textiles, Main Commerce Building, U.S. Department of Commerce, Washington, D.C. 20230, telephone 202-377-5078.

Dated: November 1, 1978.

EDWARD GOTTFRIED,
Acting Director, Office of Textiles.

[FR Doc. 78-31441 Filed 11-6-78; 8:45 am]

NORTHWESTERN UNIVERSITY

Decision on Application for Duty-Free Entry of Scientific Article

Correction

In FR Doc. 29450 appearing at page 48676 in the issue for Thursday, October 19, 1978, on page 48677 the first line of the second full paragraph should be corrected to read "Docket No.: 78-0239."

[3510-15-M]

Maritime Administration

[Docket No. S-626]

FARRELL LINES INC.

Show Cause Notice

Notice was given in the FEDERAL REGISTER on June 7, 1978 (43 FR 24724), Docket No. S-611, that Farrell Lines Inc. (Farrell) has filed an application dated May 22, 1978, with the Maritime Subsidy Board (Board), pursuant to Title VI (46 U.S.C. 1171-1183) of the Merchant Marine Act, 1936, as amended (the Act), for a 1-year operating-differential subsidy agreement (ODSA) on trade routes (TRs) 5-7-8-9, 10, 12, and 18. If Farrell is granted a 1-year ODSA, it will begin upon the termination of its current contract, FMB-87, which terminates on December 31, 1979, and run until the earlier of: (1) December 31, 1980, including voyages in progress as of that date, or (2) completion of the administrative processing of Farrell's applications for 20-year contracts to replace Contract No. FMB-87 insofar as (a) the TR 18 service (Docket No. S-547) and (b) the TRs 5-7-8-9, 10, and 12 services (Docket No. S-610) are concerned.

American Export Lines, Inc. (AEL) held ODSA, Contract No. FMB-87, until March 28, 1978, when AEL was merged with and into Farrell in accordance with procedures established by the Bankruptcy Court of the Southern District of New York in Chapter XI proceedings involving AEL's parent, American Export Industries, Inc. It is noted that all references to Farrell's services on TRs 5-7-8-9, 10, 12, and 18 before March 28, 1978, are actually references to the service provided by Farrell's predecessor, AEL.

Farrell proposes to provide the same services on TRs 5-7-8-9, 10, 12, and 18 as it currently is providing under Contract No. FMB-87 or as may be modified by Docket No. S-544, Farrell's application to modify its TR 18 service under its existing ODSA. The service descriptions and sailing minima and maxima under the proposed 1-year contract are as follows:

Service	Sailing minimum	Sailing maximum
Line I, TR 5-7-8-9 (U.S. North Atlantic/Western Europe)	40	55
Line B, TR 10 (U.S. Atlantic/Mediterranean and Black Seas)	65	95
Line D, TR 12 (U.S. Atlantic/Far East)	20	30

Service	Sailing minimum	Sailing maximum
Line E, TR 18 (U.S. Atlantic/ India)	18	25

Farrell has proposed to provide the services applied for in the subject application with the 24 vessels currently assigned to Contract No. FMB-87. These are 15 C-3 and C-4 type breakbulk vessels, 5 C-5 containerships, and 4 Ro/Ro vessels. Request has been made and approval has been given to Farrell for the early withdrawal of three C-4 breakbulk vessels against the delivery of two C-5 containership replacement vessels, which will reduce the number of vessels to 23. Farrell has certain interchange and transfer privileges of vessels assigned to Contract No. FMB-87, has interchange (substitution) rights for breakbulk vessels between Contract No. FMB-87 and its other ODSA, Contract No. MA/MSB-352, and has requested certain transfer rights for breakbulk vessels, C-5 containerships, Ro/Ro vessels and C-6 containerships between services in those contracts.

Farrell's applications for a modification of its TR 18 service (Docket No. S-544) and for a new long-term ODSA on TR 18 (Docket No. S-547) have been consolidated in hearing with several other TR 18 applications under Docket No. S-543, et al. Farrell's application for a long-term ODSA on TRs 5-7-8-9, 10, and 12 has been referred for a hearing under section 605(c) of the Act.

Farrell's Notice of Application for its 1-year ODSA stated that "Any person having an interest in such application who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing in triplicate to the Secretary, Maritime Subsidy Board, by the close of business on June 19, 1978." Petitions for Leave to Intervene under Docket No. S-611 were received from Lykes Bros. Steamship Co., Inc. (Lykes), Prudential Lines, Inc. (PLI) and Waterman Steamship Corp. (Waterman). All requested a hearing under section 605(c) of the Act. By stipulation between Farrell and Lykes, dated September 29, 1978, Lykes withdrew its protest and will not oppose the application under section 605(c). The U.S.-flag operators on Trade Route No. 5-7-8-9 are Sea-Land Service, Inc. (Sea-Land), United States Lines, Inc. (U.S. Lines), Waterman and Farrell. Sea-Land operates its service on TR 5-7-8-9 with three containerships, providing weekly sailings. These vessels have a dead weight of between 26,600 and 27,300 tons and a bale cubic capacity of about 2,335,000 cubic feet. Each vessel has a container capacity of approximately 2,000 20-foot-equivalent units (TEU's). Normal ports of call for Sea-Land are New York, Norfolk, Bremerhaven, Rotterdam, and Algeciras.

U.S. Lines operates its service on TR 5-7-8-9 with eight C-6 containerships, providing twice-weekly sailings. These vessels have a dead weight of between 15,200 and 15,500 tons and a bale cubic capacity of approximately 1,047,000 cubic feet. The container capacity of those vessels is 1009 TEU's. Normal ports of call for U.S. Lines are New York, Philadelphia, Baltimore, Norfolk, Charleston, Savannah, Jacksonville, Rotterdam, Felixstowe, Bremerhaven, and Hamburg.

Waterman offers unsubsidized monthly service on TR 5-7-8-9 with two C-4, 15,000 deadweight ton (DWT), breakbulk vessels. These vessels have a bale cubic capacity of approximately 736,000 cubic feet. Waterman's normal ports of call are New Orleans, Mobile, Houston, New York, Bayonne, Wilmington, N.C., Leningrad and Bremerhaven.

Farrell serves TR 5-7-8-9 with one C-5 Ro/Ro vessel and two C5 containerships. These vessels are 15,700 dwt and have a bale cubic capacity of about 1,194,000 cubic feet. The Ro/Ro/ has a container capacity of 810 TEU's while the containerships have a container capacity of 1070 TEU's each. Farrell made 45 unsubsidized voyages on TR 5-7-8-9 in both 1974 and 1975, 35 subsidized and 14 unsubsidized voayages during 1976, 42 subsidized voyages and one unsubsidized voyage during 1977 and 21 subsidized voayages during the first 6 months of 1978. Farrell's normal ports of call are New York, Baltimore, Norfolk, Amsterdam, Bremerhaven, Felixstowe and Le Havre.

U.S.-flag vessels carried 34 percent of the inbound cargo on TR 5-7-8-9 in 1974 and 32 percent of the inbound cargo during each of the years 1975, 1976, 1977 and for the first quarter of 1978. U.S.-flag vessels carried 31 percent, 29 percent, 30 percent, 31 percent and 29 percent of the outbound cargo on TR 5-7-8-9 for the years 1974, 1975, 1976, 1977 and for the first quarter of 1978, respectively.

The U.S.-flag operators with direct sailings on TR 10 are PLI and Farrell. It should also be noted that Sea-Land's line haul SL-7 vessels connect at Rotterdam with U.S.-flag feeder vessels which carry TR 10 cargo to the Mediterranean area in lieu of direct sailings on TR 10 from the United States. Sea-Land maintained a direct service on TR 10 in 1974, 1975 and 1976 and made, 50, 49 and 54 sailings, respectively.

PLI operates three LASH vessels on TR 10. PLI's LASH vessels have a dwt of 29,800, can accommodate 73 barges and have a bale cubic capacity of 1,560,000 cubic feet. During the years 1974, 1975, 1976, 1977, and for the first 6 months of 1978, PLI made 26, 41, 35, 24, and 9 sailings, respectively, on TR 10. The normal U.S. ports of call for PLI on TR 10 are New York, Philadelphia, Norfolk, Newport News, Savannah, Charleston and Jacksonville. Foreign ports on TR 10 that PLI normally calls include Alexandria, Bandirma, Istanbul, Constanta, Salonika, Cadiz, Kenitra, Piraeus, Arzew, Port Said, Iskenderun, Tartous, Ilichevsk, Beirut, Oran, Casablanca, Algeciras, Izmir, and Eregli.

Farrell serves TR 10 with three C5 Ro/Ro's, three C5 containerships and three C3 breakbulk vessels. The Ro/Ro's have a deadweight of 15,700 tons and a container capacity of 810 TEU's. The bale cubic capacity of the vessels is approximately 1,193,000 cubic feet. The dwt of the containerships is 16,300 tons and the container capacity is 1070 TEU's. The bale cubic capacity of the containerships ranges from approximately 952,000 cubic feet to approximately 1,126,000 cubic feet. The breakbulk vessels have a deadweight of 12,700 tons and their bale cubic capacity varies from approximately 705,000 cubic feet to approximately 716,000 cubic feet. Farrell made 63, 69, 65, 55, and 27 sailings on TR 10 during 1974, 1975, 1976, 1977, and the first 6 months of 1978, respectively. U.S. ports served by Farrell on TR 10 are New York, Bayonne, Philadelphia, Savannah, Baltimore, and Charleston. Foreign ports served by Farrell on TR 10 include Cadiz, Barcelona, Naples, Piraeus, Istanbul, Izmir, Iskenderun, Haifa, Leghorn, Genoa, Marseille, Casablanca, Alicante, Valencia, Tunis, Rijeka, and Alexandria.

During the years 1974, 1975, 1976, and 1977, U.S.-flag vessels carried 49 percent, 50 percent, 45 percent and 39 percent, respectively, of the inbound cargo carried on TR 10 and 48 percent, 55 percent, 48 percent, and 36 percent, respectively, of the outbound cargo on TR 10. During the first quarter of 1978 on TR 10, U.S.-flag ships carried 41 percent of the inbound cargo and during the first quarter of 1978, U.S.-flag ships carried 35 percent of the outbound cargo.

Farrell's privileged service on TR 10 includes service from the U.S. South Atlantic to the Mediterranean, which is part TR 13, and from ports in the Great Lakes to ports in the Mediterranean, Trade Area 4. Lykes has established U.S.-flag service on both TR 13 and Trade Area 4. PLI also serves South Atlantic ports on TR 13, as indicated under the discussion on TR 10.

Farrell called at South Atlantic ports on 40 voyages made on its TR 10 service in 1976 and on 33 such voyages in 1977. During 1976, Farrell carried approximately 59,000 tons of outbound commercial cargo on TR 13 and

about 22,000 tons of inbound commercial cargo. Farrell has not provided any service on Trade Area 4 since 1969.

During 1977, Lykes served TR 13 with 13 C5 freighters, 8 C4 freighters and 3 C3 freighters. All of these vessels, however, did not serve TR 13 for the entirety of the year. Normal operations would include approximately 12 vessels for year-round service. The C5 vessels have a deadweight of 14,300 tons, a bale cubic capcity of 796,000 cubic feet (less if cellular hatch no. 4 is used for containers) and a container capacity of 185 TEU's. The C4 vessels have a deadweight of 14,600 tons, a bale cubic capacity of approximately 750,000 cubic feet and a container capacity of 118 TEU's. The C3 vessels have a deadweight of 12,700 dwt, a bale cubic capacity of 562,000 cubic feet and a container capacity of between 79 and 86 TEU's. Lykes made 37, 40, 48, 50, and 28 sailings on TR 13 during 1974, 1975, 1976, 1977, and the first 6 months of 1978, respectively. Of these, 5, 6, 17, and 15 sailings were on the Sounth Atlantic portion of TR 13 during 1974, 1975, 1976, and 1977, resepctively. Data for the first 6 months of 1978 was not available as to which of Lykes sailings on TR 13 were made on the South Atlantic portion of TR 13. U.S. ports of call for Lykes on TR 13 are Beaumont, New Orleans, Mobile, Galveston, Orange, Port Arthur, Houston, Wilmington, N.C., Charleston and Jacksonville. Foreign ports of call for Lykes on TR 13 are Casablanca, Leghorn, Marseille, Cadiz, Constanta, Istanbul, Alexandria, Augusta, Piraeus, Valencia, Haifa, and Ashdod.

U.S.-flag carriage on TR 13 during 1974, 1975, 1976, and 1977, respectively, was 32, 31, 35, and 40 percent of inbound cargo carriage and 38, 39, 39, and 35 percent of outbound cargo carriage. U.S.-flag vessels carried 38 percent of the inbound cargo during the first quarter of 1978 and 37 percent of the outbound cargo during the first quarter of 1978. On the South Atlantic portion of TR 13, U.S.-flag vessels carried 46 and 47 percent, respectively, of the inbound cargo during 1975 and 1976 and 48 and 36 percent, respectively of the outbound cargo.

Lykes serves Trade Area 4 with three 14,300 dwt C-5 freighters. These vessels have a container capacity of 285 TEU's and bale cubic capacity of 790,000 cubic feet (less if cellular hatch No. 4 is used for containers). Lykes made 6, 8. 11, and 2 voyages on Trade Area 4, respectively, during 1975, 1976, 1977, and the first 6 months of 1978. Lykes regularly serves the following ports on Trade Area 4: Green Bay, Milwaukee, Detroit, Cleveland, Erie, Chicago, Kenosha, Toledo, Montreal, Mersin, Iskenderun, Alexandria, Salonika, Derince, Kherson, Leghorn, Marseille, Cadiz, Suez Canal, Jeddah, Assab, Bombay, Cochin, and Casablanca. U.S.-flag vessels carried 3 percent of the inbound cargo on Trade Area 4 during 1977 and 32 percent of the outbound cargo on Trade Area 4 during 1977.

U.S. Lines, Waterman, and Farrell are the U.S.-flag operators on TR 12. U.S. Lines operates eight C-7 containerships with a container capacity of 1,330 TEU's each on TR 12. The dwt of these vessels varies from 20,600 to 22,200 tons and the bale cubic capacity per vesel is approximately 1,335,000 cubic feet. U.S. Lines offers weekly service on TR 12 and regularly serves New York, Baltimore, Norfolk, Savannah, Long Beach, Oakland, Honolulu, Hong Kong, Kobe, Yokohama, and Guam.

Waterman serves TR 12 and TR 22 with five C-4 breakbulk vessels whose bale cubic capacity ranges from about 716,000 to about 738,000 cubic feet. The deadweight of the vessels is 13,400 to 13,500 tons. Waterman has made 22, 13, 8, 3, and 5 sailings on TR 12 during 1974, 1975, 1976, 1977 and the first 6 months of 1978, respectively. The ports that Waterman regularly serves include New York, Bayonne, Philadelphia, Baltimore, Orange, Corpus Christi, Houston, New Orleans, Mobile, Galveston, Yokohama, Pusan, Keelung, Kaohsiung, Manila, Dadingas, Davao, and Hong Kong.

Farrell operates on TR 12 with three C-3 breakbulk vessels that bave a bale cubic capacity ranging from about 571,000 cubic feet to about 708,000 cubic feet. The dwt of these vessels varies from 11,100 tons to 12,500 tons. Farrell made 17, 15, 11, 8, and 2 sailings, respectively, in 1974, 1975, 1976, 1977, and the first 6 months of 1978. Additionally, Farrell has made 0, 1, 4, 7, and 4 sailings, respectively, on the predominant inbound leg of TR 12 in 1974, 1975, 1976, 1977, and for the first 9 months of 1978. The ports served by Farrell are Savannah, Charleston, Norfolk, Baltimore, Philadelphia, New York, Pusan, Inchon, Keelung, Kaohsiung, and Kobe.

During the years 1974, 1975, 1976, and 1977, U.S.-flag vessels carried 22, 22, 19, and 17 percent, respectively, of the inbound cargo on TR 12 and 30, 21, 13, and 12 percent, respectively, of the outbound cargo on TR 12. U.S.-flag vessels carried 16 percent of the inbound cargo on TR 12 during the first quarter of 1978 and 11 percent of the outbound cargo on TR 12 during the first quarter of 1978.

The U.S.-flag operators on TR 18 are Central Gulf Lines, Inc. (Central Gulf), Waterman and Farrell. Sea-Land presently serves the Persian Gulf area of TR 18 with U.S.-flag feeder vessels from Western Europe. Sea-Land has announced that in January 1979 it plans to extend this service to Bombay and Cochin on the West Coast of India.

Central Gulf is an unsubsidized operator on TR 18 with LASH vessels of 40,700 to 40,900 dwt. These vessels have a barge-carrying capacity of 89 barges and a bale cubic capacity of approximately 1,736,000 cubic feet. Central Gulf made 15 voyages in 1975, 23 voyages in 1976, and 30 voyages in 1977 on TR 18. Regular ports of call for Central Gulf on TR 18 are Norfolk, Baltimore, New Orleans, Jeddah, and Persian Gulf ports.

Waterman operates on TR 18 with three LASH vessels and four C-4 breakbulk vessels. The LASH vessels have a deadweight of 40,900 tons, a barge-carrying capacity of 89 barges and a bale cubic capacity of about 1,744,000 cubic feet. The breakbulk vessels range in size from 13,700 dwt to 15,500 dwt and have approximate bale cubic capacity varying from 735,000 cubic feet to 760,000 cubic feet. During 1974, 1975, 1976, 1977, and the first 6 months of 1978, Waterman made 21, 25, 28, 22, and 13 sailings, respectively, on TR 18. Waterman's regular ports of call on TR 18 are New Orleans, Houston, Norfolk, New York, Jeddah, Aqaba, Persian Gulf ports, Kandla, Karachi, Bombay, Colombo, Madras, Chittagong, Calcutta, and Assab.

Farrell serves TR 18 with six C-3 breakbulk vessels. These vessels have a dwt of between 11,000 tons and 12,600 tons and a bale cubic capacity ranging from about 506,000 cubic feet to about 708,000 cubic feet. Farrell has made 11, 16, 19, 21, and 10 sailings on TR 18 during 1974, 1975, 1976, 1977, and the first 6 months of 1978, respectively. U.S. ports served by Farrell on TR 18 include New York, Philadelphia, Baltimore, Norfolk, Savannah, Charleston, Houston, Corpus Christi, New Orleans, Lake Charles, Pensacola, and Mobile. The regular foreign ports of calls for Farrell include Alexandria, Port Suez, Jeddah, Karachi, Bombay, Mangalore, Colombo, Madras, Chittagong, Chalna, Calcutta, and Kandla.

U.S.-flag vessels have carried 28, 39, 45, 40, and 38 percent, respectively of the inbound TR 18 cargo during the years 1974, 1975, 1976, 1977 and for the first quarter of 1978. Outbound cargo carriage TR 18 by U.S.-flag vessels for the years 1974 through 1977 and for the first quarter of 1978 was 23, 31, 36, 35, and 34 percent, respectively.

Notice is hereby given that the Board, after consideration of the above-stated facts, is prepared to award a contract on existing services of 55 maximum sailings on TR 5-7-8-9, 70 maximum sailings on TR 10, 20 maximum sailings on TR 12, and 25 maximum sailings on TR 18, for a

period to run from the expiration of Contract No. FMB-87 to the earlier of: (1) December 31, 1980, including voyages in progress as of that date, or (2) completion of the administrative processing of Farrell's applications for 20-year contracts to replace Contract No. FMB-87 insofar as (a) the TR 18 service (Docket No. S-547), and (b) the TR's 5-7-8-9, 10, and 12 services (Docket No. S-610), which would not be unduly prejudicial or give undue advantage as between citizens of the United States operating on the above TR's. Such finding is to be without prejudice to any material issue in Docket Nos. S-547 and S-610.

Any person, firm, or corporation having an interest in the application and who would contest the above proposed finding of the Board is invited to file a written statement, by November 28, 1978, showing cause why this finding should not be made. Any party requesting oral argument before the Board shall specifically include such a request in its statement.

Any party desiring an evidentiary hearing on the application should set forth his interest in the application and should, with particularity, articulate any or all of the facts upon which he desires to adduce evidence. Any allegation of undue prejudice or unfair advantage shall be accompanied by a statement describing in detail the undue prejudice or unfair advantage.

All allegations of other factual issues which the party wishes the Board to consider in a hearing on the application shall include: (1) A clear and concise statement of the issues upon which a hearing is desired; and (2) the grounds upon which such allegations rest, in such detail as to permit the Board to determine their exact nature.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS).)

Dated: November 2, 1978.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 78-31482 Filed 11-6-78; 8:45 am]

[3510-12-M]

National Oceanic and Atmospheric Administration

APPROVAL OF THE MICHIGAN, MARYLAND, NORTH CAROLINA, HAWAII, PUERTO RICO, MAINE, AND THE BAY AND OCEAN SEGMENT OF THE NEW JERSEY COASTAL MANAGEMENT PROGRAMS

Approvals

Notice is hereby given that, pursuant to the authority contained in section 306(a) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1445(a)), the Assistant Administrator for Coastal Zone Management (on behalf of the Secretary of Commerce) has recently approved the coastal programs of Michigan, Maryland, North Carolina, Hawaii, Puerto Rico, Maine, and the Bay and Ocean Shore Segment of the New Jersey Coastal Program.

Approval activates Federal agency responsibility for being consistent with these programs pursuant to the Federal consistency provisions of the Coastal Zone Management Act as of the date of approval. Further information on the responsibilities of affected Federal agencies in this regard may be found in 15 CFR Part 930, published in the FEDERAL REGISTER, at page 10510, on March 13, 1978.

Below is a complete list of State programs currently approved pursuant to the above Act, the program approval dates, and the agency responsible for administration of the program.

State	Approved date	Administrative agency
Washington	June 1, 1976	Department of Ecology.
Oregon	May 6, 1977	Department of Land Conservation and Development.
California	Nov. 7, 1977*	California Coastal Commission.
Massachusetts	Apr. 24, 1978	Executive Office of Environmental Affairs.
Rhode Island	May 12, 1978	Office of the Governor.
Wisconsin	May 22, 1978	Office of State Planning and Energy.
Michigan	Aug. 15, 1978	Department of Natural Resources.
North Carolina	Sept. 1, 1978	Department of Natural Resources and Community Development, Office of Coastal Zone Management.
Hawaii	Sept. 18, 1978	Department of Planning and Economic Development.
Puerto Rico	do	Department of Natural Resources.
Maine	Sept. 29, 1978	State Planning Office.
New Jersey (bay and ocean segment).	do	Department of Environmental Protection, Office of Coastal Zone Management.
Maryland	Sept. 30, 1978	Department of Natural Resources and Coastal Zone Administration.

*Pursuant to an order of the U.S. District Court for the Central District of California, the Federal consistency requirements with respect to the California program became effective on Aug. 31, 1978.

A copy of the written findings made by the Assistant Administrator in determining that the program met the requirements of the Coastal Zone Management Act may be obtained upon request from the Office of Coastal Zone Management. Inquiries regarding the Michigan and Wisconsin programs should be addressed to the Great Lakes Regional Manager; Maryland and North Carolina to the South Atlantic Regional Manager; Washington, Oregon, California, and Hawaii to the Pacific Regional Manager; Puerto Rico to the Gulf Regional Manager; Maine, Massachusetts, the New Jersey Bay and Ocean Shore Segment, and Rhode Island to the North Atlantic Regional Manager; Office of the Coastal Zone Management, Page Building 1, 3300 Whitehaven Street NW., Washington, D.C. 20235.

R. L. CARNAHAN,
Deputy Assistant Administrator for Administration.

[FR Doc. 78-31423 Filed 11-6-78; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric Administration

GULF OF MEXICO FISHERY MANAGEMENT COUNCIL

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will meet to: (1) Review status reports on development of fishery management plans; (2) consider foreign fishing applications, if any; and (3) conduct other fishery management business.

DATES: The meeting will convene on Tuesday, December 5, 1978, at 1:30 p.m. and adjourn at approximately 12 noon on Friday, December 8, 1978. The meeting is open to the public.

ADDRESS: The meeting will take place at Gaido's Motel, 38th, 39th, and Boulevard, Galveston, Tex.

FOR FURTHER INFORMATION CONTACT:

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Boulevard, Tampa, Fla. 33609, telephone: 813-228-2815.

Dated: November 1, 1978.

WINFRED H. MEIBOHM,
Associate Director, National Marine Fisheries Service.

[FR Doc. 78-31390 Filed 11-6-78; 8:45 am]

[3510-22-M]

WESTERN PACIFIC FISHERY MANAGEMENT COUNCIL; SCIENTIFIC AND STATISTICAL COMMITTEE

Meeting

AGENCY: National Marine Fisheries Service, NOAA.

ACTION: Notice of public meeting.

SUMMARY: The Scientific and Statistical Committee of the Western Pacific Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will meet to discuss the status of fishery management planning for the precious coral, spiny lobster, billfish, bottomfish, and seamount groundfish fisheries.

DATES: The meeting will convene on Tuesday, November 21, 1978, and on Wednesday, November 22, 1978, at 9 a.m. and adjourn at 5 p.m. on both days. The meeting is open to the public.

ADDRESS: The meeting will take place in the Mokihana Room of the Maui Surf Hotel, Kaanapali, Maui, Hawaii.

FOR FURTHER INFORMATION CONTACT:

Wilvan G. Van Campen, Executive Director, Western Pacific Fishery Management Council, Room 1506, 1164 Bishop Street, Honolulu, Hawaii 96813, telephone 808-523-1368.

Dated: November 2, 1978.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 78-31389 Filed 11-6-78; 8:45 am]

[3510-25-M]

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

COTTON, WOOL, AND MAN-MADE FIBER TEXTILE PRODUCTS FROM THE REPUBLIC OF KOREA

Adjusting Import Restraint Level

NOVEMBER 2, 1978.

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Deducting carryforward yardage used in categories 333/334/335, 433/434, 443, 633/634/635, 638/639, 641, and 643, during the 15-month agreement period which began on October 1, 1976 and extended through December 31, 1977.

(A detailed description of the textile categories in terms of T.S.U.S.A. numbers was published in the FEDERAL REGISTER on January 4, 1978 (43 FR 884), as amended on January 25, 1978 (43 FR 3421), March 3, 1978 (43 FR 8828), June 22, 1978 (43 FR 26773), and September 5, 1978 (43 FR 39408)).

SUMMARY: The Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of December 23, 1977, between the Governments of the United States and the Republic of Korea, provides, among other things, for designated percentage increases in certain specific category ceilings for carryforward during an agreement year. Carryforward is an amount borrowed from the level of restraint applicable to the affected category in the succeeding agreement year and is deducted from that succeeding year's level. Pursuant to paragraph 9(a)(iii) of the bilateral agreement, as amended, the import restraint levels for categories 333/334/335, 433/434, 443, 633/634/635, 638/639, 641, and 643 are being reduced to account for carryforward used during the previous agreement period.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert C. Woods, International Trade Specialist, Office of Textiles, U.S. Department of Commerce, Washington, D.C. 20230, 202-377-5423.

SUPPLEMENTARY INFORMATION: On December 30, 1977 a letter dated December 27, 1977 from the Chairman of the Committee for the Implementation of Textile Agreements to the Commissioner of Customs was published in the FEDERAL REGISTER (42 FR 65246), which established import restraint levels for certain specified categories of cotton, wool, and man-made fiber textile products produced or manufactured in the Republic of Korea and exported to the United States during the 12-month period which began on January 1, 1978. In the letter published below the Commissioner of Customs is directed, in accordance with the bilateral agreement to reduce the 12-month levels of restraint previously established for categories 333/334/335, 433/434, 443, 633/634/635, 638/639, 641, and 643 to the designated amounts.

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

NOVEMBER 2, 1978.

COMMISSIONER OF CUSTOMS,
Department of the Treasury,
Washington, D.C. 20229

DEAR MR. COMMISSIONER: On December 27, 1977, the Chairman, Committee for the Implementation of Textile Agreements, directed you to prohibit entry for consumption, or withdrawal from warehouse for consumption during the 12-month period beginning on January 1, 1978, and extending through December 31, 1978, of cotton, wool, and man-made fiber textile products in certain specified categories, produced or manufactured in the Republic of Korea, in excess of designated levels of restraint. The Chairman further advised you that the levels of restraint are subject to adjustment.[1]

Under the terms of the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as extended on December 15, 1977; pursuant to the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended by Executive Order 11951 of January 6, 1977, you are directed to amend, effective on November 7, 1978, the 12-month levels of restraint established for the following categories in the directive of December 27, 1977, to the amounts indicated:

Category and Adjusted 12-Month Level of Restraint[2]

333/334/335—86,018 dozen, of which not more than 49,368 dozen shall be in Cat. 333/334 and not more than 49,759 dozen shall be in Cat. 335.

433/434—18,084 dozen, of which not more than 13,162 dozen shall be in Cat. 433 and not more than 6,739 dozen shall be in Cat. 434.

443—29,232 dozen.

633/634/635—1,320,288 dozen, of which not more than 171,314 dozen shall be in Cat.

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[1] The term "adjustment" refers to those provisions of the Bilateral Cotton, Wool, and Man-Made Fiber Textile Agreement of December 23, 1977, as amended, between the Governments of the United States and the Republic of Korea which provide, in part, that: (1) Within the aggregate and applicable group limits, specific levels of restraint may be exceeded by designated percentages; (2) these same levels may be increased for carryover and carryforward up to 11 percent of the applicable category limit; (3) consultation levels may be increased within the aggregate and applicable group limits upon agreement between the two governments; and (4) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The levels of restraint have not been adjusted to account for any imports after December 31, 1977.

633; not more than 777,733 dozen shall be in Cat. 634; and not more than 574,940 dozen shall be in Cat. 635.
638/639—5,241,254 dozen.
641—1,000,367 dozen.
643—58,621 dozen.

The actions taken with respect to the Government of the Republic of Korea and with respect to imports of cotton, wool, and man-made fiber textile products from Korea have been determined by the Committee for the Implementation of Textile Agreements to involve foreign affairs functions of the United States. Therefore, the directions to the Commissioner of Customs, being necessary to the implementation of such actions, fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553. This letter will be published in the FEDERAL REGISTER.

Sincerely,

EDWARD GOTTFRIED,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 78-31472 Filed 11-6-78; 8:45 am]

[6740-02-M]

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CI77-641]

ARKANSAS LOUISIANA GAS CO. AND DYCO PETROLEUM CO., ET AL.

Informal Settlement Conference

OCTOBER 30, 1978

Take notice that an informal settlement conference will be held regarding the above-captioned proceeding on Thursday, November 2, 1978, at 1:30 p.m. Room 8402 of the Commission's office at 825 North Capitol Street NE., Washington, D.C.

The conference is open to all interested persons, however, for those persons that have not previously intervened in the above-captioned proceedings attendance at the conference will not be considered as a formal intervention.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31396 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RA78-4]

BAYOU STATE OIL CORP.

Filing of Petition for Review

OCTOBER 25, 1978.

Take notice that Bayou State Oil Corp. (Bayou) on August 9, 1978 filed a petition for review under 42 U.S.C. §7194(b) (1977 Supp.) from Department of Energy, Office of Hearings and Appeals, Decision and Order of August 1, 1978 (Case No. FEE-4264) denying Bayou's application for Exception under Part 212 of Title 10, Code of Federal Regulations.

Bayou has served copies of its Petition for Review on the Secretary, Department of Energy and other participants in the prior proceeding before the Secretary.

Any person desiring to be heard with respect to such filing should on or before November 17, 1978 file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene in accordance with the Commission's Rules. Copies of the petition of review are on file with the Commission and available for public inspection at Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary

[FR Doc. 78-31397 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-29]

CENTRAL ILLINOIS PUBLIC SERVICE CO.

Filing

OCTOBER 30, 1978.

Take notice on October 19, 1978, Central Illinois Public Service Co. (CIPS) tendered for filing proposed Amendment No. 1 to Interconnection Agreement dated May 2, 1972, with Southern Illinois Power Cooperative.

CIPS indicates this amendment primarily reflects the changes to the agreement required to add additional interconnection points.

Any person desiring to be hard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31398 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket Nos. ER78-526 and ER77-331]

CENTRAL POWER & LIGHT CO.

Order Granting Rehearing

OCTOBER 27, 1978.

On September 27, 1978, Central Power & Light Company (CP&L) filed an application seeking rehearing of the Commission's[1] order issued August 30, 1978 in the above-captioned docket, accepting CP&L's proposed Interchange Agreement and, with the exception of the fuel adjustment clause, suspending for four months, subject to refund, on the condition that CP&L file within thirty (30) days, revised rates removing deferred investment tax credit in equity capitalization in accordance with Commission Opinion No. 19. The proposed fuel adjustment clause filed on July 31, 1978 was accepted and suspended for one day, becoming effective August 1, 1978, subject to refund. The Commission further directed CP&S to file a modification to the new fuel clause to reflect the recovery of the 20 cents per million BTU in the present base rates. This modification of the fuel adjustment clause would be effective from August 1, 1978, until the end of the suspension period for the new base rates at which time the fuel adjustment clause tendered on July 31, 1978, will go into effect.

CP&L seeks rehearing of our order of August 30, 1978, alleging that the Commission is without authority to order a change in CP&L effective fuel clause; that the need for a four month suspension period is not supported by the record; that intervenors have not raised sufficient allegations to intiate "price squeeze" procedures; and that CP&L's inclusion of deferred investment tax credits in the equity capitalization was proper.

In addition, attached to the application for rehearing as Appendix A are tables showing that CP&L will lose revenues in the amount of $202,733 during the four-month suspension period by complying with our August 30th Order. Also attached to CP&L application for rehearing as Appendix B is a copy of the fuel clause "which basically tracks the clause originally filed with the 1967 contract".[2]

In support of its allegations, CP&L states that it will earn only 2.317 per-

[1] The "Commission" when used in the context of the action taken prior to October 1, 1977, refers to the Federal Power Commission; when used otherwise, the reference is to the Federal Energy Regulatory Commission, which suceeeded to the powers and duties of the FPC pertinent here by operation of the Department of Energy Act.

[2] Application for Rehearing of Central Power & Light Co., Docket Nos. ER78-526 andf ER77-331, p. 5.

cent on the rate base allocable to sales to Stec-Medina under the 1967 contract. In addition, CP&L asserts the *Sierra-Mobile* defense [3] stating that the 1967 Interconnection Agreement with South Texas Electric Cooperative, Inc., and Medina Electric Cooperative (Stec-Medina) filed on April 28, 1977, in Docket No. ER77-331 is a fixed rate contract that cannot be changed unilaterally by either of the parties or this Commission absent hearings and findings pursuant to section 206 of the Federal Power Act.

In light of the fact that CP&L would lose approximately $200,000 by complying with our August 30th Order, and the fact that, under the present rates for Stec-Medina, CP&L would earn as inordinately low return on the allocated rate base, we believe reconsideration of our August 30th Order is appropriate. Therefore, we will permit the rates and the fuel clause contained in the 1967 Inter-connection Agreement to remain in effect until the new rates and the fuel clause contained in the proposed agreement filed on July 31, 1978 become effective on December 31, 1978, subject to refund.

We need not address the question of whether the 1967 agreement between CP&L and Stec-Medina is a fixed-rate contract in granting CP&L instant application for rehearing. As noted above, and in our August 30th Order, the 1967 Agreement expired on Janurary 1, 1978. Stec-Medina has merely continued to receive service under the rates contained in the expired agreement. It is well-settled law that where a contract specifies the period of its duration, it terminates on the expiration of such period. The *Sierra-Mobile* doctrine applies to a fixed-rate, fixed-term contract only during the life of a contract and is inapplicable to contracts that have expired by their own terms. This fact renders CP&L's extensive discussion of and heavy reliance on *West Texas Utilities Co.* (WTU), Docket No. ER76-747, et al. inappropriate.

As to the length of the suspension period, we have reviewed the application and would have ordered the same suspension period even without the price squeeze allegations.

We have again considered the other issues raised in CP&L's application for rehearing, and for the reasons set forth in the Order of August 30, 1978, in Docket Nos. ER78-526 and ER77-331, these contentions are again rejected.

The Commission orders: (A) CP&L application for rehearing is hereby granted.

[3] A contractual rate cannot be increased until this Commission first determines that it is "so low as to conflict with the public interest". *FPC* v. *Sierra Power Co.*, 350 U.S. 348 (1956), *FPC* v. *Mobile Gas Service Corporation*, 350 U.S. 332 (1956).

(B) The rates and the fuel clause contained in the 1967 Interconnection Agreement shall remain in effect until the rates and fuel clause contained in the proposed Interchange Agreement, filed by CP&L on July 31, 1978, become effective on December 31, 1978, subject to refund.

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

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31399 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP77-423 (Phase I)]

COLORADO INTERSTATE GAS CO.

Application to Amend

OCTOBER 30, 1978.

Take notice that on October 17, 1978, Colorado Interstate Gas Co. (CIG), Post Office Box 1087, Colorado Springs, Colo. 80944, filed an application to amend the order issued in Docket No. CP77-423 (Phase I), pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

It is said that the Commission's order in Docket No. CP77-423 (Phase I) authorized CIG to transport for and exchange natural gas with Panhandle Eastern Pipe Line Company (Panhandle) from the Greater Green River Basin area in southwestern Wyoming (Area of Interest), in accordance with the terms of a Gas Purchase and Exchange Agreement (Agreement), dated December 3, 1976. It is further said that the area of interest is limited to Uinta, Lincoln, Sublette, Sweetwater, Carbon, and portions of Fremont Counties, Wyo. CIG may purchase up to 25 percent of the volumes delivered and would redeliver the balance, less applicable fuel and unaccounted-for volumes, on a thermally equivalent basis to Panhandle from existing delivery points located in Kearny County, Kans., and Texas County, Okla.

CIG requests that the order in Docket No. CP77-423 (Phase I) be amended to add the Fuller Reservoir area of Fremont County, Wyo., to the Area of Interest. It is said that approximately 30 percent of the Fuller Reservoir natural gas production is committed to Panhandle; the remaining 70 percent is committed to CIG. It is further said that pursuant to the order issued in Docket No. CP78-198, Montana-Dakota Utilities Co. (MDU) will transport and redeliver the Fuller Reservoir gas to CIG at mutually agreeable locations on CIG's pipeline facilities. It is stated that CIG would accept deliveries from MDU and, as appropriate, would transport and redeliver Panhandle's portion of the Fuller gas to Panhandle in accordance with the terms of the Agreement certificated in Docket No. CP77-423 (Phase I).

Any person desiring to be heard or to make any protest with reference to said application should on or before November 20, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31400 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-86]

COLUMBIA GAS TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

OCTOBER 31, 1978.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 19, 1978, tendered for filing the following revised tariff sheet to its FERC Gas Tariff, Original Volume No. 1, to become effective November 1, 1978.

Substitute Forty-seventh Revised Sheet No. 16.

Columbia states that Forty-seventh Revised Sheet No. 16 was filed on September 29, 1978 in order to comply with Commission Order issued January 20, 1975 at Docket No. RP73-86 which provides for a phased removal of the multiple zone system. In compliance with the above mentioned order the rates contained in that filing reflected a further one-sixth movement to be effective November 1, 1978 toward a system-wide rate structure.

This revised filing is necessitated by Columbia's revised PGA filing of October 19, 1978, to be effective September 2, 1978 at Docket No. RP73-65 (PGA No. 78-4) (AP78-1). Such revised PGA filing was the result of revised rates of Texas Eastern Transmission Corporation filed October 12, 1978 to become effective September 1, 1978 and the reduced rates of Transcontinental Gas Pipe Line Corporation at Docket No.

RP73-3 approved by the Letter Order issued October 16, 1978 to be effective September 1, 1978.

Copies of this filing were served upon the Company's jurisdictional customers, interested state commissions and to each of the parties set forth on the official service list in this proceeding.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before November 13, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31412 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket Nos. G-10122, *et al.*].

CONTINENTAL OIL CO., ET AL.

Notice of Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates

OCTOBER 27, 1978.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before on before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[1] This notice doe not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
G-10122, D, Oct. 11, 1978	Continental Oil Co., P.O. Box 2197, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., West Delta area, offshore Louisiana.	(1)	
G-13447, D, Oct. 13, 1978	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Southern Natural Gas Co., Black Bay fields, Plaquemines Parish, La.	Leases expired.	
CI61-1327, C, Oct. 19, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Cities Service Gas Co., Guymon-Hugoton deep field, Texas County, Okla.	(2)	14.73
CI62-588, F, Oct. 16, 1978	Amoco Production Co., (partial successor in interest to Roland S. Bond), Security Life Bldg., Denver, Colo. 80202.	Michigan Wisconsin Pipe Line Co., Laverne gas area, Harper County, Okla.	(2)	14.65
CI68-621, D, Oct. 5, 1978	Tenneco Oil Co., P.O. Box 2511, Houston, Tex. 77001.	Tennessee Gas Pipeline Co., South Marsh Island block 79 field, offshore Louisiana.	Depleted and lease released.	
CI78-33, C, Oct. 19, 1978	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	El Paso Natural Gas Co., Empire South Morrow and Burton Flat fields, Lea County, N. Mex.	(2)	14.65
CI78-137, C, Oct. 16, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Mauck A-1, Maxwell A-1, and Royce A-1 wells from formations within the Mississippian System of the Paleozoic Era only in the Langdon field, Reno County, Kans.	(2)	14.65
CI78-298, C, Oct. 17, 1978	Anadarko Production Co	Panhandle Eastern Pipe Line Co., Real Estate "A" No. 1 well from the Council Grove zone of the Permian System only in the Panoma Council Grove field, Grant County, Kans.	(2)	14.65
CI78-1131, A, Aug. 28, 1978	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Transco Gas Supply Co., block A-340 east addition, south extension High Island area, offshore Texas.	(2)	14.65
CI78-1151, A, Aug. 28, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., Chandeleur Sound area blocks 58 and 59, offshore St. Bernard Parish, La.	(2)	15.025
CI78-1152 (CI72-318), B, Aug. 28, 1978.	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Colorado Interstate Gas Co., a division of Colorado Interstate Corp., certain acreage in Sweetwater County, Wyo.	Depleted and leases terminated as a result of cessation of production and were released.	
CI78-1153, A, Aug. 28, 1978	ONG Exploration, Inc., P.O. Box 871, Tulsa, Okla. 74102.	Colorado Interstate Gas Co., certain acreage in the Mocane Field, Beaver County, Okla.	(3)	14.73
CI78-1154, A, Aug. 28, 1978	Amoco Production Co., Security Life Bldg., Denver, Colo. 80202.	Arkansas Louisiana Gas Co., W. D. Fast No. 1 well, Northwest Okeene field, Major County, Okla.	(3)	14.65
CI78-1155, A, Aug. 29, 1978	Energy Increments, Inc., P.O. Box 15015, Las Vegas, Nev. 89114.	Southwest Gas Corp., State Bancos No. 1 well in Rio Arriba County, N. Mex.	(3,4)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1156, A, Aug. 29, 1978	Helmerich & Payne, Inc., 1579 East 21st St., Tulsa, Okla. 74114.	Michigan Wisconsin Pipe Line Co., Unnamed field, Major County, Okla.	(1)	14.73
CI78-1157, A, Aug. 29, 1978	Amerada Hess Corp., 1200 Milam, 6th Floor, Houston, Tex. 77002.	Southern Natural Gas Co., (successor in interest to United Gas Pipe Line Co.), blocks 37, 38, 57, and 58, Eugene Island area, offshore Louisiana.	(2)	15.025
CI78-1158, A, Aug. 24, 1978	Cotton Petroleum Corp., 4200 1 Williams Center, Tulsa, Okla. 74103.	Michigan Wisconsin Pipe Line Co., certain acreage in the East Lookeba field, Caddo County, Okla.	(3)	14.65
CI78-1159, B, Aug. 30, 1978	Sarkeys, Inc., 1200 Mercantile Bank Bldg., Dallas, Tex. 75201.	Aminoil U.S.A., Inc., Putnam field, Dewey County, Okla.	(9)	
CI78-1160, A, Aug. 30, 1978	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	Michigan Wisconsin Pipe Line Co., West Cameron block 71 field, offshore Louisiana.	(2)	15.025
CI78-1161, A, Aug. 30, 1978	Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Florida Gas Transmission Co., a portion of South Marsh Island block 150 and all of South Marsh Island block 149, offshore Louisiana.	(2)	15.025
CI78-1162, B, Aug. 31, 1978	John B. Hawley, Jr., 1915 57th Ave., North, Minneapolis, Minn. 55430.	Northern Natural Gas Co., Panoma (Council Grove) field, Stevens County, Kans.	(10)	
CI78-1163, A, Aug. 30, 1978	Estate of H. L. Hunt, 2900 First National Bank Bldg., Dallas, Tex. 75202.	Michigan Wisconsin Pipe Line Co., Dyche Well No. 1, NE/4, sec. 27, T22N, R15W, Major County, Okla.	(3)	14.65
CI78-1164, A, Aug. 31, 1978	The Louisiana Land & Exploration Co., 225 Baronne St., P.O. Box 60350, New Orleans, La. 70160.	Texas Eastern Transmission Corp., certain acreage located in block 294 field, East Cameron area, south addition, offshore Louisiana.	(2)	15.025
CI78-1165, B, Sept. 1, 1978	Isaac Arnold, Jr., et al., First City National Bank Bldg., Houston, Tex. 77002.	United Gas Pipe Line Co., Garden City field, St. Mary Parish, La.	(11)	
CI78-1166 (CI72-854) (G-18063) (G-13274), B, Sept. 1, 1978.	Joseph I. O'Neill, Jr., P.O. Box 2840, Midland, Tex. 79702.	Getty Oil Co., Reinecke and Von Roeder fields, Borden County, Tex.	(11)	
CI78-1167, A, Sept. 1, 1978	Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001.	Southern Natural Gas Co., all of South Marsh Island block 149, offshore Louisiana.	(2)	15.025
CI78-1168, A, Sept. 1, 1978	Murphy Oil Corp., 200 Jefferson Ave., El Dorado, Ark. 71730.	Consolidated Gas Supply Corp., A and B platform wells, Vermilion block 102 in the Gulf of Mexico, offshore Louisiana.	(2)	15.025
CI78-1169, A, Sept. 5, 1978	Stephens Production Co., P.O. Box 2407, Fort Smith, Ark. 72902.	Arkansas Louisiana Gas Co., lands located in sec. 25-10N-25E of Sequoyah County, Okla.	(2)	14.65
CI78-1170 (CI63-759), B, Sept. 5, 1978.	Robbins Petroleum Corp., et al., P.O. Box 1389, Longview, Tex. 75601.	Lone Star Gas Co., Peatown field, Gregg County, Tex.	Supply exhausted.	
CI78-1171, A, Sept. 5, 1978	Stephens Production Co	El Paso Natural Gas Co., certain acreage located in sec. 9-13N-26W of Roger Mills County, Okla.	(2)	14.65
CI78-1172, A, Sept. 5, 1978	do	Arkansas Louisiana Gas Co., certain acreage located in sec. 28-10N-27E of LeFlore County, Okla.	(2)	14.65
CI78-1173, A, Sept. 5, 1978	Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001.	Montana-Dakota Utilities Co., Little Knife field (Mission Canyon Formation only) Dunn, Billings, and McKenzie Counties, N. Dak.	(2)	14.73
CI78-1174, A, Sept. 5, 1978	Energy Reserves Group, Inc., P.O. Box 1201, Wichita, Kans. 67201.	El Paso Natural Gas Co., certain acreage in Crockett County, Tex.	(2)	14.73
CI78-1175, A, Sept. 5, 1978	Hunt Oil Co., 2900 First National Bank Bldg., Dallas, Tex. 75202.	El Paso Natural Gas Co., southeast quarter, sec. 76, Block Y, TC RR Co. Survey, Amacker Tippett, southwest (Wolfcamp) field, Upton County, Tex.	(2)	14.73
CI78-1176, A, Sept. 5, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., certain acreage in the Lake Hatch field, Terrebonne Parish, La.	(2)	15.025
CI78-1177, A, Sept. 5, 1978	Diamond Shamrock Corp. (successor to the Shamrock Oil & Gas Corp.), P.O. Box 631, Amarillo, Tex. 79173.	Natural Gas Pipeline Co. of America, certain acreage located in Ochiltree, Roberts, Lipscomb, and Hemphill Counties, Tex.	(13)	14.65
CI78-1178, A, Sept. 5, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Mallory No. 1 well, Avard field, Woods County, Okla., limited to the Hunton Formation of the Siluro-Devonian System.	(2)	14.65
CI78-1180, A, Sept. 7, 1978	Union Texas Petroleum, a division of Allied Chemical Corp., P.O. Box 2120, Houston, Tex. 77001.	Cities Service Gas Co., Macy-Conley No. 1 well, Sooner Trend field, Kingfisher County, Okla.	(14)	14.65
CI78-1181, A, Sept. 1, 1978	Terra Resources, Inc., 5416 South Yale, Tulsa, Okla. 74135.	Southern Natural Gas Co., Breton Sound Plaquemines Parish, La.	(15)	15.025
CI78-1182, A, Sept. 5, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Arkansas Louisiana Gas Co., Samson Resources, No. 1 McBee, sec. 23-5N-16E, Pittsburg County, Okla.	(2)	14.73
CI78-1183 (CI72-86), B, Sept. 5, 1978.	Kerr-McGee Corp., P.O. Box 25861, Oklahoma City, Okla. 73125.	Arkansas Louisiana Gas Co., Red Deer area, Roberts County, Tex.	Uneconomical, plugged, and abandoned.	
CI78-1184 (CI65-529), B, Sept. 5, 1978.	Petroleum, Inc. (operator), et al., 300 West Douglas, Wichita, Kans. 67202.	Northern Natural Gas Co., Baldwin unit No. 1 well, SE/4 sec. 30-1N-26ECM, Beaver County, Okla.	Lease expired, plugged, and abandoned.	
CI78-1185, A, Sept. 7, 1978	Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189.	El Paso Natural Gas Co. West Reydon field, Roger Mills County, Okla.	(2)	14.73
CI78-1186, A, Sept. 7, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	United Gas Pipe Line Co., certain acreage in the Carthage field, Panola County, Tex.	(16)	14.73
CI78-1187 (CI73-867), B, Sept. 7, 1978.	Gas Producing Enterprises, Inc. (operator), et al., 9 Greenway Plaza East, Houston, Tex. 77046.	South Texas Natural Gas Gathering Co., Cortez field, Starr County, Tex.	(17)	

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft.³	Pressure base
CI78-1188, A, Sept. 8, 1978	Mobil Oil Corp., 9 Greenway Plaza, Suite 2700, Houston, Tex. 77046.	Texas Eastern Transmission Corp., certain acreage in the Vermilion, south addition, block 261 field, Federal offshore Louisiana.	(2)	14.73
CI78-1189, A, Sept. 11, 1978	Southland Royalty Co., 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102.	Michigan Wisconsin Pipe Line Co., Painton No. 1-3 well located in sec. 3-T20N-R15W, Major County, Okla.	(2)	14.73
CI78-1190, A, Sept. 11, 1978	Transco Exploration Co., P.O. Box 1396, Houston, Tex. 77001.	Transcontinental Gas Pipe Line Corp., certain acreage located in the Campbell Ranch field, Hemphill and Roberts Counties, Tex.	(2)	14.65
CI78-1191, A, Sept. 11, 1978	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	Columbia Gas Transmission Corp., High Island area, blocks A-280 and A-286, offshore Texas.	(2)	14.73
CI78-1192, A, Sept. 11, 1978	Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840.	Natural Gas Pipeline Co. of America, Ship Shoal area, block 272 field, offshore Louisiana.	(2)	14.73
CI78-1193, A, Sept. 11, 1978	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 77004.	Michigan Wisconsin Pipe Line Co., Jaco lease, the No. 1-A Jaco well located on sec. 49, block A-8, H & GN Survey, Wheeler County, Tex.	(2)	14.65
CI78-1194, A, Sept. 11, 1978	Mobil Oil Corp	Southern Natural Gas Co., certain acreage in the Eugene Island area, block 261 and 262 field, Federal offshore Louisiana.	(2)	14.73
CI78-1196 (CI77-240), B, Sept. 11, 1978.	Victory Petroleum Co., P.O. Box 36666, Houston, Tex. 77036.	Texas Gas Transmission Corp., South Minden field, Webster Parish, La.	(10)	
CI78-1197, A, Sept. 12, 1978	Terra Resources, Inc., 5416 South Yale, Tulsa, Okla. 74135.	Transwestern Pipeline Co., South Carlsbad field, Eddy County, N. Mex.	(10)	14.65
CI78-1198 (G-12721) (CI71-115), B, Sept. 8, 1978.	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Texas Gas Transmission Corp., Jefferson Davis Parish, La.	Depleted, leases terminated as a result of cessation of production and were released.	
CI78-1199, A, Sept. 11, 1978	Amoco Production Co., P.O. Box 3092, Houston, Tex. 77001.	Transwestern Pipeline Co., Buffalo Valley Field, Chaves County, N. Mex.	(10)	14.65
CI78-1200, A, Sept. 11, 1978	Tenneco Oil Co., P.O. Box 2511 Houston, Tex. 77001.	El Paso Natural Gas Co., Pardue Farms Gas Com No. 1, east half of sec. 26-T23S-R28E, Eddy County, N. Mex.	(2)	14.73
CI78-1201, A, Sept. 13, 1978	Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001.	Panhandle Eastern Pipe Line Co., Beck No. 1-25 well, Mocane-Laverne field, Beaver County, Okla.	(2)	14.65
CI78-1202, A, Sept. 13, 1978	Amoco Production Co., P.O. Box 50879, New Orleans, La. 70150.	Michigan Wisconsin Pipe Line Co., High Island block A-349, offshore Texas.	(2)	15.025
CI78-1203, A, Sept. 5, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Colorado Interstate Gas Co., Great Divide Creek field, Moffat County, Colo.	(2)	14.73
CI78-1204 (CI61-1098), B, Sept. 14, 1978.	Exxon Corp., P.O. Box 2180, Houston, Tex. 77001.	United Gas Pipe Line Co., Mt. Selman field, Cherokee County, Tex.	Depleted, plugged and abandoned, leases terminated and contract has been canceled.	
CI78-1205, A, Sept. 14, 1978	General Crude Oil Co., P.O. Box 2252, Houston, Tex. 77001.	Northwest Pipeline Corp., Federal 1-30 well, Rio Blanco County, Colo.	(2)	14.73
CI78-1206, A, Sept. 19, 1978	Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Southern Natural Gas Co., Kerr-McGee, et al., State lease No. 6802, well No. 1, located in block 35, Breton Sound area, Plaquemines Parish, La.	(2)	15.025
CI78-1209, A, Sept. 20, 1978	Tenneco Oil Co	Northern Natural Gas Co., Kemnitz Deep No. 1, NE/4 sec. 29-T16S-R34E, Kemnitz field, Lea County, N. Mex., limited to the Atoka-Morrow Formation.	(2)	14.73
CI78-1210, A, Sept. 13, 1978	American Natural Gas Production Co., 5075 Westheimer, Suite 1100, Galleria Towers West, Houston, Tex. 77056.	El Paso Natural Gas Co., certain acreage in Woodward County, Okla.	(2)	14.73
CI78-1211, A, Sept. 8, 1978	Forest Oil Corp., 1500 Colorado National Bldg., 950 17th St., Denver, Colo. 80202.	Colorado Interstate Gas Co., Hay Reservoir unit, Sweetwater County, Wyo.	(2)	14.73
CI78-1213, A, Sept. 11, 1978	Texas Pacific Oil Co., Inc., 1700 1 Main Pl., Dallas, Tex. 75250.	El Paso Natural Gas Co., J. W. Cooper No. 7 well, NW/4 SE/4 sec. 14-T24S-R36E, Lea County, N. Mex.	(25)	14.65
CI78-1214, A, Sept. 13, 1978	Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221.	Cities Service Gas Co., Alpar-Tonkawa field, Hemphill County, Tex., Ora Ramsey lease, sec. 58, block 41, H & TCRR Survey, limited to production from surface to base of Tonkawa Formation.	(2)	14.73
CI78-1215, A, Sept. 15, 1978	The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001.	El Paso Natural Gas Co., Angel Ranch field, Eddy County, N. Mex.	(2)	14.73

Docket No. and date filed	Applicant	Purchaser and location	Price per 1,000 ft³	Pressure base
CI78-1216, F, Sept. 15, 1978...	Phillips Petroleum Co., successor in interest to F. Julius Fohs and Lucerne Corp., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004.	Arkansas Louisiana Gas Co., certain acreage in Webster Parish, La.	(21)	15.025
CI78-1217, A, Sept. 20, 1978...	Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102.	Colorado Interstate Gas Co., Green "C-2" in sec. 30-28S-34W, and the Pickens "A-2" in sec. 31-28S-34W, both in Haskell County, Kans., limited to the base of the Chase Group to the base of the Council Grove.	(4)	14.65
CI78-1218 (G-16152), B, Sept. 19, 1978.	Getty Oil Co., P.O. Box 1404, Houston, Tex. 77001.	Arkansas Louisiana Gas Co., Numa-West field, Grant County, Okla.	(22)	

[1] Leases or parts of leases which were committed to the subject contract and rate schedule but which Continental no longer holds. Continental endeavored to hold these properties but could not meet the demands of the State Mineral Board for the additional drilling necessary to hold them.
[2] Applicant is willing to accept the applicable national rate pursuant to Opinion No. 770, as amended.
[3] Applicant is filing under gas purchase contract dated Sept. 11, 1958, amended by amendatory agreement dated Aug. 17, 1978.
[4] Applicant is filing under gas purchase contract dated Sept. 27, 1977, amended by amendment dated Aug. 3, 1978.
[5] Applicant is filing under gas purchase contract dated Aug. 11, 1978.
[6] Applicant and purchaser are affiliated.
[7] Applicant is filing under gas purchase contract dated July 31, 1978.
[8] Applicant is filing under gas purchase contract dated May 16, 1978, amended by letter agreement dated June 7, 1978.
[9] Sarkeys desires this abandonment so that it might enter into a gas purchase agreement with Panhandle Eastern for this gas. This will enable Sarkeys to take advantage of its small producer status and thereby enable it to collect the small producer rates to which it is entitled.
[10] The land owner would like to buy gas from this well to run his motor to pump water for irrigation purposes. The gas would be metered and sold to farmer at well head price to be used only for irrigation purposes.
[11] Contract expires on its own terms Sept. 15, 1979; the remaining reserves are dedicated to Columbia Gas Transmission Corp. under contract dated June 28, 1963, as amended.
[12] Contract was for 15 years, ending Sept. 4, 1967, and thereafter from month to month until canceled by either party upon thirty (30) days written notice to the other. Residue gas will be delivered to same purchaser, El Paso Natural Gas Co., at tailgate of new plant.
[13] Applicant is filing under gas purchase contract dated Aug. 25, 1978.
[14] Applicant is filing under casinghead gas contract dated Sept. 9, 1978.
[15] Applicant is filing under gas purchase contract dated Aug. 8, 1978.
[16] Applicant is willing to accept an initial rate determined in accordance with opinion No. 749, as amended, and opinion No. 770-A.
[17] Depletion of the reservoir, plugged and abandoned, lease expired by it's own terms, no gas sold since June 1976 and gas sales contract has been canceled.
[18] Well was shut-in due to uneconomical rates of production and seller attempted recompletion into other zones which were unsuccessful and no sales have been made under the contract since November 1977.
[19] Applicant is filing under gas purchase contract dated March 31, 1978.
[20] Applicant is filing under gas purchase agreement dated July 1, 1978.
[21] Phillips acquired a partial interest in the Monzingo "B" lease from the estate of Lewis T. Lohman and the estate of F. Julius Fohs effective on November 1, 1977 and May 16, 1978, respectively, and are filing to continue service of predecessor under gas purchase contract dated March 24, 1950, as amended.
[22] Nonproductive since August 1975, has no recompletion possibilities, and is considered to be depleted. Contract of July 29, 1958, has expired of its own term on July 29, 1978.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Total succession. F—Partial succession.

[FR Doc. 78-31267 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP72-134]

EASTERN SHORE NATURAL GAS CO.

Purchased Gas Cost Adjustment to Rates and Charges

OCTOBER 30, 1978.

Take notice that Eastern Shore Natural Gas Co. (Eastern Shore) on October 12, 1978, tendered for filing the following revised tariff sheets:

To be Effective September 1, 1978

Substitute Fifth Revised Sheets No. 5 and No. 6.
Superseding Fifth Revised Sheets No. 5 and No. 6.
Substitute Fifth Revised Sheets No. 10, No. 11 and No. 12.

To be Effective September 2, 1978

Substitute Sixth Revised Sheets No. 5 and No. 6.
Superseding Substitute Fifth Revised Sheets No. 5 and No. 6.
Substitute Sixth Revised Sheets No. 10, No. 11, and No. 12.

The revised tariff sheets track a similar filing by Eastern Shore's sole supplier, Transcontinental Gas Pipe Line Corp.

Eastern Shore requests a waiver of the Commission's Rules and Regulations, specifically section 154.22, Notice Requirements, or any other of the Commission's Rules and Regulations as may be deemed necessary to allow the revised rates to become effective as proposed.

Copies of this filing were served on Eastern Shore's customers as well as interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 8, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31401 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-36]

EQUITABLE GAS CO.

Application

OCTOBER 31, 1978

Take notice that on October 18, 1978, Equitable Gas Co. (Equitable), 420 Boulevard of the Allies, Pittsburgh, Pa. 15219, filed in Docket No. CP79-36 and application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to install a mainline tap on its transmission line No. H-508 at a cost of approximately $500 and to transport approximately 200 Mcf of natural gas per year in order to provide gas service to one residence located in Monongalia County, W. Va., all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in March 1976, Equitable obtained a right-of-way for its transmission line No. H-508 across the property of Ms. Dora D. Herron located in Fairview, Monongalia County, W. Va., Route 2, Box 161. Equitable agreed in writing to provide Ms. Herron with domestic gas service "as current regulations permit," it is said.

It is said that by orders dated August 14, 1975, and October 29, 1975, in Case No. 7555, *et al.*, the West Virginia Public Service Commission ordered Equitable to provide service to all applicants whose peak day usage did not exceed 30 Mcf. It is further said that Equitable contested the State commission's order, claiming jurisdiction was in the Federal Power Commission. On January 27, 1977, the Federal Power Commission found in Docket No. CP76-394 that Equitable was required to receive Federal Power Commission authorization for such service. It is said that this application is submitted in conformance with said order of the Federal Power Commission.

It is said that Ms. Herron's residence is now heated by means of coal and wood and that she desires to convert to natural gas. Equitable states that it is ready, willing, and able to provide the requested service.

Equitable proposes to install a mainline tap and regulators on its transmission line No. H-508 on or about November 15, 1978, at an estimated cost of $500. It is said that construction should be completed within 1 day. It is further said that the gas line from the tap to the residence is to be provided by the customer at customer's expense.

The proposed service would require the transportation in interstate commerce of approximately 200 Mcf of natural gas per year, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Equitable to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31413 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-31]

LOUISIANA POWER & LIGHT CO.

Filing

OCTOBER 30, 1978

Take notice that on October 20, 1978, the Louisiana Power & Light Co. (LP&L) tendered for filing an Electric System Interconnection Agreement dated May 25, 1976, with Cajun Electric Power Cooperative, Inc. (Cajun) which provides in addition to Emergency Assistance Service, schedules for Supplemental Power, Surplus Power, Economy Energy, and Transmission Service.

LP&L indicates that the LP&L-Cajun Agreement contemplates the construction by Cajun of generating stations and transmission service by LP&L to deliver power for Cajun.

LP&L requests that the proposed agreement be accepted for filing to become effective May 29, 1980, or the date upon which the interconnection is first made available, whichever is earlier.

LP&L states that a copy of this filing was mailed to Cajun.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the approporiate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31402 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RA78-1]

LUNDAY-THAGARD OIL CO.

Filing of Petition for Review

OCTOBER 25, 1978.

Take notice that Lunday-Thagard Oil Co. (Lunday-Thagard) on October 4, 1978, filed a Petition for Review under 42 U.S.C. § 7194(b) (1977 Supp.) from an order of the Secretary of Energy issued on June 20, 1978, denying Lunday-Thagard's application for an exception from § 211.67 of Title 10, Code of Federal Regulations.

Copies of the petition for review have been served on the Secretary, Department of Energy, and all participants in prior proceedings before the Secretary.

Any person desiring to be heard with reference to such filing should on or before November 17, 1978, file a petition to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8). Any person wishing to become a party or to participate as a party must file a petition to intervene. Copies of the petition for review are on file with the Commission and are available for public inspection at Room 1000, 825 North Cap-

itol Street NW., Washington, D.C. 20426.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31403 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP74-100 (PGA78-8)]

NATIONAL FUEL GAS SUPPLY CORP.

Granting Extension of Time

OCTOBER 27, 1978.

On October 12, 1978, Counsel for National Fuel Gas Supply Corp. (National Fuel) filed a motion requesting extensions of time to file its case-in-chief and for Commission staff to file its statement of position pursuant to the Commission order of September 29, 1978, in the above captioned proceeding. The motion noted that staff has no objection to the proposed extensions. Upon consideration, notice is hereby given that an extension of time is granted to and including November 13, 1978, for National Fuel to file its case-in-chief. Staff shall file its statement of position on or before December 12, 1978.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31404 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP73-8]

NORTH PENN GAS CO.

Proposed Changes in FERC Gas Tariff

OCTOBER 30, 1978.

Take notice that North Penn Gas Co. (North Penn) on October 20, 1978, tendered for filing proposed changes in its FERC Gas Tariff, First Revised Volume No. 1, pursuant to its PGA Clause for rates to be effective November 1, 1978.

The rates contained in Substitute Fifty-Eighth Revised No. PGA-1, reflect on increase of 1.063 cents per Mcf over the rates contained in Substitute Fifty-Seventh Revised Sheet No. PGA-1, filed October 9, 1978.

Substitute 58, Revised Sheet No. PGA-1, reflects the increase in rates filed by Consolidated Gas Supply Corp. on October 2, 1978, to be effective November 1, 1978, and the increase in rates filed by Transcontinental Gas Pipe Line Corp. on September 15, 1978, to be effective September 2, 1978.

North Penn requests a waiver of the Commission's Rules and Regulations, specifically § 154.22, Notice Requirements, or any other of the commission's Rules and Regulations as may be deemed necessary to allow the revised rates to become effective as proposed.

Copies of this filing were served upon North Penn's jurisdictional customers as well as interested State commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31405 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP76-52, et al.]

NORTHERN NATURAL GAS CO.

Informal Conference

OCTOBER 31, 1978.

By notice issued October 25, 1978, in this docket, Presiding Judge Benkin initiated a conference on the afternoon of November 14, 1978, to discuss the impact of the Natural Gas Policy Act and other recent legislation on the pending curtailment proceeding. In order to permit the parties to discuss the legislation among themselves, prior to the conference before the Presiding Judge, an informal conference will be held at 10 a.m. on November 14, 1978, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31414 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-34]

PACIFIC POWER & LIGHT CO.

Filing

OCTOBER 30, 1978.

Take notice that on October 17, 1978, Pacific Power & Light Co. tendered for filing its proposed annual revision of the Load and Resource Forecast, exhibit A, dated September 27, 1978, to the Cheyenne Light, Fuel & Power Co. Service Agreement, dated May 5, 1972, designated as Pacific Power & Light Co. Rate Schedule FPC No. 108.

Each year a revised exhibit A is submitted by Cheyenne Light, Fuel & Power Co. in accordance with article 2-d of the contract.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are available for public inspection at the Federal Energy Regulatory Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31406 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER77-523]

PUGET SOUND POWER & LIGHT CO.

Certification

OCTOBER 30, 1978.

Take notice that Presiding Administrative Law Judge Samuel Z. Gordon, on October 16, 1978, certified to the Commission a settlement proposal in the above-noted docket. The settlement proposal is described by Puget Sound Power & Light Co. as settling all issues set for hearing by the Commission's orders in this docket.

Any person desiring to be heard or to protest said settlement proposal should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, on or before December 1, 1978. Comments will be considered by the Commission in determining the appropriate action to be taken. Copies of this proposal are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31407 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP76-99]

TENNESSEE NATURAL GAS LINES, INC.

Report of Refunds

OCTOBER 31, 1978.

Take notice that on October 23, 1978, Tennessee Natural Gas Lines, Inc. (TNGL) tendered for filing a Report of Refunds made pursuant to Opinion No. 8.

TNGL states that it refunded $308,697.73 which constitutes the full principal plus interest due to its jurisdictional customer, Nashville Gas Co. (Nashville). The refund report includes a statement of the method of computing the refund, a detail of the computations, and a release by Nashville.

TNGL states that a copy of this filing has been mailed to the Tennessee Public Service Commission.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before November 17, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31415 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP79-5]

TEXAS EASTERN TRANSMISSION CORP.

Proposed Changes in FERC Gas Tariff

OCTOBER 31, 1978.

Take notice that Texas Eastern Transmission Corp. on October 24 1978, tendered for filing as a part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets:

Second Substitute Sheet No. 14.	Forty-fourth	Revised
Second Substitute Sheet No. 14A.	Forty-fourth	Revised
Second Substitute Sheet No. 14B.	Forty-fourth	Revised
Second Substitute Sheet No. 14C.	Forty-fourth	Revised
Second Substitute Sheet No. 14D.	Forty-fourth	Revised

Texas Eastern is reducing its rates due to repayment of advance payments for gas pursuant to Article V of the Stipulation and Agreement under Docket No. RP75-73 and accepted by Commission Orders issue June 6, 1977 and August 1, 1977.

Texas Eastern has requested that the Commission waive all its rules and regulations necessary to allow the above tariff sheets to become effective October 1, 1978.

Copies of the filing were served on the compnay's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before *November 17, 1978.* Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary,

[FR Doc. 78-31416 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-37]

TEXAS GAS TRANSMISSION CORP.

Application

OCTOBER 31, 1978.

Take notice that on October 20, 1978, Texas Gas Transmission Corp. (Applicant), P.O. Box 1160, Owensboro, Ky. 42301, filed in Docket No. CP79-37 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the retention in place of certain pipeline which was constructed on a temporary basis during the period of time that Applicant was performing necessary reconditioning work on its Herbert-Cannelton 8-inch pipeline in Ohio County and Hancock County, Ky., all as more fully set forth in the application on file with the Commission and open to public inspection.

It is indicated that pursuant to the Commission's temporary certificate of July 7, 1978, issued in Docket No. CP78-408, Western Kentucky Gas Co. (Western), National Pipeline Co. (National) and Orbit Gas Co (Orbit) were authorized to transport and deliver up to 30,000 Mcf of natural gas per day for Applicant during the time when Applicant was performing necessary reconditioning work on its Herbert-Cannelton 8-inch pipeline. Such temporary certificate also authorized Western, National and Orbit to construct and operate certain temporary facilities necessary to effectuate the above described transportation arrangement, it is said.

Applicant states that the reconditioning work on the Herbert-Cannelton line has now been completed with the exception of minor cleanup work. Applicant proposes now to retain in place approximately 1,681 feet of pipeline which it installed during the reconditioning period, which pipeline connects Applicant's 12-inch pipeline with the 12-inch pipeline owned by National and operated by Orbit in Hopkins County, Ky. All other temporary facilities installed in order to effectuate the reconditioning work would be or have been removed, it is stated.

Applicant states that the pipeline which it proposes to retain in place would be utilized, only under emergency conditions, in order to allow Applicant to maintain continuity of service to existing customers served from the Herbert-Cannelton line. A blind flange would be placed between the Applicant system and the National system in order to insure that no gas flows between the interstate and intrastate systems during nonemergency periods, it is said.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the

time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31417 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. RP78-94]

TEXAS GAS TRANSMISSION CORP.

Order Accepting for Filing and Suspending Rate Increase Subject to Conditions and Establishing Hearing Procedures

OCTOBER 26, 1978.

On September 29, 1978, Texas Gas Transmission Corp. (Texas Gas) tendered for filing certain revised tariff sheets [1] proposed to be effective November 1, 1978, which would increase its annual jurisdictional revenues by approximately $92,607,000 or about 14.4 percent. For the reasons stated below, the Commission shall accept the revised tariff sheets for filing, subject to certain conditions, suspend them for 5 months and set the matter for hearing.

Public notice of Texas Gas' September 29, 1978 filing was issued on October 13, 1978, providing for protests or petitions to intervene to be filed on or before October 30, 1978.

Texas Gas states that the principal reasons for the proposed rate increase are to recover increases in operating expenses and to reflect increases in rate base and related costs as well as an increased rate of return and related taxes. Texas Gas states that it requires an overall rate of return of 10.97 percent (13.5 percent on equity) because of increased costs for long-term capital resulting from continued rising inflation and the consequent increases in the embedded cost of senior capital since the last general increase in the company's rates on April 1, 1978, and the increased risk associated with the continuing deterioration in its natural gas supply.

Based on a review of Texas Gas' filing herein, the Commission finds that the proposed higher rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, the Commission shall accept Texas Gas' proposed rate increase for filing, suspend its use for five months or until April 1, 1979, when it shall become eligible to become effective in the manner prescribed in section 4 of the Natural Gas Act, subject to refund, and shall set the matter for hearing.

Texas Gas requests a waiver of § 154.63(e)(2)(ii) of the Commission's regulations to allow in its proposed rates the costs associated with facilities that are not certificated or in service but anticipated to be in service by the end of the test period. The increased rates are based on the overall cost of service for the 12 months ended June 30, 1978, adjusted to include charges which are expected to become effective by march 31, 1979. Texas Gas has included in its rate base $5.3 million of facilities related to certificates which have not yet been granted by the Commission. The Commission will grant Texas Gas' requested waiver on the condition that Texas Gas will file revised tariff sheets to reflect the elimination of facilities not placed in service on or before March 31, 1979. Texas Gas shall also adjust its rates to reflect the actual balances of advance payments in Account 166 at the end of the test period: *Provided,* That the inclusion of a higher advance payments balance shall not be permitted to increase the overall level of the original suspended rates. The waiver granted in this order is subject to the condition that Texas Gas shall not be permitted to make offsetting adjustments to its suspended rates other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those adjustments required by other Commission orders.

The Commission finds:

It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates proposed by Texas Gas and that the same be accepted for filing and suspended as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority of the Natural Gas Act particularly sections 4, 5, 8, and 15 thereof, and the Commission's rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Texas Gas.

(B) Pending hearing and decision Texas Gas' tariff sheets are accepted for filing and suspended for five months until April 1, 1979, when they shall be permitted to become effective subject to refund, subject to the conditions set forth below in ordering Paragraph (C), upon motion filed by Texas Gas in accordance with the provisions of the Natural Gas Act.

(C) Texas Gas shall, within 30 days prior to April 1, 1979, file revised tariff sheets to reflect:

1. Removal of costs associated with facilities not in service as of March 31, 1979, and

2. adjustment of the estimated balance of advance payments in account 166 to the actual balance at the end of the test period, provided that the inclusion of a higher advance payment balance shall not be permitted to increase the level of the original suspended rates.

(D) Waiver of § 154.63(e)(2)(ii) is granted to permit the action taken in ordering paragraph (C) above, subject to the condition that Texas Gas shall not be permitted to make offsetting adjustments to its original suspended rates other than those made pursuant to Commission approved tracking provisions, those adjustments required by this order, and those required by other Commission orders.

(E) The Commission Staff shall prepare and serve top sheets on all parties on or before February 1, 1979.

(F) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the Staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary, and to rule upon all motions (except motions to consolidate, sever or dismiss), as provided for in the rules of practice and procedure.

By the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31418 Filed 11-6-78; 8:45 am]

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[1] In the Third Revised Volume No. 1 the following sheets: Second Revised Sheet No. 7-A, Sixth Revised Sheet No. 102 and Twenty-fifth Revised Sheet No. 7. In the Original Volume No. 2 the following sheets: First Revised Sheet Nos. 982 and 1005; Second Revised Sheet Nos. 85, 547, 854, 896, 919, 939 and 959; Third Revised Sheet No. 643, Twelfth Revised Sheet Nos. 362 and 365; thirteenth Revised Sheet No. 363; and Fourteenth Revised Sheet No. 333.

[6740-02-M]

[Docket No. RP73-3 (PGA78-3), et al.]

TRANSCONTINENTAL GAS PIPELINE CORP.

Extension of Time

OCTOBER 27, 1978.

On September 19, 1978, Transcontinental Gas Pipeline Corporation (Transco) filed a letter for an extension of time to file its case-in-chief as required by the Commission's order of August 31, 1978. The letter stated that Transco had filed for rehearing of that order, and that favorable action by the Commission on the issues raised would substantially change the scope of its case-in-chief. The Commission issued an order on rehearing modifying the prior order on October 16, 1978. On October 18, 1978, Transco filed a letter proposing a schedule agreed to by Staff Counsel.

Upon consideration, notice is hereby given that the time for filing Transco's case-in-chief is extended to and including November 13, 1978. Staff shall file its statement of position on or before December 13, 1978. The Presiding Judge will convene a settlement conference as directed by ordering paragraph (F) of the order within 10 days after Staff serves its statement of position.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31408 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. CP79-25]

TRANSCONTINENTAL GAS PIPE LINE CORP.

Application

OCTOBER 31, 1978

Take notice that on October 13, 1978, Transcontinental Gas Pipe Line Corp. (Applicant), P.O. Box 1396, Houston, Tex. 77001, filed in Docket No. CP79-25 an application pursuant to section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the reduction of storage services for a certain customer and additional storage services for certain other customers, all as more fully set forth in the application on file with the Commission and open to inspection.

Applicant states that its customers Clinton-Newberry Natural Gas Authority (Clinton-Newberry), Fort Hill Natural Gas Authority (Fort Hill), and the city of Greenwood, S.C. (Greenwood), have requested Applicant to eliminate certain storage service allocations of Clinton-Newberry and to distribute such allocations between Fort Hill and Greenwood. It is stated that due to the installation of peak-shaving facilities on Clinton-Newberry's system and the purchase of substantial quantities of storage service under Applicant's rate schedule WSS (Washington Storage Service), Clinton-Newberry wishes to give up its allocation under Applicant's rate schedules GSS (General Storage Service) and LG-A (Liquefied Natural Gas Storage Service—upstream of Carlstadt, N.J.) as follows:

Rate schedule	Demand	Capacity	Docket authorized
GSS	100	5,700	CP70-193
LG-A	600	3,000	CP75-118

Fort Hill, it is stated, wishes to acquire such LG-A allocation, which would increase its service under that rate schedule as follows:

Rate schedule	Demand	Capacity	Docket authorized
LS-A	140	2,770	CP71-162
	143	667	CP75-118
	600	3,000	(1)
	883	6,437	

[1] Requested herein.

Greenwood, it is stated, wishes to acquire such GSS allocation, which would increase its service under that schedule as follows:

Rate schedule	Demand	Capacity	Docket authorized
GSS	220	11,000	CP72-244
	100	5,700	(1)
	320	16,700	

[1] Requested herein.

Applicant states that the additional storage capacity that would be available to Fort Hill and Greenwood would enable those customers to meet their peak demands during the coldest days.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 24, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.70). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commissions rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's rules of practice and procedure, a hearing will be held without further notice before the Commission, or its designee, on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission and approval for the proposed abandonment are required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31419 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Dockets Nos. RP75-30, RP74-20 and RP74-83]

UNITED GAS PIPE LINE CO.

Further Extension of Time

OCTOBER 27, 1978.

On October 25, 1978, United Gas Pipe Line Co. filed a motion for a further extension of time to comply with ordering paragraphs (B) and (C) of Opinion No. 16, issued June 3, 1978. The motion states that the Commission has not yet acted on the merits of United's application for rehearing of that opinion. Because of the pending rehearing application, an extension had been granted by notice issued September 19, 1978.

Upon consideration notice is hereby given that an extension of time for complying with the above-mentioned ordering paragraphs is granted to and including 45 days from the Commission's order on rehearing unless otherwise ordered by the Commission.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31409 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. ER79-30]

VERMONT ELECTRIC POWER

Filing

OCTOBER 30, 1978.

Take notice that on October 19, 1978, Vermont Electric Power Co., Inc. (VELCO) tendered for filing a Rate Schedule for the sale of capacity and energy equal to 0.1758 percent of the Operable Capability of the Vermont Yankee Nuclear Electric Generating Unit in Vernon, VT. to the Connecticut Light & Power Co., The Hartford Electric Light Co., and the Western Massachusetts Electric Co. for a 5-month period beginning on June 1, 1978 and ending on October 31, 1978. VELCO states that the Vermont Yankee power being sold to the three purchasers will be at its cost to VELCO, and that there will be no change in the overall rate of return of VELCO.

VELCO further states that the purchasers are buying Vermont Yankee Capacity and Energy under the Rate Schedule from VELCO for a flat-negotiated charge of 16.5 mills/kwh for only the kwh of energy actually made available.

VELCO proposes an effective date of June 1, 1978, and therefore requests waiver of the Commission's notice requirements.

According to VELCO copies of this filing were served upon the Vermont Public Service Board, the Massachusetts Department of Public Utilities, the Connecticut Public Service Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practical and Procedure (18 CFR 1.8, 1.10). All such petitions should be filed on or before November 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31410 Filed 11-6-78; 8:45 am]

[6740-02-M]

[Docket No. E-9611]

WISCONSIN POWER & LIGHT CO.

Notice of Compliance Filing

OCTOBER 30, 1978.

Take notice that Wisconsin Power & Light Co. on April 1, 1978, tendered for filing a refund report stating that Wisconsin Power paid $85,080.01 to the Columbus Water and Light Department, Columbus, Wis. on March 29, 1978, in compliance with the Commission's order of February 27, 1978, in the above-noted docket.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8 and 1.10). All such protests should be filed on or before November 22, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
Secretary.

[FR Doc. 78-31411 Filed 11-6-78; 8:45 am]

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1002-5]

DRAFT FINAL REPORT ON SECTION 125 STUDY FOR OHIO COAL BURNING POWER PLANTS

Notice of Availability

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of availability of draft final report on section 125 study for Ohio coal burning power plants.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) has made available for public review and comment a draft final report entitled: "Section 125 Study for Ohio Coal Burning Power Plants." This report examines alternative compliance methods for selected Ohio utilities for complying with the Ohio sulfur dioxide regulations. The report was prepared as part of a comprehensive economic and financial analysis initiated by EPA in response to petitions from Senator Metzenbaum of Ohio, the State of Ohio, the United Mine Workers of America, District 6, and the Ohio Mining and Reclamation Association to institute proceedings under section 125 of the Clean Air Act, as amended August 1977 (42 U.S.C. 7425) in Ohio. Notice of proceedings under section 125 of the Clean Air Act was published July 13, 1978 (43 FR 30113).

The report examines the technical feasibility and associated costs for various compliance options including low sulfur coal, coal washing, coal blending, and stack gas scrubbing for 15 coal-burning power plants and investigates the feasibility of increased Ohio coal use for 6 plants. These 21 plants are operated by 9 utility companies and account for 95 percent of the coal burned in Ohio to generate electric power.

Copies of the draft final report have been distributed to organizations and individuals who are known to have an interest in the Ohio section 125 proceedings.

Copies of the draft final report are available for public inspection and copying during normal business hours at the following locations:

(1) Air Programs Branch, Air and Hazardous Materials Division, EPA, Region V, 230 South Dearborn Street, Chicago, Ill. 60604.

(2) U.S. Environmental Protection Agency Public Information Reference Unit, Room 2922, 401 M Street SW., Washington, D.C. 20460

(3) Cleveland Public Library, Main Branch, 325 Superior Avenue, Cleveland, Ohio 44115.

(4) Columbus Public Library, Main Branch, 96 South Grant, Columbus, Ohio 43215.

(5) St. Clairsville Public Library, 108 West Main Street, Clairsville, Ohio 43950.

Comments and views concerning the draft final report are requested from all interested agencies, organizations, and individuals. Comments should be sent to Francis J. Biros, Chief, Technical Support Branch, Division of Stationary Source Enforcement, EN-341, U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, 202-755-2560.

Those submitting comments on the draft final report should endeavor to make their comments as specific, substantive, and factual as possible without undue attention to matters of form. Comments may recommend modifications and/or new alternatives to the analytical approach and assumptions used in the preparation of the draft final report that will enhance its accuracy.

Copies of comments received on the draft report will be placed in the above referenced locations for inspection and will be considered in the preparation of the final Ohio section 125 economic and financial analysis study if received on or before December 7, 1978.

Dated: November 1, 1978.

WILLIAM F. JOHNSON,
Acting Deputy Assistant Administrator for Enforcement.

[FR Doc. 78-31338 Filed 11-6-78; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[Independent Ocean Freight Forwarder License No. 1660]

LATINVAN, INC.

Order of Revocation

The bond issued in favor of Latinvan, Inc., P.O. Box 440281, Miami, Fla. 33144, FMC No. 1660, was canceled effective October 5, 1978.

By letter dated September 11, 1978, Latinvan, Inc. was advised by the Federal Maritime Commission that Independent Ocean Freight Forwarder License No. 1660 would be automatically revoked or suspended unless a valid surety bond was filed with the Commission.

Section 44(c), Shipping Act, 1916, provides that no independent ocean freight forwarder license shall remain in force unless a valid bond is in effect and on file with the Commission. Rule 510.9 of Federal Maritime Commission General Order 4, further provides that a license will automatically be revoked or suspended for failure of a licensee to maintain a valid bond on file.

Latinvan, Inc. has failed to furnish a valid surety bond.

By virtue of authority vested in me by the Federal Maritime Commission as set forth in Manual of Orders, Commission Order No. 201.1. (revised) § 5.01(d), dated August 8, 1977;

It is ordered, That Independent Ocean Freight Forwarder License No. 1660 be and hereby is revoked effective October 5, 1978.

It is further ordered, That Independent Ocean Freight Forwarder License No. 1660 issued to Latinvan, Inc. be returned to the Commission for cancellation.

It is further ordered, That a copy of this order be published in the FEDERAL REGISTER and served upon Latinvan, Inc.

ROBERT G. DREW,
Director, Bureau of Certification and Licensing.

[FR Doc. 78-31371 Filed 11-6-78; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

CORNING INVESTMENT CO., INC.

Formation of Bank Holding Company

Corning Investment Co., Inc., Atchison, Kans., 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 80.68 percent of the voting shares of the Farmers State Bank of Corning, Corning, Kans. 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 December 1, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1978.

JOHN M. WALLACE
Assistant Secretary of the Board.

[FR Doc. 78-31442 Filed 11-6-78; 8:45 am]

[6210-01-M]

DESOTO FINANCIAL CORP.

Formation of Bank Holding Company

DeSoto Financial Corp., DeSoto, Tex., has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 89.66 percent of the voting shares of DeSoto State Bank, DeSoto, Tex. The factors that are considered in acting on the application are set forth in § 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, not later than November 30, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31443 Filed 11-6-78; 8:45 am]

[6210-01-M]

MINNEAPOLIS HOLDING CO.

Formation of Bank Holding Company

Minneapolis Holding Co., Minneapolis, Minnesota, has applied for the Board's approval under § 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 percent of the voting shares of Bank of Minneapolis and Trust Company, Minneapolis, Minnesota. The factors that are considered in acting on the application are set forth in § 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 Minneapolis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 27, 1978.

Board of Governors of the Federal Reserve System, October 27, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31444 Filed 11-6-78; 8:45 am]

[6210-01-M]

NORTH CENTRAL BANCO, INC.

Acquistion of Bank

North Central Banco, Inc., Hutchinson, Minn., 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 20.1 percent of the voting shares of Citizens Bank and Trust Co., Hutchinson, Minn. The factors that are considered in acting on the application are set forth in § 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 Minneapolis. 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 November 30, 1978.

Board of Governors of the Federal Reserve System, October 30, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31445 Filed 11-6-78; 8:45 am]

[6210-01-M]

OHIO COUNTY BANCSHARES, INC.

Formation of Bank Holding Company

Ohio County Bancshares, Inc., Beaver Dam, Kentucky, has applied for the Board's approval under § 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 84.93 per cent of the voting shares of Beaver Dam Deposit Bank, Beaver Dam, Kentucky. The factors that are considered in acting on the application are set forth in § 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 St. Louis. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than November 22, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, November 1, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31447 Filed 11-6-78; 8:45 am]

[6210-01-M]

PANHANDLE BANCSHARES CORPORATION

Formation of Bank Holding Company

Panhandle Bancshares Corporation, Guymon, Okla., 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 Bank of the Panhandle, Guymon, Okla. The factors that are considering 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 Reserve Bank, to be received not later than November 28, 1978.

Board of Governors of the Federal Reserve System, October 30, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc 78-31446 Filed 11-6-78 8:45 am]

[6210-01-M]

PEOPLES STATE BANCSHARES, INC.

Formation of Bank Holding Company

Peoples State Bancshares, Inc., Turkey, Tex., has applied for the Board's approval under Section (3)(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 People State Bank, Turkey, 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 Reserve Bank, to be received not later than November 24, 1978.

Board of Governors of the Federal Reserve System, October 27, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc 78-31448 Filed 11-6-78 8:45 am]

[6210-01-M]

REPUBLIC OF TEXAS CORPORATION

Acquisition of Bank

Republic of Texas Corporation, Dallas, Tex., has applied for the Board's approval under § 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 The First National Bank of Plano, Plano, Tex. The factors that are considered in acting on the application are set forth in § 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, not later than November 30, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's Office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 30, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc. 78-31450 Filed 11-6-78; 8:45 am]

[6210-01-M]

RUTH JONES NELSON FINANCE CORP.

Formation of Bank Holding Company

Ruth Jones Nelson Finance Corp., Correctionville, Iowa, 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 multibank holding company by acquiring 50 percent or more of the voting shares of Corn Belt State Bank, Correctionville, and Peterson State Bank, Peterson, both in the State of 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 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 no later than November 20, 1978.

Board of Governors of the Federal Reserve System, October 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31449 Filed 11-6-78; 8:45 am]

[6210-01-M]

T. & C. BANCORP, INC.

Formation of Bank Holding Company

T. & C. Bancorp, Inc., St. Joseph, Mo., 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 86 percent or more of the voting shares of Town and Country Bank of Quincy, Quincy, Ill. 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 St. Louis. 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 December 1, 1978. Any comment on an application that requests a hearing must be sent to the Secretary's office within 30 days of the date of this notice and must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, October 31, 1978.

JOHN M. WALLACE,
Assistant Secretary of the Board.

[FR Doc 78-31451 Filed 11-6-78; 8:45 am]

[6210-01-M]

UNITED BANCSHARES, INC.

Formation of Bank Holding Company

United Bancshares, Inc., Tulsa, Okla., 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 100 percent, less directors' qualifying shares, of the voting shares of United Bank, Tulsa, Okla. 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 November 26, 1978.

Board of Governors of the Federal Reserve System, October 26, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 78-31452 Filed 11-6-78; 8:45 am]

[1610-01-M]

GENERAL ACCOUNTING OFFICE

REGULATORY REPORTS REVIEW

Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on November 1, 1978. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the FEDERAL REGISTER is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed NRC request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before November 27, 1978, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, U.S. General Accounting Office, Room 5106, 441 G Street NW., Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202-275-3532.

NUCLEAR REGULATORY COMMISSION

The NRC requests clearance of revisions to Form NRC-313R, Application for Byproduct Material License-Use of Sealed Sources in Radiography. Several minor revisions in format were made to aid applicants in filling out the form and other revisions clarify the information requested by NRC to help reduce the time required for processing the form. The revised form should benefit both NRC and applicants. NRC estimates that applicants will number approximately 400 and the burden associated with filling out Form 313R will average approximately 7 hours per application.

JOHN M. LOVELADY,
Assistant Director,
Regulatory Reports Review.

[FR Doc. 78-31357 Filed 11-6-78; 8:45 am]

[6820-25-M]

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 74; Docket No. 27411]

ROCHESTER TELEPHONE CORP., NEW YORK PUBLIC SERVICE COMMISSION

Increase in Annual Revenues

The Administrator of General Services seeks to intervene in a proceeding before the New York Public Service Commission involving an application of Rochester Telephone Corp. for an increase in annual revenues of $8,746,300. The Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th and F Streets, NW., Washington, D.C. 20405, telephone 202-566-0726, on or before December 7, 1978.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

(Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4))

Dated: October 26, 1978.

PAUL GOULDING,
Acting Deputy Commissioner.

[FR Doc. 78-31383 Filed 11-6-78; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 78G-0310]

KREY PACKING CO. AND SHARED TECHNOLOGY, INC.

Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Krey Packing Co. and Shared Technology, Inc. have jointly filed a petition (GRASP 8G0212) proposing affirmation that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is generally recognized as safe (GRAS).

DATE: Comments by January 8, 1979.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that a petition (GRASP 8G0212) has been filed jointly by Krey Packing Co., 3607 North Florissant, St. Louis, Mo. 63107, and Shared Technology, Inc., 721 Olive Street, Suite 1111, St. Louis, Mo. 63101, and placed on public display at the office of the Hearing Clerk, Food and Drug Administration (FDA), proposing affirmation that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is GRAS.

Any petition which meets the format requirements outlined in § 170.35 is filed by FDA. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for affirmation.

Interested persons may, on or before January 8, 1979, review the petition and/or file comments (four copies,

identified with the Hearing Clerk docket number found in brackets in the heading of this document) with the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857. Comments should include any available information that would be helpful in determining whether the substance is, or is not, generally recognized as safe. A copy of the petition and received comments may be seen in the office of the Hearing Clerk, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 30, 1978.

ROBERT M. SHAFFNER,
Acting Director,
Bureau of Foods.

[FR Doc. 78-31395 Filed 11-6-78; 8:45 am]

[4110-03-M]

[78-3187]

SCIENCE ADVISORY BOARD

Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice

SUMMARY: The Science Advisory Board Meeting announced by a notice in the FEDERAL REGISTER of October 20, 1978 (43 FR 49051), for November 13 and 14, 1978, has been canceled.

FOR FURTHER INFORMATION CONTACT:

Ruth S. Magee, National Center for Toxicological Research, Jefferson, Ark. 72079, 501-541-4528.

Dated: October 30, 1978.

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

[Fr Doc. 78-31208 Filed 11-6-78; 8:45 am]

[4110-12-M]

Office of the Assistant Secretary for Planning and Evaluation

[Contract No. HEW-100-78-0004]

DENVER INCOME MAINTENANCE EXPERIMENT

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of a continuation of Contract No. HEW-100-78-0004 to the State of Colorado Department of Social Services, to continue the research project entitled "Denver Income Maintenance Experiment." The purpose of this project, as well as its companion project in Seattle, is to provide data on selected behaviorial responses to various alternative income maintenance programs in certain low-income populations. This project also tests three types of manpower training programs. The estimated cost of this continution is $3,410,085, and the project is scheduled to be completed by June 1980.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc. 78-31457 Filed 11-6-78; 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0074]

MANAGEMENT ANALYSIS FOR THE SURVEY OF INCOME AND PROGRAM PARTICIPATION (SIPP)

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-78-0074 to Moshman Associates, Inc., 6400 Goldsboro Road, Washington, D.C. 20034. The purpose of the contract is to provide DHEW with an optimal design plan for staffing and managing the survey when it is operational. The data are collected through comparative analyses of five federally sponsored surveys. The method of data collection will be informal interviews with persons who were instrumental in the design and management phases of these surveys.

The estimated cost of the contract is $76,500 and the intended completion date is January 1, 1979.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc. 78-31455 Filed 11-6-78; 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0005]

SEATTLE INCOME MAINTENANCE EXPERIMENT

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974, (Pub. L. 93-644) 42 U.S.C. 2946, this agency announces the award of a continuation of Contract No. HEW-100-78-0005 to the State of Washington Department of Public Assistance, to continue the research project entitled "Seattle Income Maintenance Experiment." The purpose of this project, as well as its companion project in Denver, is to provide data on selected behavioral responses to alternative income support programs in certain low-income populations. This project also tests three types of manpower training programs. The estimated cost of this continuation is $2,512,818, and the project is scheduled for completion in June 1980.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc. 78-31454 Filed 11-6-78 8:45 am]

[4110-12-M]

[Contract No. HEW-100-78-0068]

SURVEY OF INCOME AND PROGRAM PARTICIPATION (SIPP) CONFERENCE

Notice of Contract Award

Pursuant to section 606 of the Community Services Act of 1974 (Pub. L. 93-644), 42 U.S.C. 2946, this agency announces the award of Contract No. HEW-100-78-0068 to JWK International Corporation, 7617 Little River Turnpike, Annandale, Va. 22003, for a technical conference "The Survey of Income and Program Particlpaton (SIPP): Potential for Analysis". The purpose of the conference is to make academics and professionals aware of the development program of the survey (ISDP) and its substantive and methodological content, and to informally gather information from academic and professional circles concerning their suggestions about and opinions of the survey. This will be done via a 2-day conference with a general information and discussion session, three panel discussions of professionals highly respected in their fields, and three workshops dealing with major aspects of the survey. Presentations and deliberations will be recorded, and verbatim reports will be produced.

The estimated cost of the contract is $85,000 and the intended completion date is January 15, 1979.

Dated: November 1, 1978.

HENRY AARON,
Assistant Secretary for
Planning and Evaluation.

[FR Doc 78-31456 Filed 11-6-78 8:45 am]

[4110-84-M]

Office of the Secretary

PRIVACY ACT OF 1974

System of Records and Notice of Proposed Routine Uses

AGENCY: Department of Health, Education, and Welfare.

ACTION: Notification of new system of records, Health Care Provider Profile, HEW/HSA/BMS, 09-15-0034.

SUMMARY: A new system of records within the Bureau of Medical Services is hereby published in accordance with 5 U.S.C. 552a(e)(4). In accordance with 5 U.S.C. 552a(e)(11), the routine uses of this new system are published for public comment. Interested persons are invited to submit written comments to the address below.

DATES: The routine uses will be adopted as proposed without further notice 30 calendar days after date of publication unless comments are received on or before (30 calendar days after date of publication) which would result in a contrary determination. A new system report was filed for this new system with the Director, Office of Management and Budget, the Speaker of the House, and the President of the Senate on October 31, 1978. Because of the requirements of OMB Circular A-108, this new system of records will not be put into effect until 60 days after the date that the new system report was sent to OMB and Congress.

ADDRESS: Comments should be addressed to the Acting Director, Fair Information Practice Staff, Department of Health, Education, and Welfare, 200 Independence Avenue SW., Washington, D.C. 20201. Comments received will be available for inspection in Room 526-F, Hubert H. Humphrey Building, at the above address.

FOR FURTHER INFORMATION CONTACT:

Nancy Seiler, HSA Privacy Act Coordinator, Room 1418, Parklawn Building, 5600 Fishers Lane, Rockville, Md. 20857, or call 301-443-5366.

SUPPLEMENTAL INFORMATION: The Bureau of Medical Services, Health Services Administration, proposes to establish a new system of records which will provide a data base for determining the quality and efficacy of medical care and utilization of services in a sample of Public Health Service hospitals and outpatient clinics. A profile will be developed on all health care professionals in the Division of Hospitals and Clinics of the Bureau of Medical Services who have primary responsibility for: (1) Assessing the condition of the patient; (2) exercising independent judgment as to the care of the patient; and (3) rendering services during a patient/health care provider encounter.

This data will be correlated with specific criteria which reflect minimum critical elements essential to appropriate health care services rendered to a patient. Since patients may be treated for an illness by different health care providers of various medical disciplines, it will be important to track each health care provider in the Division of Hospitals and Clinics (DHC). Analysis of the data will enable DHC to monitor quality care, provide baselines for levels of clinical skills, training needs, and background for staffing, assignments, planning, reporting, and remedial programs when necessary.

The health care providers involved in this study will be evaluated by performance as a specific group; i.e., medical specialty or discipline and by experience and background. They will not be evaluated as individuals.

Dated: October 31, 1978.

LEONARD SCHAEFFER,
Assistant Secretary for Management and Budget.

09-15-0034

System name:

Health Care Provider Profile HEW/HSA/BMS.

Security classification:

None.

System location:

See Appendix.

Categories of individuals covered by the system:

Physicians, dentists, other health care persons in PHS facilities and private health care professionals under contract to BMS, who have primary responsibility for assessing the condition of the patient, exercising independent judgment as to the care of the patient, and rendering service during a patient encounter.

Categories of records in the system:

Assignment data, demographic data, education, training and experience, specialty boards, record of continuing education credit.

Authority for maintenance of the system:

Public Health Service Act, Section 321 (42 U.S.C. 248).

Routine uses of records maintained in the system including categories of users and the purposes of such uses:

1. Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

2. In the event of litigation where one of the parties is (a) the Department, any component of the Department, or any employee of the Department, or any employee of the Department in his or her official capacity; (b) the United States where the Department determines that the claim, if successful, is likely to directly affect the operations of the Department or any of its components; or (c) any Department employee in his or her individual capacity where the Justice Department has agreed to represent an employee, the Department may disclose such records as it deems desirable or necessary to the Department of Justice to enable that Department to effectively represent such party, provided such disclosure is compatible with the purpose for which the records were collected.

3. Disclosure may be made to evaluation teams of the Joint Commission on Accreditation of Hospitals for hospital accreditation purposes only.

4. Records may be disclosed to the Professional Standards Review Organizations (PSRO) review boards for evaluation of services covered by Medicare, Medicaid, and Maternal and Child Health programs.

5. The Department contemplates that it will contract with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. Relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. (Departmental Regulations (45 CFR Part 5b) Appendix B, Item (9).)

Storage:

Hard copy, computer printouts, and magnetic tape.

Retrievability:

The records will be retrieved by the Provider Identification Number (PIN).

The records in this system will be used to establish a research and management data base which will provide a basis for determining the quality and efficacy of medical care as well as effective utilization of health care services.

Safeguards (Access Controls):

Manual files in this system of records will be stored in locking file units. Only authorized personnel will have access to the data.

Access to computerized material will conform to the guidelines contained in HEW ADP Systems manual, Part 6, "ADP System Security Policy," and the National Bureau of Standards

Federal Information Processing Standards (FIPS PUB 41 and FIPS PUB 31).

Retention and disposal:

Records will be maintained 1 year after the health care provider leaves the Bureau of Medical Services, Division of Hospitals and Clinics' service. Destruction will be by shredding of the hard copy or erasing of the tape.

System manager(s) and address:

Director, Division of Hospitals and Clinics, Bureau of Medical Services, 6525 Belcrest Road, Hyattsville, Md. 20782.

Notification procedure:

Write to the system manager to determine if a record exists.

Record access procedures:

Same as notification procedures. Requesters should also reasonably specify the record contents being sought. These access procedures are in accordance with Departmental Regulations (45 CFR 5b.5 (a)(2)).

Contesting record procedures:

Write to the offical at the address specified under the notification procedures above, and reasonably identify the record and specify the information to be contested. [These procedures are in accordance with Departmental Regulations (45 CFR, 5b.7).]

Record source categories:

Health care professionals assigned to the PHS general hospitals and outpatient clinics as listed in Appendix 1.

Systems exempted from certain provisions of the Act:

None.

Appendix 1

Director, USPHS Hospital, 3100 Wyman Park Drive, Baltimore, Md. 21211.
Director, USPHS Hospital, 77 Warren Street, Boston (Brighton), Mass. 02135.
Director, USPHS Hospital, 4400 Avenue N, Galveston, Tex. 77550.
Director, USPHS Hospital, 210 State Street, New Orleans, La. 70118.
Director, USPHS Hospital, 6500 Hampton Boulevard, Larchmont, Norfolk, Va. 23508.
Director, USPHS Hospital, 15th Avenue and Lake Street, San Francisco, Calif. 94118.
Director, USPHS Hospital, Box 3145 or 1131, 14th Avenue South, Seattle, Wash. 98114.
Director, USPHS Hospital, Bay Street and Vanderbilt Avenue, Staten Island, N.Y. 10304.
Director, USPHS Hospital, Carville, La. 70721.
Director, USPHS Outpatient Clinic, 1600 Clifton Road NE., Atlanta, Ga. 30333.
Director, USPHS Outpatient Clinic, Switzer Building, 4th and C Streets, SW., Washington, D.C. 20201.

[FR Doc. 78-31510 Filed 11-6-78; 8:45 am]

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N-78-896]

PRIVACY ACT OF 1974

New System of Records

AGENCY: Department of Housing and Urban Development.

ACTION: Notification of new system of records.

SUMMARY: The Department is giving notice of a new system of records it intends to maintain that is subject to the Privacy Act.

EFFECTIVE DATE: The system of records shall become effective without further notice in 30 calendar days December 7, 1978, unless comments are received on or before December 7, 1978, which would result in a contrary determination.

ADDRESS: Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold Rosenthal, Departmental Privacy Act Officer, telephone 202-755-5192.

SUPPLEMENTARY INFORMATION: The system will result from data gathered in a study of real estate settlement costs on residential housing units.

A new system report was filed with the Speaker of the House, the President of the Senate, and the Office of Management and Budget on August 7, 1978.

The prefatory statement containing General Routine Uses applicable to all of the Department's systems of records was published at 42 FR 54765 (October 7, 1977). Appendix A, which lists the addresses of HUD's field offices was published at 42 FR 54777 (October 7, 1977).

HUD/PD&R—6

System name:

Real Estate Settlement Costs Research Files.

System location:

Contractor's office (contractor to be selected).

Categories of individuals covered by the system:

Buyers and sellers of individual residential housing units and owners of such units who refinance their mortgages.

Categories of records in the system:

A national sample of Uniform Settlement Statement (HUD-1) forms, showing detailed settlement items and their costs, will be collected from mortgage lenders. Follow-up phone calls to buyers and sellers listed on these forms may be made to elicit information on settlement procedures, costs, etc. In addition, a sample of HUD-1 forms and good-faith estimates of settlement costs will be collected from mortgage lenders in about 12 different housing markets across the country; a sub-sample of these forms will be used to draw a sample of buyers and sellers, as well as a sample of attorneys, mortgage lenders, and others who provided services to buyers and sellers in the sub-sample; this subsample will then be interviewed.

Data will also be collected from national experts in this subject area and from State and local bodies which regulate providers of settlement services.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

See Routine Uses paragraphs in prefatory statement. Other routine uses: None.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

File folders and magnetic tape/disc/drum.

Retrievability:

Name or address of subject.

Safeguards:

Manual records stored in lockable file cabinets and desks in lockable rooms and computer facilities are in secured areas. Access to both types of records are limited to authorized personnel.

Retention and disposal:

All records will be maintained for five years until the end of 1983.

System manager and address:

Director, Office of Organization and Management Information, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, D.C. 20410.

Notification procedure:

For information, assistance, or inquiry about existence of records, contact the Privacy Act Officer at the Headquarters location in accordance with 24 CFR Part 16. This location is given in Appendix A.

Record access procedures:

The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16. If additional information or assistance is required, contact the Privacy Act Officer at the headquarters location. This location is given in Appendix A.

Contesting record procedures:

The Department's rules for contesting the contents of records and appealing initial denials, by the individual concerned, appear in 24 CFR Part 16. If additional information or assistance is needed, it may be obtained by contacting: (i) In relation to contesting contents of records, the Privacy Act Officer at the Headquarters location. This location is given in Appendix A; (ii) in relation to appeals of initial denials, the HUD Departmental Privacy Appeals Officer, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC, 20410.

Record source categories:

Subject individual, mortgage lenders, title insurance firms, real estate agents, title abstractors, land surveyors and other providers of settlement services.

AUTHORITY: 5 U.S.C. 552a, 88 Stat. 1896; Section 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

Issued at Washington, D.C., November 1, 1978.

WILLIAM A. MEDINA,
Assistant Secretary for Administration.

[FR Doc. 78-31511 Filed 11-6-78; 8:45 am]

[4810-84-M]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[M-41268-A; M-41268-B]

MONTANA

Application

OCTOBER 30, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), Fuel Resources Development Co. has applied for two 2-inch natural gas pipeline rights-of-way across the following land:

PRINCIPAL MERIDIAN, MONTANA

T. 23 N., R. 18 E.,
Sec. 1, NW¼SW¼; and
Sec. 2, Lot 1 and SE¼NE¼.
T. 24 N., R. 18 E.,
Sec. 35, N½SW¼, SE¼SW¼, and SW¼SE¼.
T. 23 N., R. 19 E.,
Sec. 7, Lots 2, 3, and 4; and
Sec. 18, Lot 1.
T. 24 N., R. 19 E.,
Sec. 21, N½NE¼ and NE¼NW¼.

The 2-inch gathering lines in these applications are a part of a system which will be used to gather natural gas from wells in Blaine County, Mont., and convey it to an existing transmission line.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the applications should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Bank Electric Building, Drawer 1160, Lewistown, Mont. 59457.

EDGAR D. STARK,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31424 Filed 11-6-78; 8:45 am]

[4310-84-M]

[M 42181]

MONTANA

Application

OCTOBER 30, 1978.

Notice is hereby given that, pursuant to section 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), The Montana Power Company has applied for one 6-inch natural gas pipeline right-of-way across the following land:

PRINCIPAL MERIDIAN, MONTANA

T. 35 N., R. 20 E.,
Sec. 5, SW¼SW¼; and
Sec. 8, N½NW¼ and SE¼NW¼.

This pipeline will convey natural gas across 0.71 mile of public lands in Blaine County, Mont.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, Bank Electric Building, Drawer 1160, Lewistown, Mont. 59457.

EDGAR D. STARK,
Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 78-31425 Filed 11-6-78; 8:45 am]

[4310-03-M]

Heritage Conservation and Recreation Service

NATIONAL REGISTER OF HISTORIC PLACES

Additions, Deletions, and Corrections

By notice in the FEDERAL REGISTER of February 7, 1978, part II, there was published a list of the properties included in the National Register of Historic Places. Further notice is hereby given that certain amendments or revisions in the nature of additions, deletions, or corrections to the previously published list are adopted as set out below.

It is the responsibility of all Federal agencies to take cognizance of the properties included in the National Register as herein amended and revised in accordance with section 106 of the National Historic Preservation Act of 1966, 80 Stat., 16 U.S.C. 470 et seq. (1970 ed.), and the procedures of the Advisory Council on Historic Preservation, 36 CFR Part 800.

RONALD M. GREENBERG,
Acting Keeper of the National Register.

The following list of properties has been added to the National Register of Historic Places since notice was last given in the February 7, 1978, Federal Register. National Historic Landmarks are designated by NHL; properties recorded by the Historic American Buildings Survey are designated by HABS; properties recorded by the Historic American Engineering Record are designated by HAER; properties receiving grants-in-aid for historic preservation are designated by G.

ALABAMA

Clarke County

Grove Hill, *Dickinson House*, 101 Dickinson Ave. (9-13-78).

Lauderdale County

Florence, *Wood Avenue Historic District*, N Wood Ave. roughly bounded by Tuscaloosa and Hawthorne Sts. (10-10-78).

Madison County

Huntsville, *Dallas Mill*, 701 Dallas Ave. (9-18-78).

Perry County

Marion, *Chapel and Lovelace Hall, Marion Military Institute*, AL 14 (9-13-78).

Walker County

Oakman, *Stephenson House*, Cobb St. (9-18-78).

ALASKA

Anchorage Division

Girdwood vicinity, *Crow Creek Consolidated Gold Mining Company,* NE of Girdwood (9-13-78).

Cook Inlet Division

Hope vicinity, *Hirshey Mine,* SE of Hope (9-13-78).

Matanuska-Susitna Division

Palmer vicinity, *Rebarchek, Raymond, Colony Farm,* S of Palmer off Glenn Hwy. (10-3-78).

ARIZONA

Pima County

Tucson, *Barrio Libre,* roughly bounded by 14th, 19th, Stone and Osborne Sts. (10-18-78).

ARKANSAS

Pulaski County

Little Rock, *Governor's Mansion Historic District,* bounded by the Mansion grounds, 13th, Center, Gaines, and 18th Sts. (9-13-78).

Union County

El Dorado, *El Dorado Junior College Building,* 300 S. West Ave. (9-13-78).

CALIFORNIA

Alameda County

Alameda, *St. Joseph's Basilica,* 1109 Chestnut St. (9-18-78).

Contra Costa County

Richmond, *Winehaven,* Point Molate (10-2-78).

Fresno County

Fresno, *Y.W.C.A. Building,* 1660 M St. (9-21-78).

Kings County

Hanford, *Kings County Courthouse,* 114 W. 8th St. (9-21-78).

Los Angeles County

Los Angeles, *Plaza Substation,* 10 Olvera St. (9-13-78).

Pomona, *Greenwood, Barbara, Kindergarten,* Hacienda Pl. and McKinley Ave. (9-18-78).

Orange County

Placentia, *Bradford, A. S., House,* 136 Palm Circle (10-3-78).

Riverside County

Riverside, *All Souls Universalist Church,* 3657 Lemon St. (9-18-78).

Sacramento County

Sacramento, *Coolot Company Building,* 812 J St. (9-20-78).

San Benito County

Soledad vicinity, *Chalone Creek Archeological Sites,* E of Soledad (8-31-78).

San Bernardino County

Needles vicinity, *Topock Maze Archeological Site,* E of Needles (10-5-78).

San Francisco County

San Francisco, *San Francisco Civic Center Historic District,* roughly bounded by Golden Gate Ave., 7th Franklin, Hayes and Market Sts. (10-10-78).

San Joaquin County

Stockton, *Gew, Wong K., Mansion,* 345 W. Clay St. (9-20-78).

Stockton, *Nippon Hospital,* 25 S. Commerce St. (9-18-78).

Santa Clara County

Saratoga vicinity, *Welch-hurst,* 15800 Sanborn Rd. (9-18-78) HABS.

Solano County

Vacaville, *Vacaville Town Hall,* 620 E. Main St. (9-18-78).

Sonoma County

Bodega vicinity, *Watson School,* 15000 Bodega Hwy. (9-18-78).

Tehama County

Mineral, *Park Headquarters, Lassen Volcanic National Park,* off CA 36 (10-3-78).

Tulare County

Mineral King vicinity, *Generals' Highway Stone Bridges,* N of Mineral King in Sequoia National Park (9-13-78).

Ventura County

Simi, *Colony House,* 137 Strathearn Pl. (9-18-78).

COLORADO

Denver County

Denver, *Bailey House, 1600 Ogden St. (9-18-78).*

Denver, *Boston Building,* 828 17th St. (9-18-78) HABS.

Denver, *Temple Emanuel,* 24 Curtis St. (10-10-78).

Larimer County

Fort Collins, *Botanical and Horticultural Laboratory,* Colorado State University campus.

Otero County

La Junta, *Lincoln School,* 300 block W. 3rd St. (9-13-78).

Pueblo County

Pueblo, *Glass, J. S., Clothing Store,* 308 S. Union Ave. (9-18-78).

Saguache County

Saguache vicinity, *Saguache Flour Mill,* W of Saguache (9-18-78).

CONNECTICUT

Fairfield County

Darien, *Pond-Weed House,* 2591 Post Rd. (10-11-78).

Hartford County

Hartford, *Charter Oak Bank Building,* 114-124 Asylum St. (10-11-78).

Middlesex County

Westbrook vicinity, *Lay-Pritchett House,* N of Westbrook on CT 145 (10-11-78).

New Haven County

Waterbury, *Waterbury Municipal Center Complex,* 195, 235, 236 Grand St.; 7, 35, 43 Field St. (10-10-78).

Windham County

Chaplin, *Chaplin Historic District,* Chaplin St. (10-11-78).

DELAWARE

Kent County

Sandtown vicinity, *Dill Farm Site,* E of Sandtown (10-2-78).

New Castle County

Middletown, *Middletown Historic District,* roughly bounded by Redding, Scott, Lockwood, and Catherine Sts. (10-4-78).

Wilmington, *Rockford Park,* roughly bounded by Red Oak and Rockford Rds., Church and Rising Sun Lanes, and the Brandywine River (9-20-78).

Sussex County

Millsboro vicinity, *Warren's Mill,* NW of Millsboro on DE 326 (9-13-78).

Rehoboth Beach vicinity, *Thompson's Loss and Gain Site,* SW of Rehoboth Beach (9-13-78).

DISTRICT OF COLUMBIA

Washington

Anacostia Historic District, roughly bounded by Good Hope Rd., 16th St., Mapleview Pl., and Martin Luther King, Jr. Ave. (10-11-78).

Civil War Monuments in Washington, DC, various parks within the original boundaries of city (9-20-78).

National Metropolitan Bank Building, 613 15th St., NW. (9-13-78).

United Brick Corporation Brick Complex, 2801 New York Ave., NE. (10-3-78).

FLORIDA

Dade County

Coral Gables, *Coral Gables Congregational Church,* 3010 DeSoto Blvd. (10-10-78).

Hamilton County

Jasper, *United Methodist Church,* Central Ave. and 5th St. (9-29-78).

GEORGIA

Putnam County

Eatonton vicinity, *Tompkins Inn,* N of Eatonton on U.S. 441 (10-5-78).

Stewart County

Lumpkin vicinity, *West Hill,* S of Lumpkin on U.S. 27 (9-18-78).

Thomas County

Metcalf, *Metcalfe Historic District,* roughly bounded by Magnolia, Hancock, Louis and Williams Sts. (9-20-78).

HAWAII

Hawaii County

Kailua, *Mokuaikaua Church,* off HI 11 (10-3-78).

Honolulu County

Honolulu, *Kakaako Pumping Station,* 653 Ala Moana Blvd. (10-4-78).

Honolulu, *Lishman Building*, Makiki Park, Keeaumoku St. (9-13-78).

IDAHO

Ada County

Boise, *Overland Building*, 8th and Main Sts. (9-21-78).
Grandview vicinity, *Guffey Butte-Black Butte Archeological District*, NW of Grandview (10-10-78).

Canyon County

Caldwell, *Academy Building, College of Idaho*, 1015 Albany St. (10-11-78).
Nampa vicinity, *Horse Barn*, NE of Nampa at Idaho State School and Hospital (10-11-78).

Cassia County

Albion, *Swanger Hall*, Albion State Normal School campus (9-20-78).

Idaho County

Kooskia vicinity, *O'Hara House*, E of Kooskia off U.S. 12 (10-2-78).

Latah County

Moscow, *First Methodist Church*, 322 E. 3rd St. (10-5-78).

ILLINOIS

Cook County

Chicago, *New Masonic Building and Oriental Theater*, 20 W. Randolph St. (9-26-78).
Evanston, *Ridgewood*, 1703-1713 Ridge Ave. (10-4-78).

DuPage County

Clarendon Hills, *Middaugh, Henry C., House*, 66 Norfolk Ave. (9-21-78).

Jackson County

Makanda vicinity, *Agnew, Dr. Frank M., House*, SE of Makanda on SR 12 (9-13-78).

Marshall County

Sparland, *Waugh, Robert, House*, 202 School St. (10-4-78).

Randolph County

Schuline vicinity, *Charter Oak Schoolhouse*, W of Schuline (10-11-78).

Rock Island County

Rock Island, *Rodman, Gen. Thomas, House*, 2532 8½ Ave. (10-3-78).

St. Clair County

Lebanon, *Lebanon Historic District*, irregular pattern centered along St. Louis and Belleville Sts. (10-4-78).

INDIANA

Allen County

Fort Wayne, *Trinity Episcopal Church*, 611 W. Berry St. (9-13-78).

DeKalb County

Auburn, *Auburn Automobile Company Administration Building*, 1600 S. Wayne St. (9-21-78).

Gibson County

Oakland City, *Cockrum, William M., House*, 627 W. Oak St. (9-13-78).

Monroe County

Bloomington vicinity, *Honey Creek School*, NE of Bloomington on Low Gap Rd. (9-20-78).

Tippecanoe County

Lafayette, *St. John's Episcopal Church*, 315 N. 6th St. (9-20-78).

IOWA

Polk County

Des Moines, *Owl's Head Historic District*, Ridge Rd., Forest Dr., 28th and 29th Sts. (10-11-78).

KANSAS

Elk County

Elk City vicinity, *Elk River Archeological District*, W and S of Elk City (9-13-78) (also in Montgomery County).

Montgomery County

Elk River Archeological District. Reference—see Elk County.

Riley County

Manhattan, *Ulrich, Robert, House*, 121 N. 8th St. (9-20-78).

Stafford County

Stafford vicinity, *Comanche Archeological Site*, NE of Stafford (9-18-78).

KENTUCKY

Jefferson County

Louisville, *Limerick Historic District*, roughly bounded by Breckinridge, Oak, 5th and 7th Sts. (9-13-78).

LOUISIANA

Orleans Parish

New Orleans vicinity, *Fort Macomb*, E of New Orleans at Chef Menteur Pass on U.S. 90 (10-11-78).

St. Bernard County

Shell Beach vicinity, *Fort Proctor*, N of Shell Beach on Lake Borgne (9-20-78).

MAINE

Greenville, *Katahdin* (lake boat), Moosehead Lake (9-13-78).

Somerset County

Hinckley vicinity, *Quincy Building (L. C. Bates Museum)* S of Hinckley (10-4-78).

MARYLAND

Baltimore County

Kingsville vicinity, *Jericho Covered Bridge*, E of Kingsville on Franklinville Rd. (9-13-78) (also in Harford County).
Owings Mills, *Owings Upper Mill*, Bonita Ave. and Reisterstown Rd. (9-13-78).

Frederick County

Woodsboro vicinity, *LeGore Bridge*, N of Woodsboro over Monacacy River (9-18-78).

Harford County

Jericho Covered Bridge. Reference—see Baltimore County.

Howard County

Savage vicinity, *Barney, Commodore Joshua, House*, N of Savage at 7912 Savage-Guilford Rd. (8-25-78).

Kent County

Stillpond vicinity, *Hebron*, SE of Stillpond off MD 292 (9-18-78).

Montgomery County

Gaithersburg, *Gaithersburg B & O Railroad Station and Freight Shed*, Summit and E. Diamond Aves. (10-5-78).

Prince Georges County

Upper Marlboro, *Content*, 14518 Church St. (9-13-78) HABS.

Washington County

Hagerstown, *Old Washington County Library*, 21 Summit Ave. (10-2-78).

MASSACHUSETTS

Bristol County

New Bedford, *Union Street Railway Carbarn, Repair Shop (Centennial Building*, 1959 Purchase St. (10-2-78).
North Swansea, *Martin House and Farm*, 22 Stoney Hill Rd. (10-2-78).

Norfolk County

Brookline, *Longwood Historic District*, roughly bounded by Chapel, St. Marys, Monmouth, and Kent Sts. (9-13-78).

Suffolk County

Boston, *Fenway Studios Building*, 30 Ipswich St. (9-13-78).

Worcester County

Worcester, *Day Building*, 300-310 Main St. (9-13-78).
Worcester, *Worcester Five Cents Savings Bank*, 316 Main St. (9-13-78).

MICHIGAN

Calhoun County

Battle Creek, *Battle Creek Sanitarium*, 197 N. Washinvton Ave. (10-4-78).

Genesee County

Flint, *Elks Lodge Building*, 142 W. 2nd St. (10-4-78).

Grand Traverse County

Traverse City, *Boardman Neighborhood Historic District*, roughly bounded State and Webster Sts., and Railroad and Boardman Aves. (10-3-78).
Traverse City, *Northern Michigan Asylum*, bounded by C & O RR. tracks, Division and 11th Sts., Elmwood Ave., Orange and Red Drs. (10-3-78).

Lenawee County

Hudson, *Hall, Dr. Leonard, House*, 334 W. Main St. (10-2-78).

Marquette County

Marquette, *Savings Bank Building*, 125 W. Washington St. (9-13-78).

Sanilac County

Lexington, *Fead, John L., House*, 5349 Washington St. (10-5-78).

Washtenaw County

Ann Arbor, *Unitarian Universalist Church*, 100 N. State St. (10-4-78).

MINNESOTA

Dakota County

Hastings, *VanDyke-Libby House*, 612 Vermillion St. (10-2-78).

Hennepin County

Minneapolis, *Foshay Tower*, 821 Marquette Ave. (9-20-78).
Minneapolis, *Little Sisters of the Poor Home for the Aged*, 215 Broadway Ave. NE (9-21-78).
Robbinsdale, *Hennepin County Library*, 4915 N. 42nd Ave. (10-2-78).

LeSueur County

St. Peter vicinity, *Andrews House*, SE of St. Peter (10-10-78).

Wabasha County

Wabasha, *Hurd House*, 333 W. Main St. (9-18-78).
Weaver, *Weaver Mercantile Building*, U.S. 61 and MN 74 (9-21-78).

Yellow Medicine County

Canby, *Lund, John G., House*, 101 W. 4th St. (10-2-78).

MISSISSIPPI

Hinds County

Jackson, *Watkins, Will, House*, 1423 N. State St. (9-13-78).

MISSOURI

Cedar County

Stockton vicinity, *Montgomery Archeological Site*, NE of Stockton (9-21-78).

Greene County

Springfield vicinity, *Pearson Creek Archeological District*, SE of Springfield (10-11-78).

Lewis County

Canton, *Henderson Hall*, College Hill (10-2-78).

MONTANA

Fergus County

Lewistown, *St. Joseph's Hospital*, U.S. 87 (9-13-78).

NEBRASKA

Douglas County

Omaha, *Flatiron Hotel*, 1722 St. Mary's Ave. (9-21-78).

Saline County

Wilber, *Hotel Wilber*, 2nd and Wilson Sts. (9-20-78).

Seward County

Seward, *Cattle, John Jr., House*, W. Hillcrest St. (9-13-78).

NEW HAMPSHIRE

Coos County

Bretton Woods vicinity, *Mount Washington Hotel*, off U.S. 302 (9-27-78).

Merrimack County

Concord, *Eagle Hotel*, 110 N. Main St. (9-20-78).
Northfield, *Hall Memorial Library*, Park St. (10-4-78).

NEW JERSEY

Morris County

Whippany, *Our Lady of Mercy Chapel*, 100 Whippany Rd. (9-18-78).

NEW MEXICO

San Miguel County

Pecos, *San Antonio de Padua Church*, NM 63 (9-13-78).

Taos County

Ranchos de Taos, *Ranchos de Taos Plaza*, off U.S. 64 (10-2-78).

NEW YORK

Dutchess County

Red Hook, *Elmendorph Inn*, 43-45 N. Broadway (9-20-78).

Madison County

Cazenovia, *Albany Street Historic District*, irregular pattern along Albany St. (10-10-78).

Monroe County

Honeoye Falls vicinity, *Totiakton Site*, N of Honeoye Falls (9-21-78).
Penfield, *Mud House*, 1000 Whalen Rd. (10-11-78).

New York County

New York, *Schomburg Center for Research in Black Culture*, 103 W. 135th St. (9-21-78).

Putnam County

Brewster, *Brewster, Walter, House*, Oak St. (10-4-78).

Saratoga County

Saratoga Springs, *Pure Oil Gas Station*, 65 Spring St. (10-18-78).

Schenectady County

Schenectady, *Schenectady City Hall and Post Office*, Jay St. (10-11-78).

Schoharie County

Cobleskill, *Cobleskill, Historic District*, irregular pattern along Washington Ave., Main, Grand, and Elm Sts. (9-18-78).

NORTH CAROLINA

Mecklenburg County

Charlotte, *Independence Building*, 100-102 W. Trade St. (9-18-78).

Moore County

Eastwood vicinity, *Black-Cole House*, NW of Eastwood (9-18-78).

Robeson County

Lumberton, *Caldwell, Luther Henry, House*, 209 Caldwell St. (9-18-78).

OHIO

Allen County

Lima, *MacDonell House (Banta-Van Dyke House)*, 632 W. Market St. (9-20-78).

Athens County

Nelsonville, *Dew House*, Public Sq. (10-3-78).

Cuyahoga County

Cleveland, *Lindner Building*, 1331 Euclid Ave. (9-13-78).
Cleveland, *Playhouse Square Group*, 2067 E. 14th St.; 1422, 1501, 1515, 1621 Euclid Ave. (10-5-78).

Delaware County

Delaware vicinity, *Limestone Vale*, 3400 Olentangy River Rd. (10-2-78).

Erie County

Sandusky, *Baltimore and Ohio Railroad Company Depot*, Washington and Warren Sts. (9-13-78).

Fairfield County

Carroll vicinity, *John Bright No. 1 Iron Bridge*, 2 mi. (3.2 km) NE of Carroll on Havensport Rd. (9-20-78).

Franklin County

Columbus, *Jones, W. H., Mansion*, 731 E. Broad St. (10-2-78).

Gallia County

Gallipolis, *Ohio Hospital for Epileptics Stone Water Towers*, Mill Creek Rd. (9-13-78).

Hamilton County

Cincinnati, *Hoffner Historic District*, bounded by Bluerock, Moline Court, Langland, and Hamilton Aves. (10-3-78).
Cincinnati, *Holy Cross Monastery and Chapel*, 1055 St. Paul Pl. (9-13-78).
Cincinnati, *Observatory Historic District*, Observatory Pl. and Ave. (9-20-78).

Lawrence County

Ironton, *Norfolk and Western Railroad Depot*, 1st St. and Park Ave. (9-13-78).

Lorain County

Lorain, *Root, William H., House*, 3535 E. Erie Ave. (9-20-78).
North Ridgeville, *Cahoon, Samuel C., House*, 38369 Center Ridge Rd. (9-20-78).
Sheffield, *Garfield, Milton, House*, 4921 Detroit Rd. (9-21-78).
Sheffield, *Sheffield Village Hall*, Detroit Rd. (10-5-78).

Lucas County

Toledo, *Wright, Dr. John A., House*, 1822 Cherry St. (10-5-78).

Muskingum County

Zanesville, *Lafayette Lodge No. 79*, 333 Market St. (9-13-78).
Zanesville, *St. James Episcopal Church*, 155 N. 6th St. (10-2-78).

Preble County

Eaton, *St. Clair Street Bridge*, St. Clair St. over seven Mile Creek (9-21-78).

Sandusky County

Fremont, *Fremont City Hall*, 401 Croghan St. (8-30-78).

Scioto County

Minford vicinity, *Bennett Schoolhouse Road Covered Bridge*, SE of Minford (10-11-78).

Shelby County

Anna, *Anna Town Hall*, Main St. (9-20-78).

OKLAHOMA

Cimarron County

Felt vicinity, *Cedar Breaks Archeological District*, W of Felt (10-10-78).

Cleveland County

Norman, *Norman Historic District*, 105 W. Main and 100-232 E. Main St. (10-10-78).

Haskell County

Stigler vicinity, *Mule Creek Site*, SE of Stigler (9-13-78).

Oklahoma County

Oklahoma City, *Oklahoma Publishing Company Building*, 500 N. Broadway (9-18-78).

Roger Mills County

Hammon vicinity, *Lamb-Miller Site*, NW of Hammon (10-2-78).

Texas County

Guymon vicinity, *Nash II-Clawson Archeological Site*, E of Guymon (10-2-78).
Guymon vicinity, *Two Sisters Archeological Site*, N of Guymon (10-2-78).

OREGON

Clackamas County

Oregon City, *Canemah Historic District*, roughly bounded by Williamette River, 5th Ave., Marshall and Paquet Sts. (10-11-78).

Marion County

Salem, *Adolph, Samuel, House*, 2493 State St. (10-2-78).
Salem, *Port-Manning House*, 4922 S. Halls Ferry Rd. (10-2-78).

Morrow County

Boardman vicinity, *Oregon Trail, Wells Springs Segment*, S of Boardman (9-13-78).

Multnomah County

Portland, *Bay E, West Ankeny Carbarns*, 2706 NE. Couch St. (10-10-78).
Portland, *Day Building*, 2068 NW. Flanders St. (10-2-78).
Portland, *Dosch, Henry E., House*, 5298 SW. Dosch Rd. (10-2-78).
Portland, *First Church of Christ, Scientist*, 1813 NW. Everett St. (10-2-78).

PENNSYLVANIA

Allegheny County

Pittsburgh, *Burke Building*, 209-211 4th Ave. (9-18-78).
Pittsburgh, *Way, Nicholas, House*, 108 Beaver Rd. (9-13-78).

Bedford County

Bedford, *Barclay House*, 230 Juliana St. (9-18-78).

Berks County

Lenhartsville, *Lenhart Farm*, jct. of U.S. 22 and PA 143 (9-18—78).

Blair County

Culp vicinity, *St. John's Evangelical Lutheran Church*, NE of Culp (9-18-78).
Hollidaysburg, *Highland Hall*, 517 Walnut St. (9-13-78).

Bucks County

Pipersville vicinity, *Stover-Myers Mill*, N of Pipersville on Dark Hollow Rd. (9-13-78).
Southampton, *Southampton Baptist Church and Cemetery*, 2nd St. Pike and Maple Ave. (9-18-78).

Centre County

Philipsburg, *Philips, Hardman, House*, Presquisle and 4th Sts. (9-18-78).

Crawford County

Meadville, *Ruter Hall*, N. Main St. on Allegheny College campus (9-18-78).

Delaware County

Darby, *Darby Meeting*, 1017 Main St. (9-13-78).
Media vicinity, *St. David's Church and Graveyard*, 7 mi. (11 km) N of Media (9-20-78).

Northampton County

Easton, *Lehigh Canal: Eastern Section Glendon and Abbott Street Industrial Sites*, Lehigh River from Hopeville to confluence of Lehigh and Delaware Rivers (10-2-78).
Walnutport, *Lehigh Canal: Lehigh Gap-Walnutport Section*, Lehigh Gap to S Walnutport boundary (10-2-78).

Philadelphia County

Philadelphia, *Adelphi School*, 1223-1225 Spring St. (9-18-78).
Philadelphia, *Drake Hotel*, 1512-1514 Spruce St. (9-18-78).
Philadelphia, *Witherspoon Building*, 1319-1323 Walnut St. (9-18-78).

Pike County

Bushkill, *Turn Store and the Tinsmith's Shop*, U.S. 209 (9-18-78).

Schuylkill County

Tamaqua, *Anthracite Bank Building*, 133 W. Broad St. (9-13-78).

Union County

Allenwood vicinity, *Griffey, Benjamin, House*, W of Allenwood on PA 44 (9-13-78).
Lewisburg, *Packwood House-American Hotel*, 10 Market St. (9-20-78).

Venango County

Oil City, *National Transit Building*, 206 Seneca St. (9-13-78).

Warren County

Russell vicinity, *Irvine, Guy C., House*, 1.5 mi. S of Russell on U.S. 62 (9-13-78).

Wayne County

Waymart, *Delaware & Hudson Canal Company Gravity Railroad Depot*, South St. (9-13-78).
White Mills, *Dorflinger, Eugene, Estate*, U.S. 6 and Charles St. (9-18-78).

Westmoreland County

Delmont, *Salem Crossroads Historic District*, Pittsburgh and Greenburg Sts. (9-18-78).

RHODE ISLAND

Kent County

Nooseneck vicinity, *Allen, Stephen, House*, NW of Nooseneck on Sharp St. (9-20-78).

Newport County

Jamestown vicinity, *Windmill Hill Historic District*, N of Jamestown at Eldred Ave. and N. Main Rd. (10-2-78).
South Portsmouth vicinity, *Lawton-Almy-Hall Farm*, 559 Union St. (10-11-78).

Providence County

Pawtucker, *Pawtucket Congregational Church*, 40 and 56 Walcott St. (9-18-78).
Providence, *Pine Street Historic District*, irregular pattern along Pine St. from Myrtle to Seekell Sts. (9-13-78).

SOUTH CAROLINA

Lexington County

West Columbia, *New Brookland Historic District*, roughly bounded by Alexander Rd., Augusta, State, Spring, and Meeting Sts. (10-10-78).

TENNESSEE

Greene County

Afton vicinity, *Ripley Stone House*, E of Afton off U.S. 11 (9-18-78).
Greeneville vicinity, *New Bethel Cumberland Presbyterian Church*, NW of Greeneville on TN 70 (10-5-78).

Montgomery County

Clarksville vicinity, *Allen House*, N of Clarksville on Allen-Griffey Rd. (10-3-78).
Fredonia, *Wilson, Sanford, House*, Old Ashland City Hwy. (9-13-78).

Shelby County

Memphis, *Lee, James, House*, 239 Adams Ave. (10-2-78).
Memphis, *Sterick Building*, 8 N. 3rd St. (10-2-78).

Smith County

Dixon Springs vicinity, *Bradley, James, House*, SE of Dixon Springs off TN 25 (9-18-78).

TEXAS

Clay County

Henrietta, *Clay County Courthouse and Jail*, (courthouse) 100 N. Bridge St.; (jail) Ikard St. (10-3-78).

Collin County

McKinney, *McKinney, Collin, Cabin*, Finch Park (9-18-78).

Dallas County

Dallas, *Munger Place Historic District*, roughly bounded by Henderson, Junius, Prairie, and Reiger Sts. (9-13-78).

Harris County

Houston, *Foley, W. L., Building*, 214-218 Travis St. (10-11-78).

Harrison County

Marshall, *Hagerty House*, 505 E. Rusk St. (9-13-78).

Randall County

Canyon, *Lester, L. T., House*, 310 8th St. (9-13-78).

UTAH

Salt Lake County

Salt Lake City, *Capitol Building*, Capitol Hill (10-11-78).
Salt Lake City, *Ladies Literary Club Clubhouse*, 850 E. South Temple (10-11-78).
Salt Lake City, *Tracy Loan and Trust Company Building*, 151 S. Main St. (10-10-78).

Sanpete County

Ephraim, *Anderson, Niels Ole, House*, 306 S. 100 East (10-5-78).
Mt. Pleasant, *Wasatch Academy*, off U.S. 89 (10-2-78).

Summit County

Park City, *Silver King Ore Loading Station*, Park Ave. (10-4-78).

Utah County

Goshen vicinity, *Tintic Standard Reduction Mill*, E of Goshen off U.S. 6 (9-13-78) HAER.

VERMONT

Chittenden County

Burlington, *First Methodist Church of Burlington*, S. Winooski Ave. (10-5-78).
Jericho vicinity, *Galusha House*, S of Jericho (10-10-78).

Franklin County

Enosburg Falls, *Enosburg Opera House*, 31 Depot St. (9-20-78).

Orange County

Newbury vicinity, *Wildwood Hall*, SW of Newbury off U.S. 5 (10-2-78).

VIRGIN ISLANDS

St. Croix Island

Christiansted vicinity, *Friedensthal Mission*, SW of Christiansted (8-25-78).
Frederiksted vicinity, *Estate Butler's Bay*, N of Frederiksted (8-25-78).

St. Thomas Island

Charlotte Amalie, *Hamburg-America Shipping Line Administrative Offices*, 48B Tolbod Gade (10-10-78).

VIRGINIA

Halifax County

Oak Level vicinity, *Redfield*, 3 mi. SE of Oak Level on VA 683 (9-20-78).
South Boston vicinity, *Tarover*, W of South Boston on VA 659 (9-20-78).

WASHINGTON

Grant County

Richland, *Paris Archeological Site*, NW of Richland (9-20-78).

Okanogan County

Oroville vicinity, *Enloe Dam and Powerplant*, 4 mi. (6.4 km) W of Oroville (10-18-78).

Spokane County

Spokane, *Hyde Building and Annex*, W. 611½ Riverside Ave. (2-8-78).

Thurston County

Olympia, *McCleary, Henry, House*, 111 W. 21st Ave. (10-2-78).

WEST VIRGINIA

Harrison County

Clarksburg, *Waldomore*, W. Pike and N. 4th Sts. (10-4-78).

Ohio County

Wheeling, *List, Henry K., House*, (10-4-78) HABS.

Pocahontas County

Huntersville, *Huntersville Presbyterian Church*, off WV 39 (10-4-78).

WISCONSIN

Dane County

Madison, *Fess Hotel*, 1123 E. Doty St. (9-21-78).

Outagamie County

Appleton, *Temple Zion and School*, 320 N. Durkee St. and 309 E. Harris St. (9-18-78).

WYOMING

Albany County

Laramie, *Union Pacific Athletic Club*, off U.S. 30 (9-13-78).

Laramie County

Cheyenne, *Van Tassell Carriage Barn*, 1010 E. 16th St. (9-13-78).

* * * * * *

The following is a list of corrections to properties previously listed in the Federal Register.

DISTRICT OF COLUMBIA

Washington

Civil War Fort Sites (Defenses of Washington) (7-15-74) (boundary increase) also in Prince Georges County, MD and Fairfax County, VA.

GEORGIA

Fulton County

Atlanta, *Fox Theatre Historic District*, Ponce de Leon Ave. and Peachtree St. (5-17-74) (boundary increase).

MARYLAND

Baltimore (independent city) *Fells Point Historic District*, bounded by the harbor, Aliceanna, Wolfe, and Dallas Sts. (3-28-69) (boundary increase).

MASSACHUSETTS

Essex County

Salem, *Chestnut Street Historic District*, roughly bounded by Broad, Warren, Flint, River, and Summer Sts. (8-28-73) (boundary increase).

MICHIGAN

Menominee County

Menominee, *First Street Historic District*, roughly bounded by N side of 10th Ave., 4th Ave., 2nd St. and Green Bay shoreline (12-31-74) (boundary increase).

MISSOURI

Clay County

Kearney vicinity, *James Brothers' House and Farm*, E of Kearney (3-16-72) (boundary increase).

* * * * *

The following properties have been demolished and/or removed from the National Register of Historic Places.

CALIFORNIA

Los Angeles County

Pasadena, *Pasadena Athletic and Country Club*, E. Green St. and S. Los Robles Ave. (demolished).

RHODE ISLAND

Kent County

Coventry vicinity, *Hopkins Mill*, SW of Coventry on RI 3 at Nooseneck River (demolished).

* * * * *

Determinations of eligibility are made in accordance with the provisions of 36 CFR 63, procedures for requesting determinations of eligibility, under the authorities in section 2(b) and 1(3) of Executive Order 11593 and section 106 of the National Historic Preservation Act of 1966, as amended, as implemented by the Advisory Council on Historic Preservation's procedures, 36 CFR part 800. Properties determined to be eligible under section 63.3 of the procedures for requesting determinations of eligibility are designated by (63.3).

Properties which are determined to be eligible for inclusion in the National Register of Historic Places are entitled to protection pursuant to section 106 of the National Historic Preservation Act of 1966, as amended, and the procedures of the Advisory Council on Historic Preservation, 36 CFR part 800. Agencies are advised that in accord with the procedures of the Advisory Council on Historic Preservation, before any agency of the Federal Government may undertake any project which may have an effect on an eligible property, the Advisory Council on Historic Preservation shall be given an opportunity to comment on the proposal.

The following list of additions, deletions and corrections to the list of properties determined for inclusion in the National Register is intended to supplement the cumula-

tive version of that list published in February of each year.

CALIFORNIA

Monterey County

Salinas, *Bunn, Thomas M., House*, 425 Blanco Rd.
Salinas, *Surbeck, Margaret Hart, House*, 322 Blanco Rd. (63.3.).
Salinas, *275 Blanco Road House* (63.3.).

Santa Barbara County

U.S. Coast Guard Rescue Station and Lookout Tower, Vanderberg Air Force Base (63.3).

Trinity County

Ironside Mountain, Shasta-Trinity National Forest (63.3).

CONNECTICUT

New London County

Colchester, *1887 Stone Railroad Viaduct over River Road* (63.3).

FLORIDA

Hillsborough County

Tampa vicinity, *Egmont Key (Fort Dade Site)*.

ILLINOIS

Adams County

FALL CREEK MULTIPLE RESOURCE AREA

(63.3) (also in Pike County) This area includes:
Acorn Knoll
Altrogge
Ambrose-Flick
Angus
Arp North
Austin Creek
Baker
Beechnut
Blacksetter
Bluffhall Mound Group
Bonifield
Buffalo
Burlington-Northern
Burton Creek
Bushmeyer
Buteo
Camp Grove
Cedar Crest
Cold Rock
Crabapple School
Crackle
Crazy Dog
Crazy Horse
Crestview
Crowfoot Mound
Dale
D. Paul
Dewrock
Dickhut
Dunker
Earl
Echternkamp
Echternkamp Mound Group
Fall Creek
Foogy Hill
Gose Creek
Hadley Creek
Hadley Creek North
Harkness Creek
Heitholt
Hellgate
Hickory Gove
Hungenberg Mound Group
Humphrey
Hunter
Ippenson
Jimson Ridge
Juanita
Jug Run
Kappner
Keil
Ke-Wa-Nee
Kuhlman
Kuhlman Mound Group
Lakker
Lazy "S" Bluff
Lepper-Griffin
Lewton
Marblehead
McCraney Creek
Mill Creek Fork
Moss Green
Mosquito Gorge
Neuer
Niere
Orchard View
Otto's Truck
Peregrine Point
Pigeon Creek
Politsch
Ponderosa Ranch
Poor-Wittland
R. Dykes
Radar Range
Rice Patty
Ripper Mound Group
Rock Quarry
Rogers Lake
Sand Trees
Schafer
Schaffnit
Schuhardt
Sharp-Shin
Sharp-Shin Mound Group
Sinkhole
Snappy
Speckhardt
Squirrel Hollow
Sweetwater
Thirty-Six Nineth-Six
Thursday's Delight
Two Left Feet
West Pond
Windchill
Wolverine
Yakima
Yellow Jacket
Zion Church

Pike County

FALL CREEK MULTIPLE RESOURCE AREA

Reference—see Adams County.

INDIANA

Wells County

State Route 316 Bridge over the Wabash River (63.3).

LOUISIANA

Avoyelles Parish

Log Raft Site, near Bank River (63.3).

MICHIGAN

Wayne County

Detroit, *Robson-Dodge House*, 642 W. Forest Ave.

MISSOURI

Clay County

Kansas City vicinity, *Smithville Multiple Resource Area*. (63.3) This area includes sites: SL239, SL408, SL446, SL441.

MONTANA

Stillwater County

Red Lodge vicinity, *West Rosebud Lake site*, W of Red Lodge.

NEW JERSEY

Appalachian Trail in New Jersey (63.3) (also in Warren County.)

Warren County

Appalachian Trail in New Jersey Reference—see Sussex County.

NEW MEXICO

San Juan County

MULTIPLE RESOURCE AREA IN BOLACK LAND EXCHANGE. This area includes sites: 10808, 10809, 10812, 10816, 10817, 10818, 10819, 10821, 10822, 10823, 10824, 10825, 10826; 10827, 10828, 10830, 10831, 10832, 10833, 10834, 10837, 10838, 10841, 10842, 10843, 10845, 10846, 10847, 10848, 10849, 10850, 10851, 10853, 10855, 10856, 10857, 10858, 10859, 10861, 10862, 10863, 10864, 10865, 10866, 10868, 10869, 10870, 10871, 3657, 3658, 3662, 3664, 3665.

NEW YORK

Westchester County

Ossining, *Main Street Crescent*.

RHODE ISLAND

Washinton County

North Kingstown, *Quonset Point Naval Air Station*

TEXAS

Hidalgo County

McAllen, *Federal Building*.

WISCONSIN

Fond du Lac County

Fond du Lac, *Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fond du Lac Enginehouse*.

[FR Doc. 78-30764 Filed 11-6-78; 8:45 am]

[4310-03-M]

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 October 30, 1978. Pursuant to § 60.13(a) of 36 CFR Part 60, published in final form on January 9, 1976, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to

the Keeper of the National Register, 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 November 17, 1978.

WILLIAM J. MURTAGH,
Keeper of the National Register.

ALABAMA

Shelby County

Montevallo, *Alabama Girls' Industrial School,* bounded by Middle Campus Dr., Oak, Bloch and Middle Sts.

COLORADO

Boulder County

Boulder, *Highland School,* 885 Arapahoe Ave.
Ward vicinity, *Modoc Mill,* N of Ward.

Chaffee County

Granite vicinity, *Littlejohn Mine Complex,* SW of Granite.

Denver County

Denver, *Dunwoody, William J., House,* 2637 W. 26th Ave.

Douglas County

Larkspur vicinity, *Spring Valley School* E of Larkspur at Spring Valley and Lorraine Rds.

Jefferson County

Golden, *Colorado National Guard Armory,* 1301 Arapahoe St.

Kit Carson County

Burlington, *Carousel No. 6,* Kit Carson Fairgrounds.

Larimer County

Estes Park, *Elkhorn Lodge,* 530 W. Elkhorn Ave.
Fort Collins, *Andrews House,* 324 E. Oak St.
Fort Collins, *Bouton, Jay H., House,* 113 N. Sherwood St.
Fort Collins, *Fuller, Montezuma, House,* 226 W. Magnolia St.
Fort Collins, *McHugh-Andrews House,* 202 Remington St.

Park County

Fairplay, *Park County Courthouse,* 418 Main St.

Pueblo County

Pueblo, *Hazelhurst,* 905 Berkley Ave.
Pueblo, *Vail Hotel,* 217 S. Grand Ave.

Routt County

Steamboat Springs, *Steamboat Springs Depot,* 39265 Routt County Rd.

San Miguel County

Telluride vicinity, *Smuggler-Union Hydroelectric Power Plant,* SE of Telluride along Bridal Veil Falls,

ILLINOIS

De Kalb County

De Kalb, *Egyptian Theatre,* 135 N. 2nd St.

KENTUCKY

Anderson County

Lawrenceburg vicinity, *Moore, Rev. William Dudley, House,* 4 mi. (6.4 km) S of Lawrenceburg on KY 425.

Bourbon County

Paris, *Paris Courthouse Square Historic District,* Courthouse Sq. and environs.

Fayette County

Lexington vicinity, *Cave Spring,* SE of Lexington off U.S. 25/421.

Franklin County

Frankfort, *Beeches,* off U.S. 421.

Harrison County

Cynthiana, *Church of the Advent, Episcopal,* 122 N. Walnut St.

Henry County

Eminence, *Eminence Historic Commerical District,* Broadway, Main, and Penn Sts.

Madison County

College Hill vicinity, *Cane Springs Primitive Baptist Church,* N of College Hill.

Mercer County

Harrodsburg, *College Street Historic District,* College St. from North La. to Factory St., 487-488 Price Ave., 223-224 Factory St.
Harrodsburg vicinity, *Jones, Moses, House,* N of Harrodsburg on Oregon Rd.

Washington County

Springfield, *McChord, William C., House,* 202 Lincoln Park Rd.

MISSOURI

Callaway County

Mokane vicinity, *Union Electric Company Site,* NE of Mokane.

MONTANA

Gallatin County

Bozeman, *Bozeman Carnegie Library,* 35 N. Bozeman Ave.

NEW JERSEY

Bergen County

Saddle River, *Achenbach House,* 184 Chestnut Ridge Rd.

Hunterdon County

Pattenburg vicinity, *Case Farmstead,* W of Pattenburg on SR 14.

Morris County

Parsippany vicinity, *Bowlsby-DeGelleke House,* NW of Parsippany at 320 Baldwin Rd.

NEW YORK

New York County

New York, *Fort Tryon Park and The Cloisters,* Broadway and Dyckman St.

Schenectady County

Niskayuna, *Niskayuna Reformed Church,* 3041 Troy-Schenectady Rd.

Westchester County

Ossining, *Calvary Baptist Church and Annex,* St. Paul's Pl.

NORTH CAROLINA

Buncombe County

Asheville, *Ravenscroft School,* 29 Ravenscroft Dr.

OHIO

Cuyahoga County

Valley View, *Gleason, Edmund, House (Edwin Carey House)* 7243 Canal Rd.

Summit County

Richfield vicinity, *Blackmoor (Lawrence Higgins House)* E of Richfield at 4370 Black Rd.

PENNSYLVANIA

Allegheny County

Pittsburgh, *Pittsburgh Athletic Association Building,* 4215 5th Ave.

Beaver County

Aliquippa, *Jones, B. F., Memorial Library,* 663 Franklin Ave.

Bedford County

Bedford vicinity, *Bonnet's Tavern,* 4 mi. (6.4 km) W of Bedford at jct. of U.S. 30 and PA 31.

Berks County

Kutztown vicinity, *Kemp's Hotel,* E of Kutztown on U.S. 222.

Bucks County

Doylestown, *Doylestown Agricultural Works,* W. Ashland and S. Main St.

Cambria County

Johnstown, *Grand Army of the Republic Hall,* 132 Park Pl.

Centre County

Spring Mills vicinity, *Egg Hill Church,* SW of Spring Mills on Egg Hill Rd.
Woodward, *Woodward Inn,* PA 45.

Chester County

Strickersville, *Lunn's Tavern,* PA 896.

Clearfield County

Clearfield, *Clearfield County Courthouse,* 2nd and Market Sts.

Crawford County

Springboro vicinity, *Shadeland Mansion,* N of Springboro on PA 18.

Dauphin County

Elizabethville vicinity, *Henniger Farm Covered Bridge,* NE of Elizabethville over Wisconisco Creek.

Elk County

Ridgway, *Elk County Courthouse and Jail,* Main and S. Broad Sts.
Ridgway vicinity, *Bonifels,* W of Ridgway off Laurel Mill Rd.

Forest County

Cooksburg, *Cook, Anthony Wayne, Mansion,* River Dr.

Tionesta, *Forest County Courthouse and Jail*, Elm St.

Franklin County

Chambersburg, *Townhouse Row*, 57-85 N. Main St.

Lackawanna County

Scranton, *Silkman-House*, 2006 N. Main Ave.

Lancaster County

Marietta, *Duffy, Col. James, Mansion*, 320 W. Market St.

Lycoming County

English Center, *English Center Suspension Bridge*, spans Pine Creek.
Williamsport, *Herdic, Peter, House*, 407 W. 4th St.

Mifflin County

Lewistown vicinity, *Old Hoopes School*, NE of Lewistown.

Montgomery County

Cheltenham vicinity, *Wall House*, W of Cheltenham on Old York Rd.
Lansdale, *Griffith-Snyder House*, 1075 Valley Forge Rd.
Norristown vicinity, *Old Norriton Presbyterian Church*, NW of Norristown on U.S. 422.

Montour County

Danville, Montour, *Montour County Courthouse*, 28 Mill St.

Northumberland County

Watsontown vicinity, *Hopper-Snyder Homestead*, NE of Watsontown off SR 49061.

Philadelphia County

Philadelphia, *Land Title Building*, 1400 Chestnut St.
Philadelphia, *Lemon Hill*, E. River Dr., E. Fairmount Park.

Pike County

Milford, *Pike County Courthouse*, Broad and High Sts.

Schuylkill County

New Ringgold, *New Ringgold Gristmill*, SR 53062.

Snyder County

Selinsgrove, *Selinsgrove Hall and Seibert Hall*, Pine St.

Somerset County

Addison, *Petersburg Toll House*, off U.S. 40.

Venango County

Pleasantville, *Allegheny Baptist, Church (Free Methodist Church)*, PA 27 and Main St.

Washington County

California, *Pennsylvania Railroad Passenger Station*, Water and Wood Sts.

York County

Lewisberry vicinity, *Hammersly-Strominger House*, NE of Lewisberry on PA 177.

TEXAS

Dallas County

Dallas, *South Boulevard-Park Row Historic District*, South Blvd. and Park Row from Central Expwy. to Oakland Ave.

UTAH

Garfield County

Escalante vicinity, *Friendship Cove Pictograph*, E of Escalante on UT 12.

Kane County

Kanab vicinity, *Cottonwood Canyon Cliff Dwelling*, NW of Kanab.

Salt Lake County

Salt Lake City, *Grant Steam Locomotive No. 223*, Liberty Park.
Salt Lake City, *McDonald, David, House*, 4659 Highland Dr.

San Juan County

Blanding vicinity, *Defiance House*, W of Blanding in Glen Canyon National Recreation Area.

Summit County

Coalville, *Summit County Courthouse*, Main St.

Weber County

Ogden, *Perry's Egyptian Theatre*, 2439 Washington Blvd.

VERMONT

Chittenden County

Burlington, *Wells-Richardson District*, bounded by Main, Pine, College, and St. Paul Sts.

WASHINGTON

King County

Woodinville vicinity, *Hollywood Farm*, SE of Woodinville at 14111 NE. 145th St.

Pacific County

Seaview, *Shelburne Hotel*, WA 103 and K St.

[FR DOC. 78-31199 Filed 11-6-78; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

Antitrust Division

UNITED STATES v. ENDERLE METAL PRODUCTS COMPANY, NOLL MANUFACTURING COMPANY, SUGDEN ENGINEERING COMPANY AND WELLMADE METAL PRODUCTS COMPANY

Proposed Consent Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (b) and (h) (APPA), that a proposed consent judgment and a competitive impact statement as set out below have been filed with the U.S. District Court for the Northern District of California in Civil No. 77-1579 CFP, *United States v. Enderle Metal Products Company, et al.* Consenting to the proposed judgment are all defendants in the case, Enderle Metal Products Co., Noll Manufacturing Co., Sugden Engineering Co., and Wellmade Metal Products Co. The complaint in this action alleges that defendants conspired to fix the prices at which Enderle Metal Products Co. and Noll Manufacturing Co. would sell furnace pipe and fittings in California and Reno, Nev. The judgment enjoins the defendants from agreeing to fix the prices of furnace pipe and fittings, allocating markets or customers of furnace pipe and fittings, or exchanging information about prices of furnace pipe and fittings or changes therein before such information is available to the public; it further requires Enderle Metal Products Co. to send its current price book to each account it served in northern California between April 1973 and April 1975. The competitive impact statement describes the anticipated effects of the proposed judgment on competition, and evaluates alternative relief proposals actually considered by the United States. Public comment is invited within the statutory 60 day comment period. Such comments and responses thereto will be published in the FEDERAL REGISTER and filed with the court. Comments should be directed to Anthony E. Desmond, Chief, San Francisco Field Office, Antitrust Division, Department of Justice, 450 Golden Gate Avenue, Room 16216C, Box 36046, San Francisco, Calif. 94102.

Dated: October 23, 1978.

CHARLES F. B. MCALEER,
Special Assistant for Judgment Negotiations.

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Enderle Metal Products Company; Noll Manufacturing Company; Sugden Engineering Company; and Wellmade Metal Products Company*, Defendants.

No. C77-1579 CFP.

Filed: October 23, 1978.

STIPULATION

It is stipulated by and between the undersigned parties, plaintiff United States of America and defendants Enderle Metal Products Company, Noll Manufacturing Company, Sugden Engineering Company, and Wellmade Metal Products Company, 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 any 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 of 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 not prejudice any consenting party in this or any other proceeding.

For the Plaintiff: John H. Shenefield, *Assistant Attorney General;* William E. Swope, Charles F. B. McAleer, Anthony E. Desmond, William S. Farmer, Jr., Irene Saal Holmes, *Attorneys, Department of Justice.*

For the Defendants: Melby & Anderson, Glendale, Calif., by Henry Melby, *Attorney for Enderle Metal Products Co.;* Ehrlich, Allison & Sparks, San Francisco, Calif., by Philip Ehrlich, *Attorney for Noll Manufacturing Co.;* Garfield, Tepper & Ashworth, Century City, Calif., by Franklin Garfield, *Attorney for Sugden, Engineering Co.;* Kipperman, Shawn, Keker & Brockett, San Francisco, Calif., by Steven M. Kipperman, *Attorney for Wellmade Metal Products Co.*

UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Enderle Metal Products Company; Noll Manufacturing Company; Sugden Engineering Company; and Wellmade Metal Products Company,* Defendants.

No. C77-1579 CFP.
Filed: October 23, 1978.

FINAL JUDGMENT

Plaintiff, United States of America, having filed its complaint herein on July 21, 1977, and plaintiff and defendants by their respective attorneys having each consented to the entry of this Final Judgment without trial or adjudication of any issues of fact or law herein, and without this Final Judgment constituting evidence against or admission by any party hereto with respect to any such issue;

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, as follows:

I

This Court has jurisdiction over the subject matter of this action and of the parties hereto. The Complaint states claims upon which relief may be granted against the defendants under Section 1 of the Sherman Act (15 U.S.C. § 1).

II

As used in this Final Judgment:

(A) "Person" means any individual, partnership, corporation, association, firm or other business or legal entity;

(B) "Furnace pipe and fittings" means pipe, ducts and fittings used to install heating and air conditioning systems in residential and commercial structures;

(C) "Manufacturer" means a person who produces and sells furnace pipe and fittings, and includes each of the defendants;

(D) "Northern California market" means Reno, Nevada and California generally north of Bakersfield;

III

The provisions of this Final Judgment shall apply to each defendant and to each of defendants' officers, directors, employees, agents, subsidiaries, 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. For the purpose of this Final Judgment, each defendant together with its controlled subsidiaries and each of its officers, directors and employees when acting solely in such capacity shall be deemed to be one person.

IV

Each defendant is enjoined and restrained from entering into, adhering to, maintaining or furthering any contract, agreement, understanding, plan or program with any other person, directly or indirectly:

(A) To fix, establish, raise, maintain or stabilize the price or process at which furnace pipe and fittings are sold to third persons;

(B) To allocate the markets in which or the customers to whom furnace pipe and fittings may be sold.

V

Each defendant is enjoined and restrained from:

(A) Communicating to, requesting from, or exchanging with any other manufacturer, information concerning:

(1) Prices or terms or conditions upon which furnace pipe and fittings would then be or are then being sold or offered for sale by any manufacturer;

(2) Future prices or terms or conditions upon which furnace pipe and fittings will be sold or offered for sale;

(3) Consideration of changes or revisions in the prices or terms or conditions upon which any manufacturer sells or offers to sell furnace pipe and fittings;

(B) Complaining or otherwise commenting to any manufacturer concerning prices charged by that manufacturer.

VI

Nothing in Section V hereof shall prohibit:

(A) The communication of information, by employees of defendant who routinely conduct furnace pipe and fittings purchase and sale transactions, to such employees of another manufacturer in the course of, and related to, negotiating for, entering into, or carrying out a bona fide purchase or sale transaction between such defendant and such other manufacturer;

(B) The transmission by a defendant, without additional comment or explanation, to another manufacturer upon the request of said manufacturer, of such defendant's price list or price book (or any change therein) for furnace pipe and fittings regularly issued in the course of business, which price book or price list (or said change) such defendant had previously released and circulated to the trade generally, if such transmission is made after the effective date of the prices included in such price list or price book (or said change).

VII

Defendant Enderle Metal Products Company shall:

(A) Send copies of its current price book to each account or former account in the Northern California market to which it sold furnace pipe and fittings during the two (2) year period immediately preceding April 1975.

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with this Section VII.

VIII

Each defendant is ordered and directed to:

(A) Within sixty (60) days after the entry of this Final Judgment, furnish a conformed copy hereof to: (1) each of its own officers and directors; (2) each of its own employees and agents who has any responsibility for the pricing or sale of furnace pipe and fittings; and (3) each officer, director and aforementioned employee and agent of a domestic subsidiary of said defendant engaged in the manufacture or sale of furnace pipe and fittings; and advise and inform each such person that violation of this Final Judgment could result in a conviction for contempt of court and imprisonment and/or fine.

(B) Within ninety (90) days after the entry of this Final Judgment, file with the Court, and serve a copy on plaintiff, an affidavit concerning the fact and manner of compliance with Paragraph (A) of this Section VIII.

(C) Furnish a copy of this Final Judgment to each successor to an officer, director, or employee described in Paragraph (A) of this Section, together with the advice specified by said paragraph, within thirty (30) days after such succession occurs.

(D) For a period of five (5) years from the entry of this Final Judgment, obtain, and retain in its files, from each officer, director, employee and agent furnished with a copy of this Final Judgment pursuant to Paragraph (A) or Paragraph (C) of this Section VIII, a signed statement evidencing each such person's receipt of a copy of this Final Judgment.

IX

(A) For the purpose of determining or securing compliance with this Final Judgment:

(1) Duly authorized representatives of the Department of Justice shall, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to a defendant made to its principal office, be permitted, subject to any legally recognized privilege:

(a) Access during the office hours of such defendant to inspect and copy all books, ledg- ers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of the defendant relating to any of the matters contained in this Final Judgment; and

(b) Subject to the reasonable convenience of such defendant, and without restraint or interference from it, to interview officers, directors, employees and agents of the defendant, who may have counsel present regarding any such matters.

(2) Any defendant, upon written request of the Attorney General or the Assistant Attorney General in charge of the Antitrust Division made to the defendant's principal office, shall submit such reports in writing, under oath if requested, with respect to any of the matters contained in this Final Judgment as may from time to time be requested.

(B) No information or documents obtained by the means provided in this Section IX 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.

(C) If at any time information or documents are furnished by a defendant to plaintiff, the defendant represents and identifies in writing the material in any such information or documents which is of a type described in 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 the Federal Rules of Civil Procedure," then ten (10) days' notice shall be given by plaintiff to the defendant prior to divulging such material in any legal proceeding (other than a Grand Jury proceeding) to which the defendant is not a party.

X

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 or directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, or for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and punishment of violations hereof.

XI

Entry of this Final Judgment is in the public interest.

Dated:

United States District Judge

UNITED STATES DISTRICT COURT, DISTRICT OF CALIFORNIA

United States of America, Plaintiff, v. *Enderle Metal Products Company, Noll Manufacturing Company, Sugden Engineering Company, and Wellmade Metal Products Company*, Defendants.

Civil No. 77-1579CFP.

Filed: October 23, 1978.

COMPETITIVE IMPACT STATEMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)], the United States hereby submits this Competitive Impact Statement relating to the proposed consent judgment submitted for entry in this civil antitrust proceeding.

I. NATURE OF THE PROCEEDING

On July 21, 1977 the United States filed a civil complaint under Section 4 of the Sherman Act [15 U.S.C. §.4] alleging that the defendants Enderle Metal Products Company, Noll Manufacturing Company, Sugden Engineering Company and Wellmade Metal Products Company violated Section 1 of the Sherman Act [15 U.S.C. § 1]. The complaint alleges that the defendants and various coconspirators engaged in a combination and conspiracy in unreasonable restraint of interstate trade and commerce, the substantial terms of which were that Enderle Metal Products Company raise the prices at which it sold furnace pipe and fittings in the Northern California market to the level of Noll Manufacturing Company's prices there, and that Noll Manufacturing Company raise the prices at which it sold furnace pipe and fittings in the Southern California market to the level of Enderle Metal Products Company's prices there. The Northern California market includes Reno, Nevada and California generally north of Bakersfield; the Southern California market is California generally south of Bakersfield.

In a grand jury indictment and an information filed respectively July 21, 1977 and July 7, 1977 these same four corporate defendants and two individuals were charged with a criminal violation of the Sherman Act on the basis of the same alleged conspiracy charged in this civil complaint. All defendants entered pleas of *nolo contendere* to the criminal price fixing charge and were sentenced to fines totalling $320,000. Those fines have been paid and the criminal cases are concluded.

Entry by the court of the proposed consent judgment will terminate this civil action, except insofar as the court will retain jurisdiction over the matter for possible further proceedings which may be required to interpret, modify or enforce the judgment, or to punish violations of any of the provisions of the judgment.

II. DESCRIPTION OF EVENTS CONSTITUTING THE ALLEGED VIOLATION

Defendants manufacture, from sheet metal, furnace pipe and fittings used to install heating and air conditioning systems in residential and commercial buildings. They sell such furnace pipe and fittings to building supply wholesalers and sometimes directly to building contractors. In 1975 the four defendants sold approximately $6 million worth of furnace pipe and fittings. Their sales accounted for 80% of all sales of furnace pipe and fittings to wholesalers in Northern California and 50% of such sales in Southern California. Sheet metal used by defendants to manufacture furnace pipe and fittings is in part acquired by them from steel plants located outside California. Most of defendants' sales of furnace pipe and fittings were made in California, but some furnace pipe and fittings were sold by them either outside California, or to California companies which resold or delivered to customers or branches outside California.

Historically the market prices for furnace pipe and fittings in Northern and Southern California have been different, with Northern California prices being about 20% higher. In approximately 1973 defendant Enderle Metal Products Company, of Los Angeles, began selling furnace pipe and fittings to several building supply wholesalers in the Northern market, but at the lower prices prevailing in the Southern market. Noll Manufacturing Company headquartered in Richmond, California with a branch in Riv- erside, thereafter proceeded to sell furnace pipe and fittings in the Southern market at prices below those being charged there by Enderle Metal Products Company, and by Sugden Engineering Company, of Bell Gardens, California, and substantially below Noll's own prices in the Northern market.

A Bill of Particulars filed by the United States in the case arising from the criminal indictment states that the United States was prepared to prove at trial that the following events occured. In January 1975 the principal officers of each of the four defendants met. Thomas A. Kelly, president of Wellmade Metal Products Company, Arthur L. Enderle, general manager of Enderle Metal Products Company, Robert E. Noll, then president of Noll Manufacturing Company and Bazil H. Sugden, president of Sugden Engineering Company met at Kelly's request, and the alleged agreement charged in this civil complaint was made. Thereafter Enderle Metal Products Company raised its Northern market prices to the prices charged there by Wellmade Metal Products Company, of Oakland, California, and by Noll Manufacturing Company; likewise Noll Manufacturing Company raised its Southern market prices to the prices charged there by Enderle Metal Products Company. These higher prices continued in effect to the time of the filing of the civil complaint.

According to the allegations of the complaint, this combination and conspiracy had the following effects: (1) furnace pipe and fittings prices in the Northern and Southern California markets have been maintained at noncompetitive levels; (2) purchasers of furnace pipe and fittings from the defendants have been deprived of the benefits of free and open competition in the sale of furnace pipe and fittings; (3) competition between and among the defendants in the sale of furnace pipe and fittings has been restrained; and (4) Endrele Metal Products Company ceased being a substantial competitor in the Northern market and Noll Manufacturing Company became a less substantial competitor in the Southern market.

In statements submitted for sentencing purposes in the criminal cases arising out of the same allegations as this civil complaint the defendants here have admitted attending the above meeting and have admitted the existence of the above agreement to raise prices. However no admissions have been made in this civil suit, which would be settled by the entry of this proposed consent judgment.

III. EXPLANATION OF THE PROPOSED CONSENT JUDGMENT

The United States and the defendants have stipulated that the proposed consent judgment, which is in a form negotiated by the parties, may be entered by the court at any time after compliance with the Antitrust Procedures and Penalties Act. Under the provisions of Section 2(e) of the Antitrust Procedures and Penalties Act, entry of the proposed judgment by the court is conditioned upon a determination by the court that the judgment is in the public interest.

A. Prohibited Conduct

The proposed judgment will permanently enjoin the defendants from entering into or adhering to any agreements or arrangements with any person to fix or maintain the prices at which furnace pipe and fittings are sold, or to allocate the markets in which or customers to whom furnace pipe and fittings are sold. The judgment also prohibits the defendants from communicating to, requesting from, or exchanging with another manufacturer of furnace pipe and fittings information about the prices at which either the defendant or any other manufacturer is selling furnace pipe and fittings, except for the purpose of effecting routine sales transactions between manufacturers. It further prohibits defendants from discussing with another manufacturer or among themselves changes they are considering in prices or terms and conditions of

the sale of furnace pipe and fittings, and from complaining to another manufacturer about that manufacturer's prices.

The judgment permits the defendants to provide a copy to another manufacturer of their own price list or price change announcements without further comment or discussion once those prices have been circulated to the trade and have been put into effect.

B. Required Conduct

The judgment also specifically requires Enderle Metal Products Company to send to the accounts it served in Northern California between April 1973 and April 1975 a copy of its current price book in effect at the time the judgment is entered.

In order to make the provisions of this judgment and the penalties for violation of it known to all responsible employees, each defendant is required, withing sixty days, to furnish a copy of the judgment to each of its officers and directors and to each of its employees or agents with pricing responsibility in the sale of furnace pipe and fittings, and to each officer and director of any affiliated company engaged in the manufacture or sale of furnace pipe and fittings. If new employees are hired in any of these positions, the judgment requires that they be furnished copies of the judgment within thirty days. In order to ensure that all employees required to receive a copy of the judgment do in fact receive a copy and become aware of the judgment's prohibitions, each defendant must, for a period of five years, obtain and keep a signed statement acknowledging receipt from each such employee. This permits enforcement of the judgment by means of a criminal contempt proceeding against employees who violate the prohibitions of the judgment.

The Department of Justice is given access under the proposed judgment to the files and records of the defendant corporations, to examine such records for compliance or non-compliance with the judgment. The Department is also granted access to interview employees of the defendants to determine whether defendants are complying with the judgment. Defendants' officials may also be required to appear before the court to testify under oath regarding their companies' compliance with the judgment.

C. *Effect of the Proposed Judgment on Competition*

The relief encompassed in the proposed consent judgment is designed to prevent a recurrence of the activities alleged in the complaint. The prohibitory language of the judgment will ensure that pricing decisions are independently made by each defendant without prior consultation with, or complaints from, competitors. The judgment provides for sufficient access to defendants' records to allow the Department adequately to monitor defendants' compliance in the future.

The requirement of the judgment that Enderle Metal Products Company circulate its price list to customers and former customers in Northern California will ensure that those customers are apprised of Enderle Metal Products Company's readiness to compete in that market.

It is the opinion of the Department of Justice that the proposed judgment is fully adequate to prevent future antitrust violations of this nature by these defendants. Furthermore, in the Department's opinion, disposition of the case without further litigation is appropriate in view of the fact that the proposed judgment provides for relief equal in scope to that which might be obtained after a full airing of the facts and legal issues at trial.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act [15 U.S.C. § 15] provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages such person has suffered, as well as costs and reasonable attorney's fees. Following the filing of the government's complaint, a private lawsuit, captioned *Heieck Supply Corp. (San Francisco), et al.* v. *Enderle Metal Products Company, et al.* No. C77-1788 CFP, was brought against these defendants under Section 4 on behalf of building supply wholesalers allegedly injured as a result of the violation of the antitrust laws alleged in the government's lawsuit. This private lawsuit is currently in the discovery stage. The plaintiffs have obtained through discovery some of the government's records pertaining to the alleged violation.

These plaintiffs and any potential plaintiffs will retain the same rights to seek monetary damages and equitable remedies that they would have had if the proposed judgment had not been entered. However, pursuant to Section 5(a) of the Clayton Act [amended 15 U.S.C. § 16(a)], the judgment may not be used as *prima facie* evidence in private litigation.

V. Procedures Available for Modification of the Proposed 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 Anthony E. Desmond, Department of Justice, Antitrust Division, 450 Golden Gate Avenue, Box 36046, San Francisco, Calif. 94102, within the 60-day period provided by the Act. The comments and the government'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 the judgment is necessary to the public interest. The proposed judgment itself provides that the court will retain jurisdiction over this action, and that the parties may apply to the court for such orders as may be necessary or appropriate for the modification or enforcement of the judgment.

VI. Alternatives to the Proposed Consent Judgment

This case does not involve any novel or unusual issues of fact or law which might make litigation a more desirable alternative than the entry of the negotiated consent judgment. The proposed judgment provides for all equitable relief requested in the complaint. It further severely limits the circumstances under which representatives of the defendants can communicate with competitors about prices. It does not, however, contain a decree by the court as requested in the complaint, that defendants have violated Section 1 of the Sherman Act. On the contrary it states that the judgment is neither an admission or adjudication of such a violation. Litigation might result in an adjudication that the defendants have violated the Sherman Act but is not likely to result in further relief than that contained in the proposed judgment.

VII. Other Materials

No materials and documents of the type described in Section 2(b) of the Antitrust Procedures and Penalties Act [15 U.S.C. § 16(b)] were considered in formulating this proposed judgment.

Dated: October 23, 1978.

William S. Farmer, Jr.,
Irene Saal Holmes,
Attorneys, Department of Justice.

[FR Doc. 78-31384 Filed 11-7-78; 8:45 am]

[4410-01-M]

Antitrust Division

UNITED STATES v. WHITTENBERG ENGINEERING & CONSTRUCTION CO., ET AL.

Written Comments Upon Consent Judgment and Department of Justice Response Thereto

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16, the following written comments on the proposed judgment filed with the United States District Court in the Western District of Kentucky in Civil Action No. C75-0380L(A), *United States of America* v. *Whittenberg Engineering & Construction Co., et al.* were received by the Department of Justice and are published herewith, together with Justice's response to the comments.

Dated: October 30, 1978.

Charles F. B. McAleer,
Special Assistant for Judgment Negotiations.

September 29, 1978.

Mr. John A. Weedon,
Chief, Antitrust Division, Cleveland Field Office, 995 Celebrezze, Federal Building, Cleveland, Ohio 44199.

Re: *Settlement of United States* v. *Whittenberg Engineering & Construction Co., et al., No. C 75-0380L(A).*

Dear Mr. Weedon: This letter is being written pursuant to the Antitrust Procedures and Penalties Act and as a consequence of the Competitive Impact Statement filed by the Antitrust Division in the above-captioned case. We represent General Electric, a potential private litigant against the named defendants in the above case and others. As you know, the criminal indictments in the general contracting industry in the Louisville, Ky. market area spawned civil litigation which is ongoing. We are informed that to date no civil litigant has been successful in obtaining the grand jury transcripts of any indicted party and further that discovery in the pending civil cases has been hampered by the inability of certain witnesses to recollect events relevant to charges of complementary bidding activity.

Our review of the proposed stipulated Final Judgment does not disclose any provisions which provide that the defendants shall not destroy any files relevant to the charges in the civil complaint filed by the United States or files submitted to the grand jury which returned the indictment. We feel that it is in the public interest that files and documents not otherwise privileged which relate to the subject matter of the civil complaint filed by the United States should not be destroyed by any of the defendants and that such a provision should be incorporated in the Final Judgment. In our opinion, without such a provision, entry of the proposed Decree would not be in the public interest.

Very truly yours,

TERRY M. GRIMM.

OCTOBER 20, 1978.

TERRY M. GRIMM, Esquire,
Winston & Strawn, Suite 5000, One First National Plaza, Chicago, Ill. 60603.

Re: *United States* v. *Whittenberg Enginnering & Construction Co., et al., C75-0380 L(A).*

DEAR MR. GRIMM: Pursuant to 15 U.S.C. § 16(a), the U.S. files the following response to those comments set forth in your letter of September 29, 1978, written on behalf of your client General Electric Co., with regard to the proposed Final Judgment filed in this case. The United States has reviewed your comments, as counsel for a potential private plaintiff, and finds the objections which you raised not sufficient to require any alteration in the proposed judgment.

The original grand jury transcripts to which you refer in the first paragraph of your letter are in the custody of the United States and will remain so regardless of the entry of this Final Judgment. Those files and documents alluded to in the second paragraph of your letter, which were subpenaed from the defendants, are subject to an Inpounding Order of this Court and, pursuant to the Order, will remain in our possession until they are no longer needed in this and any further related proceedings of the United States. only after the need for such files and documents is concluded will these materials be returned.

The proposed Final Judgment covers all of the matters which were alleged in the U.S. Complaint. The purposes of our suit, and the relief sought, have been completely fulfilled by the Judgment. It is the U.S. behalf that it was not contemplated by Congress that consent decrees would be entered into to encourage, or affect the outcome of, private litigation. With regard to any potential private litigants, the proposed judgment is, in effect, neutral as to whatever relief or damages they believe they are entitled to.

The proposed Final Judgment between the United States and the defendants in this action is not the place for such a provision as you propose, i.e., one preventing the destruction of any files relevant to this civil Complaint or any documents subpenaed by the grand jury. Normally, it is the responsibility of a private litigant to move the Court to enjoin any document destruction which it suspects may occur.

In accord with section 2 (b) and (d) of the Antitrust Procedures and penalties Act, 15 U.S.C. § 16, your written comment and this response will be filed with the Court and published in the FEDERAL REGISTER.

Sincerely yours,

JOHN A. WEEDON, *Chief,*
Great Lakes Field Office.

[FR Doc. 78-31426 Filed 11-6-78; 8:45 am]

[4410-01-M]

Attorney General

CERTIFICATION OF THE ATTORNEY GENERAL

In accordance with section 6 of the Voting Rights of 1965, as amended, 42 U.S.C. 1973d, I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Burke County, Ga. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on August 6, 1965, under section 4(b) of the Voting Rights Act of 1965 and published in the FEDERAL REGISTER on August 7, 1965 (30 FR 9897).

GRIFFIN B. BELL,
Attorney General
of the United States.

NOVEMBER 3, 1978.

[FR Doc. 78-31603 Filed 11-6-78; 8:45 am]

[4410-02-M]

[AAG/A Order No. 16-78]

PRIVACY ACT OF 1974

New System of Records

On July 21, 1978, notice of the existence of a system of records maintained by the Federal Bureau of Investigation entitled "The FBI Central Records System" was published in the FEDERAL REGISTER pursuant to 5 U.S.C. 552a(e)(4).

Notice is hereby given that pursuant to the Privacy Act of 1974, 5 U.S.C. 552a, the Federal Bureau of Investigation, Department of Justice, proposes to more fully describe certain records in the Central Records System by publishing a new and separate system, the Investigative Support Information System (ISIS). This system will consist of computerized records concerning individuals involved in several investigations, the nature of which requires compilation of voluminous records relevant to each investigation.

Title 5 U.S.C. 552a(e) (4) and (11) provides that the public be provided a 30-day period in which to comment; the Office of Management and Budget (OMB), which has oversight responsibility under the provisions of the Act, requires a 60-day period in which to review the system before it is implemented. Therefore, the public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to the Administrative Counsel, Office of Management and Finance, Room 1118, Department of Justice, 10th and Constitution Avenue NW., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress within 60 days from the date of publication of this notice, the system will be implemented without further notice in the FEDERAL REGISTER; except that the final rule exempting the system will be published after 60 days. No oral hearings are contemplated.

Appropriate reports have been filed with the Congress and OMB.

Dated: October 26, 1978.

KEVIN D. ROONEY,
Assistant Attorney General
for Administration.

Justice/FBI—013

System name:

Investigative Support Information System (ISIS).

System location:

Federal Bureau of Investigation, J. Edgar Hoover FBI Building, 10th and Pennsylvania Avenue NW., Washington, D.C. 20535, *or* in one of the 59 field divisions (see Appendix) [1] depending upon the location of the office of origin (i.e., the office where the case is being supervised and investigated).

Categories of individuals covered by the system:

The ISIS consists of alphabetical listings on computer tape of individuals whose names surface during the administration of an active, major investigation, and concerning whom information also is maintained in the appropriate investigative file in the FBI Central Records System (JUSTICE/FBI—002), published at 43 FR 31443 on July 21, 1978.

Categories of records in the system:

The ISIS was developed to provide a more efficient method to access the voluminous information documented in significant investigations.

The ISIS consists of a computer record created on individuals whose names appear on documents within the case file.

The ISIS records are maintained in addition to, not in lieu of, the records described in the FBI Central Records System.

Authority for maintenance of the system:

Federal Records Act of 1950, the Constitution of the United States,

[1] Published at 43 FR 31455 on July 21, 1978.

Title 28 U.S.C. 531-537 and various provisions of Title 18, U.S.C., Executive orders and Presidential directives.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

These computerized listings, which are maintained only during the active life of an investigation, are used solely to facilitate the administration of a particularly complex case with voluminous records. Routine use of the information is limited to access by FBI and Department of Justice personnel directly involved in the administration of a specific major case.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage:

ISIS records are maintained on computer tapes and in computer printed listings. In certain cases the ISIS records are on computer disk files.

Retrievability:

The ISIS computer listings and the FBI General Index (as described in JUSTICE/FBI—002 supra) must be searched to determine what information, if any, the FBI may have in its files. The records are retrieved manually from the ISIS listings or, in some cases, through a CRT (Cathode Ray Tube) video screen terminal to the records resident in an FBI computer.

Safeguards:

Records are maintained in a restricted area and are accessed only by FBI employees. All FBI employees receive a complete background investigation prior to being hired. All employees are instructed not to divulge confidential information or any information contained in FBI files. Failure to abide by this instruction violates Department of Justice regulations and may violate certain statutes providing maximum severe penalties of a $10,000 fine or 10 years' imprisonment, or both. Employees who resign or retire are also instructed not to divulge information acquired on the job. These safeguards are the same as explained in JUSTICE/FBI—002, supra.

Retention and disposal:

When the case is brought to a conclusion and when the ISIS is no longer of any use, all listings will be destroyed in an appropriate manner and the computer tapes and disks will be erased and reused for other tasks within the FBI's computer center.

System manager(s) and address:

Director, Federal Bureau of Investigation, Washington, D.C. 20535.

Notification procedure:

Inquiries should be directed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. Requester should include his full name, complete address, date of birth, place of birth, notarized signature, and any other identifying data which may assist in making a record search. The requester should also include the general subject matter of the document or its file number.

Record access and contesting procedures:

Although the Attorney General has exempted the system from the access, contest and amendment provisions of the Privacy Act, some records may be available under the Freedom of Information Act. Inquiries should be addressed to the Director, Federal Bureau of Investigation, Washington, D.C. 20535. The requester should clearly state which record(s) is being contested, the reason(s) for contesting, and the proposed amendment(s) to the record(s).

Record source categories:

The FBI, by the very nature of its responsibilities to investigate violations of law within its investigative jurisdiction and to protect the internal security of the United States, collects information from a wide variety of sources. Basically the records are the result of investigative efforts and information furnished by other Government agencies, law enforcement agencies, the general public, informants, witnesses, and public source material.

Systems exempted from certain provisions of the act:

The Attorney General has exempted this system from subsection (c) (3) and (4), (d), (e) (1), (2) and (3), (e)(4) (G) and (H), (e)(8), (f), (g), and (m) of the Privacy Act pursuant to 5 U.S.C. 552a (j) and (k). Rules have been promulgated in accordance with the requirements of 5 U.S.C 553 (b), (c), and (e) and are being published in the proposed rules section of today's FEDERAL REGISTER.

[FR Doc 78-31512 Filed 11-6-78 8:45 am]

[4510-43-M]

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-78-109-C]

EASTERN ASSOCIATED COAL CO.

Petition for Modification of Application of Mandatory Safety Standard

Eastern Associated Coal Co., 1728 Koppers Building, Pittsburgh, Pa. 15219, has filed a petition to modify application of 30 CFR 75.1700 (oil and gas well barriers) to its Federal No. 2 Mine in Monongalia County, W.Va. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) No appreciable volume of gas comes from the nearly depleted oil and gas sands in the area of the mine.

(2) In lieu of leaving barriers around oil and gas wells, the petitioner proposes to plug the wells to seal them from the surrounding mining area.

(3) The petitioner outlines the plugging technique to be used and cites in support of its effectiveness MESA Informational Report 1052, ERDA Report MERC/R1-771, USBM Technical Progress Report 56.

(4) The petitioner states that this alternative will provide as much if not more safety for the miners than intended by the standard for these reasons:

(a) Elimination of a possible gas flow path;

(b) Simplification of the mine ventilation and haulage system; and

(c) Improvement of subsidence control in second mining.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 7, 1978. Comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Willson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: October 31, 1978.

E. MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31459 Filed 11-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-56-M]

HARBISON-WALKER REFRACTORIES

Petition for Modification of Application of Mandatory Safety Standard

Harbison-Walker Refractories, 2 Gateway Center, Pittsburgh, Pa. 15222, has filed a petition to modify application of 30 CFR 55.9-88 (ROPS) to its Clearfield No. 3 Plant in Clearfield, Pa. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) This petition pertains to a 955 Caterpillar Front End Loader used at the mine.

(2) The loader operates on a level roadway and approach to hoppers

under a railroad tipple; there are no embankments. Hence the petitioner believes there is no danger from an overturn.

(3) ROPS (rollover protective structures) equipped loaders cannot move material from railroad cars into trucks because of insufficient vertical clearance under the tipple.

(4) The petitioner states that operation of the loader without ROPS will not lessen the safety of the loader operator.

REQUEST FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 7, 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: October 31, 1978.

E. MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31460 Filed 11-6-78; 8:45 am]

[4510-43-M]

[Docket No. M-78-52-M]

PICKANDS MATHER & CO.

Petition for Modification of Application of Mandatory Safety Standard

Pickands Mather & Co., 811 Sellwood Building, Duluth, Minn. 55802, has filed a petition to modify application of 30 CFR 55.12-14 (trailing cables) to its Hibbing Taconite Co. Mine in St. Louis County, Minn. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition is as follows:

(1) Each trailing cable has two equipment grounding conductors. These provide ground fault protection for miners.

(2) In addition, each cable has a ground check conductor. A ground check system constantly monitors the ground fault system. It will cut the power to the cable instantly if any loss of continuity in the equipment grounding conductors occurs or if a failure of the ground check conductor or circuitry occurs.

(3) The petitioner states that the ground check system allows miners to safely handle the cable without using insulated tools. It provides an alternative to the standard and affords miners the same protection.

REQUESTS FOR COMMENTS

Persons interested in this petition may furnish written comments on or before December 7, 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: October 31, 1978.

E. MUESSIG,
Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 78-31461 Filed 11-6-78; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

NEW MEXICO STATE STANDARDS

Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary), (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On December 10, 1975 notice was published in the FEDERAL REGISTER (40 FR 57455) of the approval of the New Mexico plan and the adoption of Subpart DD to Part 1952 containing the decision.

The New Mexico plan provides for the adoption of Federal standards as State standards by:

1. Technical Advisory Committee recommendation to the Environmental Improvement Board.

2. Notice of public hearing(s) published in a newspaper of general circulation in the state at least thirty (30) days prior to the date of such hearing(s).

3. Public hearing(s) conducted by the Environmental Improvement Board.

4. Filing of adopted regulations, amendments or revocations under the State Rules Act.

Section 1953.20 of 29 CFR provides that "where any alteration in the Federal program could have an adverse impact on the 'at least as effective as' status of the State program, a program change supplement to a State plan shall be required." In response to the Federal program changes the State of New Mexico has submitted by letter dated May 16, 1978, from Thomas E. Baca, Director, environmental Improvement Division, to Robert A. Wendell, Acting Regional Administrator, and incorporated as part of the plan, the State submitted State Standards comparable to Federal standard § 1910.184 dated June 27, 1975, with revisions and deletions to this section dated July 28, 1975, and March 30, 1976; § 1928.57 dated March 9, 1976, with revisions, corrections and amendments to this section dated March 16, 1976, June 2, 1976, and October 22, 1976. The State adopted amendments, corrections or deletions for §§ 1910.179 and 1910.190 dated June 27, 1975; §§ 1910.309 and 1926.400 dated December 21, 1976; § 1910.1001 dated March 19, 1976; §§ 1910.1003, 1910.1004 and §§ 1910.1006 through 1910.1016 dated August 20, 1976. The State deleted its regulation comparable to § 1910.1005.

These standards, which are contained in New Mexico Occupational Health and Safety Regulations, Section 200—General Standards, Section 300—Construction Standards, and Section 400—Agricultural Standards, were promulgated after public hearings held on April 9, 1976 and March 10, 1978, pursuant to the New Mexico Occupational Health and Safety Act, Chapter 63, Laws of 1972, 59-14-1 though 59-14-24, N.M.S.A.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor—OSHA, Room 602, 555 Griffin Square Building, Griffin and Young Streets, Dallas, Tex. 75202; Director, Environmental Improvement Division, Crown Building, 725 St. Michael's Drive, Santa Fe, N. Mex. 87503; and the Technical Data Center, Room N2439R, Third and Constitution Avenue, NW., Washington, D.C. 20210.

4. *Public participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the New Mexico State plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal standards which were promulgated in accordance with Federal law

including meeting requirements for public participation.

2. The standards were adopted in accordance with the procedural requirements of State law and further participation would be unnecessary.

This decision is effective November 7, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667)). Signed at Dallas, Tex. this 7th day of September 1978.

GILBERT J. SAULTER,
Regional Administrator.

[FR Doc.78-31474 Filed 11-6-78; 8:45 am]

[4510-26-M]

STANDARDS ADVISORY COMMITTEE ON CUTANEOUS HAZARDS

Meeting

Notice is hereby given that the Standards Advisory Committee on Cutaneous Hazards will meet on December 18 and 19, 1978, in Seminar Room No. 2, C-5515, of the New Department of Labor Building, Third Street and Constitution Avenue NW., Washington, D.C.

The Standards Advisory Committee on Cutaneous Hazards was established under section 7(b) of the Occupational Safety and Health Act of 1970 (Pub. L. 91-596) to assist the Secretary of Labor in his standards-setting function.

Draft of the Committee's report to OSHA will be discussed at the meeting. The Meeting will begin at 9 a.m. The public is invited to attend.

For additional information contact:

Mr. John M. Couric, Division of Consumer Affairs, U.S. Department of Labor, OSHA, Room N-3635, Third Street and Constitution Avenue NW., Washington, D.C. 20210, Telephone 202-523-8024.

Written data or views concerning the Committee's assigned subject may be submitted to the Division of Consumer Affairs. Such documents which are received before the scheduled meeting date, preferably with 20 copies, will be presented to the committee and included in the official record of the proceedings.

Anyone who wishes to make an oral presentation should notify the Division of Consumer Affairs before the meeting date. The request should include the amount of time desired, the capacity in which the person will appear, and a brief outline of the content of the presentation. Oral presentations will be scheduled at the discretion of the chairman of the committee, to the extent which time permits.

Official records of the meetings will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, D.C. the 1st day of November 1978.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 78-31325 Filed 11-6-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3377]

AVONDALE MILLS COWIKEE PLANT, EUFAULA, ALA.

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-3377: 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 21, 1978 in response to a worker petition received on March 7, 1978, which was filed on behalf of workers and former workers producing 100 percent cotton drills and sheeting at the Cowikee Plant of Avondale Mills, Eufaula, Ala.

The Notice of Investigation was published in the FEDERAL REGISTER on March 28, 1978 (43 FR 12967). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Avondale Mills, 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. The investigation revealed that all of the criteria have been met.

The 100-percent cotton drills and sheeting produced by the Cowikee plant of Avondale Mills are included in the categories gray woven cottin fabric and gray woven industrial cotton fabric. Although U.S. imports of gray woven cotton fabric decreased from 945 million square yards in 1976 to 654 million square yards in 1977, they were higher than the 570 million square yards recorded in 1975. Imports of gray woven cotton fabric increased from 141 million square yards in the first quarter of 1977 to 197 million square yards in the first quarter of 1978. The ratio of imports to domestic production increased from 11.0 percent in 1975 to 17.5 percent in 1976 before decreasing to 11.7 percent in 1977.

Although U.S. imports of gray woven industrial cotton fabric decreased from 332 million square yards in 1976 to 209 million square yards in 1977, they were higher than the 203 million square yards recorded in 1975. Imports of gray woven industrial cotton fabric increased from 49 million square yards in the first quarter of 1977 to 69 million square yards in the first quarter of 1978. The ratio of imports to domestic production increased from 15.9 percent in 1975 to 25.0 percent in 1976 before declining to 20.2 percent in 1977.

The Department conducted a survey of Avondale Mills' customers, which represented over 80 percent of Avondale Mills' sales in 1976. Several customers indicated that they reduced purchases of cotton drills and sheetings from Avondale Mills and switched to imports in 1977. Many customers indicated an import influence in this market stating that price is the significant factor.

CONCLUSION

After careful review, I conclude that increases of imports of articles like or directly competitive with cotton drills and sheetings produced by the Avondale Mills' Cowikee plant in Eufaula, Ala., contributed importantly to the declines in production and to the total or partial separations of workers at that plant. In accordance with the provisions of the Trade Act of 1974, I make the following certification:

All workers of the Cowikee plant in Eufaula, Ala., of Avondale Mills engaged in employment related to the production of cotton drills and sheetings who became totally or partially separated from employment on or after March 3, 1977, and before May 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers separated on or after May 1, 1978, are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31462 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3173]

E. BONELLI & CO., INC., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3173: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 21, 1978, in response to a worker petition received on February 6, 1978, which was filed by the Amalgamated Clothing & Textile Workers Union on behalf of workers and former workers producing men's jackets at E. Bonelli & Co., Inc., New York, N.Y.

The Notice of Investigation was published in the FEDERAL REGISTER on March 3, 1978 (43 FR 8864). No public hearing was requested and none was held.

The workers of E. Bonelli & Co., Inc. were certified as eligible to apply for adjustment assistance on January 16, 1976(TA-W-294). That certification expired on January 16, 1978.

The information upon which the determination was made was obtained principally from officials of E. Bonelli & 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.

U.S. imports of men's and boys' tailored dress coats and sportcoats decreased from 6,965 thousand in 1976 to 6,269 thousand in 1977, and increased to 1,776 thousand during the first three months of 1978 compared with 1,323 thousand during the same period of 1977.

The surveyed customers as a group increased their purchases of imported men's sportcoats from 1976 to 1977, and in the first 6 months of 1978 compared with the first 6 months of 1977. Several of the customers increased their purchases of imported men's sportcoats from 1976 to 1977, and decreased their purchases from the manufacturer during the same period. Several customers increased purchases of imports in the first 6 months of 1978 compared with the first 6 months of 1977, and decreased purchases from the manufacturer over the same period. Bonelli closed permanently in April 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's sportcoats produced by E. Bonelli & Co., Inc., New York, N.Y. contributed importantly to the decline in production and to the total or partial separation of workers at the firm. In accordance with the provisions of the act, I make the following certification:

All workers at E. Bonelli & Co., Inc., New York, N.Y., who became totally or partially separated from employment on or after January 16, 1978 and before June 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974. All workers separated after June 1, 1978 are denied program benefits.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31463 Filed 11-6-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade 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 November 24, 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 November 24, 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 31st day of October 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
Carlisle Finishing Co. (Machine Printers & Engravers Association).	Carlisle, S.C	Oct. 31, 1978	Oct. 25, 1978	TA-W-4,316	Commission dyeing, printing and finishing of fabric.
Center Garment Co., Inc. (workers)	Fall River, Mass	Oct. 30, 1978	Oct. 24, 1978	TA-W-4,317	Ladies' better dresses.
DeSoto, Inc., United Wall Covering Division (United Paperworkers International Union).	Chicago, Ill	do	Oct. 22, 1978	TA-W-4,318	Wall coverings, vinyl, plastic, paper, etc.
F. V. Maria Co. (company)	South Dartmouth, Mass	Oct. 25, 1978	Oct. 23, 1978	TA-W-4,319	Catching and selling of lobsters and crabs.
Robertson Factories, Inc. (ACTWU)	Bairdford, Pa	Oct. 27, 1978	Oct. 18, 1978	TA-W-4,320	Readymade draperies.
Rockwell International Corp., Admiral Group (IPSSEU).	West Babylon, N.Y	Oct. 30, 1978	Oct. 16, 1978	TA-W-4,321	Service center only—service repair for televisions and refrigerators.
Rud-Shaw Manufacturing Corp. (workers).	Brooklyn, N.Y	Oct. 31, 1978	Oct. 30, 1978	TA-W-4,322	Men's clothing.
San Juan Milling Co. (workers)	Silverton, Colo	Oct. 23, 1978	Oct. 16, 1978	TA-W-4,323	Mining of gold, silver, lead, and zinc, selling of lead and zinc concentrates to the smelter.
Titmus Optical Co. (workers)	Petersburg, Va	Oct. 31, 1978	Oct. 27, 1978	TA-W-4,324	Metal and plastic frames, safety vision lenses, single vision glass and bifocals.
Willis & Paul Corp. (workers)	Wind Gap, Pa	do	do	TA-W-4,325	Fabricate structural steel.

[FR Doc. 78-31464 Filed 11-6-78; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 24, 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 November 24, 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 30th day of October 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
Char-Lin Handbags, Inc. (company)	New Haven, Conn	Oct. 26, 1978	Oct. 24, 1978	TA-W-4,304	Ladies' vinyl handbags.
Chicago Rivet (IAM & AW)	Bellwood, Ill	Oct. 25, 1978	Oct. 23, 1978	TA-W-4,305	Rivets and automatic rivet setting equipment.
Farwell Manufacturing Inc. (workers)	Farwell, Mich	Oct. 27, 1978	Oct. 25, 1978	TA-W-4,306	Moldings for small automobile (upper and lower inside window).
Jaton Corp. (workers)	Boston, Mass	Oct. 26, 1978	Oct. 10, 1978	TA-W-4,307	Women's sportswear.
Carol Lee Fashions (ILGWU)	Santa Monica, Calif	do	Oct. 23, 1978	TA-W-4,308	Women's coats, suits, and jackets.
F/V Marrissa Ann (workers)	Mattaposett, Mass	Oct. 25, 1978	do	TA-W-4,309	Catching and selling finfish.
Nabisco, Inc. (Bakery & Confectionery Workers International Union).	Fair Lawn, N.J	Oct. 26, 1978	do	TA-W-4,310	Cookies and biscuits.
Nazareth Steel Fabricators, division of United Industrial Syndicate, Inc. (workers).	Nazareth, Pa	do	do	TA-W-4,311	Structural steel for custom designed fabricated products.
Pervel Industries, Inc. (workers)	Plainfield, Conn	do	Oct. 5, 1978	TA-W-4,312	Vinyl coated fabrics.
Professional Resource Consultants, Inc. (company).	San Diego, Calif	Oct. 27, 1978	Oct. 20, 1978	TA-W-4,313	Provided engineering and consulting work for the copper producing industries.
Salant & Salant, Inc. (ACTWU)	Henderson, Tenn	Oct. 26, 1978	Oct. 24, 1978	TA-W-4,314	Men's jeans.
S.M.R. Associates (Industrial Union of Marine & Shipbuilding Workers of America).	Glassboro, N.J	Oct. 27, 1978	Oct. 25, 1978	TA-W-4,315	Semitrailers and metal containers for air freight.

[FR Doc. 78-31465 Filed 11-6-78; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3646]

ADRIANA COAT CO., JERSEY CITY, 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-3646: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats at Adriana Coat Co., Jersey City, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Adriana Coat Co., its customers (manufacturers), 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 Trade Act of 1974 must be met. Without regard to whether any of the

other criteria have been met, the following criteria 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 total or partial separation, or threat thereof, and to the absolute decline in sales or production:

The Department conducted a survey of the principal manufacturers for whom Adriana Coat Co. worked in 1976 and 1977. Manufacturers that accounted for a majority of sales in 1976 and 1977, reduced purchases of ladies' fall and winter coats from Adriana Coat, but did not import ladies' fall and winter coats during the period under consideration. These same manufacturers experienced increased sales of ladies' fall and winter coats in 1976, 1977 and in the first half of 1978.

CONCLUSION

After careful review, I determine that all workers of Adriana Coat Co., Jersey City, 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 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31293 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3580]

ALL STAR, INC., PATERSON, N.J.

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-3580: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at All Star, Inc., Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of All Star, Inc., its customers (manufacturers), customers of the manufacturers, 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 affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. The investigation revealed that all of the requirements have been met.

U.S. imports of women's, misses', and children's coats and jackets increased from 2,252 thousand dozen in 1976 to 2,723 thousand dozen in 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977. U.S. imports of women's, misses' and children's raincoats decreased from 261 thousand dozen in 1976 to 242 thousand dozen in 1977, and increased from 84 thousand dozen in the first quarter of 1977 to 129 thousand dozen in the first quarter of 1978.

A customer representing a majority of sales of All Star, Inc. reduced contracts with the subject firm in 1977 compared to 1976 and in the first quarter of 1978 compared to the same period in 1977. A survey of customers which had reduced purchases from the manufacturer revealed that they had increased purchases of imported ladies' coats and raincoats.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats and raincoats produced at All Star, Inc., Paterson, N.J. contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of All Star, Inc., Paterson, N.J., who became totally or partially separated from employment on or after October 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 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management Administration and Planning.

[FR Doc. 78-31292 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-4220]

BETHLEHEM CONTRACTING CO., BATH, 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-4220: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on September 29, 1978, in response to a worker petition received on September 27, 1978, which was filed on behalf of workers and former workers of Bethlehem Contracting Co., Bath, Pa. The investigation revealed that the workers of Bethlehem Contracting Co. produce and install fabricated structural steel on buildings under construction.

The notice of investigation was published in the FEDERAL REGISTER on October 17, 1978 (43 FR 40796). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Bethlehem Contracting Co., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That 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.

Workers of Bethlehem Contracting Co. install fabricated structural steel on buildings under construction. Fabrication is done on the steel prior to its installation. Workers of Bethlehem Contracting Co. were on strike during the second half of 1977. During this period the company was unable to bid on contracts. Following the strike, the firm experienced declines in sales since no projects had been bid upon in prior months.

Imports of fabricated structural steel decreased both absolutely and relative to domestic shipments in the first half of 1978 compared to the first half of 1977. The ratio of imports to domestic shipments declined to 3.9 percent during the first half of 1978 compared to 5.6 percent during the first half of 1977.

CONCLUSION

After careful review, I determine that all workers of Bethlehem Contracting Co., Bath, Pa. are denied eligibility to apply for adjustment assistance under title II, chapter 3 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31294 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3785, 3785A]

CMC INDUSTRIES, INC., NEW YORK, N.Y., AND LUTEEN MANUFACTURING, INC., MORAVIA, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3785, 3785A: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 31, 1978, in response to a worker petition received on May 25, 1978, which was filed on behalf of workers and former workers producing girls' tops, blouses, and shirts at CMC industries, Inc., New York, N.Y. The investigation revealed that CMC Industries contracted with an affiliate company, Luteen Manufacturing, Moravia, N.Y., to have sewn the girls' tops and blouses CMC Industries produced. Luteen Manufacturing, owned by the principals of CMC Industries, worked exclusively for CMC Industries. The investigation, therefore, has been expanded to cover CMC Industries, Inc. (TA-W-3785) and Luteen Manufacturing, Inc. (TA-W-3785A).

The notice of investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26497-98). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of CMC Industries, Inc., its customers, manufacturers, 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.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. Imports increased to 10,186 thousand dozen in the first quarter of 1978 compared to 8,280 thousand dozen in the first quarter of 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977.

Customers surveyed by the Department and accounting for a substantial proportion of CMC Industries Inc.'s sales of blouses, shirts, and tops in 1977 indicated that they decreased their purchases from the CMC Industries in 1977 and increased purchases of imported blouses, shirts, and tops.

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 girls' tops, blouses, and shirts produced at CMC Industries, Inc., New York, N.Y., and Luteen Manufacturing, Inc., Moravia, N.Y., contributed importantly to the decline in sales or production and to the total or partial separation of workers of those firms. In accordance with the provisions of the Act, I make the following certification:

All workers of CMC Industries, Inc., New York, N.Y., and Luteen Manufacturing, Inc., Moravia, N.Y., who became totally or partially separated from employment on or after May 19, 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 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31295 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3802]

CITY GIRL, INC., LODI, 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-3802: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 5, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's coats at City Girl, Inc., Lodi, N.J.

The notice of investigation was published in the FEDERAL REGISTER on June 20, 1978 (43 FR 26498). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of City Girl, Inc., its customers (manufacturers), customers of the manufacturers, 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 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 total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The Department conducted a survey of the principal manufacturers for which City Girl, Inc., worked in 1976 and 1977. None of the manufacturers increased imports in the period under investigation. One manufacturer that accounted for a significant portion of sales in 1978, went out of business in 1977. This manufacturer's customers were surveyed regarding their purchases of men's coats. It was revealed that customers of the manufacturer did not reduce purchases from the manufacturer while increasing imports of men's coats.

CONCLUSION

After careful review, I determine that all workers of City Girl, Inc., Lodi, 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 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31296 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3616]

DELCOR FASHIONS, JERSEY CITY, 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-3616: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978, in response to a worker petition received on April 28, 1978, which was filed by the International Ladies' Garment Workers' Union on

behalf of workers and former workers producing ladies' coats, at Delcor Fashions, Hoboken, N.J. The investigation revealed that the company was located in Jersey City, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Delcor Fashions, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That a significant number or proportion of the workers in such workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated.

The plant was closed from January through April in 1977. The date of the petition is April 25, 1978. In accordance with section 223(b) of the Trade Act no certification may apply to any worker whose last total or partial separation from the subject firm occurred before April 25, 1977, 1 year prior to the date of the petition. Production related employment resumed in the third week of May 1977. Employment increased throughout May and June 1977 as the company geared up to normal production levels. Employment increased in the second and third quarters of 1977 when compared to the same periods in 1976. Employment increased in the first quarter of 1978 compared to the same period in 1977. Employment increased in the first 5 months of 1978 when compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of Delcor Fashions, Jersey City, 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 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31297 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-4006]

E. I. DUPONT DE NEMOURS & CO., INC., POTOMAC RIVER WORKS, MARTINSBURG, 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-4006: Investigation regarding certification of eligibility apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 31, 1978 in response to a worker petition received on July 25, 1978 which was filed on behalf of workers and former workers producing smokeless powder at the Potomac River Works, Martinsburg, W. Va., of E. I. duPont de Nemours & Co., Inc.

The notice of investigation was published in the FEDERAL REGISTER on August 8, 1978 (43 FR 35130). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of E. I. duPont de Nemours & Co., Inc., 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.

U.S. imports of smokeless powder increased from 2,000 pounds in the first half of 1977 to 40,000 pounds in the first half of 1978. The ratio of imports to domestic production increased from 0.02 percent in the first half of 1977 to 0.4 percent in the first half of 1978.

DuPont began importing finished smokeless powder in June 1978. Company imports increased in quantity 162 percent from June 1978 to July 1978. Imports of finished smokeless powder increased as a percentage of total company sales of finished powder from 27.4 percent in June 1978 to 42.9 percent in July 1978. The company intends to cease domestic production of smokeless powder, and import finished powder for sale to its customers.

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 smokeless powder produced at the Potomac River Works, Martinsburg, W. Va., of E. I. duPont de Nemours & Co., Inc., contributed importantly to the decline in sales or production and to the total or partial separation of workers engaged in employment related to the production of that product at the plant. In accordance with the provisions of the Act, I make the following certification:

All workers engaged in employment related to the production of smokeless powder at the Potomac River Works, Martinburg, W. Va., of E. I. duPont de Nemours & Co., Inc., who became totally or partially separated from employment on or after April 1, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31298 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405B]

FIN-TEX VII, INC., LONG ISLAND CITY, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3405B: 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 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts and sweaters at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla., (2) Fin-Tex VII, Inc., Long Island City, N.Y., and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice 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.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978. U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months in 1978.

Evidence developed during the course of the investigation revealed that Fin-Tex VII finishes fabric used solely in the production of ladies' pant suits, skirt suits, shells and dresses for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells and dresses produced at Venice Industries, Inc., from fabric finished at Fin-Tex VII contributed importantly to the decline in sales or production and to the total or partial separation of workers of Fin-Tex VII, Inc., Long Island City, N.Y. In accordance with the provisions of the Act, I make the following certification:

All workers of Fin-Tex VII, Inc., Long Island City, N.Y., who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31299 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3146]

FRASER-JOHNSTON, SAN LORENZO, CALIF.

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-3146: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the act.

The investigation was initiated on February 16, 1978, in response to a worker petition received on January 19, 1978, which was filed by the International Brotherhood of Boilermakers on behalf of workers and former workers producing fabricated metal at Fraser-Johnston, San Lorenzo, Calif. The investigation revealed that the plant produces residential central heating and cooling systems.

The 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.

The determination was based upon information obtained principally from officials of Fraser-Johnston, Westinghouse Electric 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 increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege that imports of fabricated metal have contributed to the closing of Fraser-Johnston. Fabricated metal cannot be considered like or directly competitive with residential central heating and cooling systems. Imports of residential central heating and cooling systems must be considered in determining import injury to workers at Fraser-Johnston.

Industry sources indicate that imports of nonwindow, nonwall, air-conditioners are insignificant. Industry sources indicated that foreign-made air-conditioners have no perceptible impact on the domestic market.

U.S. imports of heaters and heating systems are negligible according to industry sources.

A Department survey of Fraser-Johnston's major customers indicated that none of the customers increased purchases of imported home central heating and cooling systems while decreasing purchases from Fraser-Johnston in 1977 compared to 1976. Survey results confirm the industry analysis which found insignificant imports of these products.

CONCLUSION

After careful review, I determine that all workers of Fraser-Johnston, San Lorenzo, Calif., 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 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31300 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3591, etc.]

HIGH FASHION, INC., PATERSON, N.J., ET AL.

Certifications Regarding Eligibility To Apply for Worker Adjustment Assistance: Corrections

In the matter of [TA-W-3591] High Fashion, Inc., Paterson, N.J.; [TA-W-3610] Style Sportswear, Paterson, N.J.; [TA-W-3619] Grace Coat Co., Hoboken, N.J.; [TA-W-3629] Star Coat Manufacturing Co., Inc., Hoboken, N.J.; [TA-W-3644] RCR Sportswear, Inc., Passaic, N.J.; [TA-W-3670] Super Craft Coats, Inc., Garfield, N.J.; [TA-W-3682] Brade Sportswear, Perth Amboy, N.J.

Due to an administrative error, the impact dates in the certification paragraphs in the conclusion of the following cases were published incorrectly and should be corrected to read "April 25, 1977," instead of "March 28, 1977." These cases were published in the FEDERAL REGISTER as indicated below:

TA-W-3591—October 3, 1978—43 FR 45656, FR Doc. 78-27903.
TA-W-3610—September 12, 1978—43 FR 40573, FR Doc. 78-25528.
TA-W-3629—October 20, 1978—43 FR 49074, FR Doc. 78-29657.
TA-W-3644—October 13, 1978—43 FR 47329, FR Doc. 78-28892.
TA-W-3670—October 13, 1978—43 FR 47316, FR Doc. 78-28465.

TA-W-3682—October 17, 1978—43 FR 47797, FR Doc. 78-29145.

Due to an administrative error, the impact date in the certification paragraph in the conclusion of the following case was published incorrectly and should be corrected to read "April 25, 1977," instead of "March 23, 1977." This case was published in the FEDERAL REGISTER as indicated below:

TA-W-3619—September 26, 1978—43 FR 43579, FR Doc. 78-26886.

Signed at Washington, D.C., this 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31301 Filed 11-5-78; 8:45 am]

[4510-28-M]

[TA-W-3592]

INTERNATIONAL COAT, INC., PATERSON, 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-3592: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and raincoats at International Coat, Inc., Paterson, N.J.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of International Coat, Inc., its customers (manufacturers), 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 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 total or partial separation, or threat thereof, and to the absolute decline in sales or production.

International Coat began producing ladies' coats and jackets in January 1977. Sales increased in each quarter of 1977 compared to the previous quarter. Sales increased in the first quarter of 1978 compared to the first quarter of 1977.

CONCLUSION

After careful review, I determine that all workers of International Coat, Inc., Paterson, 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 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31302 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3622]

JERSEY MADE FASHIONS, INC., HOBOKEN, 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-3622: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' winter garments at Jersey Made Fashions, Hoboken, N.J. The investigation revealed that the company made ladies' coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Jersey Made Fashions, Inc., its customers (manufacturers), 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 any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Jersey Made Fashions, Inc., began operations in May 1976 as a contractor. Sales are equal to production. Sales during the June-December period increased in 1977 compared to 1976. Sales during the January to May 1978 period increased compared to the same period in 1977.

The few layoffs that occurred in the first quarter of 1978 resulted from seasonality which is evident in the employment history of the firm and the industry.

CONCLUSION

After careful review, I determine that all workers of Jersey Made Fashions, Inc. of Hoboken, 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 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31303 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405C]

KNIT STUDIOS, U.S.A., INC., REGO PARK, WEST BABYLON, AND NANUET, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3405C: 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 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters, at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla. (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

U.S. imports of women's, misses' and children's dresses decreased from 1,614

thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Knit Studios, U.S.A., Inc. is a retail outlet operation of Venice Industries, Inc. engaged in the sale of ladies' pant suits, skirt suits, shells, and dresses, purchased solely from its parent company, Venice Industries, Inc. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

The determination was based upon information obtained principally from officials of Venice 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.

U.S. imports of women's misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.1 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies' pant suits, skirt suits, shells, and dresses, produced at Venice Industries, Inc., and sold at Knit Studios, U.S.A., Inc., Rego Park, N.Y., West Babylon, N.Y. and Nanuet, N.Y. contributed importantly to the decline in sales or production and to the total or partial separation of workers of those retail outlets. In accordance with the provisions of the Act, I make the following certification:

All workers of Knit Studios, U.S.A., Inc., Rego Park, N.Y., West Babylon, N.Y. and Nanuet, N.Y. engaged in employment related to the production of ladies' pant suits, skirt suits, shells, and dresses, who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31304 Filed 11-6-78; 8:45 am]

[TA-W-3405D]

[4510-23-M]

KNIT STUDIOS, U.S.A., INC., CARLSTADT AND BURLINGTON, NEW JERSEY

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-3405D: 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 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters, at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla. (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses), and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice 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.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Knit Studios, U.S.A., Inc. is a retail outlet operation of Venice Industries, Inc. engaged in the sale of ladies' pant suits, skirt suits, shells, and dresses, produced solely by Venice. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries, Inc. during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies pant suits, skirt suits, shells, and dresses, produced at Venice Industries, Inc. and sold at Knit Studios, U.S.A., Inc., Carlstadt, N.J. and Burlington, N.J. contributed importantly to the decline in sales or production and to the total or partial separation of workers of those retail outlets. In accordance with the provisions of the Act, I make the following certification:

All workers of Knit Studios, U.S.A., Inc. engaged in employment related to the production of ladies' pant suits, skirt suits, shells, and dresses, who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31305 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405E]

KNIT STUDIOS, U.S.A., INC., READING, PA.

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-3405E: 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 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla., (2) Fin-Tex VII, Inc., Long Island City, N.Y., and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses), and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice 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.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Knit Studios, U.S.A., Inc., is a retail outlet operation of Venice Industries, Inc., engaged in the sale of ladies pant suits, skirt suits, shells, and dresses purchased solely from Venice. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries, Inc., during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies pant suits, skirt suits, shells, and dresses produced at Venice Industries, Inc., and sold at Knit Studios, U.S.A., Inc., Reading, Pa., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that retail outlet. In accordance with the provisions of the Act, I make the following certification:

All workers on Knit Studios, U.S.A., Inc., Reading, Pa., engaged in employment related to the production of ladies pant suits, skirt suits, shells, and dresses who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31306 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3558]

M & D COAT CO., INC., HUNTINGTON, LONG ISLAND, 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-3558: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on April 27, 1978, in response to a worker petition received on April 18, 1978, which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats, suits, and rainwear at M & D Coat Inc., Huntington, Long Island, N.Y. The investigation revealed that the plant primarily produces women's coats and raincoats.

The notice of investigation was published in the FEDERAL REGISTER on May 16, 1978 (43 FR 21069). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of M & D Coat Co., Inc., Huntington, Long Island, N.Y., its customers (manufacturers), 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. 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 total or partial separation, or threat thereof, and to the absolute decline in sales or production.

The manufacturer which contracts most of the company's production does not import finished coats and does not use foreign contractors to produce coats. Sales of this manufacturer increased from 1976 to 1977 and in the first half of 1978 compared to the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of M & D Coat Co., Inc., Huntington, Long Island, 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 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31307 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3965]

NELELY DON, INC., KANSAS CITY, MO.

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-3965: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 11, 1978, in response to a worker petition received on July 5, 1978, which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing ladies' dresses and sportswear at the Kansas City, Mo., plant of Nelly Don, Inc.

The notice of investigation was published in the FEDERAL REGISTER on July 25, 1978 (43 FR 32199-32200). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Nelly Don, Inc., its customers, 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. 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.

Nelly Don produced primarily women's and misses' dresses at the Kansas City plant. U.S. imports of women's and misses' dresses declined from 659 thousand dozen in 1976 to 587 thousand dozen in 1977. Imports increased from 346 thousand dozen during January-June 1977 to 392 thousand dozen during January-June 1978. Imports amounted to 4.6 percent of total U.S. production of women's and misses' dresses in 1976 and 4.0 percent in 1977.

A survey conducted by the Department revealed that most customers surveyed who decreased purchases from Nelly Don, Inc., in 1977 and the first 6 months of 1978 did not purchase imported dresses during those periods. Those few customers who did purchase imports indicated that neither Nelly Don nor foreign suppliers were their principal sources of supply for women's and misses' dresses. Those customers who increased import purchases in 1977 and the first 6 months of 1978 also increased purchases from other domestic sources to a greater degree during the same period.

CONCLUSION

After careful review, I determine that all workers of the Kansas City, Mo., plant of Nelly Don, Inc., 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 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31308 Filed 11-6-78; 8:45 am]

[4519-28-M]

[TA-W-3134]

PARIS KNITTING MILLS, INC. OZONE PARK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3134: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, N.Y., plant of Paris Knitting Mills. The investigation was expanded to include each plant of Paris Knitting Mills. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., knitting department (TA-W-3134B), Maspeth, N.Y., cutting department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice 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.

U.S. imports of women's, misses', and children's suits (including pantsuits and jump suits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells, and dresses solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Paris Knitting Mills, Ozone Park, N.Y., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provi-

sions of the Act, I make the following certification:

All workers of Paris Knitting Mills, Inc., Ozone Park, N.Y., who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31309 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134A]

PARIS KNITTING MILLS, INC., CARLSTADT, N.J.

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-3134A: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y., plant of Paris Knitting Mills Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., knitting department (TA-W-3134B), Maspeth, N.Y., cutting department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice 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.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells, and dresses, solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Paris Knitting Mills, Inc., Carlstadt, N.J., contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Paris Knitting Mills, Inc., Carlstadt, N.J., who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31310 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134B]

PARIS KNITTING MILLS, INC., MASPETH KNITTING DEPARTMENT, MASPETH, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3134B: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y., plant of Paris Knitting Mills Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., knitting department (TA-W-3134B), Maspeth, N.Y., cutting department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice 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 the requirements have been met.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186

thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells, and dresses solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses, in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Paris Knitting Mills, Inc., contributed importantly to the total or partial separation of workers of the knitting department of the Maspeth, N.Y., plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the knitting department of the Maspeth, N.Y. plant of Paris Knitting Mills, Inc., who became totally of partially separated from employment on or after February 10, 1978, are eligible to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31311 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134C]

PARIS KNITTING MILLS, INC., MASPETH CUTTING DEPARTMENT, MASPETH, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3134C: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y. plant of Paris Knitting Mills, Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills, Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., Knitting Department (TA-W-3134B), Maspeth, N.Y., Cutting Department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice 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.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells and dresses solely for its parent company, Venice Industries, Inc. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells and dressed produced by Paris Knitting Mills, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of the Cutting Department of its Maspeth, N.Y. plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Cutting Department of the Maspeth, N.Y. plant of Paris Knitting Mills, Inc. who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31312 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3134B]

PARIS KNITTING MILLS, INC., LONG ISLAND CITY, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3134D: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 15, 1978, in response to a worker petition received on January 16, 1978, which was filed on behalf of workers and former workers producing ladies' knitted wear at the Ozone Park, Queens, N.Y., plant of Paris Knitting Mills, Inc. (TA-W-3134). The investigation was expanded to include each plant of Paris Knitting Mills, Inc. They are as follows: Carlstadt, N.J. (TA-W-3134A), Maspeth, N.Y., Knitting Department (TA-W-3134B), Maspeth, N.Y., Cutting Department (TA-W-3134C), and Long Island City, N.Y. (TA-W-3134D).

The notice of investigation was published in the FEDERAL REGISTER on February 28, 1978 (43 FR 8209). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Paris Knitting Mills, Inc., Venice 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.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 334 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months in 1978.

Evidence developed during the course of the investigation revealed that Paris Knitting Mills produces pant suits, skirt suits, shells and dresses solely for its parent company, Venice Industries, Inc. A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells and dresses produced by Paris Knitting Mills, Inc., contributed importantly to the decline in sales or production and the the total or partial separation of workers of the Long Island City plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Paris Knitting Mills, Inc., Long Island City, N.Y., who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31313 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3973]

POIRETTE CORSET CO., INC., NEW YORK, 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-3973: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 13, 1978 in response to a worker petition received on July 10, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing brassieres and girdles at Poirette Corset Co., New York, N.Y. The investigation revealed that the plant primarily produces corsets and girdles.

The notice of investigation was published in the FEDERAL REGISTER on July 28, 1978 (43 FR 32885). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Poirette Corset 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. 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.

Imports of corsets and girdles increased from 231,000 dozen in 1976 to 269,000 dozen in 1977, and from 53,000 dozen in the first quarter of 1977 to 72,000 dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 6 percent in 1976 to 6.8 percent in 1977.

A survey of Poirette's customers was conducted by the Department. The survey revealed that customers who reduced purchases of girdles and corsets from Poirette in 1977 and 1978 did not increase their purchases of imports during the same period. customers indicated that there was minimal import influence in the market for corsets and girdles.

CONCLUSION

After careful review, I determine that all workers of Poirette Corset Co., Inc., New York, 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 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31314 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3642]

PRESIDENT SPORTSWEAR, INC., PASSAIC, 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-3642: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing children's coats at President Sportswear, Inc. Passaic, N.J. The investigation revealed that workers at President Sportswear produce juniors' and children's coats.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of President Sportswear, its customers (manufacturers), customers of the manufactur-

ers, 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 any of the other criteria have been met, the following criteria have not been met:

That sales or production, or both, of such firm or subdivision have decreased absolutely; and that such increased imports have contributed importantly to the separations, or threat thereof, and to the decrease in sales or production.

U.S. imports of women's, misses' and children's coats and jackets increased from 2252 thousand dozen in 1976 to 2723 thousand dozen in 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978.

Subsequent to the earliest impact date which could be set under the law—April 25, 1977—there were no significant layoffs until November 1977 when the layoffs typical to the firm and the industry occurred. Sales and production at President Sportswear for the first 5 months of 1978 were 12 percent higher than for the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I determine that all workers of President Sportswear, Inc., Passaic, 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 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31315 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405A]

SHELLS OF MIAMI, INC., MIAMI, 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-3405A: 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 22, 1978, in response to a worker petition received on February 21, 1978, which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts, and sweaters, at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla. (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The Notice of Investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice 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.

U.S. imports of women's, misses', and children's suits (including pant suits and jumpsuits), decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses', and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

Evidence developed during the course of the investigation revealed that Shells of Miami produces pant suits, skirt suits, shells, and dresses, solely for its parent company, Venice Industries, Inc. A departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses, in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with women's pant suits, skirt suits, shells, and dresses, produced by Shells of Miami, Inc., Miami, Fla., contributed importantly to the decline in sales or production 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 of Shells of Miami, Inc., Miami, Fla., who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31316 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3957]

SPEER OPTICAL CORP., SOUTH ORANGE, N.J.

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-3957: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on July 6, 1978, in response to a worker petition received on July 5, 1978, which was filed on behalf of workers and former workers producing eyeglass frames at Speer Optical Corp., South Orange, N.J.

The notice of investigation was published in the FEDERAL REGISTER on July 18, 1978 (43 FR 30927-30928). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Speer Optical 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.

U.S. imports of eyeglass frames increased from 27.1 million units in 1976 to 29 million units in 1977 and from 7.6 million units in the first quarter of 1977 to 8.4 million units in the first quarter of 1978. The import to domestic production ratio increased from 120.7 percent in 1976 to 126.0 percent in 1977 and from 139.7 percent in the first three months of 1977 to 145.1 percent in the same period of 1978.

Several customers of Speer Optical who were surveyed decreased purchases from Speer from 1976 to 1977 and increased import purchases, 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 eyeglass frames produced at Speer Optical Corp., South Orange, N.J., contributed importantly to the decline in sales 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 Speer Optical Corp., South Orange, N.J., who became totally or partially separated from employment on or after June 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 31st day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31317 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3675]

TONIA FASHIONS, INC., WEEHAWKEN, N.J.

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-3675: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on May 8, 1978 in response to a worker petition received on April 28, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coats and suits at Tonia Fashions, Inc., Weehawken, N.J. The investigation revealed that ladies' coats and jackets are produced.

The notice of investigation was published in the FEDERAL REGISTER on May 26, 1978 (43 FR 22793). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of Tonia Fashions, Inc., its customers (manufacturers), customers of the manufacturers, 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.

U.S. imports of women's, misses', and children's coats and jackets increased from 2252 thousand dozen in 1976 to 2723 thousand dozen in 1977. Imports declined from 590 thousand dozen in the first quarter of 1977 to 572 thousand dozen in the first quarter of 1978. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The Department conducted a survey of the principal manufacturers for which Tonia Fashion worked in 1976 and 1977. A manufacturer that accounted for 100 percent of Tonia's sales in the first quarter of 1977 discontinued purchases of ladies' coats from Tonia in the first quarter of 1978. This manufacturer's sales declined in the first quarter of 1978 compared to the first quarter of 1977. Customers of the manufacturer reduced purchases of ladies' coats from the manufacturer and increased purchases of imported coats in the first quarter of 1978 compared to the first quarter of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with the ladies' coats produced at Tonia Fashions, Inc., Weehawken, N.J., contributed importantly to the decline in sales and to the separation of workers at that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Tonia Fashions Inc., Weehawken, N.J., who became totally or partially separated from employment on or after October 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 30th day of October 1978.

HARRY J. GILMAN,
Acting Director, Office of Foreign Economic Research.

[FR Doc. 78-31318 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3845 and 3845 A]

TRAVIS MILLS, INC., NEW YORK, N.Y., LITITZ, 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-3845: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on June 14, 1978 in response to a worker petition received on June 9, 1978 which was filed on behalf of workers and former workers warehousing fabrics at Travis Mills, Inc., New York, N.Y. The investigation revealed that the petitioning workers cut samples and warehoused some synthetic fabric, which was produced at the Lititz, Pa., plant of Travis Mills. The investigation also revealed that Travis Mills employed workers in an office in New York, N.Y. The investigation was expanded to include all workers and former workers producing, warehousing and providing services to Travis Mills, Inc., in Lititz, Pa. and New York, N.Y.

The notice of investigation was published in the FEDERAL REGISTER on June 27, 1978 (43 FR 27924). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Travis Mills, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separation, or threat thereof, and to the absolute decline in sales or production.

Imports of finished fabric, which are considered to be like or directly competitive with synthetic fabric, declined

from 464 million yards in 1976 to 453 million yards in 1977.

Imports in the first quarter of 1978 increased to 255 million yards compared to 187 million yards in the first quarter of 1977. The imports to production ratio for finished fabric increased to 1.9 percent in 1977 compared to 1.8 percent in 1976.

The U.S. Department of Labor conducted a survey of some of the customers of Travis Mills. Responses to the survey revealed that there were no customers that reduced purchases from Travis Mills and increased purchases from foreign sources in 1977 as compared to 1976 or in the first half of 1978 as compared to the first half of 1977.

CONCLUSION

After careful review, I determined that all workers of Travis Mills, Inc., New York, N.Y., and Lititz, 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 31st day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31319 Filed 11-6-78; 8:45 am]

[4510-28-M]

[TA-W-3405]

VENICE INDUSTRIES, INC., CARLSTADT, N.J.

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-3405: 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 22, 1978 in response to a worker petition received on February 21, 1978 which was filed on behalf of workers and former workers producing ladies' knitted suits, dresses, pants, skirts and sweaters at Venice Industries, Inc., Carlstadt, N.J. The investigation was expanded to include workers of the following subsidiaries of Venice Industries: (1) Shells of Miami, Inc., Miami, Fla., (2) Fin-Tex VII, Inc., Long Island City, N.Y. and (3) Knit Studios, U.S.A., Inc. The investigation revealed that women's knitted skirt suits, pant suits, shells (pullover blouses) and dresses are produced by Venice Industries and its subsidiaries.

The notice of investigation was published in the FEDERAL REGISTER on April 7, 1978 (43 FR 14775). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Venice 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.

U.S. imports of women's, misses' and children's suits (including pant suits and jumpsuits) decreased from 408 thousand dozen in 1976 to 384 thousand dozen in 1977. The ratio of imports to domestic production decreased from 11.4 percent in 1976 to 10.5 percent in 1977. Imports increased from 62 thousand dozen in the first 3 months of 1977 to 104 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's blouses and shirts increased from 30,273 thousand dozen in 1976 to 30,849 thousand dozen in 1977. The ratio of imports to domestic production decreased from 70.3 percent in 1976 to 69.7 percent in 1977. Imports increased from 8,280 thousand dozen in the first 3 months of 1977 to 10,186 thousand dozen in the same period of 1978.

U.S. imports of women's, misses' and children's dresses decreased from 1,614 thousand dozen in 1976 to 1,420 thousand dozen in 1977. The ratio of imports to domestic production decreased from 8.0 percent in 1976 to 6.7 percent in 1977. Imports increased from 371 thousand dozen in the first 3 months of 1977 to 403 thousand dozen in the first 3 months of 1978.

A Departmental survey of Venice's customers revealed that some of those who responded to the survey increased their purchases of imported pant suits, skirt suits, and dresses in 1977 compared to 1976 while decreasing purchases of like or directly competitive products from Venice Industries during the same time periods.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ladies pant suits, skirt suits, shells and dresses produced at Venice Industries, Inc., Carlstadt, N.J. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Venice Industries, Incorporated, Carlstadt, N.J. who became totally or partially separated from employment on or after August 20, 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 30th day of October 1978.

JAMES F. TAYLOR,
Director, Office of Management, Administration and Planning.

[FR Doc. 78-31320 Filed 11-6-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

Internal Revenue Service

[Application No. D-495]

DANIEL INDUSTRIES, INC. EMPLOYEES' PROFIT SHARING AND RETIREMENT PLAN

Proposed Exemptions From Certain Transaction

AGENCIES: Department of Labor, Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (collectively, the Agencies) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a parcel of real property by Daniel Industries, Inc. Employees' Profit Sharing and Retirement Plan (the Plan) to Daniel Industries, Inc. (the Employer). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Employer, and other persons participating in the proposed transaction.

DATE: Written comments and requests for a public hearing must be received by the Department of Labor on or before December 7, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be sent to: Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216, Attention: Application No. D-495. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216,

and at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Robert N. Sandler of the Department of Labor, 202-523-8882. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed exemption from the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed on behalf of the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains facts and representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Agencies for the complete representations of the applicants.

On January 31, 1968, the Plan purchased 13.8841 acres of real estate adjacent to the Employer for approximately $410,000. The subject property is presently improved with asphalt surfacing over a portion of the property and a perimeter fence surrounding a portion of the property. There is also a small metal building located on the property. By written agreement dated May 1, 1969, the Plan leased 29,380 square feet of the property to the Employer for use as a parking lot. Over the years the Employer required an increasingly greater parking area for its employees and on six occasions the amount of leased property was increased without written amendment to the lease. The total area leased by the Employer is currently 151,138 square feet or approximately 25 percent of the entire property. The remainder of the property is unoccupied and nonincome producing. Currently the Employer is paying a rental of $1,200 per month based on a valuation of the leased property at $0.90 per square foot. The Plan owns no other real property.

The Administrative Committee makes investment decisions for the Plan. its members are corporate officers of either the Employer or a division of the Employer.

The Administrative Committee has determined that it would be in the best interests of the Plan to sell the subject real property. The number of employees of the Employer has increased over the years since the property was purchased and the payment of benefits has likewise increased during that period of time. The Plan now requires increased liquidity of funds in order to assure the payment of benefits to retiring participants and their beneficiaries. In order to achieve the desired liquidity, the Plan must either sell the subject property or part of the approximately 213,400 shares of Employer stock which it owns. Those shares are not registered under the Securities Act of 1933, and therefore, under the Securities Act and Rule 144 of the Securities and Exchange Commission thereunder, the shares can be sold by the Plan only subject to certain restrictions. For this reason, the sale by the Plan of a substantial portion of the Employer stock would involve substantially more time and expense than the sale for cash of the subject property.

The Employer has obtained three separate appraisals of the subject real property. The Employer proposes to purchase the subject property for a cash price of $1,130,000 ($1.87 per square foot), the highest appraised value of the property. The proposed purchase price represents 18 percent of Plan assets.

The Trustee retained an independent realtor, Laguarta, Gavrel & Kirk, Inc., to offer the property for sale at a cash price of $1,200,000. The reason for the realtor's price being $70,000 higher than the appraised value is that a 6-percent sales commission is included in the realtor's offering price. There will be no sales commission of any kind in connection with the sale of the subject property by the Plan to the Employer. The property was offered for sale by the realtor for a period of 6 months. No offers at the above-stated price were received.

NOTICE TO INTERESTED PERSONS

Notice of the pending exemption will be given to all interested parties, including the Trustee of the Plan and all active and retired participants or their beneficiaries, within 10 days of the publication of this notice in the FEDERAL REGISTER, by delivery in person or by first class mail.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and of their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction;

(5) This document does not meet the Treasury Department's criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set

forth in ERISA Procedure 75-1 and Rev. Proc. 75-26. If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, would not apply to the purchase of 13.881 acres of real property located in Houston, Harris County, Tex. by the Employer from the Plan for $1,130,000 cash, provided that such amount is not less than the fair market value of such property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of November, 1978.

IAN D. LANOFF,
Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

[FR Doc. 78-31280 Filed 11-6-78; 8:45 am]

[4510-30-M]

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

MEETING

The ninth meeting of the NCUC will be held in the Los Angeles Hilton Hotel, Los Angeles, Calif., in the Patio Room on November 11, 12, 13, and 14. The meeting will begin at 2 p.m. on November 11 and will conclude at 5 p.m. on November 14.

TENTATIVE AGENDA—NOVEMBER MEETING

Hilton Hotel, Los Angels, Calif., Patio Room.

November 11

2-5:30 p.m.—Commission discussion of first interim report and review of second draft.

Adjourn (5:30 p.m.).

November 12

10 a.m.-12:30 p.m.—Commission discussion of First Interim Report and review of second draft.

2-3 p.m.—Report to Commission by Phil Booth on research concerning agricultural coverage.

3-5 p.m.—Commission discussion of first interim report and review of second draft.

Adjourn (5:30 p.m.).

November 13

9 a.m.-12:30 p.m.—Public testimony—The emphasis will be on agricultural coverage.

2-5 p.m.—Public testimony (continued).

Adjourn (5 p.m.).

November 14

9 a.m.-12:30 p.m.—Commission discussion of first interim report and review of second draft.

2-5 p.m.—Commission discussion of first interim report and review of second draft.

Adjourn (5 p.m.).

Telephone inquiries and communications concerning this meeting should be directed to:

James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, Room 440, 1815 Lynn Street, Rosslyn, Va. 22209.

Signed at Washington, D.C., this 2d day of November 1978.

JAMES M. ROSBROW,
Executive Director, National Commission on Unemployment Compensation.

[FR Doc. 31458 Filed 11-6-78; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-97]

CORNELL UNIVERSITY

Proposed Renewal of Facility License

The U.S. Nuclear Regulatory Commission (the Commission) is considering renewal of Facility License No. R-89, issued to Cornell University (the licensee), for operation of the Zero Power Reactor located on the licensee's campus in Ithaca, N.Y.

The renewal would extend the expiration date of Facility License No. R-89 to November 21, 1998, in accordance with the licensee's timely application for renewal dated October 6, 1978.

Prior to renewal of Facility License No. R-89, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 7, 1978, the licensee may file a request for a hearing with respect to renewal of the subject facility license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street

NW., Washington, D.C., by the above date. A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for renewal dated October 6, 1978, as supplemented by future submittals, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Bethesda, Md., this 27th day of October 1978.

For the Nuclear Regulatory Commission.

ROBERT W. REID,
Chief, Operating Reactors Branch No. 4, Division of Operating Reactors.

[FR Doc. 78-31211 Filed 11-6-78; 8:45 am]

[7590-01-M]

[Docket No. 50-220]

NIAGARA MOHAWK POWER CORP.

Proposed Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-63 issued to Niagara Mohawk Power Corp. (the licensee), for operation of the Nine Mile Point Nuclear Station, Unit No. 1, located in Oswego County, N.Y.

The amendment would revise the provisions on the Technical Specifications to increase the spent fuel storage capacity from 1984 fuel assemblies to 3009 fuel assemblies in accordance with the licensee's application for amendment dated March 22, 1978.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By December 7, 1978, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect or any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 800-325-6000 (in Missouri 800-342-6700). The Western Union operator should be given Datagram Identification No. 3737 and the following message addressed to Thomas A. Ippolito: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Eugene B. Thomas, Jr., Esq. LeBoeuf, Lamb, Leiby, and Mac Rae, 1752 N Street NW., Washington, D.C. 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 22, 1978, which is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., and at the Oswego County Office Building, 46 East Bridge Street, Oswego, N.Y. 13126.

Dated at Bethesda, Md., this 27th day of October 1978.

For the Nuclear Regulatory Commission.

THOMAS A. IPPOLITO,
Chief, Operating Reactors Branch No. 3, Division of Operating Reactors.

[FR Doc. 78-31212 Filed 11-6-78; 8:45 am]

[3110-01-M]

OFFICE OF MANAGEMENT AND BUDGET

CLEARANCE OF REPORTS

List of Requests

The following is a list of requests for clearance of reports intended for use in collecting information from the public received by the Office of Management and Budget on October 31, 1978 (44 U.S.C. 3509). The purpose of publishing this list in the FEDERAL REGISTER is to inform the public.

The list includes—

The name of the agency sponsoring the proposed collection of information;

The title of each request reveived;

The agency form number(s), if applicable;

The frequency with which the information is proposed to be collected;

An indication of who will be the respondents to the proposed collection;

The estimated number of responses;

The estimated burden in reporting hours; and

The name of the reviewer or reviewing division or office.

Requests for extension which appear to raise no significant issues are to be approved after brief notice through this release.

Further information about the items on this daily list may be obtained from the Clearance Office, Office of Management and Budget, Washington, D.C., 20503, 202-395-4529, or from the reviewer listed.

NEW FORMS

COUNCIL ON ENVIRONMENTAL QUALITY

Mailing list questionnaire
Annually
Mailing lists and target particular interests; 16,000 responses; 2,000 hours
Clarke, Edward H., 395-5867

U.S. CIVIL SERVICE COMMISSION

Mid level data sheet
CSC-1056-A-12/76 and 1056-B-5/76
On occasion
Employment applicants, 110,300 responses; 55,150 hours
Marsha Traynham, 395-3773

DEPARTMENT OF ENERGY

Petroleum product emergency telephone survey
EIA-92
On occasion
Prime suppliers of residual fuel and refined petroleum, 900 responses; 900 hours
Hill, Jefferson B., 395-5867

DEPARTMENT OF COMMERCE

Bureau of Census
Multiplicity survey—reconciliation of sample persons
D-846 (X)
Single-time
Households in census dress rehearsal areas, 3,000 responses; 510 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

National Institutes of Health
NICHD centers staff development survey
Single-time
Researchers at NICHD centers, 385 responses; 77 hours
Richard Eisinger, 395-3214

Office of Human Development
Intake and service summary form; youth served on a one-time basis by the RYA-funded projects; YDB summary sheet
Other (See SF-83)
Clients of funded runaway youth projects, 35,404 responses; 8,851 hours
Reese, B. F., 395-3211

Alcohol, Drug Abuse and Mental Health Administration

Nationwide survey of adult drinking patterns
Single-time
U.S. household population within the 48 contiguous States, 2,000 responses; 2,333 hours
Office of Federal Statistical Policy and Standard
Richard Eisinger, 673-7956

REVISIONS

ENVIRONMENTAL PROTECTION AGENCY

NPDES—Manufacturing and commercial and municipal discharge permit application standard forms EPA 7550- 22, 23, 24
On occasion
Point source discharge to navigable waters, 10,000 responses; 100,000 hours
Clarke, Edward H., 395-5867

DEPARTMENT OF COMMERCE

Bureau of Census
Area sample—Interviewer record, interviewer followup, monthly noncertainty
B-645, B-646, B-647
Monthly
Retail and service business firms, 35,280 responses; 5,440 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Alcohol, Drug Abuse and Mental Health Administration
Client oriented data acquisition process (CODAP)
Adm 427-1, 2, 3, 4
Monthly
Federally funded drug abuse programs, 427,700 responses; 62,700 hours
Richard Eisinger, 395-3214

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration
Law enforcement education program application
LEEP-1
Annually
Colleges and universities participating in LEEP, 1,000 responses; 5,000 hours
Laverne V. Collins, 395-3214

EXTENSIONS

ENVIRONMENTAL PROTECTION AGENCY

Application to discharge wastewater
EPA 7550-7
On occasion
Point source discharge wastewater, 5,000 responses; 10,000 hours
Clarke, Edward H., 395-5867

DEPARTMENT OF COMMERCE

Bureau of Census
Cotton, manmade fiber staple, and raw linters (consumption and stocks, and spindle activity)
M-22P
Monthly
Fiber spinning mills, 7,800 responses; 1,950 hours
C. Louis Kincannon, 395-3211

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration
Application for approval of use of methadone in a treatment program
FD-2632
On occasion
Methadone treatment program, clinics treating narcotic addicts, 50 responses; 250 hours
Richard Eisinger, 395-3214

Health Services Administration
Questionnaire for study of patterns of utilization of contraceptive services for teenagers
Single-time
Teenage clients of title X clinics, 800 responses; 200 hours
Richard Eisinger, 395-3214

Food and Drug Administration
Medical responsibility statement for use of methadone in a treatment program
FD-2633
On occasion
Physicians employed by methadone clinics, 200 responses; 100 hours
Richard Eisinger, 395-3214

National Institutes of Health
Application for research grant and for continuation grant
PHS 398
On occasion

Research institutions, 25,000 responses; 700,000 hours
Richard Eisinger, 395-3214

DAVID R. LEUTHOLD,
Budget and Management Officer.

[FR Doc. 78-31379 Filed 11-6-78; 8:45 am]

[8025-01-M]

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 1517; Amdt. No. 1]

NEBRASKA

Declaration of Disaster Loan Area

The above numbered declaration (see 43 FR 39880), is amended by adding the following counties:

County and natural disaster(s)	Date(s)
Buffalo:	
Drought	Apr. 1 to Aug. 15, 1978.
Hail	Sept. 11, 1978.
Cherry:	
Hail, Wind	Aug. 1, 1978
Hail	Aug. 10, 1978.
Dawson:	
Hail, tornado-like winds	Sept. 11, 1978.
Dundy:	
Hail, wind and rain	Aug. 24, 1978.
Drought and insect infestation (grasshopper).	May 1 to Sept. 27, 1978.
Hayes:	
Drought and insect infestation (grasshopper).	June 1 to Sept. 27, 1978.
Hitchcock:	
Hail, rain	Aug. 20, 1978.
Drought and insect infestation (grasshopper).	May 1 to Sept. 27, 1978.
Kearney:	
Drought	Apr. 1 to Aug. 15, 1978.
Hail, wind	Sept. 11, 1978.
Lancaster:	
Hail	Sept. 2, 13, 1978.
Lincoln:	
Hail	Aug. 1, 1978.
Drought and insect infestation.	May 1 to Sept. 27, 1978.
Morrill:	
Hail	Aug. 14, 1978.
Phelps:	
Hail	July 30, 1978.
Red Willow:	
Hail, rain, wind	Aug. 20, 1978.
Drought and insect infestation.	June 1 to Sept. 27, 1978.
Sherman:	
Hail	July 30, 1978.

and adjacent counties within the State of Nebraska, and the time for filing applications is extended to March 30, 1979, for physical damage and June 30, 1979, for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: October 27, 1978.

A. VERNON WEAVER,
Administrator.

[FR Doc. 78-31369 Filed 11-6-78; 8:45 am]

[4710-02-M]

DEPARTMENT OF STATE

Agency for International Development

[Redelegation of Authority No. 99.1.41, Amendment No. 2]

AID AFFAIRS OFFICER, QUITO, ECUADOR

Redelegation of Authority, Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.41 dated September 26, 1973 (38 FR 27628) as follows:

1. Delete all references to "Mission Director" and substitute in lieu thereof "AID Affairs Officer."

2. The first paragraph is hereby amended to reflect the following changes:

(a) The last two words in the first paragraph are deleted, i.e. "or approve:".

(b) Subhead 1 is revised to read as follows:

"1. U.S. Government contracts, grants, and amendments thereto (other than grants to foreign governments or agencies thereof) provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

(c) Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

(d) Subhead 3 is deleted in its entirety.

3. The third paragraph is revised to read as follows:

"The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: October 30, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc 78-31435 Filed 11-6-78 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.68, Amendment No. 1]

AID REPRESENTATIVE, PORTUGAL

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.68 dated June 2, 1975 (40 FR 25077), as follows:

1. The first paragraph is hereby amended to reflect the following changes:

(a) The last two words in the first paragraph are deleted, i.e., "and approve:".

(b) Subhead 1 is revised to read as follows:

"1. U.S. Government contracts, grants, and amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

(c) Subhead 2 is revised to read as follows:

"2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

2. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Mangement to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment if effective on the date of signature.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director,
Office of Contract Management.

[FR Doc. 78-31432 Filed 11-6-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.31, Amdt. No. 3]

AID REPRESENTATIVE, SANTIAGO, CHILE

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.31 dated September 21, 1973 (38 FR 27628) as follows:

1. Delete all references to "Mission Director" and substitute in lieu thereof "AID Representative."

2. The first paragraph is hereby amended to reflect the following changes:

a. The last two words in the first paragraph are deleted, i.e. "and approve:".

b. Subhead 1 is revised to read as follows: "1. U.S. Government contracts, grants, and amendments thereto (other than grants to foreign governments or agencies thereof) provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

c. Subhead 2 is revised to read as follows: "2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

d. Subhead 3 is deleted in its entirety.

3. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Except as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: October 30, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31433 Filed 11-6-78; 8:45 am]

[4710-02-M]

Agency for International Development

[Redelegation of Authority No. 99.1.103]

MISSION DIRECTOR, USAID/BOTSWANA

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Mission Director, USAID/Botswana, the authority to sign:

1. U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent; and

2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

The authority herein delegated may be redelegated in writing, in whole or in part, by said Mission Director at his discretion to the person or persons designated by the Mission Director as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer or until the redelegation is revoked by the Mission Director, whichever shall first occur. The authority so redelegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Actions within the scope of this delegation and any redelegation hereunder heretofore taken by officials designated in such delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective October 1, 1978.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31430 Filed 11-6-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.38, Amdt. No. 2]

MISSION DIRECTOR, USAID, COLOMBIA

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (39 FR 12836) from the Assistant Administrator for program and Management Services of the Agency for International Development, I hereby further amend Redelegation of Authority No. 99.1.38 dated September 25, 1973 (38 FR 27628) as follows:

1. The first paragraph is hereby amended to reflect the following changes:

a. The last two words in the first paragraph are deleted, i.e. "or approve:"

b. Subhead 1 is revised to read as follows: "1. U.S. Government contracts, grants, and amendments thereto (other than grants to foreign governments or agencies thereof) provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent."

c. Subhead 2 is revised to read as follows: "2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent."

d. Subhead 3 is deleted in its entirety.

2. The third paragraph is revised to read as follows: "The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated."

Excepted as provided herein, the Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: October 30, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31434 Filed 11-7-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.104]

MISSION DIRECTOR, USAID/LESOTHO

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Mission Director, USAID/Lesotho, the authority to sign:

1. U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent; and

2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

The authority herein delegated may be redelegated in writing, in whole or in part, by said Mission Director at his discretion to the person or persons designated by the Mission Director as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer, or until the redelegation is revoked by the Mission Director, whichever shall first occur. The authority so redelegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein rededegated may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Actions within the scope of this delegation and any redelegation hereunder heretofore taken by officials designated in such delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective October 1, 1978.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31431 Filed 11-6-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.102]

MISSION DIRECTOR, USAID/SWAZILAND

Redelegation of Authority Regarding Contracting Functions

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1 (38 FR 12836) from the Assistant Administrator for Program and Management Services of the Agency for International Development, I hereby redelegate to the Mission Director, USAID/Swaziland, the authority to sign:

1. U.S. Government contracts, grants, or amendments thereto provided that the aggregate amount of each individual contract or grant does not exceed $50,000 or local currency equivalent; and

2. Contracts with individuals for the services of the individual alone provided that the aggregate amount of each individual contract does not exceed $100,000 or local currency equivalent.

The authority herein delegated may be redelegated in writing, in whole or in part, by said Mission Director at his discretion to the person or persons designated by the Mission Director as Contracting Officer. Such redelegation shall remain in effect until such designated person or persons ceases to hold the office of Contracting Officer, or until the redelegation is revoked by the Mission Director, whichever shall first occur. The authority so redelegated by the Mission Director may not be further redelegated.

The authority delegated herein is to be exercised in accordance with regulations, procedures, and policies established or modified and promulgated within AID and is not in derogation of the authority of the Director of the Office of Contract Management to exercise any of the functions herein redelegated.

The authority herein redelegated may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Actions within the scope of this delegation and any redelegation hereunder heretofore taken by officials designated in such delegation or redelegation are hereby ratified and confirmed.

This redelegation of authority is effective October 1, 1978.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31429 Filed 11-6-78; 8:45 am]

[4710-02-M]

[Redelegation of Authority No. 99.1.13]

REDELEGATION OF AUTHORITY

Regarding Contracting Functions

Redelegation of Authority No. 99.1.13 to OSARAC is hereby canceled since that office was recently abolished.

Dated: October 23, 1978.

HUGH L. DWELLEY,
Director, Office of Contract Management.

[FR Doc. 78-31428 Filed 11-6-78; 8:45 am]

[4710-02-M]

Agency for International Development

REGIONAL A.I.D. REPRESENTATIVE IN THE SOUTH PACIFIC

Redelegation of Authority

Pursuant to the authority delegated to me by A.I.D. Delegations of Authority No. 5, dated December 29, 1961 (27 FR 449), as amended, with respect to Loan Agreements; No. 38, date April 10, 1964 (29 FR 5280), as amended, with respect to Project Agreements, Trust Fund Agreements, and Grants to International Organizations; No. 99, dated April 27, 1973 (38 FR 12834), with respect to Contracting and Related Functions; and No. 112, dated October 12, 1975 (40 FR 48955), with respect to other authorities and functions delegated to me, I hereby redelegate to the Regional A.I.D. Representative in the South Pacific and to any person acting in this official capacity, authority to exercise any of the following functions, retaining for myself concurrent authority to exercise any of the functions herein redelegated:

1. Authority to negotiate and execute loan and grant agreements and amendments thereto up to five hundred thousand U.S. dollars ($500,000) with respect to loans and grants authorized under the Foreign Assistance Act of 1961, as amended (the Act), in accordance with the terms of the authorization of such loan or grant; such grant agreements for purposes of this authority and all other authorities contained in this redelegation shall mean agreements with foreign governments, foreign government agencies and international organizations having a membership consisting primarily of such foreign governments;

2. Authority to implement such loan and grant agreements with respect to loans and grants authorized under the Act, including the following:

(a) Authority to prepare, negotiate, sign and deliver letters of implementation;

(b) Authority to review and approve documents and other evidence submitted by borrowers or grantees in satisfaction of conditions precedent to financing under such loan or grant agreements;

(c) Authority to negotiate, execute and implement all agreements and other documents ancillary to such loan and grant agreements;

(d) Authority to sign or approve project implementation orders; and

(e) Authority to approve contractors, review and approve the terms on contracts, amendments, and modifications thereto, and invitations for bids with respect to such contracts financed by funds made available under such loan or grant agreements.

The authorities enumerated above may be exercised only after consultation with the regional contracting oficer and/or regional legal advisor, as appropriate, and may not be redelegated.

The authority enumerated above in paragraph one (1) is also hereby redelegated under the same terms and conditions set forth herein to the U.S. Ambassador to Fiji.

This redelegation of authority is effective immediately.

Dated: October 25, 1978.

ALEXANDER R. LOVE,
Assistant Administrator, Bureau for Asia.

[FR Doc. 78-31427 Filed 11-6-78; 8:45 am]

[4910-06-M]

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[FRA Emergency Order No. 10]

CONSOLIDATED RAIL CORP.; BLACK ROCK BRANCH

Emergency Order Forbidding Movement of Hazardous Materials

The Federal Railroad Administration (FRA), Department of Transportation, has determined that considerations of public safety necessitate the issuance of an emergency order prohibiting the further movement of placarded hazardous materials cars over the Black Rock Branch, a segment of Consolidated Rail Corp. (Conrail) track in the Buffalo Division which connects Bison Yard (at Milepost 389.7) and Black Rock Yard (at Milepost 399.3).

Located within the city of Buffalo, N.Y., this branch consists of about 9.7 miles of double track, much of it elevated to a height of 20 feet to accommodate the six major three- or four-lane streets over which it passes. Approximately 50,000 people live within one-quarter mile of the track. Within that area are approximately 15 schools and one hospital. A nursing home with 255 patients is located 100 yards from the track. Among the factories in the vicinity are American Brass with 500 to 700 workers, a Chevrolet plant with 300 to 500 workers, and a large industrial park at Elmwood Street with 5,000 to 6,000 workers.

An average of 14 trains, many 100 cars long, operate daily on the Black Rock Branch, carrying a total of 10.3 million gross tons per year.[1] It is a principal freight route reaching Canadian points via the International Bridge over the Niagara River. Both the Norfolk & Western Railway Co. (N&W) and the Chesapeake & Ohio Railway Co. (C&O) operate trains over the Black Rock Branch under trackage rights arrangements.

In the course of operations, large amounts of harzardous materials are transported. According to Conrail records, two cars of nitroguanidine, a class A high explosive, were interchanged during the week of October 23, 1978, from the Canadian National railway to Conrail and transported over the Black Rock Branch to Bison Yard. During that week there were also movements of one chlorine car and 24 cars of liquified petroleum gas.[2] In addition, Conrail records showed one car of organic peroxide, an unstable oxidizer which is extremely hazardous, and at least five cars of ammonium nitrate, the oxidizer in the 1947 Texas City disaster. Other hazardous materials among the shipments included phosphorus (a flammable solid), xylene (a flammable liquid), and carbolic acid (Poison B).[3] A total of 54 cars containing hazardous materials were moved on this branch during the week of October 23.

On October 23, 1978, in response to a complaint, an FRA inspector began inspections of the Black Rock Branch. His first inspection on that date revealed over 67 violations of the FRA track safety standards in only one-half mile of track. There were 40 instances of defective joint ties, i.e., defective ties at the point where rail sections are joined together by joint bars, a normally weaker part of the track structure, made even more so by the defective ties. In addition, FRA found two defective tie conditions affecting cross level, four areas where the distance between nondefective ties exceeded the minimal standards for class I track, 20 joints with loose or insufficient bolts, and one rail with a two-foot long, vertical split head. (See Appendix A).

The FRA inspector returned for a second inspection on October 24, 1978. Approximately five miles were walked, and conditions found to be representative of other areas inspected by riding in a specially designed track inspection vehicle. The October 24 inspection revealed numerous defects, especially at critical points in the track structure: defective ties on the bridges and highway overpasses, other defects on an elevated grade, and defective ties under a frog (a track component used where rails intersect) which caused the frog to break. The 58 defects noted were only a small sampling of the actual number of defects present along the line.

The FRA inspector noted 11 locations where tie conditions were far below FRA's minimum standards, which prescribe the maximum allowable distance between nondefective ties as 100 inches. The inspector found single violations involving distances of 172, 191, 220, 221, and 155 inches. These defects often occurred at points such as frogs, switches, and bridges, which are subjected to greater than normal stress. In the worst example, the frog was floating and not spiked to the ties. Likewise, there were 18 instances of defective joint ties.

In addition to numerous areas of noncompliance with crosstie regulations, there were five areas of wide gage,[4] including one location of 4 feet 11¼-inch gage, which is 2¾ inches beyond standard and 1½-inch wider than the maximum permitted by the track safety standards for any movement of trains. In addition, one broken rail and two broken frogs were found, which also pose a danger of derailment. (See Appendix B.)

The nature and degree of nearly all of the defects noted during these inspections are such that each presents a definite possibility of a derailment resulting solely from that defect. The locations of many of the defects increase the probability that a derailed

[1] According to the dispatcher's daily record of train movements.

[2] Chlorine is classified as a nonflammable gas. Liquified petroleum gas is a flammable gas. Both have been involved in recent tragic derailments. At Youngstown, Fla., on February 26, 1978, eight persons were killed when they were overcome by chlorine gas fumes from a punctured tank car. A few days earlier, on February 23, 1978, 15 persons died and 60 were injured in Waverly, Tenn., when tank cars carrying liquified petroleum gas exploded and burned.

[3] Hazard class under DOT hazardous materials regulations.

[4] Track gage is defined as the distance between the inside faces of the rail heads, measured at a point ⅝ inch below the top of the rail head. Standard gage is 4 feet 8½ inches. The track safety standards permit gage to widen to 4 feet 9¾ inches before a defect is considered to exist. Gage wider than 4 feet 9¾ inches usually indicates a lack of sufficient lateral support for the rail, and greatly increases the possibility of a derailment due to car or locomotive wheels dropping between the rails.

car or locomotive would completely leave the track structure and possible roll down the side of the embarkment.

The nature of traffic on the Black Rock Branch presents a high probability of a serious derailment. An annual tonnage of 10.3 million gross tons per year, handled in an average of 14 trains per day, is far from inconsequential.

In fact, derailments on this line have occurred almost weekly. Carrier records for every month in 1977 except September showed a total of 40 derailments, 23 of which were listed as track-related. In 6 months of 1978, the total was 18, with 10 described as track-related.

In response to the FRA inspection, which disclosed numerous serious track defects, Conrail issued on the evening of October 24, 1978, a general speed restriction, ordering speeds on all trains reduced to 5 miles per hour. Until then, Conrail had allowed light engines and engines with cabooses a higher speed limit of 10 miles per hour.[5] Although expanson of the slow order was a positive step, its effectiveness was somewhat doubtful, given the evidence of noncompliance with the original order. (At 4:32 p.m., October 23, 1978, an FRA inspector observed a C&O train hauling 85 or more cars at about 10 to 13 per hour, in violation of the 5-mile per hour rule then in effect.) On October 26, 1978, 2 days after the second inspection, FRA served Conrail in Buffalo with a Notice of Track Conditions, issued pursuant to 49 CFR Part 216, informing the carrier that FRA had under consideration issuance of an emergency order removing the Black Rock Branch from service. The carrier has not undertaken action to remedy the problems in a timely manner.

In the meantime, despite the defect notice and the possibility of an emergency order, traffic in hazardous and other materials has continued as usual. Conrail has placed no restrictions of any kind on the movement of hazardous materials.

The derailment of a car containing hazardous material would pose a threat not only to train crews but to people living in the vicinity. For example, a number of backyards fronting on St. Lawrence Avenue border the embankment. Houses are as close as 60 feet from the foot of the slope. A derailment would also endanger motorists using the roads which cross underneath the line, students attending the various elementary and high schools nearby, patients in neighboring hospital and nursing facilities, and employees in neighboring factories. Far too many lives are at stake to allow continued shipment of hazardous cargo over the Black Rock Branch in its present deteriorated condition.

[5]Bulletin Order No. 1—S17 June 28, 1978.

In light of the high risk that derailments will result in death or injury because of the release of hazardous materials, I have determined that the track defects on the Black Rock Branch operated by the Consolidated Rail Corp. between Bison Yard and Black Rock Yard, in Buffalo, N.Y., constitute an unsafe condition and create an emergency situation involving a hazard of death or injury to persons affected by the use of this line.

Therefore, pursuant to the authority of section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) delegated to me by the Secretary of Transportation (49 CFR 1.49(n)), it is ordered:

1. That all transportation of railroad cars containing a material which is required to be placarded in accordance with Department of Transportation regulations, 49 CFR Parts 170–189 ("placarded hazardous materials"), over the Consolidated Rail Corp.'s Black Rock Branch, between Bison Yard, at approximately milepost 389.7, and Black Rock Yard, at approximately milepost 399.3, in Buffalo, N.Y., shall cease not later than 12:01 a.m., November 3, 1978. However, any cars in transit over such track at that time may continue to their final terminal.

2. This order shall remain in effect until such track has been restored to compliance with Federal Railroad Administration standards for at least class I track (49 CFR Part 213).

3. Transportation over such track of any car containing any hazardous material required to be placarded shall be and is prohibited by this order until the authorized designated official of the Consolidated Rail Corp. has certified that required repairs have been made and the track has been inspected by a representative of the Federal Railroad Administration. Subject to these procedures, service over the line may be restored incrementally.

A civil penalty of $2,500 will be assessed for any violation of this order. (45 U.S.C. 438.)

Opportunity for formal review of this emergency order will be provided in accordance with section 203 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 432) and section 554 of Title 5 of the U.S. Code. Petition for such review must be submitted in writing to the Office of Chief Counsel, Federal Railroad Administration, Washington, D.C. 20590 in accordance with 49 CFR 216.25.

This order does not authorize the Consolidated Rail Corp. to transport cars which do not contain placarded hazardous materials, over track which is not in compliance with the track safety standards. Any such operation may subject the Consolidated Rail Corp. to the imposition of penalties prescribed by the Federal Railroad Safety Act of 1970 (45 U.S.C. 438).

Issued in Washington, D.C., on November 2, 1978.

JOHN M. SULLIVAN,
Administrator.

APPENDIX A

CONSOLIDATED RAIL CORP.

October 23, 1978, Inspection of Black Rock Branch track inspected between Milepost 395.8 and Milepost 396.25.

Number of Violations, 49 CFR Part 213

40—joint tie defects (.109).
2—defective tie conditions affecting cross level (.63).
4—distance between nondefective ties exceeding 100 inches (.109).
2—missing joint bar bolts (.121).
18—loose bolt conditions (.121).
1—vertical split in rail head, two feet long (.113).

APPENDIX B

CONSOLIDATED RAIL CORP.

October 24, 1978, Inspection of Black Rock Branch track inspected between Milepost 389.7 and Milepost 399.3.

Number of Violations, 49 CFR Part 213

5—gage defects (.53).
12—distance between nondefective ties exceeding 100 inches (.109).
1—alinement defect (.55).
18—joint tie defects (.109).
2—broken frogs (.137).
4—missing bolts (.121).
1—missing frog bolts (.133).
1—insufficient ballast (.103).
2—missing cotter pins (.133).
7—deviation exceeding allowable cross level (.63).
1—uniform profile exceeding allowable (.63).
1—incorrect holddown clearance (.139).
1—broken rail (.113).
1—vertical split head rail, 11 feet long (.113).
1—failure to inspect as required (.233).

[FR Doc. 78-31530 Filed 11-6-78; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Application No. S-929]

HAROLD PRINTUP, JR., KEOGH PLAN

Proposed Tax Exemption

AGENCY: Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service (the Service) of a proposed exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption, if granted, would exempt the sale of real property by the Harold Printup, Jr., Kiogh Plan

(the Plan) to Harold Printup, Jr. The proposed exemption, if granted, would affect the sole participant, Harold Printup, Jr., and beneficiaries of the Plan.

DATE: Written comments and requests for a public hearing must be received by the Service on or before December 7, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention: E:EP:PT:2, Application No. S-929. The application for exemption and the comments received will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Iyan Strasfeld of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: E:EP:PT:2), 202-566-3045. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Service of a proposed exemption from the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code. The application was filed pursuant to section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26, 1975-1 C.B. 722.

SUMMARY OF FACTS AND REPRESENTATIONS

The application contains representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Service for the complete representations of the applicant.

1. The Plan owns 20.02 acres of land in Riverside County, Calif. The Plan purchased this unimproved property on June 7, 1976, from an unrelated person for $19,900. This property represents approximately 66 percent of Plan assets.

2. A copy of the tax assessor's bill for 1977-78, which accompanied the application, indicates a value of $11,200 for the property. An appraisal by Lester E. Crossley, S.R.A., estimated the market value of the property to be $16,000 as of June 10, 1978.

3. The sole participant of the Plan and its certified public accountant have determined that the real property has not been a profitable investment. In addition, the property produces no current income and is subject to various holding costs including property taxes and assessments.

4. No efforts were made to locate a purchaser for the property who is not a disqualified person. The applicant represents that the property is desert land with little or no sales activity.

5. Mr. Harold Printup, the sole Plan participant, has offered to purchase the property for $19,900, the original cost of the Plan.

GENERAL INFORMATION

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 4975(c)(2) of the Code does not relieve a disqualified person with respect to the Plan to which the exemption is applicable from certain other provisions of the Code, including any prohibited transaction provisions to which the exemption does not apply, nor does it affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the Plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code, the Service must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code. including statutory or administrative exemptions and transitional rules. Furthermore, the fact that the transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

5. This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the addresses set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Service is considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in Rev. Proc. 75-26. If the exemption is granted, the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale by the Plan of the above-described real property to Mr. Printup for $19,900 cash. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of November 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

[FR Doc. 78-31372 Filed 11-6-78; 8:45 am]

[4510-29-M]
[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

DEPARTMENT OF LABOR

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Proposed Exemption Relating to a Transaction Involving the Haag Engineering Company Profit Sharing Trust (Application No. D-229)

AGENCIES: Department of the Treasury/Internal Revenue Service, Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Internal Revenue Service and the Department of Labor (the Agencies) of a proposed exemption from the prohibited transactions restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the sale of a parcel of land from the Haag Engineering Co. Profit Sharing Trust (the plan) to Haag Engineering Co. (the employer). The proposed exemption, if granted, would affect participants and beneficiaries of the plan,

the employer, and other persons participating in the proposed transaction.

DATES: Written comments and requests for a public hearing must be received by the Internal Revenue Service on or before December 7, 1978.

ADDRESS: All written comments and requests for a hearing (at least six copies) should be addressed to the Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, attention: E:EP:PT:1 (D-299).

The application for exemption, all comments relating to the proposed exemption, and any requests for a hearing will be available for public inspection at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C. 20224, and at the Public Documents Room of the Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

John R. Blasi of the Prohibited Transactions Staff of the Employee Plans Division, Internal Revenue Service, 202-566-6761. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the agencies of a proposed exemption from the restrictions of section 406(a)(1) (A) and (D) and 406 (b)(1) and (b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code by reason of sections 4975(c)(1) (A), (D), and (E) of the Code. The proposed exemption was requested in an application filed by the trustees of the plan, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the agencies for the complete representations of the applicants.

1. The Plan was adopted by the Employer in 1963. At present, the number of plan participants is 23. The plan has three trustees: C. B. Parish, E. E. Taylor, Jr., and John M. Dorsey, who are also shareholders and employees of the Employer. Messrs. Parish and Taylor are also two of the Employer's three-man board of directors, are its two largest sharholders (owning approximately 27 percent of the outstanding shares), and hold the office of president and executive vice president, respectively.

2. The Plan is the owner of a certain parcel of unimproved real property contiguous to the Employer's principal office facility in Addison, Tex. (the Property). The Property contains approximately 35,922 square feet and is described according to the plot record in volume 50 at page 207 of the map records of Dallas County, Tex. as lot No. 6, block "B" of Addition Airport industrial district, an addition to the city of Addison, Tex. The surrounding area is developing but there are a large number of undeveloped lots in the vicinity.

3. The Property was acquired in 1964 by the Plan along with a purchase of the contiguous lot 7 for a total consideration of $20,213 for an average per square foot cost of $0.25. (The cost of lot 6 was $8,890 and lot 7 was $11,233.) In 1966, the Plan constructed a building on lot 7 and in November of 1966 leased the land and the building to the Employer. In 1972, the Plan sold lot 7, with its improvements, to the Employer for $120,000.

4. The Plan has been attempting to sell the Property on the open market since June of 1975. To that end, it has engaged a realtor, Patrick J. Haggerty of Hank Dickerson & Co./Realtors, Dallas, Tex. The Plan authorized Mr. Haggerty to place a "For Sale" sign on the Property. To date, Mr. Haggerty has received only one offer to purchase the Property.

5. On August 29, 1977, the Plan entered into a lease agreement with Forney Engineering Co. (the Tenant), Dallas, Tex., an unrelated party, whereby the Tenant leased the property for use as a parking lot and driveway for its offices, which are located on adjacent property. Incident to the lease, the Plan expended $18,200 in order to pave and curb the lot. The lease is for an initial term of 48 months. Under the lease agreement the Tenant has the option to renew the lease for two successive 24-month periods following the initial term.

6. In the latter part of January 1978 the Plan received an offer to purchase the land from the Tenant. The offer was conditioned on cancellation of the lease and the simultaneous closing of two other purchases of adjoining land. The offer price was $71,999.55, from which the Plan would be required to pay an agent's commission of $2,243. An appraisal by G. William Maquire, real estate couselor, Dallas, Tex., dated March 13, 1978, value the Property at $74,000, as of February 14, 1978. On the basis of the appraisal the Plan rejected the Tenant's offer. To date there have been no further offers to purchase the Property.

7. While the Property will remain for sale to independent parties, the Plan now proposes to sell the property to the Employer for $80,000. The proposed purchase price is in excess of the $74,000 appraised value of the Property. The Employer will pay the entire amount of the purchase price in cash upon the transfer of the Property. All costs of the proposed sale are to be paid by the Employer. Further, the sale will be handled with all formalities customary to this type of real property transfer in Dallas, Tex.

Notice to Interested Persons

Notice of the proposed exemption will be given to all interested parties within 10 days of the publication of this notice in the Federal Register by posting, at a conspicuous place at each office of the Employer, a copy of the notice of proposed exemption along with an explanation which will advise all participants of their right to comment and/or to request a hearing within the period specified in the notice.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 4975(c)(2) of the Code and section 408(a) of the Act does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Code and the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 4975(c)(1)(F) of the Code and section 406(b)(3) of the Act;

(3) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408((a) of the Act, the Agencies must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries of the plan;

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provi-

sions of the Code and Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(5) This document does not meet the criteria for significant regulations set forth in paragraph 8 of the proposed Treasury directive appearing in the FEDERAL REGISTER for Wednesday, May 24, 1978 (43 FR 22319).

WRITTEN COMMENTS AND HEARING REQUESTS

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

PROPOSED EXEMPTION

Based on the facts and representations set forth in the application, the Agencies are considering granting the requested exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in Rev. Proc. 75-26 and ERISA Procedure 75-1. If the exemption is granted, the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A), (D) and (E) of the Code and the restrictions of section 406(a)(1) (A) and (D) and section 406 (b)(1) and (b)(2) of the Act shall not apply to the sale of the Property from the Plan to the Employer for $80,000 cash, provided that this amount is not less than the fair market value of the Property. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 1st day of November 1978.

FRED J. OCHS,
Director, Employee Plans Division, Internal Revenue Service.

IAN D. LANOFF,
Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 78-31229 Filed 11-1-78; 12:10 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Notice 737]

ASSIGNMENT OF HEARINGS

NOVEMBER 2, 1978.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested. No amendments will be entertained after the date of this publication.

MC 504 (Sub-102), Harper Motor Lines, Inc., now being assigned for hearing on December 4, 1978, (1 week), at Atlanta, Ga. in a hearing room to be later designated.

MC 113678 (Sub-432), (MIF), Curtis, Inc., now being assigned for hearing on January 9, 1979, (2 days), at St. Paul, Minn. in a hearing room to be later designated.

MC 123407 (Sub-438F), Sawyer Transport, Inc., now being assigned for hearing on January 11, 1979, (2 days), at St. Paul, Minn. in a hearing room to be later designated.

MC 135874 (Sub-114F), LTL Perishables, Inc., now being assigned for hearing on January 15, 1979, (5 days), at St. Paul, Minn. in a hearing room to be later designated.

MC 105813 (Sub-241F), Belford Trucking Co., Inc., now being assigned for hearing on December 6, 1978, (1 day), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.

MC 111485 (Sub-19F), Paschall Truck Lines, Inc., now being assigned for continue hearing on January 9, 1979, (4 days), at Louisville, Ky. in a hearing room to be later designated.

MC 129701 (Sub-3), Jasper Furniture Forwarding, Inc., now being assigned for hearing on January 15, 1979, (1 day), at Louisville, Ky. in a hearing room to be later designated.

MC 102616 (Sub-942F), Coastal Tank Lines, Inc., now being assigned for hearing on January 16, 1979, (2 days), at Louisville, Ky. in a hearing room to be later designated.

MCC 10038, A & H Truck Line, Inc., et al. v. Overnite Transportation Co., now being assigned for hearing on January 18, 1979, (2 days), at Louisville, Ky. in a hearing room to be later designated.

MC 115826 (Sub-305F), W. J. Digby, Inc., now being assigned for hearing on January 30, 1979, (1 day), at Denver, Colo. in a hearing room to be later designated.

MC 143993, (Sub-2), Black Hills Trucking, Inc., now being assigned for hearing January 31, 1979, (3 days), at Denver, Colo. in a hearing room to be later designated.

MC F 13545, MC 1334, (Sub-20), Riteway Transport, Inc.—Purchase—Thomas C. Hedlund DBA Telluride Transfer now being assigned for hearing on February 5, 1979, (5 days), at Denver, Colo. in a hearing room to be later designated.

MC 105813 (Sub-241F), Belford Trucking Co., Inc., now being assigned for hearing on December 6, 1978, (1 day), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.

MC 118859 (Sub-11F), Bullock Trucking Co., Inc., now being assigned for hearing on December 7, 1978, (2 days), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.

MC 143869 (Sub-1), Douglas Express, Inc., now assigned December 11, 1978 at Atlanta, Ga. (5 days) in a hearing room to be later designated.

MC 2115826 (Sub-300F), W. J. Digby, Inc., now assigned December 7, 1978 (2 days) at Denver, Colo. in a hearing room to be later designated.

MC 94201 (Sub-161F), Bowman Transportation, Inc., now assigned December 6, 1978 (3 days) at Jackson, Miss., in a hearing room to be later designated.

MC 35628 (Sub-397F), Interstate Motor Freight System now assigned January 9, 1979 at Lansing, Mich. (14 days) in a hearing room to be later designated.

MC 49387 (Sub-49), Orscheln Bros. Truck Lines, Inc., now assigned December 14, 1978 (2 days) at Jefferson City, Mo. in a hearing room to be later designated.

MC 121658 (Sub-11), Steve D. Thompson, now assigned December 4, 1978 at Baton Rouge, La. (5 days) in a hearing room to be later designated.

MC 118859 (Sub-11F), Bullock Trucking Co., Inc., now being assigned for hearing on December 7, 1978, (2 days), at Peachtree Plaza, Peachtree Center, Peachtree at International Boulevard, Atlanta, Ga.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31467 Filed 11-6-78; 8:45 am]

[7035-01-M]

CHANGE IN FORM OF PROCEEDINGS TO REVOKE CERTIFICATES, PERMITS AND LICENSES

NOVEMBER 2, 1978.

Sections 204(c) and 312a(2) of the Interstate Commerce Act authorize the Commission, upon complaint or its own initiative, to conduct investigations looking toward the revocation of operating rights when motor carriers, brokers, and water carriers fail to comply with statutory requirements and the aiding Commission regulations. These requirements and regulations pertain to the filing of insurance, bonds, or other security for the protection of the public, the performance of adequate service, the filing of tariffs,

contracts, and schedules, and the filing of annual reports.

For the past several years, revocation proceedings have contemplated the issuance of a maximum of three orders and a final notice. These documents gave the carrier or broker respondent official notice of particular compliance problems and three 30-day periods to correct them or show good cause why the Commission should not revoke the respondent's certificate, permit, or licenses. If these burdens were not satisfied, the Commission revoked the rights after 120 days.

To eliminate paperwork, the revocation proceeding is being changed so that two documents (decisions) will be issued instead of four. The first decision will pinpoint the specific aspects of noncompliance and allot 60 days for the respondent to submit written justification that its authority should not be revoked. It it fails to do so, a second decision will be issued. It will contain a self-executing provision to automatically revoke the rights if, after 60 additional days, respondent neither achieves compliance nor shows good cause why its rights should not be revoked.

The new revocation procedure will become effective December 1, 1978.

By the Commission, Alan Fitzwater, *Acting Director, Office of Proceedings.*

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31468 Filed 11-7-78; 8:45 am]

[7035-01-M]

[Notice No. 208]

MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

NOVEMBER 2, 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 a "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

MOTOR CARRIERS OF PROPERTY

MC 144-41 (Sub-12TA), filed May 8, 1978. Applicant: DOWNS TRANSPORTATION CO., INC., 2705 Canna Ridge Circle, N.E., Atlanta, GA 30345. Representative: Kim G. Meyer, P.O. Box 872, 235 Peachtree Street, NE., Atlanta, GA 30303. By order of October 16, 1978, the Motor Carrier Board granted authority to applicant to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: (A) *Insulation and insulating materials* (except in bulk), from the facilities of Callaway Insulation Co. in Clayton County, GA to points in AR, AL, FL, LA, SC, NC, VA, KY, TN and MS, and (B) *Materials, supplies and equipment* used or dealt in by insulation manufacturing plants (except in bulk), from points in AR, AL, FL, LA, SC, NC, VA, KY, TN and MS to the facilities of Callaway Insulation Co. in Clayton County, GA.

Notice of this application in the FEDERAL REGISTER on July 13, 1978, inadvertently omitted the destination state of AL in part (1). Insofar as authority to serve points in AL is concerned interested parties may file petitions for reconsideration on or before 15 calendar days from the date of publication of this notice. Send petitions to: Acting Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 78-31469 Filed 11-6-78; 8:45 am]

[7035-01-M]

[Finance Docket Nos. 28499 (Sub-No. 1) and 28676 (Sub-No. 1)]

NORFOLK & WESTERN RAILROAD CO. AND BALTIMORE & OHIO RAILROAD CO.—CONTROL—DETROIT, TOLEDO & IRONTON RAILROAD CO.

GRAND TRUNK WESTERN RAILROAD CO. AND GRAND TRUNK CORP.—CONTROL—DETROIT, TOLEDO & IRONTON RAILROAD CO. AND THE DETROIT & TOLEDO SHORE LINE RAILROAD CO.

OCTOBER 23, 1978.

The Interstate Commerce Commission's Section of Energy and Environment (Section) has concluded that the proposed acquisition of the Detroit, Toledo & Ironton Railroad Co. (DT&I) by the Norfolk & Western Railroad Co. and the Baltimore & Ohio Railroad Co., if approved by the Commission, is not a major Federal action significantly affecting the quality of the human environment. Likewise, the Section has found that the proposed acquisition of DT&I and of the Detroit & Toledo Shore Line Railroad Co. (DTSL) by the Grand Trunk Western Railroad Co. (GTW), if approve by the Commission, would also not be a major Federal action significantly affecting the quality of the human environment.

It was concluded, among other things, that under neither of the proposed actions would diversion of traffic over other rail lines and through other rail yards have significant impacts on energy consumption, air pollutant emissions, noise levels, or safety hazards.

The effect on income and employment levels in the communities which would incur a change in railroad employment as a consequence of the GTW proposal is not expected to be significant.

Finally, the Section concluded that, should the GTW acquire the DT&I but not the DTSL, and should the DTSL, therefore, eventually be abandoned, the environmental impacts of such an abandonment probably would not be significant. However, the environmental impacts of potential abandonment of the DTSL would be addressed in greater detail in the context of an abandonment application, should one be filed.

These conclusions are contained in a staff-prepared environmental threshold assessment survey, which is available on request to the Interstate Commerce Commission, Office of Proceedings, Washington, D.C. 20423; telephone 202-275-7011. Interested persons may comment on this matter by filing their statements in writing on or before (30 days after publication in the FEDERAL REGISTER).

It should be emphasized that the environmental threshold assessment survey represents an evaluation of the

environmental issues in the proceeding and does not purport to resolve the issues of whether the present or future public convenience and necessity permit discontinuance of the line proposed for abandonment. Consequently, comments on the environmental study should be limited to discussion of the presence or absence of environmental impacts and reasonable alternatives.

H. G. HOMME, Jr.,
Acting Secretary.

[FR Doc. 78-31470 Filed 11-6-78; 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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[6320-01-M]

1

[M-173, Amdt. 4; Oct. 26, 1978]

CIVIL AERONAUTICS BOARD.

Notice of deletion of item from the October 24, 1978, meeting agenda.

TIME AND DATE: 2 p.m., October 24, 1978.

PLACE: Room 1011, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: (6) BIA Briefing concerning proposed ad referendum agreement with Peru.

STATUS: Closed.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION: Time did not permit the discussion of this item. Accordingly, the following Members have voted that agency business requires the deletion of item (6) from the October 24, 1978 agenda and that no earlier announcement of this change was possible:

Chairman, Alfred E. Kahn
Member, Elizabeth E. Bailey
Member, Gloria Schaffer
Member, Marvin S. Cohen

[S-2239-78 Filed 11-3-78; 11:38 am]

[6320-01-M]

2

[M-174, Amdt. 1; Oct. 31, 1978]

CIVIL AERONAUTICS BOARD.

Notice of time change for oral argument.

TIME AND DATE: 9 O'clock, November 1, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: Oral argument—Docket 21670, Frontier Airlines, Inc., Subsidy Mail Rates.

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-2240-78 Filed 11-3-78; 11:38 am]

[6335-01-M]

3

U.S. COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: Monday, November 13, 1978, 9 a.m. to 12 noon; 1:30 to 5:30 p.m. Tuesday, November 14, 7:30 p.m. to 9 p.m.

PLACE: Room 512, 1121 Vermont Avenue NW., Washington, D.C.

STATUS: All sessions are open to the public.

MATTERS TO BE CONSIDERED: 9 a.m. to 12 noon:

I. Approval of agenda.
II. Approval of minutes from last meeting.
III. Staff Director's report.
A. Status of funds.
B. Personnel report.
C. Correspondence:
1. Letter from Secretary Harris on HUD affirmative action efforts.
2. Letter from Ms. L. Foster on Alabama SAC file—"Where are Women and Blacks: Patterns of Employment in Alabama Government".
3. Selected letters re Social Indicators report from:
a. Secretary of Interior Cecil D. Andrus,
b. Bureau of Census Director Manuel D. Plotkin,
c. ACTION Director Sam Brown,
d. Secretary of HEW Joseph A. Califano,
e. OMB Director James McIntyre, and
f. NAACP Legal Defense Fund—Jean Fairfax.
IV. SAC-charters: (A) Arkansas, (B) Iowa, (C) North Dakota, (D) Washington, (E) West Virginia, and (F) Wisconsin.
V. Report on civil rights developments in the southern region.
VI. Action re affirmative action in Kentucky Bureau of State Police.
VII. Action re equal employment opportunity in motion picture industry.
VIII. Action re employment statistics for Indians in Minnesota.
IX. Report on post-*Bakke* initiatives.
X. Presentations by Chief Harry Caldwell, Glen Murphy, Director for Governmental Relations and Legal Counsel, and Executive Director Glen King, International Association of Chiefs of Police.

MATTERS TO BE CONSIDERED: November 13, 1:30 to 5:30 p.m.

XI. Review of School Desegregation Report.
XII. Review of Media Update Report.

MATTERS TO BE CONSIDERED: November 14, 7:30 to 9 p.m.

Review of Media Update Report.

FOR FURTHER INFORMATION CONTACT:

Loretta Ward, Public Affairs Unit, 202-254-6697.

[S-2243-78 Filed 11-3-78; 12:07 pm]

[6351-01-M]

4

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 214, November 3, 1978, page 51503.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., November 7, 1978.

CHANGES IN THE MEETING:

Add to the agenda: Delegation of authority to deny registration.

[S-2248-78 Filed 11-3-78; 3:21 pm]

[6351-01-M]

5

COMMODITY FUTURES TRADING COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 43, No. 214, November 3, 1978, page 51503.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:30 a.m., November 7, 1978.

CHANGES IN THE MEETING:

Delete: Policy discussion of compliance reviews and schedule of compli-

ance reviews throught the first quarter of calendar 1980.

[S-2249-78 Filed 11-3-78; 3:21 pm]

[6351-01-M]

6

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., November 13, 1978.

PLACE: 2033 K Street NW., Washington, D.C., Office of the Vice Chairman.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Internal personnel matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-2250-78 Filed 11-3-78; 3:21 pm]

[6570-06-M]

7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: S-2160-78, S-2199-78, and S-2201-78.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m. (eastern time), Friday, November 3, 1978.

CHANGE IN THE MEETING: The following matter is added to the open portion:

Proposed contract for technical assistance in examining and certifying applicants for certain EEOC positions.

A majority of the entire membership of the Commission determined by recorded vote that the business of the Commission required this change and that no earlier announcement was possible.

In favor of change: Eleanor Holmes Norton, Chair; Daniel E. Leach, Vice Chair; Ethel Bent Walsh, Commissioner; and J. Clay Smith, Jr., Commissioner.
Opposed: None.

CONTACT PERSON FOR MORE INFORMATION:

Marie D. Wilson, Executive Officer, Executive Secretariat, at 202-634-6748.

This notice issued November 1, 1978.

[S-2238-78 Filed 11-3-78; 11:38 am]

[6712-01-M]

8

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:20 a.m., Wednesday, November 8, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Speical open Commission meeting.

MATTER TO BE CONSIDERED:

SUBJECT

Review of the status of domestic U.S. activities in the development of Teletext services.

If additional information is required concerning this meeting it may be obtained from FCC Public Information Office, telephone 202-632-7260.

Issued: November 1, 1978.

[S-2244-78 Filed 11-3-78; 3:21 pm]

[6712-01-M]

9

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF ORAL ARGUMENTS: 9:30 a.m. and 11 a.m., Tuesday November 7, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Oral arguments and closed instructions following oral arguments.

CHANGES IN THE MEETING:

The closed Commission meeting for the purpose of issuing instructions to the staff following oral argument on applications of WMUR-TV, Manchester, N.H. and KECC-TV, El Centro, Calif. (Docket Nos. 19336 and 19338) has been canceled. Oral argument in this case has been rescheduled to a date to be set by a subsequent order.

The oral argument of the renewal of KAIT (TV) and the closed instruction session which follows remains scheduled for 9:30 a.m. on November 7, 1978

Additional information concerning this change may be obtained in the FCC Public Information Office, telephone 202-632-7260.

Issued: November 2, 1978.

[S-2247-78 Filed 11-3-78; 3:21 pm]

[6730-01-M]

10

FEDERAL MARITIME COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 51197, November 2, 1978.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., November 8, 1978.

CHANGES IN THE MEETING: Addition of the following item to the closed session:

1. Interagency Maritime Study.

[S-2251-78 Filed 11-3-78; 3:43 pm]

[6730-01-M]

11

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 10 a.m., November 9, 1978.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Closed.

MATTER TO BE CONSIDERED: 1. interagency Maritime Study.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-2252-78 Filed 11-3-78; 3:43 pm]

[6210-01-M]

12

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 8:45 a.m., Friday, November 3, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Closed.

MATTER CONSIDERED: Federal Reserve Bank Senior Officers salary procedures. (This matter was originally announced for a meeting on October 18, 1978.)

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

Dated: November 3, 1978.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-2245-78 Filed 11-3-78; 3:21 pm]

[7550-01-M]

13

NATIONAL MEDIATION BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 43 FR 48814.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2 p.m., Wednesday, November 1, 1978.

CHANGES IN THE MEETING: Addition to matters to be considered—Determination to issue notice of proposed rulemaking providing page limitations for main and reply briefs filed in NMB proceedings.

SUPPLEMENTARY INFORMATION: Chairman Stowe and Board Members Harris and Ives have determined by recorded vote that Agency business required this change and that no earlier announcement of such change was possible.

Date of notice: November 1, 1978.

[S-2242-78 Filed 11-3-78; 11:48 am]

[7600-01-M]

14

[Form 1]

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSON.

TIME AND DATE: 1 p.m., November 15, 1978.

PLACE: Room 1101, 1825 K Street NW., Washington, D.C.

STATUS: Because of the subject matter, it is likely that this meeting will be closed.

MATTERS TO BE CONSIDERED: Discussion of specific cases in the Commission adjudicative process.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Patricia Bausell, 634-4015.

DATE: October 27, 1978.

[S-2246-78 Filed 11-3-78; 3:21 pm]

[8010-01-M]

15

SECURITIES AND EXCHANGE COMMISSION.

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securites and Exchange Commission will hold the following meetings during the week of November 6, 1978, in Room 825, 500 North Capitol Street, Washington, D.C.

An open meeting will be held on Wednesday, November 8, 1978, at 10 a.m. Closed meetings will be held on Tuesday, November 7, 1978, at 10 a.m., and on Wednesday, November 8, 1978, immediately following the 10 a.m. open meeting.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be 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).

Chairman Williams and Commissioners Loomis, Evans, Pollack and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 7, 1978, at 10 a.m., will be:

Access to investigative files by Federal, State, or self-regulatory authorities.
Formal order of investigation.
Freedom of Information Act appeal.
Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Other litigation matters.
Subpoena enforcement action.

The subject matter of the open meeting scheduled for Wednesday, November 8, 1978, at 10 a.m., will be:

1. Consideration of the comments on S. 3240, "The Independent Regulatory Commission Act," to be transmitted to the Senate Committee on Governmental Affairs. For further information, please contact John P. Seeney at 202-755-1362.
2. Consideration of technical amendments to rule 144, form 144, and form S-8 under the Securities Act of 1933 that would conform the rule and the forms in their entirety to certain recent amendments to the volume limitation and manner of sale requirements of rule 144. For further information, please contact Peter J. Romeo at 202-755-1240.
3. Consideration of whether an order should be issued terminating the exemption from registration as a national securities exchange of the Honolulu Stock Exchange which has been inactive since December 30, 1977. For further information, please contact William S. Muller at 202-755-7484.

The subject matter of the closed meeting scheduled for Wednesday, November 8, 1978, immediately following the 10 a.m. open meeting, will be:

Other litigation matters.
Opinion.

FOR FURTHER INFORMATION, PLEASE CONTACT:

Mark Goldfus at 202-755-1129.

NOVEMBER 1, 1978.

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TUESDAY, NOVEMBER 7, 1978
PART II

COUNCIL ON WAGE AND PRICE STABILITY

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NONINFLATIONARY WAGE AND PRICE BEHAVIOR

Voluntary Standards

[3175-01-M]

COUNCIL ON WAGE AND PRICE STABILITY

[6 CFR Part 705]

NONINFLATIONARY WAGE AND PRICE BEHAVIOR

Voluntary Standards

AGENCY: Council on Wage and Price Stability.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the regulations of the Council on Wage and Price Stability to implement the President's anti-inflation program by adding a new part 705 to title 6 and an appendix to that part specifying voluntary standards for noninflationary wage and price behavior.

DATE: These proposed standards may be used now for public guidance and by the Council on Wage and Price Stability and other Government agencies. Comments may be submitted by December 2, 1978, although comments after that date will be considered as practicable. Because rapid implementation of the anti-inflation program is required a longer comment period is not possible.

FOR FURTHER INFORMATION CONTACT:

Peter H. Lowry, General Counsel, Council on Wage and Price Stability, Room 4025, 726 Jackson Place NW., Washington, D.C. 20506, 202-456-6570.

ADDRESS: Ten copies of comments should be sent to the Office of the General Counsel, Council on Wage and Price Stability, 726 Jackson Place NW., Room 4025, Washington. D.C. 20506. Individuals may submit their views without filing multiple copies where submitting multiple copies would be a hardship.

SUPPLEMENTARY INFORMATION: In his presentation of the anti-inflation program on October 24, 1978, the President announced standards for noninflationary wage and price behavior. He has directed the Council on Wage and Price Stability to further define the standards, to monitor changes in prices and wages and to identify publicly those firms and workers who do not abide by the standards.

The Council recognizes that identification of an economic unit as noncomplying could have a substantial economic impact on the members of that economic entity. To ensure that these identifications are not arbitrary, the Council is publishing specific detailed standards and proposing to adopt them as an appendix to a new part 705 of the Code of Federal Regulations. In addition, the Council intends to publish procedural regulations shortly.

The President has stressed repeatedly the value of simplicity of Government documents and the importance of not placing undue reporting burdens on the public. This is particularly important in a voluntary program of this type. Therefore, these standards are designed to be largely self administered, much like the income tax system. Companies will determine for themselves how their own actions can be made to conform with these standards. The Council will not, in general, approve such actions in advance.

The Council, however, recognizes that there will be a need for further clarification of the standards. Because of limited staff, the Council prefers that clarification be coordinated by trade associations and labor groups. In responding to questions from these organizations and persons, the Council will give priority to general questions of interpretation that have broad applicability.

The Council will be responsible for auditing the actions of individual companies to determine whether their decisions conform with the intent of the standards and will take appropriate action where they do not.

The specific form of standards presented below is applicable to most industries. In some industries, however, their application may be modified later to reflect different institutional arrangements. These modifications will, however, be consistent with the original objective of the program.

The standards proposed by the Council are not rules and regulations since the program is voluntary. Therefore, the requirements of E.O. 12044, section 2(d) and 3(b) regarding the process for developing significant regulations and regulatory analysis procedures do not apply. Nevertheless, the procedures and analysis required by that Executive order were substantially followed.

Further supplementary information is organized as follows:

I. The Administration's White Paper which discusses the general background of the anti-inflation program and contains a synopsis of the standards.
II. Answers to some of the most frequently asked questions about the standards.
III. Some specific examples of methods of calculating rates of change of wage and prices.

Following this supplementary information, the proposed part 705, including an appendix which contains the proposed standards, are set forth.

WHITE PAPER: THE PRESIDENT'S ANTI-INFLATION PROGRAM

OCTOBER 24, 1978

I. INTRODUCTION

Over the past three years our economy has made great strides in recovering from the severe recession of 1974-75. Since early 1975, the rate of unemployment has been reduced from almost 9 percent to 6 percent. More than 10 million new jobs have been created—6 million of them during the first year and a half of this Administration. The nation's phyiscal output has expanded by almost 20 percent and the real (inflation adjusted) after-tax incomes of consumers have risen by more than 15 percent.

We have no progress, however, in solving the problem of inflation. As a result, inflation now ranks as our nation's most serious economic problem. The economic gains we have made can be extended, and the benefits of a fuller prosperity more widely shared, only if inflation is reduced.

The current inflation began many years ago—in the middle 1960's. For more than a decade, American consumers, businesses, and workers have been suffering the consequences of an inflation that has averaged over 6 percent a year.

During the first two and a half years of the current economic recovery—from early 1975 to the fall of 1977—the long-term inflation trend did not improve, but neither did it worsen. Late last year, however, prices and costs began to move up more rapidly. Thus far in 1978, consumer prices have risen at an annual rate of almost 10 percent—a rate of inflation that would cut the real value of accumulated savings in half in little more than 7 years.

Some of this acceleration of the inflation rate was accounted for by special factors. Food prices soared as a result of abnormally cold winter weather and limited supplies of meat that resulted from a prolonged decline in the size of cattle herds. Depreciation of the dollar also added to inflation pressures by boosting the prices of imports and encouraging American manufacturers of competing goods to raise the prices of their products. Sharply rising mortgage financing costs in 1978 added an additional element to inflation.

The recent worsening of the inflation problem, however, cannot be ascribed solely to these factors; other price and cost measures also indicate acceleration. Within the domestic nonfarm sector, for example, prices are rising at a rate near 8 percent annually. Nonfood raw material prices are rising at double-digit-rates. Unit labor costs have accelerated—as wage rates have been moving up more rapidly,

while productivity growth has weakened. Excessive wage increases were not the *cause* of the current inflation, but wage moderation is an essential part of the *cure.*

The present inflation is imposing severe hardships on many Americans whose incomes do not rise in step with higher prices. Those who suffer the most—the poor and the elderly—can least afford to bear the harsh burden imposed by rapid price escalation.

More importantly, the current inflation threatens the prospects for continued economic expansion. Inflation undermines consumer confidence, drives up interest rates, weakens the value of the dollar in exchange markets, reduces the future purchasing power of savers, and upsets business plans for investing in the new plant and equipment needed to foster healthy economic expansion.

Inflation has several causes. Reducing inflation, therefore, requires that we deal, not just with one, but with several problems:

- Since the economy has come far in its recovery from recession, monetary and fiscal policies must now guard against the emergence of excessive demands and economic overheating that inevitably lead to accelerating inflation.
- Legislative and regulatory actions to achieve social objectives must be carefully screened to minimize the effects on costs and prices.
- Ways must be found to break the momentum of self-perpetuating prices and wage increases that has become so deeply entrenched in the private sector after ten years of inflation.

A balanced program must address all three of these problems. Trying to attack inflation by concentrating on any one alone would lead to policies that were either ineffective or damaging to our economy. In the first instance, relying solely on highly restrictive monetary and fiscal policies to reduce inflation, given its strong momentum, would lead to recession. On the other hand, voluntary measures to break the momentum would not be effective in an exuberant economy, unrestrained by responsible fiscal and monetary policy.

Mandatory wage and price controls represent an extreme approach that creates serious inequities and inefficiencies. They should only be used in periods of national emergency. Our experience with controls in the early 1970's is replete with examples of economic distortions and is illustrative of how mandatory controls soon sow the seeds of their own destruction.

A STRENGTHENED ANTI-INFLATION PROGRAM

Earlier this year, the President outlined the framework of a voluntary program that required the cooperation of government, business, and labor. This program was designed to break the momentum of wage/price increases in the private sector and to reduce government's contribution to inflation. Simultaneously, the Federal budget deficit for fiscal 1979 was reduced by some $20 billion. These efforts have not been enough; stronger measures are required. Thus, the President has now acted:

- To intensify the anti-inflation efforts of government by

—adopting a stringent budget policy that will create an overall climate in which the inflationary process can unwind,

—establishing procedures that minimize the inflationary impact of government regulations, and

—indicating his intention to veto legislative measures and other actions of government that provide benefits to narrow special-interest groups;

- to break the upward spiral of costs and prices by

—enunciating explicit numerical standards for noninflationary wage and price increases, and

—making clear his intention to use his administrative powers to support adherence to those standards in individual situations.

Success in controlling inflation would strengthen the confidence of consumers and businesses and improve conditions in financial markets. Rising interest rates have always accompanied worsening inflation. High interest rates threaten to price young families out of the housing market. They also add to the costs that businesses confront when they borrow to expand.

The burden of controlling inflation should not be left to monetary policy alone, which can only deal with the problem through tight restrictions on money and credit.

The President's new proposals for dealing with inflation constitute a balanced and concerted program under which tight budget restraint, private wage and price moderation, and responsible monetary policy support each other.

As the Executive Branch, Congress, and the private sector, working together, show sacrifice and restraint and we begin to make progress in reducing inflation, we should expect lower interest rates for consumers and businesses alike.

With cooperation, this program will succeed in reversing the inflation trend without resorting to another recession or to controls. But success will require a willingness to give the highest priority with the inflation problem.

II. ACTIONS BY THE FEDERAL GOVERNMENT

A strong contrubution by government is vital to any effective effort to reduce inflation. No program will work unless the Federal budget promotes a proper balance between supply and demand in the economy. Government must also keep to a minimum those actions that directly increase private costs and prices—actions that include regulations that add unnecessarily to costs and prices, increased payroll taxes, and expensive favors for special-interest groups.

BUDGETARY POLICY

Given the substantial progress that has been made in reducing unemployment and the persistence of rising prices, the emphasis in budgetary policy has already shifted toward fighting inflation. That emphasis must now be further strengthened.

The Federal Government must pursue a stringent budgetary policy with respect both to spending and to the budget deficit. The growth of spending must be strictly limited. As moderate and sustainable economic growth continues, the budget deficit must be reduced and eliminated. Business and labor must be convinced that excessive demands will not be created by the government's overall economic policies. Only under these circumstances will it be possible for inflationary pressures to unwind gradually.

To achieve this objective, it is neither necessary nor desirable to pursue a budgetary policy that seeks to wring inflation out of the economic system by raising unemployment. Attempting to reduce inflation by throwing millions of people out of work and idling a significant proportion of our plant facilities would be inequitable and intolerably costly. But, the achievement of further overall reductions in unemployment will require that we show progress in reducing the rate of inflation.

In fiscal 1976, Federal expenditures represented 22.5 percent of the nation's GNP and the deficit was $66 billion. since then, the size of the deficit has been reduced substantially. In fiscal 1979, the deficit in the Federal budget will be less than $40 billion. Next January, the Administration will submit its budget for fiscal 1980—the year beginning October 1, 1979. In the context of an overall economy growing at a moderate rate, the President has set targets for planning the 1980 budget under which

- The share of total spending in GNP would be reduced to about 21 percent of GNP—a goal originally scheduled to be reached a year later—and

● the 1980 Federal budget deficit would be reduced to less than half the level of 1976.

In order to contribute to these goals, the President has imposed severe limits on hiring of Federal employees for an indefinite period. Effective immediately, Federal agencies may fill only one out of two vacancies as they occur. This step will reduce the number of Federal employees budgeted for this fiscal year by about 20,000. In July, the President announced a 5.5 percent limitation on Federal employee pay raises and a freeze on Federal executive pay levels.

REGULATORY POLICY

During the last decade we have expanded our efforts to protect the environment and the health and safety of workers and consumers. These goals are central to our welfare. But they are not free. Regulations designed to achieve these goals add to costs and hence to consumer prices. We must not abandon our regulatory goals, but we must attain them without imposing unnecessary burdens.

It is vital that equal attention be paid to decisions that impose costs on the public through raising private sector prices as to those that involve the expenditure of funds through the budget.

With this principle in mind, the President has stated his intention personally to exercise his authority, as necessary, to ensure that the regulatory process is balanced and well managed, and that specific regulations with large economic impacts achieve their statutory goals at minimum economic cost and regulatory burden.

The effort to reform the regulatory process has been underway since 1977. The regulatory agencies now prepare analyses of all of their proposed major new regulations. These analyses must identify the benefits and the costs of the proposed regulation and examine the implications of alternatives. A regulatory analysis review group has been established to review the most important of these proposals.

To strengthen further the government's effort to improve the regulatory process, the President has taken the following additional steps:

● The President has directed the formation of a Regulatory Council. The Council would comprise all Executive Branch departments and agencies with significant regulatory responsibilities. It would have the important task of coordinating duplicative or overlapping regulations.

● Most important, the Regulatory Council would develop a unified *calendar* of major regulations. The calendar would provide for the first time a comprehensive list of regulations the Federal Government is proposing, together with information on their cost, their objectives, and why they must be issued.

● He has directed each regulatory agency in the Executive Branch to include in its "sunset" reviews of existing regulations at least one set of regulations that has a major economic impact.

Progress also has been made in reducing the costs of existing economic regulations. In the past year, the Civil Aeronautics Board relaxed rules that controlled airline fares and allowed increased competition. The results have been lower air fares and record air passenger travel. The air deregulation bill just passed in Congress is the first major deregulation effort in recent history. It will extend these benefits and make them permanent. Next year, the Administration plans to work with Congress to reduce regulation in other areas, such as surface transportation.

OTHER ACTIONS

At a time when inflation is the number-one economic problem, it is especially important that the pressure of individual groups that seek government measures to protect them against domestic and international competition be resisted.

Another way of helping to reduce inflation is to slow and reverse the inflationary impact of actions by State and local governments. In August, the President asked the leaders of the State and local government associations (Governors, mayors, State legislators, county officials) to work with his staff and other appropriate offices to identify specific anti-inflation actions appropriate to those levels of government.

All of the associations have agreed to participate in this effort. Staff groups are now working on an agenda of actions that can be taken at the State and local level to deal with the problems of spiraling health costs, unnecessary costs associated with State regulation, the need to improve State and local government productivity, and the inflationary impact of Federal policies on State and local governments. The result will be specific initiatives that each State and local jurisdiction can consider taking within its own constitutional and legal authority.

III. Private Sector Actions

Government must take the lead in the effort to slow inflation. Actions by government alone, however, will not suffice. A successful campaign to break the continuing cycle by which wage and price increases feed upon one another will require restraint on the part of everyone. A voluntary approach to achieve this goal must reflect several basic principles:

● *It must be equitable.* A successful effort will require self-restraint by everyone. No one group should be asked to shoulder all of the burden. The program should be designed to protect workers from the eroding effects of inflation and to assure that all groups share in the growth of income.

● *It must establish clear and explicit standards for both wage and price behavior.* If individual businesses and workers do not clearly perceive the way in which they can contribute to the fight against inflation, they are unlikely to do so. And if the government is to undertake countermeasures against inflationary behavior, that behavior must be clearly defined.

● *It must instill confidence that others will participate.* In order to encourage widespread cooperation, the government must play an active part. Few groups can be expected to cooperate if they have no confidence that others will do the same. The government must set its own house in order; and it must take measures to encourage individual decision makers in the private sector to do likewise.

The anti-flation program announced by the President at the beginning of 1978 called for moderation in everyone's price and wage increases. The program adopted a standard of deceleration for the price and wage increases of individual industries and employee groups. Thus, each industry was asked to hold its price and wage increases during 1978 below the average of the prior two years.

Although many individuals and groups did make a major effort to cooperate, others did not. The program was struck a severe blow when adverse weather conditions and a severe shortage of meat supplies led to huge increases in food prices. It is particularly difficult to ask workers to moderate their wage demands when food prices—constituting about one-fifth of the typical family budget—are increasing at a double-digit annual rate. And, in turn, continued increases in labor costs make it difficult to achieve a deceleration of industrial price increases.

Yet, the need for strong efforts to moderate inflation has become even more urgent. More potent actions are required if we are to break the momentum of wage and price increases in the private sector.

A. PRICE/WAGE STANDARDS FOR 1979

The President has asked for a stronger effort by the private sector to be achieved by (1) instituting an explicit numerical standard for wage and fringe-benefit increases; (2) specifying a price deceleration standard for individual firms in a fashion that is consistent with the limitation on wage increases; (3) expanding the government's efforts to monitor inflation

trends and to identify sectors of the economy where the standards are being exceeded; and (4) instituting specific government measures to encourage compliance with the standards.

It is essential that these more explicit standards for private wage and price decisions retain the flexibility required for equity and economic efficiency. The following standards, promulgated by the President, accomplish that objective:

1. *Wage Standards*

Annual *increases* in *wages* and *private fringe-benefit* payments *should not exceed 7 percent.* This standard is achievable and consistent with protecting the real incomes of workers against inflation.

In new collective bargaining situations, a contract in which wage and fringe-benefit increases average no more than 7 percent annually over the life of the contract will be consistent with the pay standard. However, no more than an 8-percent pay increase should be included within the first year of a multi-year contract.

In evaluating the consistency of new contracts with the pay standard, provisions for cost-of-living increases will be costed out on the assumption of a 6-percent annual rate of price inflation over the duration of the contract period. Thus, a 100-percent cost-of-living adjustment, which fully protects workers against losses in real income due to inflation, fits within the wage standard. Therefore, the standard leaves room for complete flexibility in the allocation of the pay increase between wage and fringe benefits and between fixed increases and cost-of-living adjustments.

Formal wage agreements signed prior to announcement of the program will not be subject to the pay standard.

For employee groups not covered by collective bargaining agreements, the pay limitation applies to the annual increase in average hourly private compensation. The period of measurement extends from the firm's fiscal quarter ending prior to announcement of the program to the corresponding quarter of 1979. Compensation excludes overtime pay and government-mandated labor costs, such as increased employer payroll taxes.

In the interest of equity or improved productivity, some exemptions from the pay limitation are allowed. First, workers who earn an hourly wage below $4.00 are excluded from the program. Second, wage increases in excess of the standard are acceptable if they reflect explicit changes in work rules and practices that result in demonstrable improvements in productivity of equal or greater value. Third, wage increases above the standard are justifiable if required in order to maintain a close historical tandem relationship to another employee group whose wage adjustment occurred prior to announcement of the program.

Within an individual company, *each* of the following groups would be expected to satisfy the wage standard: (1) Individual employee groups covered by major collective bargaining agreements; (2) other nonmanagement personnel; and (3) management personnel. This categorization is required in order to take account of the differing institutional arrangements for setting wage rates and in order to prevent an inequitable distribution of the wage moderation.

These standards apply to all nonfederal employees. The President has already taken actions, consistent with this standard, that limit the Federal employee pay increase to 5.5 percent.

2. *Price Standards*

A single standard for individual firms' price increases would be impractical. A target for an economy-wide rate of inflation cannot be translated into a uniform target for each industry. While wage increases tend to be roughly uniform among various labor groups during periods of stable economic growth, rates of price increase vary considerably from industry to industry, partly because of the marked variability of productivity growth across industries.

It is equally important to avoid a price standard based upon a simple passthrough of costs. This type of rule can have debilitating effects on incentives to improve efficiency. Moreover, it raises complex administrative issues for any monitoring effort. But the standard for prices must be as explicit as that for wages.

The price standard requires that *individual firms limit their cumulative price increases over the next year to one half of a percentage point below the firm's averge annual rate of price increase during 1976-77.*

The 1976-77 period has been selected as being representative of basic underlying cost and productivity trends in individual industries. Some industries experienced abnormally high rates of price increase during that period. These extremes are taken into account by limiting the price increase for an individual firm to be no more than 9.5 percent.

Furthermore, if hourly wage rate increases within a firm decelerate by more than one half of a percentage point relative to the 1976-77 rate of increase, the deceleration of prices should be commensurately tightened to reflect a full passthrough into prices of the moderation of wage increases.

Firms that cannot meet the deceleration standard because of uncontrollable cost increases will be required to show that their before-tax profit margin (on sales) is no higher than the average of the firm's best two out of three fiscal years ending prior to October 1, 1978.

These price standards are designed to ensure that wage moderation is matched by price moderation and that prices are not increased as a means of raising profit margins.

3. *A Program of "Real Wage Insurance"*

One of the major obstacles to the success of voluntary wage and price standards is the fear on the part of each group of workers that their observance of the wage standard could lead to a loss of real income if others do not cooperate, or if uncontrollable events like a serious crop shortage occur.

To deal with this very legitimate fear, the President will propose to the Congress in January a program of *real wage insurance* for those who observe the wage standard. In broad outline the program will work as follows:

- Groups of employees would become eligible for the program through certification by their employer that their wage increase over the next year falls within the 7-percent standard outlined above.
- Employers would transmit this information to the IRS on the W-2 forms of the employees.
- Members of employee groups that meet the standard would receive a tax refund if the consumer price index (CPI) increased by more than 7 percent over the year.
- That refund would be equal to the excess of the CPI increase over 7 percent applied to the employee's wages, up to some reasonable limit.
- Only members of employee groups that adhere to the standard would be eligible for the refund.

The details of this legislative proposal will be developed over the next several months and presented to the Congress early in the next session.

Widespread observation of the standard should lead to a rate of inflation below 7 percent. But this is an uncertain world and there are risks for those who cooperate. By substantially eliminating those risks, the real wage insurance program will provide a strong incentive to observe the standards and a major support for the fight against inflation.

4. *Monitoring Observance of the Standards.*

The adherence of private-sector firms to the standards will be moni-

tored by the Council on Wage and Price Stability. The Council has the statutory authority to obtain, where necessary, the required information on prices, profits, and wage rates. It will use that authority to identify publicly areas of the economy and firms in which compliance to the standards is not being achieved.

There will be a need to expand the staff of the Council by about 100 persons. The monitoring effort will, of necessity, focus principally upon those sectors of the economy dominated by large firms and employee groups. It is in these industries where the most discretion exists in wage and price decisions and where public pressure can most usefully augment the competitive restraints of open markets.

There are four basic facets of the Council's monitoring activities.

First, *all* of the components of the consumer and producer price indexes published by the government will be monitored in order to identify markets in which prices are rising in excess of the deceleration standards. The Council will identify the major firms in those industries and seek information to determine whether or not their actions are consistent with the standards.

Second, the Council will concurrently begin a program to monitor the price and wage actions of about 400 large firms—primarily those with annual sales in excess of $500 million. This monitoring effort will provide significant coverage of wage and price trends in the major industrial sectors of the economy.

Third, although the standards apply to the average price increases of firms rather than price hikes for individual products or product lines, the Council will conduct investigations to ascertain the causes of sustained increases in major categories of the price indexes that exceed an annual rate of 10 percent. Public reports, identifying the factors responsible for the increases, will be issued by the Council.

Finally, in addition to the monitoring of wage actions by large corporations, the Council will follow developments in major collective bargaining agreements and provide public analyses of the consistency of these agreements with the wage standard.

5. *Incentives for Compliance*

This is a voluntary program. Nevertheless, individuals and firms cannot be expected to adhere to the suggested limitations on prices and wages unless they are provided with a reasonable expectation that others will do the same. Thus, government must be prepared to support the standards through its own actions. In this respect, the Administration will interpret wage or price increases above the standards as an indication of inflationary conditions in the markets concerned—shortages, excessive market power, shelter from competition, etc.—and the Administration is prepared to take those steps within its power to alleviate such conditions. The range of potential actions would include the following:

(1) A reexamination of various restrictions on import competition in industries in which wage or price increases are exceeding the standards, and, where administratively possible, relaxing these barriers to trade. Many of these restrictions have the objective of protecting the output and employment of domestic industries. But they are not intended to provide an umbrella under which excessive price and cost increases could be imposed on the American public.

(2) A request to the appropriate regulatory agencies that they, in their decisions on rates and entry, evaluate the reasonableness of cost-passthrough and other rate-increase requests in light of the anti-inflation standards for wage and price behavior.

(3) An examination of specific markets in which minimum levels for prices or wages are set by administrative regulations. Those regulations will be modified if inflationary pressures and nonobservance of the standards are evident.

(4) The circumstances surrounding specific inflationary situations will be brought to the public's attention through public hearings and reports of the Council on Wage and Price Stability. The public can help by redirecting their purchases away from those markets where inflationary pressures are evident.

In effect, increases in excess of the standards will trigger a consideration of government policies and programs that affect the specific market in which the excessive increase takes place. Most of the actions outlined above can be adopted administratively (i.e., no legislation is required). In other cases, the Administration will be prepared to provide the Congress with specific legislative proposals if necessary to change government policies that exacerbate individual inflationary situations.

6. *Government as a Buyer*

The Federal Government itself is a major purchaser of goods and services. By channeling its procurement to those firms whose price and wage decisions meet the standards of noninflationary behavior, the government, acting as a prudent buyer, can realize important long-term savings in its procurement budget and simultaneously take the lead in the fight against inflation.

The Federal Government will limit government procurement activities, insofar as feasible, to firms that observe the wage and price standards. Beginning in January, for Federal contract awards in excess of $5 million, supplying firms will be required to certify that they are in compliance with the wage and price standards. Those firms who cannot certify that they are complying with the standards will be ineligible for government cantracts. This program will be administered by the Office of Federal Procurement Policy in OMB. Specific procedures to carry out the policy will be issued shortly. As the government gains experience in administering the policy, the $5 million cutoff will be gradually lowered.

Furthermore, the competitive position of the U.S. in world markets will be sharply improved by a moderation of inflation. Thus, the Eximbank has been requested to limit, insofar as is feasible and consistent with the President's export-promotion policy, the availability of its financing programs to those supplying companies that observe the wage and price standards.

Beginning in January, 1979, for export transactions in excess of $5 million, U.S. exporters seeking Eximbank assistance will be required to certify that they are observing the wage and price standards. This certification will be needed in connection with (1) Foreign Credit Insurance Association short- and medium-term export credit insurance policies and renewals, (2) Eximbank commitments (under the medium-term bank guarantee program) to guarantee export credit obligations purchased by commercial banks, and (3) commitments issued to U.S. suppliers in connection with Eximbank loans and financial guarantees. Specific procedures to carry out this policy will be issued shortly.

In order to avoid unwarranted interference in the purchasing decisions of foreign buyers of U.S. products and services, and to avoid an adverse effect on U.S. exports, the rules for Eximbank implementation of this policy will have prospective application only (i.e., no existing commitments will be interrupted) and will apply only to those cases in which Eximbank support is sought by U.S. companies. Certifications will not be required when the foreign purchaser applies directly to Eximbank for financing.

7. *Overall Implications*

The deceleration standard for prices can be related to the wage standard by adding one half of a percentage point to the wage standard to reflect scheduled increases in legislatively mandated payroll costs, and by deducting 1¾ percentage points for productivity growth. The resulting economy-wide 5¾ percent rate of increase in unit

labor costs, with unchanged markups over costs, would imply an equal rate of economy-wide price increase. This rate of price increase is ½ percentage point below the 6¼ percent average of 1976-77. Thus, the wage and price standards are consistent with one another.

Yet, even with very widespread observance of the wage and price standards, the overall rate of cost and price increase in 1979 will probably exceed 5¾ percent. Some exceptions to the strict numerical standards have been adopted to ensure the degree of flexibility required to avoid gross inequities and inefficiencies. Some competitive markets—especially farm-product markets—could continue to be sources of inflationary pressures. Widespread compliance with the wage/price standards is likely, however, to reduce inflation to the range of 6 to 6½ percent over the next year. This would represent significant progress over 1978.

In future years, as success is achieved, the wage/price standards will be lowered. Thus, the nation will achieve price stability over a period of several years while simultaneously avoiding recession and maintaining real incomes.

B. SPECIAL PROBLEM SECTORS

The wage/price standards are designed to serve as guides for the behavior of decisionmaking agents who have discretionary power over the prices and wages that they receive. Thus, standards are not directly relevant to pricing behavior in those markets in which prices are determined by the impersonal workings of supply and demand. In particular, the program, as discussed thus far, does not address inflationary problems in such highly competitive markets as those for farm products and many other raw materials. Yet, several of these sectors have been significant sources of inflation in recent years.

In these and some other markets it will be necessary to supplement the standards with special programs that are tailored to the unique conditions of each situation. Some examples of this approach are discussed briefly below.

Food Prices

Over the last decade, food-price increases, at both the retail and farm levels, have exceeded the rise in other prices by only a slight margin. However, year-to-year food-price changes have followed a far more erratic course. In particular, food-price increases have accounted for a fourth of the inflation in consumer prices thus far this year.

The outlook for food-price inflation, except for meat products, is generally more favorable for 1979. Prices are not depressed currently relative to costs in most major food-product categories and the supply outlook, in the absence of adverse weather conditions, is good. There will continue to be, however, limited supplies of beef due to previous sharp contractions in herd sizes.

The monitoring of food prices will concentrate on food prices both at the raw commodity or farm level and at the retail level.

Farm level prices are a major source of the volatility in retail food prices. These commodity prices are determined by competitive-market supply and demand forces. In these markets, erratic price movements are most often the result of major supply-side shocks such as weather conditions, disease, and biological forces. Since these factors, and the resulting market-price movements, are outside the control of the individual farming units, the monitoring of these prices will focus on overall market trends.

Price stability in our agricultural economy is and will continue to be a cornerstone of Federal policy. The monitoring will identify sustained upward price movements in particular commodity markets in excess of the overall inflation rate. Where such changes are not justified by changes in costs, administrative actions will be considered to expand supply and moderate price increases.

At the retail level, individual firms in the processing and distribution sectors will be expected to adhere to the price standards with respect to increases in margins. The Department of Agriculture and the Council on Wage and Price Stability will cooperate in a joint effort to monitor national trends in marketing margins. Efforts will be made to ensure that commodity price decreases at the farm level are accurately and quickly reflected in retail prices and that when farm product prices rise, there are no more than commensurate increases in retail food prices.

Housing

The costs to homeownership have risen about as fast as the general rate of inflation over the last decade. In recent years, however, these costs have increased much more rapidly than other consumer prices—at an average annual rate of 9 percent. In some regions of the country the increases have been even larger. These rapid cost increases reflect a combination of (1) strong demand pressures in those markets that supply materials for homebuilding, (2) local land-use restrictions that have sharply increased development costs for new housing, and (3) large increases in financing charges.

These problems cannot be solved easily by a program of voluntary price and wage restraint. The most effective way to moderate the rise in homeownership costs is to bring the general inflation under control. Success of the anti-inflation program would help bring down interest rates and dampen speculation in real estate as a hedge against inflation.

Local land-use planning, important as it is to the preservation of a healthy and esthetic environment, can be very costly. The Administration has recently launched a cooperative effort with State and local governments, one aspect of which will work to mitigate the inflationary impact of local land-use regulations without jeopardizing the goals of these planning activities.

Health Care

The health-care sector is of particular importance. Yet a price standard cannot be easily applied to an industry in which output is not an easily measured concept. Inflation in this industry has been a severe and persistent problem. Medical-care prices have consistently outpaced overall inflation, and expenditures for medical care constitute a steadily escalating share of our national output. A decade ago, health-care costs accounted for 6½ percent of GNP. Now they account for 9 percent. The health-care industry is not one in which market forces can be expected to provide an adequate restraint on price increases. The most significant action we can take to reduce inflation in medical-care costs is to institute direct controls over hospital costs. Hospital costs are the largest and fastest growing component of medical-care costs. They have increased between 15 and 20 percent in each of the last three years and now constitute 40 percent of total health-care costs.

A deceleration of only one half of a percentage point in medical-care costs is not commensurate with the extreme magnitude of these recent cost increases. A more appropriate standard for this industry is a deceleration of at least two percentage points next year and continued deceleration in future years until the rate of growth of medical-care expenditures is brought into line with the rate of growth of the overall Gross National Product.

The Administration has already taken actions to contain health-care costs. Measures have been taken to strengthen health planning and encourage growth in Health Maintenance Organization programs, which embody incentives to promote cost consciousness and to keep enrolled members healthy. Within the Medicare and Medicaid programs, steps have been taken to discourage unnecessary surgery, to encourage use of generic drugs (which are typically less costly than brand-name drugs), and to

promote greater price competition for medical equipment and supplies.

These activities and voluntary actions of the medical-care industry have moderated the rate of medical-care inflation. The Council on Wage and Price Stability will continue to monitor inflation in this sector and will assist the industry's own efforts to contain health-care costs. However, the best way to make substantial inroads into the persistent medical-care inflation problem is to enact cost-containment legislation.

Conclusion

The actions that the President has announced rely heavily upon the balanced use of overall economic policies, exercise of the administrative powers of Government, and voluntary cooperation of the private sector. They will be implemented immediately. However, more must be done. The President has instructed his advisors to analyze and prepare a set of complementary legislative proposals for submission to the 96th Congress when it convenes in January.

QUESTIONS AND ANSWERS

1. *Question.* Are companies subject to a reporting requirement under this program?

Answer. There is no reporting requirement. This policy is consistent with the President's desire to minimize paperwork and reporting burdens on firms. However, firms are expected to collect, organize, and retain information needed to determine whether they are in compliance with both the wage and price standards. Firms should tailor their data system to the structure of the anti-inflation program. Firms should measure their price and pay actions against the standards and be able to demonstrate that they are doing so.

2. *Question.* Why is 1978 not included in the base period?

Answer. The first half of the year is excluded in order to avoid penalizing those who made a good-faith effort to comply with the deceleration effort begun earlier in the year. If the early 1978 experience were incorporated into the base, then those firms that accelerated their price increases earlier this year would be better off than those who decelerated because they would have a relatively higher base going into the program year.

3. *Question.* Can't a firm with prices that have been depressed due to weak demand and that has faced higher costs raise prices?

Answer. In general, monitoring efforts will not focus on firms with a program-year rate of price change less than 1.5 percent. With respect to the approximately 400 large firms that will be monitored most closely, this procedure does not provide an escape for those that could be expected to achieve price deceleration.

A firm with negative base-period profits would qualify as an exception to the profit test standard on the basis that applying such a test would cause undue hardship. Firms with negative profit margins are still expected to meet the price standards, but in cases where they fail, the Council will consider each situation individually to determine if an exception should be granted.

4. *Question.* Are all raw materials excluded?

Answer. Raw materials are part of the program. However, since the prices of raw materials (such as raw farm commodities, crude oil, natural gas, and coal) are not determined at the level of the individual firm, raw material prices should be excluded from the company average price calculations. Instead, raw material markets will be monitored by CWPS to identify sustained price increases in excess of the overall inflation rate. Where such increases are not justified by changes in costs, government actions will be considered to expand supply and moderate price movements.

A company would be exempt from the profit margin standard if more than 75 percent of its revenues are accounted for by sales of raw materials and there is no reasonable accounting basis for computing a profit margin on its remaining sales.

5. *Question.* Are interest rates covered by the program? Are banks covered?

Answer. Interest rates are set in open markets and influenced to a large extent by government agencies. Therefore, they will not be part of the Council's monitoring of individual firms and should be excluded from the calculation of an individual company's average price. The Council expects interest rates to decline as the overall inflation rate is reduced.

Banks are covered by the program. However, since interest rates are excluded, banks will be expected necessarily to meet the price deceleration standard, but will be expected to meet the profit margin standard. Thus, changes in the interest rates charged by banks should reflect changes in the cost of funds. In addition, banks are expected to comply with the pay standard. The Council may in future months consider a program tailored to the special institutional characteristics of banks—a program that maintains the original objectives of the program. But certainly a bank that complies with the current standards will be in compliance with any new program.

6. *Question.* Does the pay standard apply to collective bargaining settlements which were being negotiated prior to the announcement on October 24 but in which no formal agreement was signed?

Answer. The pay standard does not apply under any of the following circumstances:

(1) There was a written memorandum of agreement covering wages and benefits between the parties prior to October 24;

(2) There was a written management offer outstanding on October 24, and the contract is later signed with wage and benefit terms that are no higher; or

(3) There was evidence of an oral agreement covering wages and benefits between the parties prior to October 24.

7. *Question.* Does the pay standard apply to increases for nonunion employees that were announced prior to October 24 but not effective until after that date?

Answer. As in the case of union contracts agreed to before October 24, such increases are exempted from the standard if it can be shown that it is the company's historically established practice to announce its pay increases to its employees at such time to be effective at a later date.

8. *Question.* Does the tandem unit exception to the pay standard apply to nonunion units claiming to follow union units?

Answer. It does, if it can be shown clearly that the nonunion unit claiming tandem has historically followed the union unit exactly in both timing and size of pay increases. These criteria are to be applied strictly.

9. *Question.* How do you define the nonunion management group of employees as opposed to the nonunion nonmanagement group?

Answer. Companies will be asked to determine this according to past practices. In general, management employees should be those whose duties are primarily of a supervisory nature. For example, the Fair Labor Standards Act distinction between exempt and nonexempt employees might be used. Firms should not, however, alter or stretch previously used categories in order to permit above-guideline pay increases for large numbers of workers. Firms should not "gerrymander" the lines of demarcation among different types of employee units. Each firm should determine for itself exactly where to draw the line between management and nonmanagement personnel, based on past practice.

10. *Question.* Does the work-rule change provision for pay-rate increases above the pay standard open a loophole by allowing management and labor to overstate productivity gains and thereby justify larger pay increases?

Answer. The Council will review claims of productivity gains resulting from work-rule changes to ensure that the cost reductions are genuine and are large enough to offset the excess of the pay increase over the pay standard. Claims that larger pay increases are justified by an historically higher rate of productivity gain in a particular industry are not relevant; there must be a demonstrated gain in productivity from changes in specific work rules in the new agreement.

11. *Question.* Are such forms of executive compensation as bonuses and stock options included within the pay increase to be measured against the standard?

Answer. All such forms of compensation are included within the standard. Deferred forms of compensation are included in the year in which they are received.

ILLUSTRATIONS

1. MEASURING RATES OF PRICE CHANGE: AN EXAMPLE

To establish compliance with the anti-inflation program price deceleration standard, two rates of price increase should be computed. The first summarizes the rate of price increase over the 1976-77 period. The second summarizes the rate of price increase over the program year. These two rates of change are compared to determine compliance with the price deceleration standard.

Constructing Company Average Price

To determine compliance with the price deceleration standard on an annual basis, it is necessary to compute company-wide average prices in each of four quarters. The quarters are

1.	Last complete fiscal or calendar quarter of 1975.	Required to compute rate of price change over 1976-77 period
2.	Last complete fiscal or calendar quarter of 1977.	
3.	Last complete fiscal or calendar quarter ending by September 30, 1978 (referred to as the base quarter).	Required to compute program-year rate of price change
4.	Last complete fiscal or calendar quarter ending by September 30, 1979 (last quarter of the program year).	

An example illustrating how the average price calculations can be made is presented in Table 1. In this example, it is assumed that the company produces three products, A, B, and C. In each quarter, the individual product line prices are determined by dividing gross receipts during that quarter by the number of units sold (alternative methods of determining product-line prices are discussed below).

The company-wide average price is an index of individual product line prices. Using the definition in §705C of the standards, the company average price will always equal one in the last quarter of 1975 and the base quarter. Applying this definition to the data in Table 1, the company average prices in the final quarters of 1975 and 1977 are

$$P_{75} = \left[\frac{3.00}{3.00} \times \left(\frac{60}{450}\right)\right] + \left[\frac{2.00}{2.00} \times \left(\frac{50}{450}\right)\right] + \left[\frac{34.00}{34.00} \times \left(\frac{340}{450}\right)\right] = 1.000$$

$$P_{77} = \left[\frac{4.00}{3.00} \times \left(\frac{60}{450}\right)\right] + \left[\frac{1.60}{2.00} \times \left(\frac{50}{450}\right)\right] + \left[\frac{39.75}{34.00} \times \left(\frac{340}{450}\right)\right] = 1.150$$

TABLE 1

Last Complete Fiscal or Calendar Quarter Ending on or Before	Product Lines A		B		C		
	Gross Receipts	Unit Sold	Gross Receipts	Units Sold	Gross Receipts	Units Sold	Total Receipts
December 31, 1975	60	20	50	25	340	10	450
December 31, 1977	48	12	40	25	318	8	
September 30, 1978	100	20	50	25	400	10	550
September 30, 1979	130	25	52	25	510	12	
	Individual Product-Line Prices						
	A		B		C		
December 31, 1975	3.00		2.00		34.00		
December 31, 1977	4.00		1.60		39.75		
September 30, 1978	5.00		2.00		40.00		
September 30, 1979	5.20		2.08		42.50		
	Company Average Price						
December 31, 1975	1.0000						
December 31, 1977	1.1500						
September 30, 1978	1.0000						
September 30, 1979	1.0564						

The base quarter and final program-year quarter company-wide average prices are similarly calculated as

$$P_{78} = \left[\frac{5.00}{5.00} \times \left(\frac{100}{550}\right)\right] + \left[\frac{2.00}{2.00} \times \left(\frac{50}{550}\right)\right] + \left[\frac{40.00}{40.00} \times \left(\frac{400}{550}\right)\right] = 1.000$$

$$P_{79} = \left[\frac{5.20}{5.00} \times \left(\frac{100}{550}\right)\right] + \left[\frac{2.08}{2.00} \times \left(\frac{50}{550}\right)\right] + \left[\frac{42.50}{40.00} \times \left(\frac{400}{550}\right)\right] = 1.0564$$

Given the company average prices in the above example, the 1976-77 base rate of price change and the program-year rate of price change are computed as follows:

$$\text{Base rate of price change} = \left(\sqrt{\frac{P_{77}}{P_{75}}} - 1\right) \times 100$$

$$= \left(\sqrt{1.150} - 1\right) \times 100 = \boxed{7.24\%}$$

$$\text{Program-year rate of price change} = \left(\frac{P_{79}}{P_{78}} - 1\right) \times 100$$

$$= \left(1.0564 - 1\right) \times 100 = \boxed{5.64\%}$$

Price increase deceleration = 7.24% -5.64% = 1.60%

As is evident, the program year rate of price change (5.64 percent) is 1.60 percent below the 1976–77 base rate of price change (7.24 percent). This company therefore complies with the price deceleration standard, which requires at least a 0.50 percent reduction in the average rate of price increase for all products.

Alternative Price Measurement Method

In the above example, average prices are obtained for individual product lines by dividing quarterly revenues by units sold. Actual list prices may be used instead if the timing of list-price changes is constant for year-to-year and if discounting practices do not vary substantially. In these cases, list prices should be measured at the same point in each quarter (e.g., at the end of each quarter).

Further, companies with a very large number of products and prices may determine product line average prices from a representative sample of products within each product line. The products should be selected according to accepted statistical procedures so that a company's calculated rates of price increase are not unduly sensitive to the sampling procedure.

These, and other methods, are acceptable ways to evaluate product-line prices, so long as the methods are consistent with the objectives of the price standards.

Six-month Price Check

In order to satisfy the 6-month price increase limitation, the average price increase over the first 6 months of the program year should be less than 50 percent of the annual increase suggested by the price deceleration standard.

In the example in table 1, the 1976–77 rate of price increase was 7.24 percent the program-year rate of price increase allowed by the price deceleration standard is 6.74 percent (7.24 percent to 0.50 percent). The six-month limitation is therefore 3.37 percent (6.74 percent/2). Therefore, to satisfy the 6-month limitation, the company average price in the first and second quarters of the program year should be less than 1.0337. To check for compliance with this limitation, an average price should be calculated for the first and second quarters using the base-quarter gross receipt shares as weights.

Calculating Pass-Through of Pay Deceleration

Compliance requires that companies pass through the cost savings from substantial pay deceleration by effecting additional price deceleration. The standard calls for additional price deceleration whenever the percentage change of the company-wide pay rate in the program year falls below the average 1976–77 rate of change by more than 0.5 percentage points.

The method of calculating the required price deceleration is illustrated in the following example. If the company pay rate is $5 in the last quarter of 1975 and $6 in the last quarter of 1977, the base rate of change in the company pay rate is:

$$\left(\sqrt{\frac{6.00}{5.00}} - 1\right) \times 100 = 9.54\%$$

If the company pay rate rises to $6.50 in the base quarter and, further, to $7 in the final quarter of the program year, the program-year rate of change of the company pay rate is 7.69 percent. Thus, the rate of deceleration of the company pay rate is 1.85 percent (9.54 percent to 7.69 percent).

If the pay share is 0.6 (i.e., pay is % of gross revenue), then the price deceleration required is

$$0.5 + [(1.85 - 0.50) \times 0.6] = 1.3$$

CALCULATING PAY-RATE INCREASES: AN EXAMPLE

The pay standard is applied separately to each collective bargaining unit. For nonunion employees, the standards are applied separately to two groups: (1) Management employees and (2) nonmanagement employees. The first example below illustrates the application of the 7-percent wage standard to the latter two groups. The second example illustrates the application of the pay standard to collectively negotiated contracts.

Nonunion employee units

Although the following example uses hourly pay rates, pay increases may be measured in terms of monthly salaries if this conforms to the method of compensating these workers. If some workers are paid by the hour and others are paid by the month, a reasonable assumption, about the hours worked per month by the latter group must be made.

Table 2 contains hypothetical data on payroll costs. The firm has a total payroll cost of $3 million for one of the two employee groups in the first quarter of the company's program year. To check for compliance, the firm would first deduct the cost over the quarter of employer contributions to such items as social security, unemployment insurance, and worker's compensation. In the example, these items total $200,000; the difference ($2.8 million) represents the total private payroll cost for this employee unit in the base quarter. This cost includes both wages and payments for private fringe benefits such as health insurance and pension plans. Since the standard applies to straight-time pay rates, overtime payments should also be deducted. In the example, this entails subtracting $100,000 from the $2.8 million in total wages and private fringe benefits. The sum of straight-time wages and private fringes, then, is $2.7 million.

Division of total pay by the total number of straight-time employee hours worked in this unit yields the hourly pay rate.

TABLE 2: BREAKDOWN OF TOTAL PAYROLL COSTS

Base Quarter Payroll Costs (e.g., July to September 1978)			First Quarter Payroll Costs (e.g. October to December 1978)		
(1)	Straight-time hourly wage	$1,800,000	(1)	Straight-time hourly wage	$2,000,000
(2)	Private fringe benefits	600,000	(2)	Private fringe benefits	700,000
(3)	Total private straight-time payroll costs	2,400,000	(3)	Total private straight-time payroll costs	2,700,000
	Labor Cost Items Excluded in Program Calculations			Labor Cost Items Excluded in Program Calculations	
(4)	Overtime payments	100,000	(4)	Overtime payments	100,000
(5)	Legally-mandated employer paid payroll taxes	200,000	(5)	Legally-mandated employer paid payroll taxes	200,000
(6)	Total payroll cost	2,700,000	(6)	Total payroll cost	3,000,000
	Payroll Hours			Payroll Hours	
(7)	Straight-time hours worked	475,000	(7)	Straight-time hours worked	490,000
(8)	Overtime hours worked	10,000	(8)	Overtime hours worked	10,000
(9)	Total hours worked	485,000	(9)	Total hours worked	500,000
(10)	Hourly pay rate (3)/(7)	= $\frac{\$2,400,000}{475,000}$	(10)	Hourly pay rate (3)/(7)	= $\frac{\$2,700,000}{490,000}$
(a)		$5.05 per hr.	(b)		$5.51 per hr.

First quarter percent change in average pay rate = $\left[\frac{10b}{10a} - 1.00 \times 100\right]$

$= \left[\frac{5.51}{5.05} - 1.00 \times 100\right] = 9.1\%$

In the example, of the 500,000 hours worked in the quarter, straight-time hours comprise 490,000. Dividing $2.7 million by 490,000 hours yields $5.51 per hour. This is the relevant average hourly pay rate for this employee unit in the first quarter of the company's program year.

A comparable hourly pay rate figure for the company's base quarter must be calculated. The base quarter is either the company's last fiscal quarter completed by September 30, 1978, or the calendar quarter ending September 30, 1978. In this example, the average hourly pay rate in the base quarter is $5.05 ($2,400,000 divided by 475,000 hours).

The pay increase for the employee unit in the first quarter of the program year is 9.1 percent. This is greater than the 7-percent limit; the company is not in compliance with the pay standard. By contrast, if the base quarter hourly compensation had been $5.30, the percentage increase for this employee unit during the first quarter of the program year would be 4.0 percent, and the firm would be in compliance with the 7-percent standard.

Similar checks for compliance should be performed for the second, third, and fourth quarters of the program year. In each quarter, compliance requires that the pay rate be no greater than 7 percent above the base-quarter pay rate.

Collective bargaining agreements

In determining the cost of a collective bargaining agreement, several general principles should be followed:

(a) The average straight-time hourly wage rate for the bargaining unit at the expiration date of the prior contract will be the base rate for calculating percentage wage increases.

(b) This base rate includes any cost-of-living adjustments (COLA) made under the expiring agreement that have not yet been incorporated into the base rate.

(c) Wage increases over the period of the new agreement should be compounded. For example, the wage increase in the second year of an agreement is calculated by multiplying the stipulated percentage increase for the second year times the wage rate that will prevail at the beginning of the second year, including any first-year wage increase (including COLA).

(d) COLA increases should be calculated assuming a 6-percent average annual rate of inflation from the effective date of the contract.

(e) The increased cost of maintaining existing private benefit programs (e.g., expected increases in health premiums), as well as the cost of new benefit provisions, is to be included in pay.

(f) "Roll-up," the added cost of wage-related benefits resulting from a scheduled wage increase, should also be included.

The following example, summarized in table 3, illustrates the specific procedures to be followed in calculating the cost of an agreement. In this example, the new collective bargaining settlement calls for a fixed wage increase of 50 cents per hour in the first year and 3-percent increases in both the second and third years; continuation of a cost-of-living clause providing payments of one cent per hour for each 0.3 point rise in the CPI, payable in the second and third years; maintenance of all health insurance benefits; an additional holiday; and higher pension benefits. The average straight-time wage rate at the start of the contract is $8.00 an hour and the average wage-and-benefit rate is $11.00 an hour.

1. The first-year fixed increase in the wage rate is 50 cents per hour. There is no COLA payment in the first year.

2. The second-year fixed increase is 3 percent of the new base of $8.50, or 25 cents. To this must be added the COLA. In the example, the COLA is payable at the start of the second year, based on the change in the CPI from September 1978 to September 1979. The CPI in September 1978 stood at 198.0; the assumed September 1979 CPI is 209.9 (198.0 × 1.06). Under this 6-percent inflation assumption, the CPI rises 11.9 points (209.9–198.0). Dividing 11.9 by 0.3 produces a 39-cent COLA payment (rounding is always down). The 39-cent COLA added to a 25 cent fixed increase results in a total wage increase of 64 cents.

3. The third-year fixed increase is 3 percent of the new base of $9.14, resulting in an increase of 27 cents per hour. The assumed 6-percent inflation rate would raise the September 1980 CPI to 222.4, a gain of 12.5 points, which, when divided by 0.3, generates a third-year COLA increase of 41 cents per hour. The resulting total wage-rate increase is, therefore, 68 cents per hour.

4. Nonwage items are considered separately. The cost of maintaining existing health insurance plans or the cost of increasing monthly pension benefits will depend on existing health insurance coverage and the age and seniority composition of the work force. In this example, each holiday costs an average of $64 ($8 per hour times 8 hours) which, spread over the standard work year (2,080 hours), results in a 3-cent-per-hour ($64/2,080 hours) pay-rate increase. The estimated dollar cost of all nonwage items can be converted to an hourly figure in a similar fashion. Assume that these items total 53 cents per hour (50 cents to maintain health insurance and improve pension benefits and 3 cents for the additional holiday). To these must be added the "rollup" effect of the wage increases, i.e., the additional cost of existing wage-related benefits such as holidays and vacations resulting from the wage increase. This will depend on each individual company's benefit structure. Assuming, in the example, that rollup amounts to 20 percent of the wage-rate increase ($1.82 per hour), another 36 cents per hour is added to the pay rate over the contract term.

5. The total pay-rate increase is $1.82 in wages plus 89 cents in nonwage items and rollup for a total of $2.71 per hour. Assuming that the pay rate at the expiration of the prior contract was $11 per hour, the $2.71 increase over the new contract life represents a 24.6-percent pay-rate increase. The annual rate of increase is obtained by using the formula in 705B-2 of the above description of the standards: the cube root of 1.2464 is 1.076; subtracting 1.0 from this figure and multiplying by 100, we obtain the average annual rate of increase: 7.6 percent. This collective-bargaining agreement, therefore, would not be in compliance with the pay-rate standard.

6. Similar calculations for private fringe benefit increases and rollup over the first year of the contract should be made. The resulting increase should be added to the 50-cent first-year wage-rate increase. For compliance, this sum must be no more than 8 percent of the $11 per hour base pay rate at the time of expiration of the old agreement.

TABLE 3: WAGE AND BENEFIT INCREASES

COLA Calculation

CPI Assumption

September 1978	198.0	First Year COLA	None
September 1979	209.9	Second Year COLA = $\frac{209.9 - 198.0}{.3}$	= 39 Cents
September 1980	222.4	Third Year COLA = $\frac{222.4 - 209.9}{.3}$	= 41 Cents

Fixed Increases

First Year = 50 Cents

Second Year = .03 × (2nd year base)
= .03 × (8.00 + .50) = 25 Cents

Third Year = .03 × (3rd year base)
= .03 × (8.50 + .25 +.39) = 27 Cents

Wage Summary

	Base Wage	Fixed Increase	COLA	Total Increase	Percent by Year
First Year	$8.00	$ .50	$ .00	$ .50	6.25
Second Year	8.50	.25	.39	.64	7.53
Third Year	9.14	.27	.41	.68	7.44
Life-of-Contract		1.02	.80	1.82	

Wage Plus Private Fringe Benefits

Total Wage Increase	1.82	Base Pay Rate	= $ 11.00
Fringe Benefit Increase	.53		
Roll-up	.36		
		Percent Change over	= $\frac{2.71}{11.00}$
Total Pay-rate Increase	2.71	Life-of-Contract	

Total increase over life of the contract = 24.64%

Annual rate of increase over the life of the contract = 7.6%

Accordingly, it is proposed to add a new part 705 to title 6 of the Code of Federal Regulations and an appendix to that part as follows:

PART 705—WAGE AND PRICE GUIDANCE

§ 705.1 Authority

The provisions of this part are promulgated under the Council on Wage and Price Stability Act, Pub. L. 93-387, as amended by Pub. L. 94-78, and Pub. L. 95-121 (12 U.S.C. 1904 note), and particularly in furtherance of § 2(c), § 3(a)(4), and § 3(a)(5) of that Act.

APPENDIX

705A PRICE STANDARD

705A-1 *Price deceleration standard.* A company satisfies the price deceleration standard if its program-year rate of price change is at least 0.5 percentage points less than the base rate of price change.

(i) The program-year rate of price change is the percentage change in the company average price from the base quarter to the fourth following quarter (see the definitions for more detail).

(ii) The base rate of price change is the average annual rate of change in the company average price from the last calendar or complete fiscal quarter of 1975 to the same quarter of 1977 (see the definitions for more detail).

705A-2 *Full pass-through of pay deceleration.* If the program-year rate of change of the company pay rate falls below the base rate of change of the compnay pay rate by more than 0.5 percentage points, additional price deceleration is required for compliance. In particular, the program-year rate of price change should be less than the base rate of price change by the following percentage: 0.5+[(company pay share)×(rate of deceleration of the company pay rate minus 0.5)].

705-3 *Maximum increase.* If the base rate of price change is greater than 10.0 percent, compliance requires a program-year rate of price change of 9.5 percent or less.

705A-4 *Profit margin standard.* A company which does not achieve the price deceleration standards in 705A-1, 2, and 3 will be considered to be in compliance if its program-year profit margin does not exceed its profit margin base. If product lines excluded under parts 705A-6(i)(1) and 705A-6(i)(3) account for more than 75 percent of program-year dollar sales volume and there is no reasonable accounting method capable of establishing a separate profit margin for the nonexcluded product lines, the company is excepted from the preceding profit margin criterion for compliance.

705A-5 *Six-month standard for price increases.* During the first half of the program year, increases in the company average price should be limited to no more than 50 percent of the allowable program-year price increase. However, companies need not comply with this 6-month limit if they can demonstrate that their actions are consistent with adherence to the profit margin standard and either reflect seasonal variations in business operations or reflect their historical business practice or reflect unusual business conditions.

705A-6 *Exclusions from company average price calculations.*

(i) *Raw material and auction-type markets.* Prices that are not typically set at the level of the individual company are excluded from company average price calculations. These prices will be monitored on an overall market basis. This exclusion applies to three categories of prices:

(1) Prices of agricultural and industrial raw materials (including crude petroleum and natural gas),

(2) Interest rates, and

(3) Prices of commodities whose historical price changes can be shown to have been closely tied to price movements in an organized open exchange market.

(ii) Prices of imported goods at the time of first sale in the United States, prices charged in foreign sales or leases, and prices of product lines exchanged in other than open arms length transactions are excluded from company average price calculations.

(iii) Prices of new or discontinued product lines and custom product lines are excluded from the company average price calculations.

705A-7 *Alternative methods of accounting.*

(a) Companies may use alternative methods of accounting which are consistent with the objectives of these standards. For example, companies may:

(i) Sample prices within product lines (using generally accepted statistical procedures);

(ii) Rely upon list prices where price discounting practices are not volatile;

(iii) Measure prices at the end of calendar (or fiscal) quarters where prices are not frequently changed.

(b) The Council on Wage and Price Stability may request, for the purpose of determining whether a company is in compliance with these standards, that a company change one or more of its procedures if the Council determines that the company's method of measurement does not properly reflect the annual rates of price increase or profit margins.

705A-8 *Insufficient product coverage.* Any company that cannot compute a rate of price change representing more than 75 percent of its dollar sales volume during the base quarter should comply with the conditions of the profit margin standard. For purposes of calculating this percentage of sales volume, dollar sales volume should exclude revenues from product lines covered under § 705A-6 (i) and (ii).

705A-9 *Undue hardship or Gross Inequities.* The Council on Wage and Price Stability may except a company from the application of the price standard, make adjustments to the base rate of price change, or alter application of the profit-margin standard to avoid extreme situations of hardship or gross inequity.

705B PAY STANDARD

705B-1 *Employee units.* For the purpose of establishing compliance with the pay standard, a company must identify three types of employee units:

(i) Each group of the company's employees subject to a particular collective bargaining agreement to which the company is a party will constitute a separate employee unit;

(ii) All management employees (not under a collective bargaining agreement) will constitute a single employee unit; and

(iii) All other employees will constitute a single employee unit.

A company need not identify separately collective-bargaining units accounting for less than 5 percent of its employees. However, if a collective-bargaining unit is not separately identified, the workers must be included in the "all other employees" category.

705B-2 *Pay standard for collective-bargaining agreements.*

(i) A company complies with the pay standard if the annual rate of pay-rate change over the life of each collective-bargaining agreement negotiated during the program year is no greater than 7 percent. This compliance criterion is computed by the following formula:

$$\left[\left(\frac{W_T}{W_0}\right)^{\frac{1}{T}} - 1\right] \times 100 \leq 7.0$$

where

W_T=the pay rate at the end of the period covered by the new contract,

W_0=the pay rate in effect at the expiration of the period covered by the previous contract, and

T=the length of the period covered by the new contract (in years or fraction thereof).

(ii) In addition, the first-year increase of a contract for which the duration extends beyond 12 months must be no greater than 8 percent.

(iii) For purposes of determining whether the annual rate of pay-rate change is consistent with the pay standard, formulae for cost-of-living adjustments should be computed on the assumption of a 6-percent annual rate of inflation in the Consumer Price Index over the life of the contract.

(iv) The cost of private fringe benefit programs should be evaluated in terms of employer contribution rates.

(v) Pay-rate increases dictated by agreements signed prior to October 24, 1978, are exempted from the pay standard.

(vi) A contract that includes a provision for a future reopening will be assumed to be terminating on that date.

705B-3 *Pay standard for employee units of types (ii) and (iii).* A company complies with the pay standard if the pay rate for each of the employee units of types (ii) and (iii) in each quarter of the program year does not exceed the base-quarter pay rate of the employee unit by more than 7 percent.

705B-4 *Low-wage exemption.* Employees earning $4 or less per hour in straight-time hourly wages on October 1, 1978, must be excluded from each employee unit in making pay-rate computations.

705B-5 *Tandem pay rate changes.* Pay-rate changes in one employee unit that have been regularly linked to pay-rate changes in another employee unit are exempted if the pay-rate increase was granted to the latter unit prior to October 24, 1978. Employee units need not be in the same company. In order to establish such a linkage, the parties must demonstrate that the past pay-rate increases of the two employee units have been equal in value and directly related in timing. Companies with annual sales in excess of $500 million should notify the Council when they employ this exemption in determining compliance.

705B-6 *Pay-rate increases traded for productivity-improving work-rule changes.* In determining compliance, that part of a pay-rate change that is in return for changes in contractual work-rules and practices that alter productivity will be deducted from the pay-rate change. In order to comply in this manner, it must be demonstrated that the cost reductions generated by the work-rule change are equal to or greater than the excess of the pay-rate change over the pay standard.

705B-7 *Undue hardship or gross inequities.* The Council on Wage and Price Stability may grant an exception from the application of the pay standard or may make appropriate adjustments in the standard to avoid extreme situations of hardship or gross inequity.

705C DEFINITIONS (ALPHABETICAL ORDER)

Base quarter. The base quarter for price and pay computations means either (1) the company's last complete fiscal quarter prior to October 1, 1978, or (2) the calendar quarter July 1, 1978 to September 30, 1978.

Base quarter pay rate. An employee unit's base-quarter pay rate is determined by dividing pay (as defined in this appendix) to the employee unit during the base quarter by the number of straight-time employee hours worked during that quarter.

Base rate of change of the company pay rate (for determining price deceleration under 705A-2). The base rate of change of the company pay rate is the annual rate of change in the company pay rate over the two-year period, 1976-77, and is computed by the following formula:

$$G = \left[\sqrt{\frac{W_{77}}{W_{75}}} - 1\right] \times 100$$

where

G=the base rate of change of the company pay rate,

W_{77}=the company pay rate in the last complete fiscal or calendar quarter of calendar-year 1977,

W_{75}=the company pay rate in the last complete fiscal or calendar quarter of calendar-year 1975.

The choice of fiscal or calendar quarters must be consistent throughout the company's computations.

Base rate of price change. The base rate of price change is the annual rate of price change over the two-year period, 1976-77, and is computed using the following formula:

$$g = \left[\sqrt{\frac{P_{77}}{P_{75}}} - 1\right] \times 100$$

where

g=the base rate of price change,

P_{77}=the company average price in the last complete fiscal or calendar quarter of calendar-year 1977, and

P_{75}=the company average price in the last complete fiscal or calendar quarter of calendar-year 1975.

The choice of fiscal or calendar quarters must be consistent throughout the company's calculations.

Company. The term "company" means any person, sole proprietorship, partnership, corporation, association, joint venture, estate, trust, or any other entity however organized (but does not include Federal, State, or local governmental entities). The term "company" shall include such other entities, including operating divisions, that are effectively controlled, either directly or indirectly, through ownership by the company. The term "company" only applies to an entity's domestic business operations. One or more controlled entities may be treated as a separate, single company. In that case the standards apply separately to each of those groups of controlled entities as separate companies. Companies with sales in excess of $500 million should notify the Council of such treatment. However, this option is available if those controlled separated entities maintain accounting records which permit the Council to be sure that the prices and profits of the separate entities accurately reflect the economic realities of their operations. In particular, allocation of overhead must be made in a consistent and reasonable manner as if the separated entities were not commonly owned. Similarly, transfers between entities must be made at market prices.

Company average price. The company average price is an index of normalized product-line average prices. In the base quarter and quarters during the program year, base-quarter product-line average prices are used for normalization and base-quarter revenue shares are used as weights. For quarters in the 1975-77 periods, product-line average prices and revenue shares in the last complete fiscal or calendar quarter of 1975 are used for normalization and weighting. All revenues and prices for product lines covered in § 705A-6 are to be excluded from these calculations. The company average price in any quarter should be calculated as

$$P(t) = \sum_i \left[\frac{P_i(t)}{P_i} \times S_i\right]$$

where

t=the quarter of computation,

P(t)=company average price in quarter t,

$P_i(t)$=ith product-line average price in quarter t,

P_i=ith product-line average price in the base quarter (or last complete quarter of 1975),

S_i=ith product-line revenue share in the base quarter (or last complete quarter of 1975),

Σ=the summation operator where the subscript i runs over all product lines not excluded in § 705A-6.

However, other generally accepted methods of computing price indices can be used. Companies with revenues in excess of $500 million should notify

the Council of alternative methods employed.

Company pay rate. In any quarter, the company pay rate is obtained by dividing pay in that quarter (for all employee units) by the number of straight-time employee hours worked during that quarter (by all employee units).

Company pay share. The company pay share is the pay for all employee units in the base quarter divided by company total gross revenue in the base quarter.

Custom product line. A custom product line means a unit of property or service specially manufactured produced, or provided by the company to a particular buyer's specifications. Product lines do not become custom product lines simply because of the addition or exclusion of optional parts or accessories or because of alterations at the request of the buyer.

Employee. An employee is any individual residing in the United States who is either an employee within the meaning of Section 3121(d) of the Internal Revenue Code 26 U.S.C. or the National Labor Relations Act, as amended, 29 U.S.C. Sec. 151 et seq.

New product line. New product lines are defined separately for the program year and the 1976-77 period. In the program year (alternatively, the 1976-77 period), a product line introduced by a company since the beginning of the base quarter (alternatively, the last complete fiscal or calendar quarter of 1975) is a new product line if there is no reasonable accounting method capable of establishing a price correspondence with a similar product line which existed in the base quarter (alternatively, the last complete fiscal or calendar quarter of 1975).

Pay. Pay is defined as follows:

(1) Pay includes the straight-time wage or salary paid during the company's customary pay period. This includes, where applicable, payments for shift differentials, skill adjustments, cost-of-living adjustments, value received from stock options and other deferred compensation when received as reportable income, and incentive compensation. This does not include overtime pay as long as the conditions of that pay are not changed.

(2) Pay also includes employer contributions or costs for the following fringe benefits and payments:

(i) Paid leave,
(ii) Vacations,
(iii) Holidays,
(iv) Civic and personal leave,
(v) Private retirement (pension) programs,
(vi) Life insurance, accident insurance, and health benefit programs,
(vii) Sick leave,
(ix) Savings and thrift plans, and
(x) Forms of compensation, such as job perquisites, required to be reported as income or compensation under the Internal Revenue Code.

(3) Employer contributions for items listed in (2) above should be amortized evenly over each year.

(4) Pay does not include employer contributions for legally mandated programs such as Social Security, Workmen's Compensation, or unemployment insurance.

Pay rate. An employee unit's pay rate in any quarter is determined by dividing the pay during that quarter by the number of straight-time hours worked during that quarter.

Product line. A product line includes all comparable units of property or services that are sold or leased for comparable prices.

Product-line average price. The average price of a product line during a quarter is computed by dividing the gross revenues from sale or lease of the product line by the number of units sold or leased.

Product margin. In any time period, a company's profit margin is operating income (net sales less total costs and expenses including wages but not including nonoperating items, extraordinary items and income taxes) divided by net sales. Terms used in this definition have the same meaning as those used in annual reporting to the SEC under section 13 or 15(d) of the Securities Exchange Act of 1934.

Profit margin base. The profit margin base is the arithmetic average of the highest two annul profit margins during the three company fiscal years completed prior to October 1, 1978.

Program year. For a company, the program year is the 12-month period immediately following the company's base quarter.

Program-year rate of change of the company pay rate. The program-year rate of change of the company pay rate is the percentage change in the company pay rate from the base quarter to the last quarter in the program year.

Program-year rate of price change. The program-year rate of price change is the percentage change in the company average price from the base quarter to the last quarter in the program year.

Rate of deceleration of the company pay rate. The rate of deceleration of the company pay rate is computed as the difference between the base rate of change of the company pay rate and the program-year rate of change of the company pay rate.

BARRY P. BOSWORTH,
Director.

[FR Doc. 78-31193 Filed 11-1-78; 8:45 am]

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TUESDAY, NOVEMBER 7, 1978
PART III

DEPARTMENT OF ENERGY

■

FEDERAL LOAN GUARANTEES FOR DEVELOPMENT OF UNDERGROUND COAL MINES

[3128-01-M]

Title 10—Energy

CHAPTER II—FEDERAL ENERGY ADMINISTRATION [1]

PART 300—THE COAL LOAN GUARANTEE PROGRAM

Federal Loan Guarantees for Development of Underground Coal Mines

AGENCY: Department of Energy.

ACTION: Final rule.

SUMMARY: On July 18, 1977, the Federal Energy Administration (FEA) issued an advance notice of proposed rulemaking (42 FR 36836) in which FEA proposed policies and procedures for implementing the coal loan guarantee program, as authorized by the Energy Policy and Conservation Act (EPCA), and the Energy Conservation and Production Act (ECPA). Under this program, the Department of Energy (DOE) is authorized to issue guarantees of loans obtained for the purpose of developing, expanding, or reopening underground mines. This rule adopts policies and procedures for implementing the coal loan guarantee program.

EFFECTIVE DATE: November 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert M. Grubenmann, Department of Energy, Coal Loan Guarantee Program, Resource Applications, Room 3515, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, telephone 202-566-9934.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments on Proposed Regulations
III. Additional Information

I. Background

Section 102 of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94-163) as amended by section 164 of the Energy Conservation and Production Act (ECPA) (Pub. L. 94-385) authorizes the Administrator of the Federal Energy Administration (FEA) to guarantee loans issued for the development of new underground coal mines, the expansion of existing underground coal mines, and the reopening of underground coal mines which had been previously closed. The Department of Energy Organization Act, 42 U.S.C. 7101 et seq., transferred to DOE the functions of FEA under this program.

The coal loan guarantee program is designed to encourage and assist small and medium sized coal producers to increase the Nation's coal production from low-sulfur underground coal mines, to enhance competition among coal producers, and to encourage new market entry by small coal producers. In addition, the program is likely to stimulate additional job opportunities in geographic areas where low-sulfur underground reserves are located.

FEA issued an advance notice of proposed rulemaking on July 18, 1977 (42 FR 36836), in order to obtain the public's views regarding the need for the program, its impact and its feasibility, as well as suggestions—regarding program operating procedures. The preliminary regulations offered for comment outlined a procedure by which the FEA would administer its responsibilities to issue loan guaranteees.

Certain comments received in response to the advance notice were incorporated into the proposed regulations issued on May 19, 1978. Specifically, the filing and processing fee was eliminated, the financial reporting requirement was reduced, and the guarantee was extended to include accrued interest to enhance the attractiveness of this program. In addition, a requirement for flood insurance was added if the proposed project is located in an identified flood plain area, as required under the Flood Disaster Protection Act of 1973 (Pub. L. 92-234).

The environmental review section was also revised to establish criteria to be used by DOE in determining the appropriate level of environmental review to be afforded individual loan guarantee actions. It recognized that in some cases, the Environmental Protection Agency (EPA) will be involved in these projects through the issuance of National Pollutant Discharge Elimination System (NPDES) permits, which will be subject to an environmental review by EPA. In order to assure consistency of Federal reviews, DOE decided to utilize the draft criteria developed by EPA to assist in determining the level of the environmental review required (see 42 FR 47934, September 19, 1977, for a full discussion of this policy and the basis upon which it was developed).

Public comments were not adopted concerning the desirability of legislative authority for loan guarantees for surface mine development; the requirement for a coal sales contract before a guarantee may be made; and the definition of low-sulfur coal. The reason for not adopting these recommendations is that their adoption would require an amendment to the enabling legislation.

II. Comments on Proposed Regulations

Written comments were received in response to the advance notice and, where appropriate, were incorporated in a notice of proposed rulemaking, issued on May 19, 1978 (43 FR 21682). Five written comments were received in response to this notice, and formal oral presentations were made by three persons at a public hearing held on June 21, 1978, in Charleston, W.Va. All of these written comments and presentations, as well as other information available to DOE, were considered in arriving at the final rules adopted herein.

Further refinements have been made to these final regulations based on comments received in response to the May 19, 1978 proposed regulations. The changes which have been made are as follows:

One party suggested that the borrower be designated as the applicant, rather than the lender, as indicated in the proposed regulations, so that the lender would not bear full responsibility for the accuracy of information contained in the application, which was supplied by the borrower. DOE has accepted this suggestion and revised the regulations accordingly.

It has also been suggested that the default section should be revised to more clearly define the events of default and remedies, and to protect holders who have purchased portions of the guaranteed debt in the secondary market, especially in the event of the forebearance by some of the parties. Consequently, the default section has been revised to reflect that the lender shall notify DOE within 30 calendar days of default, and remedies may be applied by the lender if the default remains uncured for 45 calendar days or more from the date of nonpayment. Payment on the guarantee to the lender or the holder is due from DOE within 60 calendar days of demand. Further procedures and conditions have been included which govern the payment of guarantees to holder(s) other than lenders, and to clarify the forebearance procedure.

A party suggested that the language regarding pledged collateral should be clarified to indicate that both existing, and to be acquired, project assets are to be pledged as collateral. It has always been our intent to consider both existing and developed or acquired project assets as collateral for the guaranteed loan. Changes have been made in the final regulations to more clearly express this intent.

Another party suggested that the disbursements be approved on a milestone basis. DOE agrees with this recommendation and has revised the disbursement section to reflect adoption of the comment. This procedure alleviates

[1] Editorial Note.—Chapter II will be renamed at a future date to reflect that it contains regulations administered by the Department of Energy.

ates potential disruptions of project development which could result from delays of obtaining Government approval of drawdowns.

It was recommended that the section titled "Reduction or Withdrawal of Guarantee" be revised in order to clarify the Secretary's position regarding the incontestability of the guarantee to secondary market holders. It was also suggested that the reduction of the guarantee should be preceded by notification from the DOE of a right to a hearing. DOE has retitled and rewritten this section to reflect that the guarantee may be reduced for funds not yet disbursed if the lender or the borrower fails to comply with the terms and conditions of the guarantee agreement. In such event, the holders of the outstanding guarantees will continue to have an incontestable right to the amount of disbursed principal and accrued interest thereon, except for misrepresentation or fraud on the part of the holder. Also, a new § 300.93 on appeals has been added to provide the parties with the right to a hearing before the DOE Board of Contract Appeals on disputes over questions of fact, such as, whether a material term of the guarantee has been breached by the lender.

It was suggested by the Advisory Council on Historic Preservation that the regulations confused the DOE's responsibilities under the National Environmental Policy Act (NEPA), and the National Historic Preservation Act. To eliminate any possible confusion, §300.24(f) was added, as recommended.

EPA suggested that § 300.24 be expanded to clearly state that § 102(b)(1)(D) of ECPA requires the end user of the coal from loan guaranteed mines to use such coal "in compliance with all applicable requirements of the Clean Air Act, and of any applicable implementation plan * * *." A new paragraph § 300.24(d)) has been added to accommodate this suggestion.

The user charge has been retitled the "guarantee fee" in order to clearly identify the purpose of the annual charge. Additionally, DOE has adopted a 1 percent ceiling on such guarantee fees. This ceiling is consistent with other DOE loan guarantee fees. It is currently envisioned that the fee will be lower than 1 percent in most cases.

Other revisions to the proposed regulations are editorial, procedural, or for the purpose of greater clarity. In addition, changes were made for the purpose of implementing other requirements based on statutes and Executive orders, such as provisions for nondiscrimination.

The public comments which were not incorporated in these final regulations, and the reasons therefor, are as follows:

1. It was suggested that a procedure be established to assess the need for continuing guarantees on loans made in prior years so that a guarantee might be terminated or reduced if there was mutual agreement between the borrower and the lender that such guarantees were no longer required to insure a successful mining project. This suggestion was not adopted since it is believed that such a procedure would negatively impact the secondary market for the guaranteed loans.

2. It was suggested that the regulations be modified to allow loan guarantees for high-sulfur coal in accordance with section 102(b)(3) of EPCA (no more than 20 percent of the amount of guarantees issued in any fiscal year may be issued for coal mines which produce high-sulfur coal). DOE assumes that a major portion of this 20-percent ceiling will result from coal seam variability and guarantees for multiple seam projects, with one or more high-sulfur coal seams. This assumption was used in developing the programmatic environmental impact statement (EIS). The final regulations, therefore, do not provide for guaranteed loans for high-sulfur coal. DOE, however, is analyzing the environmental impact of such guaranteed loans, and will publish a supplemental EIS on such loans. Following consideration of this and other appropriate material, DOE will make the applicable changes to these regulations.

3. Two parties suggested that the definition of "Affiliate" contained in section 300.02(b) be narrowed, since the restrictions contained in this section would preclude many business firms from qualifying for loan guarantees. One of the parties suggested that the term "control" in the definition of affiliate be limited to complete or near-complete legal power or domination as established by direct inquiry into the factual circumstances in each case. A second party suggested that the gross revenues of an affiliate not be included with the revenues of the applicant, if such revenues are not derived from energy resource extraction. The narrowing of the definition, as suggested, would permit a small affiliate of a large organization having indirect control over the small affiliate to obtain a loan guarantee. It was decided not to adopt this narrow definition, since DOE considers that the major thrust of the loan guarantee program should, at this time, be directed to assisting small coal and medium sized businesses who do not have the financial resources which could be available from a large affiliate, in accordance with the intent of this legislation.

In addition, one party suggested that the requirements of section 102(c)(1) (A) through (C) must be read in the conjunctive, whereas section 300.20(a) of the proposed regulations provided for the consideration of these requirements in the disjunctive. While section 102(c)(1) utilizes the conjunctive "and" in specifying the restrictions of (A) through (C), the legislative intent to provide financial assistance to small producers would be thwarted to so read the statute. It is generally recognized that there is great laxity in the use of these terms, and courts view the words "or" and "and" to be interchangeable, if to do so is consistent with legislative intent.

4. It was suggested that DOE had no statutory authority to give priority considerations to certain classes of mining projects, such as mine expansions and reopenings, in determining which applicant should be given a loan guarantee. It is agreed that loan guarantee applications should normally be processed on a first-come-first-served basis. However, in instances where the unused guarantee authority is limited, it may be necessary to first consider those applications which have the greatest probability of achieving rapid production. Such prioritization is inherent in the Secretary's authority to manage this program.

5. It was suggested that the user charge or guarantee fee be eliminated, since it is a disincentive to coal producers to use the loan guarantee program. It was decided that the loan guarantee fee should be retained per guidance contained in 31 U.S.C. 483A (OMB Circular A-25), which requires recovery of administrative costs when the Government is providing a service such as a loan guarantee.

6. EPA suggested that the preamble be modified to reflect that the national pollutant discharge elimination system (NPDES) permit program only covers those coal mines that have water discharges. DOE recognizes that EPA's permit issuance will not be required for all coal mines, and that the NPDES permits do not necessarily address all pollutants contained in coal mine discharges. The environmental review criteria set forth in section 300.24 shall apply whether or not EPA is involved in permit issuance. The reason for the reference to the NPDES program was to identify another Federal program which might be involved with an environmental review, and was directed at minimizing potential duplication.

III. Additional Information

These regulations outline requirements for the filing and processing of applications for loan guarantees, and for the issuance and subsequent servicing of guaranteed loans. The specific documentation required to be submitted by the applicant, including certain site-specific environmental information, are described in the coal loan

guarantee application form, which is available from:

Robert M. Grubenmann, Department of Energy, Coal Loan Guarantee Program, Resource Applications, Room 3515, Federal Building, 1200 Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9934.

In accordance with section 102(2)(C) of NEPA, it was determined that the coal loan guarantee program was a major Federal action which required an environmental review. Accordingly, a draft programmatic EIS was published for public comment in March 1978, and a final programmatic EIS was published in August 1978.

In accordance with its proposed plan for implementing Executive Order 12044, Improving Government Regulations (43 FR 18634, May 1, 1978), DOE has determined that these final regulations are significant because Congress and DOE regard the development of domestic coal to be of widespread concern. DOE has also determined that these regulations will have no major economic impacts, as defined in 43 FR 18634, and that a regulatory analysis of this guarantee program is not required.

DOE has made these regulations effective immediately upon publication because there has been much delay in implementing this guarantee program, and several coal producers are presently in the final stages of completing their loan guarantee applications. In addition, public comments were twice previously solicited, as indicated earlier in this preamble.

TEXT OF THE AUTHORIZING LEGISLATION

For convenience, the texts of the provisions in EPCA and ECPA authorizing the coal loan guarantee program have been reprinted below:

ENERGY POLICY AND CONSERVATION ACT INCENTIVES TO DEVELOP UNDERGROUND COAL MINES

Section 102(a). The Administrator may, in accordance with subsection (b) and rules prescribed under subsection (d), guarantee loans made to eligible persons described in subsection (c)(1) for the purpose of developing new underground coal mines.

(b)(1) A person may receive a loan guarantee under subsection (a) only if the Administrator determines that:

(A) Such person is capable of successfully developing and operating the mine with respect to which the loan guarantee is sought;

(B) Such person has provided adequate assurance that the mine will be constructed and operated in compliance with the provisions of the Federal Coal Mine Health and Safety Act, and that no final judgment holding such person liable for any fine or penalty under such Act is unsatisfied;

(C) There is a reasonable prospect of repayment of the guaranteed loan;

(D) Such person has obtained a contract, of at least the duration of the period during which the loan is required to be repaid, for the sale or resale of coal to be produced from such mine to a person who the Administrator of the Environmental Protection Agency certifies will be able to burn such coal in compliance with all applicable requirements of the Clean Air Act, and of any applicable implementation plan (as defined in section 110 of such Act);

(E) The loan will be adequately secured;

(F) Such person would be unable to obtain adequate financing without such guarantee;

(G) The guaranteeing of a loan to such person will enhance competition or encourage new market entry; and

(H) such person has adequate coal reserves to cover contractual commitments described in subparagraph (D).

(2) The total amount of guarantees issued to any person (including all persons affiliated with such person) may not exceed $30,000,000. The amount of a guarantee issued with respect to any loan may not exceed 80 percent of the lesser of (A) the principal balance of the loan, or (B) the cost of developing the coal mine.

(3) The aggregate outstanding principal amount of loans which are guaranteed under this section may not, at any time, exceed $750,000,000. Not more than 20 percent of the amount of guarantees issued under this section in any fiscal year may be issued with respect to loans for the purpose of opening new underground coal mines which produce coal which is not low-sulfur coal.

(c) For purposes of this section:

(1) A person shall be considered eligible for a guarantee under this section is such person (together with all persons affiliated with such person):

(A) Did not produce more than 1,000,000 tons of coal in the calendar year preceding the year in which he makes application for a loan guarantee under this section;

(B) Did not produce more than 300,000 barrels of crude oil or own an oil refinery in such preceding calendar year; and

(C) did not have gross revenues in excess of $50,000,000 in such calendar year.

(2) A person is affiliated with another person if he/she controls, is controlled by, or is under common control with such other person, as such term may be further defined by rule by the Administrator.

(3) The term "low-sulfur coal" means coal which, in a quantity necessary to produce 1 million British thermal units, does not contain sulfur or sulfur compounds the elemental sulfur content of which exceeds 0.6 pound. Sulfur content shall be determined after the application of any coal preparation process takes place, before sale of the coal by the producer.

(d) The Administrator shall prescribe such regulations as may be necessary or appropriate to carry out this section. Such rules shall require that each application for a guarantee under this section shall be made in writing to the Administrator in such form and with such content and other submissions as the Administrator shall require, in order reasonably to protect the interests of the United States. Each guarantee shall be issued in accordance with subsections (a) through (c), and:

(1) Under such terms and conditions as the Administrator, in consultation with the Secretary of the Treasury, considers appropriate;

(2) With such provisions with respect to the date of issuance of such guarantee as the Administrator, with the concurrence of the Secretary of the Treasury, considers appropriate, except that the required concurrence of the Secretary of the Treasury may not, without the consent of the Administrator, result in a delay in the issuance of such guarantee for more than 60 days; and

(3) In such form as the Administrator considers appropriate.

(e) Each person who receives a loan guarantee under this section shall keep such records as the Administrator or the the Secretary of the Treasury shall require, including records which fully disclose the total cost of the project for which a loan is guaranteed under this section, and such other records as the Administrator or the Secretary of the Treasury determines necessary to facilitate an effective audit and performance evaluation. The Administrator, the Secretary of the Treasury, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers, and records of any person who receives a loan guarantee under this section.

ENERGY CONSERVATION AND PRODUCTION ACT

Section 164. Section 102 of the Energy Policy and Conservation Act is amended by adding at the end of subsection (c) the following paragraph:

"(4) The term 'developing new underground coal mines' includes expansion of any existing underground mine in a manner designed to increase the rate of production of such mine, and the reopening of any underground coal mine which had previously been closed."

Issued in Washington, D.C., November 1, 1978.

WILLIAM P. DAVIS,
Deputy Director of Administration.

Title 10 is amended by adding part 300 to read as follows:

Subpart A—General Provisions, Purpose and Objectives

Sec.
300.01 Purpose and objectives.
300.02 Definitions.
300.03 Full faith and credit provision.
300.04 Department of the Treasury concurrence.

Subpart B—Applications

300.20 Determination of eligibility.
300.21 General application information requirements.
300.22 Financial and other application information requirements.
300.23 Project cost documentation requirements.
300.24 Consideration of environmental impacts and historical preservation.

Subpart C—Application Processing and Guarantee Conditions

300.40 Approval criteria.
300.41 Conditional commitment.
300.42 Personal and corporate financial statements.
300.43 Guarantee conditions.
300.44 Mandatory purchase of flood insurance.
300.45 Interest rate.
300.46 Annual guarantee fee.

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AUTHORITY: Sec. 102, Energy Policy and Conservation Act and Sec. 164 Energy Conservation and Production Act.

Subpart A—General Provisions, Purpose, and Objectives

§ 300.01 Purpose and objectives.

The coal loan guarantee program is designed to encourage and assist small- and medium-sized coal producers to increase the Nation's coal production from low-sulfur underground mines. These regulations provide the necessary information to apply for and obtain U.S. Government loan guarantees to develop new underground coal mines, to expand existing underground coal mines, and to reopen underground coal mines which had previously been closed.

§ 300.02 Definitions.

For the purpose of this part:

(a) "Act" means the Energy Policy and Conservation Act of 1975 (Pub. L. 94-163), as amended.

(b) "Affiliate" means a person who directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with another specified person. For the purpose of this definition, control means direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

(c) "Applicant" means any person who applies to the Department of Energy (DOE) for a guarantee of a loan with respect to a coal project. The applicant is also the borrower.

(d) "Application" means the written request of an applicant for a loan guarantee in accordance with the requirements of this regulation.

(e) "Borrower" means any person directly liable for repayment of any part of a loan guaranteed by DOE.

(f) "Coal sales contract" means a written coal sales agreement or agreements for at least the duration of the period during which a guaranteed loan is required to be repaid, for the direct and indirect sale or resale of coal to be produced from the subject mine to a person who the Administrator of the Environmental Protection Agency (EPA) certifies will be able to burn such coal in compliance with all applicable requirements of the Clean Air Act (42 U.S.C. 1857 et seq.), and with any applicable implementation plan (as defined in section 110 of the Clean Air Act).

(g) "Conditional committment" means that document, issued by DOE, which sets forth specifically or by reference, the terms and conditions under which DOE may issue a guarantee.

(h) "DOE" means the Department of Energy.

(i) "Guarantee" means the written guarantee agreement issued by DOE setting forth DOE's undertaking to pay the lender or holder, as applicable, in the event of a default, the principal and accrued interest on the guaranteed portion of the loan.

(j) "Holder" means the person other than the lender who has lawfully succeeded in due course to all or part of the right, title, and interest of the lender in the guaranteed portion of the loan.

(k) "Lender" means any person making and servicing a loan guaranteed by DOE.

(l) "Loan" means any note, bond, or other evidence of indebtedness.

(m) "Loan agreement" means the written contract between the borrower and the lender specifying the terms and conditions under which the lender provides financing to the borrower.

(n) "Low-sulfur coal" means coal which, in a quantity necessary to produce 1 million British thermal units, does not contain sulfur or sulfur compounds the elemental sulfur content of which exceeds 0.6 pound. Sulfur content shall be determined after the application of any coal preparation process which takes place before the sale of the coal by the borrower.

(o) "Person" means any individual, partnership, corporation, association, joint venture, or any other entity.

(p) "Project" means an undertaking by the borrower, to be financed in whole or in part by a loan for which a guarantee is hereunder applied for, which will produce coal by the development of any new underground mine, expansion of any existing underground mine in a manner designed to increase production of such mine, or the reopening of any underground mine which had previously been closed.

(q) "Secretary" means the Secretary of DOE, or his duly designated representative.

§ 300.03 Full faith and credit provision.

Any guarantee issued by DOE under these regulations shall be conclusive evidence that the guaranteed loan qualifies for such guarantee, and the validity of such guarantee so made shall be incontestable in the hands of a holder, except for fraud or material misrepresentation on the part of such holder.

§ 300.04 Department of the Treasury concurrence.

The Secretary shall consult with the Secretary of the Treasury concerning the terms and conditions of the guarantee. The Secretary shall obtain the concurrence of the Secretary of the Treasury with respect to the date of issue of any loan guarantee, except that this concurrence may not, without the consent of the Secretary, result in a delay in the issuance of a guarantee for more than 60 calendar days.

Subpart B—Applications

§ 300.20 Determination of eligibility.

(a) Each application must include a statement from the borrower representing that the borrower (including affiliates) did not, in the prior calendar year, meet any one of the following conditions:

(1) Produce more than 1,000,000 tons of coal;

(2) Produce more than 300,000 barrels of crude oil;

(3) Own an oil refinery; and

(4) Have gross revenues in excess of $50,000,000.

(b) The applicant must also submit a statement representing that there is no unsatisfied final judgment that holds the borrower (or affiliates) liable for any fine or penalty under the Federal Mine Safety and Health Act of 1977 (Pub. L. 95-164).

§ 300.21 General application information requirements.

The applicant must provide, at the time of application, the following:

(a) Evidence that the borrower owns, leases, or otherwise controls sufficient economically recoverable coal reserves at the site described in the application to produce sufficient coal to permit the borrower to honor any obligation under the coal sales contract;

(b) A letter of intent to purchase coal, a coal sales contract, or a draft coal sales contract, for the sale or resale of the coal to be produced from the project, and, if appropriate, the Secretary may require sufficient financial information concerning the purchaser of such coal, showing that said purchaser has the capability to carry out the coal sales contract;

(c) An estimate of the sulfur content of the coal reserves, as mined and as sold, at the site described in the application;

(d) Adequate assurance that the mine will be constructed and operated in compliance with the Federal Mine Safety and Health Act of 1977;

(e) Evidence that the borrower has been unable to obtain adequate financing without such guarantee. Such evidence may consist of a signed statement from the lender representing that the lender would not provide financing under the proposed terms without a Federal guarantee;

(f) A statement from the lender disclosing whether any of its officers or directors, major stockholders, or other owners have a financial interest in the borrower. The lender will also disclose whether any of the borrower's officers or directors, stockholders, or other owners have a financial interest in the lender;

(g) A full description of the scope, nature, extent, and location of the project, and a copy of the mine development plan (normally the same plan submitted to Federal and State officials will suffice), which includes a description of the processes and methods the borrower plans to use in the project;

(h) A list of permits, licenses, and other authorizations required by local, State, or Federal authorities prior to opening of the proposed mine, with copies of any permits already issued, and a schedule of expected dates of application and expected approval dates for the remaining required permits; and

(i) Environmental data describing the environmental characteristics and impacts of the project.

§ 300.22 Financial and other application information requirements.

(a) The applicant shall provide information in support of the application, such as prescribed below. The Secretary may require additional information at his discretion in order to adequately evaluate the likelihood of repayment of the loan:

(1) A description of the borrower's organization and nature of activities, including a copy of the business certificate, partnership agreement or corporate charter, bylaws, and appropriate authorizing resolutions;

(2) A description of the affiliates of the borrower;

(3) Résumés of the borrower's key employees, which include, in reverse chronological order, their business and managerial experience, with emphasis on history of recent experience in the coal industry;

(4) A description of any other Federal financial assistance (e.g., direct loans, guaranteed loans, grants, or contracts) expected to be applied for or already obtained by the borrower in connection with the project;

(5) Itemized estimates of costs of the project;

(6) A summary of insurance coverage for the project;

(7) A schedule of salaries (and other financial remuneration, including profit sharing and stock options) to be paid to officers and key employees of the borrower who are, or will be, directly associated with the project;

(8) A technical and economical feasibility report, which includes:

(i) Coal reserve quantification;

(ii) Coal reserve quality;

(iii) Site inspection;

(iv) Assets value appraisal;

(v) Mining method;

(vi) Mining costs;

(vii) Financial analysis; and

(viii) Comparable property evaluation.

(9) A list identifying the collateral to be pledged to secure the loan, together with the estimated market value and source(s) of such estimated values.

(b) Evidence must be submitted which will enable DOE to make an independent evaluation of the creditworthiness of the borrower and the project for which a loan guarantee is sought. The evidence submitted should consist of, but need not be limited to:

(1) The credit analysis performed by the lender; and

(2) The following financial statements of the borrower, including adequate explanation, and covering the 3 most recent fiscal years, if applicable:

(i) Balance sheet; and

(ii) Income statement.

(3) A pro forma income statement and projected source and uses of funds statement must be submitted for the first 5 years of the project. In the case of mine expansion projects, the borrower shall submit a cash flow statement for total production, and a separate cash flow statement for the production from the expansion operation.

(4) The borrower's interim balance sheet and income statements, prepared within 90 days of the date of application, if the annual statements contained in (1) and (2) above are more that 3 months old. It is desirable that these statements be audited by an independent certified public accountant.

§ 300.23 Project cost documentation requirements.

(a) Except as provided in paragraph (b) of this section, reasonable and customary costs actually paid, or to be paid by the borrower applicable to the development of a project, are generally permitted in computing the estimated aggregate project cost, as approved by the Secretary. However, the Secretary reserves the right to exclude any such costs in determining the estimated aggregate project cost for the guarantee. All costs for facilities and plant and equipment must relate to, and be used substantially in connection with the project. These costs related to the project include, but are not necessarily limited to, the following:

(1) Land and/or mineral rights purchase and lease payments, including reasonable real estate commissions;

(2) Acquisition or construction of buildings, including offices, bathhouses, lamphouses, and other buildings related to the project;

(3) Coal preparation plant construction, including all support equipment;

(4) Coal handling facilities, including tipples, storage facilities, and related equipment;

(5) Mining equipment, including continuous miners, short and long wall equipment, shuttle cars, loaders, roof bolters, trucks, conventional mining equipment, conveyor belt systems, and all other equipment necessary for coal mine development and production;

(6) Powerplant equipment and transmission lines, including installation costs;

(7) Employee salaries, wages, and benefits, consultant fees, and independent contractor costs;

(8) Surveys and title insurance costs; and engineering, recording, and legal fees incurred in connection with land and/or mineral rights acquisition;

(9) Technical, financial, and environmental feasibility studies;

(10) Infrastructure, including site preparation, rail systems, access roads, and related support facilities;

(11) Transportation equipment;

(12) Refuse disposal systems;

(13) Water treatment systems;

(14) Air pollution control systems;

(15) Ventilation systems;

(16) Communications systems;

(17) Insurance and bonds;

(18) Costs of safety and environmental protection equipment, facilities, and services,

(19) Legal and accounting fees for mine permit acquisition and mine development;

(20) Royalty payments and license fees;

(21) Reasonable loan fees;

(22) Interest on interim construction financing;

(23) Costs of complying with the terms and conditions specified in the guarantee, or required by local, State, and Federal government laws and regulations;

(24) Initial working capital;

(25) Other costs not specified, but directly related to the project, which are reasonable and necessary;

(26) A contingency reserve.

(b) Costs which are not considered as project costs, and are excluded from the guaranteed portion of the loan are illustrated below:

(1) Dividends and profit sharing to stockholders, employees, and officers;

(2) Expenses not paid or incurred by the borrower;

(3) Normal operating expenses incurred after an initial period of start-up; and

(4) Costs that are excessive, or are not directly required to carry out the project.

§ 300.24 Consideration of environmental impacts and historical preservation.

(a) The issuance of a Federal guarantee for a loan under this program is subject to the provisions of the National Environmental Policy Act (NEPA), which requires identification and environmental review of "major Federal actions significantly affecting the quality of the human environment," and the DOE regulations which implement this Act.

(b) DOE will initially review the environmental data submitted by applicants for guarantees under this program. Upon completion of this review, DOE may issue a finding that no significant environmental impact is anticipated, or may conduct a more detailed environmental review pursuant to its NEPA regulations.

(c) In addition to the general criteria used for a determination as to the level of environmental review to be accorded individual applications under this program, DOE has determined that it will not routinely conduct a detailed environmental review (i.e., an environmental assessment or environmental impact statement) for:

(1) Underground coal mines of less than 100,000 annual designed tonnage, unless such a review is warranted in a particular case, based on information available to DOE indicating that impacts relating to any of the following may be significant: archeological sites; sensitive ecosystems; habitats of endangered species; historic sites; wild and scenic rivers; wetlands, prime agricultural lands; significant surface water or groundwater pollution; recreational land uses; air quality; noise levels; mining in a saturated zone; presence of toxic overburden; mining in alluvial valley floors; and

(2) Underground coal mines of greater than 100,000 annual designed tonnage, where the applicant certifies on the environmental impact questionnaire that he will use "Best Practice Procedures" as set forth in a document published by EPA entitled, "Best Practices for New Source Surface and Underground Coal Mines" (42 FR 47934). Copies of this proposed regulation will be supplied by DOE upon request.

(d) The EPA must provide certification that the borrower's coal can be burned by the purchaser of such coal under the coal sales contract in compliance with all applicable provisions of the Clean Air Act, and of any applicable implementation plan.

(e) No guarantee will be issued prior to the completion of the NEPA process. Where the NEPA process reveals that mitigation steps should be included as conditions to the guarantee, those steps shall be required by DOE to prevent or minimize significant environmental impacts.

(f) DOE will afford the Advisory Council on Historic Preservation an opportunity to review and comment upon applications for guarantees for any project which would affect property listed or eligible for listing in the National Register of Historic Places or which may meet the criteria for listing in the National Register, pursuant to 36 CFR Part 800.

Subpart C—Application Processing and Guarantee Conditions

§ 300.40 Approval criteria.

The Secretary will evaluate the proposed project and will determine whether the following criteria have been met:

(a) That the amount of a guarantee issued with respect to any loan does not exceed 80 percent of the lesser of (1) the original principal balance of the loan, or (2) the cost of the project;

(b) That the total amount of Federal financial assistance, including guarantees under this regulation obtained by the borrower for the project, does not exceed 80 percent of the estimated aggregate cost of the project to be undertaken by the borrower;

(c) That the total amount of guarantees outstanding at any time on behalf of any borrower (including all persons affiliated with such borrower) does not exceed $30,000,000 in principal amount;

(d) That the borrower is unable to obtain adequate financing without a guarantee;

(e) That the guarantee will enhance competition or encourage new market entry;

(f) That the terms of such a guarantee requires repayment of the loan over a period of no more than 30 years, or a period no longer than the term of the coal sales contract, whichever is less, as determined by the Secretary;

(g) That a coal sales contract has been executed prior to the issuance of a guarantee, and that the EPA has certified that the project coal can be burned by the purchaser in compliance with all applicable provisions of the Clean Air Act, and of any applicable implementation plans. The coal sales contract need not necessarily provide for the sale of all coal production from the project, but should indicate that there is sufficient revenue from sales to provide reasonable assurance of repayment of the loan;

(h) That the borrower has adequate coal reserves to cover the coal sales contract;

(i) That the borrower is of established integrity and demonstrated management capability, and is capable of successfully developing and operating the project mine(s);

(j) That there is a reasonable prospect of repayment of the loan;

(k) That the proceeds from the loan, together with other available funds, are sufficient to successfully carry out the project;

(l) That the assets obtained from the proceeds of the loan are pledged as collateral, and that the total value of all collateral pledged is adequate to protect the interests of the U.S. Government;

(m) That the project is environmentally acceptable;

(n) That the lender is capable of performing the servicing requirements of Subpart D of this regulation; and

(o) That the terms and conditions of the loan agreement, including interest rates, are acceptable to the Secretary.

§ 300.41 Conditional commitment.

A conditional commitment to guarantee the loan may be issued by the Secretary. A conditional commitment will state that the Secretary is prepared to guarantee a loan, and will further state the terms and conditions under which the guarantee may be issued. No amendment to a conditional commitment shall be made unless reduced to writing and duly executed by the parties to the conditional commitment.

§ 300.42 Personal and corporate financial statements.

(a) Personal endorsements of the loan may be required from major stockholders, owners, or others having a major interest in the borrower. Endorsements of the loan by parent, subsidiary, or affiliated companies may also be required.

(b) Persons who endorse the loan will:

(1) In the case of personal endorsements, provide current financial statements (not over 90 days old at the time of filing), that fairly represent the financial position of the endorsers;

(2) In the case of corporate endorsers, provide current financial statements, including income statement, balance sheets, and a statement of uses and application of funds (not over 90 days old at the time of filing), represented by an officer of the corporation, presenting fairly the financial position and results of operations of the corporation.

§ 300.43 Guarantee conditions.

(a) The guarantee shall include the terms and conditions necessary to implement the requirements of this regulation; and any additional terms and conditions deemed to be appropriate by the Secretary to protect the interests of the U.S. Government.

(b) The guarantee shall also include appropriate provisions concerning nondiscrimination and fair lending practices as may be required by applicable statutes, Executive orders, and implementing regulations.

§ 300.44 Mandatory purchase of flood insurance.

The Flood Disaster Protection Act of 1973 (Pub. L. 92-234) may require that the borrower purchase flood insurance as a condition of receiving a guarantee on a loan for acquisition of real estate or construction purposes in an identified flood plain area having special flood hazards. Questions emanating from borrowers or lenders regarding compliance with provisions of the Flood Disaster Protection Act and guidelines should be referred to the Department of Housing and Urban Development's Federal Insurance Administration. When the purchase of flood insurance is required, as finally determined by the Secretary, such costs can be included by the borrower in the estimated project cost.

§ 300.45 Interest rate.

Interest rates for guaranteed loans shall be negotiated between the borrower and the lender, but must be approved by the Secretary. Interest rates may be fixed or variable, provided they are legal in the appropriate jurisdiction. If approved by the Secretary, one interest rate may apply to the guaranteed portion of the loan, and another interest rate may apply to the unguaranteed portion of the loan. The interest rate should reflect the value, in terms of security to the lender, of the Government guarantee.

§ 300.46 Annual guarantee fee.

(a) An annual guarantee fee imposed on the guaranteed portion of the loan, and computed at a rate to be set forth in the guarantee, will be collected from the lender and used for the purpose of defraying the administrative costs of the program. The rate shall be imposed on the unpaid balance of the guaranteed portion of the loan that is outstanding on each loan anniversary date. The guarantee fee may be passed to the borrower by the lender and, in such instances, may be included as an eligible project cost.

(b) At the time the guarantee is executed, the lender shall present to the Secretary, payment of the first year's annual guarantee fee.

(c) The Secretary will evaluate, at least annually, whether the guarantee fee then in effect is sufficient to cover anticipated administrative costs and, whenever appropriate, will establish a revised fee schedule to be applied to the new guarantees. The payment of the guarantee fee by the lender, or lack thereof, will in no way impair the guarantee to a holder of the guaranteed portion of the loan that is outstanding during the year.

(d) The guarantee fee fixed by the Secretary for any guarantee shall not exceed 1 percent per annum on the guaranteed portion of the loan that is outstanding during the year.

§ 300.47 Disbursements.

The guarantee shall provide the procedure and documentation requirements for loan disbursements and drawdowns. As a minimum, the guarantee shall stipulate that the lender shall not provide the borrower with any funds under the loan agreement until:

(a) The lender has provided the Secretary with an updated schedule of milestones under the project, indicating dates and amounts of future loan disbursements and drawdowns, and the lender has received written approval for each milestone loan disbursement from the Secretary.

(b) The lender has received from the borrower a written statement in support of each request by the borrower for loan drawdowns. The statement shall detail the purposes for which loan disbursements or drawdowns is requested, and a certification that such disbursements will be used only for the stated purposes. When appropriate, copies of invoices to be paid, copies of invoices and lien waivers, and copies of cancelled checks shall be attached to the statement. The statement shall be signed by a person authorized to order expenditure of the borrower's funds.

(c) The lender has verified that loan disbursements and drawdowns approved under prior milestones have been used only for the previously stated purposes.

Subpart D—Servicing the Guaranteed Loan

§ 300.50 Loan servicing and reporting requirements.

Loan servicing is the responsibility of the lender. The guarantee will specify the lender's servicing requirements which include, but are not limited to, loan disbursements under § 300.47, and notification by the lender to the Secretary immediately upon knowledge, but in no event within more than 30 calendar days of:

(a) Any nonpayment by the borrower of the principal or interest on the date specified in the loan agreement, together with appropriate notices to the borrower;

(b) Any failure by the borrower, known to the lender, to comply with the terms and conditions as set forth in the loan agreement; and

(c) Any information or circumstance which has caused the lender to believe that repayment of the loan is in jeopardy.

§ 300.51 Collateral.

(a) The lender is responsible for seeing that proper and adequate liens upon all collateral are obtained and maintained in existence and of record to protect the interest of the lender, the U.S. Government, and any holders of the guaranteed loan. The lender will be the mortgagee, or secured party of record, with regard to such collateral, notwithstanding the fact that another party may hold a portion of the loan.

(b) Collateral may include, but is not necessarily limited to, the following: Land, buildings, machinery, equipment, furniture, fixtures, inventory, accounts receivable, cash or special cash collateral accounts, marketable securities, and cash surrender value of life insurance policies. Collateral may also include assignments of leases or leasehold interests, revenues, patents, copyrights, and contract rights.

(c) The lender may not take separate collateral to secure only that protion of the loan not covered by the guarantee. The lender may not require compensating balances or certificates of deposit, other than as used in the ordinary course of business, as a means of reducing its exposure on the unguaranteed portion of the loan.

(d) First liens on all assets pledged as collateral will be preferred. Loans collateralized entirely with secondary or other inferior lien positions will receive lower priority treatment under the program.

§ 300.60 Project monitoring and auditing.

(a) The guarantee shall provide that the lender and the borrower shall keep such records concerning the project as is necessary to facilitate an effective audit and performance evaluation of the project. The guarantee shall also provide that the Secretary of Energy, the Secretary of the Treasury, and the Comptroller General, or their duly authorized representatives, shall have access, for the purpose of audit and examination, to any pertinent books, documents, papers, and records of the borrower and the lender. Such inspection may be made during the regular office hours of the borrower or the lender, or at any other time mutually convenient.

(b) The Secretary may undertake certain loan monitoring functions which will be performed by a repre-

sentative of the Secretary acting in coordination with the lender's loan servicing. Specifically, the Secretary's role in loan monitoring may include, but not necessarily be limited to, the following:

(1) Written approval of all requests for disbursements as set forth in the guarantee. Requests for disbursements should be aggregated to cover milestones of the project, such as infrastructure improvements, equipment purchases, etc.;

(2) Review of periodic financial statements of the borrower; and

(3) Periodic inspection of the collateral pledged to secure the loan and the borrower's operating facilities and records.

§ 300.61 Assignment or transfer of guaranteed loan.

(a) The lender may assign, participate, sell, or otherwise transfer any part or all of his right, title, and interest in the guaranteed loan, subject to the procedures and limits specified in the guarantee. The lender will, however, continue to be responsible for the collateral and servicing of the loan, unless the Secretary approves a substitute lender.

(b) When a guaranteed protion of a loan is transferred from the lender to a holder, the holder then succeeds to all rights of the lender in the guarantee to the extent of the portion of the loan purchased by the holder.

(c) The assignment agreement of the quaranteed portion of the loan, or any part thereof, shall be executed by the holder, the lender, and the Secretary, and will set forth (specifically or by reference) the terms and conditions of the assignment.

(d) After assignment, sale, or transfer of all or part of a guaranteed loan, the lender shall promptly remit to the holder or other party then having an interest in the loan, their respective pro-rata shares of all payments received by the lender in connection with the loan, less only the lender's servicing fee (if any) as mutually agreed by the lender and the appropriate other party. Unless otherwise specified in the assignment agreement, all such payments due from the lender shall be made within 30 calendar days of the lender's receipt of the corresponding amounts.

(e) The guarantee shall be conclusive proof that the guarantee and the underlying loan are in compliance with the provisions of this regulation, and that such loan has been approved and is legal as to disbursed principal an accrued interest and other terms.

§ 300.62 Reduction or withdrawal of guarantee.

(a) The Secretary may reduce or withdraw the guarantee of loan amounts not yet drawn down by the borrower upon written notice to the lender and the borrower, if:

(1) Initiation of activity on the project has not occurred within the period of time set forth in the guarantee;

(2) The borrower has failed to comply with any material term or condition as set forth in the loan agreement. Drawdowns approved by the lender after such notification is received will not be covered by the guarantee;

(3) The lender has failed to comply with any material term or condition set forth in the guarantee. The guarantee may by reduced to the amount that has been received by the borrower as of the date the Secretary's notice has been received by the lender; or

(4) The Secretary and the lender determine that the project's economic success is no longer achievable. The guarantee shall be reduced to amounts which have been received by the borrower as of the date of the notice.

(b) In the event of (2), (3), or (4) above, the holder(s) of the guarantee or portions thereof shall nevertheless have an incontestable right to the disbursed amount of principal and accrued interest thereon, except for fraud or material misrepresentation on the part of the holder.

Subpart E—Default

§ 300.80 Default.

(a) In the event of nonpayment of principal and/or interest due on the loan by the borrower under the terms of the loan, the lender shall notify the Secretary promptly, but in no event later than 30 calendar days of the occurrence of such nonpayment, provided such nonpayment has not been cured. If such default remains uncured for a total period of 45 calendar days or more from the date of nonpayment, the lender may elect, with the concurrence of the holder(s), if any, and with the approval of the Secretary, to defer payment from the borrower of any overdue principal and accrued interest, or to reschedule the overdue and subsequent loan payments.

(b) If the lender and the holder(s), if any, cannot agree with the borrower to defer or reschedule the borrower's payment(s), either the lender or the holder(s), if any, may:

(1) Demand payment by the Secretary of any overdue amounts of guaranteed principal and accrued interest due from the borrower as a result of the default; or

(2) Demand payment by the Secretary of the entire outstanding guaranteed principal balance of the loan, and all unpaid interest accrued thereon to the date of the Secretary's payment hereunder.

(c) Upon receipt by the Secretary of a demand for payment as aforesaid, the Secretary shall pay the amounts lawfully demanded under the terms of the preceding paragaraph, within 60 calendar days of the date of such demand. In the event the demand is for an overdue payment under subparagraph (b)(1) above, the Secretary may, in his discretion, consider the loan in default and pay the outstanding guaranteed balance of the loan with accrued interest.

(d) If the overdue amounts of guaranteed principal and accrued interest are paid by the Secretary, the loan remains in default until the borrower reimburses the Secretary for such payment(s). When the borrower remains in default, the Secretary may take action necessary to protect the interest of the U.S. Government.

(e) In the event of any payment under a guarantee, the Secretary shall be subrogated to the rights and remedies of the parties to which payment is made.

§ 300.81 Nonpayment to holder.

(a) In the event of the nonpayment by the borrower of a scheduled payment, the holder shall first make demand upon the lender for such payment, or for the repurchase of the holder's interest in the guaranteed loan. The holder shall provide the Secretary with notice of such demand for payment within 10 calendar days. The lender shall have the option to advance the overdue payments or to repurchase the guaranteed portion(s) of the loan according to the holder(s) demand. If the lender does not make the payment within 30 calendar days, the holder may demand payment of the Secretary. Upon receipt by the Secretary of a demand for payment from the holder, the Secretary shall pay the holder the amounts lawfully demanded within 60 calendar days of the date of such demand. The Secretary shall make such payment regardless of whether the nonreceipt of the payment by the holder is due to a default by the borrower or the nontransmittal by the lender of the borrower's payment to the holder.

(b) Subsequent to a demand for payment by any holder under this section, the lender shall, within 10 calendar days, furnish to the Secretary an accounting of all payments received by the lender and all payments made to any holder in connection with the respective loan.

§ 300.82 Liquidation.

(a) After borrower default has occurred, and demand for payment has been made upon the Secretary, as provided in § 300.80(b) (1) and (2), or in the event that the Secretary and the lender agree that default has occurred, the lender shall, in consultation with the Secretary, prepare a

plan for liquidation of the assets pledged as collateral to secure the loan. When the liquidation plan has been approved by the Secretary, the lender shall proceed to take the necessary steps under applicable law to foreclose upon all of the collateral securing the loan, and to sell the collateral for the highest attainable value under the circumstances. Provisions shall be set forth in the guarantee for notice to the Secretary of the sale of collateral, expenses incurred in such sale, and other matters pertaining to the method of handling the disposition of such collateral in a coordinated manner between the Secretary and the lender.

(b) The lender shall give a full accounting of the sale of assets made pursuant to the plan of liquidation, and shall serve in a fiduciary capacity for the benefit of the parties having an interest in the proceeds of the sale of the assets.

(c) No action taken by the lender in the liquidation of any assets pledged by the borrower shall affect the rights of any party, including the Secretary, having an interest in the loan to pursue, jointly or severally, to the extent provided in the loan agreement, legal action against the borrower, or other liable parties, for any deficiencies owing on the guaranteed balance after application of the proceeds received upon liquidation.

(d) Funds received by the lender as a result of liquidation actions shall be applied as follows:

(1) First, to the payment of reasonable and customary fees and expenses incurred in the liquidation process, and as set forth in the liquidation plan; and

(2) Second, distributed among the legal owners of interests in the loan; pro-rated in accordance with their relative percentage ownership of the loan.

(e) In the event the Secretary deems it necessary or desirable to protect or further the interest of the United States in connection with the liquidation of collateral or recovery of deficiencies due under the loan, the Secretary shall take such action as may be appropriate under the circumstances.

(f) Nothing in this section shall preclude the Secretary from purchasing the lender's interest in the project upon liquidation.

§ 300.90 Disclosure.

Subject to the requirements of law, and applicable regulations, information such as trade secrets, commercial and financial information, geological, geophysical, and geographical information, and data (including maps) concerning mine sites, which the borrower or the lender submits to DOE in writing during the preliminary discussions, or at any other time throughout the duration of the project, on a privileged or confidential basis, will not be publicly disclosed by DOE without prior notification to the submitter. Any submitter asserting that information is privileged or confidential shall appropriately identify and mark such information.

§ 300.92 Noninterference with Federal, State, and local requirements.

Nothing in this regulation shall be construed to modify requirements imposed on the borrower or the lender by Federal, State, or local government agencies in connection with permits, licenses, or other authorizations to conduct or finance any project.

§ 300.93 Appeals.

The guarantee shall include a provision which specifies that any dispute concerning a question of fact arising under the guarantee shall be decided in writing by the DOE official, or his successor, executing the guarantee. The borrower or the lender, as appropriate, may, within 7 calendar days from receipt of any such decision, request the DOE official to reconsider any such decision. If not satisfied with this final decision, the borrower or the lender, upon receipt of such written decision, may appeal the decision within 30 calendar days, in writing, to the Chairman, Energy Board of Contract Appeals (EBCA), Department of Energy, Washington, D.C. 20545. That Board, when functioning to resolve such loan guarantee disputes, shall proceed in the same general manner as when it presides over appeals involving contract disputes. The decision of the Board with respect to such appeals shall be the final decision of the Secretary.

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TUESDAY, NOVEMBER 7, 1978
PART IV

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

ADMINISTRATIVE PRACTICES AND PROCEDURES

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Parts 10, 12, 13, 14 ,15, and 16]

[Docket No. 78N-0286]

ADMINISTRATIVE PRACTICES AND PROCEDURES

Proposed Amendments

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to revise the Food and Drug Administration (FDA) regulations on administrative practices and procedures. The proposed revisions are based on FDA's experience in using the regulations, and they incorporate editorial changes to make the regulations more concise and readable.

DATES: Comments by January 8, 1978.

ADDRESSES: Written comments to the hearing clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Ronald J. Wylie, Compliance Regulations Policy Staff (HFC-10), Food and Drug Administration, Department of Health, Education and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3480

SUPPLEMENTARY INFORMATION: This proposal would revise FDA's administrative practices and procedures regulations. The regulations appear in parts 10, 12, 13, 14, 15, and 16 of chapter I of title 21 of the Code of Federal Regulations. The regulations were proposed in the FEDERAL REGISTERS of September 3, 1975 (40 FR 40681) and published as final rules in the FEDERAL REGISTER of June 28, 1976 (41 FR 26636), November 2, 1976 (41 FR 48258), November 23, 1976 (41 FR 51706), November 26, 1976 (41 FR 52148), and January 25, 1977 (42 FR 4680).

There are two reasons why the procedural regulations are being revised at this time. First, FDA has had considerable experience in using the regulations since they were published in 1976 and 1977. Based on this experience, interested members of FDA's staff have made suggestions for improving the regulations. Many of these suggestions are included in this proposal.

The second reason for revising the procedural regulations is to apply several of the principles of "Operation Common Sense" issued by the Department of Health, Education, and Welfare (HEW). Operation Common Sense was described in a notice published in the FEDERAL REGISTER of November 18, 1977 (42 FR 59555). Its goals include rewriting regulations so that they are clear and understandable and revising them on the basis of experience since their issuance. The agency's separate program under HEW's Operation Common Sense, published in the FEDERAL REGISTER of May 30, 1978 (43 FR 23122), emphasizes the importance of using clear English in regulations. Similarly, Executive Order 12044, "Improving Government Regulations," which appeared in the FEDERAL REGISTER of March 24, 1978 (43 FR 12661), requires periodic review of regulations to determine whether language should be simplified or clarified.

The procedural regulations were chosen for review under these standards because of their comparatively broad impact on persons with an interest in FDA activities. Although regulations for products within FDA's jurisdiction are mainly of interest to particular companies or segments of the industry, the procedural regulations are intended to guide all persons in their dealings with the agency. It is therefore important that the procedural regulations be as understandable as possible without sacrificing the precision needed in describing the complicated network of relationships, and the elaborate sequences of events, that make up a system of procedures such as these.

With that goal in mind, FDA staff conducted an editorial review of the procedural regulations. Many changes were made to eliminate redundant language, simplify sentence structure, condense and reorganize specific regulations, and generally use clearer, simpler English. Some of the changes are simple. For instance, cross-references to sections in other parts of chapter I of title 21 as currently written include the description "of this chapter," as in "§ 10.20 (j)(3) of this chapter." Because all FDA regulations are in chapter I and, with rare exception, all cross-references are to FDA regulations, there should be no confusion concerning the chapter in which a cross-referenced section is located. Therefore, part 10 would be revised to state that, in parts 10 through 16, all cross-references to regulations should be understood to mean regulations in chapter I, title 21, unless otherwise specified.

Other editorial changes are more extensive. In part 16, §§ 16.22 and 16.24 have been reorganized to place in § 16.22 the common procedures applicable to all regulatory hearings, and to place in § 16.24 the additional procedures applicable solely to regulatory hearings required by the Federal Food, Drug, and Cosmetic Act (the act) or a regulation. In addition, provisions concerning the administrative decision and record for decision, formerly found in §§ 16.24(g) and 16.80(c), have been consolidated with the similar provision in § 16.95.

The procedural regulations, as revised, are set out below. This preamble is intended to identify and explain all changes of a substantive nature. Editorial changes are not discussed except to note when a numbered provision has been eliminated. Changes in the regulations that are not discussed in the preamble are solely editorial and are not meant to alter the requirements of the regulations. Public comment is invited both on proposed substantive amendments and on editorial changes. In particular, FDA welcomes suggestions for futher clarifying the regulations and comments on whether the changes made are helpful. If any person believes that an editorial change has inadvertently altered the substance of a regulation by modifying, adding, or eliminating an obligation, the change should be identified in the person's comments.

ADMINISTRATIVE PRACTICES AND PROCEDURES (PART 10)

1. Section 10.1 would be amended by the addition of two paragraphs. Proposed § 10.1(c) explains that references to regulatory sections in the text of parts 10, 12, 13, 14, 15, and 16, are to chapter I of title 21 of the Code of Federal Regulations, unless otherwise noted. Proposed § 10.1(d) explains that references in parts 10, 12, 13, 14, 15, and 16 to the day or date of publication refer to publication in the FEDERAL REGISTER.

2. The proposal would modify some of the definitions in § 10.3 and alphabetize the listing. The phrase "the laws administered by the Food and Drug Administration" would be added and defined like the phrase "the laws administered by the Commissioner." A new definition, for the phrase "administrative record," would be added. As defined, "administrative record" would include in the administrative file of a particular matter documents on which the Commissioner relies to support the agency's decision in the matter. While most documents of this type would be filed in the hearing clerk's office, the definition is intended to permit the inclusion in the administrative record of documents that are in the possession of the agency but which for some reason (e.g., inadvertence, the documents contain trade secret information, the documents are internal communications) may not have routinely been included in the file on the matter in the office of the

hearing clerk. These documents would still be part of the administrative record and would be subject to inclusion in any record filed in a court or other proceeding.

3. Section 10.20(c)(1), which lists types of information that may be incorporated by reference in submissions to the hearing clerk, would be amended by adding the designated journals listed in §§ 310.9 and 510.95. The full text of articles in any designated journal would not then have to be submitted because the designated journals are available to the agency.

4. Section 10.30(a) would be amended to clarify that the citizen petition requirements apply to any person wishing FDA to take some form of administrative action, including a person who may not be a citizen of the United States. Some confusion has apparently arisen on this point because of the wording of the section heading, "Citizen petition." The Commissioner has not proposed to change the section heading, even though "citizen" includes corporations and unnaturalized persons. As originally promulgated, the requirements for citizen petitions were intended to serve as a mechanism by which individuals could request agency action on regulatory matters. That is still the primary thrust of the regulation, and the Commissioner views its present title as appropriate.

5. Proposed § 10.30(c) would use the term "docket file" to refer to the file on a matter in the hearing clerk's office. The present reference to "administrative file" is not correct, nor would be the substitution of "administrative record," which is defined by this proposal to include documents not on file with the hearing clerk in some circumstances. Consequently, the file in the office of the hearing clerk on a particular matter would be referred to as the docket file.

6. Section 10.33(b) would be amended to permit requests for reconsideration to be filed for any action initiated under § 10.25. The present requirement permits requests for reconsideration only in those actions initiated under § 10.25(a), which provides for agency action to be initiated by interested persons outside the agency. The Commissioner believes there in no substantial reason to so limit requests for reconsideration. They should be available in other instances as well, particularly for those actions initiated by the agency.

7. Section 10.33(b) would be amended also to permit a petition for administrative reconsideration of action to be filed after 30 days from the date of the decision involved. There may be legitimate reasons for the filing of a petition for administrative reconsideration of action later than 30 days after the date of the decision, and the proposed amendment would permit the Commissioner to respond properly to those situations. A conforming change would be made in § 10.33(g).

8. Section 10.35(b) would be amended to permit a petition for administrative stay of action to be submitted after 30 days from the date of the decision involved. The proposal would permit the Commissioner to respond to situations in which there are adequate reasons for submitting the petition to stay administrative action after 30 days from the date of the decision, as in the case of a request for reconsideration. A conforming change would be made in § 10.35(g)

9. Section 10.40(b) would be amended to reflect the new format for rulemaking documents now required by the Office of the FEDERAL REGISTER. Although not substantially different from FDA's present requirements, the new provisions would require certain information to appear in a particular sequence. Under § 10.40(b)(1), each proposed rulemaking document would contain, in approximately the following order, (i) the name of the agency, (ii) the nature of the action, for example, whether the document is a proposed rule or notice, (iii) a summary in the first paragraph describing the substance of the document in easily understandable terms, (iv) relevant dates, for example, the comment closing date and proposed effective dates, (v) the name, business address, and phone number of an agency contact person who can provide further information to the public about the notice, (vi) an address for the submission of written comments, and (vii) supplementary information about the notice in the form of a preamble that summarizes the proposal and the facts and policy underlying it. The preamble would further retain information presently required by § 10.40(b)(1), such as references to all information on which the Commissioner relies and the authority under which the regulation is proposed. The document would also contain either the terms or substance of the proposed regulation or a description of the subjects and issues involved, and a reference to the existence of, or lack of need for, an environmental impact statement. The document would further contain the docket number established by the hearing clerk for all submissions relating to the matter. (The docket number is generally included in the document's heading.)

Section 10.40(c) would require, in accordance with FEDERAL REGISTER format, that final regulations include the same type of information in approximately the same order. Here, however, the nature of the action would be characterized as a final rule or notice, and the relevant dates would include the rule's effective date and the closing date for comments, if an opportunity for such comment is provided. The preamble to a final rule would be required to contain a summary of comments submitted on the proposed rule, the Commissioner's conclusions with respect to each, and a thorough and comprehensible explanation of the reasons for the Commissioner's decision of each issue. In other respects, the requirements for proposed and final regulations would be essentially the same, and would not differ from those in the present regulation.

10. Section 10.40(b)(3)(i) would be amended by deleting the statement that extensions of time to comment on proposed rules will not ordinarily be granted. The statement does not reflect agency practice. The Commissioner's decision to grant a requested extension is based wholly on the merits of the request. In reviewing past action on these requests, it appears that they are granted, at least in part, more frequently than they are denied.

11. Section 10.65 would be amended to refelct the agency's reorganization in which the Office of Legislative Services is now part of the Office of Legislative Affairs. Under proposed § 10.65(i), memoranda recording meetings with Representatives of Congress relating to matters listed in the section would be forwarded to the latter office.

12. Section 10.85(i) would be amended to require four rather than three copies of comments on advisory opinions. The change would make uniform the number of comments to be submitted on agency documents under Part 10. Individuals would still be permitted to submit only one copy.

13. Section 10.90(b)(4) and (5) would be amended to indicate that authority to issue agency guidelines is held by both the Commissioner and bureau directors. The present sections imply that only individual bureau directors are responsible for approving or revoking guidelines. Because guidelines represent the agency position on a matter, however, it is appropriate that the authority to issue and revoke them be exercised as well by the Commissioner, particularly for matters affecting more than one bureau.

14. Section 10.90(b)(7) would be amended to require four copies of comments on a guideline to be submitted to the hearing clerk. The present requirements call for the submission of two copies to the Public Records and Document Center and two copies to the office designated as responsible for maintaining the guideline. The hearing clerk is being substituted for the Public Records and Document Center because § 10.90(b) presently re-

quires the hearing clerk to maintain the public file of guidelines. All four copies would be submitted to the hearing clerk as a convenience to persons submitting comments. The hearing clerk would forward additonal copies to the appropriate agency offices.

15. Section 10.95 would be amended to delete references to specific agency individuals who may approve participation in outside standard-setting activities and to specific forms used to obtain approval. Because agency procedures may change from time to time, it is impractical to specify particular officials and forms in these general requirements. Instead, the particular procedures will be specified in the FDA Staff Manual Guide. Section 10.95 (b) (1) and (2), (c) (1) and (2), and (d) (1) and (2) would be amended to reflect this change.

16. Section 10.100(a), specifying requirements for prospective public calendars of public proceedings, would be amended to eliminate the requirement that the listing on the public calendar include trials or arguments of court cases. Although significant court cases may be listed from time to time, the agency sees no need to list all pending court cases. The cases may be numerous at any given time and may not be of a significance to warrant inclusions on the public calendar. Section 10.100(b), specifying requirements for the retrospective public calendar, would be changed to list employee titles created by a recent agency reorganization. The employee titles listed, similar to those on the existing list, are generally of those who serve on the FDA Policy Board.

FORMAL EVIDENTIARY PUBLIC HEARING (PART 12)

17. References to the hearing provisions for medical devices have been added to proposed §§ 12.21(a), 12.28(d)(3), and 12.38. Because these sections refer specifically to all formal proceedings for the issuance, amendment, or revocation of an order, orders relating to medical devices should be expressly mentioned.

18. Section 12.22(a)(5)(i) would be amended to exclude certain documents from the requirement for submission of all documents relied upon in a request for hearing. The documents excluded are FDA documents routinely publicly available, recognized medical or scientific textbooks readily available to the agency, and designated journals listed in § 310.9 or § 510.95. This change conforms § 12.22(a)(5)(i) to § 10.20(c)(1), as it would be amended by this proposal, and is intended to avoid unnecessary effort and expense.

19. The Commissioner proposes new § 12.23 to remedy an inadvertent omission in the regulations as first published. The new section provides for issuance of a notice specifying the parts of a regulation stayed by the filing of objections when the filing results in an automatic stay. Notice that objections have been filed is not a ruling on their merits and is not a determination that a hearing on them has been justified. The Commissioner may, however, make a preliminary determination whether an objection is in proper form and is in fact an objection to the action mentioned in it.

20. Section 12.32(f), relating to an alternative form of public hearing, would be revised to delete the requirement that a tentative order be issued after a public hearing before the Commissioner under part 15. Section 12.32(f) now provides that a decision by the Commissioner in such a proceeding is issued as a tentative order for public comment, after which the Commissioner publishes a final order. The tentative order procedure is identical to one included in part 12 when that part was first proposed, for use when the presiding officer in a formal evidentiary public hearing issues a recommended decision instead of an initial decision. The recommended decision option was eliminated in the final regulations as unnecessary because review by the Commissioner of the presiding officer's initial decision can always be obtained through an appeal. All provisions relating to recommended decisions and tentative orders were accordingly deleted from part 12, but at that time, the tentative order procedure for use in the special case of a decision after a hearing before the Commissioner should have been retained.

Rather than revise § 12.32(f) to provide a tentative order procedure when part 15 is used as an alternative form of hearing, however, the Commissioner is proposing that a part 15 hearing decision be issued as a final order, with the same content as an initial decision. Agency review is necessary for an initial or a recommended decision by an administrative law judge of a subordinate presiding officer or body. The agency, being responsible for all final decisions that apply its statutory authority, must have a mechanism for bringing before the Commissioner, the head of the agency, all decisions reached after hearings over which the agency itself did not preside. However, when the Commissioner or the Commissioner's designee presides, as at a part 15 hearing, future proceedings at the Commissioner's level are unnecessary. Although a tentative order may still be used in that situation to obtain further public views, the Commissioner maintains that the advantage from receiving those views is outweighed by the disadvantage of prolonging the hearing. The Commissioner, as presiding officer in a part 15 hearing, will have been exposed directly to all relevant points of view. Additional comment on a tentative order, the Commissioner believes, would probably add little to an understanding of the matters in issue. Moreover, persons may petition for reconsideration if the decision after a part 15 hearing is wrong because of mistake or omission.

The Commissioner notes that the Administrative Procedure Act requires the use of a tentative decision only in formal rulemaking proceedings conducted under 5 U.S.C. 556 and 557, and then only when the agency did not preside at the hearing and the presiding officer certified the hearing record to the agency without an initial or tentative decision. The hearing before the Commissioner provided in § 12.32(f) is an optional procedure, over which the Commissioner or the Commissioner's designee presides.

21. Proposed new paragraph (h) of § 12.32 would make clear that the discretionary availability of a hearing before a public advisory committee under § 12.32 is not intended to limit the statutory right, found in section 515(g)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360e(g)(2)), to a hearing before a public advisory committee on certain proposed agency actions relating to medical devices. As an alternative form of hearing, the Commissioner must agree to a hearing before a public advisory committee. The Commissioner's agreement is not a condition to invoking the right to a hearing before a public advisory committee granted by section 515(g)(2) of the act.

22. Section 12.40 would be revised to eliminate the requirement that a person appearing in a representative capacity in a formal evidentiary public hearing file a signed statement verifying the person's authority to do so. This amendment conforms § 12.40 with § 10.20(b), from which the requirement was omitted when the final rule was published in the FEDERAL REGISTER of January 25, 1977 (42 FR 4680, ¶3).

23. The present rule under § 12.45(g) would be redesignated as § 12.45(e) and amended to eliminate the requirement for giving notice of an opportunity to show cause why a person's participation should not be stricken. The need for such notice would ordinarily arise only in cases where a person's participation is to be stricken for failure to participate. A person whose participation is stricken for that reason may request reinstatement from the presiding officer when the person again desires to participate. Notice and an opportunity to respond in those circumstances serve no useful purpose, and burden the proceeding unnecessarily.

24. Section 12.75(a) would be amended to permit the ruling on a motion to disqualify the presiding officer to be

appealed under the interlocutory appeal procedure in § 12.97(b), rather than to require the ruling to be certified automatically to the Commissioner. The revision preserves the right to obtain review of such a ruling while eliminating unnecessary review when the ruling is not controversial.

25. Section 12.80(a) would be amended to require that only two copies of submissions in a part 12 hearing need be filed with the hearing clerk. (However, submissions must comply with other requirements of § 10.20.) Because § 12.80(b) requires that most submissions in an evidentiary hearing be served on other hearing participants, the hearing clerk does not need the usual number of copies of submissions.

26. Section 12.80(a) would be amended also to provide that in a formal evidentiary public hearing, submissions are considered submitted on the date of actual receipt by the hearing clerk, not the date of postmark, as provided in § 10.20(e) for submissions generally. A participant's submission in a formal evidentiary public hearing often requires a response by other participants, or it is a necessary part of other participants' preparation for the hearing. These factors, which are generally not present in other types of agency proceedings, require greater certainty than the postmark rule provides about the time submissions are actually received.

27. Section 12.85(a)(2) would be amended to clarify the requirement for filing with the hearing clerk all documents in the files of the bureau director that contain information on the issues in the hearing. It is impractical for the bureau to search every file that might possibly contain relevant information. The value of what little additional information might be found is greatly outweighed by the burden of making such a search.

Therefore, the Commissioner proposes to add a definition for "files" as "the principal files in the bureau in which documents relating to the issues in the hearing are ordinarily kept * * *." The definition excludes bureau files of secondary importance, even though they contain information relating to the issues. Examples of files of secondary importance are files maintained by individual bureau employees for their personal use, and files containing large quantities of purely analytical data (e.g., gas chromatographic measurements) generated for internal agency use. If the bureau is aware that an important document is located in a file of secondary importance, however, it should include that document in its filing under § 12.85(a)(2).

The meaning of the term "principal files" will vary with the issues in a hearing. If a hearing involves an issue which squarely addresses the agency's assessment of analytical data about the quantitation of a regulated substance, for example, some files containing such data would be "principal files." However, if the hearing involves the safety of that substance, and no issue concerning quantitation techniques is raised, those files would not be "principal files."

Determining which files are "principal files" is a judgmental decision. The bureau is expected to exercise good faith in selecting files to be searched; it is not expected to locate every document that other participants have obtained by means other than this filing requirement, such as through previous communications with the bureau or the Freedom of Information Act. Other participants in part 12 hearings are required to adhere to the same ground rules; they, too, are expected to exercise good faith in searching files for documents containing information relating to hearing issues, but they need not locate every document that contains such information. Section 12.85(b) would be revised to state this rule by requiring participants to exercise "reasonable diligence in identifying documents in files comparable to those described in" § 12.85(a). Section 12.85(d) would be revised to require persons to comply with § 12.85 (a) and (b) "substantially and in good faith."

Section 12.85(a) would be amended also to make clear that paragraph (a)(2) does not require filing internal memoranda reflecting the deliberative process or attorney work product and material prepared specifically for use in connection with a part 12 hearing. This qualification was originally stated in the preamble to the final part 12 regulations, published in the FEDERAL REGISTER of November 23, 1976 (41 FR 51714, ¶30). To avoid misunderstanding, the regulations specifically describe the types of documents not required to be filed under § 12.85(a)(2). The bureau and other hearing participants are free to disclose such documents, however, and the process has often been improved when this was done.

28. Section 12.87 (b)(1) and (c) would be revised to eliminate the specific standards for granting cross-examination in part 12 hearings, now listed in § 12.87(c), and replace them with the general standard that permits cross-examination if it is "the most effective and efficient method of clarifying the matters at issue." That standard is similar to the existing standard in § 12.87(c)(6), which is one of several criteria for determining whether oral cross-examination should be granted.

Experience since the part 12 regulations were issued has shown that written direct examination is a valuable means of expediting the oral phase of formal hearings, of presenting factual evidence clearly, fully, and concisely, and of focusing cross-examination on key issues. Experience has also shown that oral cross-examination is usually the most effective and efficient method of challenging written direct testimony, because participants can organize their cross-examination before the oral hearing, and exclude irrelevant or unproductive questions. Oral cross-examination is therefore quicker than it would be if direct testimony were not submitted in writing, and probably requires less time than other methods of challenging direct testimony, such as written rebuttal or written cross-examination through interrogatories.

For these reasons, the Commissioner believes that the presiding officer should grant oral cross-examination if it is the most effective and efficient means of clarifying the issues. The list of factors to be considered in determining whether oral cross-examination should be granted is unnecessary, and, accordingly, the Commissioner proposes to delete them from the regulations.

29. Section 12.92(b)(1) would be revised to eliminate several of the provisions that specify procedures the presiding officer may use at the prehearing conference. The procedures are those for requiring participants to file written statements of areas of disagreement, to summarize testimony on which they will rely, and to justify the submission of documentary evidence not originally filed. These procedures are discretionary; their availability is specified in other provisions of the part 12 regulations, such as § 12.70, relating generally to the authority of the presiding officer, and § 12.92(b)(2), relating to the presiding officer's authority to identify the most appropriate techniques for developing the evidence.

Section 12.92(b)(2) itself would be revised to eliminate explicit mention of the identification of all witnesses and the submision of each witness's testimony as an appropriate technique for developing evidence. The provision is unnecessary because it describes a procedure routinely followed at Part 12 hearings.

30. Section 12.92(c) would be amended to delete the requirement that the prehearing order be in writing. Under current practice, the presiding officer issues prehearing rulings orally and often restates those rulings in a written order issued shortly thereafter. This practice has proved efficient, and participants in hearings have had no problems complying with orders issued orally. Oral rulings not subsequently

reduced to writing are recorded by the stenographer for later reference.

31. Section 12.94, relating to the receipt of evidence, would be amended to permit the presiding officer to exclude irrelevant, immaterial, unreliable, or repetitive evidence. The regulation now provides that, unless they are not authentic or their exclusion is required to make a participant comply with other regulations, all written submissions are admissible as evidence, subject to diminished weight if not <reliable or relevant. The current <procedure, an object of considerable criticism, has never been used. The criticism concerns the possibility that allowing all submissions into evidence regardless of materiality or reliability would produce an unmanageable record and would require hearing participants to respond to irrelevant evidence as a precaution because other participants or the presiding officer may rely on such evidence.

Although this criticism is obviously not verified by experience, the Commissioner believes that an alternative procedure is advisable. Section 12.94 would therefore be revised to authorize the presiding officer to exclude, on objection of a participant or on the presiding officer's own initiative, irrelevant, immaterial, unreliable, or repetitive evidence, as well as evidence that must be excluded to enforce compliance with the hearing procedures, and evidence not submitted as required by § 12.85. The proposed revisions also provide that all written evidence must be specifically identified as such; submissions not identified as evidence will not be admitted as evidence; evidence must be submitted in the form of sequentially numbered documents; and a voluminous document may be submitted as a cross-reference to a written submission under § 12.85, but other documents must be separately submitted to be considered evidence. Provisions of § 12.94 relating to the admissibility of oral evidence would be substantively unchanged.

The present rule under § 12.94(e), which requires participants to apprise themselves of the contents of the record for purposes of filing objections to the admissibility of evidence, would be deleted. This obligation is necessary only if all written submissions are automatically admitted, subject to objection. It is assumed that participants will evaluate the more particularized record that will be developed under the new procedures to determine whether they wish to object to specific items.

32. Sections 12.94(h) (proposed 12.94(g)), 12.96(c) and 12.120(c), relating to closed hearings to receive oral testimony about certain trade secret information, would be revised to conform with § 10.20(j) as published in the FEDERAL REGISTER January 25, 1977 (42 FR 4680, 4682–4684, ¶10).

33. Section 12.94(i), which provides a procedure for terminating the taking of evidence, would be eliminated. Experience since publication of part 12 has shown no need for this provision.

34. Section 12.96(a) would be amended to require posthearing briefs to be filed within 45 days of the close of the hearing in the ordinary case.

35. Section 12.97(c) would be amended to prohibit the filing of briefs in interlocutory appeals except when specifically authorized by the presiding officer or the Commissioner. Interlocutory appeals often require expedited handling, and generally do not raise complex issues that would benefit from extended written discussion. They should, accordingly, be presented orally unless the presiding officer or Commissioner determines that briefing would be useful.

36. Section 12.99 would be amended to require that all motions to the presiding officer include a draft order, and to prohibit a moving party from replying to the opposing party's response without the presiding officer's permission. For greater certainty, the provision would also be modified to make receipt by the hearing clerk, rather than the date of source, the triggering event for the 10-day time limit for responses to motions.

37 Section 12.100(a)(1) would be revised to add the notice of opportunity for a hearing to the list of items comprising the administrative record in proceedings commenced by such a notice. This item was inadvertently omitted from the regulations.

38. Section 12.110, regarding correction of the administrative record, would be deleted. Its substance is included in proposed § 12.98(d). Section 12.115, which defines the administrative record, would also be deleted. Its substance is contained in existing § 12.120(b)(1).

39. Section 12.120(a) would be revised to eliminate the requirement that initial decisions be filed within 90 days of the submission of briefs, unless the Commissioner extends the time at the request of the presiding officer. Experience has shown the time limit to be impractical because of the agency's heavy hearing load. The presiding officer is nevertheless expected to file an initial decision promptly, and to consult with the Commissioner when encountering delays in a given case.

PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY (PART 13)

40. Section 13.10(b), 13.10(c), and 13.10(d) would be revised to make clear that, in selecting the members of a Public Board of Inquiry, the special status of the person whose petition is the subject of the hearing exists only when the petition in question has been granted. When FDA grants a petition and its action is challenged, the person whose petition is the subject of the hearing is not a party to it. Unless special provision is made, that person would have no voice in selecting the members of a Public Board of Inquiry, a result incompatible with the importance of the person's actual interest in the outcome of the proceeding. Section 13.10 therefore provides that when a person whose petition is the subject of a Public Board of Inquiry is not a party to the proceeding because the petition has been granted, the person may nevertheless submit a list of nominees, and one member of the Board will be chosen either from that list or from the bureau's. The bureau's and the petitioner's lists are alternatives because when a petition has been granted, the petitioner's and the bureau's interests are allied.

When FDA denies a petition, the person whose petition is the subject of a Public Board of Inquiry is also a party to it, and thus has the right to participate as such in the selection of members of the Board. Since the petitioner's interests are opposed to the bureau's, the petitioner's nominees are not alternatives to the bureau's nominees, but are considered to be those of a party. Hence, when a person whose petition is the subject of a Public Board of Inquiry is also a party to the proceeding because the petition has been denied, the person's rights and obligations in the proceeding are solely those of a party.

To make clear that the special status of a petitioner in the selection of Board members is avalable only to petitioners whose petition has been granted, the phrase "person whose petition is the subject of the hearing" is revised, wherever it appears in § 13.10 to read "person whose petition was granted and is the subject of the hearing."

41. Section 13.25 (a)(3) and (b) are identical to proposed § 12.85 (a)(2) and (b), and would be revised to conform.

42 Section 13.30(c) would be revised to make clear that a participant's presentation may be made by more than one person.

PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE (PART 14)

43. To cross-reference certain provisions of the Medical Device Amendments of 1976 (Pub. L. 94-295), § 14.1 would be amended by adding new paragraphs (a)(2) (vi) through (ix) to the list of provisions for a hearing before an advisory committee.

43a. Section 14.1(b)(5)(i) would be amended to eliminate the implication that an unstructured group is an advisory committee within the meaning of

the Federal Advisory Committee Act if the group, as a group, provides advice to the agency. The change is based on a recent decision of the U.S. District Court for the Southern District of New York in a case involving FDA's use of an ad hoc group to provide advice in a food labeling rulemaking proceeding (*National Nutritional Foods Assn. et al.* v. *Califano et al.*, No. 77 CIV 6083(LBS), Op. No. 47567 (S.D.N.Y. Aug. 29, 1978). Accord, *Nader* v. *Baroody*, 396 F. Supp. 1231 (D.D.C. 1975), vacated on appeal for mootness, App. No. 74-1675 (D.C. Cir. 1977).

44. Section 14.1 would be amended by adding a new paragraph (b)(10) to provide that FDA operational committees—as opposed to committees that give advice and recommendations—are not advisory committees within the meaning of the Federal Advisory Committee Act and part 14. The distinction is significant because the Federal Advisory Committee Act and these regulations apply only to advisory committees.

45. Section 14.22(d) would be amended to allow a committee charter to establish quorum rules different from the general rule. Under the general rule, a majority of the current voting members of the committee constitutes a quorum.

46. Section 14.22 would be amended also be adding a new paragraph (g) setting out the procedures to be followed when a meeting is conducted by a telephone conference call. The Commissioner expects that a conference call would be used infrequently, usually to discuss a matter overlooked at a regular meeting, to take final votes, or in other situations where time and expense do not permit or justify convening a regular meeting at a central location. Arrangements would be made for adequate participation by the public, as in other FDA advisory committee meetings. Because the new provision would be designated as (g), the current paragraphs (g) and (h) would be redesignated as (h) and (i).

47. The introductory text of § 14.35(d) would be amended to emphasize that written submissions to an FDA advisory committee must be made to the committee's executive secretary and not directly to the committee members. The proposed amendment would correct the problem created in the past by some persons submitting documents directly to advisory committee members, Thus making it difficult for FDA to maintain an accurate official administrative record of the proceedings.

48. Section 14.40(a) would be amended to provide that the Commissioner will directly charter advisory committees which have been established under statutes (e.g., the Federal Food, Drug, and Cosmetic Act) and for which the Commissioner has been delegated enforcement responsibility. Other committees will continue to be chartered by the Secretray.

49. New Paragraph (a)(5) would be added to § 14.70 to require that the administrative record include any reports by consultants working for an advisory committee.

50. The revised standing list of FDA advisory committees in proposed § 14.100 reflects the reduced number of committees under the President's Advisory Committee reduction program. Among the advisory committees that have been terminated is the Toxicology Advisory Committee. To reflect this fact, § 14.19, concerning the use of the Toxicology Advisory Committee to resolve scientific issues relating to the anticancer clauses, is deleted, and conforming changes are made in § 14.147(a)(2) (ii) and (iii).

Public Hearing Before the Commissioner (Part 15)

50a. Cross-references to certain provisions of the Medical Device Amendments would be added to § 15.1(b).

51. A new paragraph (c) would be added to § 15.20 to state that participants in a hearing before the Commissioner may be required to submit the text of their presentations in advance of the hearing. The Commissioner, and others who would preside, could then prepare questions for the participants to sharpen the discussion at the hearing.

52. The "notice of appearance" under § 15.21 would be redesignated a "notice of Participation" and simplified in its form and the manner in which it must be submitted. Under the revised procedure, whenever it serves the public interest FDA may permit the notice to be submitted at the time of the hearing or by telephone. The Commissioner expects the more informal procedures to be particularly useful when a hearing is to be attended primarily by individuals without an organizational affiliation.

53. Procedures for scheduling presentations would be revised. Proposed § 15.21 would provide that when several hearings are to be held on the same subject, a participant will ordinarily be allotted time for a presentation at only one hearing. Further, because the hearing schedules are mailed or telephoned to participants in advance, the provision for publishing them in the Federal Register has been eliminated as unnecessary.

In several agency-conducted proceedings, FDA has found that some scheduled participants do not attend or they appear late. Such absences may make it possible to hear all those present and to close a hearing early, before participants scheduled for a later presentation have yet arrived. Proposed new § 15.21(e) would provide that the hearing schedule will state whether participants must be present by a specific time to assure being heard, in case the absence of participants makes possible an early closing of the hearing. Section 15.30 would be revised to add new paragraph (g), to provide that the hearing will not close before the time specified unless all persons scheduled for a later presentation have already participated.

54. Section 15.30(e) would be amended to clarify that the presiding officer may permit those present to question the presiding officer or panel. The presiding officer and panel may also address these or other questions to specific participants.

55. The presiding officer and the Commissioner have always had the authority under § 10.19 to waive any of the procedures governing a hearing. This authority to waive the rules would be restated in proposed new § 15.30(h) to ensure that it is not overlooked when it is needed in this type of proceeding.

Regulatory Hearing Before the Food and Drug Administration (Part 16)

56. Editorial revisions, but no substantive changes, would be made in §§ 16.1 and 16.5, which contain a listing and description of proceedings for which regulatory hearings are available or have a limited applicability. The Commissioner is also proposing to add to the list all proceedings under the Medical Device Amendments that require opportunity for an "informal hearing," as defined in new section 201(y) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(y)). An "informal hearing" under this definition is equivalent to a hearing under part 16. The Commissioner will list in the regulations any other proceedings to which part 16 applies if comments identify relevant provisions.

57. The procedures for initiating a regulatory hearing on the initiative of the Commissioner and the procedures for a regulatory hearing in accordance with a regulation would be made identical to the extent possible. The common procedures, with minor changes, would be consolidated in § 16.22. Proposed § 16.24 would state the additional procedures applicable to regulatory hearings that are initiated in accordance with the act of a regulation. Consistent with the flexibility provided by § 16.22, under which any form of written communication may be used to send notice, §§ 16.22 and 16.24 would no longer require the use of registered mail.

58. Proposed § 16.22(b) would permit a request for a regulatory hearing to be made to any FDA employee designated for the purpose, who need not

be the presiding officer. This change would make it possible in all hearings to wait until a request for hearing is made before designating a presiding officer.

59. Section 16.22(c) would be amended to provide that, in scheduling a time for the hearing, the presiding officer is to consult both with the party requesting the hearing and the FDA employees representing the bureau or other FDA organizational unit that is to make a presentation for FDA at the hearing.

60. Proposed § 16.24(e), (§ 16.24(d) of the present rule), would allow FDA officials generally, rather than just the Commissioner, to decide whether information relating to the notice of matters for hearing should be provided orally or in writing. Similarly, to reduce unnecessary involvement by the Commissioner, § 16.60(d) would be revised to allow the presiding officer, rather than the Commissioner, to decide if a hearing should be transcribed.

61. Proposed new provisions in part 16 relate to the prior involvement of the presiding officer and the Commissioner in the subject of a regulatory hearing, and to communications with them concerning the hearing. Some uncertainty has existed within the agency about these matters, and, in most respects, the revisions simply clarify the effect of the existing requirements.

The present rule under § 16.42, relating to delegation of the Commissioner's authority concerning a regulatory hearing, would be redesignated § 16.40; § 16.40 is proposed to be redesignated as § 16.42. Proposed § 16.42(b) would continue to limit the presiding officer's prior involvement in the matter that is the subject of the hearing, but, as proposed, its applicability would be limited to regulatory hearings required by regulation. When a regulatory hearing is held on the initiative of the Commissioner, the hearing is a matter of discretion and the Commissioner should have the option of selecting as a presiding officer someone already familiar with the issues. Because the decision in the matter is not to be made only on an exclusive record, it is not essential that the presiding officer obtain information on the issues solely on the record.

62. A new § 16.44 would be added to state expressly that the separation of functions rules in § 10.55 do not apply to regulatory hearings, and to provide certain restrictions on communications between participants and the presiding officer. When a regulatory hearing is required by regulation, some limitation on communications is needed to implement the requirement in § 16.95 that establishes an exclusive record for decision. Also, §§ 16.60(e) and 16.80 specify the type of comments to be made by the participants and the timing of the comments. It would be inconsistent with these provisions for the participants in a hearing to be able to communicate in other ways about pending matters to the presiding officer or to the official who is delegated the Commissioner's functions.

The Commissioner believes that a corollary of the requirement that the decision be made on a limited record is that the participants in the hearings must avoid comunications to the presiding officer and the final decisionmaker about the very matters to be decided exclusively on the record. Proposed new § 16.44 would impose this limitation, which applies to those directly involved in the investigation or presentation of matters in the hearing. However, § 16.44 would limit only those communications that would be inconsistent with having an exclusive record for decision. Because it is difficult to determine which communications are permitted, parties should avoid any questionable communications. If a communication were made that was inconsistent with § 16.44, the communication would have to be included in the record and the other participants in the hearing given an opportunity to comment on it.

63. The revised regulation also expressly states the way proposed § 16.42 applies to the Commissioner. As discussed in detail in the preamble to the final regulation, published in the FEDERAL REGISTER of November 2, 1976 (41 FR 48259, ¶7), and as provided in proposed § 16.40, the Commissioner's functions in issuing the ultimate decision can be exercised by an official to whom the Commissioner's substantive authority for the matter has been delegated under part 5. Neither the Commissioner nor the delegate is precluded by proposed § 16.42 from involvement, before the proceeding, in the issues in dispute, although once the proceeding begins, the decisionmaker should avoid communications inconsistent with a decision based on an exclusive record. If the Commissioner or delegate has had a prior involvement in the issues at the hearing, that official would still be able to make the final decision for the agency. But if there has been such prior involvement by the official who is to make the final decision and if it is feasible, the presiding officer should not be a subordinate of that official. This precaution is a safeguard against any possible reluctance by a subordinate to change a preliminary determination in which a superior has been involved. When the Commissioner has been involved in the issues at the hearing and is also to make the final decision efforts should be made to secure a presiding officer who is either an administrative law judge or is not an FDA employee.

The Commissioner's or the delegate's exercise of general supervisory responsibility over employees who were involved in the issues in dispute, or of the authority to designate the presiding officer, does not constitute prior involvement for purposes of proposed § 16.42. If the Commissioner or the delegate were to review personally the decision to take the action leading to a hearing, however, it would be considered a prior involvement, and in that case the presiding officer should not be a subordinate of that official if it is reasonably possible to appoint someone else.

64. Proposed § 16.42(c)(2) would permit a party to request a hearing before the Commissioner or the delegate making the final decision, notwithstanding any prior involvement in the issues at the hearing. The provision has been included in response to comments on the proposed regulation which suggested that an affected party may prefer a regulatory hearing before the final decisionmaker, even if the decisionmaker initiated the action that is the subject of the hearing or had some other direct involvement, rather than have a hearing before a presiding officer who is uninvolved and unfamiliar with the issues.

65. Sections § 16.60(e) and 16.80(a)(4) would be revised to allow the participants in a regulatory hearing to comment in any manner on the presiding officer's report, and not simply to offer corrections.

66. The provisions concerning the administrative record would be reorganized, but substantially changed, and transferred from §§ 16.24(g) and 16.80(c) to § 16.95.

Therefore, under the Federal Food, Drug, and Cosmetic Act, (sec. 201 et seq., 52 Stat. 1040 (21 U.S.C. et seq.)), the Public Health Service Act (sec. 1 et seq., 58 Stat. 682, as amended (42 U.S.C. 201 et seq.)), the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)), the Controlled Substances Act (sec. 301 et seq., 84 Stat. 1253 (21 U.S.C. 821 et seq.)), the Federal Meat Inspection Act (sec. 409(b), 81 Stat. 600 (21 U.S.C. 679(b))), the Poultry Products Inspection Act (sec. 24(b), 82 Stat. 807 (21 U.S.C. 467f(b))), the Egg Products Inspection Act (sec. 2 et seq., 84 Stat. 1620 (21 U.S.C. 1031 et seq.)), the Federal Import Milk Act (secs. 1 through 9, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149)), the Tea Importation Act (secs. 1 through 10, 29 Stat. 604-607 (21 U.S.C. 41-50)), the Federal Caustic Poison Act (44 Stat. 1406 (15 U.S.C. 401-411 notes)), the Fair Packaging and Labeling Act (80 Stat. 1296 15 U.S.C. 1451 et seq.)), and under authority delegated to the

Commissioner (21 CFR 5.1), it is proposed to amend Subchapter A by revising Parts 10, 12, 13, 14, 15, and 16 as follows:

PART 10—ADMINISTRATIVE PRACTICES AND PROCEDURES

Subpart A—General

Sec.
10.1 Scope.
10.3 Definitions.
10.10 Summaries of administrative practices and procedures.
10.19 Waiver, suspension, or modification of procedural requirements.

Subpart B—General Administrative Procedures

10.20 Submission of documents to hearing clerk; computation of time; availability for public disclosure.
10.25 Initiation of administrative proceedings.
10.30 Citizen petition.
10.33 Administrative reconsideration of action.
10.35 Administrative stay of action.
10.40 Promulgation of regulations for the efficient enforcement of the law.
10.45 Court review of final administrative action; exhaustion of administrative remedies.
10.50 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.
10.55 Separation of functions; ex parte communications.
10.60 Referral by court.
10.65 Meetings and correspondence.
10.70 Documentation of significant decisions in administrative file.
10.75 Internal agency review of decisions.
10.80 Dissemination of draft FEDERAL REGISTER notices and regulations.
10.85 Advisory opinions.
10.90 Food and Drug Administration regulations, guidelines, recommendations, and agreements.
10.95 Participation in outside standard-setting activities.
10.100 Public calendars.
10.105 Representation by an organization.
10.110 Settlement proposals.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 10.1 Scope.

(a) Part 10 governs practices and procedures for petitions, hearings, and other administrative proceedings and activities conducted by the Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and other laws that the Commissioner of Food and Drugs administers under § 5.1.

(b) If a requirement in another part of title 21 differs from a requirement in this part, the requirements of this part apply to the extent that they do not conflict with the other requirements.

(c) References in this part and parts 12, 13, 14, 15, and 16 to regulatory sections of the Code of Federal Regulations are to chapter I of title 21 unless otherwise noted.

(d) References in this part and parts 12, 13, 14, 15, and 16 to "publication" or to the day or date of publication refer to publication in the FEDERAL REGISTER unless otherwise noted.

§ 10.3 Definitions.

(a) The following definitions apply in this part and parts 12, 13, 14, 15, 16, and 19:

"Act" means the Federal Food, Drug, and Cosmetic Act unless otherwise indicated.

"Administrative action" includes every act, including the refusal or failure to act, involved in the administration of any law by the Commissioner, except that it does not include the referral of apparent violations to U.S. attorneys for the institution of civil or criminal proceedings or an act in preparation of a referral.

"Administrative file" means the file or files containing all documents pertaining to a particular administrative action, including internal working memoranda and recommendations.

"Administrative record" means the documents in the administrative file of a particular administrative action on which the Commissioner relies to support the action.

"Agency" means the Food and Drug Administration.

"Commissioner" means the Commissioner of Food and Drugs, Food and Drug Administration, U.S. Department of Health, Education, and Welfare, or the Commissioner's designee.

"Department" means the U.S. Department of Health, Education, and Welfare.

"Ex parte communication" means an oral or written communication not on the public record for which reasonable prior notice to all parties is not given, but does not include requests for status reports on a matter.

"FDA" means the Food and Drug Administration.

"Food and Drug Administration employee" or "Food and Drug Administration representative" includes members of the Food and Drug Division of the office of the General Counsel of the Department of Health, Education, and Welfare.

"Formal evidentiary public hearing" means a hearing conducted under part 12.

"Hearing Clerk" means the Hearing Clerk of the Food and Drug Administration, U.S. Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

"Interested person" or "any person who will be adversely affected" means a person who submits a petition or comment or objection or otherwise asks to participate in an informal or formal administrative proceeding or court action.

"Meeting" means any oral discussion, whether by telephone or in person.

"Office of the Commissioner" includes the offices of the associate commissioners but not the bureaus, the office of the Executive Director for Regional Operations, or the regional or district offices.

"Order" means the final agency disposition, other than the issuance of a regulation, in a proceeding concerning any matter and includes action on a new drug application, new animal drug application, or biological license.

"Participant" means any person participating in any proceeding, including each party and any other interested person.

"Party" means the bureau of the Food and Drug Administration responsible for a matter involved and every person who either has exercised a right to request or has been granted the right by the Commissioner to have a hearing under part 12 or part 16 or who has waived the right to a hearing to obtain the establishment of a Public Board of Inquiry under part 13 and as a result of whose action a hearing or a Pulic Board of Inquiry has been established.

"Person" includes an individual, partnership, corporation, association, or other legal entity.

"Petition" means a petition, application, or other document requesting the Commissioner to establish, amend, or revoke a regulation or order, or to take any other form of administrative action, under the laws administered by the Food and Drug Administration.

"Presiding officer" means the Commissioner or the Commissioner's designee or an administrative law judge appointed as provided in 5 U.S.C. 3105.

"Proceeding" and "administrative proceeding" means any undertaking to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action.

"Public advisory committee" or "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or

other subgroup of an advisory committee, that is not composed wholly or full-time employees of the Federal Government and is established or utilized by the Food and Drug Administration to obtain advice or recommendations.

"Public Board of Inquiry" or "Board" means an administrative law tribunal constituted under part 13.

"Public hearing before a public advisory committee" means a hearing conducted under part 14.

"Public hearing before a Public Board of Inquiry" means a hearing conducted under part 13.

"Public hearing before the Commissioner" means a hearing conducted under part 15.

"Regulations" means an agency rule of general or particular applicability and future effect issued under a law administered by the Commissioner or relating to administrative practices and procedures. In accordance with § 10.90(a), each agency regulation will be published in the FEDERAL REGISTER and codified in the Code of Federal Regulations.

"Regulatory hearing before the Food and Drug Administration" means a hearing conducted under part 16.

"Secretary" means the Secretary of Health, Education, and Welfare.

"The Laws administered by the Commissioner" or "the laws administered by the Food and Drug Administration" means all the laws that the Commissioner is authorized to administer under § 5.1.

(b) A term that is defined in section 201 of the Federal Food, Drug, and Cosmetic Act or part 1 has the same definition in this part.

(c) Words in the singular form include the plural, words in the masculine form include the feminine, and vice versa.

(d) Whenever a reference is made in this part to a person in FDA, e.g., the director of a bureau, the reference includes all persons to whom that person has delegated the specific function involved.

§ 10.10 Summaries of administrative practices and procedures.

To encourage public participation in all agency activities, the Commissioner will prepare for public distribution summaries of FDA administrative practices and procedures in readily understandable terms.

§ 10.19 Waiver suspension, or modification of procedural requirements.

The Commissioner or a presiding officer may, either voluntarily or at the request of a participant, waive, suspend, or modify any provision in parts 12 through 16 applicable to the conduct of a public hearing by announcement at the hearing or by notice in advance of the hearing. If no participant will be prejudiced, the ends of justice will thereby be served, and the action is in accordance with law.

Subpart B—General Administrative Procedures

§ 10. 20 Submission of documents to hearing clerk; computation of time; availability for public disclosure.

(a) A submission to the hearing clerk of a petition, comment, objection, notice, compilation of information, or any other document is to be filed in four copies except as otherwise specifically provided in a relevant FEDERAL REGISTER notice or in another section of this chapter. The hearing clerk is the agency custodian of these documents.

(b) A submission is to be signed by the person making it, or by an attorney or other authorized representative of that person. Submissions by trade associations are also subject to the requirements of § 10.105(b).

(c) Information referred to or relied upon in a submission is to be included in full and may not be incorporated by reference, unless previously submitted in the same proceeding.

(1) A copy of an article or other reference or source cited must be included, except where the reference or source is—

(i) A reported Federal court case;

(ii) A Federal law or regulation;

(iii) An FDA document that is routinely publicly available;

(iv) A recognized medical or scientific textbook that is readily available to the agency; or

(v) A designated journal listed in § 310.9 or § 510.95.

(2) If a part of the material submitted is in a foreign language, it must be accompanied by an English translation verified to be complete and accurate, together with the name, address, and a brief statement of the qualifications of the person making the translation. A translation of literature or other material in a foreign language is to be accompanied by copies of the original publication.

(3) Where relevant information is contained in a document also containing irrelevant information, the irrelevant information is to be deleted and only the relevant information is to be submitted.

(4) Under § 20.63 (a) and (b), the names and other information that would identify patients or research subjects are to be deleted from any record before it is submitted to the hearing clerk in order to preclude a clearly unwarranted invasion of personal privacy.

(5) Defamatory, scurrilous, or intemperate matter is to be deleted from a record before it is submitted to the hearing clerk.

(6) The failure to comply with the requirements of this part will result in rejection of the submission for filing or, if it is filed, in exclusion from consideration of any portion that fails to comply. If a submission fails to meet any requirement of this section and the deficiency becomes known to the hearing clerk, the hearing clerk shall not file the submission but return it with a copy of the applicable regulations indicating those provisions not complied with. A deficient submission may be corrected or supplemented and subsequently filed. The office of the hearing clerk does not make decisions regarding the confidentiality of submitted documents. Persons wishing to voluntarily submit information considered confidential shall follow the presubmission review requirements of § 20.44.

(d) The filing of a submission means only that the hearing clerk has identified no technical deficiencies in the submission. The filing of a petition does not mean or imply that it meets all applicable requirements or that it contains reasonable grounds for the action requested or that the action requested is in accordance with law.

(e) All submissions to the hearing clerk will be considered as submitted on the date they are postmarked or, if delivered in person during regular business hours, on the date they are delivered, unless a provision in this part, an applicable FEDERAL REGISTER notice, or an order issued by an administrative law judge specifically states that the documents must be received by a specified date, e.g., § 10.33(g) relating to a petition for reconsideration, in which case they will be considered submitted on the date received.

(f) All submissions are to be mailed or delivered in person to the hearing clerk, Food and Drug Administration, room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, except that a submission which is required to be received by the hearing clerk by a specified date may be delivered in person to the FDA building in Washington (room 6819, 200 C Street SW., Washington, D.C. 20201) and will be considered as received by the hearing clerk on the date on which it is delivered.

(g) FDA ordinarily will not acknowledge or give receipt for documents, except—(1) Documents delivered in person or by certified or registered mail with a return receipt requested; and

(2) Petitions for which acknowledgment of receipt of filing is provided by regulation or by customary practice, e.g., § 10.30(c) relating to a citizen petition.

(h) Saturdays, Sundays, and Federal legal holidays are included in computing the time allowed for the submission of documents, except that when the time for submission expires on a Saturday, Sunday, or Federal legal holiday, the period will be extended to include the next business day.

(i) All submissions to the hearing clerk are representations that, to the best of the knowledge, information, and belief of the person making the submission, the statements made in the submission are true and accurate. All submissions are subject to the False Reports to the Government Act (18 U.S.C. 1001) under which a willfully false statement is a criminal offense.

(j) The availability for public examination and copying of submissions to the hearing clerk is governed by the following rules:

(1) Except to the extent provided in paragraphs (j) (2) and (3) of this section, the following submissions, including all supporting material, will be on public display and will be available for public examination between 9 a.m. and 4 p.m., Monday through Friday. Requests for copies of submissions will be filed and handled in accordance with subpart C of part 20:

(i) Petitions.

(ii) Comments on petitions, on documents published in the FEDERAL REGISTER, and on similar public documents.

(iii) Objections and requests for hearings filed under part 12.

(iv) Material submitted at a hearing under § 12.32(a)(2) and parts 12, 13, and 15.

(v) Material placed on public display under the regulations in this chapter, e.g., agency guidelines filed under § 10.90(b).

(2)(i) Material prohibited from public disclosure under § 20.63 (clearly unwarranted invasion of personal privacy) and, except as provided in paragraph (j)(3) of this section, material submitted with objections and requests for hearing filed under part 12, or at a hearing under part 12 or part 13, or an alternative form of public hearing before a public advisory committee or a hearing under § 12.32(a) (2) or (3), of the following types will not be on public display, will not be available for public examination, and will not be available for copying or any other form of verbatim transcription unless it is otherwise available for public disclosure under part 20:

(*a*) Safety and effectiveness information, which includes all studies and tests of an ingredient or product on animals and humans and all studies and tests on the ingredient or product for identity, stability, purity, potency, bioavailability, performance, and usefulness.

(*b*) A protocol for a test or study.

(*c*) Manufacturing methods or processes, including quality control procedures.

(*d*) Production, sales distribution, and similar information, except any compilation of information aggregated and prepared in a way that does not reveal confidential information.

(*e*) Quantitative or semiquantitative formulas.

(*f*) Information on product design or construction.

(ii) Material submitted under paragraph (j)(2) of this section is to be segregated from all other submitted material and clearly so marked. A person who does not agree that a submission is properly subject to paragraph (j)(2) may request a ruling from the Associate Commissioner for Public Affairs whose decision is final, subject to judicial review under § 20.46.

(3) Material listed in paragraph (j)(2)(i) (*a*) and (*b*) of this section may be disclosed under a protective order issued by the administrative law judge or other presiding officer at a hearing referenced in paragraph (j)(2)(i). The administrative law judge or presiding officer shall permit disclosure of the data only in camera and only to the extent necessary for the proper conduct of the hearing. The administrative law judge or presiding officer shall direct to whom the information is to be made available (e.g., to parties or participants, or only to counsel for parties or participants), and persons not specifically permitted access to the data will be excluded from the in camera part of the proceeding. The administrative law judge or other presiding officer may impose other conditions or safeguards. The limited availability of material under this paragraph does not constitute prior disclosure to the public as defined in § 20.81, and no information subject to a particular order is to be submitted to or received or considered by FDA in support of a petition or other request from any other person.

§ 10.25 Initiation of administrative proceedings.

An administrative proceeding may be initiated in the following three ways:

(a) An interested person may petition the Commissioner to issue, amend, or revoke a regulation or order, or to take or refrain from taking any other form of administrative action. A petition must be either: (1) In the form specified in other applicable FDA regulations, e.g., the form for a color additive petition in § 71.1, for a food additive petition in § 171.1, for a new drug application in § 314.1, for a new animal drug application in § 514.1, or (2) in the form for a citizen petition in § 10.30.

(b) The Commissioner may initiate a proceeding to issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action. FDA has primary jurisdiction to make the initial determination on issues within its statutory mandate, and will request a court to dismiss, or to hold in abeyance its determination of or refer to the agency for administrative determination, any issue which has not previously been determined by the agency or which, if it has previously been determined, the agency concluded should be reconsidered and subject to a new administrative determination. The Commissioner may utilize any of the procedures established in this part in reviewing and making a determination on any matter initiated under this paragraph.

(c) The Commissioner will institute a proceeding to determine whether to issue, amend, or revoke a regulation or order, or take or refrain from taking any other form of administrative action whenever any court, on its own initiative, holds in abeyance or refers any matter to the agency for an administrative determination and the Commissioner concludes that an administrative determination is feasible within agency priorities and resources.

§ 10.30 Citizen petition.

(a) This section applies to any petition submitted by a person (including a person who is not a citizen of the United States) except to the extent that other sections of this chapter apply different requirements to a particular matter.

(b) A petition (including any attachments) must be submitted in accordance with § 10.20 and in the following form:

(Date) ———————

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

CITIZEN PETITION

The undersigned submits this petition under ——— (relevant statutory sections, if known) of the ——— (Federal Food, Drug, and Cosmetic Act or the Public Health Service Act or any other statutory provision for which authority has been delegated to the Commissioner of Food and Drugs under 21 CFR 5.1) to request the Commissioner of Food and Drugs to ——— (issue, amend, or revoke a regulation or order or take or refrain from taking any other form of administrative action).

A. ACTION REQUESTED

((1) If the petition requests the Commissioner to issue, amend, or revoke a regulation, the exact wording of the existing regulation (if any) and the proposed regulation or amendment requested.)

((2) If the petition requests the Commissioner it issue, amend, or revoke an order, a copy or the exact wording of the citation to

the existing order (if any) and the exact wording requested for the proposed order.)

((3) If the petition requests the Commissioner to take or refrain from taking any other form of administrative action, the specific action or relief requested.)

B. STATEMENT OF GROUNDS

(A full statement, in a well organized format, of the factual and legal grounds on which the petitioner relies, including all relevant information and views on which the petitioner relies, as well as representative information known to the petitioner which is unfavorable to the petitioner's position.)

C. ENVIROMENTAL IMPACT

(An environmental impact analysis report in the form specified in 21 CFR 25.1(g), except for the types of actions specified in 21 CFR 25.1(d).)

D. ECONOMIC IMPACT

(The following information is to be submitted only when requested by the Commissioner following review of the petition: A statement of the effect of requested action on: (1) Cost (and price) increases to industry, government, and consumers; (2) productivity of wage earners, businesses, or government; (3) competition; (4) supplies of important materials, products, or services; (5) employment; and (6) energy supply or demand.)

The undersigned certifies, that, to the best knowledge and belief of the undersigned, this petition includes all information and views on which the petition relies, and that it includes representative data and information known to the petitioner which are unfavorable to the petition.

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition which appears to meet the requirements of paragraph (b) of this section and § 10.20 will be filed by the hearing clerk, stamped with the date of filing, and assigned a docket number. The docket number identifies the file established by the hearing clerk for all submissions relating to the petition, as provided in this part. Subsequent submissions relating to the matter must refer to the docket number and will be filed in the docket file. Related petitions may be filed together and given the same docket number. The hearing clerk will promptly notify the petitioner in writing of the filing and docket number of a petition.

(d) An interested person may submit written comments to the hearing clerk on a filed petition, which comments become part of the docket file. The comments are to specify the docket number of the petition and may support or oppose the petition in whole or in part. A request for alternative or different administrative action must be submitted as a separate petition.

(e)(1) The Commissioner shall, in accordance with paragraph (e)(2), rule upon each petition filed under paragraph (c) of this section, taking into consideration (i) available agency resources for the category of subject matter, (ii) the priority assigned to the petition considering both the category of subject matter involved and the overall work of the agency, and (iii) time requirements established by statute.

(2) The Commissioner shall furnish a response to each petitioner within 180 days of receipt of the petition. The response will either—(i) Approve the petition, in which case the Commissioner shall concurrently take appropriate action (e.g., publication of a FEDERAL REGISTER notice) implementing the approval;

(ii) Deny the petition; or

(iii) Provide a tentative response, indicating why the agency has been unable to reach a decision on the petition, e.g., because of the existence of other agency priorities, or a need for additional information. The tentative response may also indicate the likely ultimate agency response, and may specify when a final response may be furnished.

(3) The Commissioner may grant or deny such a petition, in whole or in part, and may grant such other relief or take other action as the petition warrants. The petitioner is to be notified in writing of the Commissioner's decision. The decision will be placed in the public docket file in the office of the hearing clerk and may also be in the form of a notice published in the FEDERAL REGISTER.

(f) If a petition filed under paragraph (c) of this section requests the Commissioner to issue, amend, or revoke a regulation, § 10.40 or § 10.50 also apply.

(g) A petitioner may supplement, amend, or withdraw a petition in writing without agency approval and without prejudice to resubmission at anytime until the Commissioner rules on the petition, unless the petition has been referred for a hearing under parts 12, 13, 14, or 15. After a ruling or referral, a petition may be supplemented, amended, or withdrawn only with the approval of the Commissioner. The Commissioner may approve withdrawal, with or without prejudice against resubmission of the petition.

(h) In reviewing a petition the Commissioner may use the following procedures:

(1) Conferences, meetings, discussions, and correspondence under § 10.65.

(2) A hearing under parts 12, 13, 14, 15, or 16.

(3) A FEDERAL REGISTER notice requesting information and views.

(4) A proposal to issue, amend, or revoke a regulation, in accordance with § 10.40 or § 12.5.

(5) Any other specific public procedure established in this chapter and expressly applicable to the matter.

(i) The record of the administrative proceeding consists of the following:

(1) The petition, including all information on which it relies, filed by the hearing clerk.

(2) All comments received on the petition, including all information submitted as a part of the comments.

(3) If the petition resulted in a proposal to issue, amend, or revoke a regulation, all of the documents specified in § 10.40(g).

(4) The record, consisting of any transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents resulting from the optional procedures specifed in paragraph (g) of this section, except a transcript of a closed portion of a public advisory committee meeting.

(5) The Commissioner's decision on the petition, including all information identified or filed by the Commissioner with the hearing clerk as part of the record supporting the decision.

(6) All documents filed with the hearing clerk under § 10.65(h).

(7) If a petition for reconsideration or for a stay of action is filed under paragraph (j) of this section, the administrative record specified in § 10.33(k) or § 10.35(h).

(j) The administrative record specified in paragraph (i) of this section is the exclusive record for the Commission's decision. The record of the administrative proceeding closes on the date of the Commission's decision unless some other date is specified. Thereafter any interested person may submit a petition for reconsideration under § 10.33 or a petition for stay of action under § 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a new petition to modify the decision in accordance with this section.

(k) This section does not apply to the referral of a matter to a United States attorney for the initiation of court enforcement action and related correspondence, or to requests, suggestions, and recommendations made informally in routine correspondence received by FDA. Routine correspondence does not constitute a petition within the meaning of this section unless it purports to meet the requirements of this section. Action on routine correspondence does not constitute final administrative action subject to judicial review under § 10.45.

(l) The hearing clerk will maintain a chronological list of each petition filed under this section and § 10.85, but not of petitions submitted elsewhere in the agency under § 10.25(a)(1), showing—

(1) The docket number;
(2) The date the petition was filed by the Hearing Clerk;
(3) The name of the petitioner;
(4) The subject matter involved; and
(5) The disposition of the petition.

§ 10.33 Administrative reconsideration of action.

(a) The Commissioner may at any time reconsider a matter, on the Commissioner's own initiative or on the petition of an interested person.

(b) An interested person may request reconsideration of part or all of a decision of the Commissioner on a petition submitted under § 10.25. Each request for reconsideration must be submitted in accordance with § 10.20 and in the following form no later than 30 days after the date of the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. In the case of a decision published in the FEDERAL REGISTER, the day of publication is the day of decision.

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

PETITION FOR RECONSIDERATION

[Docket No.]

The undersigned submits this petition for reconsideration of the decision of the Commissioner of Food and Drugs in Docket No.

A. DECISION INVOLVED

(A concise statement of the decision of the Commissioner which the petitioner wishes to have reconsidered.)

B. ACTION REQUESTED

(The decision which the petitioner requests the Commissioner to make upon reconsideration of the matter.)

C. STATEMENT OF GROUNDS

(A full statement, in a well-organized format, of the factual and legal grounds upon which the petitioner relies. The grounds must demonstrate that relevant information and views contained in the administrative record were not previously or not adequately considered by the Commissioner.

No new information or views may be included in a petition for reconsideration.)

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition for reconsideration relating to a petition submitted under § 10.25(a)(2) is subject to the requirements of § 10.30 (c) and (d), except that it is filed in the same docket file as the petition to which it relates.

(d) The Commissioner shall promptly review a petition for reconsideration. The Commissioner may grant the petition when the Commissioner determines it is in the public interest and in the interest of justice. The Commissioner shall grant a petition for reconsideration in any proceeding if the Commissioner determines all of the following apply:

(1) The petition demonstrates that relevant information or views contained in the administrative record were not previously or not adequately considered.

(2) The petitioner's position is not frivolous and is being pursued in good faith.

(3) The petitioner has demonstrated sound public policy grounds supporting reconsideration.

(4) Reconsideration is not outweighed by public health or other public interests.

(e) A petition for reconsideration may not be based on information and views not contained in the administrative record on which the decision was made. An interested person who wishes to rely on information or views not included in the administrative record shall submit them with a new petition to modify the decision under § 10.25(a).

(f) The decision on a petition for reconsideration is to be in writing and placed on public display as part of the docket file on the matter in the office of the Hearing Clerk. A determination to grant reconsideration will be published in the FEDERAL REGISTER if the Commissioner's original decision was so published. Any other determination to grant or deny reconsideration may also be published in the FEDERAL REGISTER.

(g) The Commissioner may consider a petition for reconsideration only before the petitioner brings legal action in the courts to review the action, except that a petition may also be considered if the Commissioner has denied a petition for stay of action and the petitioner has petitioned for judicial review of the Commissioner's action and requested the reviewing court to grant a stay pending consideration of review. A petition for reconsideration submitted later than 30 days after the date of the decision involved will be denied as untimely unless the Commissioner permits the petition to be filed after 30 days. A petition for reconsideration will be considered as submitted on the day it is received by the Hearing Clerk.

(h) The Commissioner may initiate the reconsideration of all or part of a matter at any time after it has been decided or action has been taken. If review of the matter is pending in the courts, the Commissioner may request that the court refer the matter back to the agency or hold its review in abeyance pending administrative reconsideration. The administrative record of the proceeding is to include all additional documents relating to such reconsideration.

(i) After determining to reconsider a matter, the Commissioner shall review and rule on the merits of the matter under § 10.30(e). The Commissioner may reaffirm, modify, or overrule the prior decision, in whole or in part, and may grant such other relief or take such other action as is warranted.

(j) The Commissioner's reconsideration of a matter relating to a petition submitted under § 10.25(a)(2) is subject to § 10.30 (f) through (h), (j), and (k).

(k) The record of the administrative proceeding consists of the following:

(1) The record of the original petition specified in § 10.30(i).

(2) The petition for reconsideration, including all information on which it relies, filed by the Hearing Clerk.

(3) All comments received on the petition, including all information submitted as a part of the comments.

(4) The Commissioner's decision on the petition under paragraph (f) of this section, including all information identified or filed by the Commissioner with the hearing clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from the petition.

(6) All documents filed with the hearing clerk under § 10.65(h).

(7) If the Commissioner reconsiders the matter, the administrative record relating to reconsideration specified in § 10.30(i).

§ 10.35 Administrative stay of action.

(a) The Commissioner may at any time stay or extend the effective date of an action pending or following a decision on any matter.

(b) An interested person may request the Commissioner to stay the effective date of any administrative action. A stay may be requested for a specific time period or for an indefinite time period. A request for stay must be submitted in accordance with § 10.20 and in the following form no later than 30 days after the date of the decision involved. The Commissioner may, for good cause, permit a petition to be filed after 30 days. In the case of a decision published in the FEDERAL REGISTER, the day of publication is the day of decision.

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

PETITION FOR STAY OF ACTION

The undersigned submits this petition requesting that the Commissioner of Food

and Drugs stay the effective date of the following matter.

A. DECISION INVOLVED

(The specific administrative action being taken by the Commissioner for which a stay is requested, including the docket number or other citation to the action involved.)

B. ACTION REQUESTED

(The length of time for which the stay is requested, which may be for a specific or indefinite time period.)

C. STATEMENT OF GROUNDS

(A full statement, in a well-organized format, of the factual and legal grounds upon which the petitioner relies for the stay.)

(Signature) _____
(Name of petitioner) _____
(Mailing address) _____
(Telephone number) _____

(c) A petition for stay of action relating to a petition submitted under § 10.25(a)(2) is subject to the requirements of § 10.30 (c) and (d), except that it will be filed in the same docket file as the petition to which it relates.

(d) Neither the filing of a petition for a stay of action nor action taken by an interested person in accordance with any other administrative procedure in this part or in any other section of this chapter, e.g., the filing of a citizen petition under § 10.30 or a petition for reconsideration under § 10.33 or a request for an advisory opinion under § 10.80, will stay or otherwise delay any administrative action by the Commissioner, including enforcement action of any kind, unless one of the following applies:

(1) The Commissioner determines that a stay or delay is in the public interest and stays the action.

(2) A status requires that the matter be stayed.

(3) A court orders that the matter be stayed.

(e) The Commissioner shall promptly review a petition for stay of action. The Commissioner may grant or deny a petition, in whole or in part, and may grant such other relief or take such other action as is warranted by the petition. The Commissioner may grant a stay in any proceeding if it is in the public interest and in the interest of justice. The Commissioner shall grant a stay in any proceeding if all of the following apply:

(1) The petitioner will otherwise suffer irreparable injury.

(2) The petitioner's case is not frivolous and is being pursued in good faith.

(3) The petitioner has demonstrated sound public policy grounds supporting the stay.

(4) The delay resulting from the stay is not outweighed by public health or other public interests.

(f) The Commissioner's decision on a petition for stay of action is to be in writing and placed on public display as part of the file on the matter in the office of the hearing clerk. A determination to grant a stay will be published in the FEDERAL REGISTER if the Commissioner's original decision was so published. Any other determination to grant or to deny a stay may also be published in the FEDERAL REGISTER.

(g) A petition for a stay of action submitted later than 30 days after the date of the decision involved will be denied as untimely unless the Commissioner permits the petition to be filed after 30 days. A petition for a stay of action is considered submitted on the day it is received by the hearing clerk.

(h) The record of the administrative proceeding consists of the following:

(1) The record of the proceeding to which the petition for stay of action is directed.

(2) The petition for stay of action, including all information on which it relies, filed by the hearing clerk.

(3) All comments received on the petition, including all information submitted as a part of the comments.

(4) The Commissioner's decision on the petition under paragraph (e) of this section, including all information identified or filed by the Commissioner with the hearing clerk as part of the record supporting the decision.

(5) Any FEDERAL REGISTER notices or other documents resulting from the petition.

(6) All documents filed with the hearing clerk under § 10.65(h).

§ 10.40 Promulgation of regulations for the efficient enforcement of the law.

(a) The Commissioner may propose and promulgate regulations for the efficient enforcement of the laws administered by FDA whenever it is necessary or appropriate to do so. The issuance, amendment, or revocation of a regulation may be initiated in any of the ways specified in § 10.25.

(1) This section applies to any regulation (i) not subject to § 10.50 and part 12, or (ii) if it is subject to § 10.50 and part 12, to the extent that those provisions make this section applicable.

(2) A regulation proposed by an interested person in a petition submitted under § 10.25(a) will be published in the FEDERAL REGISTER as a proposal if—

(i) The petition contains facts demonstrating reasonabale grounds for the proposal; and

(ii) The petition substantially shows that the proposal is in the public interest and will promote the objectives of the act and the agency.

(3) Two or more alternative proposed regulations may be published on the same subject to obtain comment on the different alternatives.

(4) A regulation proposed by an interested person in a petition submitted under § 10.25(a) may be published together with the Commissioner's preliminary views on the proposal and any alternative proposal.

(b) Except as provided in paragraphs (d) and (e) of this section, each regulation must be the subject of a notice of proposed rulemaking published in the FEDERAL REGISTER.

(1) The notice will contain (i) the name of the agency; (ii) the nature of the action, e.g., proposed rule, or notice; (iii) a summary in the first paragraph describing the substance of the document in easily understandable terms; (iv) relevant dates, e.g., comment closing date, and proposed effective date(s); (v) the name, business address, and phone number of an agency contact person who can provide further information to the public about the notice; (vi) an address for submitting written comments; (vii) supplementary information about the notice in the form of a preamble that summarizes the proposal and the facts and policy underlying it, includes reference to all information on which the Commissioner relies for the proposal (copies or a full list of which are a part of the docket file on the matter in the office of the hearing clerk), and cites the authority under which the regulation is proposed; (viii) either the terms or substance of the proposed regulation or a description of the subjects and issues involved; (ix) a reference to the existence or lack of need for an environmental impact statement under § 25.25(a)(3) (ii) or (iii); and (x) the docket number of the matter, which identifies the docket file established by the hearing clerk for all relevant submissions.

(2) The proposal will provide 60 days for comment, although the Commissioner may shorten or lengthen this time period for good cause. In no event is the time for comment to be less than 10 days.

(3) After publication of the proposed rule, an interested person may request the Commissioner to extend the comment period for an additional specified period by submitting a written request to the hearing clerk, stating the grounds for the request. The request is submitted under § 10.35 but should be headed "REQUEST FOR EXTENSION OF COMMENT PERIOD."

(i) A request must discuss the reason comments could not feasibly be submitted within the time permitted, or that important new information will shortly be available, or that sound public policy otherwise supports an extension of the time for comment. The Commissioner may grant or deny the request or may grant an extension for

a time period different from that requested. An extension may be limited to specific persons who have made and justified the request, but will ordinarily apply to all interested persons.

(ii) A comment time extension of 30 days or longer will be published in the FEDERAL REGISTER and will be applicable to all interested persons. A comment time extension of less than 30 days will be the subject either of a letter or memorandum filed with the hearing clerk or of a notice published in the FEDERAL REGISTER.

(4) A notice of proposed rulemaking will request that four copies of all comments be submitted to the hearing clerk, except that individuals may submit single copies. Comments will be stamped with the date of receipt and will be numbered chronologically.

(5) Persons submitting comments critical of a proposed regulation are encouraged to include their preferred alternative wording.

(c) After the time for comment on a proposed regulation has expired, the Commissioner will review the entire administrative record on the matter, including all comments, and, in a notice published in the FEDERAL REGISTER, will terminate the proceeding, issue a new proposal, or promulgate a final regulation,

(1) The quality and persuasiveness of the comments will be the basis for the Commissioner's decision. The number or length of comments will not ordinarily be a significant factor in the decision unless the number of comments is material where the degree of public interest is a legitimate factor for consideration.

(2) The decision of the Commissioner on the matter will be based solely upon the administrative record.

(3) A final regulation published in the FEDERAL REGISTER will have a preamble stating (i) the name of the agency, (ii) the nature of the action, e.g., final rule, notice, (iii) a summary first paragraph describing the substance of the document in easily understandable terms, (iv) relevant dates, e.g., the rule's effective date and comment closing date, if an opportunity for comment is provided, (v) the name, business address, and phone number of an agency contact person who can provide further information to the public about the notice, (vi) an address for the submission of written comments when they are permitted, (vii) supplementary information about the regulation in the body of the preamble that contains references to prior notices relating to the same matter and a summary of each type of comment submitted on the proposal and the Commissioner's conclusions with respect to each. The preamble is to contain a thorough and comprehensible explanation of the reasons for the Commissioner's decision on each issue.

(4) The effective date of a final regulation may not be less than 30 days after the date of publication in the FEDERAL REGISTER, except for—

(i) A regulation that grants an exemption or relieves a restriction; or

(ii) A regulation for which the Commissioner finds, and states in the notice, good cause for an earlier effective date.

(d) The provisions for notice and comment in paragraphs (b) and (c) of this section will apply to interpretive rules and rules of agency practice and procedure except as provided in paragraph (e) of this section. Paragraphs (b) and (c) of this section do not apply to general statements of policy in the form of informational notices published in the FEDERAL REGISTER or to matters involving agency organization.

(e) The requirements of notice and public procedure in paragraph (b) of this section do not apply in the following situations:

(1) When the Commissioner determines for good cause that they are impracticable, unnecessary, or contrary to the public interest. In these cases, the notice promulgating the regulation will state the reasons for the determination, and provide an opportunity for comment to determine whether the regulation should subsequently be modified or revoked. A subsequent notice based on those comments may, but need not, provide additional opportunity for public comment.

(2) Food additive and color additive petitions, which are subject to the provisions of § 12.20(b)(2).

(3) New animal drug regulations, which are promulgated under section 512(i) of the act.

(f) In addition to the notice and public procedure required under paragraph (b) of this section, the Commissioner may also subject a proposed or final regulation, before or after publication in the FEDERAL REGISTER, to the following additional procedures:

(1) Conferences, meetings, discussions, and correspondence under § 10.65.

(2) A hearing under parts 12, 13, 14, or 15.

(3) A notice published in the FEDERAL REGISTER requesting information and views before the Commissioner determines whether to propose a regulation.

(4) A draft of a proposed regulation placed on public display in the office of the hearing clerk. If this procedure is used, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments on the draft proposal may be submitted orally or in writing.

(5) A revised proposal published in the FEDERAL REGISTER, which proposal is subject to all the provisions in this section relating to proposed regulations.

(6) A tentative final regulation or tentative revised final regulation placed on public display in the office of the hearing clerk and, if deemed desirable by the Commissioner, published in the FEDERAL REGISTER. If the tentative regulation is placed on display only, the Commissioner shall publish an appropriate notice in the FEDERAL REGISTER stating that the document is available and specifying the time within which comments may be submitted orally or in writing on the tentative final regulation. The Commissioner shall mail a copy of the tentative final regulation and the FEDERAL REGISTER notice to each person who submitted comments on the proposed regulation if one has been published.

(7) A final regulation published in the FEDERAL REGISTER that provides an opportunity for the submission of further comments, in accordance with paragraph (e)(1) of this section.

(8) Any other public procedure established in this chapter and expressly applicable to the matter.

(g) The record of the administrative proceeding consists of all of the following:

(1) If the regulation was initiated by a petition, the administrative record specified in § 10.30(i).

(2) If a petition for reconsideration or for a stay of action is filed, the administrative record specified in § 10.33(k) and § 10.35(h).

(3) The proposed rule published in the FEDERAL REGISTER, including all information identified or filed by the Commissioner with the hearing clerk on the proposal.

(4) All comments received on the proposal, including all information submitted as a part of the comments.

(5) The notice promulgating the final regulation, including all information identified or filed by the Commissioner with the hearing clerk as part of the administrative record of the final regulation.

(6) The transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents resulting from the optional procedures specified in paragraph (f) of this section, but not the transcript of a closed portion of a public advisory committee meeting.

(7) All documents submitted to the hearing clerk under § 10.65(h).

(h) The record of the administrative proceeding closes on the date of the Commissioner's decision unless some other date specified. Thereafter any interested person may submit a petition for reconsideration under § 10.33 or a petition for stay of action under

§ 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit it to the Commissioner with a new petition to modify the final regulation.

(i) The hearing clerk shall maintain a chronological list of all regulations proposed and promulgated under this section and § 10.50 (which list will not include regulations resulting from petitions filed and assigned a docket number under § 10.30) showing—

(1) The docket number (for a petition submitted directly to a bureau, the list also includes the number or other designation assigned by the bureau, e.g., the number assigned to a food additive petition);

(2) The name of the petitioner, if any;

(3) The subject matter involved; and

(4) The disposition of the petition.

§ 10.45 Court review of final administrative action; exhaustion of administrative remedies.

(a) This section applies to court review of final administrative action taken by the Commissioner, including action taken under §§ 10.25 through 10.40 and § 16.1(b), except action subject to § 10.50 and part 12.

(b) A request that the Commissioner take or refrain from taking any form of administrative action must first be the subject of a final administrative decision based on a petition submitted under § 10.25(a) or, where applicable, a hearing under § 16.1(b) before any legal action is filed in a court complaining of the action or failure to act. If a court action is filed complaining of the action or failure to act before the submission of the decision on a petition under § 10.25(a) or, where applicable, a hearing under § 16.1(b), the Commissioner shall request dismissal of the court action or referral to the agency for an initial administrative determination on the grounds of a failure to exhaust administrative remedies, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201.

(c) A request that administrative action be stayed must first be the subject of an administrative decision based upon a petition for stay of action submitted under § 10.35 before a request is made that a court stay the action. If a court action is filed requesting a stay of administrative action before the Commissioner's decision on a petition submitted in a timely manner pursuant to § 10.35, the Commissioner shall request dismissal of the court action or referral to the agency for an initial determination on the grounds of a failure to exhaust administrative remedies, the lack of final agency action as required by 5 U.S.C. 701 et seq., and the lack of an actual controversy as required by 28 U.S.C. 2201. If a court action is filed requesting a stay of administrative action after a petition for a stay of action is denied because it was submitted after expiration of the time period provided under § 10.35, or after the time for submitting such a petition has expired, the Commissioner will request dismissal of the court action on the ground of a failure to exhaust administrative remedies.

(d) The Commissioner's final decision constitutes final agency action (reviewable in the courts under 5 U.S.C. 701 et seq. and, where appropriate, 28 U.S.C. 2201) on a petition submitted under § 10.25(a), on a petition for reconsideration submitted under § 10.33, on a petition for stay of action submitted under § 10.35, on an advisory opinion issued under § 10.85, on a guideline issued under § 10.90, on a matter involving administrative action which is the subject of an opportunity for a hearing under § 16.1(b), or on the issuance of a final regulation published in accordance with § 10.40.

(1) It is the position of FDA except as otherwise provided in paragraph (d)(2) of this section, that—

(i) Final agency action exhausts all administrative remedies and is ripe for preenforcement judicial review as of the date of the final decision, unless applicable law explicitly requires that the petitioner take further action before judicial review is available;

(ii) An interested person is affected by, and thus has standing to obtain judicial review of final agency action; and

(iii) It is not appropriate to move to dismiss a suit for preenforcement judicial review of final agency action on the ground that indispenable parties are not joined or that it is an unconsented suit against the United States if the defect could be cured by amending the complaint.

(2) The Commissioner shall object to judicial review of a matter if—

(i) The matter is committed by law to the discretion of the Commissioner, e.g., a decision to recommend or not to recommend civil or criminal enforcement action under sections 302, 303, and 304 of the act; or

(ii) Review is not sought in a proper court.

(e) An interested person may request judicial review of a final decision of the Commissioner in the courts without first petitioning the Commissioner for reconsideration or for a stay of action, except that in accordance with paragraph (c) of this section, the person shall request a stay by the Commissioner under § 10.35 before requesting a stay by the court.

(f) The Commissioner shall take the position in an action for judicial review under 5 U.S.C. 701 et seq., whether or not it includes a request for a declaratory judgment under 28 U.S.C. 2201, or in any other case in which the validity of administrative action is properly challenged, that the validity of the action must be determined solely on the basis of the administrative record specified in §§ 10.30(i), 10.35(h), 10.40(g), and 16.80(c) or the administrative record applicable to any decision or action under the regulations referenced in § 16.1(b), and that additional information or views may not be considered. An interested person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a new petition to modify the action under § 10.25(a).

(g) The Commissioner requests that all petitions for judicial review of a particular matter be filed in a single U.S. District court. If petitions are filed in more than one jurisdiction, the Commissioner will take appropriate action to prevent a multiplicity of suits in various jurisdictions, such as—

(1) A request for transfer of one or more suits to consolidate separate actions, under 28 U.S.C. 1404(a) or 28 U.S.C. 2112(a);

(2) A request that actions in all but one jurisdiction be stayed pending the conclusion of one proceeding;

(3) A request that all but one action be dismissed pending the conclusion of one proceeding, with the suggestion that the other plaintiffs intervene in that one suit; or

(4) A request that one of the suits be maintained as a class action in behalf of all affected persons.

(h) Upon judicial review of administrative action under this section—

(1) If a court determines that the administrative record is inadequate to support the action, the Commissioner shall determine whether to proceed with such action.

(i) If the Commissioner decides to proceed with the action, the court will be requested to remand the matter to the agency to reopen the administrative proceeding and record, or on the Commissioner's own initiative the administrative proceeding and record may be reopened upon receipt of the court determination. A reopened administrative proceeding will be conducted under the provisions of this part and in accordance with any directions of the court.

(ii) If the Commissioner concludes that the public interest requires that the action remain in effect pending further administrative proceedings, the court will be requested not to stay the matter in the interim and the Commissioner shall expedite the further administrative proceedings.

(2) If a court determines that the administrative record is adequate, but the rationale for the action must be further explained—

(i) The Commissioner shall request either that further explanation be provided in writing directly to the court without further administrative proceedings, or that the administrative proceeding be reopened in accordance with paragraph (h)(1)(i) of this section; and

(ii) If the Commissioner concludes that the public interest requires that the action remain in effect pending further court or administrative proceedings, the court will be requested not to stay the matter in the interim and the Commissioner shall expedite the further proceedings.

§ 10.50 Promulgation of regulations and orders after an opportunity for a formal evidentiary public hearing.

(a) The Commissioner shall promulgate regulations and orders after an opportunity for a formal evidentiary public hearing under part 12 whenever all of the following apply:

(1) The subject matter of the regulation or order is subject by statute to an opportunity for a formal evidentiary public hearing.

(2) The person requesting the hearing has a right to an opportunity for a hearing and submits adequate justification for the hearing as required by §§ 12.20 through 12.22 and other applicable provisions in this chapter, e.g., §§ 314.200, 430.20(b), 514.200, and 601.7(a).

(b) The Commissioner may order a formal evidentiary public hearing on any matter whenever it would be in the public interest to do so.

(c) The provisions of the act, and other laws, that afford a person who would be adversely affected by administrative action an opportunity for a formal evidentiary public hearing as listed below. The list imparts no right to a hearing where the statutory section provides no opportunity for a hearing.

(1) Section 401 on definitions and standards for food.

(2) Section 403(j) on regulations for labeling of foods for special dietary uses.

(3) Section 404(a) on regulations for emergency permit control.

(4) Section 406 on tolerances for poisonous substances in food.

(5) Section 409 (c), (d), and (h) on food additive regulations.

(6) Section 501(b) on tests or methods of assay for drugs described in official compendia.

(7) Section 502(d) on regulations designating habit forming drugs.

(8) Section 502(h) on regulations designating requirements for drugs liable to deterioration.

(9) Section 502(n) on prescription drug advertising regulations.

(10) Section 506(c) on insulin regulations.

(11) Section 507(f) on regulations for antibiotic drug certification.

(12) Section 512(n)(5) on regulations for animal antibiotic drugs and certification requirements.

(13) Section 706 (b) and (c) on regulations for color additive listing and certification.

(14) Section 4(a) of the Fair Packaging and Labeling Act on food, drug, device, and cosmetic labeling.

(15) Section 5(c) of the Fair Packaging and labeling Act on additional economic regulations for food, drugs, devices, and cosmetics.

(16) Section 505 (d) and (e) on new drug applications.

(17) Section 512 (d), (e), and (m) (3) and (4) on new animal drug applications.

(18) Section 515(g) on device premarket approval applications and product development protocols.

(19) Section 351(a) of the Public Health Service Act on plant and product licenses for a biologic.

§ 10.55 Separation of functions; ex parte communications.

(a) This section applies to any matter subject by statute to an opportunity for a formal evidentiary public hearing, as listed in § 10.50(c), and any matter subject to a hearing before a Public Board of Inquiry under part 13.

(b) In the case of a matter listed in § 10.50(c)(1) through (10) and (12) through (15)—

(1) An interested person may meet or correspond with any FDA representative concerning a matter prior to publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry on the matter; the provisions of § 10.65 apply to the meetings and correspondence; and

(2) upon publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry, the following separation of functions apply:

(i) The bureau responsible for the matter is, as a party to the hearing, responsible for all investigative functions and for presentation of the position of the bureau at the hearing and in any pleading or oral argument before the Commissioner. Representatives of the bureau may not participate or advise in any decision except as witness or counsel in public proceedings. There is to be no other communication between representatives of the bureau and representatives of the office of the Commissioner concerning the matter before the decision of the Commissioner. The Commissioner may, however, designate representatives of a bureau to advise the office of the Commissioner, or designate members of that office to advise a bureau. The designation will be in writing and filed with the hearing clerk no later than the time specified in paragraph (b)(2) of this section for the application of separation of functions. All members of FDA other than representatives of the involved bureau (except those specifically designated otherwise) shall be available to advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(ii) The Chief Counsel for FDA shall designate members of the office of General Counsel to advise and participate with the bureau in its functions in the hearing and members who are to advise the office of the Commissioner in its functions related to the hearing and the final decision. The members of the office of General Counsel designated to advise the bureau may not participate or advise in any decision of the Commissioner except as counsel in public proceedings. The designation is to be in the form of a memorandum filed with the hearing clerk and made a part of the administrative record in the proceeding. There may be no other communication between those members of the office of General Counsel designated to advise the office of the Commissioner and any other persons in the office of General Counsel or in the involved bureau with respect to the matter prior to the decision of the Commissioner. The Chief Counsel may assign new attorneys to advise either the bureau or the office of the Commissioner at any state of the proceedings. The Chief Counsel will ordinarily advise and participate with the office of the Commissioner in its functions relating to the hearing and the final decision.

(iii) The office of the Commissioner is responsible for the agency review and final decision of the matter, with the advice and participation of anyone in FDA other than representatives of the involved bureau and those members of the office of General Counsel designated to assist in the bureau's functions in the hearing.

(c) In a matter listed in § 10.50(c) (11) and (16) through (19), the provisions relating to separation of functions set forth in §§ 314.200(f), 430.20(b)(7), 514.200, and 601.7(a) are applicable before publication of a notice announcing a formal evidentiary public hearing or a hearing before a Public Board of Inquiry. Following publication of the notice of hearing, the rules in paragraph (b)(2) of this section apply.

(d) Except as provided in paragraph (e) of this section, between the date that separation of functions applies

under paragraph (b) or (c) of this section and the date of the Commissioner's decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the agency may have an ex parte communication with the presiding officer or any person representing the office of the Commissioner concerning the matter in the hearing. Neither the presiding officer not any person representing the office of the Commissioner may have any ex parte communication with a person outside the agency concerning the matter in the hearing. All communications are to be public communications, as witness or counsel, under the applicable provisions of this part.

(2) A participant in the hearing may submit a written communication to the office of the Commissioner with respect to a proposal for settlement. These communications are to be in the form of pleadings, served on all other participants, and filed with the hearing clerk like any other pleading.

(3) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk, and an oral communication contrary to this section must be immediately recorded in a written memorandum, served on all other participants, and filed with the hearing clerk. A person, including a representative of a participant in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that conversation. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted. Cross-examination and rebuttal testimony will be transcribed and filed with the hearing clerk.

(e) The prohibitions specified in paragraph (d) of this section apply to a person who knows of a notice of hearing in advance of its publication from the time the knowledge is acquired.

(f) The making of a communication contrary to this section may, consistent with the interests of justice and the policy of the underlying statute, result in a decision adverse to the person knowingly making or causing the making of such a communication.

§ 10.60 Referral by court.

(a) This section applies when a Federal, State, or local court holds in abeyance, or refers to the Commissioner, any matter for an initial administrative determination under § 10.25(c) or § 10.45(b).

(b) The Commissioner shall promptly agree or decline to accept a court referral. Whenever feasible in light of agency priorities and resources, the Commissioner shall agree to accept a referral and shall proceed to determine the matter referred.

(c) In reviewing the matter, the Commissioner may use the following procedures:

(1) Conferences, meetings, discussions, and correspondence under § 10.65.

(2) A hearing under parts 12, 13, 14, 15, or 16.

(3) A notice published in the FEDERAL REGISTER requesting information and views.

(4) Any other public procedure established in other sections of this chapter and expressly applicable to the matter under those provisions.

(d) If the Commissioner's review of the matter results in a proposed rule, the provisions of § 10.40 or § 10.50 also apply.

§ 10.65 Meetings and correspondence.

(a) In addition to public hearings and proceedings established under this part and other sections of this chapter, meetings may be held and correspondence may be exchanged between representatives of FDA and an interested person outside FDA on a matter within the jurisdiction of the laws administered by the Commissioner. Action on meetings and correspondence does not constitute final administrative action subject to judicial review under § 10.45.

(b) The Commissioner may conclude that it would be in the public interest to hold an open public meeting to discuss a matter (or class of matters) pending before FDA, at which any interested person may participate.

(1) The Commissioner shall give public notice through the public calendar described in § 10.100(a) of the time and place of the meeting and of the matters to be discussed, and may also publish notice of the meeting.

(2) The meeting will be informal, i.e., any interested person may attend and participate in the discussion without prior notice to the Agency unless the notice of the meeting specifies otherwise.

(3) No transcript of recording of the meeting will be made. A written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(c) A meeting with a person outside the Department, including a person in the executive or legislative branch of the Federal Government, concerning a pending court case, administrative hearing, or other regulatory action or decision, which involves more than a brief description of the matter, is to be summarized in a written memorandum, which is filed in the administrative file on the matter.

(d) Every person outside the Federal Government may request and obtain a private meeting with a representative of FDA in agency offices to discuss a matter.

(1) The person requesting a meeting may be accompanied by a reasonable number of employees, consultants, or other persons with whom there is a commercial arrangement within the meaning of § 20.81(a). Neither FDA nor any other person may require the attendance of a person who is not an employee of the executive branch of the Federal Government without the agreement of the person requesting the meeting. Any person may attend by mutual consent of the person requesting the meeting and FDA.

(2) FDA will determine which representatives of the Agency will attend the meeting. The person requesting the meeting may request but not require or preclude the attendance of a specific FDA employee.

(3) Whenever appropriate (e.g., the meeting involves a matter covered by paragraph (c) of this section or other important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(4) A person who wishes to attend a private meeting, but who either is not permitted to attend by the person requesting the meeting or by FDA or who cannot attend because the meeting is conducted by telephone, may obtain a separate meeting with FDA to discuss the same matter or an additional matter.

(e) FDA employees have a responsibility to meet with all segments of the public to promote the objectives of the laws administered by the Agency. In pursuing this responsibility the following general policy applies where agency employees are invited by persons outside the Federal Government to attend or participate in meetings outside agency offices as representatives of the Agency.

(1) A person outside the executive branch may invite an agency representative to attend or participate in a meeting outside agency offices. The agency representative is not obligated to attend or participate, but may do so where it is in the public interest and will promote the objectives of the act.

(2) The agency representative may request that the meeting be open if that would be in the public interest. The agency representative may decline to participate in a meeting held as a private meeting if that will best serve the public interest.

(3) An agency representatiive may not knowingly participate in a meeting which is closed on the basis of sex, race, or religion.

(4) A meeting, whether open or closed, is subject to paragraph (d)(3) of this section with respect to memoranda summarizing the substance of the meeting.

(f) Representatives of FDA may initiate a meeting or correspondence with any person outside the Federal Government on any matter concerning the laws administered by the Commissioner.

(1) A meeting initiated by FDA representatives which involves a small number of interested persons, for example, a meeting with a petitioner or with two manufacturers of a particular product which requires additional testing or with a trade association employee to discuss an industry labeling problem, may be a private meeting. A meeting initiated by FDA representatives which invloves a large number of interested persons, for example, 10 manufacturers of an ingredient in a discussion of appropriate testing or labeling, must be held as an open conference or meeting under paragraph (b) of this section.

(2) Whenever appropriate (e.g., the meeting invloves a matter covered by paragraph (c) of this section or another important matter, a decision on an issue, or statements or advice or conclusions to which future reference may be desirable), a written memorandum summarizing the substance of the meeting will be prepared by an FDA representative.

(g) A person who participates in a meeting described in paragraphs (b) through (f) of this section may also prepare and submit to FDA for inclusion in the administrative file a written memorandum summarizing the substance of the meeting.

(h) Memoranda of meetings prepared by an FDA representative or by any other person and all correspondence which relate to a matter pending before the agency will promptly be filed in the administrative file of the proceeding.

(i) A meeting with a representative of Congress relating to a pending or potential investigation, inquiry, or hearing by a congressional committee or a Member of Congress will be summarized in a written memorandum which is to be forwarded to the Food and Drug Administration, Office of Legislative Affairs. This provision does not restrict the right of an agency employee to participate in the meeting.

(j) A meeting of an advisory committee is subject to the requirements of part 14.

(k) Under 42 U.S.C. 263l(a)(8), a log or summary is to be made of all meetings between representatives of FDA and industry and other interested parties to implement the Radiation Control for Health and Safety Act of 1968.

§ 10.70 Documentation of significant decisions in administrative file.

(a) This section applies to every significant FDA decision on any matter under the laws administered by the Commissioner, whether it is raised formally, for example, by a petition or informally, for example, by correspondence.

(b) FDA employees responsible for handling a matter are responsible for insuring the completeness of the administrative file relating to it. The file must contain—

(1) Appropriate documentation of the basis for the decision, including relevent evaluations, reviews, memoranda, letters, opinions of consultants, minutes of meetings, and other pertinent written documents; and

(2) The recommendations and decisions of individual employees, including supervisory personnel, responsible for handling the matter.

(i) The recommendations and decisions are to reveal significant controversies or differences of opinion and their resolution.

(ii) An agency employee working on a matter and, consistent with the prompt completion of other assignments, an agency employee who has worked on a matter may record individual views on that matter in a written memorandum, which is to be placed in the file.

(c) A written document placed in an administrative file must—

(1) Relate to the factual, scientific, legal or related issues under consideration;

(2) Be dated and signed by the author;

(3) Be directed to the file, to appropriate supervisory personnel, and to other appropriate employees, and show all persons to whom copies were sent;

(4) Avoid defamatory language, intemperate remarks, undocumented charges, or irrelevant matters (e.g., personnel complaints);

(5) If it records the views, analyses, recommendations, or decisions of an agency employee in addition to the author, be given to the other employees; and

(6) Once completed (i.e., typed in final form, dated, and signed) not be altered or removed. Later additions to or revisions of the document must be made in a new document.

(d) Memoranda or other documents that are prepared by agency employees and are not in the administrative file have no status or effect.

(e) FDA employees working on a matter have access to the administrative file on that matter, as appropriate for the conduct of their work. FDA employees who have worked on a matter have access to the administrative file on that matter so long as attention to their assignments is not impeded. Reasonable restrictions may be placed upon access to assure proper cataloging and storage of documents, the availability of the file to others, and the completeness of the file for review.

§ 10.75 Internal agency review of decisions.

(a) A decision of an FDA employee, other than the Commissioner, on a matter, is subject to review by the employee's supervisor under the following circumstances;

(1) At the request of the employee.

(2) On the initiative of the supervisor.

(3) At the request of an interested person outside the agency.

(4) As required by delegations of authority.

(b) The review will be made by consultation between the employee and the supervisor or by review of the administrative file on the matter, or both. The review will ordinarily follow the established agency channels of supervision or review for that matter.

(c) An interested person outside the agency may request internal agency review of a decision through the established agency channels of supervision or review. Personal review of these matters by bureau directors or the office of the Commissioner will occur for any of the following purposes:

(1) To resolve an issue that cannot be resolved at lower levels within the agency (e.g., between two parts of a bureau or other component of the agency, between two bureaus or other components of the agency, or between the agency and an interested person outside the agency).

(2) To review policy matters requiring the attention of bureau or agency management.

(3) In unusual situations requiring an immediate review in the public interest.

(4) As required by delegations of authority.

(d) Internal agency review of a decision must be based on the information in the administrative file. If an interested person presents new information not in the file, the matter will be returned to the appropriate lower level in the agency for reevaluation based on the new information.

§ 10.80 Dissemination of draft Federal Register notices and regulations.

(a) A representative of FDA may discuss orally or in writing with an interested person ideas and recommendations for notices of regulations. FDA welcomes assistance in developing

ideas for, and in gathering the information to support, notices and regulations.

(b) *Notices and proposed regulations.* (1) Once it is determined that a notice or proposed regulation will be prepared, the general concepts may be discussed by a representative of FDA with an interested person. Details of a draft of a notice or proposed regulation may be discussed with a person outside the executive branch only with the specific permission of the Commissioner.

(2) A draft of a notice or proposed regulation or its preamble, or a portion of either, may be furnished to an interested person outside the executive branch only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER. A draft of a notice or proposed regulation made available in this manner may, without the prior permission of the Commissioner, be discussed with an interested person to clarify and resolve questions raised and concerns expressed about the draft.

(c) After publication of a notice or proposed regulation in the FEDERAL REGISTER, and before preparation of a draft of the final notice or regulation, a representative of FDA may discuss the proposal with an interested person as provided in paragraph (b)(2) of this section.

(d) *Final notices and regulations.* (1) Details of a draft of a final notice or regulation may be discussed with an interested person outside the executive branch only with the specific permission of the Commissioner.

(2) A draft of a final notice or regulation or its preamble, or any portion of either, may be furnished to an interested person outside the executive branch only if it is made available to all interested persons by a notice published in the FEDERAL REGISTER, except as otherwise provided in paragraphs (g) and (j) of this section. A draft of a final notice or regulation made available to an interested person in this manner may, without the prior permission of the Commissioner, be discussed as provided in paragraph (b)(2) of this section.

(i) The final notice or regulation and its preamble will be prepared solely on the basis of the administrative record.

(ii) If additional technical information from a person outside the executive branch is necessary to draft the final notice or regulation or its preamble, it will be requested by FDA in general terms and furnished directly to the hearing clerk to be included as part of the administrative record.

(iii) If direct discussion by FDA of a draft of a final notice or regulation or its preamble is required with a person outside the executive branch, appropriate protective procedures will be undertaken to make certain that a full and impartial administrative record is established. Such procedures may include either—

(*a*) The scheduling of an open public meeting under § 10.65(b) at which interested persons may participate in review of and comment on the draft document; or

(*b*) The preparation of a tentative final regulation or tentative revised final regulation under § 10.40(f)(9), on which interested persons will be given an additional period of time for oral and written comment.

(e) After a final regulation is published, an FDA representative may discuss any aspect of it with an interested person.

(f) In addition to the requirements of this section, the provisions of § 10.55 apply to the promulgation of a regulation subject to § 10.50 and part 12.

(g) A draft of a final food additive, color additive, or new animal drug regulation or a proposed or final antibiotic regulation may be furnished to the petitioner for comment on the technical accuracy of the regulation. Every meeting with a petitioner relating to the draft will be recorded in a written memorandum, and all memoranda and correspondence will be filed with the hearing clerk as part of the administrative record of the regulation under the provisions of § 10.65.

(h) In accordance with 42 U.S.C. 263f, the Commissioner shall consult with interested persons and with the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC) before prescribing any performance standard for an electronic product. Accordingly, the Commissioner shall publish in the FEDERAL REGISTER an announcement when a proposed or final performance standard, including any amendment, is being considered for an electronic product, and any draft of any proposed or final standard will be furnished to an interested person upon request and may be discussed in detail.

(i) The provisions of § 10.65 apply to meetings and correspondence relating to draft notices and regulations.

(j) The provisions of this section restricting discussion and disclosure of draft notices and regulations do not apply to situations covered by §§ 20.83 through 20.89.

§ 10.85 Advisory opinions.

(a) An interested person may request an advisory opinion from the Commissioner on a matter of general applicability.

(1) The request will be granted whenever feasible.

(2) The request may be denied if—

(i) The request contains incomplete information on which to base an informed advisory opinion;

(ii) The Commissioner concludes that an advisory opinion cannot reasonably be given on the matter involved;

(iii) The matter is adequately covered by a prior advisory opinion or a regulation;

(iv) The request covers a particular product or ingredient or label and does not raise a policy issue of broad applicability; or

(v) The Commissioner otherwise concludes that an advisory opinion would not be in the public interest.

(b) A request for an advisory opinion is to be submitted in accordance with § 10.20, is subject to the provisions of § 10.30 (c) through (l), and must be in the following form:

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

REQUEST FOR ADVISORY OPINION

The undersigned submits this request for an advisory opinion of the Commissioner of Food and Drugs with respect to _____ (the general nature of the matter involved).

A. *Issues involved.*

(A concise statement of the issues and questions on which an opinion is requested.)

B. *Statement of facts and law.*

(A full statement of all facts and legal points relevant to the request.)

The undersigned certifies that, to the best of his/her knowledge and belief, this request includes all data, information, and views relevant to the matter, whether favorable or unfavorable to the position of the undersigned, which is the subject of the request.

(Signature) _____
(Person making request) _____
(Mailing address) _____
(Telephone number) _____

(c) The Commissioner may respond to an oral or written request to the agency as a request for an advisory opinion, in which case the request will be filed with the hearing clerk and be subject to this section.

(d) A statement of policy or interpretation made in the following documents, unless subsequently repudiated by the agency or overruled by a court, will constitute an advisory opinion:

(1) Any portion of a FEDERAL REGISTER notice other than the text of a proposed or final regulation, e.g., a notice to manufacturers or a preamble to a proposed or final regulation.

(2) Trade Correspondence (T.C. Nos. 1-431 and 1A-8A) issued by FDA between 1938 and 1946.

(3) Compliance policy guides issued by FDA beginning in 1968 and codified in the Compliance Policy Guides manual.

(4) Other documents specifically identified as advisory opinions, e.g., advisory opinions on the performance standard for diagnostic X-ray systems, issued before July 1, 1975, and filed in a permanent public file for prior advisory opinions maintained by the Freedom of Information Staff (HFI-35).

(5) Guidelines issued by FDA under § 10.90(b).

(e) An advisory opinion represents the formal position of FDA on a matter and, except as provided in paragraph (f) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner may not recommend legal action against a person or product with respect to an action taken in conformity with an advisory opinion which has not been amended or revoked.

(f) In unusual situations involving an immediate an significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to an advisory opinion before amending or revoking the opinion. This action may be taken only with the approval of the Commissioner, who may not delegate this function. Appropriate amendment or revocation of the advisory opinion involved will be expedited.

(g) An advisory opinion may be amended or revoked at any time after it has been issued. Notice of amendment or revocation will be given in the same manner as notice of the advisory opinion was originally given or in the FEDERAL REGISTER, and will be placed on public display as part of the file on the matter in the office of the hearing clerk. The hearing clerk shall maintain a separate chronological index of all advisory opinions filed. The index will specify the date of the request for the advisory opinion, the date of the opinion, and identification of the appropriate file.

(h) Action undertaken or completed in conformity with an advisory opinion which has subsequently been amended or revoked is acceptable to FDA unless the Commissioner determines that substantial public interest considerations preclude continued acceptance. Whenever possible, an amended or revoked advisory opinion will state when action previously undertaken or completed does not remain acceptable, and any transition period that may be applicable.

(i) An interested person may submit written comments on an advisory opinion or modified advisory opinion. Four copies of any comments are to be sent to the hearing clerk for inclusion in the public file on the advisory opinion. Individuals may submit only one copy. Comments will be considered in determining whether further modification of an advisory opinion is warranted.

(j) An advisory opinion may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement.

(k) A statement made or advice provided by an FDA employee constitutes an advisory opinion only if it is issued in writing under this section. A statement or advice given by an FDA employee orally, or given in writing but not under this section or § 10.90, is an informal communication that represents the best judgment of that employee at that time but does not constitute an advisory opinion, does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate or commit the agency to the views expressed.

§ 10.90 FDA regulations, guidelines, recommendations, and agreements.

(a) *Regulations.* FDA regulations are promulgated in the FEDERAL REGISTER under § 10.40 or § 10.50 and codified in the Code of Federal Regulations. Regulations may contain provisions that will be enforced as legal requirements, or which are intended only as guidelines and recommendations, or both. The dissemination of draft notices and regulations is subject to § 10.80.

(b) *Guidelines.* FDA guidelines are included in the public file of guidelines established by the hearing clerk, under this paragraph, unless they have been published as regulations under paragraph (a) of this section.

(1) Guidelines establish principles or practices of general applicability and do not include decisions or advice on particular situations. Guidelines relate to performance characteristics, preclinical and clinical test procedures, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. Guidelines state procedures or standards of general applicability that are not legal requirements but are acceptable to FDA for a subject matter which falls within the laws administered by the Commissioner.

(i) A person may rely upon a guideline with assurance that it is acceptable to FDA, or may follow different procedures or standards. When different procedures or standards are chosen, a person may, but is not required to, discuss the matter in advance with FDA to prevent the expenditure of money and effort on activity that may later be determined to be unacceptable.

(ii) Use of testing guidelines established by FDA assures acceptance of a test as scientifically valid, if properly conducted, but does not assure approval of any ingredient or product so tested. Test results or other available information may require disapproval or additional testing.

(2) A guideline represents the formal position of FDA on a matter and, except as provided in paragraph (b)(3) of this section, obligates the agency to follow it until it is amended or revoked. The Commissioner may not recommend legal action against a person or product with respect to an action taken in conformity with a guideline issued under this section that has not been amended or revoked.

(3) In unusual situations involving an immediate and significant danger to health, the Commissioner may take appropriate civil enforcement action contrary to a guideline before amending or revoking the guideline as provided in paragraph (b)(5) of this section. This action may be taken only with the approval of the Commissioner, who may not delegate that function. Amendment or revocation of the guideline involved will be expedited.

(4) A guideline will be included in the public file upon approval of the guideline by the Commissioner or relevant bureau director and publication of a notice of its availability. The notice will state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline.

(5) A guideline may be amended or revoked by the Commissioner or relevant bureau director and publication of a notice of the amendment or revocation. The notice will state (i) the title of the guideline, (ii) the subject matter it covers, and (iii) the office or individual responsible for maintaining the guideline. All original guidelines and subsequent amendments will be retained in the public file permanently so that a complete record of the development of each guideline is available.

(6) Action undertaken or completed in conformity with a guideline which has subsequently been amended or revoked will remain acceptable to FDA unless the Commissioner determines that substantial public interest consideration preclude continued acceptance. This determination may be made at the time of or after amendment or revocation of the guideline. Whenever possible, notice of an amended or revoked guideline will state when it has been determined that action previously undertaken or completed in conformity with a prior guideline does not remain acceptable, and any transition period that may be applicable.

(7) The notice of a guideline or of an amended or revoked guideline will state that an interested person may submit written comments on the guideline. Four copies of comments are to be sent to the hearing clerk for inclusion in the public file on the guideline. The comments will be con-

sidered in determining whether further amendments to or reinstitution of a guideline are warranted.

(8) A guideline may be used in administrative or court proceedings to illustrate acceptable and unacceptable procedures or standards, but not as a legal requirement.

(9) A statement relating to acceptable procedures or standards given by an FDA employee orally, or in writing but not under § 10.85 of this section, is an informal communication that represents the best judgment of that employee at that time but does not <constitute a guideline, does not necessarily represent the formal position of FDA, and does not bind or otherwise obligate the agency to the views expressed.

(10) Because of the large number of analytical methods involved in FDA activities, their length and complexity and the volume and frequency of amendment, paragraph (b)(4) of this section does not apply to analytical methods except to the extent that the Commissioner concludes that particular analytical methods should be included in the public file for a particular purpose. FDA analytical methods are available for public disclosure under part 20.

(11) The dissemination of draft guidelines is subject to the same provisions as the dissemination of draft notices and regulations under § 10.80.

(c) *Recommendations.* In addition to the guidelines subject to paragraph (b) of this section, FDA often formulates and disseminates recommendations about matters which are authorized by, but do not involve direct regulatory action under, the laws administered by the Commissioner, e.g., model State and local ordinances, or personnel practices for reducing radiation exposure, issued under 42 U.S.C. 243 and 263d(b). These recommendations may, in the discretion of the Commissioner, be handled under the procedures established in paragraph (b) of this section, except that the recommendations will be included in a separate public file of recommendations established by the Freedom of Information Staff (HFI-35) and will be separated from the guidelines in the notice of availability published in the FEDERAL REGISTER as regulations under paragraph (a) of this section.

(d) *Agreements.* Formal agreements, memoranda of understanding, or other similar written documents executed by FDA and another person will be included in the public file on agreements established by the Freedom of Information Staff (HFI-35) under § 20.108. A document not included in the public file is deemed to be rescinded and has no force or effect whatever.

§ 10.95 Participation in outside standard-setting activities.

(a) *General.* This section applies to participation by FDA employees in standard-setting activities outside the agency. Standard-setting activities include matters such as the development of performance characteristics, testing methodology, manufacturing practices, product standards, scientific protocols, compliance criteria, ingredient specifications, labeling, or other technical or policy criteria. FDA encourages employees participation in outside standard-setting activities that are in the public interest.

(b) *Standard-setting activities by other Federal Government agencies.* (1) An FDA employee may participate in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide.

(2) Approval forms and all pertinent background information describing the activity will be included in the public file on standard-setting activities established in the Public Records and Documents Center.

(3) If a member of the public is invited by FDA to present views to, or to accompany, the FDA employee at a meeting, the invitations will be extended to a representative sampling of the public, including consumer groups, industry associations, professional societies, and academic institutions.

(4) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(c) *Standard-setting activities by State and local government agencies and by United Nations organizations and other international organizations and foreign governments pursuant to treaty.* (1) An FDA employee may participate in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide.

(2) Approval forms and all pertinent background information describing the activity will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HFI-35).

(3) The availability for public disclosure of records relating to the activity will be governed by part 20.

(4) If a member of the public is invited by FDA to present views to, or to accompany, the FDA employee at a meeting, the invitation will be extended to a representative sampling of the public, including comsumer groups, industry associations, professional societies, and academic institutions.

(5) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(d) *Standard-setting activities by private groups and organizations.* (1) An FDA employee may engage in these activities after approval of the activity under procedures specified in the current agency Staff Manual Guide. A request for official participation must be made by the group or organization in writing, must describe the scope of the activity, and must demonstrate that the minimum standards set out in paragraph (d)(5) of this section are met. Except as provided in paragraph (d)(7) of this section are met. Except as provided in paragraph (d)(7) of this section, a request that is granted will be the subject of a letter from the Commissioner or the bureau director to the organization stating—

(i) Whether participation by the individual will be as a voting or nonvoting liaison representative;

(ii) That participation by the individual does not connote FDA agreement with, or endorsement of, any decisions reached; and

(iii) That participation by the individual precludes service as the deciding official on the standard involved if it should later come before FDA. The deciding official is the person who signs a document ruling upon the standard.

(2) The letter requesting official FDA participation, the approval form, and the Commissioner's or bureau director's letter, together with all pertinent background information describing the activities involved, will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HFI-35).

(3) The availability for public disclosure of records relating to the activities will be governed by part 20.

(4) An FDA employee appointed as the liaison representative to an activity shall refer all requests for information about or participation in the activity to the group or organization responsible for the activity.

(5) The following minimum standards apply to an outside private standard-setting activity in which FDA employees participate:

(i) The activity will be based upon consideration of sound scientific and technological information, will permit revision on the basis of new information, and will be designed to protect the public against unsafe, ineffective, or deceptive products or practices.

(ii) The activity and resulting standards will not be designed for the economic benefit of any company, group, or organization, will not be used for such antitrust violations as fixing prices or hindering competition, and

will not involve establishment of certification or specific approval of individual products or services.

(iii) The group or organization responsible for the standard-setting activity must have a procedure by which an interested person will have an opportunity to provide information and views on the activity and standards involved, without the payment of fees, and the information and views will be considered. How this is accomplished, including whether the presentation will be in person or in writing, will be decided by the group or organization responsible for the activity.

(6) Membership of an FDA employee in an organization that also conducts a standard-setting activity does not invoke the provisions of this section unless the employee participates in the standard-setting activity. Participation in a standard-setting activity is subject to this section.

(7) The Commissioner may determine in writing that, because direct involvement by FDA in a particular standard-setting activity is in the public interest and will promote the objectives of the act and the agency, the participation is exempt from the requirements of paragraph (d)(1) (ii) and/or (iii) of this section. This determination will be included in the public file on standard-setting activities established by the Public Records and Documents Center and in any relevant administrative file. The activity may include the establishment and validation of analytical methods for regulatory use, drafting uniform laws and regulations, and the development of recommendations concerning public health and preventive medicine practices by national and international organizations.

(8) Because of the close daily cooperation between FDA and the associations of State and local government officials listed below in this paragraph, and the large number of agency employees who are members of or work with these associations, participation in the activities of these associations is exempt from paragraph (d)(1) through (7) of this section, except that a list of the committees and other groups of these associations will be included in the public file on standard-setting activities established by the Freedom of Information Staff (HFI-35):

(i) American Public Health Association.

(ii) Association of American Feed Control Officials, Inc.

(iii) Association of Food and Drug Officials.

(iv) Association of Official Analytical Chemists.

(v) Conference of State Sanitary Engineers.

(vi) Conference of Radiation Control Program Directors.

(vii) International Association of Milk, Food and Environmental Sanitarians, Inc.

(viii) Interstate Seafood Seminar.

(ix) National Conference on Interstate Milk Shipments.

(x) National Conference on Weights and Measures.

(xi) National Environmental Health Association.

(xii) National Shellfish Sanitation Program.

§ 10.100 Public calendars.

(a) *Prospective public calendar of public proceedings.* (1) A public calendar will be prepared and made publicly available each week showing, to the extent feasible, for the following 4 weeks, the public meetings, conferences, hearings, advisory committee meetings, seminars, and other public proceedings of FDA, and other significant public events involving FDA, e.g., congressional hearings.

(2) A copy of this public calendar will be placed on public display in the following places:

(i) Office of the Hearing Clerk.

(ii) Office of the Associate Commissioner for Public Affairs.

(iii) A central place in each bureau.

(iv) A central place in each field office.

(v) A central place at the National Center for Toxicological Research.

(b) *Retrospective public calendar of meetings.* (1) A public calendar will be prepared and made publicly available each week showing for the previous week meetings with persons outside the executive branch and other significant events involving the representatives of FDA designated under paragraph (b)(3) of this section, but telephone conversations will be included on an optional basis and meetings with the working press, except for "house organs" (i.e., publications of firms that manufacture or distribute regulated products, or industry associations), and with on-site contractors will not be included. Meetings with members of the judiciary, representatives of Congress, or staffs of congressional committees will be included when the meeting relates to a pending court case, administrative hearing, or other regulatory action or decision and involves more than a brief description of the matter.

(2) The calendar will include all meetings, conferences, seminars, social events sponsored by the regulated industry, and speeches. The calendar will specify the date and the person and subject matter involved. When more than one FDA representative is in attendance, only the presiding or head representative will report the meeting on the public calendar. If a large number of persons is involved, the name of each need not be specified. Meetings that would prejudice law enforcement activities (e.g., a meeting with an informant) or invade privacy (e.g., a meeting with a candidate for possible employment in FDA) will not be reported.

(3) The following FDA representatives and their deputies are subject to the requirements of paragraphs (b) (1) and (2) of this section:

(i) Commissioner of Food and Drugs.

(ii) Deputy Commissioner.

(iii) Associate Commissioner.

(iv) Executive and Special Assistants to the Commissioner.

(v) Executive Director for Regional Operations.

(vi) Director, Office of International Affairs.

(vii) Director, National Center for Toxicological Research.

(viii) Bureau Directors.

(ix) Chief Counsel for the Food and Drug Administration, or any representative of that office attending on behalf of the Chief Counsel.

(4) A copy of the public calendar will be placed on public display in the following places:

(i) Office of the Hearing Clerk.

(ii) Office of the Associate Commissioner for Public Affairs.

(iii) A central place in each bureau.

(iv) A central place in each field office.

(v) A central place at the National Center for toxicological Research.

§ 10.105 Representation by an organization.

(a) An organization may represent its members by filing petitions, comments, and objections, and otherwise participating in an administrative proceeding subject to this part.

(b) A petition, comment, objection, or other representation by an organization will not abridge the right of a member to take individual action of a similar type, in the member's own name.

(c) It is requested that each organization participating in FDA administrative proceedings file annually with the hearing clerk a current list of all of the members of the organization.

(d) The filing by an organization of an objection or request for hearing under §§ 12.20 through 12.22 does not provide a member a legal right with respect to the objection or request for hearing that the member may individually exercise. A member of an organization wishing to file an objection or request for hearing must do so individually.

(e) In a court proceeding in which an organization participates, the Commissioner will take appropriate legal measures to have the case brought or considered as a class action or other-

wise as binding upon all members of the organization except those specifically excluded by name. Regardless of whether the case is brought or considered as a class action or as otherwise binding upon all members of the organization except those specifically excluded by name, the Commissioner will take the position in any subsequent suit involving the same issues and a member of the organization that the issues are precluded from further litigation by the member under the doctrines of collateral estoppel or res judicata.

§ 10.110 Settlement proposals.

At any time in the course of a proceeding subject to this part, a person may propose settlement of the issues involved. A participant in a proceeding will have an opportunity to consider a proposed settlement. Unaccepted proposals of settlement and related matters, e.g., proposed stipulations not agreed to, will not be admissible in evidence in an FDA administrative proceeding. FDA will oppose the admission in evidence of settlement information in a court proceeding or in another administrative proceeding.

PART 12—FORMAL EVIDENTIARY PUBLIC HEARING

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AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 12.1 Scope.

The procedures in this part apply when—

(a) A person has a right to an opportunity for a hearing under the laws specified in § 10.50; or

(b) The Commissioner concludes that it is in the public interest to hold a formal evidentiary public hearing on any matter before FDA.

Subpart B—Initiation of Proceedings

§ 12.20 Initiation of a hearing involving the issuance, amendment, or revocation of a regulation.

(a) A proceeding under section 409(f), 502(n), 507(f), 512(n)(5), 701(e), or 706(d) of the act or section 4 or 5 of the Fair Packaging and Labeling Act may be initiated—

(1) By the Commissioner on the Commissioner's own initiative, e.g., as provided in § 170.15 for food additivies; or

(2) By a petition—

(i) In the form specified elsewhere in this chapter, e.g., the form for a color additive petition in § 71.1 or for an antibiotic petition in § 431.50; or

(ii) If no form is specified, by a petition under § 10.30.

(b) If the Commissioner receives a petition under paragraph (a)(2) of this section, the Commissioner will—

(1) If it involves any matter subject to section 701(e) of the act or section 4 or 5 of the Fair Packaging and Labeling Act, and meets the requirements for filing, follow the provisions of § 10.40 (b) through (f);

(2) If it involves a color additive or food additive, and meets the requirements for filing in §§ 71.1 and 71.2, or in 171.1, 171.6, 171.7, and 171.100, publish a notice of filing of the petition within 30 days after the petition is filed instead of a notice of proposed rulemaking.

(c) The Commissioner may issue, amend, or revoke an antibiotic regulation without the requirements of notice and public procedure in § 10.40(b) or delayed effective date in § 10.40(c)(4), on the Commissioner's own initiative or as a result of a petition containing the required evidence of safety and effectiveness in the circumstances described in § 10.40(e)(1).

(d) The notice promulgating the regulation will describe how to submit objections and requests for hearing.

(e) On or before the 30th day after the date of publication of a final regulation, or of a notice withdrawing a proposal initiated by a petition under § 10.25(a), a person may submit to the Commissioner written objections and a request for a hearing. The 30-day period may not be extended except that additional information supporting an objection may be received after 30 days upon a showing of inadvertent omission and hardship, and if review of the objection and request for hearing will not thereby be impeded. If, after a final color additive regulation is published, a petition or proposal relating to the regulation is referred to an advisory committee in accordance with section 706(b)(5)(C) of the act, objections and requests for a hearing may be submitted on or before the 30th day after the date on which the order confirming or modifying the Commissioner's previous order is published.

§ 12.21 Initiation of a hearing involving the issuance, amendment, or revocation of an order.

(a) A proceeding under section 505 (d) or (e), 512 (d), (e), (m) (3) or (4), of 515(g)(1) of the act, or section 351(a) of the Public Health Service Act, may be initiated—

(1) By the Commissioner on the Commissioner's own initiative;

(2) By a petition in the form specified elsewhere in this chapter, e.g., § 314.1(c) for new drug applications, § 514.1 for new animal drug applications, § 514.2 for applications for animal feeds, or § 601.3 for licenses for biologic products; or

(3) By a petition under § 10.30.

(b) A notice of opportunity for hearing on a proposal to deny or revoke approval of all or part of an order will be published together with an explanation of the grounds for the proposed action. The notice will describe how to submit requests for hearing. A person subject to the notice has 30 days after its issuance to request a hearing. The 30-day period may not be extended.

(c) The Commissioner may use an optional procedure specified in § 10.30(h) to consider issuing, amending, or revoking an order.

§ 12.22 Filing objections and requests for a hearing on a regulation or order.

(a) Objections and requests for a hearing under § 12.20(d) must be submitted to the Hearing Clerk and will be accepted for filing if they meet the following conditions:

(1) They are submitted within the time specified in § 12.20(e).

(2) Each objection is separately numbered.

(3) Each objection specifies with particularity the provision of the regulation or proposed order objected to.

(4) Each objection on which a hearing is requested specifically so states. Failure to request a hearing on an objection. Failure to include a description and analysis for an objection constitutes a waiver of the right to a hearing on that objection.

(5) Each objection for which a hearing is requested includes a detailed description and analysis of the factual information to be presented in support of the objection constitutes a waiver of the right to a hearing on that objection. The description and analysis may be used only for the purpose of determining whether a hearing has been justified under § 12.24, and do not limit the evidence that may be presented if a hearing is granted.

(i) A copy of any report, article, survey, or other written document relied upon must be submitted, except if the document is—

(a) An FDA document that is routinely publicly available;

(b) A recognized medical or scientific textbook that is readily available to the agency; or

(c) A designated journal listed in § 310.9 or § 510.95.

(ii) A summary of the nondocumentary testimony to be presented by any witnesses relied upon must be submitted.

(b) Requests for hearing submitted under § 12.21 will be submitted to the hearing clerk and will be accepted for filing if they meet the following conditions:

(1) They are submitted on or before the 30th day after the date of publication of the notice of opportunity for hearing.

(2) They comply with §§ 314.200, 514.200, or 601.7(a).

(c) If an objection or request for a public hearing fails to meet the requirements of this section and the deficiency becomes known to the hearing clerk, the hearing clerk shall return it with a copy of the applicable regulations, indicating those provisions not complied with. A deficient objection or request for a hearing may be supplemented and subsequently filed if submitted within the 30-day time period specified in § 12.20(e) or § 12.21(b).

(d) If another person objects to a regulation issued in response to a petition submitted under § 12.20(a)(2), the petitioner may submit a written reply to the hearing clerk.

§ 12.23 Notice of filing of objections.

As soon as practicable after the expiration of the time for filing objections to and requests for hearing on agency action involving the issuance, amendment, or revocation of a regulation under sections 502(n), 701(e), or 706(d) of the act or sections 4 or 5 of the Fair Packaging and Labeling Act, the Commissioner shall publish a notice in the FEDERAL REGISTER specifying those parts of the regulation that have been stayed by the filing of proper objections and, if no objections have been filed, stating that fact. The notice does not constitute a determination that a hearing is justified on any objections or requests for hearing that have been filed. When to do so will cause no undue delay, the notice required by this section may be combined with the notices described in §§ 12.28 and 12.35.

§ 12.24 Ruling on objections and requests for hearing.

(a) As soon as possible the Commissioner will review all objections and requests for hearing filed under § 12.22 and determine—

(1) Whether the regulation should be modified or revoked under § 12.26;

(2) Whether a hearing has been justified; and

(3) Whether, if requested, a hearing before a Public Board of Inquiry under part 13 or before a public advisory committee under part 14 or before the Commissioner under part 15 has been justified.

(b) A request for a hearing will be granted if the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. A hearing will not be granted on issues of policy or law.

(2) The factual issue can be resolved by available and specifically identified reliable evidence. A hearing will not be granted on the basis of mere allegations or denials or general descriptions of positions and contentions.

(3) The data and information submitted, if established at a hearing, would be adequate to justify resolution of the factual issue in the way sought by the person. A hearing will be denied if the Commissioner concludes that the data and information submitted are insufficient to justify the factual determination urged, even if accurate.

(4) Resolution of the factual issue in the way sought by the person is adequate to justify the action requested. A hearing will not be granted on factual issues that are not determinative with respect to the action requested, e.g., if the Commissioner concludes that the action would be the same even if the factual issue were resolved in the way sought, or if a request is made that a final regulation include a provision not reasonably encompassed by the proposal. A hearing will be granted upon proper objection and request when a food standard or other regulation is shown to have the effect of excluding or otherwise affecting a product or ingredient.

(5) The action requested is not inconsistent with any provision in the act or any regulation in this chapter particularizing statutory standards. The proper procedure in those circumstances is for the person requesting the hearing to petition for an amendment or waiver of the regulation involved.

(6) The requirements in other applicable regulations, e.g., §§ 10.20, 12.21, 12.22, 314.200, 430.20(b), 514.200, and 601.7(a), and in the notice of opportunity for hearing are met.

(c) In making the determination in paragraph (a) of this section, the Commissioner may use any of the optional procedures specified in § 10.30(h) or in other applicable regulations, e.g., §§ 314.200, 430.20(b), 514.200, and 601.7(a).

(d) If it is uncertain whether a hearing has been justified under the principles in paragraph (b) of this section, and the Commissioner concludes that summary decision against the person requesting a hearing should be considered, the Commissioner may serve upon the person by registered mail a proposed order denying a hearing. The

person has 30 days after receipt of the proposed order to demonstrate that the submission justifies a hearing.

§ 12.26 Modification or revocation of regulation or order.

If the Commissioner determines upon review of an objection or request for hearing that the regulation or order should be modified or revoked, the Commissioner will promptly take such action by notice in the FEDERAL REGISTER. Further objections to or requests for hearing on the modification or revocation may be submitted under §§ 12.20 through 12.22 but not further issue may be taken with other provisions in the regulation or order. Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in due course.

§ 12.28 Denial of hearing in whole or in part.

If the Commissioner determines upon review of the objections or requests for hearing that a hearing is not justified, in whole or in part, a notice of the determination will be published.

(a) The notice will state whether the hearing is denied in whole or in part. If the hearing is denied in part, the notice will be combined with the notice of hearing required by § 12.35, and will specify the objections and requests for hearing that have been granted and denied.

(1) Any denial will be explained. A denial based on an analysis of the information submitted to justify a hearing will explain the inadequacy of the information.

(2) The notice will confirm or modify or stay the effective date of the regulation or order involved.

(b) The record of the administrative proceeding relating to denial of a public hearing in whole or in part on an objection or request for hearing consists of the following:

(1) If the proceeding involves a regulation—

(i) The documents specified in § 10.40(g);

(ii) The objections and requests for hearing filed by the hearing clerk;

(iii) If the proceeding involves a color additive regulation referred to an advisory committee in accordance with section 706(b)(5)(C) of the act, the committee's report and the record of the committee's proceeding; and

(iv) The notice denying a formal evidentiary public hearing.

(2) If the proceeding involves an order—

(i) The notice of opportunity for hearing;

(ii) The requests for hearing filed by the hearing clerk;

(iii) The transcripts, minutes of meetings, reports, FEDERAL REGISTER notices, and other documents constituting the record of any of the optional procedures specified in § 12.24(c) used by the Commissioner, but not the transcript of a closed portion of a public advisory committee meetings; and

(iv) The notice denying the hearing.

(c) The record specified in paragraph (b) of this section is the exclusive record for the Commissioner's decision on the complete, or partial denial of a hearing. The record of the proceeding will be closed as of the date of the Commissioner's decision unless another date is specified. A person who requested and was denied a hearing may submit a petition for reconsideration under § 10.33 or a petition for stay of action under § 10.35. A person who wishes to rely upon information or views not included in the administrative record shall submit them to the Commissioner with a petition under § 10.25(a) to modify the final regulation or order.

(d) Denial of a request for a hearing in whole or in part is final agency action reviewable in the courts, under the statutory provisions governing the matter involved, as of the date of publication of the denial in the FEDERAL REGISTER.

(1) Before requesting a court for a stay of action pending review, a person shall first submit a petition for a stay of action under § 10.35.

(2) Under 28 U.S.C. 2112(a), FDA will request consolidation of all petitions on a particular matter.

(3) The time for filing a petition for judicial review of a denial of a hearing on an objection or issue begins on the date the denial is published in the FEDERAL REGISTER, (i) when an objection or issues relating to a regulation, if a hearing is denied on all objections and issues concerning a part of the proposal the effectiveness of which has not been deferred pending a hearing on other parts of the proposal; or (ii) when an issue relates to an order, if a hearing is denied on all issue relates to an order, if a hearing is denied on all issues relating to a particular new drug application, new animal drug application, device premarket approval application or product development protocol, or biologics license. The failure to file a petition for judicial review within the period established in the statutory provision governing the matter involved constitutes a waiver of the right to judicial review of the objection or issue, regardless whether a hearing has been granted on other objections and issues.

§ 12.30 Judicial review after waiver of hearing on a regulation.

(a) A person with a right to submit objections and a request for hearing under § 12.20(d) may submit objections and waive the right to a hearing. The waiver may be either an explicit statement, or a failure to request a hearing, as provided in § 12.22(a)(4).

(b) If a person waives the right to a hearing, the Commissioner will rule upon the person's objections under §§ 12.24 through 12.28. As a matter of discretion, the Commissioner may also order a hearing on the matter under any of the provisions of this part.

(c) If the Commissioner rules adversely on a person's objection, the person may petition for judicial review in a U.S. Court of Appeals under the act.

(1) The record for judicial review is the record designated in § 12.28(b)(1).

(2) The time for filing a petition for judicial review begins as of the date of publication of the Commissioner's ruling on the objections.

§ 12.32 Request for alternative form of hearing.

(a) A person with a right to request a hearing may waive that right and request one of the following alternatives:

(1) A hearing before a public board of inquiry under part 13.

(2) A hearing before a public advisory committee under part 14.

(3) A hearing before the Commissioner under part 15.

(b) The request—

(1) May be on the person's own initiative or at the suggestion of the Commissioner;

(2) Must be submitted in the form of a citizen petition under § 10.30 before publication of a notice of hearing under § 12.35 or a denial of hearing under § 12.28; and

(3) Must be—

(i) In lieu of a request for a hearing under this part; or

(ii) If submitted after or with a request for hearing, in the form of a waiver of the right to request a hearing conditioned on an alternative form of hearing. Upon acceptance by the Commissioner, the waiver becomes binding and may be withdrawn only by waiving any right to any form of hearing unless the Commissioner determines otherwise.

(c) When more than one person requests and justifies a hearing under this part, an alternative form of hearing may be used only if all the persons concur and waive their right to request a hearing under this part.

(d) The Commissioner will determine whether an alternative form of hearing should be used, and if so, which alternative is acceptable, after considering the requests submitted

and the appropriateness of the alternatives for the issues raised in the objections. The Commissioner's acceptance is binding unless, for good cause, the Commissioner determines otherwise.

(e) The Commissioner will publish a notice of an alternative form of hearing setting forth the following information:

(1) The regulation or order that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commissioner's discretion.

(3) The time, date, and place of the hearing, or a statement that such information will be contained in a later notice.

(4) The parties to the hearing.

(5) The issues at the hearing. The statement of issues determines the scope of the hearing.

(6) If the hearing will be conducted by a Public Board of Inquiry, the time within which—

(i) The parties should submit nominees for the Board under § 13.10(b);

(ii) A notice of participation under § 12.45 should be filed; and

(iii) Participants should submit written information under § 13.25. The notice will list the contents of the portions of the administrative record relevant to the issues at the hearing before the Board. The portions listed will be placed on public display in the office of the Hearing Clerk before the notice is published. Additional copies of material already submitted under § 13.25 need not be included with any later submissions.

(f)(1) The decision of a hearing before a Public Board of Inquiry or a public advisory committee under this section has the legal status of and will be handled as an initial decision under § 12.120.

(2) The decision of a public hearing before the Commissioner under this section will be issued as a final order. The final order will have the same content as an initial decision, as specified in § 12.120 (b) and (c).

(3) Thereafter, the participants in the proceeding may pursue the administrative and court remedies specified in §§ 12.120 through 12.159.

(g) If a hearing before a public advisory committee or a hearing before the Commissioner is used as an alternative form of hearing, all submissions will be made to the Hearing Clerk, and § 10.20(j) governs their availability for public examination and copying.

(h) This section does not affect the right to an opportunity for a hearing before a public advisory committee under section 515(g)(2) of the act regarding device premarket approval applications and product development protocols. Advisory committee hearing procedures are found in part 14.

§ 12.35 Notice of hearing; stay of action.

(a) If the Commissioner determines upon review of the objections and requests for hearing that a hearing is justified on any issue, the Commissioner will publish a notice setting forth the following:

(1) The regulation or order that is the subject of the hearing.

(2) A statement specifying any part of the regulation or order that has been stayed by operation of law or in the Commissioner's discretion.

(3) The parties to the hearing.

(4) The issues of fact on which a hearing has been justified.

(5) A statement of any objections or requests for hearing for which a hearing has not been justified, which are subject to § 12.28.

(6) The presiding officer, or a statement that the presiding officer will be designated in a later notice.

(7) The time within which notices of participation should be filed under § 12.45

(8) The date, time, and place of the prehearing conference, or a statement that the date, time, and place will be announced in a later notice. The prehearing conference may not commence until after the time expires for filing the notice of participation required by § 12.45(a).

(9) The time within which participants should submit written information and views under § 12.85. The notice will list the contents of the portions of the adminstrative record relevant to the issues at the hearing. The portions listed will be placed on public display in the office of the Hearing Clerk before the notice is published. Additional copies of material already submitted under § 12.85 need not be included with any later submissions.

(b) The statement of the issues determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A participant may obtain interlocutory review by the Commissioner of a decision by the presiding officer to revise the issues to include an issue on which the Commissioner has not granted a hearing or to eliminate an issue on which a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

§ 12.37 Effective date of a regulation.

(a) If no objections are filed and no hearing is requested on a regulation under § 12.20(e), the regulation is effective on the date specified in the regulation as promulgated.

(b) The Commissioner shall publish a confirmation of the effective date of the regulation. The FEDERAL REGISTER document confirming the effective date of the regulation may extend the time for compliance with the regulation.

§ 12.38 Effective date of an order.

(a) If a person who is subject to a notice of opportunity for hearing under § 12.21(b) does not request a hearing, the Commissioner will—

(1) Publish a final order denying or withdrawing approval of an NDA, NADA, device premarket approval application, or biologics license, in whole or in part, or revoking a device product development protocol or notice of completion, or declaring that such a protocol has not been completed, and stating the effective date of the order; and

(2) If the order involves withdrawal of approval of an NADA, forthwith revoke, in whole or in part, the applicable regulation, under section 512(i) of the act.

(b) If a person who is subject to a notice of opportunity for hearing under § 12.21(b) requests a hearing and others do not, the Commissioner may issue a final order covering all the drug or device products at once or may issue more than one final order covering different drug or device products at different times.

Subpart C—Appearance and Participation

§ 12.40 Appearance.

(a) A person who has filed a notice of participation under 12.45 may appear in person or by counsel or other representative in any hearing and, subject to § 12.89, may be heard concerning all relevant issues.

(b) The presiding officer may strike a person's appearance for violation of the rules of conduct in § 12.90.

§ 12.45 Notice of participation.

(a) Within 30 days after publication of the notice of hearing under § 12.35, a person desiring to participate in a hearing is to file with the hearing clerk under § 10.20 a notice of participation in the following form:

(Date) _____

Hearing Clerk, Food and Drug Administration, Department of Health, Education, and Welfare, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

NOTICE OF PARTICIPATION

[Docket No. ——]

Under 21 CFR Part 12, please enter the participation of:

(Name) _____
(Street address) _____
(City and State) _____
(Telephone number) _____

Service on the above will be acepted by:

(Name) _____
(Street address) _____

(City and State) _____
(Telephone number) _____

The following statements are made as part of this notice of participation:

A. *Specific interests.* (A statement of the specific interest of the person in the proceeding, including the specific issues of fact concerning which the person desires to be heard. This part need not be completed by a party to the proceeding.)

B. *Commitment to participate.* (A statement that the person will present documentary evidence or testimony at the hearing and will comply with the requirements of 21 CFR 12.85, or, in the case of a hearing before a Public Board of Inquiry, with the requirements of 21 CFR 13.25.)

(Signed) _____

(b) An amendment to a notice of participation should be filed with the hearing clerk and served on all participants.

(c) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (e) of this section.

(d) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause.

(e) The presiding officer may strike the participation of a person for nonparticipation in the hearing or failure to comply with any requirement of this subpart, e.g., disclosure of information as required by § 12.85 or the prehearing order issued under § 12.92. Any person whose participation is stricken may petition the Commissioner for interlocutory review.

§ 12.50 Advice on public participation in hearings.

(a) *Designated agency contact.* All inquiries from the public about scheduling, location, and general procedures should be addressed to the Associate Commissioner for Regulatory Affairs (HFC-10), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, or telephone 301-443-3480. The staff of the Associate Commissioner for Regulatory Affairs will attempt to respond promptly to all inquiries from members of the public, as well as to simple requests for information from participants in hearings.

(b) *Hearing schedule changes.* Requests by hearing participants for changes in the schedule of a hearing or for filing documents, briefs, or other pleadings should be made in writing directly to the Administrative Law Judge (HF-3), Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857.

(c) *Legal advice to individuals.* FDA does not have the resources to provide legal advice to members of the public concerning participation in hearings. Furthermore, to do so would compromise the independence of the Commissioner's office and invite charges of improper interference in the hearing process. Accordingly, the Associate Commissioner for Regulatory Affairs will not answer questions about the strengths or weaknesses of a party's position at a hearing, litigation strategy, or similar matters.

(d) *Role of the office of the Chief Counsel.* Under no circumstances will the office of the Chief Counsel of FDA directly provide advice about a hearing to any person who is participating or may participate in the hearing. In every hearing, certain attorneys in the office are designated to represent the bureau or bureaus whose action is the subject of the hearing. Other members of the office, including ordinarily the Chief Counsel, are designated to advise the Commissioner on a final decision in the matter. It is not compatible with these functions, nor would it be professionally responsible, for the attorneys in the office of the Chief Counsel also to advise other participants in a hearing, or for any attorney who may be called on to adivse the Commissioner to respond to inquiries from other participants in the hearing, for such participants may be urging views contrary to those of the bureau involved or to what may ultimately be the final conclusions of the Commissoner. Accordingly, members of the office of the Chief Counsel, other than the attorneys responsible for representing the bureau whose action is the subject of the hearing, will not answer questions about the hearing from any participant or potential participant.

(e) *Communication between participants and attorneys.* Participants in a hearing may communicate with the attorneys responsible for representing the bureau whose action is the subject of the hearing, in the same way that they may communicate with counsel for any other party in interest about the presentation of matters at the hearing. It would be inappropriate to bar discussion of such matters as stipulations of fact, joint presentation of witnesses, or possible settlement of hearing issues. Members of the public, including participants at hearings, are advised, however, that all such communications, including those by telephone, will be recorded in memoranda that can be filed with the hearing clerk.

Subpart D—Presiding Officer

§ 12.60 Presiding officer.

The presiding officer in a hearing will be the Commissioner, a member of the Commissioner's office to whom the responsibility for the matter involved has been delegated, or an administrative law judge qualified under 5 U.S.C. 3105.

§ 12.62 Commencement of functions.

The functions of the presiding officer begin upon designation and end upon the filing of the initial decision.

§ 12.70 Authority of presiding officer.

The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to—

(a) Specify and change the date, time, and place of oral hearings and conferences;

(b) Establish the procedures for use in developing evidentiary facts, including the procedures in § 12.92(b) and to rule on the need for oral testimony and cross-examination under § 12.87(b);

(c) Prepare statements of the areas of factual disagreement among the participants;

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing;

(e) Administer oaths and affirmations;

(f) Control the course of the hearing and the conduct of the participants;

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions;

(h) Rule on, admit, exclude, or limit evidence;

(i) Set the time for filing pleadings;

(j) Rule on motions and other procedural matters;

(k) Rule on motions for summary decision under § 12.93;

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex;

(m) Waive, suspend, or modify any rule in this subpart under § 10.19 if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law;

(n) Strike the participation of any person under § 12.45(e) or exclude any person from the hearing under § 12.90, or take other reasonable disciplinary action; and

(o) Take any action for the fair, expeditious, and orderly conduct of the hearing.

§ 12.75 Disqualification of presiding officer.

(a) A participant may request the presiding officer to disqualify himself/herself and withdraw from the proceeding. The ruling on any such request may be appealed in accordance with § 12.97(b).

(b) A presiding officer who is aware of grounds for disqualification shall withdraw from the proceeding.

§ 12.78 Unavailability of presiding officer.

(a) If the presiding officer is unable to act for any reason, the Commission-

er will assign the powers and duties to another presiding officer. The substitution will not affect the hearing, except as the new presiding officer may order.

(b) Any motion based on the substitution must be made within 10 days.

Subpart E—Hearing Procedures

§ 12.80 Filing and service of submissions.

(a) Submissions, including pleadings in a hearing, are to be filed with the hearing clerk under § 10.20 except that only two copies need be filed. To determine compliance with filing deadlines in a hearing, a submission is considered submitted on the date it is actually received by the hearing clerk.

(b) The person making a submission shall serve copies of it on the other participants. Submissions of documentary data and information are not required to be served on each participant, but any accompanying transmittal letter, pleading, summary, statement of position, certification under paragraph (d) of this section, or similar document must be served on each participant.

(c) Service is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) All submissions are to be accompanied by a certificate of service, or a statement that service is not required.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in § 12.105.

§ 12.82 Petition to participate in forma pauperis.

(a) A participant who believes that compliance with the filing and service requirements of this section constitutes an unreasonable financial burden may submit to the Commissioner a petition to participate in forma pauperis.

(b) The petition will be in the form specified in § 10.30 except that the heading will be "Request to Participate in Forma Pauperis, Docket No. ——." Filing and service requirements for the petition are described in paragraph (c) of this section, whether or not the petition is granted. The petition must demonstrate that either (i) the person is indigent and a strong public interest justifies participation, or (ii) the person's participation is in the public interest because it can be considered of primary benefit to the general public.

(c) The Commissioner may grant or deny the petition. If the petition is granted, the participant need file only one copy of each submission with the hearing clerk. The hearing clerk will make sufficient additional copies for the administrative record, and serve a copy on each other participant.

§ 12.83 Advisory opinions.

Before or during a hearing, a person may, under § 10.85, request the Commissioner for an advisory opinion on whether any regulation or order under consideration in the proceeding applies to a specific situation.

§ 12.85 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published under § 12.35, the director of the bureau responsible for the matters involved in the hearing shall submit the following to the hearing clerk:

(1) The relevant portions of the administrative record of the proceeding. Portions of the administrative record not relevant to the issues in the hearing are not part of the administrative record.

(2) All documents in the director's files containing factual information, whether favorable or unfavorable to the director's position, which relate to the issues involved in the hearing. "Files" means the principal files in the bureau in which documents relating to the issues in the hearing are ordinarily kept, e.g., the food additive master file and the food additive petition in the case of issues concerning a food additive, or the new drug application in the case of issues concerning a new drug. Internal memoranda reflecting the deliberative process, and attorney work product and material prepared specifically for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information relied upon.

(4) A narrative position statement on the factual issues in the notice of hearing and the type of supporting evidence the director intends to introduce.

(5) A signed statement that, to the director's best knowledge and belief, the submission complies with this section.

(b) Within 60 days of the publication of the notice of hearing or, if no participant will be prejudiced, within another period of time set by the presiding officer, each participant shall submit to the hearing clerk all data and information specified in paragraph (a) (2) through (5) of this section, and any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete. With respect to the data and information specified in paragraph (a)(2) of this section, participants shall exercise reasonable diligence in identifying documents in files comparable to those described in that paragraph.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known or available when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen.

(d) A participant's failure to comply substantially and in good faith with this section constitutes a waiver of the right to participate further in the hearing; failure of a party to comply constitutes a waiver of the right to a hearing.

(e) Participants may reference each other's submissions. To reduce duplicative submissions, participants are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 12.87 Purpose; oral and written testimony; burden of proof.

(a) The objective of a formal evidentiary hearing is the fair determination of relevant facts consistent with the right of all interested persons to participate and the public interest in promptly settling controversial matters affecting the public health and welfare.

(b) Accordingly, the evidence at a hearing is to be developed to the maximum extent through written submissions, including written direct testimony, which may be in narrative or in question-and-answer form.

(1) In a hearing, the issues may have general applicability and depend on general facts that do not concern particular action of a specific party, e.g., the safety or effectiveness of a class of drug products, the safety of a food or color additive, or a definition and standard of identity for a food; or the issues may have specific applicability to past action and depend upon particular facts concerning only that part, e.g., the applicability of a grandfather clause to a particular brand of a drug or the failure of a particular manufacturer to meet required manufacturing and processing specification or other general standards.

(i) If the proceeding involve general issues, direct testimony will be submitted in writing, except on a showing that written direct testimony is insufficient for a full and true disclosure of relevant facts and that the participant will be prejudiced if unable to present oral direct testimony. If the proceeding involves particular issues, each party may determine whether, and the

extent to which, each wished to present direct testimony orally or in writing.

(ii) Oral cross-examination of witnesses will be permitted if it appears that alternative means of developing the evidence are insufficient for a full and true disclosure of the facts and that the party requesting oral cross-examination will be prejudiced by denial of the request, or that oral cross-examination is the most effective and efficient means to clarify the matters at issue.

(2) Witnesses shall give testimony under oath.

(c) Except as provided in paragraph (d) of this section, in a hearing involving issuing, amending, or revoking a regulation or order, the originator of the proposal or petition or of any significant modification will be, within the meaning of 5 U.S.C. 556(d), the proponent of the regulation or order, and will have the burden of proof. A participant who proposes to substitute a new provision for a provision objected to has the burden of proof in relation to the new provision.

(d) At a hearing involving issuing, amending, or revoking a regulation or order relating to the safety or effectiveness of a drug, antibiotic, device, food additive, or color additive, the participant who is contending that the product is safe or effective or both and who is requesting approval or contesting withdrawal of approval has the burden of proof in establishing safety or effectiveness or both and thus the right to approval. The burden of proof remains on that participant in an amendment or revocation proceeding.

§ 12.89 Participation of nonparties.

(a) A nonparty participant may—

(1) Attend all conferences (including the prehearing conference), oral proceedings, and arguments;

(2) Submit written testimony and documentary evidence for inclusion in the record;

(3) File written objections, briefs, and other pleadings; and

(4) Present oral argument.

(b) A nonparty participant may not—

(1) Submit written interrogatories; and

(2) Conduct cross-examination.

(c) A person whose petition is the subject of the hearing has the same rights as a party.

(d) A nonparty participant will be permitted additional rights if the presiding officer concludes that the participant's interests would be adequately protected otherwise or that broader participation is required for a full and true disclosure of the facts, but the rights of a nonparty participant may not exceed the rights of a party.

§ 12.90 Conduct at oral hearings or conferences.

All participants in a hearing will conduct themselves with dignity and observe judicial standards of practice and ethics. They may not indulge in personal attacks, unseemly wrangling, or intemperate accusations or characterizations. Representatives of parties shall, to the extent possible, restrain clients from improprieties in connection with any proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing, constitute grounds for immediate exclusion from the proceeding by the presiding officer.

§ 12.91 Time and place of prehearing conference.

A prehearing conference will commence at the date, time, and place announced in the notice of hearing, or in a later notice, or as specified by the presiding officer in a notice modifying a prior notice. At that conference the presiding officer will establish the methods and procedures to be used in developing the evidence, determine reasonable time periods for the conduct of the hearing, and designate the times and places for the production of witnesses for direct and cross-examination if leave to conduct oral examination is granted on any issue, as far as practicable at that time.

§ 12.92 Prehearing conference procedure.

(a) Participants in a hearing are to appear at the prehearing conference prepared to discuss and resolve all matters specified in paragraph (b) of this section.

(1) To expedite the hearing, participants are encouraged to prepare in advance for the prehearing conference. Participants should cooperate with each other, and request information and begin preparation of testimony at the earliest possible time. Failure of a participant to appear at the prehearing conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the participant regarding such matters as objections to the agreements reached, actions taken, or rulings issued by the presiding officer and may be grounds for striking the participation under § 12.45.

(2) Participants shall bring to the prehearing conference the following specific information, which will be filed with the hearing clerk under § 12.80:

(i) Any additional information to supplement the submission filed under § 12.85, which may be filed if approved under § 12.85(c).

(ii) A list of all witnesses whose testimony will be offered, orally or in writing, at the hearing, with a full curriculum vitae for each. Additional witnesses may later be identified, with the approval of the presiding officer, on a showing that the witness was not reasonably available at the time of the prehearing conference or the relevance of the witness's views could not reasonably have been foreseen at that time.

(iii) All prior written statements, including articles and any written statement signed or adopted, or a recording or transcription of an oral statement made, by persons identified as witnesses if—

(*a*) The statement is available without making request of the witness or any other person;

(*b*) The statement relates to the subject matter of the witness's testimony; and

(*c*) The statement either was made before the time the person agreed to become a witness or has been made publicly available by the person.

(b) The presiding officer will conduct a prehearing conference for the following purposes:

(1) To determine the areas of factual disagreement to be considered at the hearing. The presiding officer may hold conferences off the record in an effort to reach agreement on disputed factual questions.

(2) To identify the most appropriate techniques for developing evidence on issues in controversy and the manner and sequence in which they will be used, including, where oral examination is to be conducted, the sequence in which witnesses will be produced for, and the time and place of, oral examination. The presiding officer may consider—

(i) Submission of narrative statements of position on factual issues in controversy;

(ii) Submission of evidence or identification of previously submitted evidence to support such statements, such as affidavits, verified statements of fact, data, studies, and reports;

(iii) Exchange of written interrogatories directed to particular witnesses;

(iv) Written requests for the production of additional documentation, data, or other relevant information;

(v) Submission of written questions to be asked by the presiding officer of a specific witness; and

(vi) Identification of facts for which oral examination and/or cross-examination is appropriate.

(3) To group participants with substantially like interests for presenting evidence, making motions and objections, including motions for summary

decision, filing briefs, and presenting oral argument.

(4) To hear and rule on objections to admitting into evidence information submitted under § 12.85.

(5) To obtain stipulations and admissions of facts.

(6) To take other action that may expedite the hearing.

(c) The presiding officer shall issue, orally or in writing, a prehearing order reciting the actions taken at the prehearing conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 12.93 Summary decisions.

(a) After the hearing commences, a participant may move, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other participant may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause, serve opposing affidavits or countermove for summary decision. The presiding officer may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine issue as to any material fact and that a participant is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible inevidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a participant opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must set forth specific facts showing that there is a genuine issue of fact for the hearing.

(d) Should it appear from the affidavits of a participant opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, order a continuance to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If on motion under this section a summary decision is not rendered upon the whole case or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A participant may obtain interlocutory review by the Commissioner of a summary decision of the presiding officer.

§ 12.94 Receipt of evidence.

(a) A hearing consists of the development of evidence and the resolution of factual issues as set forth in this subpart and in the prehearing order.

(b) All orders, transcripts, written statements of position, written direct testimony, writtern interrogatories and responses, and any other written material submitted in the proceeding is a part of the administrative record of the hearing, and will be promptly placed on public display in the office of the hearing clerk, except as provided in § 12.105.

(c) Written evidence, identified as such, is admissible unles a participant objects and the presiding officer excludes it on objection of a participant or on the presiding officer's own initiative.

(1) The presiding officer may exclude written evidence as inadmissible only if—

(i) The evidence is irrevelant, immaterial, unreliable, or repetitive;

(ii) Exclusion of part or all of the written evidence of a participant is necessary to enforce the requirements of this subpart; or

(iii) The evidence was not submitted as required by § 12.85.

(2) Items of written evidence are to be submitted as separate documents, sequentially numbered, except that a voluminous document may be submitted in the form of a cross-reference to the documents filed under § 12.85.

(3) Written evidence excluded by the presiding officer as inadmissible remains a part of the administrative record, as an offer of proof, for judicial review.

(d) Testimony, whether on direct or on cross-examination, is admissible as evidence unless a participant objects and the presiding officer excludes it.

(1) The presiding officer may exclude oral evidence as inadmissible only if—

(i) The evidence is irrelevent, immaterial, unreliable, or repetitive; or

(ii) Exclusion of part or all of the evidence is necessary to enforce the requirements of this part.

(2) If oral evidence is excluded as inadmissible, the participant may take written exception to the ruling in a brief to the Commissioner, without taking oral exception at the hearing. Upon review, the Commissioner may reopen the hearing to permit the evidence to be admitted if the Commissioner determines that its exclusion was erroneous and prejudicial.

(e) The presiding officer may schedule conferences as needed to monitor the progress of the hearing, narrow and simplify the issues, and consider and rule on motions, requests, and other matters concerning the development of the evidence.

(f) The presiding officer will conduct such proceedings as are necessary for the taking of oral testimony, for the oral examination of witnesses by the presiding officer on the basis of written questions previously submitted by the parties, and for the conduct of cross-examination of witnesses by the parties. The presiding officer shall exclude irrelevant or repetitious written questions and limit oral cross-examination to prevent irrelevant or repetitious examination.

(g) The presiding officer shall order the proceedings closed for the taking of oral testimony relating to matters specified in § 10.20(j)(2)(i) (*a*) and (*b*). Such closed proceedings will be conducted in accordance with § 10.20(j)(3). Participation in closed proceedings will be limited to the witness, the witness's counsel, and Federal Government executive branch employees and special Government employees. Closed proceedings will be permitted only for, and will be limited to, oral testimony directly relating to matters specified in § 10.20(j)(3).

§ 12.95 Official notice.

(a) Official notice may be taken of such matters as might be judicially noticed by the courts of the United States or of any other matter peculiarly within the general knowledge of FDA as an expert agency.

(b) If official notice is taken of a material fact not appearing in the evidence of record, a participant, on timely request, will be afforded an opportunity to show the contrary.

§ 12.96 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs are to be filed ordinarily within 45 days of the close of the hearing. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

(c) Briefs and oral argument are to refrain from disclosing specific details of written and oral testimony and documents relating to matters specified in § 10.20(j)(2)(i) (*a*) and (*b*), except as specifically authorized in a protective order issued under § 10.20(j)(3).

§ 12.97 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 12.35(b),

12.45(e), 12.93(f), and 12.99(d), when an interlocutory appeal is specifically authorized by this subpart, rulings of the presiding officer may not be appealed to the Commissioner before the Commissioner's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Commissioner if the presiding officer certifies on the record or in writing that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any participant, or substantial harm to the public interest.

(c) When an interlocutory appeal is made to the Commissioner, a participant may file a brief with the Commissioner only if specifically authorized by the presiding officer or the Commissioner, and if such authorization is granted, within the period the Commissioner directs. If no briefs are authorized, the appeal will be presented as an oral argument to the Commissioner. If briefs are authorized, oral argument will be heard only at the discretion of the Commissioner.

§ 12.98 Official transcript.

(a) The presiding officer will arrange for a verbatim stenographic transcript of oral testimony and for necessary copies of the transcript.

(b) One copy of the transcript will be placed on public display in the office of the hearing clerk upon receipt.

(c) Except as provided in § 12.105, copies of the transcript may be obtained by application to the official reporter and payment of costs thereof or under part 20.

(d) Witnesses, participants, and counsel have 30 days from the close of the hearing to propose corrections in the transcript of oral testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

§ 12.99 Motions.

(a) A motion on any matter relating to the proceeding is to be filed under § 12.80, and must include a draft order, except one made in the course of an oral hearing before the presiding officer.

(b) A response may be filed within 10 days of receipt of a motion by the hearing clerk. The time may be shortened or extended by the presiding officer for good cause shown.

(c) The moving party has no right to reply, except as permitted by the presiding officer.

(d) The presiding officer shall rule upon the motion and may certify that ruling to the Commissioner for interlocutory review.

Subpart F—Administrative Record

§ 12.100 Administrative record of a hearing.

(a) The record of a hearing consists of—

(1) The order or regulation or notice of opportunity for hearing that gave rise to the hearing;

(2) All objections and requests for hearing filed by the hearing clerk under §§ 12.20 through 12.22;

(3) The notice of hearing published under § 12.35;

(4) All notices of participation filed under § 12.45;

(5) All FEDERAL REGISTER notices pertinent to the proceeding;

(6) All submissions filed under § 12.82, e.g., the submissions required by § 12.85, all other documentary evidence and written testimony, pleadings, statements of position, briefs, and other similar documents;

(7) The transcript, written order, and all other documents relating to the prehearing conference, prepared under § 12.92;

(8) All documents relating to any motion for summary decision under § 12,93;

(9) All documents of which official notice is taken under § 12.95;

(10) All pleadings filed under § 12.96;

(11) All documents relating to any interlocutory appeal under § 12.97;

(12) All transcripts prepared under § 12.98; and

(13) Any other document relating to the hearing and filed with the hearing clerk by the presiding officer or any participant.

(b) The record of the administrative proceeding is closed—

(1) With respect to the taking of evidence, when specified by the presiding officer; and

(2) With respect to pleadings, at the time specified in § 12.96(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

§ 12.105 Examination of record.

Documents in the record will be publicly available in accordance with § 10.20(j). Documents available for examination or copying will be placed on public display in the office of the hearing clerk promptly upon receipt in that office.

Subpart G—Initial and Final Decisions

§ 12.120 Initial Decision.

(a) The presiding officer shall prepare and file an initial decision as soon as possible after the filing of briefs and oral argument.

(b) The initial decision must contain—

(1) Findings of fact based upon relevant, material, and reliable evidence of record;

(2) Conclusions of law;

(3) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any participant;

(4) Citations to the record supporting the findings and conclusions;

(5) An appropriate regulation or order supported by substantial evidence of record and based upon the findings of fact and conclusions of law; and

(6) An effective date for the regulation or order.

(c) The initial decision must refrain from disclosing specific details of matters specified in § 10.20(j)(2)(i) (*a*) and (*b*), except as specifically authorized in a protective order issued pursuant to § 10.20(j)(3).

(d) The initial decision is to be filed with the hearing clerk and served upon all participants.

(e) The initial decision becomes the final decision of the Commissioner by operation of law unless a participant files exceptions with the hearing clerk under § 12.125(a) or the Commissioner files a notice of review under § 12.125(f).

(f) Notice that an initial decision has become the decision of the Commissioner without appeal to or review by the Commissioner wil be published in the FEDERAL REGISTER, or the Commissioner may publish the decision when it is of widespread interest.

§ 12.125 Appeal from or review of initial decision.

(a) A participant may appeal an initial decision to the Commissioner by filing exceptions with the hearing clerk, and serving them on the other participants, within the period specified in the initial decision. The period may not exceed 30 days, unless extended by the Commissioner under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law in the initial decision, and provide supporting citations to the record. Oral argument before the Commissioner may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the period (including any extensions) for filing exceptions, unless extended by the Commissioner under paragraph (d) of this section.

(d) The Commissioner may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Commissioner decides to hear oral argument, the participants

will be informed of the date, time, and place, the amount of time allotted to each participant, and the issue to be addressed.

(f) Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Commissioner may file with the hearing clerk, and serve on the participants, a notice of the Commissioner's determination to review the initial decision. The Commissioner may invite the participants to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 12.130 Decision by Commissioner on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Commissioner has all the powers given to make the initial decision. On the Commission's own initiative or on motion, the Commissioner may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal is the same as the scope of the issues at the public hearing unless the Commissioner specifies otherwise.

(c) As soon as possible after the filing of briefs and any oral argment, the Commissioner will issue a final decision in the proceeding, which meets the requirements established in § 12.120 (b) and (c).

(d) The Commissioner may adopt the initial decision as the final decision.

(e) Notice of the Commissioner's decision will be published in the FEDERAL REGISTER, or the Commissioner may publish the decision when it is of widespread interest.

§ 12.139 Reconsideration and stay of action.

Following notice or publication of the final decision, a participant may petition the Commissioner for reconsideration of any part or all of the decision under § 10.33 or may petition for a stay of the decision under § 10.35.

Subpart H—Judicial Review

§ 12.140 Review by the courts.

(a) The Commissioner's final decision constitutes final agency action from which a participant may petition for judicial review under the statutes governing the matter involved. Before requesting an order from a court for a stay of action pending review, a participant shall first submit a petition for a stay of action under § 10.35.

(b) Under 28 U.S.C. 2112(a), FDA will request consolidation of all petitions related to a particular matter.

§ 12.159 Copies of petitions for judicial review.

The Chief Counsel for FDA has been designated by the Secretary as the officer on whom copies of petitions of judicial review are to be served. This officer is responible for filing the record on which the final decision is based. The record of the proceeding is certified by the Commissioner.

PART 13—PUBLIC HEARING BEFORE A PUBLIC BOARD OF INQUIRY

Subpart A—General Provisions

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13.1 Scope.
13.5 Notice of a hearing before a Board.
13.10 Members of a Board.
13.15 Separation of functions; ex parte communications; administrative support.

Subpart B—Hearing Procedures

13.20 Submissions to a Board.
13.25 Disclosure of date and information by the participants.
13.30 Proceedings of a Board.

Subpart C—Records of Hearing Before a Board

13.40 Administrative record of a Board.
13.45 Examination of administrative record.
13.50 Record for administrative decision.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257 a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)), sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-609 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401-411 notes); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 13.1 Scope.

The procedures in this part apply when—

(a) The Commissioner concludes, as a matter of discretion, that it is in the public interest to hold a public hearing before a Public Board of Inquiry ("Board") with respect to any matter before FDA;

(b) Under specific sections of this chapter a matter before FDA is subject to a hearing before a Board; or

(c) Under § 12.32, a person who has a right to an opportunity for a formal evidentiary public hearing waives that opportunity and requests that a Board act as an administrative law tribunal concerning the matters involved, and the Commissioner decides to accept this request.

§ 13.5 Notice of a hearing before a Board.

If the Commissioner determines that a Board should be established to conduct a hearing on any matter, a notice of hearing will be published in the FEDERAL REGISTER setting forth the following information:

(a) If the hearing is under § 13.1 (a) or (b), all applicable information described in § 12.32(e).

(1) Any written document that is to be the subject matter of the hearing will be published as a part of the notice, or the notice will refer to it if the document has already been published in the FEDERAL REGISTER or clerk or an agency employee designated in the notice.

(2) For purposes of a hearing under § 13.1 (a) or (b), all participants who file a notice of participation under § 12.32(e)(6)(ii) are deemed to be parties and entitled to participate in selection of the Board under § 13.15(b).

(b) If the hearing is in lieu of a formal evidentiary hearing, as provided in § 13.1(c), all of the information described in § 12.32(e).

§ 13.10 Members of a Board.

(a) All members of a Board are to have medical, technical, scientific, or other qualifications relevant to the issues to be considered, are subject to the conflict of interest rules applicable to special Government employees, and are to be free from bias or prejudice concerning the issues involved. A member of a Board may be a full-time or part-time Federal Government employee or may serve on an FDA advisory committee but, except with the agreement of all parties, may not currently be a full-time or part-time employee of FDA or otherwise act as a special Government employee of FDA.

(b) Within 30 days of publication of the notice of hearing, the director of the bureau of FDA responsible for a matter before a Board, the other parties to the proceeding, and any person whose petition was granted and is the subject of the hearing, shall each submit to the hearing clerk the names and full curricula vitae of five nominee for members of the Board. Nominations are to state that the nominee is aware of the nomination, is interested in becoming a member of the Board, and appears to have no conflict of interest.

(1) Any two or more persons entitled to nominate members may agree upon a joint list of five qualified nominees.

(2) The lists of nominees must be submitted to the persons entitled to submit a list of nominees under this paragraph but not to all participants. Within 10 days of receipt of the lists of nominees, such persons may submit comments to the hearing clerk on whether the nominees of the other persons meet the criterial established

in paragraph (a) of this section. A person submitting comments to the hearing clerk shall submit them to all persons entitled to submit a list of nominees.

(3) The lists of nominees and comments on them are to be held in confidence by the hearing clerk as part of the administrative record of the proceeding and are not to be made available for public disclosure, and all persons who submit or receive them shall similarly hold them in confidence. This portion of the administrative record remains confidential but is available for judicial review in the event that it becomes relevant to any issue before a court.

(c) After reviewing the lists of nominees and any comments, the Commissioner will choose three qualified persons as members of a Board. One member will be from the lists of nominees submitted by the director of the bureau and by any person whose petition was granted and is the subject of the hearing. The second will be from the lists of nominees submitted by the other parties. The Commissioner may choose the third member from any source. That member is the Chairman of the Board.

(1) If the Commissioner is unable to find a qualified person with no conflict of interest from among a list of nominees or if additional information is needed, the Commissioner will request the submission of the required additional nominees or information.

(2) If a person fails to submit a list of nominees as required by paragraph (b) of this section, the Commissioner may choose a qualified member without further consultation with that person.

(3) The Commissioner will announce the members of a board by filing a memorandum in the record of the proceeding and sending a copy to all participants.

(d) Instead of using the selection method in paragraphs (b) and (c) of this section, the director of the bureau, the other parties to the proceeding, and any person whose petition was granted and is the subject of the hearing, may, with the approval of the Commissioner, agree that a standing advisory committee listed in § 14.80 constitutes the Board for a particular proceeding, or that another procedure is to be used for selection of the members of the Board, or that the Board consists of a larger number of members.

(e) The members of a Board serve as consultants to the Commissioner and are special Government empoyees or Government employees. A Board functions as an administrative law tribunal in the proceeding and is not an advisory committee subject to the requirements of the Federal Advisory Committee Act or part 14.

(f) The Chairman of a Board has the authority of a presiding officer set out in § 12.70.

§ 13.15 Separation of functions; ex parte communications; administrative support.

(a) The proceedings of a Board are subject to the provisions of § 10.55 relating to separation of functions and ex parte communications. Representatives of the participants in any proceeding before a Board, including any members of the office of the Chief Counsel of FDA assigned to advise the bureau responsible for the matter, may have no contact with the members of the Board, except as participants in the proceeding, and may not participate in the deliberations of the Board.

(b) Administrative support for a Board is to be provided only by the office of the Commissioner and the office of the Chief Counsel for FDA.

Subpart B—Hearing Procedures

§ 13.20 Submissions to a Board.

(a) Submissions are to be filed with the hearing clerk under § 10.20.

(b) The person making a submission shall serve copies of it on each participant in the proceeding, except as provided in §§ 13.10(b)(2) and 13.45. Submissions of documentary data and information need not be sent to each participant, but any accompanying transmittal letter, summary, statement of position, certification under paragraph (d) of this section, or similar document must be.

(c) A submission must be mailed to the address shown in the notice of appearance or personally delivered.

(d) All submissions are to be accompanied by a certificate of service, or a statement that service is not required.

(e) No written submission or other portion of the administrative record may be held in confidence, except as provided in §§ 13.10(b)(2) and 13.45.

(f) A participant who believes that compliance with the requirements of this section constitutes an unreasonable financial burden may submit to the Commissioner a petition to participate in forma pauperis in the form and manner specified in § 12.82.

§ 13.25 Disclosure of data and information by the participants.

(a) Before the notice of hearing is published under § 13.5, the director of the bureau responsible for the matters involved in the hearing must submit to the hearing clerk—

(1) The relevant portions of the existing administrative record of the proceeding. Portions of the existing administrative record not relevant to the issues in the hearing are not part of the administrative record;

(2) A list of all persons whose views will be presented orally or in writing at the hearing;

(3) All documents in the director's files containing factual information, whether favorable or unfavorable to the director's position, which relate to the issues involved in the hearing. "Files" means the principal files in the bureau in which documents relating to the issues in the hearing are ordinarily kept, e.g., the food additive master file and the food additive petition in the case of issues concerning a food additive, or the new drug application in the case of issues concerning a new drug. Internal memoranda reflecting the deliberative process, and attorney work product and material prepared specifically for use in connection with the hearing, are not required to be submitted.

(4) All other documentary information relied on.

(5) A signed statement that, to the best of the director's knowledge and belief, the submission complies with this section.

(b) Within the time prescribed in the notice of hearing published under § 13.5, each participant shall submit to the hearing clerk all information specified in paragraph (a) (2) through (5) of this section and any objections under the administrative record filed under paragraph (a) (1) of this section is incomplete. With respect to the information specified in paragraph (a) (3) of this section, participants are to exercise reasonable diligence in identifying documents in files comparable to those described in that paragraph.

(c) The submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the Board, on a showing that the views of the persons or the material contained in the supplement was not known or reasonably available when the initial submission was made or that the relevance of the views of the persons or the material contained in the supplement could not reasonably have been foreseen.

(d) The failure to comply substantially and in good faith with this section in the case of a participant constitutes a waiver of the right to participate further in the hearing and in the case of a party constitutes a waiver of the right to a hearing.

(e) The Chairman rules on questions relating to this section. Any participant dissatisfied with a ruling may petition the Commissioner for interlocutory review.

§ 13.30 Proceedings of a Board.

(a) The purpose of a Board is to review medical, scientific, and techni-

cal issues fairly and expeditiously. The proceedings of a Board are conducted as a scientific inquiry rather than a legal trial.

(b) A board may not hold its first hearing until after all participants have submitted the information required by § 13.25.

(c) The Chairman calls the first hearing of the Board. Notice of the time and location of the first hearing is to be published at least 15 days in advance and the hearing shall be open to the public. All participants will have an opportunity at the first hearing to make an oral presentation of the information and views which in their opinion are pertinent to resolution of the issues being considered by a Board. A participant's presentation may be made by more than one person. The Chairman determines the order of the presentation. Participants may not interrupt a presentation, but members of the Board may ask questions. At the conclusion of a presentation, each of the other participants may briefly comment on the presentation and may request that the Board conduct further questioning on specified matters. Members of the Board may then ask further questions. Any other participant may be permitted to ask questions if the Chairman determines that it will help resolve the issues.

(d) The hearing is informal and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut all such information and views. No participant may interrupt the presentation of another participant for any reason.

(e) Within the time specified by the Board after its first hearing, participants may submit written rebuttal information and views in accordance with § 13.20. The Chairman will then schedule a second hearing, if requested and justified by a participant. A second hearing, and any subsequent hearing, will be called only if the Chairman concludes that it is needed to fully and fairly present information that cannot otherwise adequately be considered and to properly resolve the issues. Notice of the time and location of any later hearing is to be published at least 15 days in advance. The hearing is open to the public.

(f) A Board may consult with any person who it concludes may have information or views relevant to the issues.

(1) The consultation may occur only at an announced hearing of a Board. Participants have the right to suggest or, with the permission of the Chairman, ask questions of the consultant and present rebuttal information and views, as provided in paragraphs (c) and (d) of this section except that written statements may be submitted to the Board with the consent of all participants.

(2) A participant may submit a request that the Board consult with a specific person who may have information or views relevant to the issues. The request will state why the person should be consulted and why the person's views cannot be furnished to the Board by means other than having FDA arrange for the person's appearance. The Board may, in its discretion, grant or deny the request.

(g) All hearings are to be transcribed. All hearings are open to the public, except that a hearing under § 10.20(j)(3) is closed to all persons except those persons making and participating in the presentation and Federal Government executive branch employees and special Government employees. At least a majority of Board members are to be present at every hearing. The executive sessions of a Board, during which a Board deliberates on the issues, are to be closed and are not transcribed. All members of the Board shall vote on the report of the Board.

(h) All legal questions are to be referred to the Chief counsel for FDA for resolution. The Chief Counsel's advice on any matter of procedure or legal authority is to be transmitted in writing and made a part of the record or presented in open session and transcribed.

(i) At the conclusion of all public hearings the Board will announce that the record is closed to receiving information. The Board will provide an opportunity for participants to submit written statements of their positions, with proposed findings and conclusions, and may, in its discretion, provide an opportunity for participants to summarize their positions orally.

(j) The Board will prepare a decision on all issues. The decision is to include specific findings and references supporting and explaining the Board's conclusions, and a detailed statement of the reasoning on which the conclusions are based. Any member of the Board may file a separate report stating additional or dissenting views.

Subpart C—Records of a Hearing Before a Board

§ 13.40 Administrative record of a Board.

(a) The administrative record of a hearing before a Board consists of the following:

(1) All relevant FEDERAL REGISTER notices.

(2) All written submissions under § 13.20.

(3) The transcripts of all hearings of the Board.

(4) The initial decision of the Board.

(b) The record of the administrative proceeding is closed—

(1) Relevant to receiving information and data, at the time specified in § 13.30(i); and

(2) Relevant to pleadings, at the time specified in § 13.30(i) for filing a written statement of position with proposed findings and conclusions.

(c) The Board may, in its discretion, reopen the record to receive further evidence at any time before filing an initial decision.

§ 13.45 Examination of administrative record.

(a) The availability for public examination and copying of each document which is a part of the administrative record of the hearing is governed by §10.20(j). Each document available for public examination or copying is placed on public display in the office of the hearing clerk promptly upon receipt in that office.

(b) Lists of nominees and comments submitted on them under § 13.10(b)(3) are not subject to disclosure unless they become an issue in a court proceeding.

§ 13.50 Record for administrative decision

The administrative record of the hearing specified in § 13.40(a) constitutes the exclusive record for decision.

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

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14.174 Advice and recommendations in writing.

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Subpart A—General Provisions

§ 14.1 Scope.

(a) This part governs the procedures when any of the following applies:

(1) The Commissioner concludes, as a matter of discretion, that it is in the public interest for a standing or ad hoc policy or technical public advisory committee ("advisory committee" or "committee") to hold a public hearing and to review and make recommendations on any matter before FDA and for interested persons to present information and views at an oral public hearing before the advisory committee.

(2) Under specific provisions in the act or other sections of this chapter, a matter is subject to a hearing before an advisory committee. The specific provisions are—

(i) Section 14.120 on review of a performance standard for an electronic product by the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC);

(ii) Section 14.140 on review of the safety of color additives;

(iii) Section 14.160 on review of the safety and effectiveness of human prescription drugs;

(iv) Section 330.10 on review of the safety and effectiveness of over-the-counter drugs;

(v) Section 601.25 on review of the safety and effectiveness of biological drugs;

(vi) Part 860, on classification of devices;

(vii) Section 514(g)(5) of the act on establishment, amendment, or revocation of a device performance standard;

(viii) Section 515 of the act on review of device premarket approval applications and product development protocols; and

(ix) Section 520(l) of the act on review of device good manufacturing practice regulations.

(3) A person who has a right to an opportunity for a formal evidentiary public hearing under part 12 waives that opportunity and instead under § 12.32 requests a hearing before an advisory committee, and the Commissioner, as a matter of discretion, accepts the request.

(b) In determining whether a group is a "public advisory committee" as defined in § 10.3(a)(14) and thus subject to this part and to the Federal Advisory Committee Act, the following guidelines will be used:

(1) An advisory committee may be a standing advisory committee or an ad hoc advisory committee. All standing advisory committees are listed in § 14.100.

(2) An advisory committee may be a policy advisory committee or a technical advisory committee. A policy advisory committee advises on broad and general matters. A technical advisory committee advises on specific technical or scientific issues, which may relate to regulatory decisions before FDA.

(3) An advisory committee includes any of its subgroups when the subgroup is working on behalf of the committee. Section 14.40(d) describes when a subgroup will be established as an advisory committee separate from the parent committee.

(4) A committee composed entirely of full-time Federal Government employees is not an advisory committee.

(5) An advisory committee ordinarily has a fixed membership, a defined purpose of providing advice to the agency on a particular subject, regular or periodic meetings, and an organizational structure, for example, a chairman and staff, and serves as a source of independent expertise and advice rather than as a representative of or advocate for any particular interest. The following groups are not advisory committees.

(i) A group of persons convened on an ad hoc basis to discuss a matter of current interest to FDA, but which has no continuing function or organization and does not involve substantial special preparation.

(ii) A group of two or more FDA consultants meeting with the agency on an ad hoc basis.

(iii) A group of experts who are employed by a private company or a trade association which has been requested by FDA to provide its views on a regulatory matter pending before FDA.

(iv) A consulting firm hired by FDA to provide advice regarding a matter.

(6) An advisory committee that is utilized by FDA is subject to this subpart even though it was not established by FDA. In general, a committee is "utilized" when FDA requests advice or recommendations from the committee on a specific matter in order to obtain an independent review and consideration of the matter, and not when FDA is merely seeking the comments of all interested persons or of persons who have a specific interest in the matter.

(i) A committee formed by an independent scientific or technical organization is utilized if FDA requests advice of that committee rather than of the parent organization, or if the circumstances show that the advice given is that of the committee and not of the parent organization. A committee formed by an independent scientific or technical organization is not utilized if FDA requests advice of the or-

ganization rather than of a committee and if the recommendations of any committee formed in response to the request are subject to substantial independent policy and factual review by the governing body of the parent organization.

(ii) A committee is not utilized by FDA if it provides only information, as contrasted with advice or opinions or recommendations.

(iii) FDA is charged with seeking out the views of all segments of the public on enforcement of the laws administered by the Commissioner. The fact that a group of individuals or a committee meets regularly with FDA, for example, a monthly meeting with comsumer representatives, does not make that group or committee an advisory committee. Thus, this subpart does not apply to routine meetings, discussions, and other dealings, including exchanges of views, between FDA and any committee representing or advocating the particular interests of consumers, industry, professional organizations, or others.

(7) The inclusion of one or two FDA consultants who are special Government employees on an internal FDA committee does not make that committee an advisory committee.

(8) A Public Board of Inquiry established under part 13, or other similar group convened by agreement between the parties to a regulatory proceeding pending before FDA to review and prepare an initial decision on the issues in lieu of a formal evidentiary public hearing, is acting as an administrative law tribunal and is not an advisory committee.

(9) An open public conference or meeting conducted under § 10.65(b) is not an advisory committee meeting.

(10) An FDA committee that primarily has operational responsibility rather than that of providing advice and recommendations is not an advisory committee, for example, the Research Involving Human Subjects Committee (RIHSC).

(c) This part applies only when a committee convenes to conduct committee business. Site visits, social gatherings, informal discussions by telephone or during meals or while traveling or at other professional functions, or other similar activities do not constitute a meeting.

(d) An advisory committee that is utilized but not established by FDA is subject to this part only to the extent of such utilization, and not concerning any other activities of such committee.

(e) Any conference or meeting between an employee of FDA and a committee or group which is not an advisory committee shall be subject to § 10.65 or other provisions specifically applicable to the committee or group, for example, part 13 for a Public Board of Inquiry.

(f) This part applies to all FDA advisory committees, except to the extent that specific statutes require otherwise for a particular committee, for example, TEPRSSC, the Board of Tea Experts, and advisory committees established under the Medical Device Amendments of 1976.

§ 14.5 Purpose of proceedings before an advisory committee.

(a) An advisory committee is utilized to conduct public hearings on matters of importance that come before FDA, to review the issues involved, and to provide advice and recommendations to the Commissioner.

(b) The Commissioner has sole discretion concerning action to be taken and policy to be expressed on any matter considered by an advisory committee.

§ 14.7 Administrative remedies.

A person who alleges noncompliance by the Commissioner or an advisory committee with any provision of this part or the Federal Advisory Committee Act may pursue the following administrative remedies:

(a) If the person objects to any action, including a failure to act, other than denial of access to an advisory committee document, the person shall submit a petition in the form and in accordance with the requirements of § 10.30. The provisions of § 10.45 relating to exhaustion of administrative remedies are applicable.

(1) If the person objects to past action, the person shall submit the petition within 30 days after the action objected to. If the Commissioner determines that there was noncompliance with any provision of this subpart or of the Federal Advisory Committee Act, the Commissioner will grant any appropriate relief and take appropriate steps to prevent its future recurrence.

(2) If the person objects to proposed future action, the Commissioner will expedite the review of the petition and make a reasonable effort to render a decision before the action concerned in the petition.

(3) If the person objects to action that is imminent or occurring and which could not reasonably have been anticipated, e.g., the closing of a portion of a meeting which is made known for the first time on the day of the meeting, the matter may be handled by an oral petition in lieu of a written petition.

(b) If the person objects to a denial of access to an advisory committee document, administrative review is in accordance with the procedures established by the Department of Health, Education, and Welfare under 45 CFR 5.82.

§ 14.10 Applicability to Congress.

This part applies to Congress, individual Members of Congress, and other employees or representatives of Congress in the same way that they apply to any other member of the public, except that disclosure of advisory committee records to Congress is governed by § 20.87.

§ 14.15 Committees working under a contract with FDA.

(a) FDA may enter into contracts with independent scientific or technical organizations to obtain advice and recommendations on particular matters, and these organizations may in turn undertake such work throught existing or new committees. Whether a particular committee working under such a contract is an advisory committee subject to the Federal Advisory Committee Act and this subpart depends upon application of the criteria and principles in § 14.1(b).

(b) The following minimum standards apply to any committee of an independent scientific or technical organization which is working under a contract initially executed with FDA after July 1, 1975, but which is determined not to be an advisory committee:

(1) The committee shall give public notice of its meetings and agenda, and provide interested persons an opportunity to submit relevant information and views in writing at any time, and orally at specified times. The notice may be published in the FEDERAL REGISTER or disseminated by other reasonable means. It is in any event to be filed with the hearing clerk not less than 15 days before the meeting. The time for oral presentations and the extent to which the committee meets in open session other than for such oral presentations is in the discretion of the committee.

(2) Minutes of open sessions are to be maintained, with all written submissions attached which were made to the committee in open session. After approval, the minutes are to be forwarded to the hearing clerk and placed on public display. The extent to which the committee maintains minutes of closed sessions is in the discretion of the committee.

(3) In selecting the members of the committee, the organization involved is to apply the principles relating to conflicts of interest that FDA uses in establishing a public advisory committee. Those principles are set out or cross-referenced in this part and in part 19. Upon request, FDA will assist or provide guidance to any organization in meeting this requirement.

Subpart B—Meeting Procedures

§ 14.20 Notice of hearing before an advisory committee.

(a) Before the first of each month, and at least 15 days in advance of a meeting, the Commissioner will publish a notice in the FEDERAL REGISTER of all advisory committee meetings to be held during the month. Any advisory committee meetings for that month called after the publication of the general monthly notice are to be announced in the FEDERAL REGISTER on an individual basis at least 15 days in advance. The Commissioner may authorize an exception to these notice requirements in an emergency or for other reasons requiring an immediate meeting of an advisory committee, in which case public notice will be given at the earliest time and in the most accessible form feasible including, whenever possible, publication in the FEDERAL REGISTER.

(b) The FEDERAL REGISTER notice will include—

(1) The name of the committee;

(2) The date, time, and place, of the meeting;

(3) The general function of the committee;

(4) A list of all agenda items, showing whether each will be discussed in an open or closed portion of the meeting;

(5) If any portion of the meeting is closed, a statement of the time of the open and closed portions;

(6) The nature of the subjects to be discussed during, and the reasons for closing, any closed portion of the meeting;

(7) The time set aside for oral statements and other public participation;

(8) The name, address, and telephone number, of the advisory committee executive secretary and any other agency employee designated as responsible for the administrative support for the advisory committee;

(9) A statement that written submissions may be made to the advisory committee through the executive secretary at any time, unless a cutoff date has been established under § 14.35(c)(2); and

(10) When a notice is published in the FEDERAL REGISTER less than 15 days before a meeting, an explanation for the lateness of the notice.

(c) If a public hearing before an advisory committee is used in lieu of a formal evidentiary public hearing under § 14.1(a)(3), an initial notice of hearing is to be published separately in the FEDERAL REGISTER containing all the information described in § 12.32(e). This procedure may be used for any other hearing before an advisory committee when the Commissioner concludes, as a matter of discretion, that it would be informative to the public.

(d) A list of advisory committee meetings will be distributed to the press by the Associate Commissioner for Public Affairs.

(e) All advisory committee meetings are to be included on the public calendar described in § 10.100(a).

§ 14.22 Meetings of an advisory committee.

(a) No advisory committee may conduct a meeting except at the call or with the advance approval of, and with an agenda approved by, the designated Federal employee or alternate. No meeting may be held in the absence of the designated Federal employee.

(1) If any matter is added to the agenda after its publication in the FEDERAL REGISTER under § 14.5(b)(4), an attempt is to be made to inform persons known to be interested in the matter, and the change is to be announced at the beginning of the open portion of the meeting.

(2) The advisory committee meeting is to be conducted in accordance with the approved final agenda insofar as practical.

(b) Advisory committee meetings will be held at places that are reasonably accessible to the public. All advisory committee meetings will be held in Washington, D.C., or Rockville, Md., or the immediate vicinity, unless the Commissioner receives and approves a written request from the advisory committee for a different location. A different location may be approved when one or more of the following applies:

(1) The total cost of the meeting to the Government will be reduced.

(2) A substantial number of the committee members will be at the location at no expense to FDA for other reasons, e.g., for a meeting of a professional association.

(3) It is a central location more readily accessible to committee members.

(4) There is a need for increased participation available at that location.

(5) The committee wishes to review work or facilities in a specific location.

(6) The committee is concerned with matters that functionally or historically occur in some other location, e.g., the Board of Tea Experts and the Science Advisory Board of the National Center for Toxicological Research will generally hold meetings in Brooklyn, N.Y., and in the Little Rock, Ark., vicinity, respectively.

(c) Advisory committee members may, with the approval of FDA, conduct onsite visits relevant to their work.

(d) Unless the committee charter provides otherwise, a quorum for an advisory committee is a majority of the current voting members of the committee, except as provided in § 14.125(c) for TEPRSSC. Any matter before the advisory committee is to be decided by a majority vote of the voting members present at the time, except that the designated Federal official may require that any final report be voted upon by all current voting members of the committee. Any current voting member of the committee may file a separate report with additional or minority views.

(e) If space is available, any interested person may attend any portion of any advisory committee meeting which is not closed.

(f) Whenever feasible, meetings are to be held in government facilities or other facilities involving the least expense to the public. The size of the meeting room is to be reasonable, considering such factors as the size of the committee, the number of persons expected to attend a meeting, and the resources and facilities available.

(g) The Commissioner may authorize a meeting to be held by conference telephone call. For these meetings, a speaker phone will be provided in a conference room located in Washington, D.C., or Rockville, Md., to permit public participation in open portions of the meetings, as provided in §§ 14.25 and 14.29. These meetings generally will be brief, and authorized—

(1) For the purpose of taking final votes or otherwise confirming actions taken by the committee at other meetings; or

(2) Where time does not permit a meeting to be held at a central location.

(h) Any portion of a meeting will be closed by the committee chairman only when matters are to be discussed which the Commissioner has determined may be considered in closed session under § 14.27(b). If a portion of the meeting is closed, the closed portion will be held after the conclusion of the open portion whenever practicable.

(i) Any committe member may take notes during meetings and report and discuss committee deliberations after a meeting is completed and before official minutes or a report are available, within the rules and regulations adopted by FDA and by the advisory committee with the concurrence of FDA, including all of the following:

(1) There may be no attribution of individual views expressed in a closed session or revealing of numerical votes.

(2) There may be no reporting or discussion of any particular matter if the committee or FDA specifically so directs, e.g., where deliberations are incomplete or involve a sensitive regulatory decision that requires preparation or implementation.

(3) There may be no reporting or discussion of information prohibited from public disclosure under § 14.75.

(4) Notes or minutes kept or reports prepared by a committee member have no status or effect unless adopted into the official minutes or report by the committee. It is the responsibility of each committee member to make certain that the official minutes and reports are complete and accurate and fully reflect what happened at any meeting the committee member attended.

§ 14.25 Portions of advisory committee meetings.

An advisory committee meeting has the following portions:

(a) *The open public hearing.* Every committee meeting includes an open portion, which constitutes a public hearing during which interested persons may present relevant information or views orally or in writing. The hearing is conducted in accordance with § 14.29.

(b) *The open committee discussion.* A committee discusses any matter pending before it in an open portion of its meeting unless the meeting has been closed for that matter under § 14.27. To the maximum extent feasible, consistent with the policy expressed in § 14.27, a committee conducts its discussion of pending matters in an open portion. No public participation is permissible during this portion of the meeting except with the consent of the committee chairman.

(c) *The closed presentation of data.* Information prohibited from public disclosure under part 20 and the regulations referenced therein is presented to the committee in a closed portion of its meeting. However, if information is in the form of a summary that is not prohibited from public disclosure, the presentation is to be made in an open portion of a meeting.

(d) *The closed committee deliberations.* Deliberations about matters before an advisory committee may be held in a closed portion of a meeting only upon an appropriate determination by the Commissioner under § 14.27.

§ 14.27 Determination to close portions of advisory committee meetings.

(a) No committee meeeting may be entirely closed. A portion of a meeting may be closed only in accordance with a written determination by the Commissioner under this section.

(b) The executive secretary or other designated agency employee shall prepare the initial request for a determination to close a portion of a meeting, specifying the matter(s) to be discussed during the closed portion and the reasons why the portion should be closed. The Commissioner, based upon this request and with the concurrence of the Chief Counsel, will determine whether to close a portion of a meeting. The reasons for closing a portion of a meeting will be announced in the FEDERAL REGISTER notice of the meeting under § 14.20 in accordance with the following rules:

(1) Any determination to close a portion of a meeting restricts the closing to the shortest possible time consistent with the policy in this section.

(2) A portion of a meeting may be closed only if the Commissioner determines that the closing is permitted under 5 U.S.C. 552b(c), and that the closing is necessary.

(3) Portions of meetings may ordinarily be closed if they concern the review, discussion, and evaluation of drafts or regulations, guidelines or similar preexisting internal agency documents, but only if their premature disclosure would significantly impede proposed agency action; review of trade secrets and confidential commercial or financial information; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(4) Portions of meetings ordinarily may not be closed if they concern review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs and devices; review of information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other information not exempt from public disclosure under 5 U.S.C. 552b(c); the formulation of advice and recommendations to FDA on matters that do not independently justify closing.

(5) Only a portion of a meeting devoted to matters other than those designated in paragraph (b) (1) through (3) of this section may be closed.

(6) A matter which is properly considered in an open portion of a meeting may instead be considered in a closed portion only if it is so inextricably intertwined with matters to be discussed in a closed portion that it is not feasible to separate them or discussion of the matter in an open portion would compromise the matters to be discussed in the closed portion.

(c) Attendance at a closed portion of a meeting is governed by the following rules:

(1) A portion of a meeting closed for the presentation or discussion of information that constitutes a trade secret or confidential commercial or financial information as defined in § 20.61 may be attended only by voting advisory committee members, nonvoting members representing consumer interests who are also special government employees as provided in § 14.80(b), the executive secretary of the advisory committee, a transcriber, consultants, and such other regular employees of FDA (including members of the Office of the Chief Counsel) as the chairman of the advisory committee may invite, and by those persons authorized to be present under § 14.25(c), for presentation of information prohibited from public disclosure. A person making a presentation described in § 14.25(c) may be accompanied by a reasonable number of employees, consultants, or other persons in a commercial arrangement within the meaning of § 20.81(a).

(2) A portion of a meeting that has been closed for consideration of existing internal agency documents falling within § 20.62 where premature disclosure is likely to significantly impede proposed agency action; personnel, medical, and similar files, disclosure of which would be a clearly unwarranted invasion of personal privacy within the meaning of § 20.63; or investigatory records compiled for law enforcement purposes as defined in § 20.64 may be attended only by committee members (voting and nonvoting), the executive secretary of the committee, a transcriber, and other regular employees of FDA (including members of the Office of the Chief Counsel) whom the chairman of the committee may invite. Consultants, individuals performing personal service contracts, employees of other Federal agencies, and the general public may not attend such portions.

(3) If a person other than a person permitted to attend in accordance with paragraph (c) (1) and (2) of this section attempts to attend a closed portion of a meeting without the approval of the executive secretary and the chairman, and the matter is brought to their attention, the person will be required to leave the meeting immediately. This inadvertent and unauthorized attendance does not enable other unauthorized persons to attend, nor does it, of itself, constitute grounds for release of transcripts of closed portions or any other documents otherwise exempt from disclosure under § 14.75 and part 20.

(4) If a person other than a person permitted to attend in accordance with paragraph (c) (1) and (2) of this section is allowed by the executive secretary and the chairman to attend a closed portion of a meeting, that portion is open to attendance by any interested person.

§ 14.29 Conduct of a hearing before an advisory committee.

(a) For each meeting, the open portion for public participation, which constitutes a public hearing under § 14.25(a), will be at least 1 hour, unless public participation does not last that long, and may last for whatever longer time the committee chairman determines will facilitate the work of the committee. The FEDERAL REGISTER notice published under § 14.20 will designate the time specifically reserved for the hearing, which is ordinarily the first portion of the meeting. Further public participation in any open portion of the meeting under § 14.25(b) is solely at the discretion of the chairman.

(b) An interested person who wishes to be assured of the right to make an oral presentation at a meeting shall inform the executive secretary or other designated agency employee, orally or in writing, before the meeting.

(1) The person shall state the general nature of the presentation and the approximate time desired. Whenever possible, all written information to be discussed by that person at the meeting should be furnished in advance to the executive secretary or other designated agency employee. This material may be distributed or mailed by FDA to the committee members in advance of the meeting if time permits, and otherwise will be distributed to the members when they arrive for the meeting. The mailing or distribution may be undertaken only by FDA unless FDA grants permission to a person to mail or distribute the material.

(2) Before the meeting, the executive secretary or other designated agency employee shall determine the amount of time allocated to each person for oral presentation and the time that the presentation is to begin. Each person will be so informed in writing, if time permits, or by telephone. FDA may require persons with common interests to make joint presentations.

(c) The chairman of the committee shall preside at the meeting in accordance with § 14.30 and be accompanied by other committee members, who serve as a panel in conducing the hearing portion of the meeting.

(d) Each person may use the allotted time as desired, consistent with an orderly hearing. A person may be accompanied by additional persons, and may present any written information or views for inclusion in the record of the hearing, subject to the requirements of § 14.35(c).

(e) If a person is absent at the time specified for that person's presentation, the persons following will appear in order. An attempt will be made to hear the person at the conclusion of the hearing. Interested persons attending the hearing who did not request an opportunity to make an oral presentation may be given an opportunity to do so at the discretion of the chairman.

(f) The chairman and other members may question a person concerning that person's presentation. No other person, however, may question the person. The chairman may allot additional time when it is in the public interest, but may not reduce the time allotted without consent of the person.

(g) Participants may question a committee member only with that member's permission and only about matters before the committee.

(h) The hearing is informal, and the rules of evidence do not apply. No motions or objections relating to the admissiblity of information and views may be made or considered, but other participants may comment upon or rebut matters presented. No participant may interrupt the presentation of another participant.

§ 14.30 Chairman of an advisory committee.

(a) The advisory committee chairman has the authority to conduct hearings and meetings, including the authority to adjourn a hearing or meeting if the chairman determines that adjournment is in the public interest, to discontinue discussion of a matter, to conclude the open portion of a meeting, or to take any other action to further a fair and expeditious hearing or meeting.

(b) If the chairman is not a full-time employee of FDA, the executive secretary or other designated agency employee, or alternate, is to be the "designated Federal employee" who is assigned to the advisory committee. The designated Federal employee is also authorized to adjourn a hearing or meeting if the employee determines adjournment to be in the public interest.

§ 14.31 Consultation by an advisory committee with other persons.

(a) A committee may confer with any person who may have information or views relevant to any matter pending before the committee.

(b) An interested person may submit to the committee a written request that it confer with specific persons about any matter pending before the committee. The request is to contain adequate justification. The committee may, in its discretion, grant the request.

(c) A committee may confer with a person who is not a Federal Government executive branch employee only during the open portions of a meeting. The person may, however, submit views in writing to the committee as part of the administrative record under § 14.70. The person may participate at the closed portions of a meeting only if appointed as a special Government employee by the Commissioner as provided in paragraph (e) of this section. This paragraph (c) is not intended to bar the testimony of a person during a closed portion of a meeting about matters prohibited from public disclosure under § 14.25(c) and § 14.27(c).

(d) To prevent inadvertent violation of Federal conflict of interest laws and laws prohibiting disclosure of trade secrets (18 U.S.C. 208, 21 U.S.C. 331(j), 18 U.S.C. 1905), Federal executive branch employees who are not employees of the Department may not confer, testify, or otherwise participate (other than as observers) at any portion of an advisory committee meeting unless they are appointed as special Government employees by the Commissioner under paragraph (e) of this section. This paragraph does not apply to Federal executive branch employees who are appointed as members of TEPRSSC, as provided in § 14.127.

(e) The Commissioner may appoint persons as special Government employees to be consultants to an advisory committee. Consultants may be appointed to provide expertise, generally concerning a highly technical matter, not readily available from the members of the committee. Consultants may be either from outside the Government or from agencies other than the Department of Health, Education, and Welfare. Reports, data, information, and other written submissions made to a public advisory committee by a consultant are part of the administrative record itemized in § 14.70.

§ 14.33 Compilation of materials for members of an advisory committee.

The Commissioner shall prepare and provide to all committee members a compilation of materials bearing upon members' duties and responsibilities, including—

(a) All applicable conflict of interest laws and regulations and a summary of their principal provisions;

(b) All applicable laws and regulations relating to trade secrets and confidential commercial or financial information that may not be disclosed publicly and a summary of their principal provisions;

(c) All applicable laws, regulations, and guidelines relating to the subject matter covered by the advisory committee and a summary of their principal provisions;

(d) All applicable laws, regulations, including the regulations in part 20 of this chapter, advisory committee charters, FEDERAL REGISTER notices, curricula vitae, rules adopted by the

advisory committee, and other material relating to the formation, composition, and operation of the advisory committee, and a summary of their principal provisions;

(e) Instructions on whom to contact when questions arise; and

(f) Other material relating to FDA and the subject matter covered by the committee which may facilitate the work of the committee.

§ 14.35 Written submissions to an advisory committee.

(a) Ten copies of written submissions to a committee are to be sent to the executive secretary unless an applicable FEDERAL REGISTER notice or other regulations in this chapter specify otherwise. Submissions are subject to the provisions of § 10.20, except that it is not necessary to send copies to the hearing clerk.

(b) At the request of a committee, or on the Commissioner's own initiative, the Commissioner may issue in the FEDERAL REGISTER a notice, requesting the submission to the committee of written information and views pertinent to a matter being reviewed by the committee. The notice may specify the manner in which the submission should be made.

(c) At the request of a committee, or on the Commissioner's own initiative, the Commissioner may at any time request the applicant or sponsor of an application or petition about a specific product on which action is pending before FDA, and is being reviewed by an advisory committee, to present or discuss safety, effectiveness, or other data concerning the product during a regularly scheduled meeting of the committee. The request may be for an oral presentation or for a concise, well-organized written summary of pertinent information for review by the committee members before the meeting, or both. Unless specified otherwise, one copy of the written summary along with a proposed agenda outlining the topics to be covered and identifying the participating industry staff members or consultants that will present each topic is to be submitted to the executive secretary or other designated agency employee at least 3 weeks before the meeting.

(d) An interested person may submit to a committee written information or views on any matter being reviewed. Voluminous data is to be accompanied by a summary. A submission is to be made to the executive secretary and not directly to a committee member.

(1) FDA will distribute submissions to each member, either by mail or at the next meeting. Submissions will be considered by the committee in its review of the matter.

(2) A committee may establish, and give public notice of, a cutoff date after which submissions about a matter will no longer be received or considered.

(e) The Commissioner will provide the committee all information the Commissioner deems relevant. A member will, upon request, also be provided any material available to FDA which the member believes appropriate for an independent judgment on the matter, e.g., raw data underlying a summary or report, or a briefing on the legal aspects of the matter.

§ 14.39 Additional rules for a particular advisory committee.

(a) In addition to these rules, an advisory committee may, with the concurrence of the designated Federal employee, adopt additional rules which are not inconsistent with this subpart or with other legal requirements.

(b) Any additional rules will be included in the minutes of the meeting when adopted and in the materials compiled under § 14.33 and will be available for public disclosure under § 14.65(c).

Subpart C—Establishment of Advisory Committees

§ 14.40 Establishment and renewal of advisory committees.

(a) An advisory committee may be established or renewed whenever it is necessary or appropriate for the committee to hold a public hearing and to review and make recommendations on any matter pending before FDA. Except for committees established by statute, before a committee is established or renewed it must first be approved by the Department pursuant to 45 CFR Part 11 and by the General Services Administration.

(b) When an advisory committee is established or renewed, the Commissioner will issue a FEDERAL REGISTER notice certifying that the establishment or renewal is in the public interest and stating the structure, function, and purposes of the committee and, if it is a standing advisory committee, shall amend § 14.100 to add it to the list of standing advisory committees. The notice will be published at least 15 days before the filing of the advisory committee charter under paragraph (c) of this section.

(c) No committee may meet or take action until its charter is prepared and filed as required by sections 9(c) of the Federal Advisory Committee Act. This requirement is to be met by an advisory committee utilized by FDA, even though it is not established by the agency, prior to utilization.

(d) The regulations of the Department cited in paragraph (a) of this section provide that the charter of a parent committee may incorporate information concerning activities of a subgroup. In such instances, a subgroup will not be established as a committee distinct from the parent committee. However, a subgroup will be established as a separate committee when the charter of the parent committee does not incorporate the activities of the subgroup, or when the subgroup includes members who are not all drawn from the parent committee.

(e) An advisory committee not required to be established by law will be established or utilized only if it is in the public interest and only if its functions cannot reasonably be performed by other existing advisory committees or by FDA.

(f) An advisory committee must meet the following standards:

(1) Its purpose is clearly defined.

(2) Its membership is balanced fairly in terms of the points of view represented in light of the functions to be performed. Although proportional representation is not required, advisory committee members are selected without regard to race, color, national origin, religion, age, or sex.

(3) It is constituted and utilizes procedures designed to assure that its advice and recommendations are the result of the advisory committee's independent judgment.

(4) Its staff is adequate. The Commissioner designates an executive secretary and alternate for every advisory committee, who are employees of FDA. The executive secretary is responsible for all staff support unless other agency employees are designated for this function.

(5) Whenever feasible, or required by statute, it includes representatives of the public interest.

§ 14.55 Termination of advisory committees.

(a) Except as provided in paragraph (c) of this section, a standing advisory committee is terminated when it is no longer needed, or not later than 2 years after its date of establishment unless it is renewed for an additional 2-year period. A committee may be renewed for as many 2-year periods as the public interest requires. The requirements for establishment of a committee under § 14.40 also apply to is renewal.

(b) FDA will issue a FEDERAL REGISTER notice announcing the reasons for terminating a committee and, if it is a standing committee, amending § 14.100 to delete it from the list.

(c) TEPRSSC is a permanent statutory advisory committee established by section 358(f)(1)(A) of the Public Health Service Act (42 U.S.C. 263f(f)(1)(A)), as added by the Radiation Control for Health and Safety Act of 1968, and is not subject to ter-

mination and renewal under paragraph (a) of this section, except that a new charter is prepared and filed at the end of each 2-year period as provided in § 14.40(c). Also, the statutory medical device classification panels established under section 513(b)(1) of the act and part 860, and the statutory medical device good manufacturing practice advisory committees established under section 520(f)(3) of the act, are specifically exempted from the normal 2-year duration period.

(d) The Board of Tea Experts is a permanent statutory advisory committee established by the Tea Importation Act (21 U.S.C. 42) and is not subject to termination and renewal under paragraph (a) of this section, except that a new charter is prepared and filed at the end of each 2-year period as provided in § 14.40(c).

(e) Color additive advisory committees are required to be established under the circumstances specified in section 706(b)(5) (C) and (D) of the act. A color additive advisory committee is subject to the termination and renewal requirements of the Federal Advisory Committee Act and of this part.

Subpart D—Records of Meetings and Hearings Before Advisory Committees

§ 14.60 Minutes and reports of advisory committee meetings.

(a) The executive secretary or other designated agency employee prepares detailed minutes of all advisory committee meetings, except that less detailed minutes may be prepared for open portions of meetings which, under § 14.61, must be transcribed or recorded by the agency. Their accuracy is approved by the committee and certified by the chairman. The approval and certification may be accomplished by mail or by telephone.

(b) The minutes include the following:

(1) The time and place of the meeting.

(2) The members, committee staff, and agency employees present, and the names and affiliations or interests of public participants.

(3) A copy of or reference to all written information made available for consideration by the committee at the proceedings.

(4) A complete and accurate description of matters discussed and conclusions reached. A description is to be kept separately for the following portions of the meeting to facilitate their public disclosure: The open portions specified in § 14.25 (a) and (b), any closed portion during which a presentation is made under § 14.25(c), and any closed deliberative portion under § 14.25(d). The minutes of a closed deliberative portion of a meeting may not refer to members by name, except upon their request, or to data or information described in § 14.75(b). Any inadvertent references that occur are to be deleted before public disclosure.

(5) A copy of or reference to all reports received, issued, or approved by the committee.

(6) The extent to which the meeting was open to the public.

(7) The extent of public participation, including a list of members of the public who presented oral or written statements.

(c) For a meeting that has a closed portion, either (1) the minutes of the closed portion are available for public disclosure under § 14.75(a) (6)(i), or (2) if under § 14.75(a) (6)(ii) they are not promptly available, the executive secretary or other designated agency employee shall prepare a brief summary of the matters considered in an informative manner to the public, consistent with 5 U.S.C. 552(b).

(d) Where a significant portion of the meeting of a committee is closed, the committee will issue a report at least annually setting forth a summary of its activities and related matters informative to the public consistent with 5 U.S.C. 552(b). This report is to be a compilation of or be prepared from the individual reports on closed portions of meetings prepared under paragraph (c) of this section.

(e) The executive secretary or other designated agency employee shall, with the approval of the committee, prepare an annual report describing its membership, functions, recommendations, and other actions.

§ 14.61 Transcripts of advisory committee meetings.

(a) The agency will arrange for a transcript or recording to be made for each portion of a meeting.

(b) A transcript or recording of an open portion of a meeting made by FDA is to be included in the record of the committee proceedings.

(c) A transcript or recording of any closed portion of a meeting made by FDA will not be included in the administrative record of the committee proceedings. The transcript or recording will be retained as confidential by FDA, and will not be discarded or erased.

(d) Any transcript or recording of a meeting or portion thereof which is publicly available under this section will be available at actual cost of duplication, which will be, where applicable, the fees established in § 20.42. FDA may furnish the requested transcript or recording for copying to a private contractor who shall charge directly for the cost of copying under § 20.51.

(e) A person attending any open portion of a meeting may, consistent with the orderly conduct of the meeting, record or otherwise take a transcript of the meeting. This transcription will not be part of the administrative record.

(f) Only FDA may make a transcript or recording of a closed portion of a meeting.

14.65 Public inquiries and requests for advisory committee records.

(a) Public inquiries on general committee matters, except requests for records, are to be directed to: Committee Management Officer (HFA-25), Office of the Associate Commissioner for Management and Operations, Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857.

(b) Public inquiries on matters relating to a specific committee, except requests for records, are to be directed to the executive secretary or the designated agency employee listed in the FEDERAL REGISTER notices published under § 14.20.

(c) Requests for public advisory committee records, including minutes, are to be made to FDA's Freedom of Information Staff (HFI-35) under § 20.40 and the related provisions of part 20.

§ 14.70 Administrative record of a public hearing before an advisory committee.

(a) Advice or recommendations of an advisory committee may be given only on matters covered in the administrative record of the committee's proceedings. Except as specified in other FDA regulations, the administrative record consists of all the following items relating to the matter:

(1) Any transcript or recording of an open portion of a meeting.

(2) The minutes of all portions of all meetings, after any deletions under § 14.60(b)(4).

(3) All written submissions to and information considered by the committee.

(4) All reports made by the committee.

(5) Any reports prepared by a consultant under § 14.31(e).

(b) The record of the proceeding is closed at the time the advisory committee renders its advice or recommendations or at any earlier time specified by the committee or in other sections in this chapter.

§ 14.75 Examination of administrative record and other advisory committee records.

(a) The administrative record and other committee records are available for public disclosure under part 20, except as provided in paragraph (b) of the section, at the following times:

(1) The written information for consideration by the committee at any

meeting: at the same time it is made available to the committee.

(2) The transcript or recording of any open portion of a meeting: as soon as it is available.

(3) The minutes of any open portion of a meeting: after they have been approved by the committee and certified by the chairman.

(4) The brief summary of any closed portion of a meeting prepared under § 14.60(c): as soon as it is available.

(5) All written information or views submitted to the committee at an open portion of a meeting: as soon as they are submitted.

(6) The minutes or portions thereof of a closed portion of a meeting—

(i) For a matter not directed to be maintained as confidential under § 14.22(h)(2): After they have been approved by the committee and certified by the chairman; and

(ii) For a matter directed to be maintained as confidential under § 14.22(h)(2): After the advice or report of the committee relevant to those minutes or portions thereof is acted upon by the Commissioner, or upon a determination by the Commissioner that such minutes or portions thereof may be made available for public disclosure without undue interference with agency or advisory committee operations.

(7) Formal advice or a report of the committee: after it has been acted upon, i.e., approved, disapproved, or rejected as inadequate, by the Commissioner, or upon a determination by the Commissioner that such formal advice or report may be made available for public disclosure without undue interference with agency or committee operations. Such formal advice or report may be retained as confidential while it is under active advisement.

(8) Any other committee records relating to the matter, except transcripts and recordings of closed portions of meetings: After the advice or report of the committee relevant to those records is acted upon by the Commissioner, or upon a determination by the Commissioner that the records may be made available for public disclosure without undue interference with agency or committee operations.

(b) The following information contained in the administrative record is not available for public examination or copying except as provided in § 12.32(g):

(1) Material provided to the committee by FDA that is exempt from public disclosure under part 20 and the regulations referenced there.

(2) Material provided to the advisory committee by a person making a presentation described in § 14.25(c) and which is prohibited from public disclosure under part 20 and the regulations referenced there.

(c) The Freedom of Information Staff (HFI-35) will maintain a file for each committee containing the following principal records for ready access by the public:

(1) The committee charter.

(2) A list of committee members and their curricula vitae.

(3) The minutes of committee meetings.

(4) Any formal advice or report of the committee.

Subpart E—Members of Advisory Committees

§ 14.80 Qualifications for members of standing policy and technical advisory committees.

(a) Members of a policy advisory committee—

(1) Shall have diverse interests, education, training, and experience; specific technical expertise is not a requirement;

(2) Are special Government employees subject to the conflict of interest laws and regulations (the Commissioner has determined that, because members representing particular interests, e.g., a representative of labor, industry, consumers, or agriculture, are included on advisory committees specifically for the purpose of representing these interests, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services which the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services); and

(3) Shall be voting members.

(b) Technical advisory committee. (1) Voting members of technical advisory committees—

(i) Shall have expertise in the subject matter with which the committee is concerned and have diverse professional education, training, and experience so that the committee will reflect a balanced composition of sufficient scientific expertise to handle the problems that come before it; and

(ii) Except for members of TEPRSSC, are special Government employees subject to the conflict of interest laws and regulations.

(2) The Commissioner shall, when required by statute, and may when not required by statute, provide for nonvoting members of a technical advisory committee to serve as representatives of and liaison with interested organizations. Nonvoting members—

(i) Shall be selected by the interested organizations, as provided in § 14.84; technical expertise in the subject matter with which the committee is involved is not a requirement; and

(ii) May be special Government employees subject to the conflict of interest laws and regulations, except as provided in § 14.84(e).

(c) A person may serve as a voting or nonvoting member on only one FDA advisory committee unless the Commissioner determines in writing that dual membership will aid the work of the committees involved and is in the public interest.

(d) Members of FDA advisory committees, and the chairman, are appointed from among those nominated under §§ 14.82 and 14.86 and from any other sources by the Secretary, or, by delegation of authority, by the Assistant Secretary for Health, or the Commissioner.

(e) Members appointed to an advisory committee serve for the duration of the committee, or until their terms of appointment expire, they resign, or they are removed from membership by the Commissioner.

(f) A committee member may be removed from membership for good cause. Good cause includes excessive absenteeism from committee meetings, a demonstrated bias that interferes with the ability to render objective advise, failure to abide by the procedures established in this subpart, or violation of other applicable rules and regulations, e.g., for nonvoting members, the provisions of § 14.85(c).

(g) Consultants appointed under § 14.31(e) are not members of advisory committees.

§ 14.82 Nominations of voting members of standing advisory committees.

(a) The Commissioner will publish one or more notices in the FEDERAL REGISTER each year requesting nominations for voting members of all existing standing advisory committees. The notice will invite the submission of nominations for voting members from both individuals and organizations.

(b) The notice announcing the establishment of a new committee under § 14.40(b) will invite the submission of nominations for voting members.

(c) A person may nominate one or more qualified persons to an advisory committee. Nominations will specify the advisory committee for which the nominee is recommended and will include a complete curriculum vitae of the nominee. Nominations are to state that the nominee is aware of the nomination, is willing to serve as a member of the advisory committee, and appears to have no conflict of interest that would preclude membership.

(d) Voting members serve as individuals and not as representatives of any group or organization which nominated them or with which they may be affiliated.

§ 14.84 Nominations and selection of nonvoting members of standing technical advisory committees.

(a) This section applies when the Commissioner concludes that a technical advisory committee should include nonvoting members to represent and serve as a liaison with interested individuals and organizations.

(b) Except when the Commissioner concludes otherwise, nonvoting members of a technical advisory committee are selected in accordance with paragraphs (c) and (d) of this section and are normally limited to one person selected by consumer groups and organizations and one person selected by industry groups and organizations.

(c) To select a nonvoting member to represent consumer interests, except as provided in paragraph (c)(5) of this section, the Commissioner publishes a notice in the FEDERAL REGISTER requesting nominations for each specific committee, or subcommittee, for which nonvoting members are to be appointed.

(1) A period of 30 days will be permitted for submission of nominations for that committee or subcommittee. Interested persons may nominate one or more qualified persons to represent consumer interests. Although nominations from individuals will be accepted, individuals are encouraged to submit their nominations through consumer organizations as defined in paragraph (c)(3) of this section. Nominations of qualified persons for general considerations as nonvoting members of unspecified advisory committees or subcommittees may be made at any time. All nominations are to be submitted in writing to Office of Consumer Affairs (HF-7), Food and Drug Administration, Room 15B-41, 5600 Fishers Lane, Rockville, Md. 20857.

(2) A complete curriculum vitae of any nominee is to be included. Nominations must state that the nominee is aware of the nomination, is willing to serve as a member of an advisory committee, and appears to have no conflict of interest. The nomination must state whether a nominee is interested only in a particular advisory committee or subcommittee, or whether the nominee is interested in becoming a member of any advisory committee or subcommittee. Nominations that do not comply with the requirements of this paragraph will not be considered.

(3) The Office of Consumer Affairs will compile a list of organizations whose objectives are to promote, encourage, and contribute to the advancement of consumer education and to the resolution of consumer problems. All organizations listed are entitled to vote upon the nominee. The list will include organizations representing the public interest, consumer advocacy groups, and consumer/health branches of Federal, State, and local governments. Any organization that meets the criteria may be included on such list on request.

(4) The executive secretary, or other designated agency employee, will review the list of nominees and select three to five qualified nominees to be placed on a ballot. Names not selected will remain on a list of eligible nominees and be reviewed periodically by the Office of Consumer Affairs to determine continued interest. Upon selection of the nominees to be placed on the ballot, the curriculum vitae for each of the nominees will be sent to each of the organizations on the list compiled under paragraph (c)(3) of this section, together with a ballot to be filled out and returned within 30 days. After the time for return of the ballots has expired, the ballots will be counted and the nominee who has received the highest number of votes will be selected as the nonvoting member representing consumer interests for that particular advisory committee or subcommittee. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes.

(5) If a member representing consumer interests resigns or is removed before termination of the committee on which the member is serving, the following procedures will be used to appoint a replacement to serve out the term of the former member:

(i) The Commissioner will appoint the runner-up, in order of number of ballots received, on the original ballot submitted under paragraph (c)(4) of this section to fill the vacancy. If the runner-up is no longer willing to serve as a member, then the next runner-up will be appointed.

(ii) If none of the nominees on the original ballot is willing to serve, or if there was only one nominee on the original ballot, the Office of Consumer Affairs will contact by telephone eligible individuals whose names have been submitted in the past as candidates for membership as representatives of consumer interests. A list of persons who are interested in serving on an advisory committee will then be prepared. The curricula vitae of these persons, together with a ballot, will be sent to a representative number of consumer organizations that have been determined to be eligible to vote for consumer representatives in accordance with paragraph (c)(3) of this section. After 4 days have elapsed, the Office of Consumer Affairs will contact the consumer organizations by telephone and elicit their votes. The candidate who has received the highest number of votes will be selected. In the event of a tie, the Commissioner will select the winner by lot from among those tied for the highest number of votes.

(d) To select a nonvoting member to represent industry interests, the Commissioner will publish, for each committee for which the Commissioner has determined to appoint a nonvoting member, a notice requesting that, within 30 days, any industry organization interested in participating in the selection of an appropriate nonvoting member to represent industry interests send a letter stating that interest to the FDA employee designated in the notice. After 30 days, a letter will be sent to each organization that has expressed an interest, attaching a complete list of all such organizations, and stating that it is their responsibility to consult with each other in selecting, within 60 days after receipt of the letter, a single nonvoting member to represent industry interests for that committee. If no individual is selected within 60 days, the Commissioner will select the nonvoting member representing industry interests.

(e) The Commissioner has determined that, because nonvoting members representing consumer and industry interests are included on advisory committees specifically for the purpose of representing such interests and have no vote, any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant to the services the Government expects from them and thus is hereby exempted under 18 U.S.C. 208(b) as too remote and inconsequential to affect the integrity of their services.

§ 14.86 Rights and responsibilities of nonvoting members of advisory committees.

(a) A nonvoting member of an advisory committee selected to represent and serve as a liaison with interested individuals, associations, and organizations has the same rights as any other committee member except that—

(1) A nonvoting member may vote only on procedural matters such as additional rules adopted under § 14.39(a), approval of minutes under § 14.60(a), decisions on transcripts under § 14.61(b), and future meeting dates;

(2) A nonvoting member who is a representative of industry interests may have access to data and information that constitute a trade secret or confidential commercial or financial information as defined in § 20.61 only if the person has been appointed as a special Government employee under § 14.80(b).

(b) A nonvoting member of an advisory committee is subject to, and shall abide by, all rules and regulations adopted by FDA and the committee.

(c) It is the responsibility of the nonvoting consumer and industry members of an advisory committee to rep-

resent the consumer and industry interests in all deliberations.

(1) A nonvoting member does not represent any particular organization or group, but rather represents all interested persons within the class which the member is selected to represent. Accordingly, an interested person within the class represented by that nonvoting member may, upon request, have access to all written statements or oral briefings concerning the committee prepared by the nonvoting member for distribution to any person outside the committee. When documents are prepared with non-Government funds, persons desiring copies may be required to pay a reasonable fee to cover printing and similar costs.

(2) The nonvoting member reviews all official committee minutes to assure their completeness and accuracy.

(3) The nonvoting member acts as a liaison between the committee and the interested persons whom that member represents, and transmits requests for information from the committee and relevant information and views to the committee. The nonvoting member takes the initiative in contacting interested persons whom the member represents to seek out relevant information and views and to relate the progress of the advisory committee.

(4) A nonvoting industry member represents all members of the industry, and not any particular association, company, product, or ingredient. If a matter comes before the committee that directly or indirectly affects the company employing the nonvoting industry member, the member shall so inform the committee but need not be absent during the discussion or decline to participate in the discussion. A nonvoting industry member may not discuss the company's position as such, but may discuss any matter in general terms. All presentations and discussions of scientific data and their interpretation on behalf of a company will occur in open session, except as provided in § 14.25(c).

(5) A nonvoting member of an advisory committee may not make any presentation to that advisory committee during a hearing conducted by that committee.

(6) Although a nonvoting member serves in a representative capacity, the nonvoting member shall exercise restraint in performing such functions and may not engage in unseemingly advocacy or attempt to exert undue influence over the other members of the committee.

(d) A nonvoting member of an advisory committee may be removed by the Commissioner for failure to comply with this section as well as § 14.80(f).

§ 14.90 Ad hoc advisory committee members.

In selecting members of an ad hoc advisory committee, the Commissioner may use the procedures in §§ 14.82 and 14.84 or any other procedure deemed appropriate.

§ 14.95 Compensation of advisory committee members.

(a) All voting advisory committee members shall, and nonvoting members may: (1) Be appointed as special Government employees (except for members of TEPRSSC), and (2) receive a consultant fee and be reimbursed for travel expenses, including per diem in lieu of subsistence, unless such compensation and reimbursement are waived.

(b) Notwithstanding the member's primary residence, an advisory committee member, while attending meetings of the full committee or a subcommittee, will be paid whether the meetings are held in the Washington, D.C., area or elsewhere.

(c) A committee member who participates in any agency-directed assignment will be paid at an hourly rate when doing assigned work at home, a place of business, or in an FDA facility located within the member's commuting area, and at a daily rate when required to travel outside of that commuting area to perform the assignment. A committee member will not be paid for time spent on normal preparation for a committee meeting.

(1) An agency-directed assignment is an assignment that meets the following criteria:

(i) An activity that requires undertaking a definitive study. The activity must produce a tangible end product, usually a written report. Examples are (*a*) an analysis of the risks and benefits of the use of a class of drugs or a report on a specific problem generated by an IND or NDA; (*b*) the performance of similar investigations or analysis of complex industry submissions to support advisory committee deliberations other than normal meeting preparation; (*c*) the preparation of a statistical analysis leading to an estimate of toxicologically safe dose levels; and (*d*) the design or analysis of animal studies of toxicity, mutagenicity, teratogenicity, or carcinogenicity.

(ii) The performance of an IND or NDA review or similar review.

(2) A committee member who undertakes a special assignment, the end product of which does not represent the end product of the advisory committee, but rather of the committee member's own assignment, can be compensated. Should this preparatory work by members collectively result in an end product of the committee, this is to be considered normal meeting preparation and committee members are not to be compensated for this work.

(d) Salary while in travel status is authorized when a committee member's ordinary pursuits are interrupted for the substantial portion of an additional day beyond the day or days spent in performing those services, and as a consequence the committee member loses some regular compensation. This applies on weekends and holidays if the special Government employee loses income that would otherwise be earned on that day. For travel purposes, a substantial portion of a day is defined as 50 percent of the working day, and the traveler will be paid at a daily rate.

Subpart F—Standing Advisory Committees

§ 14.100 List of standing advisory committees.

Standing advisory committees and the dates of their establishment are as follows:

(a) *Office of the Commissioner*—(1) *Board of Tea Experts.* (i) Date established: March 2, 1897.

(ii) Function: Advises on establishment of uniform standards of purity, quality, and fitness for consumption of all tea imported into the United States under 21 U.S.C. 42.

(2) *National Advisory Food and Drug Committee.* (i) Date established: November 15, 1974.

(ii) Function: Reviews and evaluates agency programs and advises on policy matters of national significance related to the statutory mission of FDA concerning foods, drugs, cosmetics, medical devices, biological products, and electronic products. Reviews and makes recommentations on applications for grants-in-aid for research projects relevant to the mission of FDA as required by law.

(b) *Bureau of Biologics*—(1) Advisory review panels for biological products, and the dates of their establishment are as follows: (i) *Bacterial Vaccines and Toxoids Panel.* Established April 16, 1973.

(ii) *Viral Vaccines and Rickettsial Vaccines Panel.* April 16, 1973.

(iii) *Allergenic Extracts Panel.* Established August 24, 1973.

(iv) *Blood and Blood Derivatives Panel.* Established August 24, 1973.

(2) Function: Review and evaluate available data on the safety and effectiveness of biological products.

(c) *Bureau of Drugs*—(1) *Anesthetic and Life Support Drugs Advisory Committee.* (i) Date established: May 1, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the field of anesthesiology and surgery.

(2) *Anti-Infective and Topical Drugs Advisory Committee.* (i) Date established: April 10, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.

(3) *Arthritis Advisory Committee.* (i) Date established: April 5, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in arthritic conditions.

(4) *Cardiovascular and Renal Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in cardiovascular and renal disorders.

(5) *Drug Abuse Advisory Committee.* (1) Date established: May 31, 1978.

(ii) Function: Advises on the scientific and medical evaluation of information gathered by the Department of Health, Education, and Welfare and the Department of Justice on the safety, efficacy, and abuse potential of drugs and recommends actions to be taken on the marketing, investigation, and control of such drugs.

(6) *Endocrinologic and Metabolic Drugs Advisory Committee.* (i) Date established: August 27, 1970.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in endocrine and metabolic disorders.

(7) *Fertility and Maternal Health Drugs Advisory Committee.* (i) Date established: March 23, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of obstetrics and gynecology.

(8) *Gastrointestinal Drugs Advisory Committee.* (i) Date established: March 3; 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in gastrointestinal diseases.

(9) *Oncologic Drugs Advisory Committee.* (i) Date established: September 21, 1978.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of cancer.

(10) *Peripheral and central Nervous System Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in neurologic disease.

(11) *Psychopharmacologic Drugs Advisory Committee.* (i) Date established: June 4, 1974.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of psychiatry and related fields.

(12) *Pulmonary-Allergy Drugs Advisory Committee.* (i) Date established: February 17, 1972.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the treatment of pulmonary disease and diseases with allergic and/or immunologic mechanisms.

(13) *Radiopharmaceutical Drugs Advisory Committee.* (i) Date established: August 30, 1967.

(ii) Function: Reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in the practice of nuclear medicine.

(14) *Advisory review panels for over-the-counter (OTC) drugs.* (i) Dates established—(*a*) *Antimicrobial Panel.* Established March 16, 1972;

(*b*) *Dentifrice and Dental Care Panel.* Established December 27, 1972;

(*c*) *Ophthalmic Panel.* Established April 16, 1973;

(*d*) *Contraceptive and Other Vaginal Drug Products Panel.* Established June 27, 1973;

(*e*) *Oral Cavity Panel.* Established July 16, 1973;

(*f*) *Miscellaneous Internal Drug Products Panel.* Established July 16, 1973; and

(*g*) *Miscellaneous External Drug Products Panel.* Established July 16, 1973..

(ii) Function: Review and evaluate available data on the safety and effectiveness of nonprescription drug products.

(d) *Bureau of Medical Devices.* (1) Advisory panels for medical devices, and the dates of their establishment are as follows:

(i) *Circulatory Systems Devices Panel.* Established April 28, 1978.

(ii) *Clinical Chemistry and Hematology Devices Panel.* Established April 28, 1978.

(iii) *General Medical Devices Panel.* Established April 28, 1978.

(iv) *Immunology and Microbiology Devices Panel.* Established April 28, 1978.

(v) *Obstetrics-Gynecology and Radiologic Devices Panel.* Established April 28, 1978.

(vi) *Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel.* Established April 28, 1978.

(vii) *Respiratory and Nervous System Devices Panel.* Established April 28, 1978.

(viii) *Surgical and Rehabilitation Devices Panel.* Established April 28, 1978.

(2) Function: Review and evaluate available data on the safety and effectiveness of devices currently in use and make recommendations for their regulation.

(3) *Device Good Manufacturing Practice Advisory Committee.* (i) Dated Established: August 12, 1976.

(ii) Function: Reviews proposed regulations for good manufacturing practices governing the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of devices, and makes recommendations on the feasibility and reasonableness of the proposed regulations.

(e) *Bureau of Radiological Health*—(1) *Medical Radiation Advisory Committee.* (i) Date established: October 31, 1963.

(ii) Function: Advises on the formulation of policy and development of a coordinated program for the application of ionizing radiation in the healing arts.

(2) *Technical Electronic Product Radiation Safety Standards Committee.* (i) Date established: October 18, 1968.

(ii) Function: Advises on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation under 42 U.S.C. 263f(f)(1)(A).

(f) *National Center for Toxicological Research, Science Advisory Board.* (1) Date established: June 2, 1973.

(2) Function: 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 responsibilites.

Subpart G—Technical Electronic Products Radiation Safety Standards Committee

§ 14.120 Establishment of the Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC).

The Technical Electronic Product RaAdiation Safety Standards Committee (TEPRSSC), consisting of 15 members, is established in accordance with the Radiation Control for Health and Safety Act of 1968 (42 U.S.C. 263f(f)(1)(A)) to provide consultation before the Commissioner prescribes any performance standard for an electronic product.

§ 14.122 Functions of TEPRSSC.

(a) In performing its function of advising the Commissioner, TEPRSSC—

(1) May propose electronic product radiation safety standards to the Commissioner for consideration;

(2) Provides consultation to the Commissioner on all performance standards proposed for consideration under 42 U.S.C. 263f; and

(3) May make recommendations to the Commissioner on any other matters it deems necessary or appropriate in fulfilling the purposes of the act.

(b) Responsibility for action on performance standards under 42 U.S.C. 263f rests with the Commissioner, after receiving the advice of TEPRSSC.

§ 14.125 Procedures of TEPRSSC.

(a) When the Commissioner is considering promulgation of a performance standard for an electronic product, or an amendment of an existing standard, before issuing a proposed regulation in the FEDERAL REGISTER the Commissioner will submit to TEPRSSC the proposed standard or amendment under consideration, together with other relevant information to aid TEPRSSC in its deliberations.

(b) The agenda and other material to be considered at any meeting will be sent to members whenever possible at least 2 weeks before the meeting.

(c) Ten members constitute a quorum, provided at least three members are present from each group specified in 42 U.S.C. 263f(f)(1)(A) and in § 14.127(a), i.e., Government, industry, and the public.

(d) The chairman of TEPRSSC will ordinarily submit a report to the Commissioner of the committee's consideration of any proposed performance standard for an electronic product within 60 days after consideration. If the chairman believes that more time is needed, the chairman will inform the Director of the Bureau of Radiological Health in writing, in which case an additional 30 days will be allowed to make the report.

(e) Sections 14.1 through 14.7 apply to TEPRSSC, except where other provisions are specifically included in §§ 14.120 through 14.130.

§ 14.127 Membership of TEPRSSC.

(a) The Commissioner will appoint the members after consultation with public and private organizations concerned with the technical aspect of electronic product radiation safety. TEPRSSC consists of 15 members, each of whom is technically qualified by training and experienced in one or more fields of science or engineering applicable to electronic product radiation safety, as follows:

(1) Five members selected from government agencies, including State and Federal Governments.

(2) Five members selected from the affected industries after consultation with industry representatives.

(3) Five members selected from the general public, of whom at least one shall be a representative of organized labor.

(b) The Commissioner will appoint a committee member as chairman of TEPRSSC.

(c) Appointments of members are for a term of 3 years or as specified by the Commissioner.

(1) The chairman is appointed for a term concurrent with the chairman's term as a member of TEPRSSC. If the chairmanship becomes vacant without adequate notice, the executive secretary may appoint a committee member as temporary chairman pending appointment of a new chairman by the Commissioner.

(2) Members may not be reappointed for a second consecutive full term.

(d) A person otherwise qualified for membership is not eligible for selection as a member of TEPRSSC from Government agencies or the general public if the Commissioner determines that the person does not meet the requirements of the conflict of interest laws and regulations.

(e) Retention of membership is conditioned upon the following:

(1) Continued status as a member of the group from which the member was selected as specified in paragraph (a) of this section.

(2) Absence of any conflict of interest during the term of membership as specified in paragraph (d) of this section.

(3) Active participation in TEPRSSC activities.

(f) Appointment as a member of TEPRSSC is conditioned on certification that the prospective member:

(1) Agrees to the procedures and criteria specified in this subpart.

(2) Has no conflict of interest as specified in paragraph (d) of this section.

(3) Will notify the executive secretary of TEPRSSC before any change in representative status on TEPRSSC which may be contrary to the conditions of the appointment.

(g) Members of TEPRSSC who are not full-time officers or employees of the United States receive compensation under § 14.95, in accordance with 42 U.S.C. 210(c).

§ 14.130 Conduct of TEPRSSC meeting; availability of TEPRSSC records.

(a) In accordance with 42 U.S.C. 263f(f)(1)(B), all proceedings of TEPRSSC are recorded, and the record of each proceeding is available for public inspection.

(b) All proceedings of TEPRSSC are open except when the Commissioner has determined, under § 14.27, that a portion of a meeting may be closed.

Subpart H—Color Additive Advisory Committees

§ 14.140 Establishment of a color additive advisory committee.

The Commissioner will establish a color additive advisory committee under the following circumstances:

(a) The Commissioner concludes, as a matter of discretion, that it would be in the public interest for a color additive advisory committee to review and make recommendations about the safety of a color additive on which important issues are pending before FDA and for interested persons to present information and views at an oral public hearing before a color additive advisory committee.

(b) A person who would be adversely affected by the issuance, amendment, or repeal of a regulation listing a color additive requests that any issue concerning the safety of the color additive arising under section 706(b)(5)(B) of the act because of the color additive's potential or actual carcinogenicity and requiring the excerise of scientific judgment be referred to a color additive advisory committee.

(1) Paragraph (b) applies to any issue arising under the transitional provisions in section 203 of the Color Additive Amendments of 1960 relating to provisional listing of commercially established colors. A color additive advisory committee to consider any such matter will be established under paragraph (a) of this section.

(2) A request for establishment of a color additive advisory committee is to be made in accordance with § 10.30. The Commissioner may deny any petition if inadequate grounds are stated for establishing a color additive advisory committee. A request for establishment of a color additive advisory committee may not rest on mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires scientific judgment and justifies a hearing before a color additive advisory committee. When it conclusively appears from the request for a color additive advisory committee that the matter is premature or that it does not involve an issue arising under section 706(b)(5)(B) of the act or that there is no genuine and substantial issue of fact requiring scientific judgment, or for any other reason a color additive advisory committee is not justified, the Commissioner may deny the establishment of a color additive advisory committee.

(3) Establishment of a color additive advisory committee on the request of an interested person is conditioned upon receipt of the application fee specified in § 14.155.

(4) Any person adversely affected may request referral of the matter to a color additive advisory committee at any time before, or within 30 days after, publication of an order of the Commissioner acting upon a color additive petition or proposal.

§ 14.142 Functions of a color additive advisory committee.

(a) A color additive advisory committee reviews all available information relating to the matter referred to it, including all information contained in any pertinent color additive petition and in FDA files. All information reviewed is placed on public display and is available for review at the office of the hearing clerk.

(b) The Commissioner specifies to the color additive advisory committee, in writing, the issues on which review and recommendations are requested.

(c) The date of the first meeting of a color additive advisory committee, following receipt of the administrative record by each of the committee members, is designated as the beginning of the period allowed for consideration of the matter by the committee. Within 60 days after the first meeting, unless the time is extended as provided in paragraph (d) of this section, the chairman of the committee shall certify to the Commissioner the report containing the recommendations of the committee, including any minority report. The report states the recommendations of the committee and the reasons or basis for them. The report includes copies of all material considered by the committee in addition to the administrative record furnished to it.

(d) If the chairman concludes that the color additive advisory committee needs additional time, the chairman shall so inform the Commissioner in writing and may certify the report of the committee to the Commissioner within 90 days instead of 60 days.

(e) More than one matter may be handled concurrently by a color additive advisory committee.

§ 14.145 Procedures of a color additive advisory committee.

(a) A color additive advisory committee is subject to all the requirements of the Federal Advisory Committee Act and this part.

(b) All interested persons have a right to consult with the color additive advisory committee reviewing a matter and to submit information and views to a color additive advisory committee, in accordance with the procedures in this part.

§ 14.147 Membership of a color additive advisory committee.

(a) The members of a color additive advisory committee are selected in the following manner:

(1) If a color additive advisory committee is established for purposes that do not include review of an issue arising under section 706(b)(5)(B) of the act, or is established on the initiative of the Commissioner, the Commissioner may use the procedure in paragraph (a)(2) of this section to select the members, or may use an existing standing advisory committee listed in § 14.100, or may establish a new advisory committee under this subpart. Once the Commissioner has established a color additive advisory committee under this paragraph and has referred to it a matter relating to a color additive, no interested person may subsequently request that an additional or different color additive adivsory committee be established to review and make recommendations about that color additive.

(2) If the Commissioner established a color additive advisory committee to review an issue arising under section 706(b)(5)(B) of the act on the request of an interested person, it shall be established under the following requirements:

(i) Except as provided in paragraph (a)(2) (ii) and (iii) of this section, the Commissioner will request the National Academy of Sciences to select the members of a color additive advisory committee from among experts qualified in the subject matter to be reviewed by the committee, and of adequately diversified professional backgrounds. The Commissioner will appoint one of the members as the chairman.

(ii) If the National Academy of Sciences is unable or refuses to select the members of a color additive advisory committee, the Commissioner will select the members.

(iii) If the Commissioner and the requesting party agree, section 706(b)(5)(D) of the act may be waived and the matter may be referred to any standing advisory committee listed in § 14.100 or to any advisory committee established under any other procedure that is mutually agreeable. Once the Commissioner has established a color additive advisory committee and has referred to it a matter relating to a color additive, no interested person may subsequently request that an additional or different color additive advisory committee be established to review and make recommendations about that color additive.

(b) Members of a color additive advisory committee are subject to the requirements of the Federal Advisory Committee Act and this subpart, except that no member of a color additive advisory committee may by reason of such membership alone be a special government employee or be subject to the conflict of interest laws and regulations.

§ 14.155 Fees and compensation pertaining to a color additive advisory committee.

(a) When a matter is referred to a color additive advisory committee, all related costs, including personal compensation of committee members, travel, materials, and other costs, are borne by the person requesting the referral, such costs to be assessed on the basis of actual cost to the government. The compensation of such costs includes personal compensation of committee members at a rate not to exceed $128.80 per member per day.

(b) In the case of a request for referral to a color additive advisory committee a special advance deposit is to be made in the amount of $2,500. Where required, further advances in increments of $2,500 each are to be made upon request of the Commissioner. All deposits for referrals to a color additive advisory committee in excess of actual expenses will be refunded to the depositor.

(c) All deposits and fees required by this section are to be paid by money order, bank draft, or certified check drawn to the order of the Food and Drug Administration, collectable at par in Washington, D.C. All deposits and fees are to be forwarded to the Associate Commissioner for Management and Operations, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, and after appropriate record of them is made, they will be transmitted to the Treasurer of the United States for deposit in the special account "Salaries and Expenses, Certification, Inspection, and Other Services, Food and Drug Administration."

(d) The Commissioner may waive or refund such fees in whole or in part when, in the Commissioner's judgment, such action will promote the public interest. Any person who believes that payment of these fees will be a hardship may petition the Commissioner under § 10.30 to waive or refund the fees.

Subpart I—Advisory Committees for Human Prescription Drugs

§ 14.160 Establishment of standing technical advisory committees for human prescription drugs.

The standing technical advisory committees for human prescription drugs are established to advise the Commissioner:

(a) Generally on the safety and effectiveness, including the labeling and advertising, and regulatory control of the human prescription drugs falling

within the pharmacologic class covered by the advisory committee and on the scientific standards appropriate for a determination of safety and effectiveness in that class of drugs.

(b) Specifically on any particular matter involving a human prescription drug pending before FDA, including whether the available information is adequate to support a determination that—

(1) A particular IND study may properly be conducted;

(2) A particular drug meets the statutory standard for proof of safety and effectiveness necessary for approval or continued approval for marketing; or

(3) A particular drug is properly classified as a new drug, an old drug, or a banned drug.

§ 14.171 Utilization of an advisory committee on the initiative of FDA.

(a) Any matter involving a human prescription drug under review within the agency may, in the discretion of the Commissioner, be the subject of a public hearing and continuing or periodic review by the appropriate standing technical advisory committee for human prescription drugs. The Commissioner's determinations on the agenda of the committee are based upon the priorities of the various matters pending before the agency which fall within the pharmacologic class covered by that committee.

(b) High priority for such hearing and review by the appropriate standing technical advisory committee for human prescription drugs are given to the following types of human prescription drugs:

(1) Investigational drugs which are potential therapeutic advances over currently marketed products from the standpoint of safety or effectiveness, or which pose significant safety hazards, or which present narrow benefit-risk considerations requiring a close judgmental decision on approval for marketing, or which have a novel delivery system or formulation, or which are the subject of major scientific or public controversy, or which may be subject to special regulatory requirements such as a limitation on clinical trials, a patient followup requirement, postmarketing Phase IV studies, distributional controls, or boxed warnings.

(2) Marketed drugs for which an important new use has been discovered, or which pose newly discovered safety hazards, or which are the subject of major scientific or public controversy, or which may be subject to important regulatory actions such as withdrawal of approval for marketing, boxed warnings, distributional controls, or newly required scientific studies.

(c) The committee may request the Commissioner for an opportunity to hold a public hearing and to review any matter involving a human prescription drug which falls within the pharmacologic class covered by the committee. The Commissioner may, after consulting with the committee on such request, grant or deny the request in light of the priorities of the other matters pending before the committee. Whenever feasible, consistent with the other work of the committee, the request will be granted.

(d) For a drug that meets any of the criteria established in paragraph (b) of this section, one or more members of or consultants to the appropriate advisory committee may be selected for more detailed monitoring of the matter and consultation with FDA on behalf of the committee. The member or consultant may be invited to attend appropriate meetings and shall assist the bureau in any briefing of the committee on that matter.

(e) An advisory committee may obtain advice and recommendations from other agency advisory committees, consultants, and experts which the advisory committee and the bureau conclude would facilitate the work of the advisory committee.

(f) Presentation of all relevant information about the matter will be made in open session unless it relates to an IND the existence of which has not previously been disclosed to the public as defined in § 20.81 or is otherwise prohibited from public disclosure under part 20 and the regulations referenced therein. Sections 314.14, 431.71, and 601.51 determine whether, and the extent to which, relevant information may be made available for public disclosure, summarized and discussed in open session but not otherwise made available for public disclosure, or not in any way discussed or disclosed in open session or otherwise disclosed to the public.

§ 14.172 Utilization of an advisory committee at the request of an interested person.

Any interested person may request, under § 10.30, that a specific matter relating to a particular human prescription drug be submitted to an appropriate advisory committee for a hearing and review and recommendations. The request must demonstrate the importance of the matter and the reasons why it should be submitted for a hearing at that time. The Commissioner may grant or deny the request.

§ 14.174 Advice and recommendations in writing.

Advice and recommendations given by a committee on a specific drug or a class of drugs are ordinarily in the form of a written report. The report may consist of the approved minutes of the meeting or a separate written report. The report responds to the specific issues or questions which the Commissioner has addressed to the advisory committee, and states the basis of the advice and recommendations of the committee.

PART 15—PUBLIC HEARING BEFORE THE COMMISSIONER

Subpart A—General Provisions

Sec.
15.1 Scope.

Subpart B—Procedures for Public Hearing Before the Commissioner

15.20 Notice of a public hearing before the Commissioner.
15.21 Notice of participation; schedule for hearing.
15.25 Written submissions.
15.30 Conduct of a public hearing before the Commissioner.

Subpart C—Records of a Public Hearing Before the Commissioner

15.40 Administrative record.
15.45 Examination of administrative record.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b), Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50; sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 15.1 Scope.

The procedures in this part apply when:

(a) The Commissioner concludes, as a matter of discretion, that it is in the public interest to permit persons to present information and views at a public hearing on any matter pending before the Food and Drug Administration.

(b) The act or regulation specifically provides for a public hearing before the Commissioner on a matter, e.g., § 330.10(a)(8) relating to over-the-counter drugs and sections 520 (b) and (f)(1)(B), and 521 of the act relating to proposals to allow persons to order custom devices, to proposed device good manufacturing practice regulations, and to proposed exemptions from preemption of State and local device requirements under § 808.25(e).

(c) A person who has right to an opportunity for a formal evidentiary public hearing under part 12 waives that opportunity and instead requests under § 12.32 a public hearing before

the Commissioner, and the Commissioner, as a matter of discretion, accepts the request.

Subpart B—Procedures for Public Hearing Before the Commissioner

§ 15.20 Notice of a public hearing before the Commissioner.

(a) If the Commissioner determines that a public hearing should be held on a matter, the Commissioner will publish a notice of hearing setting forth the following information:

(1) If the hearing is under § 15.1 (a) or (b), the notice will state the following:

(i) The purpose of the hearing and the subject matter to be considered. If a written document is to be the subject matter of the hearing, it will be published as part of the notice, or reference made to it if it has already been published in the FEDERAL REGISTER, or the notice will state that the document is available from an agency office identified in the notice.

(ii) The time, date, and place of the hearing, or a statement that the information will be contained in a subsequent notice.

(2) If the hearing is in lieu of a formal evidentiary public hearing under § 15.1(c), all of the information described in § 12.32(e).

(b) The scope of the hearing is determined by the notice of hearing and any regulation under which the hearing is held. If a regulation, e.g., § 330.10(a)(10), limits a hearing to review of an existing administrative record, information not already in the record may not be considered at the hearing.

(c) The notice of hearing may require participants to submit the text of their presentations in advance of the hearing if the Commissioner determines that advance submissions are necessary for the panel to formulate useful questions to be posed at the hearing under § 15.30(e).

§ 15.21 Notice of participation; schedule for hearing.

(a) The notice of hearing will provide persons an opportunity to file a written notice of participation with the hearing clerk within a specified period of time containing the information specified in the notice, e.g., name of participant, address, phone number, affiliation, if any, topic of presentation and approximate amount of time requested for the presentation. If the public interest requiries, e.g., a hearing is to be conducted within a short period of time or is to be primarily attended by individuals without an organizational affiliation, the notice may name a specific FDA employee and telephone number to whom an oral notice of participation may be given or provide for submitting notices of participation at the time of the hearing. A written or oral notice of participation must be received by the designated person by the close of business of the day specified in the notice.

(b) Promptly after expiration of the time for filing a notice, the Commissioner will determine the amount of time allotted to each person and the approximate time that oral presentation is scheduled to begin. If more than one hearing is held on the same subject, a person will ordinarily be allotted time for a presentation at only one hearing.

(c) Individuals and organizations with common interests are urged to consolidate or coordinate their presentations and to request time for a joint presentation. The Commisioner may require joint presentations by persons with common interests.

(d) The Commissioner will prepare a hearing schedule showing the persons making oral presentations and the time allotted to each person, which will be filed with the hearing clerk and mailed or telephoned before the hearing to each participant.

(e) The hearing schedule will state whether participants must be present by a specified time to be sure to be heard in case the absence of participants advances the schedule.

§ 15.25 Written submissions.

A person may submit information or views on the subject of the hearing in writing to the hearing clerk, under § 10.20. The record of the hearing will remain open for 15 days after the hearing is held for any additional written submissions, unless the notice of the hearing specifies otherwise or the presiding officer rules otherwise.

§ 15.30 Conduct of a public hearing before the Commissioner.

(a) The Commissioner or a designee may preside at the hearing, except where a regulation provides that the Commissioner will preside personally. The presiding officer may be accompanied by other FDA employees or other Federal Government employees designated by the Commissioner, who may serve as a panel in conducting the hearing.

(b) The hearing will be transcribed.

(c) Persons may use their allotted time in whatever way they wish, consistent with a reasonable and orderly hearing. A person may be accompanied by any number of additional persons, and may present any written information or views for inclusion in the record of the hearing, subject to the requirements of § 15.25. The presiding officer may allot additional time to any person when the officer concludes that it is in the public interest, but may not reduce the time allotted for any person without the consent of the person.

(d) If a person is not present at the time specified for the presentation, the persons following will appear in order, with adjustments for those appearing at their scheduled time. An attempt will be made to hear any person who is late at the conclusion of the hearing. Other interested persons attending the hearing who did not request an opportunity to make an oral presentation will be given an opportunity to make an oral presentation at the conclusion of the hearing, in the discretion of the presiding officer, to the extent that time permits.

(e) The presiding officer and any other persons serving on a panel may question any person during or at the conclusion of the presentation. No other person attending the hearing may question a person making a presentation. The presiding officer may, as a matter of discretion, permit questions to be submitted to the presiding officer or panel for response by them or by persons attending the hearing.

(f) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views may be made or considered, but other participants may comment upon or rebut all such information and views. No participant may interrupt the presentation of another participant at any hearing for any reason.

(g) The hearing may end early only if all persons scheduled for a later presentation have already appeared or it is past the time specified in the hearing schedule, under § 15.21(e), by which participants must be present.

(h) The Commissioner or the presiding officer may, under § 10.19, suspend, modify, or waive any provision of this part.

Subpart C—Records of a Public Hearing Before the Commissioner

§ 15.40 Administrative record.

(a) The administrative record of a public hearing before the Commissioner consists of the following:

(1) All relevant FEDERAL REGISTER notices, including any documents to which they refer.

(2) All written submissions under § 15.25.

(3) The transcript of the oral hearing.

(b) The record of the administrative proceeding will be closed at the time specified in § 15.25.

§ 15.45 Examination of administrative record.

Section 10.20(j) governs the availability for public examination and

copying of each document in the administrative record of the hearing.

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

Subpart A—General Provisions

Sec.
16.1 Scope.
16.5 Inapplicability and limited applicability.

Subpart B—Initiation of proceedings

16.22 Initiation of regulatory hearing.
16.24 Regulatory hearing required by the act or a regulation.

Subpart C—Commissioner and Presiding Officer

16.40 Commissioner
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16.44 Communication to presiding officer and Commissioner.

Subpart D—Procedures for Regulatory Hearing

16.60 Hearing procedure.
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Subpart E—Administrative Record and Decision

16.80 Administrative record of a regulatory hearing.
16.85 Examination of administrative record.
16.95 Administrative decision and record for decision.

Subpart F—Reconsideration and Stay

16.119 Reconsideration and stay of action.

Subpart G—Judicial Review

16.120 Judicial review.

AUTHORITY: Sec. 201 et seq., Pub. L. 717, 52 Stat. 1040 as amended (21 U.S.C. 321 et seq.); sec. 1 et seq., Pub. L. 410, 58 Stat. 682 as amended (42 U.S.C. 201 et seq.); sec. 4, Pub. L. 91-513, 84 Stat. 1241 (42 U.S.C. 257a); sec. 301 et seq., Pub. L. 91-513, 84 Stat. 1253 (21 U.S.C. 821 et seq.); sec. 409(b), Pub. L. 242, 81 Stat. 600 (21 U.S.C. 679(b)); sec. 24(b). Pub. L. 85-172, 82 Stat. 807 (21 U.S.C. 467f(b)); sec. 2 et seq., Pub. L. 91-597, 84 Stat. 1620 (21 U.S.C. 1031 et seq.); secs. 1 through 9, Pub. L. 625, 44 Stat. 1101-1103 as amended (21 U.S.C. 141-149); secs. 1 through 10, Chapter 358, 29 Stat. 604-607 as amended (21 U.S.C. 41-50); sec. 2 et seq., Pub. L. 783, 44 Stat. 1406 as amended (15 U.S.C. 401 et seq.); sec. 1 et seq., Pub. L. 89-755, 80 Stat. 1296 as amended (15 U.S.C. 1451 et seq.).

Subpart A—General Provisions

§ 16.1 Scope.

The procedures in this part apply when:

(a) The Commissioner is considering any regulatory action, including a refusal to act, and concludes, as a matter of discretion, on the Commissioner's initiative or at the suggestion of any persons, to offer an opportunity for a regulatory hearing to obtain additional information before making a decision or taking action.

(b) The act or a regulation provides a person with an opportunity for a hearing on a regulatory action, including proposed action, and the act or a regulation either specifically provides an opportunity for a regulatory hearing under this part or provides an opportunity for a hearing for which no procedures are specified by regulation. Listed below are the statutory and regulatory provisions under which regulatory hearings are available:

(1) Statutory provisions:

Section 304(g) of the act relating to the administrative detention of devices.

Section 514(g)(4)(B) of the act relating to an action to make a device performance standard effective upon publication.

Section 515(e)(1) of the act relating to the proposed withdrawal of approval of a device premarket approval application.

Section 515(f)(6) of the act relating to a proposed order revoking a device product development protocol or declaring a protocol not completed.

Section 515(f)(7) of the act relating to revocation of a notice of completion of a product development protocol.

Section 516 of the act relating to a proposed banned device regulation.

Section 518(b) of the act relating to a determination that a device is subject to a repair, replacement, or refund order or that a correction plan, or revised correction plan, submitted by a manufacturer, importer, or distributor is inadequate.

Section 520(g) (4) and (5) of the act relating to disapproval and withdrawal of approval of an application for an investigational device exemption (see §§ 813.30(d) and 813.35(c)).

Section 520(1)(2) of the act relating to approval or denial of a petition to reclassify a class III device that FDA previously had regarded as a new drug (see § 860.136).

(2) *Regulatory provisions:*

§ 71.37(a), relating to use of food containing a color additive.

§ 80.31(b), relating to refusal to certify a batch of a color additive.

§ 80.34(b), relating to suspension of certification service for a color additive.

§ 130.17(1), relating to a temporary permit to vary from a food standard.

§ 170.17(b), relating to use of food containing an investigational food additive.

§ 202.1(j)(5), relating to approval of prescription drug advertisements.

§ 312.1(c)(1), relating to whether an investigator is entitled to receive investigational new drugs.

§ 312.1(c) (4) and (d), relating to termination of an IND for a sponsor.

§ 312.9(c), relating to termination of an IND for tests in vitro and in laboratory research animals for a sponsor.

§ 429.50, relating to suspension of certification service for an insulin drug.

§ 431.52, relating to suspension of certification service for an antibiotic drug.

§ 433.2(d), relating to exemption from certification for an antibiotic drug.

§ 433.12(b)(5), relating to an exemption from labeling for a certifiable antibiotic drug.

§ 433.13(b), relating to an exemption from manufacturing use for a certifiable antibiotic drug.

§ 433.14(b), relating to an exemption for storage for a certifiable antibiotic drug.

§ 433.15(b), relating to an exemption for processing for a certifiable antibiotic drug.

§ 433.16(b), relating to an exemption for repacking for a certifiable antibiotic drug.

§ 511.1(b)(5), relating to use of food containing an investigational new animal drug.

§ 511.1(c)(1), relating to termination of an INAD for an investigator.

§ 511.1(c) (4) and (d), relating to termination of an INAD for a sponsor.

§ 514.210, relating to suspension of certification service for a veterinary antibiotic drug.

§ 1003.11(a)(3), relating to the failure of an electronic product to comply with an applicable standard or to a defect in an electronic product.

§ 1003.31(d), relating to denial of an exemption from notification requirements for an electronic product which fails to comply with an applicable standard or has a defect.

§ 1004.6, relating to plan for repurchase, repair, or replacement of an electronic product.

§ 1210.30, relating to denial, suspension, or revocation of a permit under the Federal Import Milk Act.

§ 16.5 Inapplicability and limited applicability.

(a) This part does not apply to the following:

(1) Informal presentation of views before reporting a criminal violation under section 305 of the act and section 5 of the Federal Import Milk Act and § 1210.31.

(2) A hearing on a refusal of admission of a food, drug, device, or cosmetic under section 801(a) of the act and § 1.94, or of an electronic product under section 360(a) of the Public Health Service Act and § 1005.20.

(3) Factory inspections, recalls, regulatory letters, and similar compliance activities related to law enforcement.

(b) If a regulation provides a person with an opportunity for hearing and specifies some procedures for the hearing but not a comprehensive set of procedures, the procedures in this part apply to the extent that they are supplementary and not in conflict with the other procedures specified for the hearing. Thus, the procedures in subpart A of part 108 relating to emergency permit control are supplemented by the nonconflicting procedures in this part, e.g., the right to counsel, public notice of the hearing, reconsideration and stay, and judicial review.

Subpart B—Initiation of Proceedings

§ 16.22 Initiation of regulatory hearing.

(a) A regulatory hearing is initiated by a notice of opportunity for hearing from FDA. The notice will—

(1) Be sent by mail, telegram, telex, personal delivery, or any other mode of written communication;

(2) Specify the facts and the action that are the subject of the opportunity for a hearing;

(3) State that the notice of opportunity for hearing and the hearing are governed by this part; and

(4) State the time within which a hearing may be requested, and state the name, address, and telephone number of the FDA employee to whom any request for hearing is to be addressed.

(b) A person offered an opportunity for a hearing has the amount of time specified in the notice, which may not be less than 3 working days after receipt of the notice, within which to request a hearing. The request may be filed by mail, telegram, telex, personal delivery, or any other mode of written communication, addressed to the designated FDA employee. If no response is filed within that time, the offer is deemed to have been refused and no hearing will be held.

(c) If a hearing is requested, the Commissioner will designate a presiding officer, and the hearing will take place at a time and location agreed upon by the party requesting the hearing, the FDA, and the presiding officer or, if agreement cannot be reached, at a reasonable time and location designated by the presiding officer.

(d) A notice of opportunity for hearing under this section will not operate to delay or stay any administrative action, including enforcement action by the agency unless the Commissioner, as a matter of discretion, determines that delay or a stay is in the public interest.

§ 16.24 Regulatory hearing required by the act or a regulation.

(a) A regulatory hearing required by the act or a regulation under §16.1(b) will be initiated in the same manner as other regulatory hearings subject to the additional procedures in this section.

(b) The notice will state whether any action concerning the matter that is the subject of the opportunity for hearing is or is not being taken pending the hearing under paragraph (c) of this section.

(c) The Commissioner may take such action pending a hearing under this section as the Commissioner concludes is necessary to protect the public health, except where expressly prohibited by statute or regulation. A hearing to consider action already taken, and not stayed by the Commissioner, will be conducted on an expedited basis.

(d) The hearing may not be required to be held at a time less then 2 working days after receipt of the request for hearing.

(e) Before the hearing, FDA will give to the party requesting the hearing reasonable notice of the matters to be considered at the hearing, including a comprehensive statement of the basis for the decision or action taken or proposed that is the subject of the hearing and a general summary of the information that will be presented by FDA at the hearing in support of the decision or action. This information may be given orally or in writing, in the discretion of FDA.

(f) FDA and the party requesting the hearing will, if feasible, at least 1 day before the hearing provide to each other written notice of any published articles or written information to be presented at or relied on at the hearing. A copy will also be provided in advance if the other participant could not reasonably be expected to have or be able to obtain a copy. If written notice or a copy is not provided, the presiding officer may, if time permits, allow the party who did not receive the notice or copy additional time after the close of the hearing to make a submission concerning the article or information.

Subpart C—Commissioner and Presiding Officer

§ 16.40 Commissioner.

Whenever the Commissioner has delegated authority under part 5 on a matter for which a regulatory hearing is available under this part, the functions of the Commissioner under this part may be performed by any of the officials to whom the authority has been delegated, e.g., a bureau director.

§ 16.42 Presiding officer.

(a) An FDA employee to whom the Commissioner delegates such authority, or any other agency employee designated by an employee to whom such authority is delegated, may serve as the presiding officer and conduct a regulatory hearing under this part.

(b) In a regulatory hearing required by the act or a regulation, the presiding officer is to be free from bias or prejudice and may not have participated in the investigation or action that is the subject of the hearing or be subordinate to a person, other than the Commissioner, who has participated in such investigation or action.

(c)(1) The Commissioner or the delegate under § 16.40 is not precluded by this section from prior participation in the investigation or action that is the subject of the hearing. If there has been prior participation, the Commissioner or the delegate should, if feasible, designate a presiding officer for the hearing who is not a subordinate. Thus, if the Commissioner's authority to make a final decision has been delegated to a bureau director, the presiding officer may be an official in another bureau or the office of the Commissioner. The exercise of general supervisory responsibility, or the designation of the presiding officer, does not constitute prior participation in the investigation or action that is the subject of the hearing so as to preclude the Commissioner or delegate from designating a subordinate as the presiding officer.

(2) The party requesting a hearing may make a written request to have the Commissioner or the delegate under § 16.40 be the presiding officer, notwithstanding paragraph (c)(1) of this section. If accepted, as a matter of discretion, by the Commissioner or the delegate, the request is binding upon the party making the request.

(3) A different presiding officer may be substituted for the one originally designated under § 16.22 without notice to the parties.

§ 16.44 Communications to presiding officer and Commissioner.

(a) Regulatory hearings are not subject to the separation of functions rules in § 10.55.

(b) Those persons who are directly involved in the investigation or presentation of the position of FDA or any party at a regulatory hearing that is required by the act or a regulation should avoid any off-the-record communication on the matter to the presiding officer or the Commissioner or their advisors if the communication is inconsistent with the requirement of § 16.95(b)(1) that the administrative record be the exclusive record for decision. If any communication of this type occurs, it is to be reduced to writing and made part of the record, and the other party provided an apportunity to respond.

Subpart D—Procedures for Regulatory Hearing

§ 16.60 Hearing procedure.

(a) A regualatory hearing is public, except when the Commissioner determines that all or part of a hearing should be closed to prevent a clearly unwarranted invasion of personal privacy; to prevent the disclosure of a trade secret or confidential commercial or financial information that is not available for public disclosure under § 20.61; or to protect investigatory records compiled for law enforcement purposes that are not available for public disclosure under § 20.64.

(1) The Commissioner may determine that a regulatory hearing is closed either on the Commissioner's initiative or on a request by the party asking for a regualatory hearing, in the request for the hearing.

(2) If the hearing is a private hearing, no persons other than the party requesting the hearing, counsel and witnesses, and an employee or consultant or other person subject to a commercial arrangement as defined in § 20.81(a) and FDA representatives, are entitled to attend.

(3) If the hearing is a public hearing, it will be announced on the public cal-

endar described in § 10.100(a) whenever feasible, and any interested person who attends the hearing may participate to the extent of presenting relevant information.

(b) A regulatory hearing will be conducted by a presiding officer. Employees of FDA will first give a full and complete statement of the action which is the subject of the hearing, together with the information and reasons supporting it, and may present any oral or written information relevant to the hearing. The party requesting the hearing may then present any oral or written information relevant to the hearing. All parties may confront and conduct reasonable cross-examination of any person (except for the presiding officer and counsel for the parties) who makes any statement on the matter at the hearing.

(c) The hearing is informal in nature, and the rules of evidence do not apply. No motions or objections relating to the admissibility of information and views will be made or considered, but any other party may comment upon or rebut all such data, information, and views.

(d) The presiding officer may order the hearing to be transcribed. The party requesting the hearing may have the hearing transcribed, at the party's expense, in which case a copy of the transcript is to be furnished to FDA. Any transcript of the hearing will be included with the presiding officer's report of the hearing.

(e) The presiding officer shall prepare a written report of the hearing. All written material presented at the hearing will be attached to the report. Whenever time permits, the parties to the hearing will be given the opportunity to review and comment on the presiding officer's report of the hearing.

(f) The presiding officer shall include as part of the report of the hearing a finding on the credibility of witnesses (other than expert witnesses) whenever credibility is a material issue, and shall include a recommended decision, with a statement of reasons, unless the Commissioner directs otherwise.

(g) The presiding officer has the power to take such actions and make such rulings as are necessary or appropriate to maintain order and to conduct a fair, expeditious, and impartial hearing, and to enforce the requirements of this part concerning the conduct of hearings. The presiding officer may direct that the hearing be conducted in any suitable manner permitted by law and these regulations.

(h) The Commissioner or the presiding officer has the power under § 10.19 to suspend, modify, or waive any provision of this part.

§ 16.62 Right to counsel.

Any party to a hearing under this part has the right at all times to be advised and accompanied by counsel.

Subpart E—Administrative Record and Decision

§ 16.80 Administrative record of a regulatory hearing.

(a) The administrative record of the regulatory hearing consists of the following:

(1) The notice of opportunity for hearing and the response.

(2) All written information and views submitted to the presiding officer at the hearing or after if specifically permitted by the presiding officer.

(3) Any transcript of the hearing.

(4) The presiding officer's report of the hearing and comments on the report under § 16.60(e).

(b) The record of the regulatory hearing is closed to the submission of information and views, at the close of the hearing, unless the presiding officer specifically permits additional time for a further submission.

§ 16.85 Examination of administrative record.

Part 20 governs the availability for public disclosure of each document that is a part of the administrative record of a regulatory hearing.

§ 16.95 Administrative decision and record for decision.

(a) With respect to a regulatory hearing at the Commissioner's initiative under § 16.1(a), the Commissioner shall consider the administrative record of the hearing specified in § 16.80(a) together with all other relevant information and views available to FDA in determining whether regulatory action should be taken and, if so, in what form.

(b) With respect to a regulatory hearing required by the act or a regulation under § 16.1(b)—

(1) The administrative record of the hearing specified in § 16.80(a) constitutes the exclusive record for decision;

(2) On the basis of the administrative record of the hearing, the Commissioner shall issue a written decision stating the reasons for the Commissioner's administrative action and the basis in the record; and

(3) For purposes of judicial review under § 10.45, the record of the administrative proceeding consists of the record of the hearing and the Commissioner's decision.

Subpart F—Reconsideration and Stay

§ 16.119 Reconsideration and stay of action.

After any final administrative action that is the subject of a hearing under this part, any party may petition the Commissioner for reconsideration of any part or all of the decision or action under § 10.33 or may petition for a stay of the decision or action under § 10.39.

Subpart G—Judicial Review

§ 16.120 Judicial review.

Section 10.45 governs the availability of judicial review concerning any regulatory action which is the subject of a hearing under this part.

Interested persons may, on or before January 8, 1978, submit to the hearing clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, MD. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the hearing clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: November 1, 1978.

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

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